LEGISLATIVE COUNCIL

Tuesday 22 March 1988

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

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

ASSENT TO BILLS

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

Aboriginal Heritage,
Acts Interpretation Act Amendment,
Acts Interpretation Act Amendment (No. 2),
Barley Marketing Act Amendment (1988),
Beverage Container Act Amendment,
Constitution Act Amendment (No. 3),
Coroners Act Amendment,
Electoral Act Amendment (No. 2),
Family Relationships Act Amendment,
Frustrated Contracts,
Justices Act Amendment (No. 2),
Reproductive Technology.

PETITION: FIREARMS

A petition signed by 32 residents of South Australia concerning the availability of firearms and praying that the Council would exercise stricter licensing of firearms and make illegal the possession or ownership of firearms by private individuals in the metropolitan area was presented by the Hon. I. Gilfillan.

Petition received.

PETITION: EXTENDED TRADING HOURS

A petition signed by 70 861 residents of South Australia concerning extended trading hours and praying that the Council would support legislation to allow the extension of trading hours on Saturday afternoon was presented by the Hon. K.T. Griffin.

Petition received.

QUESTIONS ON NOTICE

The PRESIDENT: I direct that the following answers to Questions on Notice be distributed and printed in *Hansard*: Nos 128, 135, 153, 154, 158 and 164.

HOSPITAL STAFF

128. **The Hon. M.B. CAMERON** (on notice) asked the Minister of Health:

1. What was the total number of consultants, as opposed to doctors on a full-time equivalent basis, at each of the major metropolitan hospitals, for each of the respective years from 30 June 1982 to 30 June 1987, inclusive?

2. *(a)* What are the projected figures for consultants as opposed to full-time equivalent doctors for 30 June 1988?

(b) What was the total number of registrars at the major metropolitan hospitals for those same years, and the projection for 30 June 1988?

3. What is the cost per service provided at the Noarlunga Health Village at this stage?

The Hon. J.R. CORNWALL: The following is the information requested, broken down by year over the period 1982-83 to 1986-87 for the hospitals that are on the Health Commission's multi-function payroll system (MFPS). The information is presented by the Health Commission's classification codes. The information provided does not include statistics for Adelaide Children's Hospital or Queen Victoria Hospital, as neither of these hospitals are on the MFPS and have only recently been incorporated under the SAHC Act (24.9.84 and 1.3.86 respectively).

1. *(a)*

CONSULTANT* FTE

	RAH	FMC	T QEH	LMc	MOD	HILL	GLEN
1986-87	47.73	28.29	29.82	12.09	12.56	3.10	1.95
1985-86	53.22	26.57	27.67	11.58	13.34	2.50	1.12
1984-85	50.07	26.74	28.18	13.67	12.10	2.20	0.58
1983-84	49.66	23.04	28.08	13.36	11.60	2.08	4.00
1982-83 (est.)	50.75	22.10	30.63	13.45	8.70	—	0.01

*By the term 'consultant' it is assumed reference is made to senior visiting medical practitioner/visiting medical specialist (MOV2) and senior visiting medical specialist (MOV3)

1. *(b)*

DOCTORS* FTE

	RAH	FMC	T QEH	LMc	MOD	HILL	GLEN
1986-87	282.32	262.68	205.78	52.24	70.85	36.04	31.99
1985-86	263.94	236.37	188.02	44.61	55.14	37.36	28.31
1984-85	264.02	219.42	182.98	46.87	53.27	33.46	21.70
1983-84	252.39	214.61	176.97	44.60	58.09	31.34	20.60
1982-83 (est.)	243.14	205.60	175.11	39.15	57.54	29.86	16.18

*This includes the following award classifications: (qualified medical officers MO1-MO11; trainee medical officers MOR 3-5; visiting medical staff MOV 1-3; casual medical officers MOW 1-3).

It excludes the award classification of intern (MOR2) and persons engaged as locum interns (MOR1)

2. *(a)* Projected figures for the financial year 1988 were also requested. These figures are not readily available. In the current economic climate it is advised that whilst fluctuations in the numbers of staff may occur between classification levels, the total number of FTEs would not be expected to vary greatly from those of the past two years.

2. *(b)*

	REGISTRARS* FTE						
	RAH	FMC	T QEH	LMc	MOD	HILL	GLEN
1986-87	90.00	86.50	61.00	4.00	10.08	10.36	12.00
1985-86	76.00	72.00	42.00	2.00	6.87	9.07	4.00
1984-85	80.50	62.00	49.00	2.00	5.00	10.07	8.00
1983-84	74.00	64.00	53.00	1.00	2.00	5.00	3.00
1982-83	51.50	64.53	46.00	—	6.00	3.00	2.00

*This covers registrars (MOR4) and senior registrars (MOR5).

3. The direct cost per patient treated at the Noarlunga Health Village Medical Drop-in Centre in 1986-87 was as follows:

	$
Total cost per patient	25.82
Revenue received (Medicare) per patient (av)	14.89
State subsidy per patient	10.93

No details are available on the cost per service.

CENTRAL LINEN SERVICE

135. **The Hon. K.T. GRIFFIN** (on notice) asked the Minister of Health:

1. When will the Minister provide answers to questions about the Central Linen Service raised by him in the Committee stages of the Appropriation Bill on 22 October 1987?

2. What are the answers to those questions?

The Hon. J.R. CORNWALL: This question was answered on 18 February 1988.

FOREIGN MEDICAL GRADUATES

153. **The Hon. R.J. RITSON** (on notice) asked the Minister of Health:

1. What is the procedure for registration of foreign medical graduates?

2. Is a distinction made between:

(a) Holders of 'recognised' or 'registrable' degrees; and

(b) Non 'recognised' or non 'registrable' degrees?

3. If so, what is the distinction?

4. Are requirements for registration of non-recognised degrees waived or modified to enable holders of such degrees to take up academic appointments in South Australian universities?

5. *(a)* If a holder of a non-recognised primary degree is registered as a medical practitioner to enable him or her to practise a specialty in relation to an academic appointment, does that registration legally entitle such a practitioner to practise privately in areas remote from the specialty in which the academic appointment was made?

(b) Would a foreign graduate (with unrecognised primary degrees) registered only by virtue of an academic appointment in, say, neurosurgery, be allowed to treat, say, a broken leg in a private hospital?

6. If the situation described in 5 *(b)* above is permitted, does the Minister believe that such a situation should continue?

7. If the Minister does not approve of such a situation, would the Minister take steps to ensure that foreign medical graduates with non-recognised qualifications who are appointed to academic positions, and who do not qualify for registration by examination or internship, are only registered to practise in public institutions and only in specialties related to the academic appointment?

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

1. All medical practitioners who are not graduates holding primary medical qualifications from universities in Australia, New Zealand, the United Kingdom or the Republic of Ireland, are considered to be 'foreign graduates'. Under normal circumstances foreign graduates are not eligible for 'full' registration unless they have successfully completed the Australian Medical Council's (AMC) examination and, in addition, meet Medical Board requirements regarding internship training. All such practitioners are required to make personal application to the board's office and produce the following documentation:

1. Original of the A.M.C. Certificate.
2. Original or certified copies of the applicant's primary medical qualification.
3. A Certificate of Good Standing from the registering authority under whose jurisdiction the applicant has last worked, or in certain circumstances, a statutory declaration asserting Good Standing.
4. Two recent reference reports.
5. Two passport photographs.
6. Some means of identification, that is, a passport.

The board then considers the internship training of the applicant and decides whether or not some additional training is required before full registration is granted.

2. Yes, the Medical Practitioners Act makes a distinction between the holders of recognised or registrable degrees and non-recognised and registrable degrees.

3. *(a)* Pursuant to section 32, a person holding recognised primary qualifications and meeting the other requirements of the section is entitled to full registration on the General Register.

(b) Pursuant to section 35, a person not holding recognised or registrable qualifications may, in certain circumstances, be entitled to limited registration on the General Register.

4. Again, pursuant to section 35, a holder of a non-recognised degree may obtain limited registration for certain purposes; they are:

i. to obtain the experience and skill for full registration under the Act; or
ii. to teach or to undertake research or study in South Australia; or
iii. if (in the opinion of the board) the applicant's registration is in the public interest.

The documentary evidence and procedure is the same as previously stated in this reply plus a requirement of documentary evidence of appointment as an intern, or in a teaching or research position, acceptable to the board. Public interest applications require the support of the Chairman of the South Australian Health Commission.

5. *(a)* Such a person would hold limited registration and that registration would have stated the limited conditions imposed by the board. For example, 'RAH Department of Surgery ONLY when carrying out the duties of his/her appointment at the University of Adelaide'. Practice outside of these conditions would not be covered by the terms of the registration.

(b) Generally speaking, no such action would in all probability be outside the terms and scope of the limited registration.

6. This question is answered in question 5.

7. The provision of sections 30, 32 and 35 of the Medical Practitioners Act appear to cover this situation.

If the member has a specific case or cases of concern, he should take them up with the Medical Board.

SOCIAL WORKERS

154. **The Hon. DIANA LAIDLAW** (on notice) asked the Minister of Health: Further to the Minister's reply to her question on social workers qualifications (Legislative Council 9.2.87), how many social workers are employed by the Department of Community Welfare and of this number:

1. How many are Aborigines?

2. How many are persons of ethnic background?

3. How many have less qualifications than the minimum recognised by the Australian Association of Social Workers?

The Hon. J.R. CORNWALL: There are 308 social workers* employed by the Department for Community Welfare.

*'Social Workers' include:

- community welfare workers;
- Aboriginal community workers;
- crisis care workers;
- neighbourhood youth workers.

Of this number—

1. 32 are known Aborigines (five of whom have an Associate Diploma in Social Work).

2. The department does not maintain records on how many employees are from an ethnic background. However, the department has 38 social workers who are bilingual.

	Number
Aboriginal Languages	3
Chinese	2
Dutch	6
French	2
German	4
Gilbertese	1
Greek	5
Icelandic	1
Khmer	2
Italian	4
Lithuanian	1
Maltese	1
Melanesian	1
Russian	1
Spanish	1
Vietnamese	2
Yugoslav	1

3. 185 have fewer qualifications than the minimum recognised by the Australian Association of Social Workers. However, of the 185, 144 have an Associate Diploma in Social Work; of the 41 unqualified left, 27 are Aboriginal community workers. This leaves 14 unqualified social workers. The qualification requirement determined by the Commissioner for Public Employment for appointment as a social worker is an Associate Diploma in Social Work or an equivalent qualification accepted by the Commissioner for Public Employment. An equivalent qualification accepted by the Commissioner for Public Employment is the In-Service Community Welfare Training Course which was the only form of training for social workers prior to the introduction of formal qualifications through tertiary institutions.

POLICIES ON THE DISADVANTAGED

158. The Hon. DIANA LAIDLAW (on notice) asked the Attorney-General: In respect to the Premier's announcement on 30 August 1987, that all Government departments and agencies would be required to assess the impact of their major planning and policies on the disadvantaged, particularly families with low incomes—

1. Will the Premier make available for incorporation in *Hansard* a copy of the *pro forma* used for making such assessments?

2. Which Government departments and agencies have made such an assessment in relation to their planning or policies since the Premier's announcement and in each instance what was the nature of the subject assessed?

3. As a part of the strategy, does the Government intend to release each assessment for public scrutiny or at least table each assessment in Parliament and, if not, why not?

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

1. No *pro forma* was used.

2. All departments and most agencies have submitted reports, which described in varying degrees of detail operations judged relevant to the social justice strategy.

3. No. However, composite information on social justice matters will be presented at the time of presentation of the 1988-89 budget.

COMMUNITY AIDES

164. **The Hon. J.C. BURDETT** (on notice) asked the Minister of Community Welfare:

1. How many persons are registered as community aides at the present time?

2. How many unregistered volunteers are in fact carrying out duties with the Department for Community Welfare at the present time?

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

1. There are 494 registered community aides within the department.

2. There are five unregistered volunteers carrying out duties within the department at the present time.

ABERFOYLE PARK SOUTH PRIMARY SCHOOL

The PRESIDENT laid on the table the report by the Parliamentary Standing Committee on Public Works, together with minutes of evidence, on Aberfoyle Park South Primary School.

PAPERS TABLED

The following papers were laid on the table:

By the Attorney-General (Hon. C.J. Sumner):

Pursuant to Statute—

Correctional Services Act 1982—Regulations—Medical Examination of Prisoners.

Government Management and Employment Act 1985—Regulations—Sick Leave Credits and Certificates

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

Pursuant to Statute—

Liquor Licensing Act 1985—Regulations—
Liquor consumption at Ceduna and Thevenard
Liquor consumption—Corporation of Woodville

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

Pursuant to Statute—

Trustee Act 1936—Regulations—Chase AMP Acceptances Ltd

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

Pursuant to Statute—

Planning Act 1982—Crown Development Report—275kV transmission line between Tungkillo and Tailem Bend Substation.
Drugs Act 1908—Regulations—Medicine Warning.
Royal Adelaide Hospital—By-laws—Parking.

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

Pursuant to Statute—

Local Government Act 1934—Regulations—
Counting of Votes at Elections.
Worker's Compensation Prescribed Bodies.
District Council of Paringa—By-laws.
No. 31—Keeping of Dogs.
No. 32—Keeping of Poultry.

QUESTIONS

SECOND TIER WAGE INCREASES

The Hon. M.B. CAMERON: I seek leave to make a brief explanation before asking the Minister of Health a question on the subject of second tier wage increases.

Leave granted.

The Hon. M.B. CAMERON: Members may well be aware of media coverage in the past 24 hours of claims by the Royal Australian Nursing Federation that a financial crisis is emerging in the State's health system because hospitals and health centres are not being given additional funds to meet recent pay rises, particularly the 4 per cent second tier increases. Only today the Federated Miscellaneous Workers Union backed up those claims saying, in essence, that the South Australian health system was being squeezed dry but would have to give further blood in the coming State budget.

None of this surprises me in the least. For months hospital representatives have been telling me of the acute conditions they are working under. As I understand it, the first that metropolitan public hospitals knew of the awarding of or the agreement to the 4 per cent increases (which I might add they are being told they will have to pay for out of their existing budgets if they cannot find offsets) was when they read about it in the newspapers. The hospitals have been told by the Health Commission that they will have to find cost offsets to meet these increases in wages, as no extra funding will be provided. However, the hospitals I have spoken to, both in city and country areas, say it is just not possible to obtain cost offsets without a reduction in staff and standards of service. The offsets that have been suggested really do not save any real money. For instance, if the length of time staff have for lunch is reduced, all that means is that they return to work earlier. In the case of maintenance staff, for example painters, it can even result in their using more materials and costing more because of the additional time spent at work.

The only way the hospitals can save money is by reducing staff, and the unions have informed hospital managers that that is unacceptable in the context of their obtaining second tier increases, because they simply did not agree to it. It was not part of the agreement. Hospital administrators appear to be in the dark because they have not been involved in negotiations between the Government and unions over the wage increases. What they are faced with now is paying the rises, as they have been instructed to do, and having a budget overrun, with the likelihood of a further budget cutback as a penalty next financial year, or cutting back on existing services. The cutbacks they will have to put in place represent potentially a further reduction of about 2.5 per cent on top of the three-quarter per cent reductions that metropolitan hospitals have had to accept, and the 1 per cent reductions for country hospitals, in real terms.

Country administrators tell me they have all received a letter from the commission's country health services division seeking information on the costs of implementing the second tier wage increases. It states in part:

> The means of funding the 4 per cent second tier pay increase for employees employed under the South Australian Health Commission and Government Management and Employment Act is currently being negotiated with the Treasury Department.
>
> To enable all necessary budgetary information to be provided to Treasury, it is necessary for the following information to be provided in respect of health units with employees paid under awards that have had the second tier increase approved.

When administrators asked commission representatives whether this indicated there was a chance they would be reimbursed for paying second tier rises if they could not find offsets, the reply came back, 'Oh, no, we require this information only for statistical purposes.' My questions are:

1. Will the budgets of South Australian public hospitals be supplemented in order to meet the additional costs of the recent 4 per cent second tier wage increases for staff? If not, where is the money to come from?

2. Will the money come off public hospitals' budgets for the 1988-89 fiscal year?

3. If so, will the Minister give a guarantee that the present level of services will be maintained in our public hospitals?

The Hon. J.R. CORNWALL: Let me begin by again reassuring Mr Cameron and his colleagues, members of the Legislative Council, the Parliament, the people of South Australia, and anyone else who cares to listen, that there is no financial crisis in South Australia's public hospital or health services. It is a furphy of enormous proportions to claim that there is a financial crisis. South Australia's public hospital system is very well managed and, relative to the rest of Australia, is a very well resourced hospital system.

If one looks at the number of beds per thousand of population one will find that with respect to acute care public beds the Australian average is 3.9, and in South Australia it is 4.3; with respect to the private sector, the Australian average is 1.2, and in South Australia it is 1.5; with respect to the repatriation area, the Australian average is 0.2, and in South Australia it is 0.3. The total number of beds per thousand people nationally is 5.3 (which I might say is generous by international standards), and with respect to public, private, and repatriation in South Australia it is six. I am not able to do the arithmetic as rapidly as I might like, but it is certainly in excess of 10 per cent more than the national average. Therefore, in South Australia in terms of beds, we do—

The PRESIDENT: It is 11 per cent.

The Hon. J.R. CORNWALL: Thank you very much, Ms President. It is 11 per cent, which is higher than the national average which, as I say, is higher by international standards. With regard to the use of hospitals, the average length of stay nationally is 5.8 days (that is, for acute care public hospital patients), and in South Australia it is 5.2 days.

Therefore, we have more beds and a shorter length of stay—and the length of stay is one of the accurate indicators of the levels of management and competence. We do very

well by national and international standards. As I said, we are well resourced by national standards. We have a hospital and health system which, in many respects, rivals the best in the world—that is on any objective analysis.

We have achieved a very high standard with our hospital buildings. The fabric of our hospitals is good to very good by international standards. The equipment in our teaching hospitals is good, certainly by national standards and overall by international standards. Our clinical and surgical standards are overall as good as any in the world. Our metropolitan public hospitals have achieved excellence through the integration of patient care, teaching, and research. There is a very healthy balance in this city of Adelaide between public and private sector medicine.

We have a very good balance between the number of beds in the public hospital sector and the number of beds in the private hospital sector. Also, we have a very good balance between the private beds that are available within the teaching hospitals and the number of public beds. In addition, and I am pleased that the Hon. Mr Cameron raised the matter, the South Australian health system boasts numerous centres of excellence and, included among these, we have the Craneo-Facial Unit, the Cardio-Thoracic Unit at Royal Adelaide Hospital, the Micro Surgery Unit at Royal Adelaide Hospital, the Pain Clinic and the Ophthalmology Department at Flinders Medical Centre, the Renal Unit at Queen Elizabeth Hospital, the Division of Human Immunology at the Institute of Medical and Veterinary Science—all of them in world class, and many of them, let me say, world leaders.

Members interjecting:

The Hon. J.R. CORNWALL: I know that you do not like this. I think it ought to go on the record because you are trying to compare this State and its health system with New South Wales.

Members interjecting:

The Hon. J.R. CORNWALL: There is, let me say, no comparison.

Members interjecting:

The Hon. J.R. CORNWALL: I know, it is not a question of hoping. I am not at all sensitive. Let me say in the wider health system that this State Government provides free community based dental care to every South Australian school child up to and including the year in which they turn 16, and has made these services widely available to adult low income earners. So, there is no financial crisis, and we do have, by any standards, one of the finest health and hospital systems in the world. Anyone in this State who tries to denegrate and knock that system ought to be an inpatient in one of the mental health institutions because the recorded facts are that we do very well indeed.

As to the 4 per cent second tier agreement, that was entered into and agreed by all parties before the South Australian Industrial Commission. There were very clear guidelines for the second tier and we could not and did not as a Government go outside those guidelines. We negotiated with the health industry as one of the first major public sector areas and we concluded those agreements some time ago.

As part of that agreement, the cost within the incorporated health units (that is the hospitals and community health centres and various other services incorporated under the Health Commission Act) and the additional wages bill in a full year is estimated at $19.2 million. The additional wage bill on top of that, that is, outside the system of incorporated health units, is an extra $6.8 million, but it was agreed by the unions representing the health industry (that is, the principal unions: the Miscellaneous Workers Union, the Public Service Association and the Royal Australian Nursing Federation) that they would cooperate in establishing worksite committees in all of the major health units and that they would go back to the Industrial Commission from time to time and report on the progress that had been made in reaching those productivity savings that were agreed to.

There is nothing unusual in the event for us looking for pro rata savings in 1987-88. The worksite committees in each of the major hospitals, in particular, the Health Commission, as well as the Industrial Commission and the South Australian Government are looking for pro rata savings. We are asking the unions, representing the work force, to honour the agreements that were reached in the Industrial Commission. The budgets at this stage most certainly will not be supplemented, although there are a number of areas in which the individual budgets are under significant pressure.

However, as I said yesterday, that is not unusual towards the end of the third quarter of a financial year—in fact, it is to be expected. In relation to where the money is coming from, obviously—and I repeat this—we are looking for those pro rata savings to which all parties agreed in the Industrial Commission. In conclusion, I find the claim from the Royal Australian Nursing Federation to sit a little strangely because during the period of this Government it has fared significantly better than any other industrial or professional organisation in this State.

The clinical career structures alone to which we agreed last year and which are now in place have resulted in, first, an increased number of nurses, and particularly senior nurses, being available in the wards of our hospitals, which adds to the quality of patient care; and, secondly, there have been salary increases of up to 22 per cent. So, the nursing profession as represented principally by the RANF in this State has done very well indeed—$42 million a year or almost 5 per cent of the total budget. That was the agreement reached with the RANF.

In addition, the recurrent cost of tertiary nursing education to the State Government up to and including 1993 is $40 million a year in 1987-88 dollars. So the RANF and its membership directly and indirectly during the period of the Bannon Government have benefited in this State by in excess of $80 million a year. In fact, there has been a revolution in the nursing industry and more importantly in the nursing profession, and it has become further professionalised. We do not cavil about that at all, but it seems to me in those circumstances to be a very strange position indeed—for the RANF to lead a charge complaining about a lack of funding in the public health sector.

Let me repeat what I said at the recent Health Ministers Conference in Alice Springs, that is, that I believe, looking at the whole question of health and hospital care nationally, that it may well be—and indeed I am urging this on my Federal colleagues—that they should reconsider the percentage of gross domestic product that we spend as a nation on health and hospital care, because at around 7.7 per cent it places us in the lower quarter of OECD countries. Only the United Kingdom spends significantly less as a percentage of gross domestic product—with obvious results. However, that is quite another matter for another day. I will pursue that matter with the Federal Minister, with the support of at least some of my State colleagues, at the special Health Ministers Conference prior to the Premiers Conference. At that time we will renegotiate an interim arrangement on Medicare funding for the 1988-89 financial year. I will put that case strongly.

In the meantime, I believe that the State Government has been caught in a double bind (if you like) between keeping a cap on taxes and charges with a very clear commitment to do so and, on the other hand, being faced with a mini-budget in May last year which took away from the State of South Australia alone about $200 million in recurrent and capital funds. When you look at that twin squeeze in which we have been caught and at the resources of our very fine health and hospital system, I think we have a great deal about which we can be proud.

CHILDREN'S COURT

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about the Children's Court review.

Leave granted.

The Hon. K.T. GRIFFIN: Two weeks ago I made a call for a review of the Children's Court and legislation governing its operations. I was pleased to see that the Attorney-General responded by announcing that there will be a partial review. He has said that the review will be conducted by a member of his department, and members of the Department for Community Welfare, the police, and the Education Department. Since that indication, I have called for the membership of that committee to be broadened to extend beyond Government officials, the majority of whom may already be involved with the existing system, to ensure that some outside points of view and experience may be brought to bear on the questions to be considered. I was suggesting perhaps a representative of school parents organisations, private legal professionals, and the community in general. So far, the Attorney-General has rejected that proposal. On the other hand, the Attorney-General has accepted that there is a need to review access to the court by the public and the media. That access is now very much limited.

According to the newspaper report the review will focus on screening panels and children's aid panels; the right of the Children's Court to review bail conditions imposed by other courts; the need for a more open system; the trial of juveniles as adults; and the right of the Children's Court to review orders and penalties imposed by other courts. Of course, the emphasis must continue to be on ensuring that whenever possible, the young offender will not offend again. However, the Attorney-General does not talk about penalties, including the inadequacies in the present community work order system, and other options for dealing with repeated offenders. There is a high level of community concern about the perceptions which repeated young offenders appear to have that they can thumb their noses at the court with impunity. There is a perception among the wider community that for deliberate, wilful and repeated offences by young offenders leniency is liberally applied, and that the community work orders are not available, but, if they are, they are enforced half-heartedly. My questions are as follows:

1. Why will the Attorney-General not agree to broader representations from outside the Government on any committee of review?

2. Will he extend the review to examine the options for penalties available to the court, the extent to which the punishment fits the crime and the availability and effectiveness of community work orders?

The Hon. C.J. SUMNER: It is interesting that the Hon. Mr Griffin has decided to ask me a question today as opposed to the last time the Parliament met when, lily livered as he is, or, perhaps I should say, as a person of some integrity (I hope it is the latter) he did not realise that the scoundrels in the other place, his colleagues, were going to get up to their tricks.

The Hon. K.T. GRIFFIN: On a point of order, Madam President, the Attorney-General has made an injurious reflection on the members of the other place. I ask him to withdraw it.

The Hon. C.J. SUMNER: I am sorry that the honourable shadow Attorney-General is so sensitive about this matter. Quite clearly—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER:—he has a guilty conscience about it. It would appear—

Members interjecting:

The PRESIDENT: A request has been made that the Attorney withdraw certain remarks.

The Hon. C.J. SUMNER: If you think it is unparliamentary, Madam Chair, I will—

The PRESIDENT: It does not have to be whether I think it is unparliamentary.

The Hon. C.J. SUMNER: Well, I would like your advice on the matter—a ruling.

Members interjecting:

The PRESIDENT: Order! Under Standing Order 193, no objectionable or offensive words shall be used and no injurious reflections shall be permitted on, amongst others, the Parliament or any member thereof. I would interpret that as meaning the member would have to be named.

