LEGISLATIVE COUNCIL

Tuesday 29 November 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:

Road Traffic Act Amendment (No. 3),
Statutes Repeal (Agriculture),
Travel Agents Act Amendment.

QUESTIONS ON NOTICE

The PRESIDENT: I direct that the following answers to Questions on Notice as detailed in the schedule which I now table be distributed and printed in *Hansard*: Nos. 19, 21, and 22.

COMMUNITY WELFARE DEPARTMENT

19. **The Hon. DIANA LAIDLAW** (on notice) asked the Minister of Tourism:

1. What land or buildings owned by the Department for Community Welfare were sold during 1987-88, and what was the sale price in each instance?

2. What if any land and/or buildings owned by the Department for Community Welfare does the Government propose to sell in 1988-89?

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

1. No land or buildings were sold during 1987-88.

2. It is proposed to sell:

(a) A small property at Clarke Road, Yahl, previously used as a Youth Project Centre.

(b) A property at 34 Beach Road, Christies Beach, previously a branch office of the department and currently used by non-government community services organisations.

(c) The Lands Department is considering options for the sale of 44 Harwood Avenue, Enfield.

ASH WEDNESDAY BUSHFIRES

21. **The Hon. K.T. GRIFFIN** (on notice) asked the Attorney-General: In relation to each Ash Wednesday 1983 bushfire and claims against ETSA:

1. What payments have been made by ETSA and/or its insurers to Government agencies?

2. In each case, how much has been paid—

(a) to which agencies?

(b) on what dates?

3. What claims by Government agencies are still to be resolved and, in each case, what is the amount of such claims?

The Hon. Barbara Wiese, on behalf of the **Hon. C.J. SUMNER:** The replies are as follows:

1. None.

2. *(a)* and *(b)* Not applicable.

3. Only one claim has been received from ETSA from a State Government agency. This claim is brought pursuant to the SGIC's subrogated rights in respect of its insured persons or bodies who suffered loss as a result of the various fibres. One of those bodies is the CFS in respect of which SGIC is claiming $263 000 for persons who suffered injury in the course of fighting the fires.

22. **The Hon. K.T GRIFFIN** (on notice) asked the Attorney-General: In relation to the Ash Wednesday 1980 bushfire at Stirling and claims against the Stirling council, what is the amount of each claim (either directly or indirectly) by any agency of the Crown and to what does each claim relate?

The Hon. Barbara Wiese, on behalf of the **Hon. C.J. SUMNER:** The Crown Solicitor is not handling any claims against the Stirling council arising from the Ash Wednesday, 1980 bushfire. It is my understanding that ETSA has made a claim for about $38 000 against the council for property damage suffered by ETSA as a result of that bushfire. I am not aware of any other claim by any other agency of the State Crown.

JOINT PARLIAMENTARY SERVICE COMMITTEE REPORT

The PRESIDENT laid on the table the 1987-88 annual report of the Joint Parliamentary Service Committee.

PUBLIC WORKS COMMITTEE REPORTS

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

Tandanya Aboriginal Cultural Institute,
Golden Grove High School and Golden Grove Shared Secondary Facilities (Stage II),
Settlers Farm School—Paralowie South West (Stage II).

PAPERS TABLED

The following papers were laid on the table:

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

Pursuant to Statute—

Department of Correctional Services—Report, 1987-88.
Port Pirie Development Committee—Report, 1987-88.
Justices Act 1921—Rules—Court Fees.
Rules of Court—Supreme Court—Supreme Court Act 1935—Pretrial Conferences.
Regulations under the following Acts—
Legal Practitioners Act 1981—Indemnity Insurance scheme.
Local and District Criminal Courts Act 1926—Local Court Fees.
Occupational Health, Safety and Welfare Act 1986—Licence for Asbestos Removal.
Supreme Court Act 1935—
Interpreter and General Fees.
Probate Fees.

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

Commissioner for Consumer Affairs—Report, 1987-88.

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

Aboriginal Lands Trust—Report, 1987-88.
Controlled Substances Advisory Council—Report, 1987-88.
South Australian Timber Corporation—Report, 1987-88.
Radiation Protection and Control Act 1982—Regulations—Fees.
Forestry Act 1950—Variation of proclamation.

QUESTIONS

ADELAIDE CHILDREN'S HOSPITAL

The Hon. M.B. CAMERON: I seek leave to make a statement before asking the Minister representing the Minister of Health a question about the Adelaide Children's Hospital.

Leave granted.

The Hon. M.B. CAMERON: Members may have noticed the report in yesterday's *Advertiser* which said South Australian health services will get a $3.2 million boost under a new Medicare funding agreement with the Federal Government. Among the initiatives I noted was the allocation of $250 000 for a 10-bed unit for children and adolescents suffering from asthma and cystic fibrosis. The unit, which I understand is to be attached to the Adelaide Children's Hospital, will be geared to handle the needs of young patients requiring long-term hospitalisation. I gather that there is also a move at the hospital to provide six psychiatric beds there and a further six beds for patients who have a low dependency on services: in other words, patients virtually able to look after themselves.

While applauding any move which will provide extra beds at the Adelaide Children's Hospital, particularly as the waiting list for elective surgery is now reported to be in excess of 900, or double what it was in October 1984, I understand that the provision of extra beds is seen by some at the hospital (and this has been said to me) as little more than a con job, particularly when it is remembered that even with an additional 22 beds at the ACH, taking its bed numbers to 187, the hospital will still be down 28 beds on its approved capacity of 215 beds. Notwithstanding that, people at the hospital say the Cystic Fibrosis Unit and the psychiatric beds are not new initiatives, and in fact have been in the pipeline for some time, as the former Minister of Health will be fully aware.

I understand that the task force set up to look at the ACH's financial problems is now suggesting a reduction in the number of operating theatres. I am informed they are suggesting that no more than three of the hospital's four theatres be used during December and January, but in the week before Christmas theatre use be limited to emergency cases only. On top of that, I understand that for a fortnight immediately after Christmas only one theatre is to be utilised, and no more than two are to be used before 13 January.

It appears that we will have the ludicrous situation where waiting lists are rising dramatically at the Adelaide Children's Hospital (they rose 200 in the July to September period), and the Health Commission is finally admitting that some extra beds need to be opened, but the Government is placing restrictions on the use of up to 75 per cent of the hospital's theatres. This is at a time when many children are on holidays and are accessible for surgery, so that they can thus receive it without disrupting school studies. My questions to the Minister are: will the Adelaide Children's Hospital—

The Hon. J.R. Cornwall interjecting:

The Hon. M.B. CAMERON: That is fine, but surgeons are complaining about it.

The PRESIDENT: Order!

The Hon. M.B. CAMERON: If the former Minister wants to debate the matter—

The PRESIDENT: Order!

The Hon. M.B. CAMERON: —I will debate it. I am perfectly happy to do so. The fact is that I have been informed that surgeons are perfectly willing to perform surgery to overcome what they consider to be a serious problem. My questions to the new Minister are: will the Adelaide Children's Hospital be required to comply with the restrictions on theatre use during December and January that I have just outlined? If so, what effect will the restrictions have for elective surgery on waiting lists that have already topped 900? If the commission is not seeking restrictions on theatre usage as outlined, what limitations have been placed or are being considered on surgery during December and January?

The Hon. BARBARA WIESE: I will refer those questions to my colleague the Minister of Health and bring back a reply.

ENTERTAINMENT CENTRE

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister of Tourism, as Acting Leader of the Government, a question about the entertainment centre.

Leave granted.

The Hon. L.H. DAVIS: On 19 November 1985—just over three years ago and, more than coincidentally, just a few days before the 1985 State election—the Premier stood on a site at Hindmarsh to announce the go-ahead for a $40 million world-class entertainment centre that would seat 8 000 people. Mr Bannon said that the State Government would fund the construction costs of the project and that the facility would be managed by private operators. Mr Bannon further stated, 'For too long South Australia has had to put up with second best for major concerts and international indoor sporting events.' This entertainment centre was a firm commitment and a key proposal in the 1985 policy speech made by the Premier. An opinion poll showed that this promise clearly attracted enthusiastic support from many young voters.

The entertainment centre was to be opened in late 1988—in fact, right now—but what do we have? We have an empty site at Hindmarsh, and we learn that the Government contemplates selling off part of this site for commercial development. However, according to the Premier, the site remains the Government-preferred option. As it is, the Hindmarsh site can accommodate no more than 1 000 cars, so why would the Government contemplate selling off land?

In the meantime, the Basketball Association of South Australia has indicated that before Christmas it will begin construction of a basketball centre at Toogood Avenue, Woodville, to seat between 6 000 and 9 000 people. The centre would be for not only sporting functions but also for entertainment events. The size of the centre and the quality of the finish will apparently depend on whether or not the Government will provide financial support. At least this Woodville site can provide parking for 2 400 cars. This centre will provide a home for the Adelaide 36ers as well as rock concerts and other events.

The Minister would be well aware that every other State has an entertainment centre. Hobart, which has a population of 180 000, is constructing an entertainment centre to seat 5 000 people. Perth has three centres which seat 7 500, 5 000 and 20 000 respectively. Brisbane has the Chandler Stadium which seats 5 000, and there is a marvellous entertainment centre which I saw at Boondall that seats 12 000 to 14 000 people. Sydney has an entertainment centre near Chinatown that seats 10 000 to 11 000 people and another facility at Homebush accommodates 5 000 people. Melbourne has the Tennis Centre which, when converted to the entertainment mode, seats 8 000 people.

The swimming centre near the Yarra is now being converted into an entertainment and sports arena which accom-

modates 8 000 people. Adelaide, the capital of the Festival State, has the Apollo Stadium which accommodates 2 800 people. It is certainly not designed to be an entertainment centre. If one watches entertainment there, one is likely to end up with a ricked neck. It has a convention centre which, although designed for entertainment and sporting events, is not used for that purpose.

The Hon. R.J. Ritson: And Davis Cup tennis.

The Hon. L.H. DAVIS: That is right. This convention centre, which was designed for entertainment and sporting events, is not used for that purpose because of a gross design bungle which means that the ball boys are likely to be sitting in the third row with the spectators. My questions to the Minister are, given that South Australia (the Festival State) is the only State without an entertainment centre:

1. Is the Government still committed to financing an entertainment centre at the Hindmarsh site?

2. Will the Government provide financial assistance to the Basketball Association of South Australia for the construction of the centre at Woodville?

3. Does the Government believe it is viable to have two entertainment centres in Adelaide: that proposed by the Basketball Association and the centre which has been proposed by the Government for the past three years?

The Hon. BARBARA WIESE: As the Premier has indicated on a number of occasions, it is still the Government's intention to do what it can to ensure that an entertainment centre is built in Adelaide. We are committed to that and would like to see it happen. As the honourable member would also be aware, the original plans for an entertainment centre on the Hindmarsh site had to be rejected once the financial situation that the Government faced during the two or three budget cycles became known, because it was the Government's view—and I would have thought a view which in their sensible moments the Opposition would agree with—that the people of South Australia would not be prepared to see some $60 million worth of Government funding devoted to the construction of an entertainment centre at the expense of the provision of other Government services and facilities.

For that reason the Government indicated that it would look at other options. We wanted to look at cheaper options for the construction of an entertainment centre. We could no longer afford the deluxe model because the State's financial situation had changed since those plans were first mooted.

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The question was heard in absolute silence: I ask that the same courtesy be accorded to the answer.

The Hon. BARBARA WIESE: As a result of that financial situation, the Government announced that it would look for less expensive options for the construction of an entertainment centre, but that the Hindmarsh site was preferred. It is history, and publicly known, that the Grand Prix Board was asked to look at the matter on behalf of the Government and consider options and suitable sites around Adelaide. Such discussions and considerations have taken place during the past few months.

In the meantime, the Basketball Association decided that it would like to proceed with the construction of its own facility and indicated to the Government that it would be interested in having Government participation in its project to the extent that the Government may be asked to upgrade the facility to make it suitable not only for basketball but also for entertainment purposes. Since that proposition was put to the Government discussions have taken place with the Basketball Association as to whether or not that is a viable option. I believe that it is the Government's view that, at this time is Adelaide, not in a position to support two large entertainment centres. If it were possible for the Basketball Association's proposal to be modified in such a way to make it a suitable entertainment centre, that would make it a reasonable proposition for the Government to support.

I should have thought that members opposite would support a proposition like this because it is they who are constantly whingeing and griping about funds not being made available in various areas of Government services because—

Members interjecting:

The PRESIDENT: Order! I particularly call on the Hon. Mr Cameron, the Hon. Mr Davis and the Hon. Mr Dunn.

The Hon. BARBARA WIESE: It is not possible to have it both ways. We are looking—

Members interjecting:

The PRESIDENT: Order! Mr Davis, I have already called you to order. You have asked a question which was heard in complete silence. I ask you to extend the same courtesy to the reply.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Mr Davis, I am asking you to remain silent.

The Hon. BARBARA WIESE: The Government is taking a very responsible approach to this issue and will be looking for the most cost effective option that it can find in order to build an entertainment centre in South Australia. It is acknowledged by everyone that such a centre is needed. Members opposite may not like the option that the Government chooses because this alternative will be responsible and cost effective. However, we will have it anyway.

STIRLING COUNCIL

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Minister of Local Government a question about Stirling council.

Leave granted.

The Hon. K.T. GRIFFIN: In the Minister's ministerial statement of 15 November relating to the Stirling council's difficulties she said among other things:

> . . . having made a full assessment of the situation, I yesterday outlined to council and local government authority representatives a plan of action which I propose to follow to deal with the situation.

She then went on to detail the package. Since we last sat a number of criticisms of the package have surfaced in the media. On 25 November, the Henley and Grange council is reported to have opposed it. On 21 November, the Salisbury Mayor said that she had been innundated with calls from ratepayers opposed to the package.

On 25 November, metropolitan councils are reported to have rejected the package at a meeting attended by Mr Malcolm Germein of the Local Government Association. That media report stated:

> The Local Government Association President, Councillor Malcolm Germein, said there was a strong view among local governments that the Minister was attempting to control debate about the Stirling council's liability without taking any responsibility.

Later in that report he went on to say:

> Councillor Germein said it was difficult to understand why the Minister had proposed such a 'radical solution' without any financial support from the State Government when the State 'clearly had an obligation'.

Other concern has been expressed by local government and ratepayers and has been reported in the media as a result of the Minister's ministerial statement of 15 November. My questions to the Minister are:

1. Has the Minister made any modifications to the package and, if so, what are they?

2. Does the Minister contemplate any other modifications and, if she does, what are they?

The Hon. BARBARA WIESE: At this stage the answer is 'No'. I have not made any modifications to the package. I am still awaiting responses from various people involved in this matter. I have not had any meetings with representatives either of the council or of the Local Government Association since I first outlined the package to those people at the meeting which was held a couple of weeks ago. I can say that, in the meantime, representatives of the Department of Local Government have been attending various regional meetings to make sure that members of local government are fully informed about the nature and the details of the package. In addition, I have agreed to meet with the President and Secretary-General of the Local Government Association within the next couple of weeks to discuss the issue further.

Various members of the local government community have indicated, at least in the press and certainly by way of letter to me, that they do not believe that the redistribution of funds through the Local Government Grants Commission is an appropriate way of helping to find a solution to the Stirling Council's problem. I feel that it is, and, in the absence of any alternative proposal being put to me at this stage, I intend to pursue that strategy. However, if the local government community can come up with another proposal which is acceptable and which meets the needs of this situation, I am certainly prepared to talk about it. No such proposal has come forward at this stage, but I do understand that the President of the Local Government Association has publicly stated that he acknowledges the responsibility of the local government community in this matter and that it must work to find a suitable solution to it.

I can add little more about this issue at this stage, but I am looking forward to the further discussions that I will be having with the President and Secretary-General of the LGA within the next couple of weeks. I certainly hope that it will be possible for us to find a satisfactory solution which equitably spreads the burden of the Stirling council's bushfire liability and which does not place an unreasonable burden on any particular sector of our community.

The Hon. K.T. GRIFFIN: I ask a supplementary question for clarification. Am I correct in interpreting the Minister as saying that, if the local government community does not present an alternative proposition, she will nevertheless proceed with the package announced on 15 November in the face of the opposition expressed by the local government community?

The Hon. BARBARA WIESE: At this stage I certainly intend to proceed with the aspects of the package as I have outlined them. It is not satisfactory for people in the local government community simply to oppose a package without putting forward an alternative. In the absence of any other alternative, I am not sure that the Government would have any option but to pursue the package that I have outlined because, as I have indicated earlier today and on other occasions, I believe that it is an equitable package which does not place an undue burden on any of the people or organisations that would participate in fulfilling it. However, I have said already that I am willing to talk with the Local Government Association. As I indicated to the representative at the very first meeting that I had with the Stirling council when I outlined the package, if they come up with some alternative, I shall be happy to discuss it with them.

ROXBY DOWNS

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister of Tourism, as Acting Leader of the Government in the Council, a question on the South Australian Health Commission's submission to the Roxby Downs Select Committee in May 1982.

Leave granted.

The Hon. I. GILFILLAN: The contents of the submission from the South Australian Health Commission (it was a scientifically prepared submission) was the subject of some dispute when the select committee was sitting. I indicate to the Council that there is a remarkable inconsistency in two reports on how the submission came to the select committee by the Hon. Roger Goldsworthy, who was Minister of Mines and Energy at the time. I refer the Council to a comment made by the Hon. Roger Goldsworthy on 8 June 1982 explaining why the first draft of the submission was withdrawn before it was seen by the members of the committee and replaced by another. It is a matter of great concern to many people that the original document was forcefully removed from distribution and replaced. I inform the Council that on 8 June 1982, when explaining this extraordinary chain of events, the Hon. E.R. Goldsworthy, in reference to Dr Wilson (who was in charge of the report), stated:

> As I understand it, Dr Wilson was on leave at the time. Subsequently, a submission was sent to the select committee. Dr Wilson chose to revise that, which he did.

The *Sunday Mail*, in an article on 30 October this year, contained a comment by the same Hon. E.R. Goldsworthy. In describing the same event, he is reported to have said:

> I called Dr Keith Wilson, who was in charge of the Health Physics Unit, to my office and told him the report was inaccurate. He adamantly refused to consider any changes. He stated that to change it would reflect adversely on his officers.

It is a remarkable inconsistency between reports from the same person speaking, one assumes, with authority and accuracy on exactly the same event, the consequences of which are quite dramatic. The withdrawn document contained the following strictly confidential conclusions:

1. Lung cancer has a specific association with the mining of uranium, and is primarily due to the inhalation of radon daughters.

