

LEGISLATIVE COUNCIL

Thursday 6 October 1988

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

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

PAPER TABLED

The following paper was laid on the table:

By the Minister of Tourism (Hon. Barbara Wiese):
Engineering and Water Supply Department—Report,
1987-1988.

QUESTIONS

NATIONAL CRIME AUTHORITY

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question on the subject of the National Crime Authority office.

Leave granted.

The Hon. K.T. GRIFFIN: Today's *News* carries a story that the Federal Minister of Justice (Senator Tate) says that he does not see a need for an office of the National Crime Authority in Adelaide. Senator Tate also says that he is keeping at arm's length in the negotiations to leave South Australia to take the running on the issue. He is reported to have referred the Attorney-General last week to the Chairman of the National Crime Authority (Mr Justice Stewart). In answer to a question in Federal Parliament last Friday, which was the day after the Attorney-General said that the South Australian Government had invited the NCA to open an office in Adelaide, Senator Tate confirmed that the matter had not at that stage been raised with the authority and that there had been only preliminary discussions with him about it.

As I understand from the discussions in the past few days, any office here would be established on the recommendation of the National Crime Authority to the inter-governmental committee which is responsible for the NCA's operations. That committee includes the Attorney-General and Senator Tate. It is not clear whether there has yet been a formal request by the South Australian Government to the National Crime Authority or to the Federal Government for an office to be established in South Australia. My questions are: has a formal or official request yet been made by the South Australian Government to the National Crime Authority or the Federal Government for an office to be established in South Australia? If so, when was the formal or official request made?

The Hon. C.J. SUMNER: If the honourable member means by 'formal request' a letter, no, a letter has not been sent.

The Hon. K.T. Griffin: Or official?

The Hon. C.J. SUMNER: Yes, there has been. Certainly I have approached the Federal Minister and indicated the South Australian Government's desire to have a National Crime Authority office established in South Australia. I have had three or four telephone discussions with him on that topic. My most recent one with him was this morning when he said that, whilst the rest of the *News* article was reasonable (after I read the first paragraph to him) he said that he did not say the words quoted in the *News* article, namely, that in his view there is no need for a National

Crime Authority office in Adelaide. He denies making that statement. Clearly the matter has to be discussed with the National Crime Authority. I have discussed it with the Chairman of the authority and the arrangement is that those discussions will continue, that is, the South Australian Government discussions with the National Crime Authority and with the Commonwealth Government.

When the matter is resolved one way or the other, an announcement will be made. A letter has not been sent, but the understanding is that there will be discussions now with appropriate officers in those organisations I have mentioned to try to work out the options that might be available for the establishment of a National Crime Authority office in South Australia. It was the Thursday before Mr Duncan's statement that I first approached Senator Tate, contrary to the Hon. Mr Griffin's libelous defamatory statement in a press release that he put out in which he said that he suspected that I had not spoken to Senator Tate.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: It sounded defamatory to me when you said—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: —that you suspect that the Attorney-General had not had discussions with the Federal Minister.

Members interjecting:

The Hon. C.J. SUMNER: It certainly sounded defamatory in my view. I had already said that I had discussed the matter with the Federal Minister, but the shadow Attorney-General then decided to enter the fray and say that he suspects that I have not. If he wants to take that view, that is his business, but clearly all I can say now is that he is wrong. To some extent I resent the fact that he would put out that statement, having already heard and known that I had said that I had discussed the matter by that time with Senator Tate. I am not given to making statements of that kind if I have not carried out what I said that I had done. The reality is that it was the Thursday before Mr Duncan's statement that I discussed the matter with Senator Tate.

Prior to Mr Duncan's statement I had a couple of other discussions with Senator Tate in which the question of the office was raised. Senator Tate said that he would discuss it with his senior Minister, the Federal Attorney-General, (Lionel Bowen), and also with the Chairman of the National Crime Authority, which he did. Mr Duncan's statement then came out and obviously at that stage I was asked about his statement and it was opportune at that time to indicate what the Government had done in the previous week. That is what has happened and I have since had further discussions, including now a discussion with the Chairman of the National Crime Authority. We have agreed that we will continue those discussions in cooperation with the Commonwealth Government.

I accept what Senator Tate said, namely, that it is a matter that should initially be dealt with by the South Australian Government and the National Crime Authority. Obviously from what Senator Tate is reported to have said in the *News* article today, the question of resources will have to be addressed. However, I return to what I have said on previous occasions, particularly in the light of Mr Gilfillan's introduction yesterday of a Bill to establish an independent commission of inquiry: how many organisations are we going to have in Australia with coercive powers of a nature that have not generally been given to investigatory bodies in this State, or in this country, in the past? If one wants to cut through all the nonsense, that is the principal issue that must be addressed. It is all very well to say 'enough'

to ascertain what is going on. I am not sure that the Hon. Mr Griffin would say that the police ought to be given 'enough' powers to find out everything that is going on in everyone's life. The reality is that there are very serious—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Have you read his Bill? Have a look at it. The point is that, if one has to give coercive powers to investigatory organisations (and there is already a body in place that has those coercive powers), surely it is desirable that there not be a proliferation of those bodies but that matters be dealt with through the body that is already established. I understood that the Liberal Party supported the establishment of a National Crime Authority office in South Australia.

The Hon. K.T. Griffin: We said that.

The Hon. C.J. SUMNER: Good, that's all right. There are interjections coming from the Opposition that may be suggesting—

Members interjecting:

The Hon. C.J. SUMNER: We never rubbished that proposition. We said that we would have no objection to a National Crime Authority Office in South Australia. When it was suggested, we said that we had no objection to it whatsoever. We were not sure that the NCA wanted to establish an office here—for all sorts of reasons. When one gets down to the critical issue—which I have put in this debate before and in answering questions—of how many bodies are to be given coercive powers, then one comes to the proposition that surely it is more desirable to have the body which is already established under statute and which already has those coercive powers and the necessary degree of independence, established in South Australia rather than setting up yet another body with those coercive powers.

The Hon. K.T. GRIFFIN: Can the Attorney indicate when he expects a resolution of those discussions which he has indicated he is having?

The Hon. C.J. SUMNER: No, I cannot indicate when those discussions will be resolved.

The Hon. K.T. GRIFFIN: I said, 'When does the Attorney expect it?'

The Hon. C.J. SUMNER: I cannot indicate when they will be resolved. Obviously, we will proceed with the discussions as quickly as we possibly can. Obviously, a number of issues have to be considered, and the question of resources is one of them. However, the matter needs to be considered in a reasonably calm and rational atmosphere, and that is what the Government intends to do. We hope to get to a position that is best for the people of South Australia, and going through that process, even if it takes a long time, is more desirable than rushing into something which we may later regret or which may not, in fact, be satisfactory.

BEVAN SPENCER VON EINEM

The Hon. M.B. CAMERON: I seek leave to make a brief statement before asking the Attorney-General a question about Bevan Spencer Von Einem.

Leave granted.

The Hon. M.B. CAMERON: I refer to allegations made on the radio today by a Prison Officers Association representative (Mr Bill Trevorrow), who alleged during an interview on 5DN this morning that convicted murderer, Bevan Spencer Von Einem (who is serving a record 36 year gaol term in Yatala Gaol for the murder of teenager, Richard Kelvin), has his pick of cell mates. Mr Trevorrow stated that Von Einem and his associates are virtually running Yatala and passing inmates from cell to cell for sex. During

the interview Mr Trevorrow claimed that Von Einem lived a very comfortable life and he stated:

He's got a very comfortable cell, works a minimal period of time during the day, if you call it work; has everything in his cell you could possibly wish for; he has a very comfortably appointed cell; (and) he swaps and changes cell mates as he wishes.