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! I have called for order. I repeat that Standing Order No. 193 says that there shall be no injurious reflections upon the Parliament of this State. Of course that includes the House of Assembly as part of the Parliament of this State. It goes on to say 'or any member thereof'. It seems to me that 'any member' means that a specific member would have to be named or clearly referred to.

Members interjecting:

The PRESIDENT: If anyone wants to suggest a meeting of the Standing Orders Committee to alter that ruling I shall be happy to call it. Standing Order 193 does not prevent any person upon request from giving apologies or withdrawals, as has frequently happened in the Council without the ruling having to be made whether a particular phrase is against Standing Order 193.

The Hon. K.T. GRIFFIN: I wish to disagree with that ruling because I do not believe that it is appropriate.

The PRESIDENT: Order! If you wish to disagree with the ruling, can you put it in writing and bring it to the table straight away?

The Hon. C.J. SUMNER: I do not want to waste the time of the Council. If members object to my calling their colleagues in the House of Assembly scoundrels I will withdraw that comment. Nevertheless, they are certainly gutless and cowards and that is already on the public record.

The Hon. C.M. Hill: You have been stewing over this.

The Hon. C.J. SUMNER: No, I hadn't given it another thought. I asked Mr Olsen, Mr Griffin and Mr Goldsworthy to debate me in the press conference room. I had it already set up for them, but they could not be found; they scuttled out as soon as they saw me coming in never to be seen again.

The Hon. C.M. HILL: On a point of order, can the honourable Attorney answer the question?

The PRESIDENT: There is no point of order.

The Hon. C.M. HILL: There is a point of order. I take the point of order that the Attorney is not referring to the question.

The PRESIDENT: There is no point of order. There is nothing in the Standing Orders which says that an answer must be relevant to a question. I very much regret this.

Members interjecting:

The PRESIDENT: Order! There is nothing in Standing Orders to prevent that. I have on occasions suggested such a change and have been the only person on the Standing Orders Committee to support such a move. The only thing in Standing Orders relating to answers to questions is that a matter may not be debated.

The Hon. C.J. SUMNER: I prefer to take the charitable view of the Hon. Mr Griffin which is that he knew nothing about what his colleagues were up to in the House of Assembly. I am sure that had he known he would have had the gumption to raise the matter directly in the Parliament. However, I take the view that he is a man of integrity and that what happened in the House of Assembly two weeks ago was done without his approval. I am sure that is right because he is a man of integrity, and I know that he would not have been involved in that sort of nonsense. I will maintain that view until he or someone else indicates to me that it is not correct; but I will take the charitable view until there is any evidence to suggest otherwise.

The review of the Children's Court and its procedures was noted in Cabinet on 1 February 1988. The committee is to review screening panels—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I thought that I would have something ready for you when you made your statement to the press. I know that you are very upset that you missed out on the headline, but that is just part of the business. It is called anticipation. The committee should be established to review screening panels and children's aid panels—their use, effectiveness and alternatives; bail and the review thereof (section 44); the need for a more open system; the trial of juveniles as adults; the review of orders by the Children's Court (section 80); penalties, including the use of community service orders; the adequacy of statistics in allowing proper monitoring and evaluation of the juvenile criminal justice system; and any further matters referred to the working party by the Attorney-General.

It was decided that the working party would be in-house, as I have already announced, and chaired by an officer of the Attorney-General's Department with representatives of the Minister of Community Welfare, the Police Commissioner and, in particular, with respect to the problems that have occurred in relation to school arson and vandalism, someone to represent the views of educational groups.

Those terms of reference clearly cover the question of penalties to which the honourable member has referred in his question; therefore, there is no need for me to respond. I do not know where the honourable member obtained his information to suggest that penalties were not included in the review; they are and, in particular, the use of community service orders. Two weeks ago, when this issue was raised, I said that there ought to be more attention given to community service orders to bring home to children a greater sense of personal responsibility for the criminal acts that they commit.

I think it is appropriate that the working party be in-house. The results of the review will be made available to the Children's Court Advisory Committee and the public. If any legislative measures arise from the review they will be introduced into the Parliament and be the subject of debate and as part of the whole process public comment from interested people can be received.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: People can comment about it if they disagree with the system, but I do not take the view that the Children's Court system is in need of major overhaul.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: They can make submissions while the committee is considering the matter, after the report is published and when legislation is before the Parliament. At any of those stages anyone who wishes to put a point of view will be entitled—indeed, I will say now, encouraged—to make their views known to the review group. The reason that the Government does not believe there is any need for a broader review is that it does not think that the Children's Court system requires a dramatic overhaul. This system has been in existence for some 10 years. It was supported by the Liberal Government when it was in office and it did not change the basic structure.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That is all very well, but you did not change the basic structure of the Children's Court and the legislation under which it is administered.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: It came in in 1979. If you had such fundamental concerns about the philosophy that it contained—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: You do not have fundamental concerns: that is good, I am glad you do not have fundamental concerns.

The Hon. K.T. Griffin interjecting:

The PRESIDENT: Order! This is not a conversation across the Chamber.

The Hon. C.J. SUMNER: You do not have fundamental concerns about the Act; therefore it appears to me that you support the position that the Government is taking, which is to enable the legislation to be reviewed, to enable the public to make comments if they wish, to have the Children's Court Advisory Committee look at the results of the review and then, of course, to introduce legislation if that becomes necessary.

The reality is that, if we consider particularly the level of violent offending, there has been no significant increase. There have been some blips up and down, but in the past seven or eight years there has been no significant increase in violent offences committed by children. If one goes back for the past 15 years, on a per capita basis, there has not been a significant increase in juvenile crime in this State.

The other important figure is that 87 per cent of children who appear before a children's aid panel do not subsequently reappear before the Children's Court. On the face of it, that is a pretty reasonable record for a system of juvenile correction. The other thing that has happened is the policies of the past 15 years, supported by the Liberal Party when it was in Government, have resulted in a much lower rate of detention for juveniles in institutions. That, I think, is agreed by most correctional people throughout Australia and indeed the world as being desirable. If children are put into correctional institutions with other juveniles who have a propensity to commit criminal acts, then they are involved in a criminal culture and their chances of rehabilitation might be even less than they might have been.

The Hon. M.B. Cameron interjecting:

The Hon. C.J. SUMNER: That is all very well. They are important questions and you are getting proper answers to

them. Basically, the Government says that the structure that was established, the 1978 legislation, has worked reasonably well. There is, however, after 10 years, a case for examining some specific areas that do need to be looked at, and I have outlined them. The way that will happen is as a result of a Government working party. Anyone from outside of Government—from the private legal profession or anywhere else—who wishes to do so can put submissions. The Hon. Mr Griffin or the Hon. Mr Burdett can contribute by way of submission, and they are perfectly welcome to do so. The question of penalty is one issue that is specifically included in the terms of reference of the review.

EARWIGS

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Health, representing the Minister of Agriculture, a question on the vexed subject of earwigs.

Leave granted.

The Hon. L.H. DAVIS: The Minister of Health is probably unaware of the devastating impact of the European earwig (or to give it its scientific name, *forficula auricularia*) in many parts of the State. The earwig is about 1 to 1½ centimetres in length and was first sighted in the Kapunda district in the 1960s, and is now widely distributed in country areas, particularly the lower north, in towns such as Burra. It has also been reported in Mount Gambier and in the metropolitan area of Adelaide.

The number of earwigs has increased dramatically in recent years. Earwigs are good breeders, with the females laying about 60 eggs twice a year. Earwigs enjoy cool and damp conditions. They thrive outdoors in mulch or under logs and rocks or inside in salt cellars, kettles or wall cavities.

Members interjecting:

The Hon. L.H. DAVIS: Madam President, I am not getting any protection at all. In South Australia earwigs are most evident in October/November and can be expected to reappear in large numbers shortly when the season breaks, in late March/April/May. The destructive properties of the earwig are legend. They can attack anything green and wipe it out overnight. They can strip the leaves off rhubarb in one night.

The Hon. C.M. Hill: Question!

The PRESIDENT: Order! 'Question' has been called. The explanation must cease.

The Hon. L.H. DAVIS: Thanks, Murray. I was just coming to your garden.

The PRESIDENT: Order! The question must now be asked as 'Question' has been called.

The Hon. L.H. DAVIS: My question is: can the Government investigate as a matter of urgency the sharp increase in earwigs in the State's mid-northern regions and publicise methods of minimising the rapid and severe damage which earwigs can inflict on flowers, fruit, trees and vegetables, affecting not only domestic gardens but quite possibly commercial properties in South Australia?

The Hon. J.R. CORNWALL: It is nice to see the Opposition fighting amongst themselves. I had the impression that in the contemporary political climate we might have faced a rather hostile and vicious Question Time in the Legislative Council today. However, it is nice to see that there is virtually a tripartisan approach to politics being adopted in this Chamber at this time. The question is a sensible one. It does not involve any Party politics that I can think of, and in the circumstances and, in the spirit of concordiality which seems to be abroad, I shall be very pleased to refer it to the Minister of Agriculture and bring back a reply.

UNLEY PROPERTY

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General, as Leader of the Government, a question relating to the New Age Spiritualist Mission in North Unley.

Leave granted.

The Hon. I. GILFILLAN: There has been a lot of publicity about the placing of the New Age Spiritualist Mission in Palmerston Road, North Unley. A letter to my colleague, Senator Janine Haines, has been passed on to me, and extracts from that letter from the mission are as follows:

Having purchased the property at auction in May 1987, we approached Unley council in October 1987, with a development application, sketch and summary of the use of our building and its parking requirements.

We received a notification, dated 20 October 1987 that our building was 'permitted' within the terms of the Development Plan Unley. We then engaged an architect, called tenders and obtained building approval from the Unley council on 17 February 1988. A building contract was signed on 29 February 1988.

After the signing of the contract, a letter was received from Mr Kym Mayes, Minister of Agriculture, and two other people asking us to withdraw our proposal. We wrote to him immediately indicating that we had signed a building contract and were commencing construction but that we would be pleased to meet him and his associates to dispel any doubts they might have about our centre.

We received no reply except that on Wednesday 2 March a notification from Mr Don Hopgood, Minister for Environment and Planning, informing us that we were required to produce an environmental impact statement and applying section 50 of the Planning Act to stop our development.

Mr Mayes then issued wildly inaccurate and exaggerated statements to the press concerning the operation of our centre. We learnt also from the newspaper articles that a petition had been raised, which we later discovered had been instigated by him.

Further on, the letter states:

The point at issue is this: Mr Mayes persuaded State Cabinet to invoke section 50 of the Planning Act, which as you know is intended to be used for the control of projects which will have a major social, economic and environmental impact on the State. How can this apply and be applied to a $120 000 house-type structure in a back street in Unley?

Does this mean that councils generally are now gradually to be relieved of their powers under the Planning Act? Will we eventually find the Minister for Environment and Planning approving house plans?

That letter is signed by Mr Johns from the mission. The letter to which they referred was signed by Mr Kym Mayes and two other residents of North Unley. An article in the *Sunday Mail* of 20 March stated:

The Royal Australian Planning Institute Vice-President, Mr Mike Green, said the use of section 50 in the Unley case was totally inappropriate.

Mr Green said section 50 had very pervasive powers in that it could be used to call in any proposal.

However, during compilation of the Act, assurances had been given by Government advisers that section 50 would only be invoked in cases of major social, economic or environmental importance.

I understand that that section applies to petrochemical and other major works. Section 50 states:

(1) Where the Governor is of the opinion that a declaration under this Division is necessary to obtain adequate control of development of major social, economic or environmental importance, the Governor may, by notice published in the *Gazette*, declare that this Division applies to—

It then specifies in what areas the Government may take action, and it has taken that step in this case. The newspaper articles have implied that the Unley council and the Mayor (Mr McLeod), in particular, were surprised at this move

and that they accepted that the development was approved through normal and proper procedures. Bearing in mind that there has been some publicity and a totally inadequate answer to this question in the other place, my questions to the Attorney are:

1. What are the issues of major social, economic or environmental import that justify the use of section 50 in this particular project?

2. Does the Attorney agree that it is a rare and extraordinary measure to invoke section 50?

3. When else has section 50 been invoked?

4. Does the Attorney agree that the Unley council had approved the project through its normal processes?

5. Did the Minister of Agriculture (Kym Mayes) initiate this matter in Cabinet?

6. If not, did Dr Hopgood initiate it on Mr Mayes' instigation?

7. Did the Hon. Kym Mayes excuse himself from any discussions on this issue on the grounds of having a vested interest?

8. If not, why not?

The Hon. C.J. SUMNER: The honourable member is obviously not aware that the Minister for Environment and Planning (Hon. D.J. Hopgood) has this afternoon advised the House of Assembly that the Governor in Council will revoke the declaration that was made under section 50. That being the case it seems to me that the honourable member's questions are no longer relevant.

Members interjecting:

The PRESIDENT: Order!

LINEAR PARK

The Hon. C.M. HILL: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question about the Linear Park devopment.

Leave granted.

The Hon. C.M. HILL: Local government authorities are concerned that funds for the completion of the Linear Park development scheme along the Torrens River throughout metropolitan Adelaide may be seriously curtailed, especially in the 1988-89 budget. There are strong rumours in the Hindmarsh-Thebarton area to the effect that all work will cease in the forthcoming financial year. Council members in the area, taking an overall view of the scheme, informed me that a lot of work is still to be carried out in the top end or foothills area and, if the project is stopped, supervisory staff will be deployed elsewhere thus presenting serious difficulties in regrouping such officers if and when the scheme recommences. So that local government can be informed, will the Treasurer advise whether it is his intention to reduce the funding for the Linear Park scheme either in this or in the next financial year and, if so, what will be the appropriate reduction in the Government's contribution to this most important metropolitan project?

The Hon. C.J. SUMNER: I will obtain a reply from the Treasurer. The Government remains committed to the Linear Park development and, in the past, has made allocations to enable it to continue to be developed. I am not aware at this stage of the precise budget position, but if the Treasurer can provide any information I will give it to the honourable member.

NURSING HOME CARE

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Health a question about nursing home care.

Leave granted.

The Hon. J.C. BURDETT: A series of very well attended meetings arranged by the Voluntary Care Association in the past week or so highlighted the problems which residents in South Australian nursing homes will face when the new funding and care arrangements for nursing homes are phased in by the Commonwealth Government from 1 July 1988.

I refer particularly to CAM, the Care Aggregated Module of those arrangements. One of the problems, I understand, is that the term of the phasing in period has not been fixed. In the past the standard of nursing home care in South Australia and Victoria has been high, largely in South Australia through the lead of the Health Commission in the standards set by regulation.

However, staffing has often been higher than the standard set by regulations, and has in the past been approved for funding by the Commonwealth department. That department now wishes to impose and fund uniform standards throughout the nation, and the net result will be a gradual reduction of the standard of nursing care in South Australian nursing homes.

I think it must be said that the South Australian Minister and his predecessors have made a significant contribution to the standard of nursing care in nursing homes in the State, and it is a shame to see that eroded by this action of the Commonwealth Department of Community Services. I understand that at one of the meetings held in the Woodville Town Hall—rather a significant place at present—last Thursday night the member for Henley Beach (Mr Don Ferguson) stated that the Minister in this Chamber, the Hon. Dr Cornwall, and his colleague Mr White, the Victorian Minister—as reported to me—were planning a meeting with the Federal Minister, Dr Blewett, with the hope of resolving the situation. My questions are:

1. What action is the South Australian Health Commission taking to try to ensure that there is no drop in standards in nursing home care in South Australia?

2. What representations is the Minister making to his Commonwealth colleagues to prevent disadvantage to residents in South Australian nursing homes?

3. Is the Minister in a position—and he might not be—to be able to release the report of the joint working party?

The Hon. J.R. CORNWALL: A number of very important issues have been raised by the Hon. Mr Burdett and I wish that I had a little more time to answer them. First, I have not got the report of the joint working party, although I have had correspondence from the Federal Minister, Peter Staples, only in the past day or two. He has indicated that he intends to release that letter unless there are reasons to the contrary advanced by the end of this month.

I have asked urgently that I should receive a copy in the meantime in confidence. In practice, in South Australia we have set the gold standard: we have the best quality of care and the best levels of care, both personal and nursing, in the country. That is no coincidence: it is a matter that was given very significant attention in the early 1980s and, in fact, the regulations that were developed by my predecessor were put in place by me when I became Minister of Health. Of course, the Commonwealth is moving to what is called 'outcome standards'. Rather than measuring them in the traditional ways it has given an undertaking that there will be no reduction in nursing home hours for present nursing home patients.

However, new standards will be phased in over three years. At present Queensland and New South Wales, in particular, are very much below the standards of Victoria and South Australia. They provide only what is called 'custodial care'. There is no active rehabilitation in that level of care at all. I have already had preliminary discussions with Neil Blewett and David White, and those discussions occurred in Alice Springs. I am meeting with all the interests from the nursing home area on Saturday morning next—the Voluntary Care Association, the Private Nursing Homes Association and other interested parties.

I want to get their views, and to discuss the matter with them. Following that meeting I will be seeking an urgent meeting with the Federal Minister for Community Services and Health, again on a formal basis. I will put propositions to him: although at this stage I am not prepared to discuss the fine detail, I will be taking whatever action is available to me to defend the standards that we now enjoy in South Australia.

OPTICIANS ACT AMENDMENT BILL (No. 2)

The Hon. J.R. CORNWALL (Minister of Health) brought up the report of the select committee, together with minutes of proceedings.

Ordered that report be printed.

ADOPTION BILL

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

That the time for bringing up the report of the select committee be extended until Tuesday 29 March 1988.

Motion carried.

OPTICIANS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 February. Page 2906.)

The Hon. M.B. CAMERON (Leader of the Opposition): The Opposition supports this Bill, which has resulted from a reasonably lengthy select committee hearing. The matters contained in the Bill have been the subject of some controversy over a long period. In supporting the select committee's report, and thus the Bill, might I say that it was not a simple select committee to sit on. There is nothing like what are essentially many competing commercial interests to test members who sit on these committees. It is not a simple matter to arrive at conclusions, and the enthusiasm of some groups of people in the presentation of evidence was quite understandable and was accepted in the spirit in which it was presented because, clearly, they believed in what they were presenting and they certainly gave their evidence vigorously and made sure that their point of view was brought before the committee, not once but several times.

However, the select committee had to arrive at a conclusion at some stage and, if possible, unanimous conclusion, and that we did. Let me assure the Council that it is not easy for the Minister of Health and me to arrive at any unanimous conclusion on any matter. However, on this occasion we did come together with the Hon. Mr Elliott and other members of the committee, and we have indicated to the Council through the report a series of recommendations that the Minister has put into the Bill. I hope the Bill will be accepted by the various competing forces as the blueprint from which they will work for the future, and that from now on we will see various sections of the industry working together for the better eye health of people in South Australia.

I know of my own need for assistance with my eyes in recent years because my deterioration has been somewhat rapid, and I appreciate the work that these people do. The Bill goes through the recommendations of the select committee, although it deregulates optical dispensers, that had happened anyway, and was in force, but illegally. The Bill sets out to make legal that which was already being done illegally.

The Hon. C.M. Hill: Has the select committee definitely finished its work?

The Hon. M.B. CAMERON: The Hon. Mr Hill asks whether the select committee has finished its work: the answer is 'Yes'. Later I will speak about the matter to which the Hon. Mr Hill is referring. The use of drugs by opticians was dealt with by the committee, and I believe that we came down on the side of reason. I must say that there was a view in the earlier stages of the committee that no drugs should be used by opticians. However, that view was calmed down a little, and we have only banned the use of cycloplegics. There are good and sound reasons for that according to both evidence and expert advice received by the committee.

Certainly, from the little information that I have received since from people in the industry, that recommendation would have the support of many people within the industry. Also we have allowed the sale of ready-made glasses. That is obviously an area of concern to some groups within the industry involved in eye care, but no evidence was given to us indicating that the use of ready-made glasses, which are in effect magnifiers (providing they provide equal magnification on each side) have any effect on the eyesight of a person. So, there can be no real reason on that ground for the banning of the sale of ready-made glasses, as was proposed in the original Bill introduced by the Minister.

One view put, and one that we carefully considered, was that for many reasons people should have to have their eyes tested before they started wearing glasses, but also to ensure that they did not have some disease or problem of the eye that needed to be treated. As I said, that was carefully considered but the unanimous view of the committee was that that could not be a final reason for the banning from sale of ready-made glasses. While it is important that people go to either an optician or an ophthalmologist at some stage once their eyesight starts to deteriorate, nevertheless, we believe that the issuing of a warning notice, which will be by regulation with the sale of each pair of ready-made glasses, is sufficient.

Certainly, this area needs to be watched in future, but that is our view. The Bill does not contain any indication that the ready-made glasses will have to conform to a standard, and that is probably an oversight. I indicate that, if the Minister does not do something about it, I will certainly be moving to apply some standards to the glasses that are to be sold. Basically, it would be to provide the same or similar standard as applies to sunglasses. Standards are laid down, and it is not as if we will be breaking new ground. Certainly, this area needs to be considered.

There are a number of other areas that have been referred to in the committee's report. There have been some changes to the optical dispensers registration committee, and I understand that there may be some amendment moved about that by a member from this side, but that will become

clear during the second reading stage debate when members speak to the Bill.

Members will note that a separate committee was set up to oversee optical dispensers. Consideration was given to allowing these people to remain under the opticians committee area, but we believed that, as there had been plenty of opposition to the deregulation of optical dispensers, there should be a separate committee.

It is always a bother when we have to put up new authorities and new committees, but in this case, certainly at this stage, we believe that it was necessary. Without going into much further detail I point out that it is not the sort of select committee that I would want to serve on every year. In fact, I trust that in the rest of my time in this Council it is not necessary to have another similar select committee, because it has not been an easy area to investigate.

In the final analysis I am glad that we have come forward with these conclusions, although I guarantee that they will not please everyone. I understand that, and I also understand the reasons for the enthusiasm of some people in relation to their particular views. However, I ask them to remember that as members of Parliament we must make conclusions, even though they will not please everyone. That is the way of life within our system. I am pleased that we came to a unanimous agreement. I support the Bill.

The Hon. J.C. BURDETT: I, too, support the Bill. Along with the Minister of Health and the Hon. Mr Cameron, I was a member of the select committee. It dealt with a number of different areas, and a number of them are addressed in the Bill. In regard to drugs, opticians or optometrists (as they usually call themselves) had been using illegally a number which are mainly diagnostic or anaesthetic. In the past they had no legal right to use those drugs, but for a long time a blind eye had been turned towards this practice. It was necessary and desirable, as with other areas such as deregulation of dispensing (with which I will deal in a moment), that this matter be cleared up and that practices which in the past seemed to have been permitted, albeit illegally, should be defined. People should know what the law is, and hopefully the law will be applied in the future.

In regard to drugs, the select committee recommended—and the Bill supports and implements this—that prescribed drugs may be used by optometrists. Of course, those drugs will be prescribed under the Controlled Substances Act. The select committee recommended that these drugs should not include cycloplegics in regard to which it is considered there is a need for proper medical supervision because of the effects that they may have.

Another area of the Bill mentioned by the Hon. Martin Cameron relates to ready-made glasses. The evidence given to us, including that by ophthalmologists, was that ready-made glasses, which are really magnifying glasses in frames, cannot do any harm. Certainly it would be desirable for anyone who has any defect in their eyesight to go to an optometrist or ophthalmologist before purchasing glasses to have a check-up, because the purchaser may suffer from all sorts of conditions. However, if we ban the sale of ready-made glasses, as was the case in the original Bill, we will introduce a measure of compulsory medication. It is desirable that all sorts of checks should be carried out. In fact, I think it is desirable that anyone over the age of 40 has a general medical check-up every 12 months, but no-one would suggest that it should be made compulsory.

The point is that the evidence indicates that ready-made glasses cannot do any harm. Generally, they cost about $25. A purchaser may or may not—but in fact usually does—get the degree of satisfaction out of them that he expects. They may give him headaches but they will not damage his eyesight. In regard to the general attitude in the community, and I think in Parliament, in regard to compulsory medication, it was the view of the select committee (and this is reflected in the Bill) that the sale of these glasses should not be banned but that prescribed warnings should be attached to these spectacles when they are sold. I might add that at the moment, as we were informed in evidence, the pharmacists who sell these glasses (and as far as I am aware they are sold solely by pharmacists) do attach warnings to them. Perhaps those warnings do not include all that we think should be included. However, the warnings will be prescribed by regulation, and the select committee felt that this was all that was required.

Another important question was the deregulation of dispensing spectacles which had once been prescribed by an ophthalmologist or optician. I think all members will be aware that this is another area where the law has been broken for a long time but no-one has worried about it. Certain firms have dispensed spectacles where there was no direct supervision by an optician. This has been going on for a long time but nothing has been done about it. Once again, I think it was necessary to define what could be done so that the law was in accordance with the general belief and requirements of people involved in this industry and of consumers. That is very important and, of course, it can be enforced. So, dispensing has been deregulated, but with registration. Those persons who dispense spectacles and fit them will have to have some training in future and will have to be registered.

A very important and vexed question before the committee related to those under eight years of age. The committee accepted evidence that the initial examination to prescribe spectacles for under eight year olds should be carried out by an ophthalmologist. This was opposed by the optometrists, but I think even they generally agreed that, in order to prescribe for under eight year olds, it is necessary to use cycloplegics. As I have said, the committee had already decided (and has recommended) that optometrists should not be able to use cycloplegics. The reason why it is necessary to use cycloplegics on under eight year olds is that up to that age children very often do not have powers of focus and therefore it is necessary to use these drugs to assess the condition of their eyes. The other reason generally given is that in regard to under eight year olds in particular what may appear to present at first blush as a visual problem is not that at all: it may be dyslexia, a specific learning difficulty or some other organic problem. After all, an ophthalmologist is a doctor who has basic medical training and is able to recognise these things.

The clause in the Bill dealing with under eight year olds will be, I understand, subject to an amendment to be moved by the Minister of Health. Of course, we can address this issue further at that stage. Basically, as I understand it, that prohibition on optometrists examining and prescribing for under eight year olds will be removed pending the matter going before the Health Ministers Conference to try to obtain some uniform resolution.