2. The number of excess lung cancers in uranium miners is greater with higher exposure levels, but the exact relationship between exposure and excess cancer is not known.

3. Most estimates of risk of lung cancer are based on studies at high exposure levels. The relationship at low exposures has been assumed to be the same as at high exposures. It has also been assumed that there is no threshold below which no excess cancers occur. In other words the 'linear hypothesis' has been assumed.

4. There is some epidemiological and experimental evidence that the 'linear hypothesis' understates the risk at low levels of exposure.

5. On the basis of the 'linear hypothesis', an excess lung cancer mortality rate, for a 30 year working life, a risk period of 30 years and on an average exposure equal to the existing maximum permissible level, has been calculated as ranging from 2 per cent to 11 per cent. This is in addition to the 6.3 per cent of all South Australian males expected to die of lung cancer.

The conclusions, in the submission that was finally submitted to the select committee, are completely different to the first conclusions. Revised conclusion number 2—

Members interjecting:

The Hon. I. GILFILLAN: I remind honourable members that conclusion number 1 said that the linear hypothesis

understates the risks. I will now quote conclusion 2 from the second draft of the report, which states:

> At high exposure levels, the risk of lung cancer is proportional to the dose. The exact relationship between exposure and excess cancer at the lower exposure levels achievable today is not known. However, the 'linear hypothesis' is now thought to give an estimate of risk which is too pessimistic. There may be a practical threshold at very low exposures below which the risk is extremely low.

What an extraordinary inconsistency in a document that was prepared by scientists in the Health Commission to be submitted to the select committee! The first draft was withdrawn, according to the last comment by the Hon. E.R. Goldsworthy, on his own instruction and replaced, over objections by Dr Wilson, by one that is completely and diametrically opposite.

Members interjecting:

The Hon. I. GILFILLAN: I have some other material, and those members who do care about the health of workers at Roxby Downs cannot avoid their obligation in this matter. The issue of threshold of radiation is another issue. I will quote from a book entitled *Coverup* by Karl Grossman, quoting a US Government atomic energy pamphlet, as follows:

> Once scientists thought that, under a given threshold of radiation, life would not be damaged—

this is in relation to genetic damage—

> but even the U.S. Government eventually was admitting it just was not so. A 1966 Atomic Energy Commission pamphlet by Isaac Asimov (a main AEC nuclear power writer) and Theodosius Dobzhansky, entitled *The Genetic Effects of Radiation*, concedes:
>
> It is generally believed that the straight line continues all the way down without deviation to very low radiation absorptions. This means there is no 'threshold' for the mutational effect of radiation. No matter how small a dosage of radiation the gonads receive, this will be reflected in a proportionately increased likelihood of mutated sex cells with effects that will show up in succeeding generations.
>
> Suppose only one sex cell out of a million is damaged. If so, a damaged sex cell will, on the average, take part in one out of every million fertilisations. And when it is used, it will not matter that there are 999 999 perfectly good sex cells that might have been used—it was the damaged cell that was used. That is why there is no threshold in the genetic effect of radiation and why there is no 'safe' amount of radiations in so far as genetic effects are concerned. However small the quantity of radiation absorbed, mankind must be prepared to pay the price in a corresponding increase of the genetic load.

The Hon. R.J. RITSON: I rise on a point of order. However, as the honourable member is almost finished, I will not take my point of order.

The PRESIDENT: If you wish to cease the explanation, it is in your hands, Dr Ritson. You can call 'Question'.

The Hon. R.J. Ritson: I was tempted, but I will desist, Madam President.

The Hon. I. GILFILLAN: I appreciate the consideration of my colleague. Does the Government believe that genetic damage will result from increased radiation exposure experienced by workers at Roxby Downs and, if not, why not? If so, what is the Government doing about it? Does the Government have concern for increased incidence of lung cancer as a result of exposure to radon gas at Roxby Downs and, if not, why not? If so, what is it doing about it? Will the Government table the first draft of the Health Commission report to the select committee on Roxby Downs of May 1982 which was withdrawn on the order of Mr Goldsworthy? Will the Government ascertain the true reasons why the first draft was withdrawn by Mr Goldsworthy?

The Hon. BARBARA WIESE: As the honourable member is probably aware, the Government has spent a lot of time and effort in establishing very rigid health procedures to apply at the Roxby Downs mine, and a lot of time and effort has gone into negotiating not only with the various health authorities on this matter but also with the trade unions that represent workers at the Roxby Downs site. There will be a register of workers, and their health issues will be recorded and paid proper attention. I will refer the specific questions to my colleague and bring back a reply.

WEST TERRACE CEMETERY

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister representing the Minister of Housing and Construction a question about the West Terrace cemetery.

Leave granted.

The Hon. J.F. STEFANI: The West Terrace cemetery is under the direction of the Minister of Housing and Construction and is administered by the South Australian Department of Housing and Construction through the regulations under the West Terrace Cemetery Act 1976. There are 11 people employed by the Government on this site, and some employees have been working at the West Terrace cemetery for a very long time.

Workers have said that there is a total lack of management direction to the workers and that they have not been properly trained against injury or work related contact with diseases. For instance, workers are not provided with a change of clothing or protective equipment or directed to shower when they are required to lift the remains of bodies from the graves. They are issued with a pair of gloves, two sets of overalls per year, a pair of gum boots, a hard hat and ear muffs. They eat their lunch wearing the same overalls that they wore when a coffin is broken up and the remains of a body lifted. I have been informed that on occasions, workers have been required to lift bodies with flesh on them. It has been suggested by those involved that State Government workers are totally neglected.

The regulations governing the West Terrace cemetery permit the lifting of bodies of persons in a coffin aged 10 years and over after the lapse of only three years. For a child aged between five and 10 years, the period is two years; and for a child younger than five years a coffin can be lifted after one and a half years. Reliable sources within the industry have advised me that the coffin cannot be lifted intact. The timber used in the burial coffin is not always of a quality which will last for a very long period of time. These comments have also been confirmed by the workers on the site.

In any event, because of the position of the graves even if machine digging was possible, workers say that the coffin can only be removed and lifted by hand, and this requires the breaking up of a coffin, which is at a depth of 1.8 metres for all adult persons. What is left of the body is then physically removed by hand by the workers, who are expected to work in a grave trench (often dug by hand) to a depth of 1.8 metres to 2.1 metres without shoring planks and proper personal protection against possible disease, bacteria or personal injury. On one occasion recently (and who knows how many others) against all regulations and at great personal health risk, a vault was opened and a body removed. The floor of the vault was broken up and the grave dug deeper to allow another burial to take place.

I have been informed that the Government administered West Terrace cemetery is the only cemetery that allows such a bizarre practice to occur. Members of the public have said to me that the Government is setting one standard for workers employed by private industry but that it does not care for its own work force. Trenches at the depth required for burials, especially when dug by hand, must always be shored with planks in accordance with the safety Act. My questions to the Minister are:

Will the Minister hold an immediate investigation into the scandal? Why has the Minister or his department given permission to remove bodies with flesh still on them? Why has the Minister or his department given permission to allow the practice of lifting of bodies and deepening of burial graves in the Government cemetery at West Terrace? Why has the Minister or his department not provided workers at the cemetery with training in matters of personal safety and health risks against bacteria and other diseases, including AIDS? Will the Minister advise what precautions have been taken to safeguard the bodies and remains of dead people when lifting and deepening of the graves occur, particularly during periods of inclement weather, when the open grave sites are abandoned?

The Hon. BARBARA WIESE: I would be very surprised if—

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —any inappropriate work practices are being undertaken by the people at the West Terrace cemetery, because those workers have coverage by very competent trade unions.

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: They have very competent coverage from registered and recognised trade unions in this State, and I am sure that attention would have been paid by the unions and the managers of the West Terrace cemetery to appropriate work practices. I am certainly not familiar with the practices that are engaged in at the West Terrace cemetery, and I will be very happy to refer the honourable member's question to my colleague, the Minister of Housing and Construction, and bring back a reply.

BOLIVAR TOXIC WASTE FACILITIES

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister for Environment and Planning, a question relating to Bolivar toxic waste facilities.

Leave granted.

The Hon. M.J. ELLIOTT: On 3 November I asked the Attorney-General a question which at that stage was to be referred to the Minister for Environment and Planning. The question related to a proposal for toxic industrial waste to be disposed of through the Bolivar sewage treatment works. There is about 30 000 tonnes of highly acidic waste also containing a high level of heavy metals. I raise this matter again, three weeks further on, because I have been told that further work has gone on. The concrete pad has been laid, a shed has been erected; and some piping has already been put in in order to continue with that proposal. So, it is necessary for me to raise that matter again so that we might get a speedy reply on it.

I believe it is a matter of great public interest, so I wanted to bring it to the attention of the Minister, who should also have an interest through the Waste Management Commission. I also draw to the Minister's attention a document entitled 'South Australian land based marine pollution' put out by the Department of Environment and Planning in March 1987. The document, on page 1, states:

> The South Australian Government has given an undertaking to the Federal Government that it will legislate to control marine pollution as a result of the dumping of land based discharges.

This seems to be linked to the subject of toxic waste disposal. I ask the Minister:

1. Will the Minister, as a matter of urgency, inform the public exactly what is happening at Bolivar in relation to toxic waste?

2. When will the South Australian Government carry out its promise to the Federal Government to legislate in order to control marine pollution?

The Hon. BARBARA WIESE: Since the honourable member asked his question in this place I have discussed the matter with the Director of the Waste Management Commission in order to ascertain whether he or any of his officers had been involved in discussions or negotiations with officers of the Engineering and Water Supply Department on any proposal to dispose of waste into the sea. I am advised that there has been some discussion with officers of the Waste Management Commission about this proposal and that, theoretically, the proposal as outlined would cause a very small amount of waste to be disposed of in this way at any time—in such a way that it is estimated that there would be no adverse effect on the marine environment.

As I understand it, the E&WS officers would like to test the theory before they engage in any such program. I believe that the Waste Management Commission would support the idea of undertaking a test, because such a test would not cause any harm and would certainly demonstrate, one way or the other, whether or not the idea is possible as a means of waste disposal for the Bolivar site.

The Waste Management Commission would not give its blessing to a method of disposal that would have harmful effects on the marine environment and, should there be any doubt about that matter, it would certainly voice the very strongest objections. I would then want to raise the matter with my colleagues the Minister for Environment and Planning and the Minister of Water Resources who would have an interest in the matter. I cannot say whether or not any such work has taken place, but I will refer the honourable member's question to my colleague and bring back a reply.

The Hon. M.J. ELLIOTT: As a supplementary question, as a result of the information shown to the Minister, was she told anything about lead, cadmium, tin and mercury which were not referred to in the original experimental work? Was she informed that a lot of the heavy metals would end up at the bottom of the sludge lagoons and would eventually have to be removed some time in the future? Why was an EIS on this matter not undertaken rather than doing it all in secret?

The Hon. BARBARA WIESE: As I recall the conversation I had with the Director, it was not anticipated as part of this experiment that there would be a problem with residual waste. I am certain that, if it were necessary or appropriate to undertake an environmental impact statement on an issue like this, it would be undertaken by the Government. However, at the point at which I had discussions with the Director of the Waste Management Commission, no work had commenced. Discussions were still taking place on the issue about the detail of the proposal. The Government would not embark upon a scheme of this kind if any lasting damage would be caused and/or if an environmental impact assessment had to be first undertaken.

SOUTH AUSTRALIAN GRANTS COMMISSION

The Hon. J.C. IRWIN: I seek leave to make an explanation before asking the Minister of Local Government a question about the Grants Commission.

Leave granted.

The Hon. J.C. IRWIN: The Minister recently announced plans to deal with the funding of liability as a result of the 1981 bushfires. Half the responsibility for the presumed liability of $15 million will be met by the Stirling council and half will or may be met by special arrangements made with the South Australian Grants Commission.

Leaving aside the relatively important fact that the South Australian Grants Commission distributes money raised by Federal Government taxation to local government (and, therefore, Federal money rather than State money helps to resolve the problems), I am told that no legal problem is envisaged with the State Government's making a submission to the South Australian Grants Commission asking it to vary its normal distribution method for what could be described as special circumstances.

I am also advised that there is no legal problem about suggesting to the commission that the horizontal equalisation provisions could be used. Further, the Director of Local Government is a member of the Grants Commission. It will be very difficult for the Director to attend to departmental matters as well as to South Australian Grants Commission matters when they both will entail matters relating to the Stirling council and how to fund bushfire liability. There will be a clear conflict of interest.

The Minister and members of this Council will remember what happened to a former Director of Local Government who was at the same time Chairman of the South Australian Grants Commission. He was forced to resign from the Grants Commission because of a conflict arising from the formation of a new council. My questions to the Minister are: first, has the Minister made a submission to the Grants Commission? Secondly, will the Minister make public the submission prepared by the Department of Local Government and, if not, why not?

Thirdly, is the Minister aware of the conflict of interest that will arise because her departmental head will sit on the South Australian Grants Commission and judge the submission made by that same department together with other matters relating to the bushfire liability? Fourthly, what arrangements have been made to avoid a conflict so that the Director of the Department of Local Government can undertake all her duties? Fifthly, what special arrangements have been made so that as departmental head the Director of Local Government can perform all her duties relating to all local government matters, including the Stirling council?

The Hon. BARBARA WIESE: There will be no conflict of interest for the Director of the Department of Local Government, because the Director has taken no part in the discussions that I have had with officers of my department about the Stirling bushfires issue. We have been very careful to avoid the Director's involvement in the discussions and negotiations that are necessary in order to resolve this problem. The Director anticipated a potential conflict of interest and, as I understand it, she had discussions with the Chairman and the other member of the Grants Commission about her position. She has made it perfectly clear to the other members of the commission that she is not taking any part in discussions within the department on this question and, therefore, she believes that she would not be placed in a position where there could be a conflict of interest. I understand that the other members of the commission believe that to be so and do not anticipate any problem in that respect.

As to the Grants Commission's position as a body, I have already indicated, and I repeat, that I recognise that the commission is an independent organisation and that it will make its own judgment on any submissions that are put to it on this or any other matter. The Treasurer and I intend to make a joint submission to the Grants Commission about the Stirling bushfires issue. The commission may receive other submissions from people in local government and other areas of the community. It will weigh up all views on the matter quite independent of any organisation that may wish to make representations to it.

The Government will not ask the commission to vary its normal distribution method. However, the Government will ask the commission to employ exactly the same criteria to this proposal that it would to any other proposal that it would receive from other councils when it decides allocations for individual councils.

I want to explain what I mean by that statement. Part of the role of the Grants Commission is to assess disability factors that individual councils may have in providing a similar service at a similar cost to other councils across the State and, indeed, across Australia. That is the purpose of the Grants Commission in this State and other parts of Australia. The purpose of funding provided by the Federal Government is to provide some method of equalisation across the country so that councils have the opportunity of providing a similar service at a similar cost.

At this time there is no council in South Australia which has a greater need than Stirling council and no council in this State that would have a greater disability factor to be taken into consideration than that council. That is the basis of the submission the Government would want to make to the Grants Commission on this question. Just as the Grants Commission has from time to time taken into consideration the disability factors that have applied to councils on the West Coast when their capacity to provide a service has been diminished by various local factors, I suggest the commission should take into consideration the Stirling council's circumstances at this time. There can be no question that the commission is independent and that the Director of Local Government, who is a member of that commission, will act in an independent capacity.

JUDICIAL ADMINISTRATION (AUXILIARY APPOINTMENTS AND POWERS) BILL

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Appointment of judicial auxiliaries.'

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

Page 1, lines 32 and 33, page 2, lines 1 to 6—Leave out subclauses (2) and (3) and insert new subclauses as follow:

(2) A person cannot be appointed to act in a judicial office under this section unless—

(a) that person holds a judicial office of a coordinate or higher level of seniority;

or

(b) that person has previously held the relevant judicial office, or a judicial office of a coordinate or higher level of seniority, on a permanent basis.

(3) A person may be appointed to act in a judicial office on an auxiliary basis even though that person is over the age of retirement prescribed for the relevant office.

This is the crunch clause which deals with the appointment of judicial auxiliaries. When I spoke during the second reading stage I raised a question as to how this scheme would operate and come to grips with the problem of significant delays in the courts. I indicated that it was more of an *ad hoc* or stopgap provision than something likely to address the substantive question of delay. I indicated that I had some concern about setting up this so-called pool of judicial auxiliaries, some of whom may be legal practitioners, judges, and magistrates, or judges and magistrates who

requested to act in different judicial offices no higher than their own ranking.

During the second reading I asked for the Chief Justice's views on this matter, because when I was Attorney-General he had significant concerns about a proposal to appoint some acting judges from the active bar and profession. He was strongly of the view that that should not occur. I suggest that the same sort of problem is likely to happen with this Bill.

It is interesting to note that in the Minister's reply she said that the Chief Justice's objections to acting judicial appointments have not changed since the honourable member was Attorney-General, but then went on to say that the objections have less force in relation to retired judges than acting appointees, and that he supports the general thrust of the Bill while expressing the hope that auxiliary appointments will be confined to covering temporary absences of permanent judges.

I find that difficult to interpret. It seems to me that he still objects to current active practitioners taking acting appointments. He does not have any problem with retired judges. I am not sure that he supports the general thrust of the Bill in respect of both retired judges and magistrates taking acting appointments, or currently active legal practitioners taking acting appointments, or both. I suggest that, if his attitude has not changed since I was Attorney-General, he actually has objections to acting appointments from the profession but no objection to retiring appointments being made.

After I had spoken during the second reading stage, the Law Society wrote to me staying that it is opposed to the appointment of practitioners to fill this pool of auxiliaries. The letter states:

> The independence of the judiciary, and the public confidence in the impartiality of the judiciary, is critical to community acceptance of the law. Judges must not only be impartial, but also be seen to be impartial.
>
> The appointment of judicial auxiliaries from the profession might be seen as a trial period before permanent appointment. Both in relation to members of the profession, and to former judges, appointment for 12 months with a further period of 12 months 'option' might also be seen as a trial period. In either case members of the public, particularly unsuccessful litigants, might perceive the auxiliary judge as having made a decision influenced by the prospect of permanent promotion or extension of term.
>
> Another reason for objection to judicial auxiliaries from the profession is the possible perception that a former judicial auxiliary may have an advantage by reason of his knowledge of his former judicial associates, or his former status, in the subsequent conduct of litigation.
>
> Although the society shares the concern about the present delays in the courts, it is opposed to those clauses [clauses 3 and 4]. It suggests the appointment of judicial auxiliaries should be only of former judicial officers, and only for a non-reversible defined term.