These allegations are quite clearly very serious and, if true, represent what can only be described as an absolutely disgraceful state of affairs. My questions are as follows: first, have any of the foregoing allegations or information of a similar nature been made available to the Government or the Attorney-General and, if so, what steps have been taken to establish the truth of the allegations? Secondly, if not, what steps does the Attorney-General intend to take to investigate these allegations and what corrective steps will the Attorney take in the interim, including the isolation of Von Einem from other prisoners, if that is found to be necessary? Thirdly, will the Attorney begin an immediate investigation into allegations of homosexuality within the South Australian prison system?

The Hon. C.J. SUMNER: I have not heard of these allegations until today. They apparently come from Mr Trevorrow. As Mr Blevins stated, apparently Mr Trevorrow alleged illegal criminal activity, or at least breaches of regulations. It seems a trifle odd that he has alleged that his prison officers are involved in breaches of the law or the regulations. I suppose that he will have to answer to his members for that.

The Hon. M.B. Cameron interjecting:

The Hon. C.J. SUMNER: I am not sure which interview you saw or heard, but some of the transcripts I have seen indicate that he is alleging illegal behaviour and the provision of teenagers to Von Einem. Apparently, the Minister of Correctional Services said that he would have the matter investigated. Mr Trevorrow indicated to the investigating officer that he would not speak to him unless a royal commission or something similar was established. Obviously, if people make these sorts of allegations, they must be prepared to back them up and to present before appropriate investigating authorities. If it is a question of internal disciplinary measures, it may be internal or Government investigators or, if criminal offences are alleged, then it would be the police.

As we have seen in the recent debate about police corruption, it is just too easy for people to make allegations without providing names and details to support those allegations. We have reached a sorry state when people feel that their only obligation is to peddle rumours or to make allegations and then, if they are approached, not to substantiate their statements. This question should be of major concern to all members of Parliament. That is what faces us at the moment.

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: I do not suggest that names should be given here. However, whether it is the Hon. Mr Gilfillan, Mr Masters, Mr Trevorrow or anyone else who makes these allegations, whatever their nature, I suggest that they should come forward and provide that information to the appropriate investigating officials.

The Hon. M.J. Elliott: What if they are the ones being accused?

The Hon. C.J. SUMNER: We have made that offer.

The Hon. M.J. Elliott: It's a nonsense.

The Hon. C.J. SUMNER: It is not a nonsense. We then made the offer that they could come forward and repeat their allegations to the Crown Solicitor or the Crown Prosecutor. We also made a further offer to pay for them to go to, and make their allegations to, a private lawyer. The lawyer could then determine how those matters could best

be brought before the authorities. I do not think that the offer could be fairer than that. The offer relates to the general allegations and rumours which we seem to have had visited upon us in recent times.

The Government seems to be boxing at shadows. What the Government wants is some substance to the allegations and then we will know what needs to be investigated. The same applies with respect to Mr Trevorrow. If he has made the allegation that his members are breaching regulations, that can be investigated and he should provide the information. If the allegation is that there is criminal behaviour in prisons, then the police should be called in for the matter to be investigated. The onus now rests with Mr Trevorrow to come forward and provide information to back up the statement that he is making.

DIAMOND EXHIBITION

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister Assisting the Minister for the Arts a question about the diamond international award exhibition.

Leave granted.

The Hon. L.H. DAVIS: The Minister would be aware that Meg Benbow, a student in design at Underdale CAE, won one of only 29 prizes in an important international award from a field of 2 000 designers representing 36 countries. Some of the winners have been successful in these competitions for the past 20 years. As a student, Meg competed with and beat some of the most successful jewellery designers in the world, and that is regarded by leaders in the Australian jewellery industry as an extraordinary achievement.

This exhibition of international jewellery design was scheduled to travel to 11 countries in 1988. It was coming to Australia only because Meg Benbow had been a winner. In fact, it was to have been exhibited only in Adelaide at the South Australian Art Gallery. That will not happen now because the Art Gallery has cancelled the exhibition. I should add that there was some thought that it might be exhibited at Mr Guido Voivodich's jewellery store in Adelaide, but that will also be cancelled following very nasty threats. So at this stage the exhibition will not be coming at all.

The Hon. Diana Laidlaw interjecting:

The Hon. L.H. DAVIS: As my colleague reminds me, the Lady Mayoress's charitable trust fund function to raise thousands of dollars for charity which was centred on this exhibition has also been cancelled as a result of physical threats and intimidation. The Art Gallery cancelled the exhibition.

An honourable member interjecting:

The Hon. L.H. DAVIS: This is South Australia 1988. The Art Gallery, in its press release of 24 October announcing cancellation of the 1988 diamond exhibition award, said:

In the light of indications that the exhibition will now generate considerable politically motivated agitation, negative publicity and even industrial action, the Art Gallery Board has reluctantly decided to cancel the one week display. The State's collection of art could be at risk and the public's use of the gallery could be disrupted particularly during the final days of viewing the extremely important touring exhibition of paintings by Fred Williams.

As one Adelaide jeweller wryly observed to me, 'In future all a union has to do is to make a threat and an exhibition will be called off.' But why did the Art Gallery cancel the exhibition? It was because, as we have heard in another place yesterday, the Premier and Minister for the Arts suggested that it would not be wise for the exhibition to go ahead following a motion passed by the United Trades and

Labor Council and because the Public Service Association and the Miscellaneous Workers Union, both associated with the Art Gallery, had threatened to take industrial action if the display was not cancelled.

The Premier claimed in another place that De Beers was pro-apartheid and should not be supported. The public is entitled to know the truth. First, the designs of 29 exhibitors in the 1988 Diamond International Award have been on world tour all of this year. Of all 11 cities where it was exhibited, Adelaide is the only place to protest. None of the entrants in this exhibition is from South Africa. Secondly, Mr Guido Voivodich, a well known and well respected jeweller who is publicly against apartheid, had recognised Meg Benbow's talent, sponsored her entry into this award, spent tens of thousands of dollars in backing her and then bringing this collection to Adelaide. He is picking up the costs of bringing the exhibition to Adelaide, not De Beers. Thirdly, Adelaide has in recent years become a leader in jewellery design with not only Meg Benbow achieving success but also Lisa Howie last year winning a national student scholarship awarded by Angus and Coote. Incidentally, I understand that there is some association with De Beers in that award.

Fourthly, the De Beers company was not promoting itself, rather it was promoting excellence in jewellery design. As I said, the exhibition was being promoted in Adelaide by Mr Voivodich. In fact, it is a biennial award which has existed for over 30 years. There has never been any objection until little old Adelaide raised its ugly head.

Fifthly, De Beers is recognised as an anti-apartheid company devoting millions of dollars to the anti-apartheid cause over many years. De Beers markets industrial diamonds throughout the world which are widely used in eye surgery, surgeons's scalpels, oil drills, dentistry and diamond saws for cutting trenches. There is little doubt that the Highways Department would almost certainly use diamond saws, which contain De Beers industrial diamonds, for cutting trenches.

The PRESIDENT: Order! I am not quite sure what the digging of trenches by the Highways Department has to do with a question on the diamond international award exhibition. I suggest that the explanation be limited to explaining the question.

The Hon. L.H. DAVIS: I am explaining that De Beers not only has this international award for diamonds but also markets industrial diamonds and that South Australian public hospitals would also use equipment—

The PRESIDENT: Order! Is that related to the diamond international award exhibition?

The Hon. L.H. DAVIS: Yes, it is—which contains De Beers industrial diamonds. The chances are that the Premier has operated a piece of equipment, which contains De Beers diamonds, at a mining ceremony. Leaders of the jewellery industry in Adelaide are staggered at the Government's decision and the hypocrisy of its stand. As one jeweller said to me, it is weak-kneed, gutless and hypocritical of the Government to go to water just because a few unionists get their facts badly muddled. It was also sadly noted that Adelaide's leadership in jewellery design will be severely jeopardised.

Today I spoke to Meg Benbow, winner of that award, and she is stunned, saddened and disillusioned. As she put to me, it is a slap in the face for Adelaide's cultural ideas. My questions to the Minister are:

1. Does the decision of the Government mean that every time a trade union objects or an agitator makes threatening noises the Government will back off and cancel an exhibition?

