LEGISLATIVE COUNCIL

Wednesday 28 March 1990

The PRESIDENT (Hon. G.L. Bruce) took the Chair at 2.15 p.m. and read prayers.

PUBLIC WORKS COMMITTEE REPORT

The PRESIDENT laid on the table the following interim report by the Parliamentary Standing Committee on Public Works:

Eyre Peninsula College of TAFE, Ceduna campus.

QUESTIONS

ELECTORAL SYSTEM

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Attorney-General a question about electoral systems.

Leave granted.

The Hon. R.I. LUCAS: As members will be aware, the independent Electoral Comissioner has just completed an analysis of the last State election which showed that the ALP won Government in South Australia even though it only polled just under 48 per cent of the two-Party preferred vote. Conversely, the Liberal Party polled just over 52 per cent of the two-Party preferred vote and yet failed to win Government. Various other commentators, both political and independent, have made similar calculations at around that mark of 52 per cent, so it involves not just the independent Electoral Commissioner. This situation has attracted widespread condemnation from many independent commentators. During the 1970s, when electoral reform was a major issue in South Australia, many Labor members like the Attorney-General were outspoken critics of the unfairness of the electoral system of the day.

For example, on 15 October 1975 whilst speaking in this Chamber, the now Attorney-General argued that in 1947 the ALP had polled 51 per cent of the vote; in 1953, 52.9 per cent; and in 1959, 50.4 per cent, and yet had not won Government. Mr Sumner then went on to attack the Liberal Party of the day for 'maintaining a disproportionate electoral system' in this State. Given the Attorney-General's past statements on electoral unfairness, does he concede that the result of the last State election was unfair and, if not, why not?

The Hon. C.J. SUMNER: I have not studied the figures prepared by the Electoral Commissioner—

Members interjecting:

The PRESIDENT: Order! The honourable Attorney-General has the floor.

The Hon. C.J. SUMNER: —but, on the assumption that what the honourable member says is correct, I can say in relation to this matter that the system which was introduced effectively from 1975 was that there should be an independent commission that determined the electoral boundaries.

An honourable member: With certain guidelines.

The Hon. C.J. SUMNER: With certain guidelines which were agreed to at the time and enshrined in the Constitution. The difference between that and the situation that obtained in this State from the time of the war until 1975, sponsored in particular by the Playford Government and people like the Hon. Mr DeGaris, was that there would be a deliberate disproportion in the numbers in the electorates, depending on whether those electorates were in rural or metropolitan areas.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I find it strange that the Hon. Mr Griffin should contest that proposition. That was the situation. It was a deliberate act of policy by the Government of the day, endorsed by the Parliament—

Members interjecting:

The PRESIDENT: Order! There is too much audible noise.

The Hon. C.J. SUMNER: —introduced by the Liberal Party and sustained by it in this State over about three decades.

Members interjecting:

The PRESIDENT: Order! There is too much conversation.

An honourable member: What would Don Dunstan say about it?

The PRESIDENT: Order!

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The Hon. Mr Davis will come to order. The honourable Attorney-General has the floor.

The Hon. C.J. SUMNER: It was a deliberate act of policy.

The Hon. R.I. Lucas: And yours isn't deliberate? Is that what you are telling us?

The Hon. C.J. SUMNER: It certainly is not deliberate. I find it somewhat surprising that the honourable member can say that, as he knows the situation as well as I do. Apparently he is suggesting—

The Hon. R.I. Lucas: You use your own words. I will suggest what I want to suggest.

The PRESIDENT: Order! The Hon. Mr Lucas asked a question. He will get the answer only by listening. The honourable Attorney-General has the floor.

The Hon. C.J. SUMNER: The honourable member has apparently suggested that the system that has existed since 1975 came about as a result of a deliberate attempt to have a disproportionate number of electors in seats. That clearly is not the case. As the honourable member would know, the fact is that an independent boundaries commission was established in 1975 as a result of legislation passed by the Parliament, introduced by the Dunstan Government, and supported in the final analysis by the Upper House. The rationale behind that legislation was for a quota to be established for each seat and for the numbers of electors in a seat not to exceed 10 per cent above that quota or slip 10 per cent below it. The honourable member is aware of that. In other words, it was introduced to correct the deliberate act—

The Hon. R.I. Lucas: So you think this is fair?

The PRESIDENT: Order! There is too much audible conversation.

The Hon. C.J. SUMNER: It was introduced to correct the deliberate act of policy that had occurred in the State through the 1940s, 1950s, 1960s and early 1970s as a result of the actions of the Playford Government. That Government set out to weight rural electorates. There is absolutely no doubt about that. They did so because they had greater support in the rural areas. To overcome that, the Labor Party set up an independent boundaries commission in 1975. It gave it certain criteria. It said that—

An honourable member interjecting:

The Hon. C.J. SUMNER: It is absolute rubbish to suggest that as a deliberate act of policy—

Members interjecting:

The PRESIDENT: Order! The honourable Attorney-General has the floor.

The Hon. C.J. SUMNER: It is absolute rubbish to suggest—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: This is outrageous, Mr President. I am not sure why he is still in the Chamber.

The PRESIDENT: I am inclined to agree.

The Hon. C.J. SUMNER: Thank you.

The PRESIDENT: I have silence. The honourable Attorney-General.

The Hon. C.J. SUMNER: Thank you, Mr President. To suggest that this was introduced as a deliberate policy to ensure the election of a Labor Government is absolute rubbish, as the honourable member would know. There was an independent boundaries commission, chaired by a Supreme Court judge, from the time that that commission was established, and it was specifically provided that there ought not to be weighting in favour of rural electorates. At the time this matter was debated, I remember one of the honourable member's predecessors (sitting in that very seat) carrying on about the Liberal Party and its attitude to electoral reform in the 20 years before that.

The fact is that the Hon. Mr DeGaris could never resolve the situation in his own mind because, as I have said in this Council before (and probably said on that occasion as well—I have certainly said it since), with single-member constituencies there is always the possibility of arriving at a result where, across the whole of the State, a majority of votes is not reflected in the number of seats in the Parliament. That is a phenomenon that can always arise with single-member constituencies. We know that, as a fact: the only way to get proportionality is to have a system of proportional representation. That is not a system the Liberal Party has been prepared to endorse—until this juncture at least—except, of course, for the Legislative Council for which, as a result of Labor Party and Liberal Party support, a system of proportional representation was introduced.