The Law Society President, Mr Mansfield QC, expresses similar concerns to those expressed to me six years ago by the Chief Justice. They are the concerns that I have about this proposition because it is likely to be perceived as a compromising appointment and not effectively addressing the issue of long-term delays in the courts.

My amendment is to remove the reference to practitioners being eligible for appointment and to limit the appointment to a person who holds judicial office at a coordinate or higher level of seniority, or a retired judicial officer. It seems to me that that is a better way of dealing with this stop-gap measure to fill some short-term needs within the courts, rather than dealing with the question of long-term delays.

The Hon. BARBARA WIESE: The Government opposes this amendment, which seeks to confine the pool of available people to formal judicial officers only and which places unacceptable limitations on the people available to be judicial auxilliaries. With this amendment, the honourable member would exclude from the pool of available people well qualified or semi-retired practitioners who may wish to do some work. I remind the honourable member that such people are now appointed as acting judicial officers from time to time. It was common practice for practitioners to be appointed as commissioners to go on circuit. However, that has not been the practice in recent years.

This Bill will merely allow a pool of people to be available to be called on when needed without the necessity of appointing them as acting judicial officers, with all the associated paperwork, and the need to reappoint them should they have matters incomplete at the time their acting appointment expires. It must also be remembered that no-one can be appointed by the Governor without the concurrence of the Chief Justice. In the Government's view the honourable member is taking a very narrow view of the matter. He is attempting to emasculate a measure that is designed to bring order and efficiency into the provision of extra judicial assistance when required. Once again, I advise that the Chief Justice has indicated his general support for the thrust of this Bill.

The Hon. I. GILFILLAN: The Australian Democrats oppose this amendment and support the Government. I watched the Hon. Trevor Griffin smarting under what I thought was unnecessary denigration of his intention with such words as 'emasculation' and so on. Those terms are inappropriate in describing what I believe is a genuine attempt to make sure the judiciary is held in high regard and works efficiently.

However, notwithstanding that, I am sure someone else was the scriptwriter of the speech and I urge the honourable member not to take it too deeply to heart. The Australian Democrats do not see the justification for opposing the Government's initiative. It is not an area in which we have particular first-hand experience and we are guided by the advice of others. In the light of that, it is our intention to oppose the amendment and support the Government.

The Hon. K.T. GRIFFIN: I am disappointed in the Hon. Mr Gilfillan's reaction. I do have concern about the way in which this Bill will be administered. It will not, as the Minister says, provide a rational initiatve for the implementation of efficiencies in the courts. That is an absolute nonsense. Of course, there are provisions which allow acting appointments, but they are made on a one-off basis. Under this Bill a group of people will be appointed who will hold auxilliary, or acting, office, and they will form a pool.

Those officers may be appointed for 12 months. For a couple of weeks or months they may be sitting in a particular court and then they will go back to practice. A month or so later they will go back into court. I do not see anything less desirable than that in the administration of justice. In effect, those officers are on call, but there is nothing to prevent them from carrying on their practice during the period in which they are not required to be sitting on the bench. That is the undesirable aspect of this proposition and it is the basis of the criticism by the Chief Justice in relation even to acting appointments.

I know that the Chief Justice has to approve this process. That may be the reason why he is prepared to go along with it. However, I must say that, just because he has control of it, does not change the principle. I would have thought that, regardless of whether or not the Chief Justice is involved in the appointment, the question of principle remains the same. I believe that it has the potential to compromise the system of justice rather than to assist in its administration. Notwithstanding the Hon. Mr Gilfillan's indication of opposition to my amendment, if my amend-

ment is not passed on the voices, I intend to call for a division.

The Committee divided on the amendment:

Ayes (9)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, R.I. Lucas, R.J. Ritson, and J.F. Stefani.

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

Pair—Aye—The Hon. M.B. Cameron. No—The Hon. C.J. Sumner.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 4 passed.

Clause 5—'Power of judicial officer to act in coordinate and less senior offices.'

The Hon. BARBARA WIESE: I move:

Page 2, lines 25 and 26—Leave out 'with the consent of the court in which that judicial office exists'.

In speaking to this amendment, I will also deal with my next amendments relating to the insertion of the new subsection (4). These amendments are intended to overcome a problem which was perceived by the Senior Judge, when he looked at the Bill. He wrote to the Attorney-General about this, and said:

> It did seem to me that there might be some conflict between clause 5 of the draft Bill and section 22 of the Magistrates Act. At the present time judges of the District Court not infrequently exercise the powers conferred by section 22 of the Magistrates Act to sit as a magistrate and so deal at the one time with all of the offences with which a person is charged. At the present time, the judge needs no other authority before taking that course. Clause 5 of the Bill requires the judicial head of a court to consent before one of the members of his court exercises an inferior jurisdiction.

As His Honour hints, this power is a valuable adjunct to the exercise of a judge's ordinary judicial office. Nor is this power confined to District Court judges. Moreover, Supreme Court judges can exercise the powers of a District Court judge. Section 22 of the Magistrates Act 1983 provides:

> Any of the following persons, namely—
> *(a)* a judge of the Supreme Court;
> *(b)* a master of the Supreme Court; or
> *(c)* a District Court judge,
> may exercise the jurisdiction, powers or functions of a magistrate.

Similarly, section 51a of the Local and District Criminal Courts Act 1926 provides:

> A judge of the Supreme Court may exercise the jurisdiction and powers of a District Court judge.

The amendments will allow clause 5 (1) to embrace section 22 of the Magistrates Act and section 51a of the Local and District Criminal Courts Act and will make it clear that it is the movement of a judicial officer between courts of coordinate or lesser level that will require the consent of the judicial head of the court in which the judicial officer ordinarily presides.

The Hon. K.T. GRIFFIN: As the amendment tidies up the provision, I raise no objection to it.

Amendment carried.

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

Page 2, lines 29 and 30—Leave out subclause (2).

This is another important issue because clause 5 (2) excludes the Industrial Court from the operation of this Bill. The basis on which that was claimed to be appropriate was that the Industrial Court was a specialist jurisdiction. I have never heard so much nonsense in all my life! There is nothing specialised about the Industrial Court; it is just that it deals with industrial matters. Members on the other side might regard the Industrial Court as a special court. I could suggest that the Children's Court or the Appeals Tribunal is a specialised jurisdiction just as much as the Industrial Court. Each deals with one area of the law and one area of human relations. The community might well regard part of the problem with the Industrial Court being the fact that the court has not had enough experience in other areas of the law on a day-to-day basis.

That is not a criticism that I make about the Industrial Court in general, but I concede that it is a resonable criticism that some people have made to me about the operation of that court. There would be considerable advantage to members of the Industrial Court and to the administration of justice in that court if the members of the court were able to participate in this scheme covered by the Bill. Similarly, the judges and magistrates in the other jurisdictions would benefit from it and might be able to assist the backlog of cases in some areas of the work of the Industrial Court, particularly in workers compensation matters, where the delay is even worse in many instances than that which is presently occurring in the Local Court. I see that there is some advantage in this occurring.

It is still subject, I remind honourable members, to the concurrence of the Chief Justice. The Chief Justice ought to be the person with the overriding responsibility for the justice administration system, even though the Industrial Court is currently serviced by the Department of Labour. It is quite inappropriate to exclude the Industrial Court on the basis of proper consultation, which must occur if this Bill is to work, between the President of the Industial Court and the Chief Justice. The opportunity for some cross fertilisation of views and cross referencing of assistance would be appropriate. My amendment is to leave out subclause (2), which presently excludes the Industrial Court from the operation of this Bill.

The Hon. BARBARA WIESE: The Government opposes the amendment. It would allow a District Court judge to exercise all the jurisdiction and powers of the Industrial Court. I have already indicated that there is no objection to District Court judges sitting in workers compensation cases and other legal matters. However, once the judge is assigned to the Industrial Court, there is no way under the Industrial Conciliation and Arbitration Act that the judge's function can be so confined.

Further, the Industrial Conciliation and Arbitration Act specifically provides, in section 9 (2) *(b)*, that a District Court judge shall not be appointed as a Deputy President on an acting basis, except on the recommendation of the Chief Justice of the Supreme Court with the concurrence of the Senior District Court Judge. The amendment proposed by the Hon. Mr Griffin, while not in direct conflict with this provision, is certainly contrary to the spirit of the provision, and for that reason we oppose the amendment.

The Hon. I. GILFILLAN: That is exactly what I was going to say—it has been said for me. The Democrats oppose the amendment.

The Committee divided on the amendment:

Ayes (9)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, R.I. Lucas, R.J. Ritson, and J.F. Stefani.

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

Pair—Aye—The Hon. M.B. Cameron. No—The Hon. C.J. Sumner.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. BARBARA WIESE: I move:

Page 2, lines 31 and 32—leave out 'has, while doing so,' and substitute 'may adopt'.

This amendment has arisen from a comment made by the Chief Justice. Judicial officers may also call themselves by either title applicable, that is, their ordinary title or the title of the lower court in which they are acting.

Amendment carried.

The Hon. BARBARA WIESE: I move:

Page 2, after line 32—Insert new subsection as follows:

(4) A judicial officer who has been appointed to hold or act in a judicial office in a particular court must obtain the consent of the judicial head of that court before undertaking judicial work in another court (but such a consent is not required where the occasion to exercise the jurisdiction and powers of some other court arises incidentally in some matter before the court to which the judicial officer was appointed).

Amendment carried; clause as amended passed.

Schedule 1.

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

Page 32—leave out the proposed amendment to section 8 of the Supreme Court Act 1935.

The three schedules provide for the period of service outside the State to be taken into consideration in determining the eligibility of a legal practitioner who is entitled to practise in South Australia actually being able to be appointed as an acting judicial officer. Again, the Law Society is concerned about this. I expressed my concern about it because, although the person must be a legal practitioner entitled to practise in South Australia, there is no guarantee that that person would have had to have had any recent experience of practice in South Australia.

The provision in the Bill would allow the appointment of judicial officers who have had no practical experience in South Australia to take up acting appointments. That may be the extreme position, but nevertheless it is a possibility, and I believe that is undesirable. I think that, whoever sits on the bench, whether as acting Supreme Court judge, acting District Court judge, or acting magistrate, the citizens have a right to expect that that person will have had some experience of South Australian law and practice and have some empathy for South Australians.

I am told that at present when barristers come from interstate to appear on a one-off basis in our courts, their lack of local knowledge is, on occasions, prejudicial to a particular case and certainly does not enhance that case. So, my amendment is to delete the reference to service outside the State and to require only service in South Australia to be taken into consideration in respect of the qualification for appointment to those acting judicial offices.

The Hon. BARBARA WIESE: The Government also opposes this amendment. In doing so, I point out that people with no practical experience can be appointed as judicial officers now. All that is required to be eligible for appointment to judicial office is to be a legal practitioner for a required period ranging from five years in the case of magistrates to 10 years in the case of Supreme Court judges.

'Legal practitioner' is defined in section 5 of the Legal Practitioners Act as 'a person duly admitted and enrolled as a barrister and solicitor of the Supreme Court'. So long as a person keeps his or her practising certificate, no matter that he or she never practises law, that person is eligible for judicial appointment.

Having said all that, that is not to say that any appointments as judicial auxiliaries of practitioners who have no experience in this State would be made willy-nilly. Just as with every judicial appointment, the qualifications of a person will be carefully scrutinised before any such appointment is made. The honourable member, in moving this amendment, is saying that a person who has served on the highest court in the land, the High Court, will not be eligible to serve on any court in this State. It should be remembered that not just any overseas or interstate experience can be taken into account in determining the eligibility of a person for appointment as a judicial auxiliary. It is a condition precedent that a person be a practitioner of the Supreme Court; that is, the Supreme Court has decided that the person has the qualifications to practise law in this State.

The Hon. K.T. GRIFFIN: That might have been the case 50 years ago; I know all that. But, the fact is that the person may not have practised in South Australia since the date of admission but may have practised in Uganda or wherever. I just have some very real concerns about what the Minister is putting in response to this amendment. I think there are some good reasons for limiting the experience to practise in South Australia.

The Hon. I. GILFILLAN: I believe that the Hon. Mr Griffin is needlessly concerned. It is almost as if he has a flush of dramatic fantasy as to the deleterious effects of someone practising interstate. We are one country.

The Hon. K.T. Griffin: We are talking about overseas.

The Hon. I. GILFILLAN: But, as far as the essence of this debate is concerned, your argument concerns someone from interstate. I have confidence in the choosing authority's being trusted to determine the previous experience of the proponent. I feel that the amendment is unnecessary.

Amendment negatived.

The CHAIRPERSON: I point out that new section 12 in schedule 1 is a money clause and is in erased type. Standing Order 298 provides that no question shall be put in Committee upon any such clause. So, the message transmitting the Bill to the House of Assembly is required to indicate that this clause is deemed necessary to the Bill.

Schedule passed.

Schedules 2 and 3 and title passed.

Bill read a third time and passed.

TRUSTEE COMPANIES BILL

In Committee.

Clauses 1 to 9 passed.

Clause 10—'Fee for administering perpetual trust.'

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

Page 4, lines 6 and 7—Leave out subclause (2) and insert subclause as follows:

(2) The administration fee—

(a) must not exceed one-twelfth of one per cent of the value of the trust as at the first business day of the month;

and

(b) may be charged only against income received by the company on account of the trust.

The Minister did give an answer to a number of the matters which I raised during the second reading, one of which was the matter of a fee for administering a perpetual trust. During the course of the second reading debate the Minister stated that trustee companies administer perpetual trusts and are not able to charge a fee except in relation to income, and that this legislation will enable the trustee company in such a position to charge an administration fee of not more than one-twelfth of 1 per cent of the value of the trust as at the first business day of the month. I express some concern about this, because it does amount to a variation, if only in minor respects, to the terms of the perpetual trusts.

I understand that any new trust that is established provides for some administration fee, so they are not affected. With this Bill we seek to impose this additional administration fee that was never envisaged during the course of the establishment of these perpetual trusts. I have had a

discussion with Mr Brenton Wood, who is the President of the Trustee Companies Association and have expressed my concern about this legislation, in the sense that it is not clear that the one-twelfth of 1 per cent per month comes out of income only.

He said to me that it is intended that such additional charge would come out of income and that, if there was insufficient income, then the charge would not be made. It was not intended to deplete the capital. He was not concerned about my proposition that the Bill expressly provide that the administration fee may be charged only against income received by the company on account of the trust. I think that that is reasonable. It makes it clear that it is the income which bears the cost and that the capital cannot be depleted.

It is clear from the Minister's reply during the second reading debate that there are some trusts where a significant amount of income is not received by the perpetual trusts and, in those circumstances, I do not believe that it is proper for the capital to be depleted in the event of inadequacy of income. I believe that my amendment is reasonable and that it clarifies what I understand to be the intention of trustee companies.

The Hon. BARBARA WIESE: Did the trustee people agree with the honourable member's amendment? The provision in the Bill was agreed to by the trustee companies. Although I can see some merit in the honourable member's amendment, unless the trustee companies agree to the change I would be rather reluctant to support his amendment.

The Hon. K.T. GRIFFIN: I received the amendment only a few minutes ago, so no-one else has seen it. In fact, I had not seen it until that time.

The Hon. I. Gilfillan: Where did the amendment come from?

The Hon. K.T. GRIFFIN: I got it drafted.

The Hon. I. Gilfillan: What do you mean when you say that you had not seen it?

The Hon. K.T. GRIFFIN: I had not seen the draft.

The Hon. I. Gilfillan: You knew what the intention was, surely.

The Hon. K.T. GRIFFIN: Of course I did. If everybody listened, they would know that is what I said. I talked to Mr Brenton Wood from the Trustee Companies Association about the intention of the amendment to limit the charge of one-twelfth of 1 per cent per month of the value of the trust to the income from the trust. He indicated that there would be no difficulty with that, because it accorded with the spirit of what they intended, anyway. The Trustee Companies Association has not seen the draft and I saw it only a few minutes ago. If there is some reservation about the amendment, it could be passed and then it will go back to the House of Assembly. In the meantime, the Minister's officers could contact the Trustee Companies Association and the matter could be resolved by the end of this week. I would be reluctant to see it leave the Council if there was still some hesitation about it because, once it passes here without amendment, that is the end of it. I suggest an appropriate way to deal with it would be to maintain a slight reservation, if that is the view of the Minister, and to pass the amendment. If there is some difficulty, it could come back.

The Hon. I. GILFILLAN: The Government may equivocate on the issue, but the Democrats find it to be an attractive amendment and we are firm and resolute that we will support it.

The Hon. BARBARA WIESE: I can see some merit in this amendment, but we also must keep some faith with the people with whom we have consulted about drafting the legislation. I take the point made by the honourable member that he has consulted with the representative of the Trustee Companies Association and that he could see no problem with the concept that was described to him. For that reason, I am prepared to agree to the amendment. In the meantime, if there is a problem with it, we will raise the matter when it goes to the House of Assembly. On the strength of what the Hon. Mr Griffin said, I doubt whether there will be a need to raise this matter a second time.

Amendment carried; clause as amended passed.

Clauses 11 to 31 passed.

Schedule 1.

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

Page 11—Leave out clause 2.

The schedule provides for certain companies to be recognised as trustee companies for the purposes of the Bill and those companies are quite clearly identified. There are two additional trustees—National Mutual Trustees Limited and Perpetual Trustees Australia Limited. Those companies have not previously been able to carry on business as trustee companies in South Australia but, by virtue of their inclusion in the schedule, they will now be able to do so. I have no difficulty with that. They are reputable national trustee companies and I know that they applied for recognition quite some time ago.

My difficulty with the schedule is that the Governor may, by regulation, vary the list contained in clause 1. That suggests that a straight regulation providing that XYZ Trustee Limited is approved would be sufficient to allow that company to carry on business as a trustee in South Australia.

There is no reference anywhere to the criteria for approval. A regulation means that the company is enabled to carry on business and, although there are disallowance provisions in relation to regulations, I suggest that it would be quite improper to exercise those provisions when a company has been given approval by regulation to carry on business in South Australia as a trustee and subsequently disallowed. I think it would be quite inappropriate in relation to business confidence and, in particular, for the conduct of that company's business.