2. Why did the Government heavy the Art Gallery into backing off from holding this important exhibition?

3. Why is Adelaide the only city of 11 world capitals which has objected to the exhibition this year, remembering that some of the countries involved, such as the United States and the United Kingdom, are strongly anti-apartheid?

4. Was the Government of South Australia not prepared to ensure personal safety and security of property at the Adelaide Art Gallery during the course of the exhibition, rather than bowing to the threats of some unions?

The Hon. BARBARA WIESE: What needs to be clarified first is that it was the board of the Art Gallery of South Australia—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: Just listen to the reply for a change. It was the board of the Art Gallery of South Australia which made the decision not to proceed with the exhibition—

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —in Adelaide at the Art Gallery; that needs to be made perfectly clear. There was no pressure on the board of the Art Gallery; it made its own decision on the issue. As I understand, the Premier was advised informally by the Art Gallery that it was planning to have this display.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The honourable member has asked his question; if he is at all interested, I suggest he listen to the answer.

The Hon. BARBARA WIESE: The display was being held in Adelaide largely to pay tribute to the work of a South Australian designer who is well recognised internationally and of whom I am sure we are all very proud. In the intervening period, the Premier received messages of concern and complaint, not only from the trade union movement but from a number of people. In view of the—

The Hon. L.H. Davis: What was the basis of the complaint?

The Hon. BARBARA WIESE: Concern was expressed to the Premier by numerous organisations, including trade unions, but it was much broader than that.

The Hon. L.H. Davis: Name them.

The PRESIDENT: Order!

The Hon. BARBARA WIESE: I do not have the names.

The Hon. Peter Dunn: There weren't any.

The Hon. BARBARA WIESE: I do not have the names but I am advised that that is so. The basis of the complaints that were registered with the Premier was that various community organisations or individuals were concerned that an exhibition at the Art Gallery might in some way lend support to a racist regime in South Africa and they thought that was inappropriate. As a result of those concerns being raised with the Premier, he discussed the matter with the Chairman of the Art Gallery Board and with representatives of the administration, including Daniel Thomas, who is the Director of the Art Gallery, and Dick Richards, who is the Curator of European Decorative and Asian Fine Arts at the gallery. He suggested to them that, in view of the likely disruption to the business of the Art Gallery by such a display there, they may wish to reconsider their decision.

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: Following that, the board decided not to continue with the display at the Art Gallery on the grounds that they were concerned to protect the Art Gallery and its collection. They were concerned that oppo-

sition or protest could occur at the gallery and might in some way detract from other exhibits or from the display at the gallery itself. For that reason—

The Hon. L.H. Davis: It is not government for the people.

The Hon. BARBARA WIESE: Be quiet and listen for a change. The honourable member is so annoying—such a baby.

The Hon. L.H. Davis: This is annoying a lot of people out there, I can tell you that.

The PRESIDENT: Order! A question has been asked and the answer is being given. I suggest that members listen to the answer with the same courtesy as they listened to the question.

The Hon. BARBARA WIESE: The issue is not whether there have been protests or demonstrations in other parts of the world. It is not an issue as to what De Beers' international reputation with respect to apartheid may or may not be. The decision that the Art Gallery Board made was based on its own responsibility and concern for the Art Gallery and the collections over which it has responsibility. Following the Art Gallery's decision, Mr Voivodich decided to have the display in his own store. That decision has now been reversed, probably for similar sorts of reasons. He did not believe—

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: He did not believe that the problems that would be caused by it outweighed the gains to be made by conducting the exhibition. That was probably the judgment of the Art Gallery Board. Members have the right to disagree with that but that is the decision of the Art Gallery Board and it had every right to make it in the interests of the collection for which it is responsible, and its judgment must be respected.

CADMIUM CONTAMINATION

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health a question concerning cadmium contamination of foodstuffs.

Leave granted.

The Hon. M.J. ELLIOTT: Earlier this year I asked the Minister of Health a question in relation to levels of cadmium found in foodstuffs in South Australia. I received a reply which I felt did not answer the question. I wrote a letter to the Minister and now, six months later, I have received a reply from the Minister of Health (Frank Blevins). He makes it clear that there is a problem with cadmium levels in foodstuffs in South Australia and states:

As you have observed South Australia has higher cadmium levels in meats than some other States. A number of actions are being taken to deal with this by both Federal and State Governments. For example, it was proposed that there should be a voluntary withdrawal from sale for human consumption of kidneys from the older beef cattle and sheep. However, the industry seems to be reluctant to agree to voluntary ban proposals by the Australian Quarantine Inspection Service so it is therefore likely that enforceable bans will have to be introduced.

The Minister intimated that the Government might regulate or legislate to control levels of cadmium in meat by banning the sale of kidney and, I presume, other offal meats from older animals sourced in South Australia.

Cadmium comes from superphosphate which is applied to soil. In sandy soils, in particular, cadmium is readily taken up by plants and, when eaten by animals, concentrates in the kidney and liver. Work done by DPI and the NH&MRC suggests that children, in particular, get fairly high levels of cadmium from an average basket of Austra-

lian food. Because South Australia has particular problems, it is reasonable to expect that some children may get levels above that which is considered safe by the FAO and WHO. Therefore, it is a matter of some concern.

We are sitting on a time bomb from another source: some countries have very strict standards concerning cadmium in meat. Just as we nearly lost our meat sales overseas because of organochlorins, the same could happen with cadmium levels unless the Government acts fairly quickly, particularly with meat to be exported. My questions are:

1. What does the Government intend to do about cadmium levels?
2. Does it intend to regulate or legislate?
3. If so, when does it intend to do so?
4. How quickly will other surveys be carried out to get a precise handle on the size of the problem so that exports will not be threatened?

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

POLICE CORRUPTION ALLEGATIONS

The Hon. R.I. LUCAS: I ask the Attorney-General:

1. How will the allegations relating to corruption made yesterday by the Hon. Mr Gilfillan be investigated?
2. If they are to be investigated by the police, which section of the force will do so, given that we understand the Anti-Corruption Unit is yet to be established?
3. Is it the Government's intention to ask the National Crime Authority to investigate the allegations made by the Hon. Mr Gilfillan?

4. If so, when does the Attorney-General expect a report?

The Hon. C.J. SUMNER: As I understand the matter, the Police Commissioner has been examining the allegations made by the Hon. Mr Gilfillan.

The Hon. R.I. Lucas: By himself?

The Hon. C.J. SUMNER: At the moment, presumably, with his executive. He will provide me with a paper on the steps he is taking to investigate the allegations made by the Hon. Mr Gilfillan, but obviously I am not in a position to respond in detail to the honourable member's question now.

The Hon. R.I. Lucas: Have you referred them to the NCA?

The Hon. C.J. SUMNER: No, I have not referred them to the NCA. The honourable member was not here yesterday, but he obviously knows from the newspaper report this morning that the Bill was only introduced yesterday. It was in introducing the Bill that the allegations were made. I was here.

Members interjecting:

The Hon. C.J. SUMNER: I am not sensitive. You make inane interjections about the Bill. The Bill was introduced with the second reading explanation, which contained the allegations. The Police Commissioner is studying the allegations. I intend to give a response to the Bill at some stage, given that it has been introduced and in so doing will also respond to some of the allegations. If it is necessary for some of them to be referred to the NCA, that will happen.

The Hon. R.I. Lucas: Who makes that decision?

The Hon. C.J. SUMNER: Anyone—you can refer it to the NCA, if you like.

The Hon. R.I. Lucas: But you will not?