However, the committee persists in its assessment that it was convinced on the evidence presented to it that, in regard to under eight year olds, an ophthalmologist should be consulted at least 12 months before the prescription is made.

The other principal departure from the original Bill is the change of title to the Optometrists Act rather than the Opticians Act. This would seem to be a minor step forward because the practitioners call themselves optometrists. So,

why not call them that in the Act which will regulate their activities. I support the second reading.

The Hon. M.J. ELLIOTT: I will keep my contribution brief. I am in full accord with the report which came from the select committee. The report was, in fact, a unanimous report from all members, and I do not think it is necessary to cover the ground which has been covered there. It is true that during some stages of the committee I had doubts about the efficacy of the registration of optical dispensers. However, I do not believe a workable alternative was put forward. Therefore, I concur with the committee in that one area on which I had some doubts.

While the committee sat a number of other issues came to my attention which I think need to be addressed at some time, although not necessarily by way of legislation. First, it was quite clear, even among members of the committee, that when we began there was a very poor knowledge as to distinction between opthamologists and optometrists and, for that matter, optical dispensers. I believe that there has been a great blurring, certainly in the community's mind, as to what each of those practitioners is and is not capable of doing. I do not believe that it is in the best interests of the patient not to know exactly what they are, or are not, getting from each of those people. I would have liked that issue to be clarified by way of public education.

I was also concerned by what seems to be a growing oligopoly in the optometrical industry, particularly at the medical end. I believe that the commercialisation of medicine that we are seeing, particularly in optometrical practices, is a matter of grave concern. I believe that there are two reasons why the Government should address this issue: first, for the reasons of good and proper competition in the marketplace and, more importantly, in relation to the quality of the service which is provided to consumers. I do not think that we can afford to risk the quality not only of the glasses themselves but also, more importantly, of the medical aspects which are obviously involved. That is not something which this committee addressed, and it was not covered in the Bill as it stood. However, it was quite clear as I listened to the evidence that we need to pay attention to this aspect. I concur in the committee's report and, therefore, support the second reading.

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

TOBACCO PRODUCTS CONTROL ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 March. Page 3280).

The Hon. M.B. CAMERON (Leader of the Opposition): Mr Acting President, the Opposition does not support this Bill, which would have to be the most cynical, hypocritical and farcical Bill that I have seen introduced into this Parliament in my 17 years as a member. The best description of it is a *papier-mache* Bill. It looks good on the outside but is empty and hollow underneath.

The proposal was quite clearly the result of a carefully thought out policy by the Government to acquire control of the smaller sports of South Australia at no cost to the State while at the same time not upsetting the newspaper proprietors, or causing any problems for the Grand Prix or major sporting codes. It is, quite frankly, sickening to see the hypocrisy of the Minister of Health standing up in this place, scene setting, going through statistics of the effect of smoking on health, and then slipping in exemptions in the Bill covering areas such as advertising in newspapers and magazines.

Let me give an example of the hypocrisy to which I refer. If one went to Tourism South Australia today—in the last five minutes—one could pick up a document entitled 'Adelaide for the Visitor: South Australia Enjoy'. On the front it has a picture of a Marlboro car, in the background there is a Marlboro sign and further in the background there is another picture of Marlboro. This document can still be obtained at a Government department and is still being presented to the public by this Government. That is how dinkum the Government is. It is not prepared to pull out its own publicity, which is based entirely on cigarette advertising, because it happens to involve the Grand Prix. If the Government believed that this legislation would work, this document would not be available today. Let me quote what the Minister said earlier this month:

> New section 11a(3) makes it clear that the print media is excluded. Due to the nature of the printing industry, advertising in newspapers and magazines can only be controlled effectively at a national level.

What on earth does the Minister mean when he says that newspapers can be controlled only at a national level? Does he mean that advertisements in the *Advertiser*, the *News*, *Sunday Mail* or Messenger Press and country newspapers can be effectively controlled only at a national level? Out in the countryside we call that bulldust. What absolute nonsense! Look at the sorts of advertisements that will appear in newspapers after the passage of this Bill. Any member who thinks that they will be different from what the Minister is trying to stop has rocks in his head.

The Bill will prohibit advertising on billboard hoardings, in cinemas, video tapes and unsolicited pamphlets. I understand that this amounts to more than $4 million annually in South Australia, and all that will happen is that money, now spent in those areas on tobacco advertising, will be transferred to coloured newspaper advertising. I am not convinced that these bans will have any effect on reducing smoking among young people. Let me give the Council some reasons for this.

A world Health Organisation study of behaviour of schoolchildren in England, Norway, Finland and Austria during the 1980s entitled 'Health Behaviour in School-children a WHO Cross National Survey' found no link between tobacco advertising and the incidence of smoking among schoolchildren, and I quote from a section of that report published in May 1986:

> The lack of differences in smoking habits between countries probably reflects the selection of countries involved in the study in 1983-84. However, since Norway and Finland are countries with a restrictive legislation on advertising of tobacco products and the other two are not, a difference might have been expected. No such systematic differences are found.

In Australia, a National Health and Medical Research Council survey in 1979 into the smoking habits of our schoolchildren was also unable to find any links with tobacco advertising. That survey found that factors such as where children spent their spare time, and with whom they spent that time, parents' smoking habits and the students' scholastic abilities were far more likely to result in a child taking up smoking than any other reason. Advertising was not mentioned in the NHMRC study.

I remember going to boarding school in this city. I ended up becoming a house prefect. I did not smoke then and I have never smoked. One of the things that a house prefect had to do was to catch people smoking—people such as the Minister of Health, who I reckon used to do that at school. Looking back I am certain that the more I penalised these

people for smoking the more they did it because I almost always caught them smoking in exactly the same place. I do not think I stopped anybody at all. Our actions made it a dare. The more one bans such behaviour, the more that penalties are inflicted, the more one says it is not available, the more people have a go; but if time and money is spent on educating people on what will happen to them, that is a different matter entirely and will have an effect.

If the Minister really wants to stop people smoking, a greater percentage of the $41 million this State Government receives from its own taxes on tobacco should be used in education programs in schools, and for highlighting the health hazards of smoking in the media. As I said, I have never smoked but many of my friends have and the majority of them have given it up. It is even rumoured that the Minister of Health has stopped smoking. Why have all these people stopped? It is because the health hazards of smoking are being discussed more and more.

Are our children being recruited into smoking by advertising? I don't believe that they are but I have a very strong view that we should continue to increase the education of society through the school system.

If the Minister and the people supporting him really believe that a ban on advertising will work and is the way to go then they would not be exempting all the high-profile events such as the Grand Prix, and international and national sporting events—in fact, all the organs or events of advertising that really could influence smoking.

How can the Government justify this high profile sport, the Grand Prix, being exempt from this Act if it believes this works? Great Britain does not have tobacco advertising on its Grand Prix cars. West Germany does not have it on the cars or circuit hoardings, yet both countries still hold the Grand Prix. I suggest to the Minister that he is not fair dinkum. The Adelaide Grand Prix cannot be beamed in from another State; it originates here. That is the clearest example of the utter hypocrisy of this Bill, the Minister and the Government.

Let us briefly examine what effects this Bill will have on other sports in South Australia, some of which will not be as fortunate as the Grand Prix. Most sporting bodies and associations are in agreement on this Bill—they say it creates double standards because of its wide-ranging exemptions. A common statement to me is that the Bill should be 'all in or all out'. It seems that the Minister has never heard of satellites, because if he had he would be fully aware of the ability of sporting bodies to skirt this Bill. The South Australian Jockey Club, for example, says it has even been advised by the Department of Recreation and Sport that it could be exempted from the Bill's restrictions on tobacco advertising because Skychannel, which broadcasts racing nationally to participating hotels, is based in Sydney, and therefore does not have to heed South Australian legislation. While access to Skychannel will result in tobacco advertising continuing at Adelaide, Balaklava, Murray Bridge, Strathalbyn, Gawler, Naracoorte and Mount Gambier racetracks as well as hotels, it will be banned at other racing clubs under this Bill. It does not take much imagination to see that many of these disadvantaged racing clubs may soon set about installing Skychannel dishes in order to circumvent the Bill and so continue to enjoy much needed tobacco sponsorship.

I gather that the South Australian National Football League has already accepted that this Bill's successful passage is an accomplished fact and is attempting to negotiate a deal for State football to also receive exemption from the tobacco ban. The SANFL quite naturally is also looking at subscribing to Skychannel as a way of getting around the Bill. With cricket we will have the ludicrous situation where test and shield matches at the Adelaide oval will be exempted from the tobacco advertising bans, yet grade cricket will have to comply. It will be permitted to have signs around the Adelaide Oval during the test cricket and Sheffield Shield matches but they will be detached for the grade matches.

At grade cricket level 50 per cent of sponsorship is sourced from the tobacco companies, coming through the South Australian Cricket Association. The Australian Cricket Board gets sponsorship at present from the Benson and Hedges tobacco company for test, shield and junior coaching. The latter would be lost under the proposed Bill, while the moneymaking grades would obtain exemptions.

Junior tennis will lose $10 000 which is presently provided by the Rothmans Foundation, yet the Virginia Slims Womens International Tournament, scheduled for Adelaide next November, will be exempted under this Bill. Again, in soccer the national Socceroos team will play on with tobacco sponsorship, protected under this Bill's ludicrous exemptions system, yet the local State league—from which some of the national players come—will have to forgo its tobacco sponsorships.

I detest hypocrisy and the Minister must take the cake with this Bill with the exemptions in it, while pretending to be worried about smoking. Many taxis would continue to carry advertising until 1992 (after an election) and in fact most contracts will be allowed to continue until after the next election in 1989, all of which is designed to ensure that there is no uproar before an election.

Let us look at the question of sponsorship and the Sports Promotion, Cultural and Health Advancement Trust. If the Government was really concerned that sponsorship was the cause of juvenile smoking, then it would have offered, for example, to replace the sponsorship refused by the East Torrens Cricket Club. The Government received $41 million last year from tobacco excise. Why did it not match the offer? I suggest it does not really believe its own propaganda, and the sinister motivation behind this Bill becomes more and more obvious.

South Australian smokers already pay a huge sum into general revenue by way of tobacco excise to both State and Federal Governments. To rip more money from their pockets is at once a cynical and heartless exercise, while at the same time a sinister move to gain control of all the lesser sports in this State. It simply is not on.

Why is the Minister blaming and penalising smokers? Governments already take almost $112 million a year out of South Australian smokers. Why is this Bill out to extract more money from this group? Many of these people cannot afford any more: many of this group are single parents, pensioners and disabled people. But this Government does not care about that or the financial problems it creates for these people. Might I say that that is one of the reasons why Labor Governments throughout Australia are getting into trouble. There is no excuse for this additional tax on a group of South Australians who already provide more than $110 million to State and Federal Government kitties. It is well-known that there was a huge row in Cabinet over this Bill, and that is why it has ended up such a hollow empty shell. Cabinet sent it into the Parliament as a weak, useless piece of paper except in the area of the trust which will decide the distribution of funds raised by a 5 cents per packet tax.

The Minister did deal with the Premier and others on the exemptions, particularly the proposition to exempt newspapers. He did not want to upset Mr Murdoch. It is in the section dealing with the trust that the Government

has taken total control. The trust will be selected entirely by Government Ministers or the Government. No sporting organisations will be able to play any part in the final selection of the trust. The members will owe their positions entirely to the Government. In this Chamber on 3 March the Minister made the following statement:

> The trust will not be subject to the specific control and direction of the Minister of Health. However, it will exercise its powers subject to any guidelines issued from time to time by the Minister of Health following consultation with the Minister of Recreation and Sport and the Minister for the Arts.

What that says is the trust will not be subject to the control of the Minister but will do as he directs. What a ridiculous attempt by the Minister to try and put it on this Council and the people of the State. This clause clearly puts the trust totally and absolutely under the control of the Minister. He went on to say in this Chamber on 3 March:

> At this stage, I am able to provide the Council with a general outline of the way the Government expects the trust to operate. However, because its independence is enshrined in the legislation, its day-to-day decision and direction will be determined by the trust itself.

The only thing enshrined in this legislation is the lack of independence of the trust, as I have previously pointed out. The Minister said:

> There is the scope for sponsorship and assistance to be spread widely by the trust, through the community, rather than concentrating on a few high profile events.

The trust will not have to concentrate on the high profile sports because they will be still sponsored by the tobacco companies. That is why I have described this Bill as a farce.

All health promotion, regardless of whether or not the problem is tobacco related will be able to be funded out of this fund. The Minister tried to tell this Chamber earlier this month that this Bill represented a major development in the community response to tobacco usage. He said the success of the Bill would be gauged by the extent to which young people are discouraged from starting smoking. The Minister tried to say that where prohibitions on smoking and sponsorship have occurred overseas there was clear evidence that the smoking rate of children declines markedly. I quote the Minister again:

> For example, this occurred in Norway where the introduction of a ban on tobacco advertising saw sharply reduced sales of cigarettes to young persons.

How can the Minister say this when one of the findings of the WHO report already referred to says there was a clear lack of variance in the smoking habits of the four countries it surveyed in the mid-1980s? That lack of difference was quite clear despite Norway and Finland having very restrictive legislation on tobacco products advertising. No, I agree with the Minister that this is not a zealots Bill; it is a Bill of a Government that is hypocritical, a mob of con men.

This Bill will have no effect on smoking between adolescence and adulthood. It is riddled with hypocrisy. It is a cynical move to gain political control of the lesser sports which is carefully tailored to ensure there is no effect on the circus-type events that this Government is relying on more and more for its survival. It will have absolutely no effect on total tobacco advertising. In fact, it will probably increase sponsorship in high profile sports and in the newspapers while removing it from cinemas, billboards, and lesser sports.

In summary, we will be opposing the Bill on the grounds that it will not work. We do not believe that banning advertising will achieve the results claimed by the supporters of this Bill, and this has been demonstrated in other parts of the world. We have apprehension that because of the hype created by the Minister over this Bill that real action of the other important areas of health education on the subject will be downgraded, because I believe that the Minister will say, 'We have done everything that we needed to do.' Because we do not support the concept of this legislation, we will not support the amendments proposed by the Democrats in the areas they have so far indicated, except, maybe, for one small area. We again point out that if the Minister really believes that the banning of tobacco advertising will work, then he would not have indicated exemptions for newspapers and the Grand Prix besides international and national sporting events. That shows he is not fair dinkum, and it indicates he is just putting up this Bill for political purposes, and I am sorry to see so many people sucked in by his political stunt.

If the Bill passes, which appears inevitable, then we will be moving amendments to ensure the independence of the trust and to ensure that none of the money raised is used for administration but rather it is used in health promotion and on tobacco related diseases and health problems. We would consider the repeal of this legislation in Government. In considering this question we would want to ensure that no sporting or cultural organisation is prejudiced but that there is freedom of choice as to questions such as sponsorship. We would want to ensure that adequate health and educational initiatives against tobacco smoking are in place. We would also want to ensure that there is in place a tight code of conduct and practice to govern advertising of tobacco products. We oppose the BIll.

The Hon. PETER DUNN secured the adjournment of the debate.

ROAD TRAFFIC ACT AMENDMENT BILL (1988)

Adjourned debate on second reading.
(Continued from 1 March. Page 3191.)

The Hon. PETER DUNN: The Opposition supports this Bill. It is a measure which has been talked about at some length for some time. If my memory is correct, I can recall when heavy vehicles, particularly road trains, were limited to 50 kilometres an hour. That is unrealistic with today's technology and the very great horsepower that today's trucks have. They could travel at these speeds and not use the full range of gearing that the truck had at its disposal.

This Bill increases from 90—the previous limit being 80—to 100 kilometres per hour the speed at which trucks (which weigh greater than four tonnes), omnibuses (such as Stateliner which travels intra and interstate), and tourist buses (which travel intra and interstate) can travel on this State's roads. The 100 kilometres per hour is still 10 kilometres per hour less than the speed at which cars and other vehicles can travel on this State's roads. This Bill will have some beneficial effects and, I guess, some not so beneficial effects.

I spend a few moments going through some of the problems that can occur when different vehicles have different speed limits. A major problem occurs when vehicles legally travelling at the faster rate try to pass heavy vehicles. People who travel particularly on the roads to Murray Bridge and Port Wakefield, where the heaviest traffic appears to be, often see a large truck with a great number of cars and other vehicles that can legally travel faster travelling in a line behind it. When there is a lot of oncoming traffic vehicles allowed to travel at 110 kilometres an hour have great difficulty in passing trucks that are travelling at 80 kilometres per hour.

This Bill will allow trucks to travel at 100 kilometres per hour and this will save some of the bad judgments of the

drivers of cars when wanting to pass. All members have seen the situation of accidents nearly occurring when a vehicle has pulled out to pass a large truck and has only managed to get back on its side of the road in time. When some people get into cars they seem to think that they are enclosed in a cocoon and that nothing can happen to them. They have a very heavy foot, particularly when they start going up hills. When going to the Adelaide Hills they drive at a moderate speed until they start to go up hill and all of a sudden they have to travel at about a third of the speed they have been travelling at, and the result is often bad judgment when it comes to passing or estimating the speeds of the vehicles in front of them.

That problem continually occurs in country areas. Generally around a city motorists travel at 60 kilometres per hour, although it is interesting to note that today Minister Keneally suggested that in certain areas the speed limit should be 40 kilometres per hour; and I believe that some areas may require that restriction. Particularly young people, who do not have the opportunity to drive at higher speeds, when they come to the 110 kilometres per hour zone, seem to have to travel at that speed irrespective of the road conditions, the weather, or the traffic, and they often get into trouble. Often they drive off the side of the road after getting into difficult situations. They often turn over, and this is mainly because they have failed to judge the speed of the vehicles in front of them.

In wet weather if one is, for instance, travelling to Port Augusta, in heavy rain a large truck lifts enormous quantities of water off the road, and if one is travelling north and the wind is from the west it is difficult to pass that vehicle because one cannot see past the spray. If a vehicle is travelling at 80 kilometres an hour it is reasonable to assume that people will want to pass it. If a vehicle is travelling at 100 kilometres per hour I guess that people following will not do so unless that vehicle pulls into a town, a parking bay, or something similar. Raising the speed limit from 80 kilometres an hour to 100 kilometres per hour will have the advantage of avoiding some of the problems I have mentioned.

One of the difficulties in raising the speed limit will be the resultant damage to the road surface. We hear a lot about the construction and the maintenance of our roads. At present the South Australian Government collects $50 million in tax from fuel, yet spends $25.7 million on roads. There is a great disparity: and that emphasises the fact that the Government relies on petrol as being a consolidated revenue tax earner, and it legitimately says that it can use that money for other factors. Fuel tax is discriminatory, because people who live further away from centres and towns pay more tax yet seem to have fewer sealed and well constructed roads.

The Hon. J.R. Cornwall: They are not bad in South Australia. I have just done a little interstate trip.

The Hon. PETER DUNN: The Minister says that they are not bad in South Australia. I admit that the roads funded by the Commonwealth are very good. This includes the roads to Port Augusta and Melbourne which are federally funded.

The Hon. J.R. Cornwall interjecting:

The Hon. PETER DUNN: No, they are not State funded. How many kilometres of main roads were funded in this State last year that were not Commonwealth funded? I specifically refer to rural arterial roads? How many roads were funded outside the metropolitan area? The Crystal Brook bypass at $10 million was federally funded. I wonder at the rationale of bypassing a small town like that, and the reason for spending $10 million to construct about six kilometres of road. It cost in excess of $10 million for the Gawler bypass, which is already there. It was said that there were many accidents on the road, and I agree with that. However, a simple speed restriction and some minor changes to the construction of the bypass would have helped that situation. The bypass at Naracoorte cost $7 million, and this was another federally funded scheme. There already was a bypass there, but another $7 million was spent. It would have been better to allocate that money to fund rural arterial roads. If we are to help tourism, the road north from Orroroo going into the Flinders Ranges has a lot of heavy traffic going to Moomba, and it could be sealed.

There are three towns on Eyre Peninsula (and it is boring to repeat what I have said of 1 000 people—Cowell, Cleve, and Kimba—that are not joined by a sealed road, and I have never heard of anything so ridiculous. Where else in Australia would towns about 60 kilometres apart not be joined with a sealed road? How does the Government expect commerce to be transacted reasonably and legitimately when these towns are not provided with a sealed road.

If only members of the Government had to live out there and pay for motor cars which wear out on average in about 150 000 kms on a dirt road. Certainly, on a sealed road, they will do 1½ to two times that distance. The Minister ought to try maintaining a car in those circumstances. Cars alone have increased in cost by up to 15 per cent on average, and we are looking at a common, everyday garden variety Holden costing $20 000, and I believe the new Ford costs even more. The Government expects people to replace and use vehicles while having to spend more money than the average city person in paying tax through the additional fuel they use, yet the Government is spending absolutely nothing on these areas.

I understand that only about 30 kilometres of road was sealed in South Australia outside main highways and the metropolitan area last year. It is incredible to think of this State and the thousands of miles of roads that it has and the roads that could be sealed but which are not sealed. Further, many of the older sealed roads will need to be restructured. Certainly, the Government will have to lift its game and put more money into the funding of the highway system, otherwise we will finish up with a State that is just a dust bowl.

We seem to be able to spend $120 million that is a dead loss in running the State Transport Authority and its system of shifting people around metropolitan Adelaide, but we cannot spend that sort of money fixing up roads in areas where people pay for their own freight in the country. Another matter that I would mention concerning this Bill relates to policing. There appears to be a lack of police on South Australia's country roads. True, I do not travel as much on the roads as do some of my colleagues—

The Hon. J.C. Burdett interjecting:

The Hon. PETER DUNN: Yes, I travel over them! I use an aircraft to a great extent because I find, first, that it is less tiring and, secondly, that there is less risk in flying than in driving. I have often said that the most dangerous part of flying is driving to the airport, and I maintain that view. Certainly, the policing of South Australia's roads is very lax. Those few police officers who are there do a good job, but they have a difficult task.

I can assure the Council that when I have been travelling on the east-west highway when there are many heavy vehicles (this Bill deals with this matter) and those vehicles travel at high speed, many of them travel at high speed for most of the distance and they do that because they know that they will rarely be picked up. We see the law being flouted purely because it is not being correctly policed. I

had an incident related to me recently by a young friend who was just over 20 years of age and who got a job in Melbourne for a couple of weeks. In driving his vehicle to Melbourne late in the evening he observed what I have heard about but never seen, that is, tailgating by heavy vehicles.

Five large semi-trailers were travelling nose to tail at about 100 km/p between Adelaide and Melbourne. It is very difficult to pass such vehicles, as members would understand, because five vehicles would extend over 300 feet in total plus the distance between each vehicle. My friend faced a difficult task in passing them and, having passed them, he approached a town and slowed down to 60 kms an hour in the approach areas but was passed by all five semi-trailers that were exceeding the speed limit. That was at about 2 o'clock in the morning.

Tailgating is a problem, and it comes back to policing the law. I can understand why the truckies do it. It relates to wind resistance: they use less fuel and their operation becomes less expensive. Truck drivers do it for those reasons, but that does not justify the situation. I understand that the Federal Office of Road Safety has brought out a report on speed limits for heavy vehicles, and I understand that the report states that speeding with the present load limits is acceptable on the road surfaces that we have. However, it is difficult to get that report. I understand that the RAA, the NRMA and the AAA all had input into the report, and I do not know whether the Minister has access to it, but I would like to study at it for several reasons, but primarily for loading etc. and the new technologies that are being developed for tyres, tyre size and width etc.

I reiterate the points that I made earlier: I agree with the raising of the speed limit. Certainly, I disagree with the collection of petrol tax and the small amount of petrol tax that goes back into road funding. Country people pay much more petrol tax than city people, because they buy much more fuel. They have to, because it is the only way they can get around. It is an unfortunate situation. The Council has seen the Federal Government remove the subsidy to freight on fuel for people who live a long way out.

Certainly, people had to live a long way out before that subsidy was of any benefit to them, and then it was removed, which demonstrates some of the arrogance that the present Government is showing. Even city people are beginning to understand that, especially if we look at what happened last weekend. I support the Bill, and I hope that, on 1 July when the Bill's provisions come into force, trucks and particularly omnibuses will be able to travel at 100 kms an hour. The breaking and other technologies used in these vehicles make them safe at that speed and, for all those reasons, I support the Bill.

The Hon. I. GILFILLAN: I indicate a degree of indifference to the Bill that could be interpreted as opposition. It is a fatuous Bill. If anyone believes that there will be any difference in the speeds at which vehicles travel on the roads because of this measure, they are ignorant of what is the current practice on our roads. If there is any attempt to keep the speed limit down on these vehicles, they have the mechanism of radio and so on to avoid it. Certainly, I reject completely the argument that such vehicles are safe at these speeds in terms of their influence on road accidents.

We are dealing with massive vehicles, often 50 gross tonnes or 60 gross tonnes travelling at speed. Any vehicle with those weights and even lesser weights for that matter, including omnibuses, involved in any impact will be devastatingly more damaging on human life than the ordinary passenger car and the weight that they normally carry. I believe this Bill has little point and little effect. It is important that the trend should be to remove heavy weight transport off our roads and on to rail, and I would rather have seen positive initiatives being taken by this Government and by the Federal Government to do that.

Finally, I make the point that there is good reason to be looking at overall speed limits. The question of what should be an upper speed limit concerning the safety factor and fuel consumption ought to be addressed. They are issues to which we pay lip service, but when the crunch comes we never really take the hard decision. I commend those city councils that are moving to declare 40 km/h speed zones on certain of their suburban roads. If that move is supported by the department, it will be a positive step towards reducing the carnage on our roads. In my opinion this Bill will achieve nothing. It may salve some consciences, but in relation to its effect on what is happening on our roads right now it amounts to nothing. Therefore, I indicate that the Democrats believe that the Bill is a great non-event: it is not worth supporting or opposing.

The Hon. J.R. CORNWALL (Minister of Health): I will be very brief in my second reading response. I guess it is a measure of the indulgence of this Council, and perhaps it is a positive attribute, that the Hon. Mr Dunn was able to wander at large and travel widely around the State in his remarks. I found that many of his remarks were not particularly pertinent to this legislation but, nonetheless, they were interesting. In relation to the Hon. Mr Gilfillan's rather gratuitous remarks, the decision to move to a uniform speed limit of 100 km/h for heavy vehicles was taken at the Australian Transport Advisory Council, which is the peak body at which all Transport Ministers of all political persuasions meet.