The better course of action is for an amendment to be proposed by Act of Parliament to add a name to the list rather than limiting it to a regulation. There would be much more control over the event by Parliament, and we have to recognise that trustees are in a peculiar position with respect to the community. They are entrusted with large sums of trust money, and with the administration of deceased estates and other trusts. They are in a position where they must have the confidence not only of their clients but also the beneficiaries of trusts, however constituted. It is for that reason that their stability, credit rating, and standards must be of a high level. Giving them the authority to operate in South Australia by an amending Act would be a much more appropriate mechanism than by a regulation which is then an executive decision because, by the very fact that they are able to conduct business in South Australia, it would be difficult to disallow that regulation. My amendment does nothing to the substance of the Bill; I suggest that it deals appropriately with the future with respect to any new trustee companies that may subsequently want to carry on business in South Australia.

The Hon. BARBARA WIESE: The Government opposes the amendment. The Attorney-General seeks to develop guidelines that would be applied when a trustee company's name is proposed to be added to the list. As it now stands, the schedule has the support of the Trustee Companies Association. The Government has looked at the situation in two other States (Western Australia and Victoria) where

trustee company legislation has recently been modernised. In one case the Governor has been given power to add to the schedule by regulation and in the other case the Attorney-General is able to add to the list by notice published in the *Government Gazette*. I remind honourable members that to use the method prescribed in this schedule still allows members of Parliament to have a say in the matter, because members are able to disallow any regulation that comes before the Parliament. For those reasons the Government opposes the amendment.

The Hon. I. GILFILLAN: The Democrats support the amendment. It is a minor extra burden for the Government to introduce an amending Bill, and I believe that Parliament should deal with as many matters as possible that are significant and within its responsibility in the formal way of legislation, and I have no hesitancy in supporting the amendment.

The Hon. K.T. GRIFFIN: I have also raised this matter with Mr Wood of the Trustee Companies Association who said that there would be no problem with it. I suppose that is understandable in the sense that it is making it a little more difficult for trustee companies to establish an office here, but they have a reputation to maintain and I agree that some caution is appropriate. I appreciate the indication by the Hon. Mr Gilfillan that he intends to support the amendment.

Amendment carried; schedule as amended passed.

Schedule 2 and title passed.

Bill read a third time and passed.

JUSTICES ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 10 November. Page 1433.)

The Hon. K.T. GRIFFIN: The Opposition has some reservations about this Bill. I will endeavour to outline them during the course of this debate, but I should say from the outset that I think a lot of information ought to have been included in the second reading speech, such as outstanding amounts on warrants and the number of outstanding warrants, that would have made the task of considering this Bill much easier. I will be asking the Minister for information about those matters before the Opposition is prepared to see this Bill in its present or amended form passed through the Legislative Council.

This Bill might appear to be relatively innocuous, but I think it raises some fairly important issues. The Justices Act provides that after 15 years a warrant that has not been executed may be cancelled on the application of the Attorney-General to the Governor. This Bill seeks to reduce that period of 15 years, in some instances to seven years. Warrants of apprehension will remain at 15 years, but other warrants, presumably for non-payment of fines, may be cancelled at the expiration of seven years, although it ought to be recognised that if there is a reason to maintain a warrant that will be done. I am not sure how effective that will be, because it requires checks to be made before determining whether or not a warrant should be cancelled.

According to the Minister's second reading speech, the Court Services Department has undertaken a study that indicates that, with the passing of each year, the probability of collecting an amount outstanding on a warrant diminishes until, by the time a warrant is seven years old, there is a collection rate of 1 per cent to 2 per cent. In the 1985-86 financial year, $21 348 was collected on warrants issued during the period 1 July 1972 to 30 June 1980.

Presumably, that is the latter eight years of the 15 year period. If one does some quick calculations, if that $21 348 is 1 per cent then about $2.13 million is outstanding. If it is 2 per cent, it is just over $1 million. However, there is no information, other than that quick calculation, to indicate what amounts are outstanding with respect to old warrants.

The Government argues that the amounts collected do not justify the costs involved to the Police Department and the Court Services Department in the storage of records, the culling of records, attempting execution and maintaining accounting systems. Therefore, the Bill is essentially a cost saving proposal. We are not told—and I would like the Minister to give some attention to this—the present series of guidelines for the determination as to whether or not a warrant should be cancelled. What are the criteria applied in making that decision? There is an indication of the cost to the Police Department and the Court Services Department in the storage of records. Can the Minister indicate how many warrants have been outstanding for more than seven years, and what is the system of storage of those records?

There is a suggestion that the amounts collected do not justify the costs associated with the culling of records. What sort of culling occurs? Surely that cost is nevertheless incurred if there is a conscious assessment made as to whether or not a warrant should be cancelled or kept alive. Is a check made before a decision is taken to apply to the Governor for cancellation of warrants after 15 years? What sort of procedures are adopted to periodically check that an offender, or someone detected by the police, does not have outstanding warrants? Is it a manual or computerised system? What sort of proposition is there for the inclusion of outstanding warrants in the Justice Information System? Is it proposed that the Justice Information System will carry all outstanding warrants and, therefore, make easier the task of checking names of persons coming to the attention of the police against the names of those against whom outstanding warrants have been issued and are being held?

What sort of attempts are made to execute old warrants? It is suggested that the amounts collected are not sufficient to cover the costs of attempting execution. The second reading explanation which accompanied the Bill is grossly inadequate in respect of that sort of information. Is there any record of the amount outstanding on warrants in respect of each of the years, say, from eight years to 15 years ago? What sort of amounts are we talking about in respect of individual warrants? Are they amounts of $10, $20 or $30? Are they much larger amounts? Whilst I do not expect an indication of the amount outstanding on every warrant, is there any information available that would identify the categories of amounts and the number of warrants, say, $1 to $100, $100 to $200, and so on?

It is for that reason that I am concerned about rushing this Bill through. I have some concern anyway about reducing the time so dramatically from 15 years to seven years, because that would tend to suggest that if you can stay out of South Australia for seven years that there is a good prospect that any warrant against you will be written off. Maybe that is no different from staying out of South Australia for 15 years, but certainly the longer period would suggest that it would be less likely that you can avoid the obligation for payments of warrants.

I am also concerned that, by reducing the period to seven years, it certainly gives the impression that the State is not serious about following up fines that have been imposed by the courts in the administration of justice. I would be happy to support a proposition for 10 years, subject to appropriate

information being made available along the lines that I have indicated. I certainly would not support seven years. I think that that is much too short. I am even uneasy about 10 years, but at least that is better than seven. I can see that, in some instances, particularly with very small amounts perhaps under $100, it may not be worth maintaining a record system and periodically checking outstanding warrants over 10 years or more. Therefore, I have mixed feelings about the Bill. During the Committee stage I intend to move an amendment. However, if the amendment is not carried, whilst the Opposition will support the second reading to enable the Bill to be fully debated at the Committee stage, we will oppose the third reading of the Bill.

The Hon. BARBARA WIESE (Minister of Tourism): I thank the honourable member for his contribution. It will not be possible to provide all of information that the honourable member has requested. The Government would have to go back to the courts and also to the police to extract that information. I am advised that it would be likely to be information that would take a very long time to put together in order to answer all the questions that the honourable member has asked. I do not believe that we would be in a position to do that. However, I do have some information and I hope it will give the honourable member an idea of the extent of the problem that we are talking about.

The information that has been given to the Government by the Police Department and the Court Services Department indicates that, after a warrant has been outstanding for over 12 months, the chances of recovery diminish rapidly. However, there is still the requirement to keep records for 15 years.

Of the warrants collected, 70 per cent are collected in the first three months of life with another 20 per cent in the first 12 months of life. The vast majority of the remaining 10 per cent are collected in the first three years of life. With the passing of each year the probability of collecting an outstanding amount diminishes until, by the time the warrant is seven years old, there is a collection rate of only 2 per cent. Using the collection rate of 2 per cent applicable to warrants over seven years, an amount of $21 000 is all that could reasonably be expected to be received each year from the eight to 15 year period.

Total outstanding warrants are valued in excess of $5 million, of which $1 million is in the eight to 15 years old category. About $2.5 million of the $4 million in the up to seven years old category will be collected in the next 12 months; however, only about $0.02 million in the eight to 15 years old group is likely to be collected. Therefore, the point that has been made very strongly by both the Court Services Department and the police is that once you get into the eight to 15 years bracket the chance of collecting money diminishes very significantly. The costs associated with attempting to collect the money certainly outweigh the costs involved in maintaining the records. For this reason it has been requested that we no longer keep records beyond seven years.

I hope that that information will help to convince the Hon. Mr Griffin that the seven year cut-off point is an appropriate place to draw the line. If there are any outstanding questions, they are issues that would take a very long time for us to research and to provide information about, but the statistics I have just given paint the picture very clearly.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Substitution of section 187aa.'

The Hon. K.T. GRIFFIN: Before I move any amendments I would like to pursue a couple of issues. I certainly do not want large amounts of time, effort and money to be expended to gain statistical detail about warrants eight to 15 years old. I appreciate the information that the Minister gave during her reply, but she did not really address the issues of guidelines for cancellation; what checks are made before determining that a warrant ought to be cancelled; and any reference to the JIS system. Is the Minister able to address these issues and give some indication as to what procedures are followed in determining what warrants are to be recommended for cancellation?

The Hon. BARBARA WIESE: We are not aware of the criteria used by the Police Department in deciding on 15 years as the cut-off point. However, I do understand that warrants are now being recorded on JIS. This means that in future it will be much easier to follow the progress of warrants and trace the success rate than is currently the case. I cannot provide much more information than that.

The Hon. K.T. GRIFFIN: I do not make any personal criticism of the Minister, but I am disappointed that we cannot have information about the procedures which apply. One of the statements made in the second reading explanation was that the reason for bringing it back from 15 years to seven years—which is more than halving it—was of the costs involved in storing records, culling records (the culling is particularly relevant), the attempting of execution and maintaining accounting systems. The culling of records suggests that they go through it periodically and make recommendations for cancellation. I would have presumed that some guidelines apply in making a decision on whether this one is cancelled and that one will not be cancelled. I would have thought that there would be some procedures for the police, in particular, to maintain a follow-up on outstanding warrants.

For example, if the police pick up someone for car stealing, do they check it on the computer record or check manually whether there are outstanding warrants? That sort of background would be helpful in determining the additional cost of accepting my amendment which is, instead of reducing it from 15 to seven years, reducing it from 15 to 10 years, which is more conservative and sensible than the dramatic reduction proposed.

The Hon. BARBARA WIESE: I cannot add any more than I have already said on the question of criteria employed by the police, but I restate the point I made earlier that the collection rate for warrants over seven years old is only 2 per cent. The police and the Court Services Department therefore believe that the costs involved in maintaining the records and attempting to collect outstanding moneys is not warranted. At the moment the situation is such that the records must be perused manually. That is also a very time-consuming and difficult task which adds to the costs. Since the return is so low past the seven-year period, the police and the Court Services Department do not feel that it is justified to keep these warrants alive beyond that point.

The Hon. K.T. GRIFFIN: Does the Minister know how many warrants are presently outstanding for the eight to 15-year period?

The Hon. BARBARA WIESE: To take it back 16 years to 1 July 1972, up to 30 June 1980, 12 331 warrants were still outstanding as at February this year.

The Hon. K.T. GRIFFIN: That is not a particularly large number. Does the Minister know whether outstanding warrants will be placed on the Justice Information System in future?

The Hon. BARBARA WIESE: It is intended that outstanding warrants will be placed on JIS, but big savings will be involved if the outstanding warrants beyond seven years do not have to be recorded.

The Hon. K.T. GRIFFIN: I can appreciate that, if the 12 000 warrants do not have to go on, a cost saving will be achieved. In looking ahead to the future, presumably from whenever the JIS gets up and running, there will be no additional cost as it is all on the magnetic tape or disc, as the data would have been entered up when the warrant was issued. In the short term a cost is involved in putting the 12 000 warrants onto the JIS, but in future I do not see that as a continuing problem.

Whilst cost is relevant in maintaining the records, it ought not to be the one and only factor that we consider. If we did everything on a cost efficiency basis in terms of the administration of justice, a lot of criminals and offenders would get away and thumb their noses at the law with impunity. We have to try to get some balance into this and say that in some instances cost saving is not everything. What would worry me about writing off eight years of warrants, which would be legally permissible under this clause, is that we are allowing people to escape their legal and moral obligations to the community. We also have the other problem where, if 12 000 warrants are oustanding, will a decision be made on them individually as to whether they should be cancelled and which ones should continue, or will it be 12 000 warrants *carte blanche* off the record? The principal issue is whether we should be allowing costs to dictate the decision to write off a person's debt to society legally imposed by the courts. There are some difficulties in that, and that is why I would prefer, when I come to it, a minimum of 10 years rather than knocking it right back to seven.

The Hon. BARBARA WIESE: It would be the intention that to cancel warrants the matter would have to go to the Governor so that a list of warrants proposed to be cancelled could be presented to him for his decision.

The Hon. K.T. Griffin interjecting:

The Hon. BARBARA WIESE: I am not in a position to say what the police intend to do in that respect. I am not sure whether they will have guidelines for preparing the list of warrants to be cancelled, so I cannot add to that information.

The Hon. K.T. GRIFFIN: Madam Chair, I am unhappy about it. I think we ought to have a lot more information. I could make the point in passing that if we were sitting next week and the week after, and the session was not being cut short, we would have an opportunity to get the information. I would have preferred that.

Members interjecting:

The Hon. K.T. GRIFFIN: We could still do that. In the light of what the Minister has been unable to indicate to me, I would be much happier with a 10-year period than with a seven year period, and accordingly I move:

Page 1, line 21—Leave out 'seven' and insert 'ten'.

In moving this amendment I might say that I am not altogether comfortable with something as little as 10 years but it is certainly better than seven years, as provided in the Bill.

The Hon. I. GILFILLAN: I oppose the amendment. The Democrats are not persuaded that any useful purpose can be served by making a mandatory time limit of 10 years. We will support the Bill as it is, unamended.

The Hon. BARBARA WIESE: I oppose the amendment. I repeat that only 2 per cent of warrants over seven years are collected. If one looked at the list of warrants which I previously mentioned from 1972 to 1980, one sees that 12 331 were worth $1 million, representing an average warrant value of $86.94. I believe that the present discussion should be put in that context.

The Hon. K.T. GRIFFIN: I understand that the numbers are against me, but I intend to divide if I lose on the voices. Is the Minister prepared to obtain answers for me on those matters which do not involve a large amount of statistical data collection; the criteria which are currently applied; the criteria which will be applied; whether it is intended to make an assessment individually whether or not warrants should be recommended for cancellation, and matters in those sorts of areas which I do not think will be particularly time consuming or costly to reply to? If the Minister could provide me with that information by letter I would be happy with that.

The Hon. BARBARA WIESE: I will try to provide as much of the information for the Hon. Mr Griffin as is reasonably available.

The Committee divided on the amendment:

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

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

Pair—Aye—The Hon. R.J. Ritson. No—The Hon. C.J. Sumner.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Title passed.

Bill reported with an amendment.

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

That this Bill be now read a third time.

The Hon. K.T. GRIFFIN: I indicated during the course of the Committee debate that if my amendment was not successful I would oppose the third reading of this Bill. I think it is quite inappropriate to reduce the period of warrants for outstanding fines from 15 years back to seven years, I know the amount may be $1 million or 12 000 warrants, but there are lots of unanswered questions which the Minister has indicated she will endeavour to respond to by letter. My concern about the Bill is that it gives the impression that, for the sake of saving some costs, the State is prepared to write off an established liability imposed by way of penalty by the courts of this State. I have an aversion to that impression being created and to those who might be able effectively to dodge their legal liabilities and responsibilities for a period of only seven years being able then to walk away effectively free of the imposition by the court. In those circumstances I indicate that we will oppose the third reading.

The Council divided on the third reading:

Ayes (9)—The Hons G.L. Bruce, T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, G. Weatherill, and Barbara Wiese (teller).

Noes (7)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, and R.I. Lucas.

Pairs—Ayes—The Hons J.R. Cornwall and C.J. Sumner. Noes—The Hons M.B. Cameron and R.J. Ritson.

Majority of 2 for the Ayes.

Third reading thus carried.

Bill passed.

TECHNOLOGY PARK ADELAIDE ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 15 November. Page 1511.)

The Hon. L.H. DAVIS: The Opposition supports this Bill, which seeks to do three things. First, it seeks to change the name of Technology Park Adelaide Corporation to Technology Development Corporation. The purpose of this name change is to take into account the proposed development in the southern regions of Adelaide of a further Technology Park (Southern Science Park) with an emphasis on biotechnology. That development is adjacent to the Flinders University and is situated at Bedford Park in an area known as the Sturt Triangle.

Two models could be proposed for such further development. One is to establish a separate authority through a new Act of Parliament to acknowledge the creation of the Southern Science Park. The other model is to use the existing legislation, which is now styled the 'Technology Park Adelaide Act', and incorporate both Technology Parks under the umbrella of the existing Act. I accept that the second model is the better way to go. It is more economical and a more coherent approach to this very important area of development in South Australia.

Although many people may be a little concerned about the proposed name 'Technology Development Corporation', on balance it does not fuss me over greatly. It is perhaps a little splendiferous. It perhaps connotes a grand private sector corporation involved in technology development rather than an umbrella organisation responsible for the development of the Technology Park at The Levels and the proposed Southern Science Park in the Sturt Triangle.

The second proposal in this Bill is that the membership of the corporation be increased from eight to nine. The third amendment will pluralise the references to Technology Park, given that there is now more than one park. It will provide for flexibility in the future if a further science or technology park is proposed for another region of South Australia.

This Bill provides an opportunity to examine the developments that have taken place at Technology Park Adelaide since this proposal was mooted by the Tonkin Liberal Government in the early 1980s. I think that the Tonkin Liberal Government can reflect with pride on the establishment of Technology Park Adelaide at The Levels because, when it was established in 1983, it had its critics but, within a few years, it has established itself as the premier Technology Park in Australia. The estimated number of employees at Technology Park as at June 1989 will be about 750. Today Technology Park represents the most concentrated group of high tech companies in Australia. Not only is the emphasis on innovation with the companies that have established there but also the Innovation Centre encourages innovation and inventions.

Various companies have achieved success not only in the domestic market but also in the international market. I refer to the South Australian Centre for Remote Sensing, which won a $6 million contract against United States, Canadian and Swedish competition. I refer also to Vision Systems, which is a publicly listed company on the Australian Stock Exchange.

That has had several successes. It has supplied security equipment to the Dallas-Fort Worth International Airport, one of the largest airports in the world. That success was achieved against competition from all-comers. It has also concluded several contracts with the United States Air Force for the supply of video security equipment.

We have the example of Austek Microsystems, a company which designs and makes super chips (VLSI), which has also had a measure of success. Those companies were established at a local level and some of them have gone beyond the seeding stage to the production stage. For example, Vision Systems is building a production facility at Technology Park.