The Hon. C.J. SUMNER: I did not say that I will not refer it to the NCA. I said that the Bill was introduced yesterday, the second reading speech was made yesterday and the allegations were made yesterday. It is now less than 24 hours since they were made. I am not in a position to

be able to collect all the information about the disparate allegations the Hon. Mr Gilfillan cobbled together to give some substance to his proposal for an independent commission. He stuck in everything. He heard about the poaching of abalone, so that is the first bit. He probably only heard about it a day or two ago, yet that comes in. He has a whole bunch of other things to which he has referred in his speech. Fair enough, he has made the allegations. He never comes forward to anyone with any basis to the allegations—he just makes them.

That was the point that I made earlier: people make these allegations, they do not come forward to the Government, the police, the National Crime Authority or anyone else. Certainly the Hon. Mr Gilfillan does not. He was asked in May, in making the first statement, whether he was going to introduce a Bill of this kind. He made a whole range of broad sweeping allegations. He was called on by the Police Commissioner and by me to come forward with the allegations, but he did not. He spent from May until now trying to collect enough information to make his speech look respectable and to give respectability to the proposition that he was putting up. He had made the allegations and has not provided anyone with substance or basis to it—he never does.

The Hon. K.T. Griffin: The same as Mr Duncan!

The Hon. C.J. SUMNER: The same as Mr Duncan. I am not trying to discriminate between the two of them. I did not discriminate on Tuesday.

The Hon. R. I. Lucas: Do you think Duncan is as bad as Gilfillan?

The Hon. C.J. SUMNER: On this point, yes.

The Hon. R.I. Lucas: The backbench is not too happy.

The Hon. C.J. SUMNER: I am not worried about that.

The PRESIDENT: Order!

The Hon. C.J. SUMNER: If people want to make these allegations, it is their responsibility to come forward to the Government, the police or the National Crime Authority and give details.

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: If they do not trust the National Crime Authority, do not trust the police, do not trust the Crown Prosecutor, do not trust the Government and do not trust private solicitors—

The Hon. K.T. Griffin: But they trust the Democrats!

The Hon. C.J. SUMNER: Why they trust the Democrats, I do not know. Why would they trust an independent commission of inquiry? The reality is that a good deal of hysteria exists at the moment in the community on this issue.

The Hon. J.C. Burdett: Yes.

The Hon. C.J. SUMNER: The Hon. Mr Burdett interjects, 'Yes'. A degree of hysteria exists, if not in the community at least amongst certain people in the media. The Government has to put all these matters together and come up with a response that will satisfy the community.

The Hon. R.I. Lucas: That is all we ask.

The Hon. C.J. SUMNER: I am responding to it.

The Hon. M.B. Cameron: You abused him.

The Hon. C.J. SUMNER: That is all very well—he interjects. Members opposite interject. If they want to interject, they will get replies. Less than 24 hours ago the Hon. Mr Gilfillan introduced his Bill, the second reading explanation to which contained allegations. The Police Commissioner is examining the allegations and will give me a summary of the issues. From there the Government will determine what to do with those allegations. I cannot say, without examining them, whether any of them ought to be referred to the NCA, whether any should be the subject of further inquiry by the police, but I am certainly happy to discuss

the matter with the Police Commissioner and anticipate that I will be doing that in due course. Certainly a response will be given to the Hon. Mr Gilfillan's Bill in due course.

Members opposite, believe it or not, will also be called upon to respond to the Bill and to Mr Gilfillan's speech. I will be interested to see what they have to say about the matter at the time. When I give that response I will respond to the allegations and also indicate what has happened about them. It may be appropriate for some to be investigated by the NCA, but it is possible that the NCA does not have a reference in any event to some of those matters. The NCA can collect intelligence on a number of issues, but if it wants to use its coercive powers it has to have a reference from Government.

All these issues have to be examined, along with all the other allegations that have been made and, no doubt, along with what will be said tonight. So, we will get another bunch of allegations tonight, which the Government is quite prepared to take seriously and have examined. We would hope that Mr Masters, having made the allegations, will also be prepared to make his information available to the Government or to the National Crime Authority. At this stage we are waiting to hear what happens tonight. I am yet to be convinced that a need exists for another body with coercive powers. I still consider that the NCA option should be explored, that is, the option of establishing an NCA office in this State.

Many people in the community have forgotten that the people who are prepared to make these sort of allegations about the South Australian Police Force are potentially causing a large problem with morale in the Police Force. In that sense, because they will not come forward with substantive allegations, they are doing a great disservice to the South Australian Police Force and the South Australian community. The South Australian community, on the whole, respects its Police Force. The Government respects and on the whole has confidence in the Police Force.

If the Police Force becomes a punching bag for anyone in the community who has allegations to make—unsubstantiated or otherwise—we will get in this State a drop in police morale. We will not get good people coming into the Police Force because they will not see it as a worthy career. They will not see it as a career that they wish to take up. They are the sorts of risks people run in insisting on making these unsubstantiated allegations around the community. They run the risk of not only destroying the good name of the South Australian Police Force but also run the risk of seriously affecting the morale of the officers who work in it, the great majority of whom are honest and hard working. Frankly, it is about time that people like the Hon. Mr Gilfillan and others in this place—

Members interjecting:

The Hon. C.J. SUMNER: And Peter Duncan. Those who think it is good fun to go around making these unsubstantiated allegations about the Police Force ought to start realising the potential—

An honourable member interjecting:

The Hon. C.J. SUMNER: All right. The Hon. Mr Elliott is in the team with the Hon. Mr Gilfillan.

Members interjecting:

The Hon. C.J. SUMNER: Just a minute. In going around and making these allegations, they should also take some responsibility for the effect that that has on the honest, hardworking serving officers in the South Australian Police Force, the great majority of whom are going about doing their job in very difficult circumstances. I repeat that if people keep making these sorts of unsubstantiated allegations people in the community will not see the Police Force

as a worthy career choice. That would be absolutely disastrous for South Australia. It is about time that some of these people—including the Hon. Mr Gilfillan—started to take a more responsible attitude with respect to these allegations.

The South Australian Government has indicated quite clearly that it will take whatever action is necessary to root out any corrupt officers in the South Australian Police Force. However, we must make sure that we act on the basis of allegations that have some substance and that are backed by people who are prepared to put their money where their mouth is.

The Hon. L.H. Davis: Like Duncan?

The Hon. C.J. SUMNER: Any of them—I don't care—anyone who is prepared to come forward and make these allegations so that they can be investigated. That is what we must work on. We cannot, in this community or in this Parliament, continue to operate on the basis of rumour, innuendo, half-baked statements and unsubstantiated allegations, which is what we have had to put up with in this Parliament and indeed, in this State, over the past few months. It is about time that some of those who are prepared to do this, and who in the process are apparently prepared not to give a damn about the reputation of the South Australian Police Force, started to live up to their responsibilities. The Government makes quite clear that it will take whatever action is necessary to root out corruption in the Police Force. However, we also make quite clear that we will not be a party to the denigration, downgrading and abuse of what is, in my view, a very good Police Force in this State.

UNDER-AGE DRINKING

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Attorney-General a question about under-age drinking.

Leave granted.

The Hon. DIANA LAIDLAW: Last week the newly formed National Alcohol Beverage Industries Council, representing hotels, liquor stores, wine producers, clubs, breweries and restaurants, supported moves by the Australian Hotels Association for a national proof of age card for teenage drinkers. The Chairman of the council, Mr Broderick—who, incidentally, is a former Chairman of the Victorian Foundation of Alcohol and Drug Dependence—noted that the council was proposing a national scheme to establish age where a drivers licence was not held.

It appears that the proposal follows calls by the New South Wales Commissioner of Police for proof of age cards and a raising of the legal drinking age from 18 to 21. I understand that in the Northern Territory an AHA-sponsored 'pub card' system operates to establish age. While I recognise that most South Australians who consume alcohol do so without abuse, the issue of under-age drinking has been one of concern not only to hoteliers but also to organisations and individuals working with young people and particularly adolescents at risk.

Is the Attorney-General aware of proposals and initiatives to establish a proof of age card to help curb under-age drinking where a drivers licence is not held? Does he consider that such a card has merit, or can he say whether the Government has any other proposals to help address the issue of under-age drinking?