However, if we have a system of single-member constituencies, as we have in the House of Assembly, what we must do is establish a structure that will give a fair system from those single-member constituencies. That was done, Mr President, by means of an independent commission being given, first, a strict instruction not to weight in favour of rural areas and, secondly, certain criteria which have been accepted by the Parliament.

An honourable member interjecting:

The Hon. C.J. SUMNER: The honourable member seems to have a coach now, Mr President. The Hon. Mr Lucas acceded to your request to be silent while I am answering the question, but now has a coach from the backbench who has, apparently, decided to take up the cudgels on his behalf and continue these interjections.

An honourable member: You won't answer the question.

The Hon. C.J. SUMNER: I am answering the question. An independent boundaries commission was established, given criteria that prohibited weighting in favour of rural electorates and given certain other criteria. Members of this Council—or, at least, some of them—supported the system, and it has been supported for the past 15 years. On all but this occasion the system has produced a result whereby a majority of the popular vote has produced the Government in the Lower House.

An honourable member: That's not right.

The Hon. C.J. SUMNER: The honourable member says it is not right: that is the information I have.

The Hon. R.I. Lucas: Your information is wrong. So are you.

Members interjecting:

The Hon. C.J. SUMNER: 1975? The system was not in place in 1975. The first election during which the system came into operation was in 1977, so I am not quite sure how 1975 got into the act.

The Hon. R.I. Lucas: You said, 'For the past 15 years.'

The Hon. C.J. SUMNER: Well, the only time this situation that the honourable member has outlined has occurred was in this most recent election. Otherwise, the system that was established delivered Government in the Lower House to the Party that had the majority of votes across the State as a whole. I am not sure, if we stick with the single-member constituency system, what more can be done other than to have the boundaries determined by an independent commission.

That is what happened on this occasion. The honourable member put in a submission, the Labor Party put in submissions, as did the Democrats and the National Party, and the Electoral Districts Boundaries Commission made its determination.

As I recollect, at the time members opposite did not raise any criticisms of the determination of the commission following the last redistribution. However, last year when this matter was previously debated—and the honourable member could have referred to *Hansard* for the recitation of the arguments on both sides—the Government recognised that there was a blow out in the numbers of electors in certain seats and that, because of the extension of the Parliament from three to four years, there would need to be redistribution before the next election. That is what the Government is doing by introducing this Bill in the Lower House.

MINISTERIAL STATEMENT: ABORIGINAL COMMUNITY GOVERNMENT

The Hon. ANNE LEVY (Minister of Local Government): I seek leave to make a statement about Aboriginal community government.

Leave granted.

The Hon. ANNE LEVY: In association with my colleague, the Minister of Aboriginal Affairs in another place, I am pleased to table the report entitled 'Community Government', prepared by Don Dunstan. Don Dunstan was appointed as a part-time adviser to the Government in June 1988. His brief was to consult with Aboriginal communities in the Aboriginal Lands Trust areas, the Maralinga and Pitjantjatjara lands, on the concepts of community government; to review the operation of local government legislation affecting Aboriginal communities in Queensland and the Northern Territory and to report back to the Government on the various options and alternative strategies we could pursue in South Australia following consultation with Aboriginal communities. Mr Dunstan also directed his attention to whether Aboriginal communities could gain access to Local Government Grants Commission funding, recognising that the commission's methodology for grants determination may not adequately take into account the unique circumstances which apply to Aboriginal communities.

The Dunstan report is a painstaking and complex analysis of the problems and opportunities facing Aboriginal families. The first Australians, Aboriginal people, are still the last Australians on every social index—whether it be employment, health, housing, education, crime or longevity. Equally, Dunstan recognises that there can be no quick fixes

and that solutions to these problems are not always contingent on more funds. But he rightly calls for a more coordinated and flexible approach to enable Aboriginal communities to take more responsibility for improving their position.

I want to place on record the Government's appreciation of the work undertaken by Don Dunstan. His commitment to Aboriginal affairs remains unequalled by any Australian politician and, as a result, there could be no person more qualified to undertake this study. The release of the Dunstan report has been delayed by the introduction of Commonwealth legislation establishing the Aboriginal and Torres Strait Islander Commission which began operations on 5 March this year. ATSIC replaces the former Commonwealth Department of Aboriginal Affairs and the Aboriginal Development Commission and establishes elected representative structures at community, regional and national levels. Because of the obvious potential for overlap and conflict, it is necessary to cross-reference the Dunstan report and ATSIC provisions.

This process has begun but will now need to be undertaken in the context of opinions by Aboriginal communities and local government on the Dunstan report. We have therefore today sent copies to Aboriginal communities and the Local Government Association for comment by the end of May this year. There will be no commitment to implementing any option until Aboriginal groups that could be affected by changes to community government structures have had the opportunity to express their views on this report, ATSIC administration and the operation of the Aboriginal Lands Trust.

Dunstan has proposed a series of options including: the implementation of Aboriginal communities as separate local government bodies through special legislation and facilitating access to various local government funds; alternatively regional strategies such as reconstituting the Aboriginal Lands Trust and Maralinga Tjarutja, as the local governing body, along the lines of the Outback Areas Trust; incorporating some Aboriginal communities within the relevant mainstream local government authority; and maintaining the *status quo.*

Mr Dunstan stresses that his report—its findings and its options—must be treated as a discussion document and that extensive consultation with all communities and local government should occur before final recommendations are made. Mr Dunstan also argues for flexibility, allowing communities to opt for a course to obtain local government services in a manner and at a pace which they see as best suited to their needs and aspirations.

However, other issues raised in Mr Dunstan's findings are being addressed with urgency. Following discussions with Mr Dunstan, the current Review of the Aboriginal Lands Trust has been asked to look at ways of making the trust more proactive in giving support to economic development and community employment initiatives in Lands Trust communities in order to break the cycle of welfare dependence. In his report, Mr Dunstan refers to the better standards of health in Lands Trust communities compared with the remote lands, except for alcoholism and alcohol related health problems. Legislation is now before this Parliament that will give Lands Trust communities the legally enforceable right to ban or control alcohol use, with similar provisions to those currently applying on the Pitjantjatjara lands.

Mr Dunstan also examines the positive steps that local as well as State and Federal Governments can take in order to improve the employment prospects of Aboriginal people. The Minister of Aboriginal Affairs will announce a major Government strategy designed to take up this challenge. The Dunstan report will challenge all of us—including Aboriginal communities and local government—to examine strategies for improving opportunities for Aboriginal people to participate in decisions that affect their lives. We look forward to a constructive and mature response. In association with the Minister of Aboriginal affairs, I have much pleasure in now seeking leave to table this report for the information of the Council.