Together with groups such as British Aerospace Australia and MacDonald Dettwiler of Canada, both international companies which have achieved recognition on the international technology stage, a strong base in technology has been achieved in a short time at Technology Park, Adelaide. That success has been reflected in the recent appointment of Barry Orr (the Executive Director of Technology Park Adelaide) to the position of Vice-President of the International Association of Science Parks.

The development at Flinders University is exciting. For some time, the Sturt Triangle has been a vexed problem. Flinders University, along with the Sturt college, the Highways Department, the Marion council and the South Australian Government, has been involved in discussions about what can be done with this prime area of land known as the Sturt Triangle, which is situated immediately opposite the Flinders University and Flinders Medical Centre site.

The siting of the second Technology Park (the Southern Science Park) in this area is highly appropriate, particularly because the Flinders University and the Flinders Medical Centre have an enviable reputation in research. For several years the Flinders University has had the highest research grants *per capita* of any university in Australia. It has been a remarkable record which sadly has achieved very little coverage in the local media.

The only other comment that I would like to make relates to the proposed increase in the number of board members from eight to nine. The corporation will consist of one member to be appointed on the nomination of the Commonwealth Minister, one member to be appointed on the nomination of the Flinders University of South Australia, and seven members to be appointed on the nomination of the Minister. That will achieve balance. The composition of the present board has worked well to date.

The membership of the corporation includes representatives from the South Australian Institute of Technology; the University of Adelaide; the Salisbury council; the Department of State Development; the Department of Science and Technology; David Pank, who has longstanding interests in several technology related companies, such as Solar Holdings and Vision Systems; and Ian Kowalik, the Executive Director of Samic, which is a venture capital company. So, there is no doubt that this board will adequately represent the interests of both the existing Technology Park at The Levels and the proposed Southern Science Park.

I believe that this is an exciting development in South Australia. I am pleased to say that the development of Technology Park Adelaide and the proposed Southern Science Park has occurred with a large measure of bipartisan support and clearly, in such a sensitive area, that bipartisan support is of great assistance to those people engaged in activities which are undoubtedly very difficult and often very trying financially.

There is no question that Technology Park Adelaide is at the leading edge of technology. It is a high risk area; there have been and will be failures. One should accept that when we are talking about innovation in technology—a new development—there will always be a measure of failure, but that should not detract from the worth of the project nor the essential benefits that flow from high technology, particularly in areas such as defence where defence related

technological development in South Australia will undoubtedly bring many benefits in the form of contracts and additional employment. I support the second reading.

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

BOATING ACT AMENDMENT BILL

In Committee.

Clauses 1 to 9 passed.

New clause 9a—'Insertion of heading.'

The Hon. PETER DUNN: I move:

Page 7—After clause 9 insert new clause as follows:

9a. The following heading is inserted in the principal Act after the heading to Part IV;

DIVISION I—BOATING OFFENCES.

I am introducing this amendment purely because it was indicated in another place that there was a need for provisions relating to people consuming alcohol and driving high speed boats. There having been several fatal accidents on the Murray River it was implied that alcohol had been consumed prior to the accident and, therefore, had some effect. For that reason, the Hon. Peter Arnold, in another place, indicated that there should be an amendment to include in the Act regulations that are incorporated in the Motor Vehicles Act dealing with the consumption of alcohol.

The Minister replied that he would rather see the complete part of the Road Traffic Act put into this Act. That is virtually what is achieved by this and subsequent amendments. Although the amendments are very long the Minister has agreed that they should be included. I believe that the public know these provisions well as they are exactly the same as those in the Road Traffic Act that address the question of drunk driving.

The Hon. BARBARA WIESE: The Government supports the amendment. As the honourable member has indicated, people feel more comfortable having those sections of the Road Traffic Act incorporated in this Bill. For that reason, if it makes people happier with the Bill as a whole, the Government is happy to support the inclusion of the new clause and therefore supports the amendment.

New clause inserted.

Clauses 10 and 11 passed.

Clause 12—'Motor boats must be registered.'

The Hon. PETER DUNN: I move:

Page 9, lines 34 to 38—Leave out subsection (7).

This amendment is consequential on my first amendment.

The Hon. BARBARA WIESE: The Government supports the amendment.

Amendment carried; clause as amended passed.

The Hon. BARBARA WIESE: Mr Acting Chairman, I will ask now that the Committee report progress and have leave to sit again. I do so because the Hon. Mr Elliott raised some issues during his second reading contribution to which I have not yet had the opportunity of replying. I do not have the material with me at the moment and I would like to include that information before this Bill passes.

Progress reported; Committee to sit again.

STATUTES AMENDMENT (LOCAL GOVERNMENT) BILL

Adjourned debate on second reading.

(Continued from 16 November. Page 1561.)

The Hon. DIANA LAIDLAW: The Liberal Party supports this Bill to amend the Local Government Act 1934 and the Local Government Act Amendment Act 1988. This rather unwieldy piece of legislation contains 52 clauses covering 24 pages. I readily acknowledge that to read it in association with the Local Government Act has not been a simple task, yet I understand that we are being required to debate this Bill and pass it through all its stages today and this evening, and that the same process is to be undertaken tomorrow in the other place, because the Government has decided that it is not keen to sit for the next two weeks.

The Bill incorporates provisions which it is desirable that councils and electors be able to make use of in the next periodic election in May 1989. It is considered that it will be too late for the provisions in this Bill to be implemented if this debate is adjourned until next February. I repeat my protest about being required to push this Bill through all its stages today and through another place tomorrow because of the Government's arbitrary decision not to sit for the next two weeks.

The Bill addresses a range of essentially technical but very important matters arising from two reports ordered by the Government in the past year. The first report, from the Local Government Advisory Commission, related to the changes which it deemed desirable, based on its experience with provisions adopted in 1984, the year in which the first of the five major Bills amending the Local Government Act passed Parliament. The second report was from a working party appointed by the Minister in December 1987 to assess electoral provisions following the conduct of the local government elections earlier in that year. This inquiry was also required to focus on measures to maximise voter turnout and the adequacy of provisions for policing illegal practices and for challenging an election.

I will address this Bill at various stages, but I will not address the clauses in sequence. First, I address clauses 10 to 13 inclusive, which relate to the Local Government Advisory Commission. They provide for, first, the disqualification of members of the commission in relation to the hearing of matters in which they might have a conflict of interest.

Secondly, the commission will prepare an annual report to the Minister. Thirdly, they provide for an application for referral of a provision to the commission to amend boundaries to be made by 20 per cent of the electors for an area or portion of an area directly affected by the proposal and, fourthly, for the commission to recommend an alternative proposition for boundary changes or for the proposition before the commission not to be carried into effect. The Liberal Party supports all these moves, although we continue to have doubts about the commission's role in relation to boundary changes.

Clauses 50 and 51 seek to amend the Local Government Act Amendment Act 1988, which deals almost exclusively with financial provisions and which was debated in this place late last year and early this year before being assented to on 21 April. It is yet to be proclaimed.

A number of provisions are contained in these two clauses. The first that I will address relates to the suppression of the name and address of a person whose address has been suppressed under the Electoral Act 1985 in order to protect his or her safety. A similar provision is also incorporated in amendments to clause 24, amending section 92 (2) *(a)* of the principal Act. I recall raising this issue with the Attorney-General back in 1985 after I received representations from a women's shelter highlighting their concern that the law at the time required that all enrolled electors have their address noted on the roll. This placed women in jeopardy if they were seeking anonymity, safety and security from a

violent partner. I was delighted when, some months later, the Attorney-General moved to amend the Electoral Act accordingly. Similar amendments were made to the Local Government Act, but we did not seek to extend them as far as the assessment book and the changes proposed here would seek to overcome that oversight. We are pleased to support the amendment.

Clause 51 also proposes amendments to new section 200 relating to the powers of the Minister to include other councils as constituent councils of controlling authorities. This subject was debated at great length in March this year, particularly during the Committee stage of the Bill. The Government's Bill initially proposed heavy handed and authoritarian provisions in relation to a Minister's forcing a reluctant council to be part of a controlling authority. That provision in the Bill was vehemently rejected by the Local Government Association, and at the time the Mitcham, Stirling and Burnside councils raised strong objections.

The Minister in the Committee stage moved extensive amendments to proposed section 200. Those amendments made the provisions more palatable and were supported by the Democrats at the time but not by the Liberal Party. We continued to object to what we saw and termed as obnoxious provisions. It is in the light of this background that I am interested to note that the Government, particularly the Minister, has now seen fit to amend section 200 again to provide an additional check and balance to the powers of the Minister in relation to the controlling authorities, in particular in relation to requiring a council to join a controlling authority.

In relation to this move, the Liberal Party will seek to amend the provision further, based on representations which we have received from Burnside council and which, in turn, are based on two legal opinions that I will read in a moment. Last March, and again at this time, section 200 was and has been considered in the light of a proposed controlling authority to address the mitigation of flood water damage within the Unley council area. For some years efforts have been made to find a solution to the problems of storm water damage from higher councils such as Burnside, Mitcham and Stirling with regard to water damage problems experienced from time to time within Unley. Since section 200 was passed by this Parliament and assented to in April, considerable correspondence has passed between the cities of Burnside and Mitcham and the District Council of Stirling with both the Minister of Local Government and representatives of her department.

I note that on 26 October the Minister wrote to the Chief Executive Officers of those three councils proposing the amendment, now included in the Bill, which seeks to include the word 'reasonable' in relation to the Minister's consideration of councils being incorporated into the controlling authority. All those councils, I understand, have raised objections with the Minister about the proposed amendment. I have, however, received copies of correspondence only from the city of Burnside at this stage incorporating legal advice from two sources, namely, Johnsons (Barristers and Solicitors) and Norman, Waterhouse and Mutton. I will briefly refer to both. First, the letter from Johnsons regarding proposed section 200 of the Local Government Act states:

It is our opinion that the proposed amendments will provide protection for councils against being unreasonably included as a constituent council in a section 200 joint system. However, the extent of the protection is that a court would only set aside a decision of the Minister if it could be shown that proper consideration was not given to representations made under subsection (4) or if it could be shown that the Minister could not have properly concluded that it was reasonable that a council be included as a constituent council in a section 200 joint system.

As an example it would most probably be reasonable for a council to be included as a constituent council in a drainage scheme provided that the council fell within the catchment area of the drainage system. Therefore, councils would not necessarily have to derive any benefit from a section 200 joint system in order to be included as a constituent council. The question of what is reasonable will vary from case to case and it will be more difficult for councils to challenge a decision of the Minister without guidelines being in existence which the Minister has to comply with in making her decision.

The vagueness of the concept of what is reasonable will also lead to a greater difficulty in councils assessing their prospects of successfully challenging a decision of the Minister. In other words, the outcome of a judicial review of the Minister's decision will be more difficult to predict than if a code were in existence pursuant to which the Minister was to make a decision.

We agree that the proposed amendment incorporates into the Minister's decision making in relation to the proposed section 200 of the Local Government Act the concept of natural justice and that the Minister's decision would be subject to judicial review.

We note that the Minister states in her letter of 26 October 1988 that the power to bind a dissenting council to a scheme is not a new power and is not presently subject to automatic appeal rights. The Minister is correct in her assertions. However, the power to bind a dissenting council to a scheme from which the council will derive no benefit is a new power.

In relation to the amendments proposed to section 200 of the Local Government Act 1934 we point out that without the amendments the Minister has an obligation pursuant to the rules of natural justice to hear councils before making decisions affecting them. Also the Minister has an obligation to make decisions that are reasonable in all the circumstances. Therefore, the proposed amendments simply write into the Act obligations which the Minister already has in relation to her decision making.

It is our opinion that councils would not be adequately protected unless a code was written into the Act providing specific criteria such as that the proposed scheme should benefit the council to be included in it.

Yours faithfully,

J.M. Kilby

The second opinion from which I quote in part is from Mr E.M. Byrt of Norman Waterhouse and Mutton. The opinion reads:

We refer to your request for opinion on the proposed amendments to section 200 of the Local Government Act, which is to come into effect in 1989. In answer to your specific inquiries, we advise as follows:

1. The amendments do not give sufficient protection to a council which wants to avoid being involved as a constituent council of a controlling authority. The amendments certainly are an improvement on the current proposal but they do not give to an objecting council the right to avoid compulsory membership of a controlling authority nor do the amendments give a right of appeal against the Minister's decision.

That letter from Norman Waterhouse and Mutton goes on to address other issues beyond section 30 so I will not refer to those. I simply make that point, and I will be moving an amendment accordingly to leave out paragraph *(c)* as proposed by the Minister and to insert a new paragraph as follows:

That it is fair and reasonable to each of the constituent councils (including the council proposed to be included) for the council to be included as a constituent council.

So, the major difference in the amendment which I shall move on behalf of the Liberal Party and which I hope will have the support of the Australian Democrats is the addition of the word 'fair' to that of simply 'reasonable', as the Minister has proposed. I also note in addition to the matters that I have already highlighted that, before the most recent amendment in March, the Minister could not join councils unless satisfied both that the proposed scheme was fair and reasonable and that the works undertaken would substantially benefit the areas of the councils concerned. Those remarks address the first of the amendments proposed by the Liberal Party. We also seek to move an amendment in

relation to advance voting because the majority of provisions in this Bill relate to the conduct of elections.

The amendments in this Bill, as I noted earlier, are essentially based on the report of a working party established by the Minister following the 1987 elections that particularly focused on maximising voter turnout. I believe it is relevant to note that, at the last election, voter turnout averaged 17.16 per cent. This was a fall from 19.03 per cent in 1985 but it remains a substantial increase over the figure in 1983 of a mere 14.80 per cent. I appreciate the difficulty in looking at these average figures because they depend on so many factors: whether there are mayoral elections at the time; whether there are controversial issues; the number of positions that are being challenged; and whether there are sitting members or simply new members with lower profiles. So, there is some hazard in comparing figures from one election to the next in attempting to establish an accurate reflection of voter turnout.

However, there is no doubt that despite the efforts of campaigns such as the 'Have a say' campaign at the last election, voter turnout remains disappointingly low. I do note, however, that it is essentially no different from the voter turnout of any voluntary voting system either in other States of Australia or overseas and the voluntary voting system is one which the Liberal Party strongly supports and would like to see at State and Federal elections.

On that note, I must say that I am pleased to see that the Government is pursuing a wide range of initiatives other than advancing the cause of compulsory voting to seek to raise voter turnout at local government elections across the State. There certainly was some fear, following remarks by the Hon. Mr Keneally, once Minister of Local Government, that compulsory voting would be introduced prior to the next local government elections. The Minister may be able to confirm the Government's position on this subject, but I understand that the decision will be held over until after the next local government elections and possibly the State Government elections as well. However, I make the point that the Liberal Party is strongly opposed to the introduction of compulsory voting although we support initiatives—and are heartened to see the Government pursuing initiatives—to maximise voter turnout.

Both the report and the Bill recommend a wide variety of measures to maximise voter turnout including the elimination of wards for municipal councils and a maximum of four councillors per ward; the extension of facilities for advance voting, including the period during which an advance vote can be procured; and provision for greater use of mobile polling places and booths. The Local Government Act provides for district councils to forgo wards, and it is proposed that this power now be extended to municipal councils, because it is believed that the removal of these arbitrary restrictions would give councils more options in redesigning their elected structure.

The Minister indicated in her second reading explanation that this recommendation was supported by both the Local Government Advisory Commission and the working party. In regard to this question of wards, at page 88 of its report the working party noted that the Electoral Reform Society had reminded the working party that a feature of the proportional representation system is that the larger the number of candidates to be elected the more representative will be the election results. With this in mind the society suggested that the Act should be amended to give all councils the option of having no wards and to allow for a greater number than four councillors to be elected per ward. The working party agrees with that proposition and the Liberal Party also supports the change.

An extensive number of clauses deals with provisions relating to advance voting. The Bill essentially reflects the working party's recommendation that advance voting should be an automatic right and should not depend on the inability of a person to attend a polling booth on polling day. Section 106 (1) of the Local Government Act provides that, where a person desires to vote at an election or poll but believes that he will for any reason be unable to attend at a polling place, he may apply to the returning officer for advance voting papers. Although the Bill does not change that provision a great deal, it deletes reference to 'unable to attend at a polling place' and allows a voter to apply for advance voting papers without providing the returning officer with any reason why they would not be able to attend. They could apply for the voting papers simply if they did not wish to attend.

The Liberal Party has some reservations about this provision. We recognise that provisions in this Act and the State Electoral Act vary. The State Electoral Act provides a whole range of reasons that a person can indicate to the returning officer for not attending a polling place. There is no such defined provision in the Local Government Act. We recognise the difference between the two Acts. We have some misgivings about this further liberalisation and drawing apart of the Local Government Act and the State electoral provisions. We support this provision, but we will monitor its application following the next council election.

In relation to advance voting procedures, the Liberal Party will move an amendment to section 116. This section relates to calling an adjournment of an election or poll and the need to call a new poll. We believe that at such a time all votes cast in the election should be recast for the new poll and that the returning officer not simply take into account those that were recorded on election or polling day. The amendment requires that advance votes plus those recorded on polling day be recast at the new time of polling. We believe that this is a fair provision which tidies up a matter that was merely overlooked when the legislation was last before Parliament.

In relation to mobile polling booths, I note that the provisions in the Bill are not as extensive as those that apply in the State Electoral Act. It is proposed that the use of mobile polling booths be confined to the day of polling rather than as applies in the State Electoral Act where they can be used for several days in advance of polling. The Liberal Party has always had some reservations about that provision in the State Electoral Act. However, in relation to this Bill, we do not have the same concerns about mobile polling booths.

There will also be advantages in this Bill for many country councils which have smaller populations but very large areas, because they will be able to operate a polling booth for only a certain part of the day. It becomes very expensive for councils in far flung areas of the State to conform with the current provision of keeping these polling booths open from 8 a.m. until 6 p.m. Metropolitan councils are more fortunate in that regard because, when polling booths are designated, they have a much bigger catchment area.

We will follow with great interest the initiatives that have been introduced in this Bill. We support the second reading of this Bill which is designed to maximise voter turnout. I hope that during the Committee stage our amendments will be passed and that the Bill can proceed with ease in order to help local councils and electors in general during the next periodic election which is to be held in May 1989.

[*Sitting suspended from 6 to 7.45 p.m.*]

The Hon. J.C. IRWIN: I rise briefly to support the second

reading of the Bill and to support the comments made by my colleague the Hon. Diana Laidlaw. She went into far more detail on a number of points than I will attempt to do. I would like to say from the beginning that it never ceases to amaze me that State Governments worry so much about voter turnout or voter participation in local government elections.