The Hon. C.J. SUMNER: I had formed the impression that the honourable member was opposed to the carrying

of identity cards by individuals in this community. It would seem—

The Hon. Diana Laidlaw: It is not an identity card; it's a proof of age card.

The Hon. C.J. SUMNER: Unless the card has a name and a photograph on it, how can anyone tell the age of the person? Presumably if there are to be proof of age cards, photographs will be necessary. Do you agree?

The Hon. Diana Laidlaw: This is instead of a driver's licence.

The Hon. C.J. SUMNER: Do you agree with that?

The Hon. Diana Laidlaw interjecting:

The Hon. C.J. SUMNER: If you are going to have it do you think you need a photograph on it?

The Hon. Diana Laidlaw: Our drivers licence does not have a photograph.

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I am not talking about drivers licences; I am talking about proof of age cards.

The Hon. Diana Laidlaw interjecting:

The Hon. C.J. SUMNER: It is your proposal. Are you proposing that it have a photograph?

The Hon. Diana Laidlaw: This is in place of a drivers licence.

The Hon. C.J. SUMNER: I see; this is in place of a drivers licence. There is no photograph on it.

The Hon. Diana Laidlaw: That has never been suggested.

The Hon. C.J. SUMNER: Oh, it's never been suggested. Well, that clarifies that.

The PRESIDENT: Order!

The Hon. C.J. SUMNER: We are now apparently not going to have a proof of age card: we are going to have a bit of paper with a name and an age on it.

Members interjecting:

The PRESIDENT: Order! This is not a time for conversation across the Chamber. A question has been asked and interjections will cease while the reply is given.

The Hon. C.J. SUMNER: I was merely trying to clarify the matter. The honourable member is obviously in a state of some confusion about what she means.

The Hon. Diana Laidlaw: I am not confused.

The Hon. C.J. SUMNER: You are! You don't know whether there there will be a photograph on it.

The Hon. Diana Laidlaw: I said there would be no photograph.

The Hon. C.J. SUMNER: Is there going to be a signature?

The Hon. Diana Laidlaw: No, just proof of age.

The PRESIDENT: Order!

The Hon. C.J. SUMNER: There is no signature and no photograph. Will it have the name of the person on it?

Members interjecting:

The PRESIDENT: Order!

The Hon. Diana Laidlaw interjecting:

The Hon. C.J. SUMNER: I certainly am; I just wanted to get you straight.

The PRESIDENT: Order!

The Hon. C.J. SUMNER: You are going to have a proof of age card that does not have a photograph, and apparently no signature. I will leave honourable members to make their own judgment on what the Hon. Miss Laidlaw has said on that particular point.

The Hon. Diana Laidlaw: I think you should investigate it.

The Hon. C.J. SUMNER: Investigate! Investigate!

The PRESIDENT: Order!

The Hon. C.J. SUMNER: The honourable member has raised the issue and I will give consideration to what she has said. She probably recalls that legislation has been intro-

duced in the past to deal with under-age drinking. In particular, we have toughened up on the publican's responsibilities. We have said that under-age people cannot drink in public places without being accompanied by a parent or guardian. That legislation was enacted in the past 18 months or so. We have also declared some dry areas. They are two fairly substantial initiatives that have already been taken by the Government in this area. I will study the honourable member's question and, if there is anything further to add, I will bring back a reply.

PERSONAL EXPLANATION: POLICE CORRUPTION ALLEGATIONS

The Hon. M.J. ELLIOTT: I seek leave to make a personal explanation.

Leave granted.

The Hon. M.J. ELLIOTT: Ms President, the Attorney-General, in answer to a question concerning the NCA, gave a rather wide-ranging answer in which he decided to include me and to make implications to which I take great exception. There are in the Police Force many people whom I count as good friends.

Members interjecting:

The PRESIDENT: Order! It is customary for personal explanations to be heard without interjection.

Members interjecting:

The PRESIDENT: Including you!

The Hon. M.J. ELLIOTT: Indeed, they still are, and I want to put on the record, here and now, that I have absolute respect for the Police Force as an organisation. I believe that most police officers, like most people in most occupations, are honest and hard working citizens. I do not appreciate the slur that the Attorney-General attempted to cast on my opinions.

SUMMARY OFFENCES ACT AMENDMENT BILL

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

[Sitting suspended from 3.19 to 4.11 p.m.]

LAND AGENTS, BROKERS AND VALUERS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 October. Page 848.)

The Hon. C.J. SUMNER (Attorney-General): I thank the Opposition for its expression of support for the second reading of this Bill and for the detailed attention given to it. I appreciate that the Hon. Mr Griffin did not have a great deal of time in which to consider this Bill and I appreciate his cooperation in having the matter dealt with urgently by this Council. While supporting the Bill in general terms, the Opposition through the Hon. Mr Griffin raised many points of detail. These points have been considered along with matters raised in other representations which the Government has continued to receive on this Bill. As a result of that consideration I propose to move several amendments at the appropriate stage. In order to

ensure that there is no misunderstanding about the procedure that will take place if the Bill is passed, I wish to clarify the procedure.

It is true that the Commissioner for Consumer Affairs will assess the entitlement and make a determination which will be communicated to the claimant. If the claimant rejects the Commissioner's assessment of his or her entitlement or does not respond to the notice of assessment within three months of receiving it, the claim is then referred to the Commercial Tribunal for a determination of the entitlement. In either of those circumstances it is the tribunal that determines the entitlement, not the Commissioner.

In relation to the question of outstanding claims, it is my intention to ensure that all claimants with outstanding claims from 1 January 1980 to the date of commencement of this Bill are paid in the same proportion. If it is possible to pay them 100 per cent of their entitlement they will be so paid. If it is not possible to pay them 100 per cent of their entitlement they will all be paid in the same proportion as far as possible. The procedure that will be adopted if this Bill is passed will be as follows. Those claimants who have made claims between 1 January 1980 and the date of commencement of this Bill and whose claims have been already determined by the Land and Business Agents Board will be paid further amounts as *ex gratia* payments under new section 76f (6). Payments under this section will be made to such claimants to the full extent of their entitlement as determined, as the fund allows.

The remaining claimants who have made claims between 1 January 1980 and the date of commencement of this Bill will be processed under the new procedure. The Commissioner will make an assessment of the amount of the claim. If the claimant accepts the assessment the Commissioner is then able to pay out subject to whether there is a need to make a proportionate reduction in accordance with section 76f. If the claimant rejects the Commissioner's assessment or does not respond to the Commissioner's assessment within three months, the claim is referred to the tribunal for a final determination of the entitlement. Once that determination is made that determination remains subject to 76f, that is, the proportionate reduction provisions. If in either case at the time at which the entitlement is determined, the fund is insufficient to pay all outstanding amounts the Commissioner will make a proportionate reduction in the amount paid out and the claim is then discharged.

The Commissioner, however, is able to make further payments to the full extent of the entitlement under new section 76f subsection (6). I draw honourable members' attention in particular to new section 76f (6) (a) which specifically allows such a payment to be made where the amount of an entitlement has had to be proportionately reduced. It is the intention that further payments will be made to the full extent of the entitlement for these claimants under this provision as the fund allows. It is the Commissioner's intention, I understand, to operate the fund in a manner which will result in as much of the full entitlement being paid to the claimant as is viable to extract from the fund at the point in time at which the entitlement is determined. At the moment there are a large number as well as significant amounts of claims against the fund.

The maximum amount of the entitlement that the fund is able to make will be paid to claimants. However, it may be in the future that there are fewer claims and of lower amounts against the fund in which case at the time at which the entitlement is determined the Commissioner may be able to make a 100 per cent payment of the entitlement. In order to ensure that all claimants against the same broker or agent are treated in the same manner there is provision

for the Commissioner to defer payment of a claimant's entitlement in order to allow the entitlements of other claimants to be determined.