Leave granted.

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Attorney-General a question about the United Nations Convention on the Rights of the Child.

Leave granted.

The Hon. K.T. GRIFFIN: The United Nations adopted the Convention on the Rights of the Child on 20 November 1989, and the Federal Minister for Foreign Affairs, Senator Gareth Evans, was prominent in that adoption. However, since that time there has been some publicity about the contents of that convention. While aspects of the convention have been well received, others have created grave concern. Those areas which are obviously worthy of support include the declarations of the right of children to be protected from physical or mental violence, exploitation, abuse, drug abuse, sexual exploitation and abuse, exploitation in child labour, abduction and exploitation.

However, the concern has been expressed that the convention does not recognise the rights and responsibilities of parents towards their children and that the convention may diminish the parent-child relationship and allow children to grow and develop without proper parental guidance and, in fact, usurp the traditional parental function.

For example, the convention declares that children have the right to 'freedom of expression' which includes 'freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print'. That does not acknowledge the right and duty of parents to provide guidance to children on information they should receive in their formative years.

Again, the convention declares that children have the right of 'freedom of peaceful assembly'. It does not acknowledge the right and duty of parents to supervise the associations that their children keep. The convention does not give proper recognition to the rights and duties of parents with respect to the education of their children as well as their physical, social and moral development.

There are a number of other issues of importance. The next step is to consider whether the Commonwealth Government intends to ratify the convention and ultimately, through that process, to apply it to Australian domestic law. If it does that, there will be quite significant changes in the relationship between parents and children, in State law in particular. I would presume that, prior to the adoption of the convention and as part of the consultative process, there would have been discussions between the Federal Minister and State Ministers, and some consideration given to the changes that would need to be effected if it was to be ratified.

My questions are: first, does the Attorney-General support ratification of the convention and, secondly, what discussions have occurred in relation to ratification of the convention and its application to South Australian law?

The Hon. C.J. SUMNER: The Government does support the United Nations Convention on the Rights of the Child and it certainly supports the principle of its ratification by the Commonwealth Government. There have been consultative discussions on this topic between Commonwealth and State Ministers. I will obtain a report on those discussions and provide the honourable member with a full reply.

FESTIVAL CENTRE PLAZA

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister for the Arts a question about the Festival Centre Plaza.

Leave granted.

The Hon. DIANA LAIDLAW: In September 1987 work commenced on a major $11 million project to upgrade and repair the 1.8 hectare Festival Centre Plaza. This sum was in addition to $1.6 million spent on repairs to the plaza between 1982 and 1987. Since the plaza was commissioned in 1978, it has suffered extensive damage, due to movement in the main structure and corrosion of steel supporting columns due to water leaking through the pavement.

By 1987, when this latest repair project started, there were some 90 major leaks in the plaza pavement, which were causing damage to offices, dressing rooms, The Space, the car park and Festival Drive. The decision to commence work on repairing the plaza also provided an excuse to upgrade the visual appeal of the site with new tree plantings, seating and the installation of a water sculpture. Certainly, over the years the plaza had come to be regarded as a blot on our landscape, being seen as bleak, barren, hot in summer and forbidding in winter, while comments on the environmental sculpture have rarely been flattering.

The Government's capital works program for 1988-89 notes that improvements and repairs to the plaza were due for completion in December 1989. That was some three months ago, yet water is still leaking into the car park. In fact, I am advised and have observed that, while some of the old leaks have been successfully sealed, new leaks have appeared, so that every time the new irrigation system waters the garden beds, the car park below is awash with water. I therefore ask the Minister:

1. Is she satisfied with the progress on the improvements and repairs to Festival Centre Plaza commenced in September 1987 and due for completion in December last year?

2. What additional cost, if any, will be required due to the fact that the project has not been completed on schedule?

3. What is the revised date for completion of the work?

4. Does she consider that taxpayers have received value for the $11 million spent to date to improve the plaza's visual appeal and public use?

The Hon. ANNE LEVY: I do not have detailed information with me on some of the matters that the honourable member raised. I will certainly try to get that. As far as I know, the cost of the renovations or repairs to the plaza are as budgeted for.

The Hon. Diana Laidlaw: Notwithstanding the delays?

The Hon. ANNE LEVY: As I understand it. I have not had any information since just before the Festival, so I cannot speak for what may have happened in the past three or four weeks. Although the delays in completing the project were a worry prior to the Festival, the costs were expected to come in on budget.

I do not know what is now the expected date for completion of the work. I know that the Festival Centre and the Festival Board were concerned that the plaza might not be usable for the recent Adelaide Festival. However, there was a tremendous effort and cooperation all round so that all the public areas would be completed and available for the Festival. The work was scheduled so that any small amount of remaining work would be in areas which were not frequented by the public and which would not have caused any inconvenience to anyone participating in or merely enjoying the Festival of Arts.

The honourable member asked whether the renovations of the plaza are good value for money. I do not pretend to impose my artistic judgments or aesthetic appreciations on other people. That is very much a matter for others to determine. I will seek information and come back to the honourable member with the now expected date of completion and whether the costs have changed since the last information that I received.

SMALL BUSINESS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Small Business a question about business disruption due to building activity.

Leave granted.

The Hon. M.J. ELLIOTT: On a number of occasions since I have been in Parliament I have been contacted by small business people who have had their business severely disrupted by building activity in the near vicinity. Several of those have received some publicity; for instance, the people in the arcade adjacent to the Remm development have been seriously affected. Construction work by the Highways Department on South Road has disrupted a large number of businesses and sent several of them to the wall. In the past couple of days I received a copy of a press release from Mr Garth Pye, the co-owner of Fables Bookshop, which I will read, as follows:

> Attached is a photograph of my family in front of the house that we are four weeks away from losing, having had the misfortune of being surrounded by not one but three high-rise buildings under construction in Adelaide. Our business has suffered now for 22 months with the prospect of a further 12 months construction still to come. We have endured demolition, noise, dust, disruption and limited access in a once beautiful Chesser Street.
>
> Our stock has been severely affected by dust and is dwindling due to a lack of funds to reinvest caused by the fact that we operate at 25 per cent of our previous Chesser Street turnover. In this reduced state we have no legal recourse to compensation. The developers and their lawyers know this only too well. The longer you survive in circumstances like these the less are the resources with which you have to fight.
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> These situations have hurt thousands of small businesses in this country during the recent idiotic building boom. It would seem that we will lose our house so that three buildings can rise and stand mostly empty as testament to the mad folly that built them. We would like, however, to have our say before this happens.