I do not think that anyone would doubt that it was a sensible decision. To be realistic I suppose one must say that, if we were able to contain the speed at which these juggernauts travel to 100 km/h, it would be quite an achievement. There is no doubt that given the power of these vehicles they present very special problems on Australia's roads. Only last week I travelled interstate to Berrigan to see my dear elder sister, of whom I am very fond, and to get back to the grassroots of rural communities, which I do from time to time. In fact, I had the pleasure of presenting the hospital cup at the Berrigan races on Saturday afternoon. Again, this has nothing to do with the Bill, but I want it to be known that I do stay sensitively in touch—

An honourable member interjecting:

The Hon. J.R. CORNWALL: I backed Campaign King, of course, because my niece was once a half-owner.

The ACTING PRESIDENT (Hon. C.M. Hill): Order! Perhaps the Minister can get back on the road again.

The Hon. J.R. CORNWALL: The point of my story is that when I was returning from Berrigan I passed a very large semitrailer, with some difficulty, just this side of Swan Hill. At Ouyen, I stopped for petrol and a quick cup of tea and a sandwich. Travelling west of Ouyen after two hours and on the way to Adelaide I again passed this vehicle. I am not able to accurately divulge to the Council the speed at which I was travelling, but suffice to say that there are some long open stretches of road between Ouyen and Tailem Bend. I have not the slightest doubt that that very large semitrailer was averaging a speed somewhere in the vicinity of 110 km/h. When we consider the mass of these vehicles and the speed at which they travel I agree with the Hon. Mr Gilfillan that it is not possible, despite all of the mechanical advantages that they may have, to say that they are safe at 110, 120, or even 130 km/h.

As I say, I think the Transport Ministers realistically would be very happy indeed if they were able to contain the speed at which these vehicles travel to the new legal limit of 100 km/h. Nevertheless, it is a recognition by that peak council of Transport Ministers that at least there should be uniformity around the country as a significant step towards a measure of greater road safety, although one suspects that it is a rather marginal step in that direction.

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

ROYAL COMMISSIONS ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 2 March. Page 3230.)

The Hon. K.T. GRIFFIN: The Opposition is prepared to support this Bill, which principally provides for our Governor to authorise royal commissioners, where more than one is appointed, to sit independently of each other for particular purposes. As the Attorney-General indicated in his second reading explanation, the Bill arises from a request from the Federal Government to implement operational changes to the royal commission into aboriginal deaths in custody. As I understand it, the present Royal Commissioner, Mr Muirhead, has requested that additional royal commissioners be appointed to deal with separate fact-finding aspects of the royal commission to investigate particular deaths. In addition, the Bill seeks to upgrade penalties. At this point I indicate that I have no difficulty with the upgrading of penalties. However, I am somewhat cautious about individual commissioners being able to sit separately and deal with only certain aspects.

My caution arises from the fact that there may well be logistical problems for those appearing before the commission and wish to be represented in each case. The difficulty may be that, if there are additional commissioners sitting separately and dealing with difficult aspects of the investigation, not only will there have to be additional counsel assisting the Royal Commissioner but more particularly the police, for example, will need to be represented before each royal commissioner. That also applies to the Aboriginal Legal Rights Movement and other Aboriginal organisations, and prison officer associations may also wish to be represented before the commission on each of the matters being investigated.

Effectively, that means that there is considerable potential for a substantial increase in cost because additional resources will be needed to finance that representation. Of course, the other difficulty is that, rather than one person having at his or her fingertips all the information that is being obtained through the one Royal Commissioner, a number of people are having to assess the evidence taken before each of the Royal Commissioners. I believe that will present a very messy situation not only for the Royal Commissioners but also for those who wish to be represented. It will also be a very expensive exercise for the Government.

As I understand the situation—and the Attorney-General may be able to indicate whether or not my understanding is correct—it is a Federal Royal Commission acting under a commission issued by the Governor-General, but with concurrent commissions issued by those States where the Royal Commissioner is conducting investigations. Therefore, the principal responsibility is with the Commonwealth, but the States have facilitated the Royal Commission in their respective States by issuing what might be described as concurrent Royal Commissions to the same Commissioner.

It is not clear whether that will involve any financial resources on the part of the State. I think that, in the light of the Bill now before us, it would be appropriate for the Attorney-General to give consideration to the question of what resources are required at the State level in respect of this Royal Commission into Aboriginal deaths in custody. If State resources are required, could the Attorney-General give any indication of the costs to the State so far, the likely costs in the future and what the appointment of extra Commissioners will do to those costs at the State level.

The Hon. C.J. Sumner: It will not affect the costs. If it is not done by an extra Commissioner it will have to be done by this Commissioner and take a lot longer.

The Hon. K.T. GRIFFIN: Obviously the Attorney-General missed some of my earlier points. He may like to reconsider, because the point I was making is that perhaps additional resources are required because additional represention may be required. Instead of one person acting for a person or group, and representing that person or group before the Royal Commission, you may now have a number of people being required to represent the—

The Hon. C.J. Sumner: But it will shorten the time.

The Hon. K.T. GRIFFIN: It will shorten the time, but it does not necessarily follow that there will be a reduction or an equality in costs. I would suggest that there will be an increase in costs. However, that is not so much the issue as whether or not there is any involvement by the State in funding the Royal Commission. If the Attorney-General could give some information on that I would appreciate it.

It is interesting to note that in the *Australian* of 14 March there was some reference to the budget. It was suggested that the Royal Commission is facing a crisis because it is significantly over budget. The original budget was $2 million, and it is now likely to end up costing something in excess of $20 million. Of course, instead of being completed by the December deadline, the Royal Commissioner has said himself that it will be extended far beyond that time. Also, there has been some criticism from persons reported in that article that the commission is not going about its work in the most effective manner.

Apart from those issues, I see no great difficulty in the provisions that are included in this Bill. After all, the Government of the day in appointing the Royal Commission has control of the number of Commissioners to be appointed, the aspects of the inquiry to be dealt with independently by individual Commissioners and which parts will be dealt with by the Commission sitting as a whole. So, the Government of the day retains that measure of control over the conduct of the Royal Commission where more than one Royal Commissioner is appointed. Subject to those matters, the Opposition supports the second reading of the Bill.

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

HAIRDRESSERS BILL

Adjourned debate on second reading.
(Continued from 2 March. Page 3232.)

The Hon. J.C. BURDETT: I support the second reading of this Bill and I welcome it as a substantial measure of deregulation. It abolishes the Hairdressers Registration Board, repeals the Hairdressers Registration Act and imposes only a requirement to have the necessary qualifications in order to operate as a hairdresser. This move has been around for a long time. From the time I became Minister of Consumer

Affairs until almost the end of my term of office the administration of the Hairdressers Registration Act was the responsibility of the Minister of Industrial Affairs. Towards the end of my term of office the then Government moved the responsibility to the Minister of Consumer Affairs, as this department was broadly responsible for occupational licensing, except in specialised areas relating to doctors, lawyers, dentists, etc. This seemed to be a sensible move, and I am pleased to see that it has remained so and that the responsibility is still committed to the Minister of Consumer Affairs.

At the time I started moves towards deregulation they were resisted by the industry itself. I found this to be so not only in the hairdressing industry but also in other areas where I sought deregulation. I found that often the people who resisted deregulation were regulated. They wanted to retain regulation and saw it as being a closed shop situation. I am pleased to see that the Minister through his department has been able to break down that resistance in the fairly considerable intervening period, and I am quite satisfied, through my consultations to which I will refer in a moment, that at both the employer and employee level the people operating in the industry are now perfectly happy with deregulation.

I consulted fairly widely with employer and employee groups in the hairdressing industry, including members of the Hairdressers Registration Board and its Chairman. It was interesting to note that, while employer and employee groups had known that the issue had been around for a long time, the people to whom I spoke were not aware of the details of the Bill. Most of them were provided by me with copies of the Bill and the second reading explanation. I found it interesting that the Government had not informed the people to whom I spoke, who were prominent people in the employer and employee organisations, of the details of the Bill.

There were no objections to the principle of the Bill. Some persons with whom I consulted raised the question that their main concern related to unqualified backyarders. Going back to the time when I was Minister that was then a concern. The problem then related to unregistered backyarders. The persons in the industry to whom I spoke noted the assurance that the Department of Public and Consumer Affairs would try to exercise some surveillance over unqualified backyarders. As I said, while registration is to be abolished people will still need to be qualified. There was considerable concern about people who operate on an unregistered basis at the present time and who, in the future, will operate on the basis of not having the prescribed qualifications. In this respect, a substantial penalty is involved.

I think the problem is that the department will not be able to devote many resources to this operation. It has not devoted many resources in the past, and obviously it will have difficulty doing so in the future. I hope that the department will be able to follow up complaints, particularly by qualified hairdressers, about hairdressers operating illegally. I acknowledge that this is a difficult area, it is fairly hard to prove, and that members of the public, as long as they are satisfied with the services of unqualified hairdressers, will not say anything about it. However, I hope that the industry itself will act as its own policeman and, where it finds evidence of unqualified hairdressers operating, that it will take up the matter with the department and that the department will do something about it.

Other persons in the industry to whom I spoke were concerned about the intention expressed in the second reading explanation by the Minister of making a grandfather provision by regulation or making a grandfather provision at all. They were concerned that people who, just because they had operated for some time, should be able to go on operating without having the necessary qualifications. It is my view that members of this Council will agree that people who have previously earned their living at a particular occupation for some time should not be deprived of this right by subsequent legislation. This applies not only in the hairdressing industry but almost uniformly, as far as I can recall, with provisions relating to occupational licensing, qualifications or anything of that kind: persons who have legitimately operated in the past should not be deprived of their livelihood by provisions that are made in regard to the future.

I initially had some doubt about this matter, because it is obvious from the second reading explanation that the grandfather provisions are intended to be imposed by regulation. Very often they are spelt out in the Bill and the subsequent Act. As I say, I did have some doubts about that, but in the discussions that I had, particularly with members of the board, it was impressed upon me that there might be some need for flexibility in this area and that to make the grandfather provisions by regulation was likely to be more expeditious and to fill the bill better than writing these provisions into the Bill. I am prepared to accept that.

I note that under the present Hairdressers Registration Act there is no provision to prevent unscrupulous or incompetent hairdressers from continuing to operate. So, if a hairdresser turns a person's hair green or makes it fall out—and one does hear of these horrifying things—he can go on operating. It has been suggested to me that he will probably soon go broke, that competition will force him out of business but, in the interests of consumer protection, I suggest that there ought to be a mechanism to prevent such people from being able to continue to operate. There is no effective mechanism under the present law. Section 23 of the Hairdressers Registration Act provides:

> (1) The registration (whether in respect of one or more prescribed classes) of any person as a hairdresser under this Act—
>
> *(a)* whose registration in respect of any such prescribed class has been obtained by fraud or misrepresentation; or
>
> *(b)* who has been convicted of any offence against this Act or any regulation thereunder, or any offence against the Industrial Code, 1967,
>
> may be cancelled or suspended by order of the board.

This is not particularly relevant. I make no secret of the fact that at present in respect of incompetence or unscrupulous practices, short of an offence against the Act or the Industrial Code, there is no means of preventing a hairdresser from continuing to operate, even though that person may have been guilty of incompetence or unscrupulous practices. However, at present, the fact of registration does provide some sanction which is now taken away because, in future, under the Bill, if a person is qualified (and those qualifications cannot be removed) he will be able to continue to operate however much damage may be caused to consumers.

I discussed with various people the proposition of a simple negative licensing procedure that has been introduced recently in various other Bills. It is a proper procedure in appropriate cases where positive licensing is not called for (as in this case), and it has been supported on both sides of the Chamber. I have suggested that there ought to be a procedure whereby a code of ethics can be prescribed by regulation and where a breach of that code, such as incompetence, is proposed, the matter can be brought before the Commercial Tribunal, which should have the power to restrain from operating or restrain from operating except on conditions, or fine or reprimand, or dismiss the complaint if there is no call for it.

In his second reading explanation, the Minister pointed out that in recent times, because of the high qualifications, very few complaints have been made against hairdressers. I would ask the Minister when he replies to indicate from the records of the Department of Public and Consumer Affairs how many complaints there have been and the nature of those complaints, how many have been resolved and so on, because I know from my own knowledge when I was Minister, and from asking questions since, that the department has very excellent records of the complaints made, their details and the result. Perhaps subject to his reply, I intend to propose an amendment in the Committee stage to introduce the kind of measure of negative licensing that I have spoken about. If the complaints are few, and if very few matters therefore go before the Commercial Tribunal, that will not matter. It is desirable that consumers should have some way to complain and protect their interests if they find that people who are totally incompetent are still operating.

It is a difficult measure of balance. It depends on the nature of the services offered. I think everyone would agree that doctors and lawyers, and veterinarians and dentists I guess, ought to be able to be restricted from practising if they are in breach of their particular code of ethics. With regard to motor mechanics and plumbers, I suppose we accept the position that you cannot stop them from operating, but it simply depends on supply and demand, commercial competition and so on. It seems to me that hairdressers and cosmeticians, who operate in the same sort of field as hairdressers and very often in conjunction with them, are somewhere between those two areas that I mentioned.

Hairdressers can do a great deal of harm, and the other treatments which they administer can also do a great deal of harm. They are directly in relation to the actual person as opposed to property. Certainly, at least, there would be no harm in negative licensing provisions. If it is found in practice that they are rarely used, so be it. No harm is done. With regard to the consultations that I had, from within the industry I found no real opposition to that concept. The only thing that people in the industry were concerned about was that they wanted this Bill to pass in this session of Parliament. They were concerned that the propositions which I raised would hold that up, but there is no reason why they should. Consumer organisations, such as CASA (Consumer Association of South Australia) and the Housewives Association, strongly supported the idea that there ought to be some measure of protection for consumers.

Some of the opinions presented to me were that my negative licensing provision was not going far enough, but certainly they thought that there ought to be that rather than nothing. I do have an interest in the rights of consumers, as I am sure the Minister has, and I hope that he favourably considers this modest protection which does not involve any policing or cost, except I suppose when a matter goes to the Commercial Tribunal. It does not involve a department or any registration, but simply gives consumers a final court of appeal, namely, the Commercial Tribunal, if they feel that they need it. If that is not necessary very often, as I say, no harm is done.

The final matter that I raise with regard to the detail of the Bill relates to clause 5 (3) which provides:

> This section does not prevent the employment by a qualified person of a person who is undertaking an apprenticeship in hairdressing.

I suggest that the words 'with that qualified person' ought to be added to that. As the subclause stands, a qualified person could employ an apprentice of another qualified person, not his own apprentice, and I do not think that that is intended. The general thrust of the Bill is one of deregulation, a direction and philosophy which in proper cases I strongly support, and I support the second reading of this Bill.

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

TECHNICAL AND FURTHER EDUCATION ACT AMENDMENT BILL (1988)

Adjourned debate on second reading.

(Continued from 2 March. Page 3238.)

The Hon. R.I. LUCAS: I support the second reading. The Minister of Employment and Further Education in another place has argued that the need for the Bill is because of a perceived legal anomaly—a legal anomaly that evidently has existed for a number of years, indeed since 1975. In another place in debate the Minister said:

> It has been drawn to my attention that this anomaly that existed between regulations existing and no authority in the Act for there to be regulations became apparent when we sought to change the structure of councils.

I will be seeking a response from the Minister in charge of the Bill in this place as to the precise nature of this 'legal anomaly' as described by the Minister in another place. Section 28 of the parent Act, under the heading 'College Councils', clearly provides that the Minister may establish a council for any college of technical and further education and that a council shall consist of such members, not less than five in number, as may be determined by the Minister. The operative words are 'determined by the Minister'. Section 43, under the heading 'Miscellaneous', is a wide regulation-making provision which is in many of the pieces of legislation that we pass through this Chamber. It provides:

> (1) The Governor may make such regulations as are contemplated by this Act, or as he considers necessary or expedient for the purposes of this Act.
>
> (2) Without limiting the generality of subsection (1) of this section, those regulations may make provision with respect to the following matters:

Then some 13 specific areas are referred to (and I will not take up the time of the Chamber in specifying them) in relation to regulation-making provisions. The section continues:.

> and *(n)* any other matter necessary or expedient for the proper administration of this Act.

On my non-legally trained reading of that regulation-making provision, I would have thought that there were wide regulation-making provisions in that Act and that they would be applicable to section 28, which concerns the power of the Minister in relation to the establishment of TAFE college councils.

If one looks at the regulations, regulation 52 (which as I understand it from the Government Printer is still a current regulation under the Consolidation of Regulations under the Technical and Further Education Act 1975) in relation to college councils provides:

> (1) Unless the Minister determines otherwise the council of a college shall consist of not more than 15 members including the principal and representatives of the staff and student body.
>
> (2) The representatives of the staff and student body shall be elected annually by secret ballot at regularly convened meetings of the staff and student body respectively presided over by the principal, or by other methods approved by the Director-General.
>
> (3) The remaining members shall be appointed by the Minister on the recommendation of the Director-General.

I refer back to section 28 of the parent Act which provides:

(3) A council shall consist of such members, not less than five in number, as may be determined by the Minister.

To my non-legally trained reading of the parent Act and the regulations, an anomaly does not spring out in relation to a comparison between the Act and the regulations because the regulations provide that the remaining members shall be appointed by the Minister and the parent Act provides that the members shall be determined by the Minister, and that appears to be consistent. The only difference would appear to be that in the regulations the Minister does so on the recommendation of the Director-General of the Department of Technical and Further Education. If one refers back to the very wide regulation-making provisions in the parent Act, I would have thought that that was permissible. I raise that as a specific question for the Minister and I seek a response to it before we proceed through the Committee stage.

Without wanting to go through the complete history of the formation of college councils for TAFE in South Australia, it is important that we note that in 1985 and 1986 the South Australian Council on Technical and Further Education considered at some length the question of how TAFE college councils ought to be composed. It was a matter of some debate within TAFE college councils through that period and the advisory council presented a report entitled 'Composition of College Councils' to the Minister in March 1986. Without going through all the detail again, subsequent to that there was some discussion with the Minister, some give and take between the Minister and the recommendations in that report, and the Minister then took a submission to Cabinet which was approved on 22 September 1986.

Again, I do not wish to go through the precise details of that submission, but one or two important points should be placed on the record, as follows:

(1) The maximum number of members of college councils remain at the present 15 but retaining the provision allowing the Minister to permit exceptions upon request . . .

(3) The regulations be amended to require a two stage process for the establishment of college councils; first, approval of a structure for membership of the council which matches the specified representation criteria in (5) below with local factors and, secondly, approval of actual membership.

(4) In view of the increasing managerial role of councils, at least one nominee should be a person with recognised business/management skills.

(5) In the year preceding the biennial election/re-election of college councils the existing college councils be required to submit to the Minister for approval a proposed structure or model to be followed by it in arranging nominations. Evidence should be given that the model takes adequate account of the following factors and will achieve a suitable balance of interests and skills; geographic sub-regions, industrial and commercial interests, employees, educational disciplines taught by the college, an appropriate gender balance, coverage where appropriate of such special interest groups as Aborigines and migrants as well as the more general community interests.

I note that that is all to be done within the membership, the maximum number being 15. It continues:

(6) (i) Selection of nominees to be through the calling of nominations by advertisement and subsequent selection by college councils for referral to the Minister for approval.

(7) The regulations be amended to allow the Minister to appoint directly two nominees to any college council.

That Cabinet submission was approved on 22 September 1986 and I seek further response from the Minister in charge of the Bill about paragraph (6). If the college council goes through all the procedures (stages 1 and 2) as outlined and the Minister then objects to the nomination of either one person or perhaps all the nominations, what is the procedure to be followed? Does the Minister then have the power to nominate replacements or, as I would hope would be the case, the other alternative would be that it would go back to the TAFE college council and for it to go through its procedures again and nominate further people, bearing in mind the comments of the Minister as to why the first nominations had not been approved?

Obviously, this is a matter that we will have to further pursue when the regulations are before Parliament, but I believe that it is of such importance that we ought to have on the record in this place a response from the Minister as to the interpretation of that part of the approved Cabinet submission of 22 September 1986.

Ms President, the Opposition supports the second reading because, first, clearly, there has been a long period of consultation with TAFE college communities. There has been that report to which I have referred of March 1986 and I believe that in my travels through TAFE college communities there has been broad support for the alterations to the composition of college councils which was envisaged in that report. Therefore, the Liberal Party does not wish to put a spanner in the works in relation to that long period of consultation and change to the appointment of new TAFE college councils.

However, the Liberal Party reserves its position in relation to the final regulations that might come before Parliament. We urge the Minister to bring those regulations forward as soon as possible. I know that the Minister is arguing that they cannot be completed until this amending legislation passes through Parliament, and the Liberal Party understands the position of the Minister in that fact. As I said earlier, by seeking a specific response to these two general questions that I have put, I hope that we can have a response from the Minister before the Committee stage is reached so that, if there needs to be further questioning, it can be done in Committee.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

MOTOR VEHICLES ACT AMENDMENT BILL (1988)

Adjourned debate on second reading.

(Continued from 3 March. Page 3285.)

The Hon. K.T. GRIFFIN: The Opposition supports this Bill because it is better than nothing at all. The Bill seeks to deal with the scope of the compulsory third party bodily injury insurance cover that is available to motorists through the sole insurer, the State Government Insurance Commission. The Council will remember that in 1986 a range of amendments were brought into Parliament and passed which limited quite extensively the cover provided to road users under this compulsorily third party insurance scheme.

At the time I did raise some questions of the Attorney as to how the limits on the cover were to be drawn to the attention of motorists, because the legislation then passed would leave motorists particularly vulnerable to certain claims arising out of accidents which were not subject to compulsory third party cover. The amendments at that time limited cover to those accidents which arise from the driving of a vehicle, the parking of a vehicle or a vehicle running out of control. Since that time considerable attention has been focused on those accidents which are not covered by the Act. In 1987 I did raise on a number of occasions the question of publicity for the limits on the cover available to motorists.

As I understand it, there was only one notice by way of advertisement in February 1987 in the *Sunday Mail*. It may have occurred in one of the other daily papers, but it was

certainly a very limited advertising campaign, and that advertisement in the name of the State Government Insurance Commission as the approved insurer drew attention to the limits and, among other things, it drew attention to the following:

A change in the definition of 'use of a motor vehicle'. Previously, injuries arising from use of a motor vehicle, many of which were more applicable to workers compensation than third party (such as loading or unloading a truck) came within the CTP area. Now, the injury must arise as the result of either the driving of the vehicle, parking the vehicle, or the vehicle running out of control.

I was critical of what I claimed to be the inadequacy of the publicity campaign. I did suggest that it would have been more appropriate to draw attention to the limits by way of notice, enclosed with every notice of licence renewal or notice of registration renewal.

That would have brought it to the attention of members of the motoring public and would have at least alerted them to the fact that they should contact their own insurers to arrange some endorsement to their household policy or to some other insurance that they may have to cover them against risks which were no longer to be covered under the compulsory third party scheme. However, that has not happened. I suggest again to the Attorney-General that that would be a most appropriate course of action to draw attention to the maximum number of motorists as possible the risks to which they may be exposed as a result of the limit in liability and a recommendation that they seek some further cover from their own insurers.

Section 99 of the principal Act deals with the limit on the cover available under the CTP scheme. I drew attention to one particular instance in a question that I asked in December last year and in another question that I asked earlier this year. This matter largely arose from an accident where a vehicle was parked at the side of a road. The door of the vehicle was open and a passing cyclist ran into it and suffered injury. The person under whose responsibility the vehicle was at the time of the accident received a letter of demand from another insurance company claiming an amount for workers compensation and medical expenses incurred by the injured cyclist. I am pleased to say that this Bill will cover that sort of accident because the cover will now extend to accidents arising out of the opening or closing of the door of a vehicle. For that reason the Opposition will support the Bill, because it is better than what is there at the moment. However, there are other potential accidents which are not covered.

I have had some discussions—as has the Attorney-General, I understand—with the Insurance Council of Australia, which drew attention to a situation where a vehicle may be parked on a road in circumstances where a situation of danger to other road users may arise. Another vehicle could crash into that parked vehicle with the result that the passengers are either killed or suffer injuries. In that situation the CTP insurance of the parked vehicle will not cover that negligence. It may be that either the owner of the vehicle or the person who parked it would be sued for a very large amount of money but not have adequate private insurance and therefore be unable to satisfy any liability; and I suppose they could end up being declared bankrupt. On the other hand, the persons who are injured may be unable to recover an adequate sum to compensate them for their injury and loss. Of course, they would not be covered by the pool which relates to uninsured drivers because the pool liability is limited to the cover available under the Act.

If one drives on country roads there are occasions where you find a vehicle parked on the side of the road. It may be a semitrailer with inadequate lights at night or inadequate markers; it may be a vehicle with a flat tyre or some other mechanical trouble; or it may be a vehicle that has been involved in an accident. A person travelling along that road might crash into that vehicle and, as I indicated earlier, may not be able to recover any compensation because the vehicle so parked or damaged is not covered under the CTP scheme. It is in that sort of situation where I think there needs to be further consideration in relation to liability and cover. During the Committee stage I would like the Attorney-General to consider widening the cover to include that sort of event.

I suppose, as discussed in 1986, one must be careful that the cover does not give rise to all sorts of odd claims such as those arising as a result of an accident occurring through the loading or unloading of vehicles, for jammed fingers or a variety of other injuries which might occur but which do not arise out of the use of a vehicle. On the other hand, I think it is reasonable for motorists and members of the public to be adequately covered where negligence arises as a result of a stationary and inadequately identified and illuminated vehicle.

The Earthmoving Contractors Association of South Australia has also drawn attention to this problem and has extended it to its own earthmoving equipment which might be registered and insured. The association indicates that it feels that there is a limitation under the amendments passed in 1986 which would not allow it to be adequately covered where its vehicles are used in the course of its business activity or even, for example, where they may be parked on the side of a road and some other party runs into them. I have also received correspondence from Sedgwick Ltd, insurance brokers, drawing attention to the inadequate publicity which has been given to the limitations on cover. However, I need do no more than refer to that company by name to indicate that it, too, has a concern about the limit on cover. The company believes that greater publicity should be given to the limit, and that is something with which, as I said earlier, I agree. So, subject to the Attorney-General addressing that particular issue I indicate that the Opposition supports the Bill.