I note the matters raised by the Hon. Mr Griffin in relation to the creditors of Swan Shepherd. It has been suggested that when their claims are being considered the interest being received from the liquidator on funds that have been invested has been taken into consideration and any entitlement from the indemnity fund is being discounted by the amount of such interest. This is not the intention. The intention is that the entitlement to payment from the fund will only be deducted by any amount of principal, not interest, which they receive from the liquidator. I have been assured by the Commissioner that he will ensure that this is the case. In relation to the Swan Shepherd claimants, the Hon. Mr Griffin alleges that the Commissioner for Consumer Affairs has been delaying resolution of claims.

In relation to the delays in finalising Swan Shepherd claims, it should be noted that the investigation of those claims was referred by the Land and Business Agents Board to a firm of solicitors in 1980. That firm delayed completion of its investigations until the liquidator completed his work. Several complex actions between the liquidator and creditors further delayed finalisation of the investigations. The relevant files were only received by the Commissioner for Consumer Affairs late last year and since then have been dealt with as quickly as possible by the same task force established within the Department of Public and Consumer Affairs to deal with the Hodby/Schiller claims.

Once verification of these claims is complete, it is the intention of the Commissioner for Consumer Affairs to pay under section 76b and, with my approval, under section 76f (6), a total of 100c in the dollar of capital lost without taking into account, as mentioned above, interest which claimants may have received from the Swan Shepherd liquidator. Those claimants have also already received an average of 60c in the dollar of capital from the liquidator. Once again, it is not possible to say precisely when a payment can be made from the Agents' Indemnity Fund to those claimants but it is my wish that these matters are resolved as soon as possible.

The Hon. Mr Griffin has raised the issue of further payments to claimants in respect of the activities of Field. It remains my wish that Field claimants also received 100c in the dollar of capital lost. They have already received about 60c in the dollar. The Commissioner for Consumer Affairs has already indicated to me that when the Agents' Indemnity Fund is able to bear further payments to those claimants, he will seek my approval (subject of course to the Bill before the Parliament being passed) under section 76f of the Bill for additional payment. It is not possible at this time to indicate when this can occur because it depends on the income the fund itself generates, the interest derived from agents' trust accounts and the resolution of claims which have not been verified in respect of Nichols.

In relation to the issue of claimants who have had their claims determined by the old Land and Business Agents Board the Bill enables their claims to be dealt with as follows. New clause 13 of the transitional provisions of the Bill enables the Commissioner to make payments pursuant to section 76f (6) in respect of claims against the Consolidated Interest Fund determined by the Land and Business Agents Board if those claims were made on or after 1 January 1980. With respect to clauses 7 and 9 of the Bill it is expected that the scheme will work as follows. Under clause 7 the Commissioner is required to assess the amount of the compensation to which the claimant is entitled.

That assessment is either accepted or rejected by the claimant. If the assessment is rejected, the claim is then heard by the tribunal and the determination of the amount of compensation to which the claimant is entitled made. Clause 9 deals with a separate procedure whereby, if the fund is insufficient to pay outstanding amounts to which claimants are entitled, the Commissioner is required to make a proportionate reduction in the amounts paid out. Where the Commissioner pays out an amount, having had to make a proportionate reduction in the amount to which a claimant is entitled, that entitlement is then discharged. It is the intention, as far as possible, to pay out entitlements as assessed by the Commissioner or the tribunal to the full extent. Where entitlements need to be proportionately reduced under clause 9, it is the intention to pay those entitlements. This will have the result of discharging the entitlement. However the provisions in clause 9 under which the Commissioner, with the approval of the Minister, may make further payments will allow further payments to be made over a period of time to the full entitlement. It is intended to use these provisions to make those further payments.

If an appeal provision is inserted to allow appeals where the Commissioner makes proportionate reduction in an entitlement, there will be considerable delays before claimants will receive any money and it would be almost impossible for the Commissioner to operate the proportionate reduction provisions since he would not know at any point in time whether the fund would be insufficient to pay outstanding amounts. For example, by the time a claimant had had an appeal against a proportionate reduction in the amount paid out heard, the fund may be in far less of a position to pay out money than it would have been had the Commissioner been able to pay it out earlier. It is true that the converse is also the case.

However, the intention is not only to maximise payments but also to make payments as quickly as possible. In my view it is preferable that the claimants be allowed to obtain payment as soon as possible and the provisions in clause 76f (6) be used to make the further payments than to introduce further procedural mechanisms which may only prejudice claimants. I draw the member's attention to clause 9 and new section 76f (6) (a). This section has been inserted specifically to ensure that, where the Commissioner makes a proportionate reduction in paying out an entitlement and as a result that entitlement is discharged, the Commissioner can make further payments on that entitlement.

In respect of clause 4 of the Bill there is no intention at this stage to prescribe other persons under paragraph (c) of the Bill. In respect to the audit provisions of the Act, it is the practice of the Commissioner for Consumer Affairs to cause his officers to attend offices of persons licensed under the Act to carry out what is commonly known as a 'surprise' audit when:

- (1) a qualified audit report is received from an agent's auditor;
- (2) an audit report is not received within the time required under the Act;
- (3) a bank advises that an agent's audit account is in debit; and
- (4) a complaint is received in respect of the activities of an agent which the Commissioner believes should be investigated by using the surprise audit power.

The Commissioner for Consumer Affairs also authorises surprise audits in respect of an agent's records when there is no reason to suspect that there is a problem in respect of that agent's records. The objective is to conduct an audit

in respect of the trust account records of every agent as soon as that can be achieved.

The suggestion that the penalty in clause 10 of the Bill is inadequate has been considered and discussed with Parliamentary Counsel. Any increase in the penalty would lead to uneven penalties for comparable offences elsewhere in the Act. I am advised that the penalty is considered adequate in view of the nature of the offence. However, it is proposed to conduct a review of all penalties in the Act and the proposal made by the Hon. Mr Griffin will be taken into account at that time.

The Hon. Mr Griffin raised the issue of consultation. A copy of the Bill was forwarded to the Law Society on 4 October 1988 and, as a result, comments have been made on the Bill. Some of the issues raised are dealt with in the regulations which will be prescribed shortly. Other general comments will be taken into account when the Act is reviewed over the next 12 months. The Commissioner for Consumer Affairs has now discussed the content of the Bill with the President of the Land Brokers Society but no suggestions as to amendment have been made. The content of the Bill has been discussed in general terms with the Real Estate Institute. I am advised that the Bill is supported.

I give notice that further amendments will be moved by me in Committee to improve certain aspects of the Bill. I have considered the proposal by the Hon. Mr Griffin that the service of notice of provisions could be made more effective by requiring notice to be published in appropriate newspapers, and I will be moving an amendment in Committee which takes up that proposal. The Hon. Mr Griffin raised the question of the alleged liability of the Government or the Land and Business Agents Board to the Hodby creditors. The Government's position is that individuals who wish to pursue this matter will have to seek their own legal advice. However, any action would be defended by the Government or the board.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: The Bill does not have the usual line numbers, which I hope will not be a general departure from past practice by the Government Printer. When will the remaining sections come into operation? Subclause (1) refers to sections 1, 2, 5, 6, 7, 8, 9, and 12 as coming into operation on the date of assent. When will the others come into effect?

The Hon. C.J. SUMNER: Because of the need to amend the indemnity fund provisions of the Act to allow its standing claims to be dealt with under the new procedures as quickly as possible, the sections dealing with that aspect will come into effect on proclamation. However, a need exists to allow industry time to comply with the amendments to the mortgage broking provisions of the Act and these sections will come into operation as soon as there has been sufficient time for consultation with the industry. The first lot come into operation on assent. Regulations have to be drafted, so it will obviously take a few weeks at least.

Clause passed.

Clause 3—'Interpretation.'