That is not an uncommon story—a large construction operation sending many small, innocent businesses to the wall. First, I ask the Minister what she is doing about this ongoing problem, not just in relation to this construction but elsewhere. Secondly, would she consider the possibility of setting up some form of tribunal which could do a number of jobs. First, it may set discounts on council rates for people who may be affected; secondly, it may examine the rents that are set by large landholders; and, thirdly, and probably most importantly, it could set up some system of reasonable compensation for business losses where those funds may come from the development that is causing the problems in the first place.

The Hon. BARBARA WIESE: Although I have read recently of individual cases where small business people have complained about loss of revenue through disruption

caused by development nearby, I have not been approached by any individual business people, as far as I can recall, who have wanted me to take up this matter or to take any action, so it is not a matter that I have studied or given detailed thought to at all. I have heard of individual cases where small businesses have been compensated by developers for disruption caused to their business as a result of development taking place.

Also, I understand that this issue has been raised by at least one city councillor as a matter that ought to be addressed by the Adelaide City Council itself. Whether the City Council has taken up this suggestion in a formal way, I do not know, but I will certainly make some inquiries about that when I look at the issue that has been raised by the honourable member. I do not know whether a tribunal would be an appropriate way to deal with such cases, but I shall certainly give the matter some thought and bring back a considered reply as to what approaches should or could be taken to assist small businesses that find themselves in this situation.

SENATE VACANCY

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking you, Mr President, a question about the current South Australian casual Senate vacancy.

Leave granted.

The Hon. R.I. Lucas: Which one?

The Hon. T. CROTHERS: Well, we know about one. The other one (that is your Federal colleague, the Hon. Senator Messner) has been in limbo land for some months now, Mr Lucas, as you would know. On page 5 of today's *Australian*, there appears an article written by Carolyn Collins headed, 'Democrats Regroup for New Challenge'. The article refers to the Democrats' Senate replacement for Janine Haines, a Mrs Meg Lees, and a quote from the article attributed to Mrs Lees is as follows:

> Mrs Lees said she would have been in Canberra before the 24 March election if not for delays by the South Australian Parliament in accepting her nomination.

Mr President, if this quote is correct, I would find it outrageous but if, on the other hand, it is not, I would find that position absolutely appalling. In the light of my explanation, I ask if you, Sir, can advise this Council whether there was any delay in calling a joint sitting of the two Houses to fill the casual Senate vacancy brought about by the resignation of Janine Haines.

The PRESIDENT: The only way that it came before this Parliament was by a message from the Governor which, as I understand it, was received last Tuesday (20 March), and it was at my discretion, in consultation with the Speaker, when the Houses would meet for a joint sitting to elect that person to the position. I understand that protocol has been followed for many years and that there was no problem with protocol being followed on this occasion. The message having been received, and there having to be seven clear days notice, I took it upon myself, in consultation with the Speaker, to set Wednesday next at 12.15 p.m. as a convenient time.

To my knowledge, there has been no delay on my part or that of the Parliament. I cannot see how the Government got into the act. The Governor acts on directions given to him by the Government, I suppose, and he would attend to it as a machinery matter. In my opinion, what the honourable member has stated would be completely wrong. However, if I am wrong, it is not through any fault of this Parliament that there has been any delay in the appointment of a Senator to fill the position for the Democrats.

The Hon. T. CROTHERS: As a supplementary question, having just listened to your assurance, what redress, if any, exists for this Parliament to ensure that the blame that has been attached to it by the incoming Senator is removed and that the record is squared up just for the sake of truth?

The PRESIDENT: This is a democratic Parliament, and my view is that the redress lies with the press upstairs.

ADELAIDE MEDICAL CENTRE FOR WOMEN AND CHILDREN

The Hon. R.J. RITSON: I have been advised that the Hon. Barbara Wiese has an answer to a question I asked on 21 February concerning the Adelaide Medical Centre for Women and Children. I further ask her, as a member of the Government, to consult with her colleagues and, in the interests of reducing the cost impact of postage stamps upon the Government during the recess, whether she might arrange for all outstanding answers to questions to be delivered in bulk within the Chamber, so that leave could be granted for them to be inserted in *Hansard*?

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

1. No. It is intended to transfer the majority of the terminations currently provided by Queen Victoria Hospital to the Pregnancy Advisory Centre at Woodville.

2. As there is no planned reduction in overall bed numbers at the Adelaide Medical Centre for Women and Children, there will be no competition between children and adults for beds.

REPLIES TO QUESTIONS

The Hon. BARBARA WIESE: As to replies to questions during the parliamentary recess, I shall certainly consult with my colleagues, although I believe that at various times in the past it has been the practice to have replies to questions incorporated in *Hansard* at the beginning of a session.

The Hon. R.J. Ritson: I was just wondering whether you would provide them in bulk if you had any there now.

The Hon. BARBARA WIESE: I can certainly do that for the questions that I have, but individual Ministers will have to make their own decisions as to whether they can do the same. I seek leave to have the following replies to questions inserted in *Hansard*.

Leave granted.

HODBY CREDITORS

In reply to the **Hon. K.T. GRIFFIN** (27 February).

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

1. As the former Minister of Consumer Affairs advised this House on 22 August 1988, the Government will do all it possibly can to ensure that all creditors of Ross D. Hodby who have a valid claim for compensation from the Agents Indemnity Fund, will be compensated to the extent of 100c in the dollar.

The Commissioner for Consumer Affairs has advised that claimants have, to date, received 80c in the dollar. However, he is unable to say when the remaining 20c will be paid, as he is relying on the official receiver paying him.

2. Valid claims for compensation arising from fiduciary default of three land brokers, Peter Francis Warner, Leslie Allan Field and Richard Walker Neagle have been paid in full. Dates of payment are as follows:

Peter Francis Warner—6.12.89 to 3.1.90
Leslie Allan Field—22.1.86 to 25.8.89
Richard Walter Neagle—5.12.88

CEDUNA GAOL

In reply to the **Hon. PETER DUNN** (21 February).