An enormous amount of rate money and energy is expended in trying to whip up enthusiasm amongst local electors. However, if people have nothing to grouch about they will not feel compelled to vote—it is as simple as that. It does not matter what is done; people will not be interested in voting in local government elections. They are not interested unless they have something to say. If a council and councillors are doing a good job, then no matter what a State Government does with legislative provisions or what local government itself does will get people to stand for council. In this regard, a problem exists in relation not only to voter turnout but also to getting people to stand for council positions. As I say, if councils are doing a good job, and so on, people will not turn out in droves to support those people who are standing for election.

There is no doubt, however, that if a contentious matter in a council area arises if a council or a councillor is not doing a good job the electors will react accordingly and turn out in their droves. As to the forthcoming local government elections, I point out to the Minister and the Council that in at least two council areas, namely, Willunga and Stirling, we will see a dramatic increase in elector turnout. It is not hard to understand why that will be. There are issues in those two council areas that are burning issues amongst the local population and the local community, and whatever side people are on—

The Hon. T.G. Roberts: Burning would be right!

The Hon. J.C. IRWIN: It certainly relates to burning in one of them; the other relates to a marina, which is the opposite, down at Willunga. So, we can use those two councils as an example, although I guess there would be many others around the State, in either the metropolitan area or country areas in relation to which there will be a contentious issue at the next election which will result in a high voter turnout, just as there will be in relation to people wanting to support one councillor or another or one mayoral candidate or another trying to win that position in local government.

So, although I am happy to support this Bill, which deals with aspects of voting and election procedures, I do so with some apprehension. The matters of extending facilities for advanced voting, the greater use of mobile polling places and increasing the period during which advanced voting means can be procured may all be designed to increase the participation of electors in local government elections, but I have the uneasy feeling that all those new provisions, plus others that we passed recently, give the opportunity for unfair and in some cases improper practices to grow.

I understand that the provisions for mobile polling booths apply only to the prescribed voting day. With advertisements in advance telling electors where and at what time mobile booths will be available may mean a cost saving to council—I say 'may' because I am not convinced that there will be a cost saving. A number of aspects must be taken into consideration in relation to mobile booths. It might be the case that we can do away with some of the polling clerks, but we still have the mobility aspect to consider, with a vehicle or a number of vehicles being moved around a country district, or a large metropolitan area, which will involve costs. So, I am not convinced that this will be a great cost saving exercise, and nor am I convinced about the matter of voter convenience. However, if properly advertised, and if it is in conjunction with a static polling place—in other words, that in every country area at least one polling booth will be open for the prescribed time at one place—there should be little excuse for people not voting, if that is the intention of this provision.

I do not think that the new provisions individually or collectively will make a great difference to the diligent and enthusiastic elector who exercises his or her responsibility quite seriously every time there is a council election. These people are, of course, the backbone of local government throughout the State—far more so than those voters who are coerced, in one way or another, with a range of sort of voting aids designed to make people turn out and vote.

I now want to comment briefly on the provisions included in the Bill that will allow municipal councils to forgo wards. They repeal the limitation permitting only four councillors per ward and the new provisions for councils prevented from proceeding to an election because of boundary inquiries close to the normal election period. My parochial interest lies with repealing the limitation permitting only four councillors per ward. As the Minister would know, my old council has not had a great deal of success recently because it has experienced considerable problems in drawing up its ward arrangements for the district. They had that old limitation of only four councillors per ward. The provisions of this Bill may now allow the problem to be sorted out, and I have no doubt that there would be councils all around South Australia which would have had or which are having difficulty in drawing up new ward boundaries—which, of course, they are now bidden to do under the Act.

Many variations to the problems are encountered in the different districts, with varying traditions and population centres, and differing physical properties. Quite obviously, I am speaking more from experience in a rural council district than in relation to a council in the metropolitan area. However, I guess what I say in relation to a rural area is similar to what is encountered in city and metropolitan council areas.

The Opposition is in favour of local government having more flexibility to make its own arrangements, within reason, of course, right across the board in relation to local government activities. That was made quite clear in the last major debate we had here on legislation to deal with the rewriting of the Local Government Act and, of course, it is inherent in the provisions of the legislation now before us tonight.

The provision to abolish the limiting of the numbers does allow for this freedom, and I am happy to support that. However, I am not convinced that 'no ward' district councils would be for the best. I am not convinced that even multiple ward representation, especially if it is 'all in, all out' each local government election, is the best thing either. However, with the passage of this legislation, local government will be able to find its own best combination that suits any particular given area. Councils are not prevented, as I understand it, from operating in or out of various ward combinations and ward representation combinations, so I am confident, even if every district council has a different combination, that they will all find what is best for their own local needs. That might sometimes be a tortuous exercise, but if it is found to be quite easy to achieve that combination, so much the better for local government.

Finally, paragraph *(c)* of clause 51 makes what the Minister describes in her second reading explanation amendments relating to the powers of the Minister to include other councils as constituent councils of controlling bodies. My colleague the Hon. Diana Laidlaw addressed this issue

at some length. Subsection (4) of new section 200 will now provide a consultative and appeal process for councils which may be required to be joined in a controlling body. I am happy that this amendment goes somewhere along the correct line in relation to consultation and, probably more importantly, appeal. Further, I urge the Council to support the amendment on this matter as proposed by the Opposition, which increases that process even further. I urge the Council also to support the other amendments to which the Hon. Ms Laidlaw has referred. I support the second reading of the Bill.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. DIANA LAIDLAW: This clause refers to the commencement of the provisions. The Opposition recognises that it is desirable that this Bill be in place for councils and for the benefit of electors for the next periodic election. Therefore, the Opposition is prepared to oblige the Minister in pressing through all stages of this Bill tonight.

The Hon. R.I. Lucas: Begrudgingly.

The Hon. DIANA LAIDLAW: Begrudgingly, as the Hon. Mr Lucas wisely says. We have a variety of concerns about provisions, some of which I alluded to in my second reading speech. The Hon. Mr Irwin also highlighted a variety of concerns in his contribution to the second reading debate.

I am tempted to ask a variety of questions on a number of the provisions. However, I accept that if we are to pass this Bill and debate other legislation tonight, and if the Council is to rise at the end of the week, it would be unwise and inconvenient of me to raise those concerns and so hold up the Parliament. It is not my intention to do that but simply to move the amendments that the Opposition has placed on file. However, I reinforce the fact that the approach that the Opposition has adopted, in order to oblige the Government in passing this legislation to ensure that it is in place for the benefit of councils, does not reflect a lack of interest in many of the provisions.

I have today very quickly read the report of the Local Government 1987 Election Review Working Party. That report outlines in some detail various recommendations which were subsequently supported by the Government and incorporated in this Bill. However, the report raises various concerns, and it certainly has reservations in many areas in respect of mobile and temporary polling places, absentee and advance voting. Under the heading 'spread voting'—a term with which I am not familiar—it has reservations whether the recommended provisions will be of practical benefit in maximising turnout for elections.

In this Bill, we are experimenting in a variety of areas in order to increase turnout of voters at elections. As I indicated in my second reading speech, that very fact would be one reason why the Liberal Party will monitor very closely the impact of these provisions at the next election. However, we are nevertheless keen to see these provisions in place for the next election. Therefore, we will support the Government's drive to get this Bill through both Houses of Parliament this week.

The Hon. BARBARA WIESE: I thank the honourable member for her comments and for the indication that she has given on behalf of the Liberal Party that it is prepared to cooperate in seeing the passage of this Bill take place through both Houses this week. However, it is not only the Government but also local government with whom both Parties are cooperating, because the local government community is also very keen that many of the measures contained in this Bill should be passed through the Parliament before the end of this year so that they can be in place for the next round of local government elections to be held in May next year.

Indeed, the provisions contained in this Bill have the agreement of the local government community generally. Therefore, it is a piece of legislation that, by and large, has been discussed at some length by the Election Review Working Party, which was established following the last council elections, the Local Government Advisory Commission, which has brought forward a number of suggested amendments to those clauses which govern its work and, of course, the Local Government Association, which had an opportunity to comment on the various provisions of the Bill. The Local Government Association and councils would like to see the passage of this legislation by the end of the year. I am very pleased that the Liberal Party is prepared to cooperate in ensuring that that occurs.

Clause passed.

Clauses 3 to 26 passed.

Clause 27—'Method of Voting at Elections.'

The Hon. R.I. LUCAS: Do the provisions contained in clause 27, which amends clause 100 of the principal Act, substantially differ from those of the existing Act?

The Hon. BARBARA WIESE: The proposed changes to this section are designed to clarify what was intended with the amendments which were made to the Act in 1986. The amendment made at that time was designed to provide for a series of numbers to be regarded as valid even though all the numbers on the ballot paper may not be correctly marked. This amendment makes it clear that subsection (3) does not operate to make a ballot paper valid under the proportional representation system, which does not contain correctly marked consecutive preferences for at least the number of candidates required to be elected. In summary, therefore, what we are doing is clarifying the intention of the original amendment.

Clause passed.

Clauses 28 and 29 passed.

Clause 30—'Issue of advance voting papers.'

The Hon. R.I. LUCAS: In the interests of expediting the passage of this Bill (somewhat grudgingly, but we will not enter this debate this evening) I did not speak in the second reading debate. I wish to address the provisions concerning advance voting and some other provisions—voting in remote areas and advance voting procedures, etc.—and place this on the record.

I have long held the view that the local government electoral system ought to be as consistent as possible with the State and Federal electoral systems. Previously in this Chamber we have debated long and hard the question of the electoral systems to be used with local government; debated long and hard and, I might add, with varying degrees of success. The view that I have put on those occasions and I put again in the Committee stage is that if we want to make formal as many votes as we can in all forms of voting, whether it be in Commonwealth, State or local government elections, it would be much better for voters in South Australia to be confronted with provisions as similar as possible in all three electoral systems.

In relation to advance voting, the circumstances or provisions that prevail under the Local Government Act are quite different from those that prevail under the State and Commonwealth electoral Acts. The State and Commonwealth Electoral Acts are substantially very similar in relation to their postal and advance voting procedures. Limitations are imposed upon groups of people who are eligible for and can therefore apply to lodge a postal or an advance vote. In general, that is a principle with which I

would agree. The current local government voting system and Act and the new Act will not in my view be substantially different in relation to the provisions for advance voting, but they will still be significantly different from the provisions in the State and Commonwealth electoral Acts.

In the interests of not prolonging debate in the dying days of this part of the session, I do not intend taking this matter any further. I certainly flag that I have some concerns in this area. As the Hon. Diana Laidlaw and others have said, we ought to monitor the provisions of the Local Government Act in this and other areas of the electoral system. Parliament ought to consider at some time in the future the advantages for voters of having similar guidelines in relation to advance and pre-poll or postal voting.

The provisions for advance voting under the existing Local Government Act are wide ranging, and allow voters, as do the provisions contained in this Bill, to lodge advance votes for any reason at any time up to three weeks prior to election day.

As a general principle, as I said earlier, I support the view that we ought to limit in some way the numbers of people who can lodge postal votes, because I believe that if an election is held on a particular day as many people as possible should vote on that day. We have all been around long enough in State politics to know that a lot of things can happen in three weeks.

The Hon. T.G. Roberts: Not in local government.

The Hon. R.I. LUCAS: I will not pursue that question in relation to local government in some other States. I am told that we have a much better and cleaner system here in South Australia. However, a lot of things can happen in the three weeks leading up to an election, be it State, Commonwealth or local and as a general principle I repeat that as many people as possible ought to be voting on election day. With the full amount of information about all the issues and all the candidates, they can then cast their vote.

Pre-poll voting or advance voting ought to be for those who, for specified genuine reasons cannot vote on election day. With the best intention in mind we have in the past opened up, and in this Act continue to open up, local government provisions to encourage as many people as possible to vote in the three weeks beforehand. As I said, it is not a principle with which I would generally agree and I place that on record during the Committee stages.

The Hon. BARBARA WIESE: I would like to make a couple of points about this. First, the provisions that are contained in clause 30 are, generally speaking, in line with those of the Electoral Act, the significant difference being that a provision is being made for people to have what might be termed as a automatic right to a pre-poll vote rather than having to qualify for a pre-poll vote in the way that people do for State and Federal elections by way of absence from the State on polling day, or whatever the criteria might be.

That is being done in acknowledgement of the fundamental difference that exists between the systems of local government, as opposed to State and Commonwealth Governments. The significant difference is that voting is not compulsory for local government as it is with the other two levels of Government. The objective that is being pursued here, with the inclusion of this clause, is to attempt to provide maximum opportunity for electors to voluntarily turn out to vote, and that is being done by extending the period during which electors may exercise their right to vote.

So, whilst I understand the points that are being made by the Hon. Mr Lucas about the need to standardise electoral procedures as much as possible for the various levels of government, it is also important to recognise the fundamental difference that exists here in the local government system. Perhaps the way to ensure standardisation is to introduce compulsory voting into local government as well, but I am sure that the Honourable Mr Lucas would not wish to pursue that course.

In the absence of pursuing that course, I think we must pursue the option of finding whatever means we can to improve the voluntary turnout because, as has been said on many occasions it is currently very poor in many areas of the State, and it is not healthy for local government, or any level of government in my view, that so few people should exercise a view on matters that are of such enormous concern to a local district and to the future of individuals. So, I simply wish to place on the record why these provisions are being included and what the fundamental differences are between this level of government and the other two levels of government to which I have referred.

Clause passed.

Clauses 31 and 32 passed.

Clause 33—'Repeal of Division VIII of Part VII and substitution of new sections.'

The Hon. DIANA LAIDLAW: I move:

Page 16—

Line 5—Leave out 'Subject to subsection (3), any' and insert 'Any'.

Lines 7 to 9—Leave out subsection (3).

This amendment relates to proposed new section 33, which refers to the adjournment of an election or a poll. The new section seeks to provide that, if for any reason it becomes impractical to proceed with the conduct of an election or a poll on a voting day, the returning officer may adjourn the election or poll for a period not exceeding 21 days. The section further provides that in such a case votes cast prior to the adjournment will be disregarded and the taking of votes recommenced, and that in such a case the returning officer may, if of the opinion that it is desirable to do so, retain for the purposes of the election or poll advanced voting papers received prior to the adjournment.

The Liberal Party would argue that as proposed in the Bill the Government would be providing advance votes with a special significance in any poll that was adjourned and recommenced. We believe very strongly that in a recommenced poll all votes should be recast, and that there should not be any distinction between advance votes and votes that would be cast on a polling day. We believe that there should be equity between those votes and that we should go right back to the beginning and all votes be recast. So, that is essentially the basis of the amendment which we are moving and which would leave out of subsection (2) the words 'subject to subsection (3), any' and leave out subsection (3). So subsection (2) would read 'any votes cast prior to the adjournment will be disregarded and the taking of votes recommenced', so that there would be no distinction between advance voting and other votes cast prior to the poll being recommenced.

The Hon. I. GILFILLAN: The Democrats support the amendment. It seems to be a reasonable safeguard that no indiscreet handling of votes or ill-informed votes are lodged and then handled after the result of an adjournment.

The Hon. BARBARA WIESE: The Government also supports this amendment. However, whilst I appreciate the reasons for this amendment and accept them, I think it should also be recognised that there may be occasions when an individual has cast a vote prior to an election due to an extended period of absence and, by having their vote made void following the adjournment of an election, may ultimately be denied a vote. So, some disadvantages may flow from an amendment of this kind as well. However, having

said that, I understand the points that are being made and acknowledge that, whichever way this provision is written, it is not likely to be perfect or cover the needs of all individual voters. I am prepared to agree to the amendment.

The Hon. J.C. IRWIN: What happens if there has not been a resolution of the problem after 21 days? Is there a roll on provision that can be employed for another 21 days or is there some mechanism that resolves the problem at the end of 21 days? Presumably the election is held whether or not the problem has been resolved.

The Hon. BARBARA WIESE: The election would fail if the problem had not been resolved within 21 days. We would have to begin again.

Amendment carried; clause as amended passed.

Clause 34 passed.

Clause 35—'Procedure to be followed at the close of voting at elections.'

The Hon. BARBARA WIESE: I move:

Page 17, after line 21—Insert new paragraph as follows:

(ba) by striking out from subparagraph (vi) of paragraph *(b)* of subsection (1) 'lock' and substituting 'seal';.

This amendment has resulted from an oversight in the original drafting and it brings the clause into line with other sections of this Bill. The amendment relates to the ballot box. Under the existing legislation, it is assumed that the ballot box is made of metal and has a lock. The Government does not wish to exclude the possibility of councils or returning officers using the new cardboard boxes that are commonly used at election time. For that reason, the word 'lock' is to be changed to 'seal' to apply to either form of ballot box and to provide flexibility and choice.

The Hon. DIANA LAIDLAW: The Liberal Party supports the amendment.

Amendment carried; clause as amended passed.

Clauses 36 to 50 passed.

Clause 51—'Repeal of Parts X to XV and substitution of new Parts.'

The Hon. DIANA LAIDLAW: I move:

Page 23, lines 34 to 36—Leave out paragraph *(c)* and insert new paragraph as follows:

(c) that it is fair and reasonable to each of the constituent councils (including the council proposed to be included) that the council be included as a constituent council.

A variety of councils have expressed concern about the provision in new section 200 which obliges councils, no matter their reluctance, to be involved in controlling authorities. During my second reading speech, I noted that there had been considerable correspondence between the Minister's office and three councils in particular since this measure was debated at some length in May. The Minister was prepared to include an amendment to this provision as a conciliatory gesture. The legal opinion received by three councils—Burnside, Stirling and Mitcham—was that the concession by the Minister to insert 'reasonable in all the circumstances of the case' elaborates on what she is obliged to do under the provision of the Act and would not improve the lot of councils in these circumstances.

The councils have sought that the amendment be expanded so that it is fair and reasonable to each of the constituent councils, not simply reasonable. That is seen as absolutely vital to preserve the interests of councils that may be obliged by the Minister to enter a controlling authority. I read two legal opinions into *Hansard.* During the dinner adjournment I received further correspondence on the subject, being a letter addressed to the Minister today signed by C. Russell for J.M. Hullick, Secretary-General of the Local Government Association. The letter reinforces and supports the amendment that the Liberal Party has moved, and it reads:

Dear Minister,

Further to previous discussions between the association and yourself regarding concerns held by member councils related to section 200 of the Local Government Act, I should like to clarify our position in the light of the proposed amendment by the Opposition. You are well aware of the concerns which have been raised, in particular, by the Burnside, Mitcham and Stirling councils.