The Hon. K.T. GRIFFIN: The President of the Land Brokers Society rang me in the lunch period and said that he had had some opportunity to consider the Bill, which I sent to him last night. He indicated that he had some discussion with the Commissioner for Consumer Affairs in relation to the definition of 'mortgage financier' and that he had raised the question of whether this definition pre-

vents a broker or agent advertising for funds for his or her own private development.

The answer which he received was that it does not. I have not had much time to give detailed consideration to that question but, on first view, I would have thought that, if the agent or broker is an individual, and if a company is involved and the provisions of the Companies Code apply in respect of invitations to the public for funds, the definition would extend to that sort of call for funds. Will the Attorney-General confirm his, or his officers', understanding of the extent of the application of the definition of 'mortgage financier', particularly paragraph (b)?

The Hon. C.J. SUMNER: I think the explanation is that, if the financier receives money from another for his own benefit, he is not a person caught by the definition unless he receives the money from another person for the purpose of lending it to a third person. We believe that that makes it clear that a person raising money for his own purposes would not be caught by the definition 'mortgage financier'.

The Hon. K.T. GRIFFIN: If we take that a step further, is the Attorney-General satisfied that it is not appropriate to catch the funds which are borrowed by the agent or broker for his or her own purposes?

The Hon. C.J. SUMNER: At this stage we do not believe that it should cover that.

The Hon. K.T. GRIFFIN: I do not press it at the moment. I think that issue will have to be considered at some stage in the future.

The Hon. C.J. Sumner: Why? What's the problem?

The Hon. K.T. GRIFFIN: As it was raised with me at lunchtime, I have not had time to think it all through. Let us take an agent as an example. If the agent advertises for funds for a particular development of which the agent is the proprietor, and the agent is not a company but, rather, he or she is an individual, in that case, it seems that the agent is raising those funds in his or her capacity as an agent and applying them to a development which is being undertaken, perhaps peripherally, as part of the responsibility of an agent. On the basis of what the Attorney-General has just indicated, it seems that those funds would not then be subject to the audit provisions of the Act. If that is so, there may be a problem area which should be looked at in the future. If my interpretation is correct, I do not say that it should be amended now but, rather, that it should be noted and, if the Act is to be revised, this area should be considered.

Clause passed.

Clause 4 passed.

Clause 5—'The Agents' Indemnity Fund.'

The Hon. K.T. GRIFFIN: I do not expect the Attorney-General to be able to answer this now. I put it on notice so that he may come back to me as soon as possible with some answers. The questions relate to the fund to those bodies with whom the fund is invested, the nature of the investments, the return on the investments and the costs of administering the fund which, under this clause, may be deducted from the balance standing to the credit of the fund. At the same time, would the Attorney-General indicate whether any insurance premiums are being paid and, if so, on what insurance policies and in respect of what form of cover? Can he also indicate what payment is being made to prescribed persons or bodies for prescribed education programs conducted for the benefit of agents or members of the public? I am not asking for that information to be given on the run but I would appreciate receiving it at the earliest opportunity.

The Hon. C.J. SUMNER: I will obtain that information for the honourable member.

Clause passed.

Clause 6 passed.

Clause 7—'Establishment of claims.'

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

Page 3—

Lines 17 and 18—Leave out 'refuse the assessment and instruct the Commissioner to refer the claim to the Tribunal' and insert 'reject the assessment'.

Line 22—After 'claimant' insert 'rejects the Commissioner's assessment or'.

These two amendments will enable the Commissioner to refer a claim, the assessment of which has been rejected, to the tribunal without having to require or wait for an instruction to do so from the claimant. This will avoid claimants having to know that they must instruct the Commissioner before the claim will be referred.

The Hon. K.T. GRIFFIN: I support the amendments; they are reasonable.

Amendments carried.

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

Page 4, lines 10 and 11—Leave out paragraph (b) and insert the following paragraph:

(b) where the whereabouts of the claimant are unknown—
(i) by publication of the notice in a newspaper circulating in the area in which the claimant was last known to reside;

or

(ii) where the Commissioner or Tribunal has never known the claimant's place of residence—by publication of the notice in a newspaper circulating generally throughout the State.

This amendment is proposed in response to a suggestion from the Hon. Mr Griffin that it would be a more effective service of notice if the notice is published in a newspaper circulated in the region of the claimant's last known address rather than the *Government Gazette*. This amendment accommodates that suggestion.

The Hon. K.T. GRIFFIN: Obviously I support this amendment. I am pleased to see that the change has been made. It is a much more appropriate method of giving notice in certain circumstances.

Amendment carried.

The Hon. K.T. GRIFFIN: I will now clarify my understanding of what the Attorney-General said when he replied at the second reading stage. It is intended that those claims, going back to 1 January 1980 and relating to Swan Shepherd and Field in particular, which may have been determined and for which some payments have been made, will in fact still be eligible for some further proportionate payment according to the availability of funds, but that such payment will be made by the Commissioner with the approval of the Minister. In effect, it is an exercise of a ministerial discretion to make the additional payments, and the intention is, as far as it is possible to do so, to pay 100c in the dollar for those claims as well as those which have not yet been formally determined.

The Hon. C.J. SUMNER: Yes.

The Hon. K.T. GRIFFIN: And the same applies in relation to Hodby and Schiller? It is the intention that claims will be quantified, validated or established—however one describes it—by the Commissioner, whether made before 18 February 1988 or after, and it is the intention, as far as possible, also to pay them 100c in the dollar.

The Hon. C.J. SUMNER: Yes. The qualification is 'as far as possible', and any statements I have made on this matter have always been qualified to the extent that there is enough money in the fund to make the payments. That would to some extent be affected by whether there are any other large claims on the fund which become known to us in the near future. We trust that that will not be the case.

The Hon. K.T. GRIFFIN: If I could develop that scenario: in respect of, say, the Schiller claims, a person may have sustained a capital loss of, say, \$10 000 which the Commissioner would assess as being the entitlement. There may be insufficient funds to pay out \$10 000 and, along with all the other creditors of Schiller, the Commissioner would reduce the amount proportionately to, say, \$5 000, or 50 per cent. That would then be paid out in the same proportion to all Schiller's creditors. I understand that that will result in the claim being formally discharged for the full \$10 000 but that, subsequently, when moneys become available the Commissioner may recommend to the Minister the payment of, say, another \$2 000, which the Minister then approves and which is paid out, and at some later time another \$2 000 may be available for that creditor and proportionately for other creditors by way of another dividend, in effect.

Again, that would go from the Commissioner to the Minister for approval and, when approved, would be paid out, so that \$9 000 out of \$10 000 is paid. If that is a correct understanding of the way in which the Government intends to manage the payments, is it intended that any time limit will be imposed on those subsequent dividends being paid out?

The Hon. C.J. SUMNER: There are no time limits, but, obviously we would want them paid out as soon as possible. I suppose there is a problem about the future of the fund. At some stage I suspect that this issue will have to be readdressed, because essentially what we are providing here is a Government guarantee for people who decide to invest with a land broker. That is basically the situation we have come to.

The Hon. Diana Laidlaw: It doesn't happen in too many other fields.

The Hon. C.J. SUMNER: That is right, but if you do not think it ought to happen you can go to the next meeting of the creditors.

The Hon. Diana Laidlaw interjecting:

The Hon. K.T. Griffin: I assume that's off the record.

The Hon. C.J. SUMNER: No, it was on the record. The Hon. Ms Laidlaw said, 'Not many other investors get that sort of protection.'

The Hon. Diana Laidlaw: Well, it's a fact.

The Hon. C.J. SUMNER: The honourable member said that it is a fact—she is dead right. The point is that we are doing it here. The point that the honourable member makes leads to the question: what is this fund all about and what is its future? Obviously, everyone recognises that we have to do this now; do it as equitably as possible; and ensure that these people are paid. If this means that we will go on with it, it is always subject to there being enough money in the fund. If there is enough money in the fund, people who invest in that sort of investment have, in effect, a sort of Government-backed guarantee that they will not lose, but they might not get their full interest as well.