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

1. No. In fact, the Minister of Public Works, as principal in the contract with Arthur Lloyd Pty Ltd (receiver and manager appointed), has exercised his contractual right and taken over the work remaining to be completed. The South Australian Department of Housing and Construction is implementing completion by alternative means.

2. A resumption in on-site activity is expected by early April, with completion some 12 weeks thereafter.

3. Considerable extra costs would have been involved had Arthur Lloyd continued. In any event, there was no guarantee that that firm would have been able to achieve completion.

4. No.

5. The cost to complete is at this stage indeterminable, but recovery action for any additional cost that may be incurred in completion is available against Arthur Lloyd Pty Ltd.

FOURTEENTH WORLD ENERGY CONGRESS

In reply to the **Hon. I. GILFILLAN** (22 February).

The Hon. BARBARA WIESE: The Minister of Mines and Energy is aware of the Fourteenth World Energy Congress. Dr Messenger, the Director of the Office of Energy Planning, reported to the Minister and to the Energy Planning Executive on the congress and associated matters. Follow-up work is in progress. It is not usual practice for an officer's report to be presented to Parliament. However, the Minister will be pleased to make a copy available to the honourable member.

STATE CLOTHING CORPORATION

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health a question about the State Clothing Corporation.

Leave granted.

The Hon. J.F. STEFANI: During the 1988-89 operating period, the State Clothing Corporation recorded an operating loss of $591 000. A total amount of more than $2.8 million has been written off since 1984. During the last financial period, the State Government allocated grants to the value of $460 000 under the miscellaneous line of the Minister of Health to enable the corporation to continue operating throughout that year. Recently, I was informed that that coporation is still operating at a loss and that total losses for the six month period ended 31 December 1989 exceeded $100 000.

My questions are: what is the actual operating result for the half-year period to the end of December 1989? What is the total amount of funding provided by the Government through grants and write-offs during the period July to December 1989? When will the Government take action to stop the squandering of taxpayers' money on this failed manufacturing enterprise?

The Hon. BARBARA WIESE: I will refer the honourable member's question to my colleague in another place and bring back a reply.

DRIVERS' LICENCES

The Hon. I. GILFILLAN: Has the Minister of Local Government a reply to a question I asked on 21 February concerning drivers' licences? I would be happy for the answer to be incorporated in *Hansard* if the Minister was agreeable.

The Hon. ANNE LEVY: I have had provided the response to the question on drivers' licences that the Hon. Mr Gilfillan asked on 21 February. I feel that I should read it out so that the answer can be given the same publicity or have the same interest taken in it as the original question. Incorporation of the answer in the *Hansard* is a good way of burying it. The reply is as follows.

My colleague, the Minister of Transport, has advised me that when consideration was being given to the initial concept of photo licences, known manufacturers were approached. CPE Australia, having wide experience in the field, throughout Australia, was the successful candidate. The original intention was that the licences would be manufactured at heir Dry Creek plant in South Australia. However, because of the type of licence required, this would have necessitated the purchase of additional equipment. This cost would have been added to the cost of the licence.

As a cost saving measure, the photo licences are manufactured by CPE Australia at its Melbourne plant. Flinders University is only producing student identification cards. This involves laminating a polaroid photograph on to a separate card and is obviously an inferior procedure to that required for a photographic licence. No manufacturer in this State is able to produce a photo licence of the standard required and within the price structure. I point out that the photo licences issued by this State are considered superior to those issued by the other States.

PRISON WAGES

The Hon. I. GILFILLAN: Has the Attorney-General a reply to a question I asked on 20 February about prison wages?

The Hon. C.J. SUMNER: The Minister of Correctional Services has provided me with the following response to the honourable member's question:

I am unable to comment on the Supreme Court judgment on prisoner allowances referred to in the question as an appeal is soon to be heard.

RENTAL ACCOMMODATION

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Housing and Construction, a question about rental accommodation in Adelaide.

Leave granted.

The Hon. T. Crothers interjecting:

The Hon. L.H. DAVIS: I am glad to see that the Hon. Trevor Crothers has thawed out. An article by Nadine Williams on page 12 of this morning's *Advertiser* drew attention to the shortage of rental accommodation in Adelaide. PRD Gaetjens, the largest rental agency in Adelaide, reported that the average rental for a three bedroom house in Adelaide is currently $159.60 week, an increase of 11 per cent over the previous year. That is obviously well in excess of the

increase in average weekly earnings in that period. This $159.60 a week represents 33 per cent of the latest average weekly earnings of a full-time adult worker in South Australia. As far as I can recollect, it is the highest percentage of average weekly earnings that has had to be paid for rental accommodation in South Australia for many years, if not the highest in the State's history.

The latest data available also suggests that more than 30 per cent of average family income is required to meet the principal and interest repayments on the purchase of a house in Adelaide. As I have maintained on more than one occasion in this Chamber, financial institutions involved in housing loans—principally banks and building societies—are simply reluctant to make housing loans available where principal and interest payments exceed 25 per cent of gross family income, yet PRD Gaetjens has today confirmed that an Adelaide family with two children requiring a three bedroom home for rental accommodation has to pay an average of 33 per cent of average weekly earnings for that accommodation, assuming that only one adult is working.

What is more alarming is that the vacancy rate of rental accommodation in Adelaide is only 1.8 per cent, which is well below the 3 per cent level which is considered to be an acceptable balance between supply of and demand for rental accommodation. I understand the shortage reflects the extraordinarily high interest rates and economic uncertainty which makes developers reluctant to commit to rental projects.

Today I canvassed several sources in the real estate industry, who confirmed that a further 10 per cent increase in rents is likely during 1990. In other words, the cost of renting a three bedroom house in Adelaide is likely to increase from $159.60 a week to about $175 a week before the year is out. That amount will represent far more than 33 per cent of average weekly earnings.

Quite clearly, as well as the serious problem for people seeking to purchase homes of their own in Adelaide, there is a grave crisis in rental accommodation. A poverty trap is developing in Adelaide with people being unable to purchase a house because they do not have sufficient funds and others being unable to rent a house. As we know, there is also a waiting list of 44 000 people for Housing Trust accommodation. Obviously there is a housing crisis in Adelaide. My question is: is the Minister aware of the grave crisis that confronts Adelaide with respect to rental accommodation, with the fact that rental accommodation is presently beyond the capacity of an average family? Is the Government aware that, in addition to the average family being unable to raise funds to purchase a home, it is also unable to rent a house? What plans has the Government to rectify this alarming situation?