It appears to the LGA that the amendment proposed by the Opposition is in accord with that proposed by the Burnside council. This is acceptable to the LGA and hence I would appreciate your support for it. Whilst it is recognised that regional and local interests may be in conflict in certain circumstances, it is important that a council involved has every opportunity to air its community's views. As the representative of local communities, councils should have the ability to expect fair and reasonable treatment of those communities.

The Liberal Party seeks fair and reasonable treatment, and I hope that the Minister will be prepared to accept this amendment as she was prepared to accept the earlier amendment that I moved.

The Hon. BARBARA WIESE: I am unable to support this amendment.

The Hon. Diana Laidlaw: You object to being fair?

The Hon. BARBARA WIESE: No. I would like to explain why. It is important to state the history of this part of the Act and the amendments that are included in this Bill to explain why this amendment is not appropriate. Under the Local Government Act the Minister already has power to require an individual council to become part of a controlling authority when it is deemed that there is good reason, in the interests of an area or region, that such a council be so involved. One of the objections that has been presented by councils in this matter was that they felt that the provisions of the Act had not provided sufficient protection or natural justice for councils that might have objected to their inclusion within a controlling authority.

During the debate in the House of Assembly on the second revision Bill an undertaking was given by my colleague the Minister of Transport, who was handling the Bill in that place, that in these circumstances the Government would consider improving the right of dissenting councils to be heard. I have since examined this matter, and the amendments included in this Bill are designed to give greater protection to councils which may feel that it is unreasonable for them to be included in a controlling authority. The Bill provides that a council must be given a reasonable opportunity to make written submissions to the Minister prior to the Minister's making a decision about the matter and that, if a council so requests, that council should have the right to meet with the Minister and personally discuss the issue prior to a decision being made. I think that that provides the capacity—

The Hon. Diana Laidlaw: For fair treatment?

The Hon. BARBARA WIESE: —for fair treatment of councils. Implicit in those provisions is the view that prior to a decision being made the Minister would be fair and reasonable in hearing the case put by individual councils. I do not differ with the arguments being put in that area. Obviously, a Minister must be fair and reasonable in assessing whether or not a council should be required to participate in a controlling authority, but that is not the point which should be highlighted in the amendment moved by the Hon. Ms Laidlaw. The point that must be tested is the latter part of that amendment which refers to each of the constituent councils. The amendment provides that it must be fair and reasonable to each of the constituent councils that the council be included as a constituent council. It may very well be that the council dissenting to such an arrangement believes that it is not fair and reasonable, or that no benefit is to be derived from its inclusion in a controlling authority.

I imagine that that is the position of the Burnside council in relation to its proposed involvement in a controlling authority which is designed to deal with the stormwater problem in the region of which it is a part. However, that is not to say that, in all fairness and reasonableness, in the interests of the region they should not be part of that controlling authority, because stormwater from its areas affects councils further downstream. My concern is that, if this is to be a test which can be challenged in the court, it would invalidate the purpose of this part of the legislation which provides that the Minister can insist that a council be part of a controlling authority when it is for the greater good of a region. For that reason I oppose this amendment, and I would want to have the opportunity, at the very least, to check the legal implications and interpretations that may be placed on it in a court of law. The amendment has been on file only since sometime during the afternoon, so I have not had an opportunity to do that. The preliminary advice that I have received on this matter is likely to be upheld after I have had the opportunity to receive considered opinions on the matter. For that reason, the Government will oppose this amendment.

The Hon. DIANA LAIDLAW: The Minister stated that, because the amendment has been on file only since early this afternoon, she has hardly had any time to consider it. It is the first opportunity that the Liberal Party has had to put this amendment on file. Notwithstanding that fact, ever since March the Burnside council and other councils that have lobbied on this subject have raised this very matter of fairness and reasonable treatment. If the Minister decided in the period since March to refuse all those repeated representations from councils seeking fair and reasonable treatment, it is somewhat astounding to hear her say that she has not had time to check legal opinion on the matter. I highlight that point and see it as being little excuse not to support this amendment.

During the Minister's explanation, I became rather lost, not for the lack of trying to understand what she endeavoured to say but, rather, because she seemed to suggest that her actions would at all times be fair and reasonable in coming to such a decision. She is not prepared to accept the words 'fair and reasonable' within the Act, but she is prepared to accept the word 'reasonable'. I cannot see why she is prepared to go only halfway but not the full extent. She said that she would apply herself in a 'fair and reasonable manner' when considering the interests of councils that she would force into such a controlling authority.

Her statements reinforce concerns that were expressed in the legal opinion which councils received and which I read into *Hansard* during the second reading debate. Unfortunately, I do not have that legal opinion in front of me, because it has been sent to *Hansard* for checking purposes. At that time one of the points I made about that legal opinion was that the Minister's concession in this Bill to insert the words that 'it is reasonable in all the circumstances' does not change the situation that is already provided in the Act. The Minister is virtually endeavouring to put the legal opinion in the Act as an actual sop to the council's concern, and it does not add anything of substance to the Bill. That is the reason why those councils wish the term 'fair and reasonable' to be included in the legislation.

I repeat: the Local Government Association considers that that would be a fair and reasonable inclusion in the legislation. The Local Government Association is not seeking to pit one council against another. It is looking at the overall benefit to councils. As I have said, the association wrote to the Minister this afternoon in a last ditch effort, hoping that the Minister would be fair and reasonable in this matter, and to put on the record and in this Bill the fact that she is prepared to do what she has indicated she will do in practice. I cannot see why in practice she is prepared to be fair and reasonable but not have that provision in the Bill.

The Hon. I. GILFILLAN: I have listened to the Minister's explanation. I think that perhaps the Minister is being misjudged in the Hon. Diana Laidlaw's analysis of what she had to say. I do not think the Minister objects to the word 'fair', although she can clarify that. However, the wording of the latter part of the provision does give me some cause for question, at least because if there was protracted legal argument due to one particular council using 'fair' as applied to itself and itself alone the intention of this amendment could be lost.

The Hon. Diana Laidlaw: I point out to the Hon. Mr Gilfillan that the words that we have at the end of our amendment are exactly the words that the Minister has in the Bill. All we have added to the provision in the Bill is the word 'fair'.

The Hon. I. GILFILLAN: Well, I will read both provisions into *Hansard*, and see how similar they are. The provision in the Bill reads:

> . . . that, after giving proper consideration to any representations made under subsection (4), it is reasonable in all the circumstances of the case that the council be included as a constituent council.

The amendment reads:

> . . . that it is fair and reasonable to each of the constituent councils (including the council proposed to be included) that the council be included as a constituent council.

There are certainly more variations in those two drafts than just the word 'fair'.

The Hon. Diana Laidlaw: But, in relation to taking exception to the words 'that the council be included as a constituent council', they are the exact words in the Bill.

The Hon. I. GILFILLAN: Ms Chair, I am sorry if I was distracted by what was an interjection saying that 'fair' was the only alteration of the wording, and I was making it plain to members that that is not true. I understood the Minister to be justifiably concerned that the implication of some of those other words may be more than is intended even by the mover of the amendment. It seems to me that no-one can argue against the word 'fair'. It is obviously part of what would be interpreted as a reasonable judgment of what council should be involved in.

If a Minister is making a reasonable judgment and that imposes a great penalty on one particular council, it would be a very long stretch of the imagination to include that, on my understanding of the word 'reasonable'. I see here an opportunity for the Minister to give an undertaking to seek, as expeditiously as possible, details of the legal ramifications of an amendment such as this, and an undertaking that she would be receptive to an amendment along the lines suggested during the next session of Parliament, if it appears that any such fuller wording would not complicate legally the implementation of the intention of the Act. Perhaps the Minister might like to comment on that before I proceed further with my remarks.

The Hon. BARBARA WIESE: I would be quite prepared to seek further legal advice on this matter to clarify the point which I have attempted to make and which I think the Hon. Mr Gilfillan has also identified as being a potential problem as regards the Hon. Ms Laidlaw's amendment. In giving that undertaking that I will look further at the matter with a view to introducing an appropriate amendment in a future Local Government Act Amendment Bill—

The Hon. Diana Laidlaw: The Minister said that all those months ago.

The Hon. BARBARA WIESE: Well, I have included some of the points that the councils were requesting in relation to providing greater rights of appeal in this area. If it is the case that the terms 'fair and reasonable' are the Hon. Ms Laidlaw's major consideration, I would be prepared at some future time to include the word 'fair' in paragraph *(c)* of subsection (5) of the Bill. Therefore, the last part of paragraph *(c)* would read:

. . . it is fair and reasonable in all the circumstances of the case that the council be included as a constituent council.

That may satisfy the concern that the honourable member has raised. However, I cannot accept the wording in the Hon. Ms Laidlaw's amendment. The words 'fair and reasonable' are not the key words in this provision. The problem with it concerns the test whether or not it is fair to an individual council—under her proposed wording. As has already been stated, it may not be judged to be in the interests of a particular council in terms of benefit that would flow from its involvement in a controlling authority.

It is not the benefit to an individual council that needs to be tested here; it is whether or not the establishment of a controlling authority is in the interests of the wider community. That is what must be protected in this legislation. The Parliament has already accepted that the Minister should have the right to require that a controlling authority be established in exceptional circumstances for particular purposes. To accept the Hon. Ms Laidlaw's wording, which places the test on the benefit to each individual council, would potentially negate the purpose of these provisions in the Local Government Act. In summary, I am prepared to give the undertaking that the Hon. Mr Gilfillan has requested, and I am also prepared to look at the inclusion of the word 'fair' in that part of the Bill to which this relates.

The Hon. DIANA LAIDLAW: I am wondering whether the Minister would be prepared to report progress so that I can seek some further advice. I make this request having regard to the fact that the Liberal Party has tried to accommodate the Minister in getting the Bill through quickly tonight. I would still seek to accommodate that request but I would like a few minutes to check on some matters with the shadow Minister of Local Government, on whose behalf I am presenting this case. I ask this in the interests of the Burnside, Mitcham and Stirling councils, and the Local Government Association which has supported their representations. I am not suggesting that further consideration of the Bill be put off until tomorrow but that progress be reported while I very quickly seek some advice on this matter.

The Hon. BARBARA WIESE: I am happy to cooperate with the Hon. Ms Laidlaw in giving her the opportunity to discuss this further with members in another place.

Progress reported; Committee to sit again.

AUSTRALIAN FORMULA ONE GRAND PRIX ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

ROSEWORTHY AGRICULTURAL COLLEGE ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

It seeks to amend the Roseworthy Agricultural College Act 1973 in a number of ways. Most of the amendments are relatively minor and could be described as being of a housekeeping nature reflecting changing usages and practices with the passage of time. The impetus for the change arises from the council of the college itself reviewing the Act and suggesting ways in which it might be updated.

Perhaps the most significant of the changes relates to superannuation. The Act presently provides (section 20 (6)) that college employees are employees for the purposes of the Superannuation Act. In other words it provides an entitlement to membership of the State superannuation scheme without giving the discretion to the college, after consultation with staff, to opt for some other arrangement. Recent developments in higher education have seen the establishment of a national scheme entitled (perhaps inappropriately but for historical reasons) the Superannuation Scheme for Australian Universities (SSAU). The Commonwealth, as the principal funding agent for higher education, is keen to see institutions adopt SSAU as the vehicle for making superannuation available to staff. It is proposed in this Bill to amend the college Act in such a way as to enable the college to move to SSAU if it so wishes, whilst at the same time preserving rights of access to the State scheme and protecting existing entitlements.

The Act also provides for the college to be able to be required to pay to the State part of its primary production and agricultural processing income. This provision is a legacy of earlier days in the college's history when it was under the control of the Minister of Agriculture as Commissioner for Agricultural Endowments. It is not an appropriate provision in the Act of a modern higher education institution, particularly at a time when such institutions are being encouraged to develop their entrepreneurial roles for the benefit of education and research programs. Furthermore the provision has not been used since the college was established as an autonomous institution. This Bill seeks to delete the provision.

Other parts of the Bill seek to:

- delete references to the now non-existent South Australian Board of Advanced Education, Australian Council on Awards in Advanced Education and Australian Commission on Advanced Education;
- update the definitions of academic and ancillary staff;
- clarify eligibility for membership of the council of the college;
- update references to the Department of Technical and Further Education;
- increase the maximum penalty for contravention of the by-laws.

Some might wonder why amendments to this Act are being proposed at this time given the present discussions taking place in relation to the organisation of higher education in the State. In that regard it must be recognised that any such sector-wide changes are not likely to be implemented before the end of 1990 and in the meantime the college has identified a number of areas relating to its present operations requiring attention in the Act. Of particular practical significance at the present time are the provisions dealing with superannuation and, given the need to change those, it is sensible to attend simultaneously to other matters.

It should be mentioned, however, that the college did seek to increase the size of the council. The Government does not support such changes at this time given the statements on sizes of governing bodies in the Commonwealth White Paper on higher education and the discussions taking

place in South Australia. This question would need to be addressed in a system-wide context. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides that the measure is to come into operation on a day to be fixed by proclamation.

Clause 3 amends the definition section, section 4, by replacing the current definitions of the academic staff and the ancillary staff of the college. The new definition of the academic staff differs from the present definition in two major respects. First, it omits the present requirement for members of the staff to be in the full-time employment of the college. Secondly, it specifically includes within the staff the Associate Director of the college. The new definition of the ancillary staff differs from the present definition in that it omits the requirement that members of the staff be in the full-time employment of the college.

Clause 4 removes an obsolete reference to the Board of Advanced Education. Clause 5 replaces subsection (3) of section 10 relating to election of the President and Vice-President of the council of the college. The new provision excludes the Director of the college from eligibility for election as President or Vice-President. This is in addition to those currently excluded, that is, members of the academic staff, members of the ancillary staff and students. Clause 6 is of a drafting nature only, correcting or removing outdated references.

Clause 7 replaces subsection (6) of section 20 of the principal Act which provides that an employee of the college is an employee for the purposes of the Superannuation Act 1969. The new subsections provide instead that the college may enter into superannuation arrangements with the South Australian Superannuation Board under the new Superannuation Act 1988, as if the college were an instrumentality or agency of the Crown, but that this does not prevent the college from entering into other arrangements for the provision of superannuation benefits for employees of the college subject to the approval of the Treasurer.

Clause 8 increases the maximum penalty for an offence against a by-law of the council of the college from $50 to $200. Clause 9 removes subsection (2) of section 26 which requires the college to pay to the Treasurer, at such times as the Treasurer may determine, so much of the net income of the college from primary production and agriculture processing industries as may be determined by the Minister after consultation with the Treasurer.

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

FISHERIES ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

It provides for a number of amendments to the Fisheries Act 1982 to enable both the Government and the Department of Fisheries to more effectively meet the objectives of the Act as set out under section 20. Specifically, the amendments recognise the dynamic nature of fisheries management and the need to provide measures for the proper management and conservation of the State's aquatic resources.

During 1982 when the Fisheries Act 1982 was in the process of being drafted, the penalties incorporated under the Act were increased substantially from those that applied under the Fisheries Act 1971. This was in recognition of the serious nature of fisheries offences, and the need for realistic penalties which would also serve as a deterrent to persons contemplating breaches of fisheries legislation. The need for appropriate penalties to act as a deterrent as well as reflect the current economic situation is fully supported by the fishing industry.

The major managed fisheries of South Australia are fully exploited. The stocks are limited and future yields from fisheries are dependent upon management measures which protect adult stocks and provide for adequate recruitment of juvenile fish. Controls placed on fishing effort such as gear restrictions, area and seasonal closures, legal minimum size and bag limits are management measures which provide for replenishment of stocks; and also for maximising the yield available from fish stocks.

Management of the fish stocks of South Australia involves biological, economic and social issues. Infringements of the management measures may result in substantial financial gain for the offender but have detrimental biological effects. In all cases, infringements result in some degradation of the fishing rights of other users of limited community owned resources. In addition, fisheries management can be difficult and expensive to police because of the large numbers of fishermen involved, and the often remote nature of fishing activities. What may appear to be relatively minor offences can have a substantial cumulative impact on the resource and how it is shared. Often, detection and successful prosecution of such offences are only achieved at great expense to the community. The penalties applied by the courts should demonstrate the gravity of fisheries offences and by providing a deterrent will assist in reducing the costs of fishing offences to the community.

Since 1982, the Adelaide CPI rate has risen in excess of 30 per cent. As a consequence, this has had the effect of eroding the deterrent value of current penalties for fisheries offences. In addition, a review of the penalty provisions contained in the Fisheries Act 1982 has shown that a number of the sections no longer reflect penalties commensurate with established increases in fish values. The penalties need to be increased to more realistic levels in line with increased fish values, and in keeping with the serious nature of fisheries offences.

The Bill proposes amendments to the penalties applicable to convictions for breaches of all sections of the Act. As an example, the more serious penalties are covered by sections 37, 41, 43 and 44 of the Act. These sections deal with:

- contravention of licence conditions (37);
- engaging in a prescribed (illegal) class of fishing activity (41);
- fishing in contravention of the Act (43);
- the sale, purchase or possession of fish taken in contravention of the Act (44).

The existing penalties are:

- first offence—$1 000;
- second offence—$2 500
- subsequent offence—$5 000.

The proposal is to increase these penalties to:

- first offence—$2 000 (Division 7 fine);
- second offence—$4 000 (Division 6 fine);
- subsequent offence—$8 000 (Division 5 fine).

In the case of section 44, no graduated penalty is proposed. The penalty would be a Division 5 fine—$8 000.

In addition, the Bill proposes an amendment to section 66 of the Act, which provides for the courts to impose an additional penalty where a person is convicted of an offence against the Act involving the taking of fish. The existing penalty is:

- five times the amount determined by the convicting court to be the wholesale value of the fish at the time at which they were taken;
  or
- ten thousand dollars;
  whichever is the lesser amount.

The proposal is to increase the $10 000 component to $30 000 to more adequately reflect the high value of catches, particularly in the abalone, prawn and rock lobster fisheries. Such increases would restore the deterrent value of penalties, which would in turn assist in the fisheries management process.

I would make the point that the South Australian Fishing Industry Council and a number of other industry associations have urged the Government to increase penalties for offences under the Fisheries Act. The Parliamentary Counsel is under instruction that, where a substantial amendment is proposed to an Act of Parliament, the penalty clauses contained in that Act must be revised in accordance with the requirements of the Statutes Amendment and Repeal (Sentencing) Act 1987. Accordingly, all the monetary penalty amounts contained in the Fisheries Act 1982 have been reviewed, and changes made to bring penalty amounts into line with the levels of fines contained in the Statutes Amendment and Repeal (Sentencing) Act 1987.