Bill read a second time.

WRONGS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 March. Page 3286.)

The Hon. K.T. GRIFFIN: Madam President, the remarks which I made on the previous Bill apply here. The two Bills are interdependent and the one is consequential upon the other. For that reason there is no need for me to reiterate the arguments which I put with respect to the limitations on the cover available under the CTP scheme. The Opposition supports the Bill subject to the same questions that I raised on the Motor Vehicles Act Amendment Bill.

Bill read a second time.

CRIMINAL LAW (SENTENCING) BILL

In Committee.

(Continued from 10 February. Page 2628.)

Clause 2 passed.

Clause 3—'Interpretation.'

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

Page 2—

Lines 25 and 26—Leave out all words in these lines.

Lines 30 and 31—Leave out all words in these lines.

My amendments relate to the definition of 'prescribed unit', which is relevant in other parts of the Bill to determine the period of time which must be served in prison in default of payment of a monetary penalty or where default is made in the performance of community service. The amounts which are specified for imprisonment are $50 or, if some other amount is prescribed, that amount, and for community service $100 or, if some other amount is prescribed, that amount, that is, $50 and $100 per day respectively.

When we considered this matter in the enforcement of fines legislation last year we deleted reference to the prescription of some alternative amounts. It is for that reason, and because I believe it is something which can effectively come back to the Parliament without very much difficulty, that I seek to remove the power to prescribe alternative amounts.

The Hon. C.J. SUMNER: The Government does not believe that these amendments are necessary. I do not think it is necessary for these amounts to come back to the Parliament. They are the sort of thing that regulations should be about. The honourable member's amendments are designed to remove provisions that would allow for regulations in future to prescribe the prescribed unit for pecuniary sums in default; that is, $50 per day of imprisonment—the amount of fine that is removed by each day's imprisonment—or the amount of a fine that is removed for eight hours of community service orders. The Bill currently sets these amounts at $50 and $100 respectively, but states that these amounts can be changed by regulation.

It is considered desirable to retain flexibility in the future without the necessity of coming back to Parliament to amend the Act. I do not believe that these amendments are of sufficient importance as to be central to the legislation. Clearly, they are matters that can be dealt with by regulation and, as changes in money values occur, they can be altered flexibly by way of regulation without coming back to Parliament. They are the sorts of things with which regulations are designed to deal. I therefore oppose the amendments as being unnecessary. I point out that in any event regulations come before Parliament as part of the general scrutinising procedures that exist for subordinate legislation.

The Hon. I. GILFILLAN: Normally the Democrats are very nervous about prescribed conditions and clauses in the legislation, but I agree that the matter that is the subject of this amendment is probably better dealt with by regulation. The principle is established, and the variation in the actual monetary sum may move rapidly or over long periods of time, and I do not see any necessity for a Bill to be required to do that. I am happy to leave the Bill as it is worded and I therefore oppose the amendments.

The Hon. K.T. GRIFFIN: In the light of what has been said, I indicate that if I lose the amendments on the voices I do not intend to divide.

Amendments negatived; clause passed.

Clauses 4 and 5 passed.

Clause 6—'Determination of sentence.'

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

Page 3, line 36—Leave out 'not'.

This is a very important clause, and I notice that the Attorney-General has on file some amendments which seek to delete subclauses (2), (3) and (4), leaving only subclause (1), which would declare that for the purpose of determining sentence a court is not bound by the rules of evidence and may inform itself on matters relevant to the determination as it thinks fit. I think that acknowledges the problem which I highlighted during the second reading of this Bill, particularly as to the onus of proof in certain cases and especially in the circumstances referred to in subclause (3).

My amendment had a different emphasis; it was to state that the court was bound by the rules of evidence and that the provisions in subclause (3) should be deleted. I think that that is probably preferable, although the deletion by the Attorney-General of subclauses (2), (3) and (4) would probably be as effective. I have therefore moved my amendment to enable the matter to be further considered. I think I also need to delete paragraph *(b)*, but we can talk about that during the Committee stage.

The Hon. C.J. SUMNER: The Government opposes the amendment. I think it would make the business of sentencing very cumbersome and difficult. From my experience, the reality is that at present the courts do not regard themselves as being bound by the rules of evidence in relation to sentencing. In the case of *R. v Perre*, 41 SASR, page 106, the following appears:

> There seems to be a misunderstanding abroad as to the respective roles of the judge and counsel in relation to the basis upon which sentence is imposed. It is for counsel to decide whether or not to call evidence. If counsel relies upon submissions from the bar table, it is not part of the ordinary role of the judge to indicate that he is not prepared to act upon those submissions so that counsel may decide whether to call evidence. A judge may do so, but he is not bound to do so. He may, and generally will, simply consider the depositions and the submissions and make his decision as to the basis of sentence.

As a matter of fact, when counsel are making submissions on sentence they often canvass matters that are not strictly contained in the depositions, that is, in evidence; they make assertions about the defendant in submissions from the bar table. If those assertions are disputed by the Crown, evidence may be called. I think that the Hon. Mr Griffin's amendment would impose on the sentencing process strict rules of evidence which are not applied at the present time. It is also worth noting that the fact that a court is not bound by the rules of evidence does not mean that it has completely open slather. I refer to the case of *Nepeor Pty Ltd v Liquor Licensing Commissioner.* A statement by von Doussa J. dealing with the Licensing Court is as follows:

> The power of the court to inform itself in such manner as it thinks fit is not a power to proceed in defiance of the recognised rules of natural justice.

So, although it is said that you are not bound by the rules of evidence or you may inform yourself on matters relevant to the determination as it thinks fit, that does not mean that a court can behave in an arbitrary, capricious manner. It must still be bound by the general recognised rules relating to natural justice. When you get to the point of sentence (and that is obviously what we are talking about—we are not talking about the trial procedure) there is a case for loosening up the strict rules that generally are applicable in criminal cases.

The Hon. K.T. Griffin: What about when you have a dispute of facts in relation to sentence? What do you do then?

The Hon. C.J. SUMNER: That would then be a matter for the court to determine, just as it does in the Industrial Court at the present time in the workers compensation jurisdiction and the industrial jurisdiction generally. It does not mean that it is open slather. They do tend to contain to some extent what might be called the testimony that goes outside the general bounds of evidence. So, again, it would not be a matter of open slather. Certainly, if a factual dispute arises with respect to sentence, that is, a dispute between the Crown and an accused person as to the proper factual basis, although the accused may have pleaded guilty, there might still be a factual dispute as to the basis upon which the sentence should be imposed.

In those cases—and it does not happen very often as I recall, but it certainly does happen on occasions where there

is that dispute as to facts—the court can hear evidence from the prosecution and defence. It is true that in those circumstances, with respect to the determination of this issue, as the Bill is drafted, the court would not be bound by the rules of evidence. But, as I said, as a matter of practice where provisions such as this exist, for instance in the Industrial Court, where courts are dealing with issues of fact, they tend to comply with the rules of evidence and take the best possible evidence available. However, if they feel that they need to go outside of the bounds of the strict rules of evidence, then this permits them to do it.

The Hon. K.T. GRIFFIN: I do not think it is appropriate to refer to what happens in the Industrial Court. There are lots of criticisms of the way in which information comes in the Industrial Court and there is criticism about the quality of evidence or information which is given there. It is quite unreasonable to be equating what happens in the criminal jurisdiction with what might presently occur in the Industrial Court. We have to look at this as to what actually happens. I know that when there are submissions on sentence in many instances there is no challenge to the submissions made by the Crown or by the defence, but there are occasions when that happens. I know that when submissions are made, a lot of background is submitted which, if put to the test, could not be proved. However, there is a recognition on the part of the Crown and the defendant that it is not ordinarily necessary to challenge assertions made in those submissions.

My amendment will not prevent the Crown and defence counsel making submissions. It will not require them to call evidence in all cases or even in many cases. But where there is perhaps an assertion by the Crown of a conviction, and that is disputed by the defendant, some evidence of that conviction will have to be established.

It may be that there are certain facts relating to, say, aggravation, which is an area that I raised during my second reading speech, where it will be necessary to call evidence because that may be disputed. It is unwise to be going down the track of saying that no longer will the court be bound by the rules of evidence where there is a disputed fact, and evidence is called. I can see that, with submissions on sentence, it will not ordinarily be necessary to worry about the rules of evidence because there will not be anything there which either party will challenge. But where there is a disputed fact, it seems to me to be only fair and reasonable to maintain what I believe to be the current position, and that is that the rules of evidence apply in that area of disputed fact.

One of the difficulties which I highlighted during the course of the second reading debate was that, once you move to a codification of the law, you open up all sorts of avenues for challenge, and this may well be one of them. Whilst I accept that the deletion of other subclauses is appropriate in that context, I still think we have to get this right. I suggest that it is not right if we allow the court, in dealing with even disputed assertions, to be not bound by the rules of evidence.

The Hon. C.J. SUMNER: Before the Hon. Mr Gilfillan addresses us and decides our future, I would just like to add the following information which has come to me. Through the Senior Assistant Crown Prosecutor, Tony Schapel, the Crown Prosecutor has made comments on this Bill. With respect to this clause, he states:

> In my view, the dispensing with the rigid application of the rules of evidence is a welcome innovation. However, I think in practical terms no judge is going to find an allegation made by the Crown proved beyond reasonable doubt unless the allegation is proved in accordance with the rules of evidence. For example, I do not think a judge would find an allegation proved beyond reasonable doubt if the only source of the evidence establishing that allegation was hearsay.

He says it is welcome.

The Hon. K.T. Griffin: He says it is an innovation.

The Hon. C.J. SUMNER: He says it is an innovation. It is partly an innovation, I suppose, and partly a statement of what happens now as a matter of course. I am not quite sure how the honourable member's amendment, if passed, will be interpreted, and whether that will then mean that the general practice that applies in the courts at present with respect to the making of submissions and the like will now have to be completely overthrown. That will certainly make life very difficult in the sentencing process. He indicates that it may be an academic exercise, saying that they are not bound by the rules of evidence. However, I think that that matter ought to be left to the courts and the judges can decide in particular cases what they take notice of.

You are not dealing here with a jury situation; you are dealing with judges who can decide whether to take notice of evidence that comes in that is not in accord with the strict rules of evidence. One has to have strict rules where a jury might be influenced by some extraneous evidence. However, where one has a judge dealing with the matter, the fact that some evidence gets before him that is not strictly in accordance with the rules of evidence is not of such great importance because in the final analysis the judge can decide whether to accept or to reject it.

I think that the proposal in the Bill is reasonable. It has been widely circulated, including to the judiciary, and no objection has been raised to this clause from those quarters. As far as Mr Kleinig is aware, no objection has been raised to this clause from any source, despite the fact that the Bill has been circulated to the judiciary, the Law Society, the Legal Services Commission and I think even to the Criminal Lawyers Association. One would have expected that, if those practising in the field or particularly in the courts perceived a problem, they would draw it to our attention.

The Hon. I. GILFILLAN: As the Attorney wields a radical hatchet on the other subclauses, is there any point in leaving subclause (1) in? I understand that the courts are currently operating in a way that is satisfactory to both the Attorney and the shadow Attorney. In fact, they are at times not being confined to the rules of evidence and, at other times, apparently when it suits them, they are. Far be it from me to judge whether or not they are doing the appropriate thing, but instead of giving an instruction in this Bill as to what they shall or shall not do, is it feasible to let the matter rest by deleting the whole of this provision?

The Hon. C.J. SUMNER: I think it should remain in. As I said, the whole of the clause did not receive the criticism that the Hon. Mr Griffin sought to—

The Hon. I. Gilfillan: What about subclauses (2) to (4)?

The Hon. C.J. SUMNER: That is what I am saying. He made criticisms of them and no one else did, as far as we can make out, when the Bill was distributed. In deference to the honourable member's criticism, we took them out.

The Hon. K.T. Griffin: I was happy with that.

The Hon. C.J. SUMNER: And he is happy with that. However, with respect to clause 6 (1), we feel that that is a useful statement for courts as to how they should handle and obtain the evidence relating to sentencing. I emphasise that this Bill has been sent everywhere.

The Hon. I. GILFILLAN: The words 'is not bound' are virtually an instruction that the court shall not be bound by the rules. Why not make it 'may not be bound'—something that gives an option?

The Hon. C.J. SUMNER: That is not necessary. The courts are in charge, particularly when dealing with a judge, of what evidence they will or will not give credence to. If

hearsay evidence gets in that they do not feel ought to be considered, then they will not do so. That is the way the system works. It seems to me to be exciting a lot of interest over an issue that ought to be reasonably clear.

The Hon. K.T. GRIFFIN: It is exciting interest because it is not clear. Although the Attorney-General is saying that no one out of all of the many people he appears to have circulated the Bill to has raised any question about this, I circulated it to others and the issue was raised with me. The fact is that a question has been raised about it and it has been raised in the context of determining what rules are to apply. It is all very well for the Attorney-General to say, 'Leave it to the courts'; the fact is that the courts will have to determine rules and they will only be determined not by rules of court as such promulgated by the judges, but by decisions of the Court of Criminal Appeal and maybe even, in rare cases, by the High Court of Australia. It is that area that concerns me.

In the advice to which the Attorney-General referred (from the Senior Assistant Crown Prosecutor) there was a reference to it being an innovation. While I do not profess to be an expert on criminal law and have certainly not practised in that area to a very great extent, if at all, it seems to me that it is an innovation. What I am really looking to is a position where the Crown and the defence can continue to make their submissions, but where there is a disputed fact then that has to be heard by the judge and the onus of proof, if it is disputed by the prosecutor, may well be on the prosecutor to prove beyond reasonable doubt; and in those circumstances the rules of evidence should apply.

Maybe the amendment that I am proposing does not clearly enough enunciate that position, but it seems to me that that is what we have to do, because if you say that it is left to the court to inform itself how it likes about matters that are raised on the question of sentence, if a matter is in dispute it might be of such significance as to affect the length of a prison sentence, and it will then go on appeal because the limits of a judge's authority and discretion are unclear. That is the position which I am putting. and which needs to be clarified.

The Hon. I. GILFILLAN: The law appears to be a wonderous thing imponderable to the laity from time to time. I have listened to what appears to be an explanation of exactly similar procedures in the courts from both the Attorney and the shadow Attorney and there is now this dispute about wording. My attempts to modify the wording did not, I might say, receive amiable response from the Attorney. In the circumstances and because I believe that the issue is one of academic interest, in spite of the argument advanced by the Hon. Mr Griffin, and with some modesty, I do not regard myself as having had enough experience close enough to make a determination, I indicate that I will oppose the amendment on the ground that it is the Attorney's Bill and that I have not been persuaded strongly from the other side. I would have preferred to have left it out, and I will oppose the amendment of the shadow Attorney.

The Hon. K.T. GRIFFIN: I am disappointed with that, because it is something that is more than of academic interest and it will be the subject of debate before the courts. That will undoubtedly mean additional costs one way or the other to the taxpayers and litigant.

The Hon. I. Gilfillan: The Attorney will have to wear it.

The Hon. K.T. GRIFFIN: He will have to wear it, but I am thinking of what is in the interests of justice.

The Hon. C.J. Sumner: I am trying to keep the costs down.

The Hon. K.T. GRIFFIN: The Attorney will keep the costs down if he limits it to the rules of evidence in matters of dispute.

The Hon. C.J. Sumner: No.

The Hon. K.T. GRIFFIN: You will. Anyway, in the light of what the Hon. Mr Gilfillan has said, if I lose on the voices I will not divide.

Amendment negatived.

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

Pages 3 and 4—Leave out subclauses (2), (3) and (4).

The Hon. K.T. GRIFFIN: I am willing to support the deletion of these subclauses. I am pleased that the Attorney was persuaded to move this amendment. This issue was raised with me as a result of my consultation on the Bill.

Amendment carried; clause as amended passed.

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

New clause 6a—'Prosecutor to furnish particulars of victim's injury, etc.'

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

Page 4, after line 8—Insert new clause as follows:

6a. (1) Subject to subsection (2), the prosecutor must, for the purpose of assisting a court to determine sentence for an offence, furnish the court with particulars (that are reasonably ascertainable and not already before the court in evidence or a pre-sentence report) of—

(a) injury, loss or damage resulting from the offence; and

(b) injury, loss or damage resulting from—

(i) any other offence that is to be taken into account specifically in the determination of sentence;

or

(ii) a course of conduct consisting of a series of criminal acts of the same or a similar character of which the offence for which sentence is to be imposed forms part.

(2) The prosecutor may refrain from furnishing the court with particulars of injury, loss or damage suffered by a person if the person has expressed a wish to that effect to the prosecutor.

(3) The validity of a sentence is not affected by non-compliance or insufficient compliance with this section.

This new clause revamps the provisions which we inserted into legislation in early 1986 relating to the details of the impact of a crime on the victim which can be put before a sentencing court. At that time we inserted in our law a new clause which provided that wherever there was a pre-sentence report there should be included in that report an assessment of the impact of the crime on the victim. In cases where there had not been a pre-sentence report then it was a matter for the prosecutors to deal with, either the police or the Crown prosecutors, and to ensure that material was before the court which they could take into account in sentencing as far as the effect on the victim was concerned. We had not proclaimed that section relating to the pre-sentence report, although over the past two years, as part of the principles which the Government prepared giving rights to victims of crime, prosecutors have increasingly adopted the approach of putting to the court the effect of the crime on the victim.

Sometimes this has been done by special medical examination, for instance in the case of serious psychological or physical trauma. In other cases the prosecutor can point to the effects of the crime on the victim from the transcript, while in other cases the prosecutors (this happens in the Magistrates Court) can hand up details of any loss or damage which has occurred to the victim. I had a personal experience with that when there was some damage to a window at my house. A receipt was obtained and given to the police; they submitted it to the court, and the magistrate made an order for direct compensation—which was also

one of the provisions we introduced into the law in early 1986 as part of our victim package.

So, victim impact is now being put before the courts by the police or Crown prosecutors, and that has developed over the past two years. This amendment formalises that process, but it removes the specific position whereby a victim impact statement must always be prepared as part of a pre-sentence report. That would have required parole officers to prepare a victim impact statement as part of a pre-sentence report. There was some objection to that by the Victims of Crime Service, and I think initially parole officers were not all that enthusiastic about doing it, although they may have changed their minds.

In any event, what we now have and what is incorporated in this amendment is a summation of all that, that is, victim impact statements should and can be provided by either the Crown prosecutors or police prosecutors or, in appropriate cases, as part of a pre-sentence report. Whether as a matter of course they will become part of a pre-sentence report prepared by parole officers will depend on whether we consider that to be desirable in the long term and if resources can be made available for it to occur.

Resources will be made available in the form of two additional solicitors in the Crown Prosecutor's office funded from the Criminal Injuries Compensation Fund. They will ensure that the specific concerns of victims as far as victim impact statements are concerned are met in the Crown Prosecutor's office; and, of course, the police will also be responsible for continuing what has been recently developed as far as their putting victim impact material to the courts. So the principles contained in the 1986 legislation are reaffirmed in this amendment.

I think the amendment is more desirable, because it broadens the principles that we are talking about and ensures that in all cases victim impact statements will be provided—in most cases by the Crown prosecutors or police prosecutors. However, they can be provided in other ways: in evidence that has already been given, or at some time in the future it may be decided that it can be done formally by way of a pre-sentence report with involvement from parole officers. The Government is working on a formal victim impact statement being presented to the courts so that they can be better informed when considering sentence.

The Hon. K.T. GRIFFIN: I am prepared to support the new clause. I think it puts into proper context the question of victim impact statements. However, it does not address the issue which I raised during the second reading debate, although the Attorney-General referred to it in his reply. I refer to the role of a prosecutor in any event acting for a victim where there is a potential conflict of interest. I accept that this has been done by prosecutors for some time and that this new clause merely puts into the legislation a formal recognition of what has been happening so far.

I am interested to hear that two additional solicitors will be engaged in the Crown Prosecutor's office with a view to preparing victim impact statements and ensuring that they are available to the courts and that the costs of those two solicitors will be charged to the Criminal Injuries Compensation Fund. It would be appropriate, either now or if the Attorney-General does not have the information, at some later stage, without holding up the Bill, if he could let me know the full year cost of those two solicitors and whether or not their sole responsibilities will be involvement in the preparation of victim impact statements. I would also be pleased if he would let me know whether the victim impact statements on which they will be engaged relate only to those criminal offences where personal injury is involved or where it extends also to property damage, and if there are in fact any guidelines which now will apply in respect of the work on which they will be involved.

The Hon. C.J. SUMNER: The use of the Criminal Injuries Compensation Fund for purposes generally to assist victims was accepted by the Parliament when this matter was debated last year.

The Hon. K.T. Griffin: I have no quarrel with that.

The Hon. C.J. SUMNER: The honourable member says that he is not quarrelling about it. When we imposed the levy it was envisaged that there would be the capacity to use some of the criminal injuries compensation money for other than direct compensation to victims. One of the purposes which the Attorney-General authorised in this case was the two extra Crown Prosecutors, and, from memory, that involved some $60 000, from the Criminal Injuries Compensation Fund. Those two officers will not, obviously, be just doing strictly victims work, because that would not be a practical proposition in terms of the proper organisation of the office.

The appointment of those additional two officers will mean that there is the capacity within the Crown Prosecutor's office to ensure that victim impact statements are submitted. It will cover both personal injury and other claims. I also point out to the honourable member that the Criminal Injuries Compensation Fund will be used to assist in the preparation of a pamphlet on victims rights and will be funding the survey of victims needs: also, it has provided a small sum to assist the Elton Mayo School of Management in the victimology aspects of its criminal justice course.

All those areas, I think, are important areas of support for victims, albeit not involving direct compensation to victims; nevertheless, they are very important areas in the general question of the provision of rights to victims of crime in the criminal justice system. Honourable members might be interested to note that the new Government to be in a couple of days in New South Wales had a policy at the last election which substantially picked up the South Australian initiatives in this area with respect to the levy. I think they announced a declaration of victims rights. Whether that had any effect on the election result, I do not know, but it is nice to know that, even if in consumer affairs, I can get only a B rating, in the area of victims rights South Australia can still get an A rating.

New clause inserted.

Clause 7—'Pre-sentence reports.'

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

Page 4, lines 21 to 25—Leave out subclause (4).

This is a consequential amendment to the one that has just been passed.

Amendment carried; clause as amended passed.

Clause 8—'Court to state reasons for sentence.'

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

Page 4, line 43—After 'non-compliance' insert 'or insufficient compliance'.

This is a technical drafting amendment.

The Hon. K.T. GRIFFIN: I am happy to support the amendment.

Amendment carried.

The Hon. K.T. GRIFFIN: The Attorney-General gave some response during his reply in the second reading stage to questions which I raised during my second reading speech as to the way in which this explanation of the legal effect and obligations of the sentence and the consequences of non-compliance with it would be given to a defendant. Can the Attorney-General amplify whether or not some uniform presentation, pamphlet, brochure or other format is proposed which would satisfy compliance with subclause (1) *(b)*

in particular and, if there is, can he give details of what is currently envisaged?

The Hon. C.J. SUMNER: That matter has not been finally determined and will depend on the approach the court takes. Before this Bill is proclaimed we will be discussing with the courts whether they feel there is any need for a set form, either informally or in regulations, which would give effect to this clause. It will be a document in writing which goes beyond what already exists. A clause in the Offenders Probation Act provides that the court shall furnish the probationer with a notice in writing stating in simple language the conditions he is required to observe and shall satisfy itself that the probationer understands those conditions. This will be an expansion of that provision which currently exists and will mean that the courts will be obliged to explain, and indeed provide to the defendant a document which will explain, the effect and obligations of the sentence and the consequences of non-compliance with it. How that will work out exactly in practice has not yet been determined and will have to be the subject of further discussions with the courts.

Clause as amended passed.

Clause 9—'Matters to which a sentencing court should have regard.'

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

Page 5, after line 5—Insert new paragraphs as follows:

(ba) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character—that course of conduct;

(bb) the personal circumstances of any victim of the offence.

Clause 9 deals with the matters that the court shall have regard to. It was felt that these two subclauses should be added, namely, if there was a course of conduct consisting of a series of criminal acts, that that whole course of conduct ought to be a factor to be taken into account by a court in sentencing. The second matter is to insert a specific requirement to have regard to the personal circumstances of any victim of the offence, and that is the form in which I now move it.

The reason for my not moving the amendment after line 6 is that, having given it a considerable amount of thought, it is preferable to leave the existing formulation presently in the Bill which refers to 'any injury, loss or damage resulting from the offence'. That does not specifically refer to 'victim' and I felt at one stage it ought to be more specifically delineated, so the victim was referred to, but it occurred to me that 'any injury, loss or damage resulting from the offence' is the broadest possible formulation one can get. Even though it does not specifically refer to the victim, obviously the victim is comprehended in that phrase. To try to change it in the manner of which I gave notice would in fact constitute a limitation to those factors to be taken into account and it is therefore not justified.

The Hon. K.T. GRIFFIN: I am happy to support the amendments. The new paragraph *(ba)* think is important because the court needs to take into account whether the crime is part of a course of conduct or just an isolated incident. To that extent paragraph *(ba)* is an important addition to clause 9. I support new paragraph *(bb)* because I raised during the course of the second reading debate the fact that there appeared to be an inadequate emphasis upon the situation of the victim. As I interjected to the Attorney-General when he indicated that he was seeking to move this in an amended form, I had intended to raise some questions about the words which he has now deleted, because it seemed that that would tend to turn the tables on the victim, and it seemed to me inappropriate for that to occur.

In relation to paragraph *(bb)* I raise the question of whether the personal circumstance of any victim of the offence is clear enough in identifying also the effect on a victim of the offence. I wonder whether the Attorney-General would give some further consideration to extending paragraph *(bb)* so that it would refer to the effect on and the personal circumstances of any victim of the offence, or some similar wording, so that we deal not only with the personal circumstances of a victim—which, I suppose, could mean just about anything—but also with the effect on the victim which, I suppose, might come within the description of injury but which might have some psychological consequences that might be less obviously brought within the description of injury. That is the only observation I make on it.