The Hon. BARBARA WIESE: I will refer the honourable member's question to my colleague in another place, but it strikes me as rather peculiar that the Hon. Mr Davis seems only recently to have discovered the problems that exist in South Australia with respect to housing. The State Government recognised this long ago and has put very considerable resources towards trying, first, to assist the South Australian Housing Trust to expand its housing program and, secondly, for many years it has taken measures to ensure—

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —that the price of land and of housing in South Australia is kept as low as possible. The honourable member may have read an article in yesterday's *Financial Review* which referred to this very point—that the cost of housing and land in South Australia is considerably lower than in other parts of Australia, and that we are relatively much better off in relation to people wanting to purchase or rent housing in this State. However, I shall refer the honourable member's questions to my colleague in another place and bring back a reply.

HEALTH CARE

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health a question about primary health care.

Leave granted.

The Hon. M.S. FELEPPA: Members would be aware that the South Australian Government has adopted a social justice strategy for South Australians as a means of reducing across-the-board inequalities in our community. This strategy is comprehensive, covering several policy areas including education, employment, housing and health, and it is to this latter policy area that I will address my question.

A fundamental area in which social injustices are evident is in the area of health. This was recognised as long ago as 1981, when the 'global strategy of health for all' was adopted by the Thirty-fourth World Health Assembly. Australia is a signatory to this agreement. This reveals, both at Federal and at State level, this Government's commitment to the provision of adequate health care for all Australians and South Australians.

At the international level, the concept of primary health care is seen as a key component in the pursuit of social justice objectives. The concept of primary health care aims to provide a direction and focus for the health system in our State, and aims to approach health problems from a wide perspective and encompass the broad range of factors which influence the health of our community.

Our key emphasis is on cooperation and consultation between professional organisations, community groups and individuals. This approach recognises the wide range of factors that influence the health of the community. The Bannon Government has responded to this call through the South Australian Health Commission's initiative, the primary health care policy.

My questions are as follows: what form will a primary health care policy in South Australia take? How will this policy develop a broader understanding of the causes of ill health and the most appropriate ways of promoting health and dealing with illness and disability in our community? Finally, when will South Australians begin to benefit from this approach to health care?

The Hon. BARBARA WIESE: I will refer the honourable member's question to my colleague in another place and bring back a reply.

WAITING LISTS

The Hon. M.B. CAMERON: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health a question about waiting lists.

Leave granted.

The Hon. M.B. CAMERON: I was heartened to read in today's press that a spokesperson for the Minister of Health does not dispute figures I released in this Chamber yesterday, showing that surgical waiting lists in our hospitals had reached a record 7 120 in January of this year, although I understand that in the initial stages this spokesperson did attempt to say that the figures were not correct. However, he finally became convinced once he had done some checking.

I was somewhat puzzled by his comment that these lists are not, in fact, waiting lists, but booking lists. This furphy commenced in about 1986, when the Minister had been denying for a period of 12 months that there were waiting lists, and finally said that I had been using the wrong terminology: they were not waiting lists at all—they were booking lists. I guess that that was to overcome the fact that a few furphies had been told during the previous 12 months. This euphemism of booking lists that successive Health Ministers and Health Commission heads have tried to pass off to the public is a load of nonsense. Irrespective of what the lists are called, there is no doubt that the people who are waiting months, and even years, in much pain, know the full consequences of the Government's failure to address this issue. They are not on booking lists; they are on waiting lists. They are the ones who have to suffer, often in pain, until their number comes up.

However, a disturbing factor that lay hidden in my release yesterday of the Health Commission's January waiting list figures was that a figure may be understated by several thousand, as there are many more 'uncounted' patients waiting for operations. These are the people who, for one reason or another, cannot have their surgery until some date in the future—it may be six months or nine months from now—and are therefore not included on the lists until their time for surgery is imminent.

Some time ago a memo went out from the authorities in our major hospitals (and no doubt was relayed from a similar Health Commission memo) stating that such patients were not to be included in the compilation of future waiting lists. So, in effect, a second, or hidden, waiting list was created. Now you have to get on a list to see the specialist at the hospital. He or she then determines an expectation of when the surgery might be done given current waiting lists, and you do not show up on the Health Commission's statistics until this forecast operation date draws near.

On top of this, there are many people who, in order even to get near the specialist at the hospital, go on an additional waiting list to obtain a booking to find out whether they will be put on the waiting list. So, we have about three different waiting lists, each of which is quite serious. I understand that in the area of orthopaedic surgery it is reaching the stage where even to go and see a specialist entails up to five months wait or longer.

Little wonder then that the Minister can boast about 50 per cent of patients seeking elective surgery having it done within a month of their joining a waiting list. In some cases the patient—together with possibly thousands of other patients—may have already been waiting six to 12 months to get on the waiting list for the operation. My questions to the Minister are: will the Minister table in Parliament figures detailing the number of people who are on specialist surgeons' waiting lists for appointments at each of Adelaide's five major hospitals—that is in each separate speciality (that is, those people seeking appointments with specialists prior to joining the official elective surgery waiting lists, or booking lists)? I do not care what they call the lists: I do not want the Minister to avoid answering the question because of that point. Will the Minister provide details on this matter broken down by hospital, specialty and duration of waiting period in order to obtain these appointments?

The Hon. BARBARA WIESE: I will refer the honourable member's question to my colleague in another place and bring back a reply.

TAXI INDUSTRY

The Hon. DIANA LAIDLAW: Has the Minister of Local Government an answer to the question I asked on 1 March about the taxi industry? She may, since other members also have questions, prefer to incorporate this answer in *Hansard.*

The Hon. ANNE LEVY: I seek your guidance on this matter, Mr President. The question has been asked in Parliament.

The PRESIDENT: It is the Minister's prerogative to answer the question as she sees fit. If she wants to insert the answer in *Hansard,* she may; if she wants to answer in the Parliament, she may do that.

The Hon. ANNE LEVY: I think that it should be read in the Parliament—it is a very important matter. The Minister of Transport has advised me that he has been waiting for some time for the taxi industry to accept responsibility for its own operation. As an industry it has failed to recommend any plan or strategy for the future. By paring down the regulations to cover only aspects of safety and service, the Government is acting responsibly. These two principles cover the ambit of the Government's legitimate interests.