I think that is the restriction that exists on it, and that might not make it quite as attractive to investors as would appear on the surface, because it is unlikely that they will get full capital return plus the full interest return that they would otherwise have earned. Nevertheless, it is virtually a capital guarantee if we proceed in the future with what we are doing now. It is possible that at some stage in the future someone will have to readdress what this fund is for and how it will be used—but that is in the future. At the moment we are trying to get the money paid out as quickly as we possibly can to these people who have undoubtedly lost a considerable amount and who generally are in a position where they cannot afford to lose that sort of money. They

got sucked in by people who, on the face of it, were respectable, honest brokers. These people unfortunately got sucked in to investing with these brokers; they have lost; and it is the Government's intention to try to redress that problem as quickly as possible.

However, this raises the question of the future of this fund. Is it going to be forever a guarantee to people for capital lost in this sort of investment? It is obviously subject to the size of the fund at any time but, if there are no more claims on the fund for the next five years and it builds up again to \$6 million, \$7 million or \$8 million, we then have a situation of what we will do with it. Will it stay there as a capital and interest guarantee for this sort of investment, or will something else be done?

The Hon. K.T. GRIFFIN: As the Attorney-General would know, under the Legal Practitioners Act a master policy is available for the purpose of insuring land brokers. I must say that when I was looking at that provision in the Bill I had perhaps wrongly envisaged that the reference to insurance premiums might have been a reference to some form of premiums on master policies for land brokers as a form of professional indemnity. However, that is digressing from the real issue—but I put it on the record, because it may be that we have to look at having the same sort of professional requirements for land brokers as is applied to solicitors under the Legal Practitioners Act.

I now refer to the question of recoveries through the defaulting land broker and the rights of subrogation. I understand that it is not intended for the Swan Shepherd creditors, for example, where interest is part of the component of a dividend paid by the liquidator, that interest will not be taken into consideration in determining the entitlement which the Commissioner may assess against the agents' indemnity fund. If that is correct, does the same also apply in relation to the Hodby creditors, where the official receiver has invested the recoveries of some \$3 million so far and will be making a distribution to creditors, part of which will be capital and part of which will be income derived from the investment of recoveries made so far by the Official Receiver? If they are not to be treated in the same way, will the Attorney-General indicate what is the distinction between the two sets of circumstances?

The Hon. C.J. SUMNER: I am instructed that the intention is to treat them in the same way, and not taking into account the interest.

The Hon. K.T. GRIFFIN: That matter needed clarification. I interpreted part of the second reading explanation to suggest that the interest would be taken into consideration in determining the amount payable out of the Agents Indemnity Fund. However, if I have misinterpreted that, I am pleased that it is now clear. I think that they are the only questions that I have in relation to the way in which the fund is to be administered. I think that covers all the areas which have been causing concern to a whole range of creditors of a number of defaulting brokers. If the letter of the Bill does not specifically provide for that, it is my interpretation that sufficient discretions are now available in the Bill to enable those technical difficulties to be overcome. So, one way or another, the scheme which has now been explained to us can be implemented.

The Hon. C.J. SUMNER: We agree that it makes the operation of the fund far more flexible.

Clause as amended passed.

Clauses 8 and 9 passed.

Clause 10—'Money received by mortgage financiers.'

The Hon. K.T. GRIFFIN: I have noted what the Attorney-General indicated with respect to the penalty for a breach of proposed section 98b. I recognise that this new

section does not create an offence which might be construed as one relating to fraud. Nevertheless, it is an important offence and it is appropriate to put in a penalty of imprisonment in addition to the fine. However, in the light of the fact that the Attorney-General has indicated that the penalties and the Act are to be reviewed, I am happy if he would take on board the view that I have expressed. When amending legislation dealing with penalties is introduced, I hope that imprisonment will be included.

The Hon. C.J. SUMNER: The scale is usually \$4 000 or imprisonment for one year.

The Hon. K.T. GRIFFIN: We might as well put it in.

The Hon. C.J. SUMNER: Yes.

The Hon. K.T. GRIFFIN: As the Attorney-General has indicated his preparedness to go along with my proposition, I move:

After 'Penalty' strike out '\$5 000' and insert '\$4 000 or imprisonment for one year.'

Amendment carried; clause as amended passed.

Clause 11 passed.

Clause 12—'Amendment of schedule.'

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

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Lines 10 and 11—Leave out '(excluding those claims allowed by the Land and Business Agents Board)' and insert '(excluding barred claims and claims allowed or disallowed by the Land and Business Agents Board)'.

Line 14—Leave out 'the allowance' and insert 'subject to paragraph (ab), the allowance or disallowance'.

After line 16—Insert paragraph as follows:

(ab) paragraph (a) does not apply in respect of a determination of the tribunal that a claim is not barred by reason of being made out of time;

Line 19—After 'Act' insert 'and must be dealt with by the Commissioner and the tribunal in pursuance of that division as so amended'.

Lines 23 to 37—Leave out paragraphs (c), (d) and (e).

These amendments are necessary to ensure that, whether a claim lodged between 1 January 1980 and the date of the commencement of the 1988 amending Act has been barred, or whether it has been disallowed or allowed by the old Land and Business Agents Board, it is not revived and is not subject to the new procedures in the 1988 amending Act. The third amendment amends clause 14 of the schedule to ensure that in respect of claims lodged during that period of time, a determination of the tribunal that a claim will not be barred, even though out of time, is not made void.

Further amendments ensure that where the tribunal has allowed or disallowed a claim or made a determination in respect of a claim, and that claim was lodged during that period of time, that determination is void. This is to ensure that all determinations involving the assessment of the amount of the claim are subject to the new provisions. It may mean that some matters will have to be heard again by the tribunal. This is unavoidable if everyone, who should be given the opportunity, is to be given the same opportunity to use the new provisions. A further amendment is being made to ensure that claims to which clause 14 apply

are assessed by the Commissioner or tribunal under the new provisions.

The Hon. K.T. GRIFFIN: On the understanding which I have, and which we have been through in relation to clause 7 in particular, all the creditors of these defaulting land-brokers are to be treated equally whether or not their claim has been quantified, validated or established, and if the basis is that all these amendments do is to tidy up those areas consistent with that principle, then I am prepared to accept it.

The Hon. C.J. SUMNER: They are consistent with that principle.

Amendments carried; clause as amended passed.

Title passed.

The Hon. C.J. SUMNER (Attorney-General): I move:
That this Bill be now read a third time.

The Hon. K.T. GRIFFIN: I reiterate what I said yesterday, that the Opposition will facilitate the consideration of the Bill. While I cannot speak for the other House I can say that my colleagues there have indicated that they, too, will facilitate consideration of the Bill. In that context I would certainly expect it to pass both Houses by the end of next week. I would hope that then the Bill can be assented to, the various provisions implemented and the procedures established so that the various creditors who have suffered a great deal of hardship and uncertainty as to the amounts they have lost as a result of the defaults of those brokers can be paid out at the earliest opportunity, and one would hope that at least a substantial part will be paid out by Christmas of this year.

The Hon. C.J. SUMNER: The amount that will be able to be paid out will be determined by the amount of the fund, but we anticipate that once the Bill is assented to within a few weeks a payment—a dividend if you like, and I am not able to say precisely how much—will be made in the order of 50c or 60c in the dollar. Remaining payments will then have to await the money in the fund. But it remains my aim, which I announced earlier this year, to try to ensure payment of 100 per cent of capital. Subject to there being no further major claims on the fund I am confident that that can be achieved over time. My intention in that respect, of paying 100 per cent of capital, has always been subject to there being enough money in the fund to do it. That, of course, will be determined to some extent by whether or not there are any other major claims. Hopefully there will not be, in which case we can make the immediate payment and pay out the rest of the capital over time.

Bill read a third time and passed.

ADJOURNMENT

At 5.2 p.m. the Council adjourned until Wednesday 12 October at 2.15 p.m.