The incidence of illegal taking and sale of fish, particularly abalone, from South Australian waters has dramatically increased over the past two years. In order to counteract these activities, fisheries officers have increased their surveillance efforts in an attempt to apprehend and prosecute offenders. In the case of the abalone fishery, such illegal activities are putting at risk a well managed, multi-million dollar industry. Offenders have a total disregard for the principles of responsible fisheries management.

Under the present legislation, section 44 of the Fisheries Act makes it an offence to sell, purchase or have possession of fish taken in contravention of the Act. The difficulty with this is that the Department of Fisheries must establish that the fish were in fact taken in contravention of the Act. In practice, this has become almost impossible when attempting to obtain convictions for the illegal taking of abalone because of the highly organised activities of the offenders. Their activities are all pre-planned so that any surveillance or attempted apprehension by fisheries officers is effectively foiled. Accordingly, the Bill proposes an amendment to section 44 of the Fisheries Act such that a person in possession of fish allegedly taken illegally must prove that the fish were not taken in contravention of the Act.

During 1987, the Attorney-General encouraged departments to consider the use of expiation procedures as a means of streamlining prosecutions. The Department of Fisheries has identified a number of offences prescribed under the Fisheries Act 1982 which may be resolved without necessitating court hearings. Such offences include: failure to submit catch and effort returns; failure to mark a vessel with appropriate registration number; use of unregistered gear; exceeding the number of permitted devices; exceeding bag limits; and taking undersize fish. It is proposed that the additional penalty provisions (that is, five times the wholesale value of the fish) need not apply to those offences resolved by expiation.

With regard to seizure of fish taken illegally, it is proposed that where an expiation notice is issued only those fish taken over the permitted bag limit or less than the legal minimum length will be seized by the fisheries officer. Upon payment of the expiation notice, the seized fish will be forfeited to the Crown.

The main advantages of having a fisheries offence expiation system would be removal of the anxiety associated with attending court for relatively minor offences; reduction of delays in resolving minor prosecutions; reduction in time spent by fisheries officers processing minor briefs; reduction in demands on the Crown Solicitor's Office prosecution staff; and reduction in demands on the courts processing minor fisheries offences. The Department of Fisheries would, of course, retain the option of pursuing court action for serious breaches of the fisheries legislation.

It should be noted that the fisheries expiation system will be in line with the provisions of the Expiation of Offences Act 1987, which outlines the principles of administering such a system. Accordingly, the Bill proposes the implementation of an expiation system for minor fisheries offences. The Department of Fisheries has a responsibility to protect the South Australian aquatic environment against the introduction of feral fish and exotic fish diseases.

Recently, there has been significant interest in the development of commercial aquiculture in this State, and a number of applications to establish marine and freshwater fish farms have been received by the department. Such undertakings are fully covered by the Fisheries Act 1982, as the definitions of 'fish farming' and 'farm fish' specifically refer to the activity of propagating or keeping fish for the purpose of trade or business. However, as a result of this commercial development, a number of individuals have taken the opportunity to establish fish farms for non-commercial purposes, for example, food for the family. This type of operation does not come within the ambit of the Fisheries Act, so the department cannot legally take steps to eliminate or control any outbreak of fish disease without the cooperation of the individual concerned.

The inherent risk in such a situation is that the owner could harbour diseased fish or contaminated water which may subsequently be transmitted into the State's rivers or underground water system, which could then spread the disease further afield. This has the potential to affect other fish, possibly killing native or fish farm stocks elsewhere. In order to overcome this deficiency, an amendment to the definitions of 'farm fish' and 'fish farming' is warranted so that non-commercial fish farming comes within the scope of the Fisheries Act 1982. Therefore, the Bill proposes a redefinition of 'fish farming' and 'farm fish' so that the activity includes non-commercial as well as commercial operations.

It must be pointed out that in the case of private fish farms, that is, non-commercial, the Department of Fisheries is only seeking powers at this stage over those aspects that relate to the introduction of feral fish and exotic fish diseases into South Australia.

On the subject of fish processing, the Fisheries Act 1982 requires commercial fishermen who process their own catch to be registered as fish processors. The current definition of processing covers activities other than scaling, gilling, gutting or chilling fish. During discussions between the Department and the then Australian Fishing Industry Council, South Australian Branch (now SAFIC), when the fish processor regulations were introduced in their present format in 1984, it was agreed by the department and industry that

the definition of processing be expanded to include scaling, gilling, gutting, filleting, freezing, packing, reselling, chilling or any other activity preparing fish for sale and that commercial licence holders who process their own catch be excluded from the requirement to be registered as a processor.

At present, fish processors who purchase only from licence holders who process their own catch are not required to register and submit statistical returns regarding value of catches, which is the basis for production data and fee calculation. As more fishermen become registered as processors, the fewer other processors there are to provide the required information. The current provisions for fish processors are complicated and have only been made to work through the use of ministerial exemptions. An amendment to the definitions of 'fish processor' and 'processing' in the Fisheries Act would have little or no effect on policy, but would remove anomalies and simplify procedures.

Accordingly, the Bill proposes a redefinition of the terms 'fish processor' and 'processing' to encompass the activities of scaling, gilling, gutting, filleting, freezing, packing, reselling, chilling or any other activity preparing fish for sale, and to exempt commercial licence holders (including authorised fish farmers) who process only their own catch (or product from the fish farm) from the requirement to be registered as a fish processor.

In providing the foregoing explanation of proposed amendments to the Fisheries Act 1982, I would inform the House that both the South Australian Fishing Industry Council, representing the interests of commercial fishermen, and the South Australian Recreational Fishing Advisory Council, representing the interests of amateur fishermen, have been consulted and support the proposed major amendments to the Act.

While drafting the proposed Bill to amend the Fisheries Act, the Parliamentary Counsel has taken the opportunity to make minor procedural amendments to sections 3, 34 and 48 of the Act. These amendments do not change the intent of the legislation, they only clarify existing provisions, and are described in the clause by clause explanation. I seek leave to have detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides for commencement on a date to be fixed by proclamation.

Clause 3 repeals section 3 of the principal Act. The repealed section set out the way in which the principal Act was arranged. Sections of this kind are no longer used.

Clause 4 amends section 5 of the principal Act (the definition section). A new definition of 'expiable offence' is inserted as subsequent amendments through clause 12 provide for the expiation of offences. The definitions of 'farm fish' and 'fish farming' are amended extending those definitions to include fish that are kept for purposes other than for the purpose of trade or business, namely, for food or for the control or eradication of aquatic or benthic flora or fauna. The definition of 'fish processor' is amended to provide that any person who for the purpose of trade or business processes or purchases or obtains fish is a fish processor. It is intended that certain classes of persons (registered fisherman who process their own catch and fish shop proprietors) will be excluded by regulation from the obligation to be registered. The definition of 'processing' is amended extending the definition to include scaling, gilling, gutting or chilling which were formerly excluded from the definition.

Clause 5 amends section 28 of the principal Act by inserting a paragraph in subsection (9) and by making a consequential amendment to paragraph *(d)* of that subsection. The amendments are required to provide for the forfeiture of fish or other perishable things where the offence in relation to which the fish or things were seized is expiated. The amendments provide that, where an offence is expiated, fish or perishable things seized in relation to the offence will be forfeited (if they have not already been forfeited by order of the Minister under that section) and that, whether the fish or things have been forfeited by the Minister or by virtue of the expiation, no compensation may be recovered in respect of the fish or things seized and forfeited.

Clause 6 amends section 34 of the principal Act by amending subsection (2) and repealing subsection (3). The effect of the repealed subsection (3). The effect of the repealed subsection is preserved by the amendment to subsection (2) but the regulation-making power is broadened. At present, section 34 (2) makes it an offence to use a boat for commercial fishing unless the boat is registered. Subsection (3) provides that subsection (2) does not apply to boats of a prescribed class, thus the regulation-making power is limited to prescribing classes of boats to which the subsection does not apply. The proposed amendments preserve the regulation-making power but do not restrict it to prescribing classes of boats. The power is extended so that regulations may prescribe a situation or a set of circumstances in which a boat may be used lawfully for commercial fishing without the boat being registered.

Clause 7 repeals section 44 of the principal Act but replaces it with a new section that includes the substance of the repealed section with certain additions. Subsection (1) makes it an offence to sell or purchase fish that have not been taken by the holder of a fishery licence. Subsection (2) makes it an offence to sell, purchase or have the possession or control of fish taken in contravention of the Act or fish of a prescribed class. The class of fish likely to be prescribed for the purposes of subsection (2) are protected fish such as whales and dolphins. As regards fish taken in contravention of the Act the principal examples likely to be encountered are undersized fish or fish taken by an unlicensed person. Subsection (3) provides a defence to a person charged with offences against subsection (1) or (2) if the person can prove that the fish (the subject of the charge) were obtained from a person whose ordinary business was that of selling fish, that the fish were obtained in the ordinary course of that business and that he or she did not know and had no reason to believe that the fish were fish that had not been taken pursuant to a licence, in contravention of the Act or were of a prescribed class.

Subsection (4) provides that, in relation to fish taken in contravention of the Act, regulations may prescribe a class of fish and a specified quantity of that class of fish. Where a person sells, purchases or has possession or control of more than the specified quantity of that class of fish and is not a licensed fisherman or registered fish processor the person will be found guilty of selling, purchasing or having possession or control (as the case may be) of that fish unless the person has the defence previously referred to or is able to prove that the fish were not taken in contravention of the Act. That is, persons who deal in large quantities of fish which have come into their possession otherwise than in the ordinary course of business will have the burden of proving that the fish were taken lawfully.

Clause 8 strikes out subsection (1) of section 48 of the principal Act and substitutes a new subsection (1) and makes

a minor amendment to subsection (6). The amendment to subsection (1) makes it clear that the regulations or a permit that are contemplated by the subsection may permit persons to engage in a fishing activity in an aquatic reserve. The minor amendment to subsection (6) broadens the species of fish that may be excluded from the definition of 'aquatic or benthic flora or fauna' by regulations made pursuant to that subsection.

Clause 9 amends subsection (1) of section 54 of the principal Act and will enable regulations to be made as a result of which certain classes of person may act as a fish processor without being registered. This will enable regulations to be made that will allow licensed fishermen to process their own catch without being registered as fish processors. The clause amends also subsections (2), (3), (5) and 6 of section 54 by striking out the references to 'unprocessed fish'. These further amendments are consequential upon the amendments made through clause 4 to the definitions of 'fish processor' and 'processing'.

Clause 10 amends section 55 of the principle Act by striking out from paragraphs *(b)*, *(c)* and *(d)* the references to 'unprocessed fish'. These amendments are consequential upon the amendments made through clause 4 to the definitions of 'fish processor' and 'processing'.

Clause 11 amends subsection (10) of section 56 of the principal Act and is consequential upon the amendment made to section 44 through clause 7.

Clause 12 inserts a new Division in the principal Act that consists of sections 58a, 58b, 58c and 58d all of which relate to the expiation of offences. Section 58a contains definitions for the purpose of the Division. Section 58b provides for the issue of an expiation notice, the form of the notice, that it may relate to no more than three offences, that it may not be given to a person under sixteen years and that it may be issued only by a fisheries officer. A notice may be given personally or sent by post. Section 58c provides that once an offence is expiated the person expiating cannot be prosecuted for the offence expiated but, where a notice relates to more than one offence and not all the offences are expiated, the alleged offender may be prosecuted for the offences that have not been expiated. The section provides also that expiation does not constitute an admission of guilt or of any civil liability and cannot be used as evidence to establish such guilt or liability. Section 58d provides that the Minister may withdraw a notice where the Minister is of the opinion that the notice should not have been given or that the alleged offender should be prosecuted. A notice may be withdrawn even after expiation in which case the fee must be refunded but it cannot be withdrawn after 60 days have elapsed from the date of the notice. Withdrawal must be effected by written notice served personally or by post and, where withdrawal occurs after payment, the fact of payment is not admissible in proceedings against the alleged offender.

Clause 13 amends section 72 of the principal Act and enables regulations to be made to create expiable offences and expiation fees. Such fees may be variable depending upon the circumstances of the offence.

The schedule amends the penalties imposed by the principal Act and expresses them in the new form.

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

TRUSTEE COMPANIES BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments.

STATUTES AMENDMENT (LOCAL GOVERNMENT) BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 1662.)

The Hon. DIANA LAIDLAW: I thank the Minister for being prepared to report progress earlier this evening to provide me with time to consult in relation to the amendment that I have moved and also in relation to the position outlined by both myself and the Hon. Mr Ian Gilfillan as to the Democrats stand on our amendment. I accept that both the Government and the Democrats are not prepared to support the Liberal Party's endeavour to accommodate the wishes of the Local Government Association in this matter. I accept the reality of the situation and recall that the Minister gave an undertaking that she would be prepared to add the word 'fair' so that the provision would read:

That after giving proper consideration to any representations made under subsection (4) it is fair and reasonable in all the circumstances of the case that the council be included as constituent council.

If the Minister is prepared to honour that verbal undertaking made earlier in the evening, the Liberal Party would support that on the basis that our amendment would not be carried.

The Hon. BARBARA WIESE: I thank the honourable member for her reconsideration of this matter and I am very happy to honour the undertaking that I gave earlier to add the words 'fair and' to the provision as indicated.

The Hon. DIANA LAIDLAW: I do not wish to withdraw my amendment.

The Hon. BARBARA WIESE: I move

Page 23, line 35—Insert after the words 'it is' the words 'fair and'.

If, as indicated earlier in her remarks supporting the amendment that she moved, it is the Hon. Ms Laidlaw's wish to ensure that fair and reasonable consideration is given to the matter of councils being included in a controlling authority, then these are the only words that are required and the words that are included in her proposed amendment are way beyond meeting that objective. It ought to be quite clearly on the record that we are talking about two different concepts here. One is ensuring that there is fair and reasonable consideration given to the circumstances of the case that apply when a council is being included as a constituent council in a controlling authority. In the second case, as put to us by the Hon. Ms Laidlaw, the objective is to provide that each individual council's rights or benefits to individual councils in these circumstances is being tested. So they are two quite separate concepts and it is important that that be clearly recorded in *Hansard*.

Having said that, however, I am pleasd to acknowledge the support of the Hon. Ms Laidlaw for the proposed wording that I have just moved and I hope, too, that the Hon. Mr Gilfillan will agree that this is a way to resolve the situation that arose earlier.

The Hon. Diana Laidlaw's amendment negatived; the Hon. Barbara Wiese's amendment carried; clause as amended passed.

Clause 52 and title passed.

Bill read a third time and passed.

LAW OF PROPERTY ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 November. Page 1567.)

The Hon. BARBARA WIESE (Minister of Tourism): I thank the Hon. Mr Griffin for his contribution to this debate. I will address some of the issues raised by him, and I hope that I will be able to satisfy some of his queries. The honourable member asked whether new section 40 was intended to allow a person holding a power of attorney to contract with himself. The intention of the amendment is to ensure that a person can enter into contracts with himself and one or more other persons.

The honourable member also queried what was meant by the words 'separate capacities'. The word 'capacities' in section 40 refers to the character in which one does something. It is suggested that the present section 40 (3) should be retained so that a person can convey land to himself. The amendment is not intended to prevent this from happening and, when 'capacities' is interpreted in the sense that I have used it, it does not. Because of the possible difficulties in interpreting this section, I have placed on file an amendment that I trust will make the meaning clearer.

The honourable member pointed out that there is a typographical error in new section 41 (5) and that this should read 'indenture or deed' not 'indenture of deed'. That is quite correct and it will be amended. The honourable member suggested that, because deliveries are necessary, the reference to delivery in new section 41 (5) *(b)* should be deleted. The suggestion is that it should be sufficient for the document to express it to be signed by a deed. That is the effect of 41 (5) *(a)*. Clause 41 (5) *(b)* merely gives an alternative method of indicating that the document is a deed.

The honourable member's next point was that a document should not be deemed to be a deed merely because it is executed by a company under seal. I am advised that it is not. New section 41 (1) *(a)* provides that a body corporate executes a deed by affixation of the common seal. New section 41 (5) states that a document is not a deed unless:

(a) the instrument is expressed to be an indenture or deed;

(b) the instrument is expressed to be sealed and delivered or, in the case of an instrument executed by a natural person, to be sealed;

or

(c) it appears from the circumstances of execution of the instrument or from the nature of the instrument that the parties intended it to be a deed.

The Hon. Mr Griffin suggested that section 41 (5) *(c)* opens Pandora's box. This section requires intention of the parties that the instrument is a deed. This intention must be coupled with the circumstances of the execution or the nature of the instrument, and these are sufficient criteria.

The Hon. Mr Griffin also suggested that the heading to section 41aa should be amended to refer to 'conditional execution of instruments'. This matter has been considered and is agreed to, and I will take up the matter with the Clerk. The Hon. Mr Griffin is concerned that section 41aa (3) *(a)* would allow the first party to wait for an inordinate amount of time while the second party made up his mind. Section 41aa (4) allows a party to recall execution of the instrument at any time prior to fulfilment of a condition.

Section 41aa (5) was queried. This section implements the recommendation of the Law Reform Committee, and I am satisfied that the reasoning of the committee is correct. The committee said:

> The party relying on the condition to defeat the claim of another party should not be permitted to do so where the other party or a person claiming under him has acted on that instrument or relied on its execution without actual notice of the condition. In such circumstances, the absence of actual knowledge should entitle the latter to act upon and in relation to such an instrument as if no such condition had been imposed.

The Hon. Mr Griffin also queried the meaning of the words 'another party'. Section 41aa (5), including the words 'another party', refers to the other party to the instrument. The Hon. Mr Griffin thinks that there should be some clarification on whether the document executed by a company is a deed. New section 41 (5) expressly sets this out. The Hon. Mr Griffin suggested that land agents will change their contracts to contracts executed conditionally. The Bill does not deal with conditional contracts, only conditional execution of contracts. The Hon. Mr Griffin suggested that the words 'deeds or other' should be deleted from clause 4 (2) *(a)*. The Government agrees with that and I will move an amendment to provide for it.

Finally, in order to ensure that the public has time to become acquainted with the new law, I will also move an amendment to insert a proclamation clause. I believe that those remarks cover the points that were made by the Hon. Mr Griffin in his second reading contribution. I am sure that the Hon. Mr Griffin will want to consider those comments before we proceed to the Committee stage, and I hope that the amendments I move will satisfy his queries.

Bill read a second time.

ADJOURNMENT

At 9.30 p.m. the Council adjourned until Wednesday 30 November at 2.15 p.m.