The former Minister of Transport, Hon. Gavin Keneally, did not 'promise' 20 new taxi licences. The figure of 10 to 20 taxi licences was raised by the former Minister as a means of improving service levels in metropolitan Adelaide. The proposal met with considerable opposition, including a rally of taxi owners on the steps of Parliament. The Minister of Transport is surprised that the taxi industry now views this matter as a broken promise. The Government has effected legislative change to provide for the sale, tender or lease of new taxi licences. Any submissions from the major taxi industry organisations detailing the current lack of service to the public and recommending the issue of new taxi licences are awaited with great interest.

There is no Fielding recommendation to disband the Metropolitan Taxi-Cab Board. I assume with 'disbandment of the Metropolitan Taxi-Cab Board', the honourable member is referring to the Fielding recommendation to create a Metropolitan Transport Authority (MTA) which would, amongst other things, license taxi cabs and certify their safe operation. To act on this recommendation the Minister would need to be convinced that the current licensing and safety checking is inadequate.

ST VINCENT GULF PRAWN FISHERY

The Hon. M.J. ELLIOTT: I move:

That this Council urges the Minister of Fisheries to resolve the continued decline of the St Vincent Gulf prawn fishery by—

1. Immediately agreeing to replace the current unworkable buy-back repayment scheme with a revenue-based, tonnage and price-sensitive formula which will tie a realistic level of buy-back repayments to a real recovery in catch; and
2. Immediately inviting Professor Parzival Copes to review management practice in the St Vincent Gulf prawn fishery and to make recommendations to halt and reverse the current decline of the fishery.

Honourable members will be aware that earlier in the year I asked a question in this Chamber to which I was promised a reply—a fairly straightforward question—but to date I have not received a reply. This motion canvasses information which is pertinent to that question and to several other questions which were not put at the time. Essentially, my question was querying what the Government intended to do about an apparently worsening situation with the St

Vincent Gulf prawn fishery, and I foreshadowed that the buy-back scheme, introduced by legislation in 1987, was running further into debt and was not working as it was supposed to.

Since that time, in fact only a week ago, the Opposition asked a similar question in the other Chamber and specified the degree to which that buy-back debt has now increased. When the buy-back of five licences—and not six as recommended by Professor Parzival Copes—was introduced, the collective debt to be fully repaid by the remaining licence holders was approximately $2.8 million. Within a year or so of the repayment scheme being introduced the repayments were reduced to cover interest only, on the basis that the fishermen could not meet capital repayments. Within another year, even the interest only repayments were frozen, again on the basis that the fishing catch could not finance any repayments at all.

I might add that at the time when the legislation was first brought into this Parliament there was not the capacity to vary the repayments at all, because the Government was so confident that the catch was going to recover immediately. It was only through the intervention of the Democrats on behalf of the fishermen that there was a variation of the formula which allowed a cut-back in the repayments.

In that period the capitalisation on the debt has added another $500 000 to the Bill, and the fishermen now owe in the order of $3.4 million. They are still unable to meet the repayments, and I understand that the Minister has delayed for a further period those repayments, on the basis that a new financial formula (devised at the expense of the fishermen themselves, I might add) has been proposed for adoption by the Government.

I have been advised by the representatives of the fishermen, a committee of the St Vincent Gulf Prawn Boatowners Association, that as part of their approaches to the Government, they have had several very brief meetings at which documentation has been handed to the Minister with strict limitations imposed as to what could be discussed at those meetings. I am told that this is despite the fact they have given assurances that they would have the opportunity to address with the Minister a wide range of concerns, all of them centring on the question of management of the fishery.

Their most recent attempts have been met with the response that, until the question of the financial formula has been agreed, the question of management will not be discussed. I know also that the fishermen's representatives have met others in this Chamber, and also with members in the other place, and have sought to convey some very simple propositions, based, however, on some extraordinarily complex matters to do with the fishery.

The simple propositions have been two-fold: first, that urgent redress for impossible financial pressures, which are largely not of their own making, is both necessary for their survival and is their right as ordinary citizens whose livelihoods are at stake and, secondly, that unless the matter of the cause of their current financial distress (and the intolerable burden being placed on this State's resources) is addressed simultaneously by an urgent review of the fishery management, then all the financial formulae in the world will be to no avail.

It would appear that there is strong resistance to the latter point, for reasons which may or may not be obvious, by the Department of Fisheries. The association has requested of the Minister that Professor Copes, of Simon Fraser University in Vancouver, be invited forthwith to return to conduct a review of management. He previously reported back in 1986. Of course, there is an argument that he should be invited back to conduct such a review before any final decision is taken on the restructuring of the repayment scheme, as his assessment of the current continued decline of the fishery would be highly relevant to such a restructuring. The association of fishermen considers that he is the only independent world renowned authority who is already completely versed in highly complex matters which must be understood for a management review to be quick, efficient and accurate.

When one considers the state of the fishery and the fishermen's finances, it is obvious why that is important. The association also believes that he will instantly recognise that what he recommended last time he was here has not been implemented and that he will be able to say why it should have been and recommend how it can be. Members here will know that a number of doubts were expressed by me and by others about the manner in which Copes' previous report was to be implemented, when we debated the legislation which created the buy-back. Members will also recall that a number of experienced fishermen warned that such a scheme without a concomitant change to management practice simply could not succeed. Unfortunately, we, and those in the other place, who raised those doubts, as well as those fishermen who warned us of the possible outcome, were right. It is a shame that it is only by virtue of hindsight that some can now admit it.

When the then Minister issued news releases outlining the Government's decision and the proposed implementation of the amendments to legislation in 1987, he also issued details of the Department of Fisheries' projections on the recovery of the fishery. I have a copy of that release dated 12 March 1987. The Minister said quite clearly:

> The level of repayment will be calculated on the size of the catch and the market price for prawns at the end of each season. The existing and continuing harvesting strategies, based on biological surveys, are aimed at increasing the present catch of 262 tonnes to the long-term average to the fishery of 400 tonnes in three to seven years.

Three years has passed and the catch has not recovered. It is no surprise to me—and nor I expect to other members of the Council—that the department is now claiming that these were not projections at all. What are they? Now we are told they are 'hoped for outcomes'. It is not surprising that the department has changed its description, because even its worst possible scenario has been shown to be radically wrong. Despite now being in the fourth year of the buy-back scheme, the fishing catch is almost exactly where it was on the very day on which Professor Copes came to conduct his inquiry. It was precisely that fishing catch which Professor Copes described as representing a crisis in Gulf St Vincent. When he returns, as I will urge the Minister to facilitate, he will have the extremely dubious pleasure of being able to use exactly the same description—almost exactly four years further down the track.