I tend to agree with the Attorney-General's decision not to proceed with an amendment to make paragraph *(c)* more related to the victim, because I think the provision as presently drafted in the Bill is wide enough to encompass the injury, loss or damage suffered by a victim. Subject to the question which I have raised, I am happy to go along with the amendments.

The Hon. C.J. SUMNER: I have given considerable thought to the way in which this should be formulated and, in fact, at one stage I suggested that the words 'the effect of the crime on the victim' should be specifically included in the matters that have to be taken into account. But having thought about it, and having played around with some different drafts to give effect to that intention, the end result, in my view, was that leaving it as in clause 9 *(c)*, namely, that the court has to take into account any injury, loss or damage resulting from the offence, is as all-encompassing as we can get and that there is really no purpose in restating that the court should take into account the effect of the crime on the victim, because any injury, loss or damage resulting from the offence is precisely that. 'Injury' is defined very broadly as including pregnancy, mental injury, shock, fear, grief, distress or embarrassment resulting from the offence.

The definition of 'injury' is very broad and the formulation 'any injury, loss or damage resulting from the offence' seems to me to pick up in the broadest possible way the relevance of the effect of the crime on the victim that the court must take into account.

Amendment carried.

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

Page 5, line 9—leave out subparagraph (i).

This amendment arises out of some representations from the Chief Justice and it deals with the question of the manner in which a plea of guilty is to be taken into account. In a letter to me the Chief Justice stated:

> Clause 9 lists matters to which a court have regard when determining sentence. Paragraph *(d)* refers to a plea of guilty but only so far as it is an indication of contrition. This court has established a strong practice of giving credit for a plea of guilty even when it does not proceed from contrition but is motivated merely by a desire to secure leniency by cooperating in the administration of justice. The importance of this in conserving the resources available to the justice system is explained in *The Queen V. Shannon* (1979) 21 S.A.S.R. 442. I suppose that these considerations can be given effect to under paragraph *(e)*—

which is the one that deals with the degree to which the defendant has cooperated in the investigation—

> but the clause as drafted might give rise to an argument that they are excluded on the *expressio unius* principle by reason of the express provisions of paragraph *(d)*.
>
> I suggest that the reference to the plea of guilty be deleted from *(d)* and that a new paragraph be inserted after *(d)* as follows: 'a plea of guilty to the charge'. This would clearly authorise the court to give effect to the principles in *Shannon's* case by taking all aspects of the plea of guilty into account.

The reason for this amendment is to say that the plea of guilty, no matter what the motives for the plea of guilty are, can be taken into account and need not be related to the contrition of the accused person. So, I think it is a sensible amendment.

The Hon. K.T. GRIFFIN: I am happy to go along with that.

Amendment carried.

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

Page 5, after line 13—insert new paragraph as follows:
(da) if the defendant has pleaded guilty to the charge of the offence—that fact;.

This amendment is consequential to the one that I have just explained.

Amendment carried; clause as amended passed.

Clause 10—'Imprisonment not to be imposed except in certain circumstances.'

The Hon. K.T. GRIFFIN: I refer to the reference to a serious offence in subclause (1) *(b)*. There is no definition of what is a serious offence, and to that extent it seems to me that that paragraph might therefore be regarded as being somewhat vague. Is the Attorney-General able to give some indication as to what is envisaged and why there is no definition of 'serious offence' relative to that paragraph?

The Hon. C.J. SUMNER: We are talking about the exercise of the court's discretion, not about a specific verifiable position that must be established. The Government does not see a need to define 'serious offence'. It would be a matter for the judge to consider, depending on all the circumstances of the case.

The Hon. K.T. GRIFFIN: I put on the record my concern about the lack of definition. It is delightfully vague and, while the court does have discretion as to whether or not imprisonment is imposed, it seems to me that this adds an ingredient that is uncertain to the extent I have indicated and therefore is probably capable of a variety of interpretations which may ultimately be subject to review by a court of criminal appeal. I put that on record without moving an amendment.

Clause passed.

Clauses 11 to 14 passed.

Clause 15—'Imposition of fine without conviction.'

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

Page 6, lines 32 to 35—Leave out all words in these lines and insert the following:

Where a court finds a person guilty of an offence for which it proposes to impose a fine (but no other penalty) and the court is of the opinion—

(a) that the defendant is unlikely to commit such an offence again;

and

(b) that, having regard to—

(i) the character, antecedents, age or physical or mental condition of the defendant;

(ii) the fact that the offence was trifling;

and

(iii) any other extenuating circumstances,

good reason exists for not recording a conviction, the court may impose the fine without recording a conviction.

During the second reading debate I raised questions about the relationship of clauses 15, 16 and 17 to each other and also to other legislation where the courts have some discretion in relation to trifling offences. We need to clarify what the discretion of the court depends upon, and I do not think that it is sufficient merely to be of the opinion that the defendant is unlikely to commit such an offence again and that the offence was trifling to be able to exercise the discretion. My amendment clarifies the basis upon which the court may impose a fine without recording a conviction and, to some extent, brings it into line with clauses 16 and 17.

The Hon. C.J. SUMNER: The Government is prepared to support the amendment if the honourable member changes 'and' in paragraph *(b)* to 'or'. That would mean that the court could have regard to any of the factors, that is, either the character, antecedents, age or physical or mental condition of the defendant, or the fact that the offence was trifling, or any other extenuating circumstances.

That is a formulation similar to that contained in section 4 of the Offenders Probation Act where, if the court thinks the charge is proved but is of the opinion, having regard to character, antecedents etc., trivial nature of the offence or the extenuating circumstances, it is expedient to exercise the powers, it may convict or dismiss the information or complaint, etc. The amendment as it is at the moment requires that all these factors be satisfied, that is, the court has to have regard to the character, antecedents, age, physical or mental condition and the fact that the offence was trifling and any other extenuating circumstances.

All those things have to occur in order for the honourable member's criteria for the operation of his new provision to be established. We say that the principle that he is outlining is satisfactory, but it should not have to rely for its operation on the court having to have regard to all those factors.

The Hon. I. GILFILLAN: It seems that we are to proceed rapidly to agreement in this. I do not know whether the minor wording change is agreeable to the Hon. Mr Griffin.

The Hon. C.J. Sumner: It is minor in terms of work but important in terms of—

The Hon. I. GILFILLAN: I do not see that. Maybe there is a legal mental fixation here where a little lay interpretation of the wording is of benefit to all. There is no way that it is going to be spelt out in such particular detail that any presiding judge will get instruction from the amended clause so that he or she will be properly and precisely guided more so than from the present wording. The present wording is 'the court may': there is no direct instruction. The court has its own free mind, and it would be a completely insensitive court that has not some awareness and inference from these matters of character, antecedents, age or physical or mental condition of the defendant. The wording 'that offence was trifling' was the original wording.

As to any other extenuating circumstances, goodness, how indefined can one get? I gather that the Attorney is interpreting the word 'and' to mean that Mr Griffin is insisting that there be compliance with all of these criteria to a certain degree if the conviction is to not be recorded. That is a non-specific ingredient in the amended wording; there is no measure of degree and the court is to take regard. It does not provide for the court finding the character to be a sort of B minus and the antecedents to be of sound mind or of a certain colour. I am somewhat impatient. The thing has become a pointless academic exercise on piffling wordage. The amendment adds nothing to the original. Unless there is a gesture of goodwill which the Attorney intends to use to his advantage later, I cannot see any point in supporting the amendment. It is futile; I am not supporting it.

The Hon. C.J. SUMNER: The problem that the honourable member has, simply, is that the use of the word 'and' or 'or' has significant differences of meaning in legislation.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: If we use the word 'and', both the conditions to which that conjunction refers have to be fulfilled. If we use the word 'or', either one or the other has to be fulfilled.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: Okay; you do not know what you are talking about. You would be much better to go

back and shut up and just not get into arguments that you know nothing about.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: The Hon. Mr Griffin will tell the honourable member that the use of the word 'and' or the use of the word 'or' is of great significance.

The Hon. I. Gilfillan: You don't need any of it. The original drafter knew more about it than you do.

The Hon. C.J. SUMNER: Then I will not accept the amendment. I am just trying to be friendly.

The Hon. I. Gilfillan: There are some advantages in listening to me from time to time.

The Hon. C.J. SUMNER: No, there aren't.

The Hon. K.T. GRIFFIN: I am sorry that the Hon. Mr Gilfillan has had that outburst, as there is a significant difference between the drafting of my amendment and what is presently in the Bill. I had intended that the court should take into account all these matters to determine whether or not good reason existed for not recording a conviction.

The Hon. I. Gilfillan: What are 'extenuating circumstances'?

The Hon. C.J. Sumner: That has been in the law since 1913.

The Hon. K.T. GRIFFIN: Yes. It is there already, and it can be anything which goes to the credit of the defendant and which would be regarded by the court as a circumstance that, while not justifying the criminal offence, could to some extent explain it and would be a reason why the court would regard it as appropriate in those specific circumstances not to proceed to a conviction. I had in mind that, because of the reference in clause 16 to character, antecedents, age or physical or mental condition of the defendant, it would be appropriate to repeat it in clause 15, which serves a different purpose and has a different objective. I also had in mind that the court would be required to take into account all these matters and not just that the defendant was unlikely to commit an offence again. If the Attorney-General is happy to accept it in an amended form, even though I am giving way on something which I believe ought to be fairly firm, I am happy to seek leave to delete 'and' appearing between paragraphs (ii) and (iii) and replace it with 'or'.

Leave granted.

The Hon. I. GILFILLAN: If the word is changed to 'or', does that mean that the condition in subclause (2), the fact that the offence was trifling, does not necessarily have to be complied with?

The Hon. K.T. Griffin: Well, it does.

The Hon. I. GILFILLAN: If we put in 'or' anyone could be taken into account, and you would not have to take into account whether or not the offence was trifling.

The Hon. K.T. GRIFFIN: That is correct. I had intended that all these factors would be taken into consideration. I was trying to rescue something, because my original drafting was preferable to what is in clause 15.

The Hon. I. Gilfillan: You two have been trying so hard to be nice to each other that you have stuffed it up.

The Hon. C.J. Sumner: No we haven't. You are being mischievous.

The Hon. K.T. GRIFFIN: He's got a good point, though. I will adhere to it, and we can argue about it at some other time.

The Hon. I. GILFILLAN: I oppose this amendment, but I indicate that, if I lose on the voices, I do not intend to call for a division.

Amendment as amended carried.

The Hon. C.J. SUMNER: Madam Chair, I draw your attention to the State of the Committee.

A quorum having been formed:

Clause as amended passed.

Clause 16—'Reduction of minimum penalty.'

The Hon. K.T. GRIFFIN: In this case, it is important to change the word 'or' to 'and', because in this clause we are talking about the position where a special Act fixes a minimum penalty in respect of an offence and the court is thereby empowered to reduce that minimum penalty if it has regard to the character, antecedents, age or physical or mental condition of the defendant, the fact that the offence was trifling, or any other extenuating circumstances. To be consistent with minimum penalty provisions which appear in the Road Traffic Act in particular, or the Motor Vehicles Act, I think it is important for the court to take into account all those factors and not just any one of them. For that reason, I feel fairly strongly that the word 'or' should be changed to 'and'.

Before we finalise our decision on this matter, I will refer briefly to another amendment. I think that the court ought to be required to be satisfied that good reason exists for reducing the penalty. That is then consistent with the amendment to clause 15 which we have just passed. It is not good enough for the court merely to be of the opinion that the penalty should be reduced; it ought to be of the opinion that there is good reason for reducing that penalty.

The Hon. C.J. Sumner: I accept that.

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

Page 6, line 41—Leave out 'or' and insert 'and'.

The Hon. C.J. SUMNER: The argument in respect of this clause is similar to that relating to the previous one. We believe that, if a court is to have these powers, it ought to have them in the broadest possible way and, therefore, ought to be able to take into account any of the circumstances of character, the fact that the offence was trifling, or the fact that there were other extenuating circumstances and not to provide that the court must have regard to all those factors before making a decision to reduce the penalty below the minimum.

Where we are talking about penalties being reduced below the minimum we are not talking about licence disqualifications. They would be precluded from this as a result of the amendment that is in the Bill that is to follow, namely, the statutes amendment Bill, which tidies up the other Acts that the Criminal Law (Sentencing) Bill replaces. So, the penalty there would not relate to licence disqualification, but it could relate to any other minimum penalty. So it would normally involve a fine, or it may in some cases, for instance, in DUI situations, possibly enable a court to impose a penalty below a minimum term of imprisonment. However, it does not apply to licence suspension. As to the second amendment, which requires the court to find that good reasons exist for reducing the penalty, we have no disagreement.

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

Amendment negatived.

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

Page 7, line 2—Leave out 'the penalty should be reduced' and insert 'good reason exists for reducing the penalty'.

Amendment carried; clause as amended passed.

Clause 17—'Court may add or substitute certain penalties.'

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

Page 7, lines 5 and 6—Leave out 'the sentence provided by the special Act inappropriate to the circumstances of the case' and insert 'that good reason exists for departing from the penalty provided by the special Act'.

This amendment will make the provision consistent in its drafting with clauses 15 and 16, as just amended. Also, it means in my view that there is something more which the court has to conclude rather than that it is inappropriate to

the circumstances: it is something more positive, that is, that a good reason exists for departing from a penalty provided in a special Act.

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

Amendment carried; clause as amended passed.

Clause 18 passed.

Clause 19—'This division does not affect mandatory sentences.'

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

Page 8, line 13—Leave out 'exercise of a power vested in a court by this Division' and insert 'reduction, mitigation or substitution of penalties or sentences'.

This clause provides:

Nothing in this Division—

(a) affects the sentence to be imposed by a court for murder, or treason—

I certainly accept that—

or

(b) derogates from a provision of a special Act that expressly prohibits the exercise of a power vested in a court by this Division.

I had some difficulty with this because it seemed to me that it could be construed as a reference only to legislation which made expressed reference to this Bill, and I did not think that that was appropriate. I think that my amendment will overcome that and, if it is accepted, paragraph *(b)* will provide:

Derogates from a provision of a special Act that expressly prohibits the reduction, mitigation or substitution of penalties or sentences.

So, the clause will apply both prospectively and retrospectively to legislation already passed and where legislation is enacted in the future and has some specific reference to minimum penalties and to the powers in this Bill granted to courts. I think that my amendment clarifies the situation and hopefully will resolve some debate as to the extent to which the Bill will impinge on other legislation passed before this comes into operation and providing for minimum penalties.

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

Amendment carried; clause as amended passed.

Clause 20—'Commencement of sentences and non-parole periods.'

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

Page 9, after line 2—Insert new subclause as follows:

(6) If, on imposing a sentence of imprisonment, the court fails to specify the date on which or the time at which the sentence is to commence or is to be taken to have commenced, the sentence—

(a) will, in the case of a defendant not then in custody, commence on the day which the defendant is subsequently taken into custody for the offence;

(b) will, in the case of a defendant already in custody for the offence, be taken to have commenced on the day on which the defendant was last so taken into custody;

or

(c) will, in the case of a defendant in custody for some other offence, commence on the day on which the sentence is imposed, unless the sentence is to be served cumulatively pursuant to this Act or any other Act.

This clause deals with the commencement of sentences and non-parole periods but, as I said in my second reading speech, it does not deal with the perhaps remote situation where a court does not specify the date on which a sentence is to be taken to have commenced. My amendment is designed to deal with that situation, however remote the possibility may be. So, the date when a sentence commences, if a court does not specify a date, is to be the day on which the defendant is subsequently taken into custody for an offence, if he or she is not already in custody; if a defendant is already in custody, the sentence will commence on the day on which the defendant was last taken into custody; or, if a defendant is in custody for some other offence, it will commence on the day on which the sentence is imposed, unless it is to be served cumulatively pursuant to this Bill.

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

Amendment carried; clause as amended passed.

Clause 21—'Cumulative sentences.'

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

Page 9—

Line 13—Leave out 'the court must' and insert 'the sentence will'.

Line 14—Leave out 'direct that the sentence'.

These amendments will ensure that in the circumstances specified in subclause (2) a sentence of imprisonment will be cumulative upon the sentence or sentences in respect of which the defendant was on parole as a matter of law and not merely as a matter of mandatory direction by the court.

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

Amendments carried; clause as amended passed.

Clause 22—'Duty of court to fix or extend non-parole periods.'

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

Page 9—After line 33 insert new subclause as follows:

(1a) Where the sentence of imprisonment is imposed for an offence committed during a period of release on parole from a previous sentence of imprisonment, the court, in fixing a non-parole period under subsection (1) *(a)*, must have regard to the total.

This amendment articulates for the benefit of the courts and others involved in the system what is already the law. If a person is gaoled for an offence committed while on parole, the sentencing court in fixing the non-parole period is to have regard to the sum total of the new gaol sentence plus the revived unexpired portion of the previous sentence.

Amendment carried.

The Hon. K.T. GRIFFIN: I want to ask a question of the Attorney with respect to subclause (5) which provides that the court may apply to the sentencing court for an order extending a non-parole period fixed in respect of the sentence or sentences of a prisoner, whether the non-parole period was fixed before or after the commencement of this Act. That provision has been in the law now for several years. Could the Attorney-General indicate on how many occasions the Crown has applied for the extension of a non-parole period and in respect of which prisoners and for what reasons and with what consequence?

The Hon. C.J. SUMNER: I will attempt to get that information.

Clause passed.

Clause 23—'Court to have regard to defendant's means.'

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

Page 11, line 32—After 'Act' insert 'or any other Act'.

Amendment carried: clause as amended passed.

Clauses 24 to 26 passed.

Clause 27—'Part does not apply to murder or treason.'

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

Page 12, lines 25 and 26—Leave out 'exercise of the powers vested in a court by this Part' and insert 'reduction, mitigation or substitution of penalities or sentences'.

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

Amendment carried; clause as amended passed.

Clause 28—'Suspension of imprisonment upon defendant entering into a bond.'

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

Page 12, line 28—Leave out 'it appropriate to do so' and insert 'that good reason exists for doing so'.

This amendment is consistent with earlier amendments to clauses 15, 16 and 17 where the court must find that, rather than providing something nebulous like it being appropriate

to impose a bond or suspend the sentence on condition that the defendant enter into a bond, something more positive is required, namely, that good reason exists for doing so.

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

Amendment carried.

The Hon. I. GILFILLAN: I raise the point that the Hon. Mr Griffin raised in relation to subclause (2)—the ability to impose the optimum sentence. I quote from his second reading speech as follows:

Clause 28 (2) provides that the suspension of a sentence is not permitted if it is to be served cumulatively upon or concurrently with another term of imprisonment. I have been informed that not infrequently judges have expressed a view that this restriction prevents them from setting an appropriate sentencing package.

He then goes on to outline an example. Has that criticism been addressed?

The Hon. C.J. SUMNER: I understand the point that the honourable member is making, but we have considered this matter and feel that the distinction should be drawn between a bond or imprisonment. Bonds are specifically designed to keep people out of prison and to mix the two notions would possibly lead to imprisonment being imposed on more occasions than would be justified. We think that the court has to decide whether imprisonment is warranted. If it is, it must decide to impose that imprisonment but not mix up imprisonment with a bond, as has been suggested by the honourable member. It is a perfectly respectable argument that has been put forward and argued before, but we have come to the view that one ought to decide, in this area at least, to go one way or the other and not mix up the notion of a bond with that of imprisonment.

The Hon. K.T. GRIFFIN: As the Hon. Mr Gilfillan indicated, I raised this matter during my second reading speech and the Attorney-General responded during his reply. I considered whether I should move an amendment, but it seemed to me that there were some difficulties in getting the right drafting. Also, in the face of the argument that parole applies in some instances and there may be confusion between parole and a bond, I thought that it needed further detailed consideration and that it would be more appropriate for the Attorney-General with his resources to pursue that matter, even with the Chief Justice, if necessary, as a matter of principle than for me to try to reach a satisfactory conclusion with no resources.

Clause as amended passed.

Clause 29—'Discharge without sentence upon defendant entering into a bond.'

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

Page 13, line 2—Leave out 'it appropriate to do so' and insert 'that good reason exists for doing so'.

This amendment is consistent with other amendments which place on the courts a requirement to reach a positive conclusion that good reason exists for doing what is proposed under clause 29 rather than the court merely concluding that for some vague reason it is appropriate to do so.

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

Amendment carried.

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

Page 13, lines 2 and 3—Leave out 'without recording a conviction or' and insert 'with or without recording a conviction and without'.

This amendment will enable courts to impose bonds both where a conviction is not recorded and where a conviction is recorded. This is the law already by virtue of the combined operation of sections 4 (1) and 4 (2) of the Offenders Probation Act which apply respectively to courts of summary jurisdiction and the higher criminal courts. It seeks to make uniform in one provision the powers of all the criminal courts to release a person on a bond. Obviously, in the higher courts an imposition of a bond without the recording of a conviction would be a very rare event in light of the fact that only the more serious of offences are tried in those courts.

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

Amendment carried.

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

Page 13—
Line 8—After 'for' insert, 'sentence, or'.
Line 14—After 'to' insert 'sentence, or'.

These amendments are consequential.

Amendments carried; clause as amended passed.

Clauses 30 to 33 passed.

Clause 34—'Variation or discharge of bond.'

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

Page 14, lines 31 and 32—Leave out 'If the Minister of Correctional Services is satisfied, on the application of a probationer' and insert 'If a probative court is satisfied, on the application of the probationer or the Minister of Correctional Services'.

Clause 34 deals with the variation or discharge of a bond and provides in subclause (2) that if the Minister of Correctional Services is satisfied that it is no longer necessary for the probationer to remain under supervision and that it would not be in the best interests of the probationer to remain under supervision then the Minister may waive the obligation of the probationer to comply any further with the condition requiring supervision. I believe that we ought to toughen up on this and that it ought to be the probative court which makes the decision whether or not supervision is required any longer. Of course, the temptation for any Minister would be to remove the requirement for supervision where it may be, because of resource implications, that it can no longer be satisfied. In any event, I would suggest that the court is the more appropriate place and body to make that decision having already set the conditions applicable to the bond in relation to a particular defendant. So, the application can be made by the probationer or the Minister of Correctional Services. It need not be a matter of complexity or undue formality, but I think that it ought to be something which is hereafter the responsibility of the probative court.

The Hon. C.J. SUMNER: The Government opposes this amendment. The Bill before us picks up an existing provision, namely, section 8 (3) of the Offenders Probation Act, which was inserted in the legislation in 1981 with the enthusiastic support of the then Attorney-General. I do not think that there has been any major problem caused by the 1981 provision and I can see no reason why it ought not to be repeated in this legislation.

The Hon. I. GILFILLAN: I would like to indicate the Democrats' support for the amendment. It seems to me that it is an unreasonable power to be exercised by the Minister of Correctional Services alone, and that it is more properly assessed by the probative court.

The Hon. C.J. SUMNER: It is in the existing law. The Hon. Mr Griffin introduced it in 1981 and put it in the law; it is working without any problems as far as one can make out, and he comes here today, with the support of the Hon. Mr Gilfillan, and wants to take it out. It is an incredible way to go about legislating.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: You can change your mind, you can change the law, but if you are going to change it you want to be able to identify how the law is not working, and not just change it for the sake of it. No evidence whatsoever has been given by the Hon. Mr Griffin or the Hon. Mr Gilfillan which indicates that the law as passed in 1981 is not working or that there is some problem with it. No-one has identified a problem with it at all, and I suppose

we will just have to debate it in a conference, if we get there, but it staggers me that members can go about legislating in this way. Sure, one is entitled to change one's mind, and I do not mind that, but it must be on some reasonable basis: for example, on the basis of some evidence that has been produced that the section is not working.

The Hon. I. GILFILLAN: I was not here in the earlier debate, but I do not see that there is not the possibility for changing one's mind, so I am not prepared to accept that as a reason for not supporting the amendment. I normally have respect for the Attorney's point of view but, as I understand it, we have already voted on that previous amendment but, assuming we have not, I would like to indicate that it appears to me that the period of probation or probation conditions are imposed by the probative court. I assume that is correct: they are not imposed by the Minister of Correctional Services so, in logic at least, in my interpretation of the way the Act is applied, it is reasonable that the imposing authority is the one which has the authority to vary that. Whether or not there have been problems with it, my reaction is based purely on the logic of the argument as it appears to me in the Act and in the Bill.

The Hon. C.J. SUMNER: What has been the problem with the Act so far? It has worked well. There have not been any complaints about it.

The Council divided on the amendment:

Ayes (11)—The Hons J.C. Burdett, M.B. Cameron, Peter Dunn, M.J. Elliott, I. Gilfillan, K.T. Griffin (teller), C.M. Hill, J.C. Irwin, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (8)—The Hons G.L. Bruce, J.R. Cornwall, T. Crothers, M.S. Feleppa, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Pair—Aye—The Hon. L.H. Davis. No—The Hon. Carolyn Pickles.

Majority of 3 for the Ayes.

Amendment thus carried.

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

Page 14, lines 37 and 38—Leave out 'the Minister may, by instrument in writing' and insert 'the court may, by order'.

This amendment is consequential on the amendment just carried.

Amendment carried; clause as amended passed.

Clause 35—'Community service not to be ordered unless there is a placement for the defendant.'

The Hon. K.T. GRIFFIN: The Attorney-General may not have all this information at his fingertips, but it is an appropriate point at which to ask whether, in due course, he can supply details of where the community service centres are in South Australia, what plans there are for additional community service centres and where they are likely to be located. Can he give some indication of the extent to which community service orders under the existing legislation have been used in the past 12 months?

The Hon. C.J. SUMNER: I will attempt to get that information.

Clause passed.

Clause 36 passed.

Clause 37—'Special provisions relating to community service.'

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

Page 15, line 34—After 'employment' insert ', or that would cause unreasonable disruption of the person's commitments in caring for his or her children'.

It makes clear that a person's child-caring commitments must be taken into account in order to determine the appropriate time at which community service is to be performed by that person. Already such service cannot be required or demanded on grounds of remunerated employment and religion. Child-care commitments should also receive appropriate recognition.

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

Amendment carried.

The Hon. K.T. GRIFFIN: Before I move the amendment on file, can the Attorney-General indicate what is envisaged by paragraph *(j)*? On reading it, I have some concern that the mere attendance at some educational or recreational course of instruction approved by the Minister is to be community service. It involves improvement of the offender's own attributes, but I cannot see that that is community service, so I seek some clarification.

The Hon. C.J. SUMNER: The amendment that the honourable member has not moved yet is unacceptable. Paragraph *(j)*, which he will seek to amend, was inserted at the request of the Department of Correctional Services. Its experience has been that it is virtually futile for courts to order, as part of community service, that a person attend educational or recreational courses of instruction. This paragraph deals with the situation in which an offender voluntarily decides on an action towards self-improvement and to take a course of instruction voluntarily.

That course of instruction has to be approved by the Minister in order for credit to be given, but I believe that it would provide a much needed incentive to self-improvement and the rehabilitative aspects of community service orders. I can see no problem with it. The Minister must approve it. It must be a genuine attempt at carrying out some educational work, and I believe that it is a useful adjunct and addition to what a person can do as part of community service—not imposed by the court, because that has not been found to be acceptable. However, where an offender decides to do it and genuinely does it, and satisfies the Minister of that, we believe it is reasonable that that be taken into account, as I say, at the Minister's discretion as part performance of community service.

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

Page 15, lines 38 to 40—Leave out paragraph *(j)*.

In moving the amendment I have no argument with the principle of a person who may be an offender attending an educational or recreational course of instruction. I would have thought that that was more important and more appropriate in relation to the term or condition of a bond, rather than being described as community service which, in my view, is doing something for some individuals or a group in the community, and that that was putting something back into the community to make reparation for the consequences of the criminal offence.

While the attendance at any educational or recreational course of instruction may develop one's personality and abilities and promote rehabilitation, I think it is more appropriate as a term or condition of a bond. It is drawing a very long bow to suggest that that ought to be regarded as community service, and it is in that context that I have moved my amendment. If it can be included somewhere else in relation to a bond, I will be happy to support it. In fact, that sort of provision can probably already be a term or condition of a bond ordered by a court, and the only reason for having it in that part of the Bill which relates to a bond would be to draw the court's attention to the fact that it is one of the conditions which might be imposed. However, I really do not think that it is appropriate to describe it as community service when, in fact, it is putting nothing back into the community by the offender in consequence of the offence.

The Hon. I. GILFILLAN: I indicate opposition to the amendment. It is very difficult in institutions to get approval and facilities for prisoners to do self-improvement or other

courses, and it is one of the major deficiencies of the way in which our prison system is currently conducted. I do not expect the Minister to magnanimously grant education or recreation courses to all and sundry in lieu of community service. I do not think it will be abused.

The Hon. Mr Griffin misses a major point. Community service is achieved if an offender is rehabilitated and established as a more valuable and contributing member of society That is probably more important than pulling the rubbish out of the Patawalonga, which is one of the community service orders, because it fills again: it is repetitive. It may well be that many people on CSOs would be of greater benefit and that it would be a greater community service if many of them were encouraged to take courses, provided that they were constructive and that they were willing participants therein.

So, although at first glance it looks mildly inappropriate that an educational course can be done in lieu of what is normally regarded as a physical contribution to some sort of community project, I have no difficulty in seeing that, as far as the community is concerned, the advantages are likely to be just as great from that form of time serving as they were from some manual task. Also, one must remember that, if it is a properly structured course, it imposes some restrictions and discipline on the people involved. It is not fun or recreation in itself. It is a course with certain obligations. So, this is an enlightened clause to have as an option, and I commend the Government for bringing it in. I oppose the amendment.

The Hon. K.T. GRIFFIN: I do not misunderstand what is involved. It is equally a community service to keep prisoners in gaol and protect the community at times. I merely say that it is inappropriate to regard the attendance at an educational or recreational course of instruction as a community service within the commonly accepted description of a community service order. If one looks at the other paragraphs of this clause, one sees that it is quite clear that this course of instruction is not within the normal description of a community service. That is why I believe it is quite inappropriate to describe it as community service in this clause.

Amendment negatived; clause as amended passed.

Clauses 38 to 41 passed.

Clause 42—'Restitution of property.'

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

Page 17, lines 37 and 38—Leave out 'The court by which a defendant is found guilty of an offence involving the misappropriation of property' and insert 'Where the offence of which the defendant has been found guilty, or any other offence that is to be taken into account by the court in determining sentence, involves the misappropriation of property, the court'.

This amendment seeks to do in relation to restitution what is already the case for compensation, that is, that restitution orders can be made also in relation to any other offence that is to be taken into account by the court involving the misappropriation of property.

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

Amendment carried; clause as amended passed.

Clause 43—'Compensation.'

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

Page 18, lines 21 to 24—Leave out subclause (6).

I move this amendment on the basis that it is already picked up by clause 12 (1).

The Hon. K.T. GRIFFIN: I am prepared to support the amendment.

Amendment carried.

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

Page 18, line 26—Leave out $10 000 and insert $20 000.

This amendment increases to $20 000 the amount of compensation that a court of summary jurisdiction can award, that sum being the jurisdictional limit of the existing local court which is presided over by magistrates in civil matters.

Amendment carried.

The Hon. K.T. GRIFFIN: I place on the record my concern about subclause (5). During the second reading debate I made the point that the blanket prohibition against any order for compensation where injury, loss or damage is caused by or arises out of the use of a motor vehicle is unwise and I do not think that it is justified. The Attorney-General has given some response in his second reading reply, but I still say that there are some difficulties which I think may become evident in the future, perhaps on rare occasions, but I place on record my concern—

The Hon. C.J. Sumner: It is the existing law.

The Hon. K.T. GRIFFIN: I still have some concern about it, particularly in the light of the limitations which are being placed on CTP insurance.

Clause as amended passed.

Clauses 44 to 50 passed.

Clause 51—'Imprisonment in default of payment.'

The Hon. K.T. GRIFFIN: I have raised this point on previous occasions, but in relation to subclause (3), persons have been imprisoned for a period longer than six months for failure to pay outstanding fines relating to overloading charges, for example. In a different context, there is arrears of maintenance. I have drawn attention to one case where a person was imprisoned for 213 days for failure to pay outstanding maintenance in circumstances where there was some real difficulty in making payment. Does the Attorney-General intend to apply this provision retrospectively to those sorts of cases to which I have referred relating, say, to overloading and, in relation to arrears of maintenance (which, strictly speaking, is not a criminal matter), does he see an inconsistency between the maximum period of six months being required to be served under subclause (3) and the periods imposed for non-payment of maintenance where those periods exceed six months?

The Hon. C.J. SUMNER: The schedule to the Act states clearly that, in relation to the transitional provisions, the Act does not affect the term of imprisonment for the enforcement or, in default, the payment of a pecuniary sum where the term was fixed before the commencement of the Act. So it applies to the future. With respect to the maintenance question, we are dealing here with the Bill relating to sentencing.

The Hon. K.T. Griffin: I said that, but there really is an inconsistency.

The Hon. C.J. SUMNER: I suppose there is: it depends on what view you take of maintenance. Maintenance is a payment that ought to be made: it is ordered by a court after an assessment of a person's income.

The Hon. K.T. Griffin: So are fines.

The Hon. C.J. SUMNER: Yes. In some respects the non-payment of maintenance is more serious than a fine. Maintenance is ordered to be paid after an assessment of the facts of the case and of the means that the individual has to make those payments of maintenance. It is, I think, quite a serious matter not to pay maintenance. It is, after all, a figure that goes directly to a person that the individual who has to pay the maintenance is obliged to support, whereas there is not the same direct individual that receives support from the payment of a fine. So I think there are some distinguishing features, but the reason that is not picked up here is that we are not dealing with that legislation. It is not being considered here; whether we pick it up or not is another matter.

Clause passed.

Clauses 52 to 55 passed.

Clause 56—'*Ex-parte* orders.'

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

Page 23, line 32—Leave out 'or by post'.

This deals with an order being made in the absence of a person in default, and provides that a copy of the order must be served on the person personally or by post. That, of course, may be an order for imprisonment. I have some difficulties with service other than personal service, particularly where the consequence may well be imprisonment. It seems to me to be more appropriate to provide for that service to be personal rather than leaving it to the vagaries of the postal system.

Amendment carried; clause as amended passed.

Clauses 57 and 58 passed.

Clause 59—'Amount in default is reduced by imprisonment served.'

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

Page 25, after line 46—Insert new subclause as follows:

(6) For the purposes of this section, the deduction from a prisoner's earnings of the amount of a levy payable under the Criminal Injuries Compensation Act 1978, will be taken to be payment by the prisoner of that amount.

This amendment picks up the reference to deduction from a prisoner's earnings of the criminal injuries levy in section 13 (7) of the Criminal Injuries Compensation Act. Payment of the levy is deemed to be achieved by such deduction and, accordingly, the warrant of commitment is *pro rata* reduced (and so too, in consequence, is the amount of the term of imprisonment).

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

Amendment carried; clause as amended passed.

Clause 60 passed.

Clause 61—'Failure to comply with a court order may be punished by imprisonment.'

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

Page 26, after line 30—Insert new subclause as follows:

(5) A right of appeal lies against a decision of an appropriate officer under subsection (1) to direct, or not to direct, that a sentence imposed under that subsection be served cumulatively on some other term.

(6) The right of appeal conferred by subsection (5) lies to the court that imposed the order for community service, or a court of co-ordinate jurisdiction.

The clause deals with the failure of a person to comply with an order of a court to perform community service. In those circumstances the appropriate officer—in the Supreme Court or the District Court it is the sheriff and in a court of summary jurisdiction it is the clerk—may sentence the person to a term of imprisonment in respect to the default, issue a warrant of commitment and, if the officer thinks it appropriate, direct that the term of imprisonment be cumulative. I think that there should be some right of appeal against the decision whether or not to require the sentence to be served cumulatively and that the right of appeal should lie to the court which imposed the order or a court of coordinate jurisdiction. After all, it is a discretion which is being exercised and, rather than it being exercised by a person such as the sheriff without any redress, I think it is appropriate to have a form of appeal.

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

Amendment carried; clause as amended passed.

Remaining clauses (62 to 65) and schedule passed.

Title.

The Hon. K.T. GRIFFIN: Can the Attorney-General indicate when the Bill is likely to be proclaimed to come into effect?

The Hon. C.J. SUMNER: It is hoped that we can start by July or thereabouts.

Title passed.

Bill reported with amendments. Committee's report adopted.

STATUTES AMENDMENT AND REPEAL (SENTENCING) BILL

In Committee.

(Continued from 10 February. Page 2628.)

Clause 2—'Commencement.'

The CHAIRPERSON: There are no indicated amendments at the table.

The Hon. K.T. GRIFFIN: I thought that the amendments had been circulated before we adjourned two weeks ago. I have amendments to clauses 10, 17, 25 and 28.

Progress reported; Committee to sit again.

TRADE STANDARDS ACT AMENDMENT BILL

In Committee.

(Continued from 3 March. Page 3284.)

Clause 16 passed.

Clause 17—'Defect notices.'

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

Page 7, line 39—After 'goods' insert 'from members of the public to whom they have been supplied'.

This clause deals with defect notices and provides the circumstances in which defect notices must be given. New section 27a (2) provides:

A defect notice is a notice that identifies a defect in, or dangerous characteristic of, the goods to which it applies and directs the supplier to do one or more of the following—

(a) to take action to recall the goods in accordance with directions contained in the notice and on the return of the goods . . .

I want to insert after 'recall the goods' the words 'from members of the public to whom they have been supplied'. It seems to me that that is really the key to defect notices and also to the later provision in new section 27c relating to the voluntary recall of goods. I think that this provision needs some qualification to try to identify in what circumstances the recall is to be made and from whom.

The Hon. C.J. SUMNER: The Government opposes this amendment. Once goods have entered the distribution chain, they should be subject to recall. The Trade Standards Act is not an Act which deals with consumers alone but is designed to protect all persons to whom goods are supplied. It is by no means uncommon for wholesalers to sell direct to the public. If the manufacturer identifies goods as being dangerous goods, it would certainly be of concern to the Government if those goods had entered the chain of distribution. It seems to the Government that we ought to be able to direct the supplier to take action to recall the goods not just from members of the public to whom they have been supplied but from anyone to whom they have been supplied. For instance, if they have been supplied by a wholesaler to a retailer, then one ought to be able to order that the goods be recalled by the wholesaler from the retailer or, indeed, from the manufacturer. That recall notice should be able to apply to a manufacturer who has supplied them to a wholesaler. So, the provision ought to apply throughout the distribution chain, once you have decided that an item is the subject of a defect notice.

The Hon. I. GILFILLAN: I agree with the argument of the Attorney. I oppose the amendment.

The Hon. K.T. GRIFFIN: If I lose the amendment on the voices, I will not divide. I might point out at this stage that I see some difference between this proposed section 27a and proposed section 27c which deals with voluntary recall. If I lose this amendment, that will not necessarily mean that I will give up on the later amendment which is in identical terms.

Amendment negatived.

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

Page 8, line 23—After *'Gazette'* insert 'and in a newspaper circulating generally in the State'.

A defect notice may be issued to a supplier personally, by post, or, if the notice is addressed to suppliers of a particular class, by publication in the *Gazette*. During the second reading debate, I made the point that the *Gazette* is not the favourite reading material of many people in South Australia and that, with suppliers, it would be appropriate also to give notice in a newspaper circulating generally in the State, as there is both a greater likelihood of access to that newspaper than the *Gazette* and also a greater prospect that the public notices column will be read there than in the *Gazette*. I move the amendment to also require a notice in a newspaper circulating generally in the State.

The Hon. I. GILFILLAN: We accept that.

Amendment carried.

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

Page 8, after line 23—Insert new subsection as follows:

(3a) The Minister must take reasonable steps to bring the publication of a notice under subsection (3) *(c)* to the attention of suppliers who are known by the Minister to be affected by the notice.

Proposed new subsection (3a) provides that, where a defect notice is published in the *Gazette* and a newspaper circulating generally in the State, if the Minister has notice of specific suppliers, the Minister ought to be required to take reasonable steps to bring the publication of the notice to the attention of those suppliers. It may be that a particular product comes to the notice of the Minister through a certain supplier. I think that it is reasonable for the Minister to be required to draw the publication of a notice in the *Gazette* to the attention of suppliers who might be known to the Minister. I suggest that it is not unduly onerous and will not affect the validity of the notice. It is just a reasonable provision for communication of information where suppliers are known to the Minister.

The Hon. C.J. SUMNER: We opposed a similar amendment which was moved to clause 7 when this matter was last before the Committee, but we lost it so, although we do not think that it is necessary, for the sake of consistency we will not oppose it.

The Hon. I. GILFILLAN: I support the amendment. It may impose an extra task on the Minister but, bearing in mind that the safety of the public is involved, this seems a reasonable step to make sure that this material which could be injurious to the health of the public is recalled and controlled as soon as possible. It is a helpful amendment.

Amendment carried.

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

Page 8, line 38—Leave out 'necessary transportation costs' and insert 'reasonable transportation costs'.

Subclause (6) of proposed new section 27a provides that the cost of the repair or replacement of goods, including any necessary transportation cost, must be borne by the supplier. I want to amend that to refer to 'reasonable transportation costs'. I think that whoever is returning goods to a supplier must look to do that by a reasonable mode of transport and by a reasonable route, and not have total disregard for the consequences on the supplier. I think that 'reasonable transportation costs' would represent an appropriate amount for someone to seek to recover from the supplier. I think that it really reflects a principle of the common law, that a person who is aggrieved must take reasonable steps to mitigate their loss.

The Hon. C.J. Sumner: They won't be necessary transportation costs.

The Hon. K.T. GRIFFIN: I do not get the significance of what you are saying. My amendment states 'reasonable transportion costs' and I think that that would be an appropriate description of what can be recovered.

The Hon. C.J. SUMNER: The Government opposes this amendment. Section 65 F (6) of the Trade Practices Act requires that the cost of repair or replacement, including any necessary transport costs, shall be borne by the supplier. Therefore, the vast majority of suppliers in the State will already be caught by the Trade Practices Act provision. I think that this is one of the sections that we ought to strive to keep uniform in the interests of business. I do not hold the fears that the honourable member has, and in fact I feel that the use of the word 'necessary' confines the transportation costs that can be recovered to those which are necessary. So if any cost of repair or replacement must be borne by the supplier, that cost includes any necessary transportation costs. If there are any unnecessary transportation costs, then they cannot be recovered. I think that the provision as drafted is satisfactory.

The Hon. I. GILFILLAN: I agree.

Amendment negatived.

The Hon. K.T. GRIFFIN: As my next amendment to page 9, lines 1 and 2, is in identical terms to the previous one, and in the light of the decision in relation to the last amendment, I do not propose to move it. I move:

Page 9, line 19—Leave out '10' and insert '28'.

Proposed section 27b deals with the situation where the Minister proposes to publish a defect notice in relation to goods, and he has to publish a draft of the proposed defect notice, a summary of the reasons and an invitation to any person who supplies or proposes to supply goods to request the council, within a period specified in the notice (which must be a period of at least 10 days from the date of publication), to hold a conference in relation to the proposed publication of the defect notice. I think that that 10 day minimum period is too short taking into consideration the fact that weekends may interpose. Therefore, I propose a period of 28 days.

The Hon. C.J. SUMNER: This amendment is rejected. The 10 days provision is picked up from the Trade Practices Act. Corporations under that Act have to give the Trade Practices Commission notice within 10 days. We do not see that that should provide any major problems for non-corporations under our legislation which, as I said in this respect again, is to mirror the Trade Practices Act and to provide business in this State, whether corporations or individuals, with a code as to how to deal with these things.

The Hon. I. GILFILLAN: I agree with the Attorney.

Amendment negatived.

The Hon. K.T. GRIFFIN: There is an earlier reference to publication of the notice in the *Gazette*. In relation to a defect notice in proposed section 27a, the Committee has agreed that there should be publication also in a newspaper circulating generally in the State. I cannot move an amendment to an earlier line than the amendment that has just been defeated unless it is recommitted, but it seems to me that, to be consistent, with respect to proposed section 27b on page 9 at line 13 and on page 10 at line 8, the Committee should provide for that publication of a notice in a newspaper circulating generally in the State. If the Attorney-General can acknowledge that, a couple of appropriate

amendments could be prepared and inserted by recommittal, if that is necessary.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: I know that. I merely point out that there are two places in proposed section 27b where notice is to be given in the *Gazette*. The Committee has agreed to an amendment to proposed section 27a which provides for notice in the *Gazette* and in a newspaper circulating generally in the State. I point out before the clause gets away from me that, to be consistent, the Committee should include this provision in this clause also. I want to get from the Attorney-General an indication whether he is prepared to agree with that in principle.

The Hon. C.J. SUMNER: That is all right.

The Hon. K.T. GRIFFIN: The clause will need to be recommitted.

The ACTING CHAIRPERSON (Hon. T. Crothers): A motion to recommit the clause will have to be moved at the end.

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

Page 9, after line 21—Insert new subclause as follows:

(1a) The Minister must take reasonable steps to bring the publication of a notice under subsection (1) to the attention of suppliers who are known by the Minister to be suppliers of goods of the relevant kind.

This is consistent with earlier amendments that have been accepted by a majority of the Committee that, where suppliers are known to the Minister to be suppliers of goods of the relevant kind, the Minister must take reasonable steps to bring the publication of a notice to the attention of those suppliers.

The Hon. C.J. SUMNER: There is a distinction. As I said previously, we did not accept this proposal that the Minister must bring the publication of a notice to the attention of others when it came up in relation to section 26(4). My recollection is that when the matter was before us previously the Democrats supported the Opposition on that point, and for that reason I did not raise any objection to the amendment that we have considered this evening in a similar vein. However, but there is some difference between this proposed amendment of the Hon. Mr Griffin and the previous one.

I am advised that with the previous amendments the wording was that the Minister should take reasonable steps to bring the publication of a notice to the attention of manufacturers or suppliers who were known by the Minister to be affected by the notice. I am advised that we would know who those people were and that, therefore, we could bring the publication of the notice to their attention. However, this amendment has different wording because it says that the Minister must take reasonable steps to bring the publication of a notice to the attention of suppliers who are known by the Minister to be suppliers of goods of the relevant kind.

We do not believe that that ought to be accepted. Again, it is uniform with section 65J of the Trade Practices Act. It is the view of the advisers that the amendment places an unrealistic burden on the Minister. For example, in the case of erasers, which may have a high heavy metal content, virtually every delicatessen in the State would have to be notified because they all stock erasers, particularly those prone to have a high metal content. So, it would seem to me to place an impractical obligation on the Minister to bring to the attention of suppliers of goods of the relevant kind who are known to the Minister when the Minister would be presumed to know in some circumstances that these things were being supplied by outlets all over the State, depending on what the item was.

The Hon. K.T. GRIFFIN: I would have thought that that was knowledge by the Minister. It may be in all the delis. We are really talking about specifics, I would have thought. That was the whole object: not to make it so broad as to make it impossible to comply with. If you have knowledge of who specifically are suppliers, then you would take reasonable steps to bring it to the attention of those suppliers. The drafting is really consistent with the drafting of the proposed provision where there is a difference in drafting from other provisions where a similar amendment has been accepted by a majority in the Council. I do not think that the provision can have the ramifications to which the Attorney has referred.

If there is an alternative form of wording that might, for example, refer specifically to suppliers likely to be affected by the notice, I am happy to accommodate that to ensure some consistency and put the Attorney-General's fears to rest.

The Hon. C.J. SUMNER: We do not believe that it should be accepted in this case. If we proceed too far down the track of breaking from a uniform approach, we defeat the whole purpose of the exercise.

The Hon. K.T. GRIFFIN: This is not a significant departure. If the Attorney looks at his files, if people have been identified—

The Hon. C.J. SUMNER: We do not think that it is confined to that.

The Hon. I. GILFILLAN: The same points made earlier apply. Maybe the wording is different and that has some consequence, but I do not want to comment on that. I see the value of these amendments in offering more efficient and probably more rapid protection of the public from a product that has been determined as being defective. That is the only point as far as I am concerned. I am not looking to impose an extra load upon the Minister or to provide the suppliers with an out clause or grounds upon which they can challenge. The wording 'reasonable steps' means that, if it is quite unreasonable that too many people are involved, that is a decision the appropriate Minister could make, quite reasonably with an easy conscience, and that under the circumstances it is impossible to do that. On balance, it does no harm to have it in there, and it does encourage the response of suppliers to the defect notice.

Amendment carried.

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

Page 10, line 8—After '*Gazette*' insert 'and in a newspaper circulating generally in the State.'

I apologise that this amendment was not circulated. Proposed subsection (7) refers to the position that, if the Minister decides not to publish a defect notice, he must give notice of the decision in the *Gazette*. I want to ensure that that is consistent with an earlier amendment.

The Hon. C.J. SUMNER: It is not opposed.

The Hon. I. GILFILLAN: I am not strongly persuaded that the amendment is as necessary as the earlier one because it seems that if the defect notice is not to be proceeded with it is not a matter of desperately urgent information to be conveyed to the suppliers. On balance, it probably helps the working of the Bill. It is in a different category to the earlier amendment where widespread knowledge of the defect of a dangerous substance is necessary.

The Hon. K.T. GRIFFIN: If we are going to publish a notice of an intention to issue a defect notice, that may well prejudice suppliers. It is therefore important to give equally wide circulation to a decision not to publish a defect notice. I see it as being important.

Amendment carried.

The Hon. K.T. GRIFFIN: During the second reading debate I raised the difficulty in defining what is a recall of goods. Proposed section 27c provides that, where a supplier voluntarily takes action to recall goods because the goods will or may cause injury, the supplier must, within a period of time, give notice to the Minister in writing of that fact. The Retail Traders Association in particular expressed concern that recall may include removal of goods from shelves or recall by a supplier from the supermarket before the goods are put out on the shelves.

It seemed to me that, if that happens frequently (and I am assured by the Retail Traders Association that it does) it would be appropriate not to clutter up the administration of the Act, the Minister's office and the department, and not to create an unnecessary burden on, say, the retailer if we limited the notice that is to be given to the Minister to those occasions where goods have been recalled by the supplier from members of the public to whom they have been supplied. I do not see any reason why, if a product is supplied by a distributor to a retailer but is recalled before it goes on to the shelf, that should be something of which notice is given to the Minister. I therefore move:

Page 10, line 10—After 'goods' insert 'from members of the public to whom they have been supplied'.

The Hon. C.J. SUMNER: We oppose this amendment for similar reasons to those outlined before.

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

Amendment negatived.

The Hon. K.T. GRIFFIN: My next amendment is in the same context. It extends the time within which notice must be given to the Minister from two days to seven days. The two day period seems to me to be unnecessarily short, and it can create quite difficult burdens for suppliers. I would have thought that the important thing is that the goods have been recalled and that, provided the notice is given within seven days, which will take into account five working days plus two weekend days, that would not be unreasonable. I see no reason to place what may be a very difficult burden—and in some instances an impossible burden—upon suppliers where there has been a voluntary recall. I move:

Page 10, line 11—Leave out 'two' and insert 'seven'.

The Hon. C.J. SUMNER: This is opposed by the Government. Two days is ample time. Corporations are required currently to tell the Trade Practices Commission within two days. It seems not unreasonable that that time should also apply under the State Act.

The Hon. I. GILFILLAN: I oppose the amendment. I believe that the decision to recall has been made deliberately, so there has obviously been a lead-up time to that decision, and the two day period seems to me to be reasonable. It is not a decision that would have been made lightly by the supplier, so two days is adequate.

Amendment negatived; clause as amended passed.

Clause 18 passed.

Clause 19—'Repeal of s. 44 and substitution of new section.'

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

Page 11, after line 34—Insert new subclause as follows:

(2a) If in proceedings for the compensation it is established that the person claiming compensation contributed to his or her loss, that fact must be reflected in any award of compensation to that person.

The whole area of compensation has been widened considerably in this Bill, and it seems to me to be reasonable that, where compensation is claimed, if a person has contributed to his or her loss that must be reflected in any award of compensation. We have already agreed to that in clause 15. What I am moving here is really a reflection of the principle already accepted by the Committee in respect of an earlier clause.

The Hon. C.J. SUMNER: It was accepted previously, so I will not argue about it.

Amendment carried; clause as amended passed.

Title passed.

Clause 10—'Cost of testing'—reconsidered.

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

Page 4, after line 28—Insert new subsection as follows:

(4a) The Minister must, before proceeding to recover costs from a person under this section, supply to the person a statement setting out details of the examination, analysis or test that was carried out and the costs that were incurred.

This clause was the subject of some consideration. I think the Attorney-General had some sympathy for the amendment that I proposed but pointed out some technical difficulties of proof. I appreciate that there were some difficulties, but I wanted to provide that this clause, which relates to the recovery of costs of testing, ensured that the Minister must, before proceeding to recover costs, supply a statement setting out details of the examination, analysis or test that was carried out and the costs that were incurred. Proposed subsection (5) suggested to me that there was no way by which the costs could be questioned if the Minister certified the cost of the analysis or test. My amendment will require the provision of details to the defendant and, as I understand it, the Attorney-General has an amendment on file which will overcome the difficulty that he foresaw as a result of my earlier amendment.

The Hon. C.J. SUMNER: The amendment is acceptable subject to the carriage of my amendment.

Amendment carried.

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

Page 4, lines 31 and 32—Leave out all words in these lines and substitute:

Minister—

(a) certifying that the Minister supplied a statement in accordance with subsection (4a) on a date specified in the certificate;

or

(b) certifying the amount of the costs,

will be accepted, in the absence of proof to the contrary, as proof of the matter so certified.

The Hon. Mr Griffin has just explained this amendment.

Amendment carried; clause as amended passed.

Bill recommitted.

Clause 17—'Defect notices'—reconsidered.

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

Page 8, line 23:

After '*Gazette*' insert 'and in a newspaper circulating generally in the State'.

This is consistent with other amendments which provide for the notice of certain matters to be given not only in the *Gazette* but in a newspaper circulating generally in the State with the greater prospect of persons likely to be affected observing that notice and reacting to it.

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

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

Amendment carried; clause as amended passed.

Bill reported with a further amenmdment; Committee's report adopted.

STATUTES AMENDMENT AND REPEAL (SENTENCING) BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 3350.)

Clauses 2 to 9 passed.

Clause 10—'Insertion in Part II of new Divisions IV and V.'

The Hon. K.T. GRIFFIN: Before I move the amendment, can I just raise one issue with the Attorney-General. Under proposed section 17a (1) the Minister may by notice published in the *Gazette* declare any premises to be a community service centre. Then proposed subsection (3) provides that the community service centres are under the control of the Minister. I would like to know from the Attorney-General whether it is intended only to declare premises which are Government property to be community service centres or whether it is envisaged that private premises may be declared by the Minister to be a community service centre. Of course, if that latter course is followed it immediately brings community service centres under the control of the Minister, and I have some concern if that is the intention of the Government.

The Hon. C.J. SUMNER: There is no limitation in the legislation as presently expressed.

The Hon. K.T. GRIFFIN: Can the Attorney indicate what sort of properties are currently declared as community service centres? If he does not have the answer I am happy for him to give it to me at some later stage without holding up the passage of the Bill.

The Hon. C.J. SUMNER: The intention is to continue with the existing practice, as this is picked up out of the community services legislation provisions which are now in the Offenders Probation Act and which were inserted in 1981 with the enthusiastic support of the then Attorney-General.

The Hon. K.T. GRIFFIN: It is legitimate to ask the question; if the Attorney-General does not have the answer he can give it to me later. I am just raising the question of what sort of premises are declared as community service centres. Is it all Government property or is it not?

The Hon. C.J. SUMNER: I will obtain a report on that matter.

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

Page 3, lines 22 to 26—Leave out all words in these lines and insert 'nor more than five, members appointed by the Minister, of whom one must be a person nominated by the Permanent Head'.

This amendment deals with the Community Service Advisory Committee established under the Offenders Probation Act which is still in existence. The advisory committee is to be comprised of not less than three nor more than five members, of whom one will be appointed by the Minister after consultation with the United Trades and Labor Council and one will be a person nominated by the permanent head. I do not see any reason to have one member appointed after consultation with the United Trades and Labor Council. I would prefer to see '. . . not less than three nor more than five, members appointed by the Minister, of whom one must be a person nominated by the permanent head'. The Minister can then consult with whomever he wishes, whether it be the Trades and Labor Council, the Employers Federation, the Chamber of Commerce and Industry, SACOSS or any other body which might have some interest in community service administration.

The Hon. C.J. SUMNER: I oppose this amendment. This is to take out a person who was appointed by the Minister after consultation with the United Trades and Labor Council. We think that it is valid to have a person from the United Trades and Labor Council on the committee because, clearly, there is the possibility of community service orders impacting on work places and work that might otherwise be done by paid employees. That being the case, it seemed only sensible that a person with an interest to represent in terms of organised labour should be a member of the advisory committee. It is interesting to note that this was in the original Bill introduced in 1981 by—

The Hon. K.T. Griffin: It was forced upon us by the then Opposition and the Australian Democrats.

The Hon. C.J. SUMNER: The Liberals accepted it; it is in the legislation and has been there from 1981, so I would suspect that consistency, which I am sure the Democrats will show on this occasion, would dictate that the Hon. Mr Griffin's amendment be opposed. I accept that the provision was not in his original Bill. In fact, I was absolutely flabbergasted when I saw that it was put in the Bill in 1981, because I was sure that the Hon. Mr Griffin would not have included it. On recollection, I believe it was inserted by the Labor Opposition with the support of the Democrats. In any event, the reasons for it are perfectly valid and it is a sensible requirement to involve someone who represents the union movement given the nature of community service orders.

The Hon. I. GILFILLAN: I am not persuaded by that. I believe that it is quite inappropriate to follow what seems to me to be a regular procedure in which this type of clause is inserted in legislation. Since I have been in Parliament, we have consistently opposed it, and I intend to oppose it this time as well. I support the amendment.

The Committee divided on the amendment:

Ayes (10)—The Hons J.C. Burdett, M.B. Cameron, Peter Dunn, M.J. Elliott, I. Gilfillan, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (7)—The Hons G.L. Bruce, T. Crothers, M.S. Feleppa, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Pairs—Ayes—The Hons L.H. Davis and C.M. Hill. Noes—The Hons J.R. Cornwall and Carolyn Pickles.

Majority of 3 for the Ayes.

Amendment thus carried.

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

Page 3, lines 40 and 41—Leave out paragraph *(b)*.

This is a similar amendment to that which has just been passed.

The Hon. I. GILFILLAN: The Democrats support the amendment for the same reason that we supported the previous one.

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

Amendment carried.

The Hon. K.T. GRIFFIN: Regarding the functions of a community service committee, I note that the community service committee is to perform such other functions as the Minister may direct. Given the composition of the community service committee, which comprises a magistrate, one appointed by the Minister and one by the permanent head, does the Attorney-General see any difficulty with the Minister being able to direct the committee and, in particular, a magistrate member of that committee, to perform certain functions as a community service committee?

The Hon. C.J. SUMNER: It was in the 1981 legislation and no-one has raised a point in relation to it, so I do not intend to do anything about it.

The Hon. K.T. GRIFFIN: Can the Attorney-General obtain for me (not necessarily now) in relation to proposed section 17d the details of the insurance currently provided for offenders in respect of death or injury arising out of or occurring in the course of community service, and can he also at some later date, if necessary, let me have information about premises declared to be a probation hostel under proposed section 17e similar to that which I requested under proposed section 17a?

The Hon. C.J. SUMNER: I will attempt to get that information.

Clause as amended passed.

Clauses 11 to 16 passed.

Clause 17—'Repeal of ss. 77 and 77a.'

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

Page 5, line 26—Leave out 'Sections 77 and 77a of the principal Act are' and insert 'Section 77 of the principal Act is'.

This clause is particularly important and critical because it seeks to repeal sections 77 and 77a of the principal Act. Section 77 deals with the power of a court in certain circumstances to order that an offender be detained at the Governor's pleasure on a report by two or more legally qualified medical practitioners.

During my second reading speech I indicated that the Liberal Party and I were prepared to support the repeal of section 77, because it is a limited provision which provides that, where there is reason to suspect that an offender who is guilty of an offence to which the section applies is suffering from a venereal disease, the offender shall be examined by two or more legally qualified medical practitioners. I can see that there is an argument for that to be repealed, and I am prepared to support it. However, I am not prepared to support the repeal of section 77a, which applies in a situation where a person has been found guilty of an offence to which the Act applies and the offender is found to be incapable of exercising proper control over his sexual instincts. In those circumstances the offender can be detained at the Governor's pleasure.

The Liberal Party is very much opposed to the repeal of that section. I do not know how many people this affects in the prison system—not very many—but it is important to have this provision in the legislation. There is one to whom attention was drawn in the House of Assembly earlier this year and who, in August 1987, was ordered to be detained at the Governor's pleasure. This person had a 20 year record of sexual offences, and the judge in the District Court was satisfied that it was appropriate in this case to order that the person be detained at the Governor's pleasure. A newspaper report referring to evidence given by Dr Clayer to the District Court stated:

He had examined many patients over the years and had rarely recommended that anyone be detained under section 77a. He had spoken with the man for about 45 minutes, had observed his attitudes and answers to questions, and had read several reports about him. He felt strongly that the man represented a danger to society. The man acted impulsively without any thought to the consequences. 'He doesn't have the insight to see he comes across as a monster, quite honestly,' Dr Clayer said.

That man has, as I indicated, a string of convictions for sexual offences. There was no way that that person could be adequately detained to protect the public, other than by the use of section 77a.

One can argue that an element of double jeopardy is involved in the application of section 77a. I said that they can argue that, but I suggest most strongly that there is no substance in that argument. What this section does is provide to the court a power to require a person to be detained in order to protect the public where the person is incapable of exercising proper control over his sexual instincts.

If section 77a was not available to the court, there would be no way that that person could be detained and the public protected where the court was satisfied that there was just no way at all that the person was likely to be rehabilitated, was unlikely ever to offend again, but was most likely to be a threat and danger to society.

The Hon. C.J. Sumner: How long are you keeping them in for?

The Hon. K.T. GRIFFIN: It must be accepted that, if a person is a danger to society and has a string of convictions he may have to be kept there for a very, very long time in order to protect the public. What does one do with a person who has a string of convictions for indecent assault on male persons, buggery, attempted buggery, perjury, rape and a whole string of convictions across Australia? Does one just say, ' Well, we will sentence you to three years, four years or five years. With a non-parole period of three years, you will be out in two, but we cannot do anything to protect the community'? Although rare, in some circumstances one must give the court power to say that because a person is such a danger to society, for the protection of society, he must be deprived of his freedom for an indefinite period. It is incredible that the Government is seeking to remove this provision from the Criminal Law Consolidation Act.

The Hon. C.J. Sumner: I have changed my mind. Don't worry about it.

The Hon. K.T. GRIFFIN: You are going to leave it there?

The Hon. C.J. Sumner: Yes.

The Hon. K.T. GRIFFIN: Great! I have made my point successfully.

The Hon. C.J. Sumner: No, you haven't. We had decided that we were going to do that, anyway.

The Hon. K.T. GRIFFIN: You hadn't told anybody that you were going to do it.

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

The Hon. K.T. GRIFFIN: That's great! It will stay there; that is marvellous. I commend the Attorney-General for having a change of heart.

The Hon. C.J. SUMNER: The honourable member may need some correction, and I will explain the Government's position on this matter. The Government will stand by the provision in the Bill, which removes section 77 and section 77a. The Hon. Mr Griffin agrees with the removal of section 77. With respect to section 77a, subject to what the balance of reason says, the Government will remove that section from the Criminal Law Consolidation Act by passing this Bill. When the matters are considered in the other place (this is one way of going about it), the Government will reinsert in the sentencing Bill a provision which is similar to section 77a but which places the whole determination of these matters, including the release into the community of a person given a sentence under section 77a, with the courts. The Government will also do that with respect to habitual criminals and children who are given sentences at the Governor's pleasure at present. We will also probably seek to do so with respect to those committed to institutions after having been found not guilty of an offence on the ground of insanity.

That will take the matters out of the arena of the Governor's pleasure and place them where they properly ought to be, that is, with the courts. Basically, there are two ways of going about it. One is to support the Hon. Mr Griffin's amendment and then to re-examine the provisions along the lines outlined in another place. The other alternative is to oppose the Hon. Mr Griffin's amendment, which would remove section 77a from the Act, and the Government would undertake to reinsert such a clause in the sentencing Bill in another place, but with some modifications to it. The Government is now accepting the principle that some provision needs to remain in the law with respect to persistent sexual offenders and habitual criminals.

The Hon. K.T. GRIFFIN: I would prefer the course of supporting my amendments and then looking at the amenments which the Government is proposing to move in another place to the sentencing Bill, so that the Council retains some measure of control over the way this is going. I do not question the undertaking by the Attorney but I have not seen the amendments that he is now talking about with respect to the sentencing Bill. This is the first I have heard about it and it would be preferable, when all that occurs, to have a message come back from another place on the sentencing Bill which has the new clauses in it. A

message would come back from the House of Assembly dealing with the Criminal Law Consolidation Act. I would be much happier with that, because they are then running parallel and nothing can go wrong between here and there and back to here. That is the fairer way to deal with it.

The Hon. C.J. Sumner: We will do that.

The Hon. K.T. GRIFFIN: I would prefer that, because it means that we have everything before us and we know where we are going then.

The Hon. I. GILFILLAN: The game plan is changing so fast that I am not sure what the last interjection of the Attorney meant. I seek confirmation. I gather it meant that he will support the amendment of the shadow Attorney to retain section 77a.

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

The Hon. I. GILFILLAN: I have to think pretty fast on my feet: about five minutes ago I was hearing a completely different story. Further, I make the point that the Democrats have profound concerns about sections 77 and 77a. They are iniquituous laws. Maybe the number of people who have suffered the effect of them is not large, but the effect is crippling on human beings who are exposed to this indeterminate sentencing. I will not canvass the argument in detail as I am sure that the shadow Attorney and the Attorney have heard that, but I would like to run over a couple of points that emerged from the second reading debate. I raised the issue of sections 77 and 77a and in his reply to the second reading debate the Attorney stated:

> The Hon. Mr Gilfillan raised the question of the position of those currently kept in custody at Her Majesty's pleasure under sections 77 and 77a. Those sections were also considered by the Hon. Mr Griffin in his contribution.
>
> I will not reiterate the arguments on the substance of those sections; that can be done in the Committee stage if need be. The question basically revolves around the desirability or otherwise of indeterminate sentences and, as the honourable member has mentioned, most commentators today would probably say that such sentences are undesirable—certainly that was the view of the Mitchell committee.

It is a sorry reflection on what I was pleased to see as a constructive and clear reform that we now seem to be fiddling. I do not pretend to completely understand what the Attorney has in mind, as there seems to have been a change as the discussion has progressed. In relation to these points, the Mitchell committee reported (and I quote what I consider to be the relevant paragraphs at pages 12 and 13) as follows:

> ... the indeterminate sentence has three serious defects. The first is that, if an offender is to be detained until he is believed to have attained some imprecise state of cure from propensity to ciminal behaviour, he is likely to serve a much longer sentence than would otherwise be thought just or reasonable because those charged with his supervision will tend to err on the side of caution.
>
> Secondly, a situation in which a person may be detained indefinitely by others has obvious potential for abuse. Thirdly, the affects on prisoners of an indeterminate sentence are known to be deleterious. The absence of any definite date for release induces a hopelessness and resentment which is counterproductive in correctional terms because it diminishes the offender's capacity to become fit for release.

It also notes the following:

> The Child Sexual Abuse Task Force of 1986 also recommended the repeal of section 77a.

The Mitchell Report made another comment on page 94, specifically related to sexual offenders, as follows:

> Recommendations with respect to sexual offenders:
>
> *(a)* We recommend the repeal of section 77a of the Criminal Law Consolidation Act 1935-1972, and section 42p of the Prisons Act 1936-1972, and the consequential enactment of transitional legislation to authorise the continued detention as mentally ill offenders, if that is in fact the case, of such persons as are at present detained under section 77a.
>
> *(b)* We do not recommend the placing of sexual offenders in a special category for any purpose.

The report has been referred to by the Attorney and other legal figures commenting on the situation in South Australia. It seems to be a very sorry regression that we are not moving clearly and precisely towards a repeal of those sections. The consequences of the persons who may, upon deliberation, be considered to be mentally ill (and that would be the determination that would justify them being detained under a different law than 77a) is a separate matter. That is where some constructive work can be done.

The other issue I raised in my second reading speech was the fate of these people, on the assumption that sections 77 and 77a were to be repealed, currently serving indeterminate sentences. The Attorney did comment on this, and I quote again from the second reading speech wherein he related to these people in stating:

> The Government believes that this sort of transitional provision is much fairer than a simple total cut off of the indeterminate sentence. After all, such offenders were sentenced and had expectations with respect to release as the law then was. It seems only a fair transition to comply with the law as though it were not affected by this Bill. However, on the point of indeterminate sentences, it may be that the matter could be addressed by giving the courts power, if the repeal of these sections is agreed to, to reconsider those people who are currently being held at Her Majesty's pleasure with a view to their making a recommendation as to the appropriate action to be taken, that is, release at some time in the future or continuing detention. That is a matter to which I will give further thought before the matter comes back to the Committee.

I assume that not only has the Attorney given thought to it, but also that he is giving thought to it now. The Democrats believe that it would be scandalous to leave those who are serving indeterminate sentences to wallow indefinitely under what is archaic law while at the same time making reforms to the way in which people in similar circumstances are dealt with today. It is absolutely essential that some clear procedure be spelt out so that these people have an avenue for revision and reconsideration of their cases. I have an overriding concern about the fact that the Attorney appears to have wavered in what was a clear determination to wipe off distinct blots from the Statute Book in South Australia. I am very disappointed that apparently he will now support the shadow Attorney and leave sections 77 and 77a untouched in the legislation.

The Hon. R.J. RITSON: I did not think it would be necessary for me to speak in this debate but, having heard the Hon. Mr Gilfillan, I want to make a comment. First, the Hon. Mr Griffin and the Hon. Mr Sumner have made some progress towards recognising a more fundamental principle that lies behind the retention of this clause. I was a little saddened that Mr Gilfillan confused the issue of indeterminate sentence with the question of public protection from mentally abnormal offenders. The two issues are quite separate. Members will remember that, when I spoke during the second reading debate, I made the point that the body of law relating to people unable to control themselves in various areas consists of a series of jigsaw puzzle pieces which really do not cover the field but which represent historic plugging of particular dykes over the centuries.

I remind the Committee that in England a system has been developed whereby the courts can issue hospital orders, treatment orders and restriction orders which can be either orders for secure or for insecure detention, depending upon the circumstances, for the purpose of protecting the public, in places which are not places of punishment, and release can be based on either the institution's consideration of fitness to release, or on political considerations, if they are involved, in the case of a restriction order release being based on the order of the Home Secretary.

That is different from a sentence. A sentence is appropriate for a person who is considered to be able to respond

to a reward and punishment system or, even if that person is not able to respond to such a system, nevertheless it is often considered that a sentence is appropriate for a person who is deserving of punishment and whose punishment will serve as a general deterrent. Therefore, there is quite a difference between people who are detained either for correction or for deterrence and people who are incorrigible, and who may be of limited blameworthiness because of their intellect or personality defects but from whom the public must be protected.

They are two quite distinct things. I think that the Hon. Mr Gilfillan failed to recognise the dialogue being conducted between the Hon. Mr Sumner and the Hon. Mr Griffin in which I saw the glimmerings of the beginning of a march along the path that Dame Roma envisaged. Whilst she talked about the disadvantages of people wallowing in indeterminate sentences, she referred to the replacement of that system by a system of non-punitive, protective and preventive custody, if necessary, but not based on a penal tariff.

My impression was that, in responding to the Hon. Mr Griffin's very persuasive words about the value of section 77a in relation to incorrigible sexual offenders, the Attorney had in mind the role of the courts perhaps in issuing such orders, and also had in mind that one day a fundamental principle of what makes a person either an incorrigible sexual offender, an incorrigible arsonist or an incorrigible person who assaults citizens at random might be drawn up and the courts might have the power to recognise the difference between the need to sentence someone on a penal tariff and the need to detain someone in perhaps a non-punitive way but in a way that would protect the public from the uncontrollable actions of these people.

I support the position arrived at between the two lawyers in this Chamber, that is, the retention of this section but with the understanding that it is imperfect and that all the other matters that I have just mentioned will need to be considered in the future; and the role of the courts in issuing such orders will also need to be thought about. While recognising the limitations of isolated pieces of the jigsaw, such as section 77a, I repeat that it should remain and that I am pleased to see the two eminent lawyers in this Chamber working in the right direction towards a more fundamental solution to these problems in the future.

The Hon. K.T. GRIFFIN: I reserve my position on the drafting which the Attorney-General will obviously have prepared for the Criminal Law (Sentencing) Bill. The provisions in section 77a and the habitual criminal provisions already provide in certain circumstances for the release by the Governor on the recommendation of the Parole Board of a habitual criminal or a person who is unable to control his sexual instincts. I want to ensure that, if we go the way now proposed by the Attorney-General, there are adequate safeguards for the community in the consideration of the suitability for release of that person detained at the Governor's pleasure. As I said earlier, I would be happy for my amendments to be carried and then for the two messages on the Bills to come back so that they can be considered together and looked at when the final drafting is before us.

The Hon. C.J. SUMNER: To clarify the matter for the benefit of the Hon. Mr Gilfillan, who seems to have not followed it with his usual diligence, I point out that the Government will support the Hon. Mr Griffin's amendment. However, we will also prepare a draft of a revamped section 77a (the habitual criminal section) for reinsertion in the Criminal Law (Sentencing) Bill in the other place. We will provide for those individuals currently detained at the Governor's pleasure the right to reapply to a court to have their cases reassessed and, if they convince a court that they are fit to be released, clearly that can occur. It will take the matter out of the area of the Governor's pleasure and put it where I think it ought to be—with the courts.

The proposal is to do that with respect to other Governor's pleasure sentences as well, that is, children in murder cases, the habitual criminals that I have mentioned, section 77a offenders, and we are also examining the question of those offenders found not guilty because of insanity. The matters will come back to the Council with drafts to give effect to those broad policy positions that I have outlined.

The Hon. I. GILFILLAN: I do not pretend that I was able to follow the full significance of all the remarks made, and for that I do not apologise. My understanding is that some genuine effort will be made and to that extent I am pleased. However, the only matter with which we have to deal here is the Bill that is before us, and it is my intention to oppose this amendment. Assuming, I think probably quite rightly, that we will lose on the voices, it is my intention to divide.

The Committee divided on the amendment:

Ayes (16)—The Hons G.L. Bruce, J.C. Burdett, M.B. Cameron, T. Crothers, H.P.K. Dunn, M.S. Feleppa, K.T. Griffin (teller), C.M. Hill, J.C. Irwin, Diana Laidlaw, R.I. Lucas, R.J. Ritson, T.G. Roberts, C.J. Sumner, G. Weatherill, and Barbara Wiese.

Noes (2)—The Hons M.J. Elliott and I. Gilfillan (teller).

Majority of 14 for the Ayes.

Amendment thus carried; clause as amended passed.

Clauses 18 to 24 passed.

Clause 25—'Repeal of ss. 315 and 316.'

The Hon. K.T. GRIFFIN: This clause seeks to repeal sections 315 and 316. Section 315 deals with repeated offenders, where a person is convicted, on information, of certain offences, namely, any felony, obtaining property by false pretences, conspiracy to defraud, uttering or possessing false or counterfeit coins, and is proved to have been previously convicted of any offence specified, in addition to any other punishment it should be deemed part of the sentence, unless otherwise declared by the court, that he is to be subject to the supervision of the police for a period of seven years or such less a period as the court directs, commencing from the time at which he is convicted and exclusive of the time during which he is undergoing his punishment. It seems to me that, while the format of this is a little different from the provisions in section 319 and subsequent sections relating to habitual criminals, there is some value in retaining the provisions for additional controls over persons who might be regarded as repeated offenders. It is for that reason that I oppose this clause.

The Hon. C.J. SUMNER: That might sound all right but the reality is that the provision is just not used. It is a dead letter. I am advised that the police do not use it and really it is inconsistent with the notion of courts imposing sentences, of defendants being subject to parole and parole conditions and therefore subject to the supervision of parole officers. The reality is, I am advised, that no such thing occurs as is in this law. The advice that I have from the officers preparing the Bill is that it is not used actively by the police.

The Hon. I. GILFILLAN: The Democrats do not oppose the clause.

The Hon. K.T. GRIFFIN: In light of that indication, if I lose the question on the voices, I will not divide, having already been through a division.

Clause passed.

Clauses 26 and 27 passed.

Clause 28—'Repeal of ss. 319 to 328 and heading.'

The Hon. K.T. GRIFFIN: I oppose the clause. The Attorney-General has indicated that he will do the same in the context of amendments to the Criminal Law (Sentencing) Bill to be moved in the House of Assembly designed to retain the essence of the habitual criminal provisions of the Criminal Law Consolidation Act. Therefore, there is no need for me to take the matter further, and I look forward to seeing what amendments the Attorney-General ultimately comes up with to maintain this power of the court to order detention for longer periods where a person is declared to be an habitual criminal.

The Hon. C.J. SUMNER: I will support the Hon. Mr Griffin on the same basis as previously announced.

Clause negatived.

Remaining clauses (29 to 60) and title passed.

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

That this Bill be now read a third time.

The Hon. I. GILFILLAN: I want to speak briefly at this stage because I have been sent some material from Laurie O'Shea, who has been serving an indeterminate sentence and has asked that I table a letter addressed to members of Parliament and a copy of a submission he sent to the Chief Justice (Hon. Justice King), and I seek leave to table those documents.

Leave granted.

Bill read a third time and passed.

CRIMINAL LAW (SENTENCING) BILL

Bill read a third time and passed.

STAMP DUTIES ACT AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's suggested amendments Nos 1 to 4 and 6 to 15, and had disagreed to suggested amendment No. 5.

STRATA TITLES BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments.

ADJOURNMENT

At 11.48 p.m. the Council adjourned until Wednesday 23 March at 2.15 p.m.