Professor Copes indicated conservatively that this fishery was entirely capable of returning to a 425 to 500 tonne fishery. The fact that it was half that when he was here and is still half that four years later will concern him. It concerns me, but I am not that surprised. As *Hansard* will show, I was one of the sceptics, as were the Hon. Norm Peterson and Mr Martyn Evans in the other place. I know that they, too, are not surprised. I understand from the fishermen who have talked to me that the now Speaker and Deputy Speaker in the other place also see the need for an immediate return of Professor Copes to deal with the central problem—the core and the cause of the problem—namely, the management of the fishery. I might add that this fishery is theoretically the most managed fishery in the world. It has been managed since its initial discovery and yet it is on the point of total collapse.

I have said that the reason for the department's resistance to the return of Professor Copes may or may not be obvious, but I believe it may have something to do with the fact that the person responsible for making the predictions for recovery—now known as 'hoped for outcomes'—was at the time the Chief Biologist and manager of this fishery and is now the Director of the Department of Fisheries. I do not consider it important to either lay blame or make excuses and I do not seek in any way to impugn the motives for the judgment or the political process by which the buy-back scheme was legislated and implemented. The fact is that the critics at the time have been proven right and the decisions taken then have proven to be wrong. It is now time to make new decisions and to try to ensure that they are right. We have a new Minister who has inherited a problem which the Government as a whole was warned would recur. It has recurred or, rather, resurfaced, because it never really went away and it would not be unreasonable to look again and adopt a different resolution.

I strongly urge this Minister not to allow himself to be insulated from the problem by doing what previous Ministers—Labor and Liberal—have done, namely, to assume wrongly that impartial and independent advice would be offered by the department. In a nutshell, his department is very much part of the problem. It seems more than a little unlikely that his department will take a dispassionate view of how the problem should be resolved if it is the case that a considerable part of the problem is of its own making. What is needed is a truly independent review by an authority which all parties can accept as expert and independent. It is one of the reasons why it would be advisable to have someone from outside Australia who is not on a first-name basis with the people in the Department of Fisheries here in South Australia.

It is not surprising that the fishermen have rejected a proposal for a summit to be chaired by someone nominated by the department, especially if this entails replacing just one biological theory with an interstate or overseas biological theory. It seems then not unreasonable for the fishermen, through their association, to meet the Minister now to hammer out an urgent and rational solution with him—not with his department or some other intermediary, be that a political minder or some vested interest group masquerading as an industry voice. I have no wish to engage in politicking or name calling and I will refrain from the temptation to do either.

My proposition to the Minister is extremely simple. Several years ago this Government examined, decided on and implemented a series of decisions which sought to overcome a serious industry problem. The problem remains and is getting worse. I believe that so far this season the boats have fished on only 10 days since last June, which indicates just how serious the situation is. The decisions and actions taken based on those decisions, for whatever variety of reasons, have proven absolutely inadequate. The Government is being asked to rectify the problem now and to do it this time in such a way that the damage done will be reversed and the problem will not recur. The resolution is in the hands of this Minister. I urge him to urgently address the whole rather than part of the problem with those whom it most directly affects—the Gulf St Vincent fishermen—and to quickly settle on an independent and expert way of resolving it. The up side would be the gradual but assured restoration of a unique South Australian resource which is literally on its last legs. The down side is having to acknowledge that the previous attempts have failed.

The bill for failure, which is currently $3.4 million, guaranteed by the Government apparently on the basis of hoped for outcomes by a Government department, will have to be met by the taxpayer, because the failure of the resource will guarantee the failure of those currently responsible for repaying the debt. A large number of very serious allegations have been made to me about the way these problems have been handled, which I will not go into in any detail at this stage. However, they involve what is essentially blackmail of fishermen and threats that if they made a noise licences could be revoked, because there was the capacity to remove further licences. There was an attempt to divide and rule.

Members may remember that four years ago there were two sectors in the St Vincent Gulf Fishermen's Association—the older fishermen (and I mean in terms of time in the fishery) and the newer arrivals. The department managed to divide them into two factions and, by this divide and rule process, the department got its own way. It discredited some of the more experienced fishermen just by weight of numbers. I find it interesting that the fishermen are now speaking with a united voice again. Some of the stories told about what was done in the old days and the sort of comments that were made really curl one's hair. It worries me greatly that Government departments should function in that way. All sorts of strange things are still going on. Parzival Copes' recommendations in relation to what size prawns should be taken are being disregarded, and I believe that lies that have come from the department suggest that there has not been any decrease in the size of prawns caught.

I have received letters from the three major buyers of prawns in South Australia and they all say that there has been a decrease in prawn size. It appears that games have been played with numbers. However, I do not intend to go into many of the serious allegations in great depth. I will not do that at this stage. The fishermen are asking for something reasonable. I think that the Minister has the opportunity to do something reasonable, but I can assure this place that, if reason does not prevail, I will come back and repeat these more serious allegations in more detail—something I would rather not do.

In summary, I ask the Minister, the Hon. Mr Arnold, to urgently agree to a financial restructuring of the current buy-back scheme and simultaneously to invite Professor Copes to return, as he has indicated he is willing to do. Telephone calls have already been made to Professor Copes and he is available to return. Although this time the fishermen are asking that he be brought to Australia, they were not originally supportive the first time he came out. However, they see him as an independent expert, which the Government itself recognised on the previous occasion, so he should be invited back—and, as I said, he is willing to do that—to review the management of this fishery, and he should recommend immediately a management regime to bring about a lasting recovery to the fishery, which is an important resource, and to give some chance of financial recovery to fishermen who are facing very real ruin.

I was told just recently that the licences at present have no value whatsoever. A serious loss is being faced by those people and they still have the debt of $3.4 million which is growing. It is not their problem—they have complied absolutely with every requirement placed on them by the Department of Fisheries, and it has not worked, so it does not help to try to blame the fishermen. The ball is in the Minister's court. I can only hope that he will act upon the recommendations contained within this motion.

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

HOMESURE INTEREST RELIEF BILL

Adjourned debate on second reading.
(Continued from 14 February. Page 118.)

The Hon. I. GILFILLAN: The Democrats support this Bill. It is a significant step in putting pressure on Parties that win Government to honour promises made prior to an election. We do not believe that this Bill is targeted at a particular Government or Party at a particular time. It is really the first step of what should be mounting pressure that there will be an expectation from the public and steps taken eventually to ensure that promises that are made in the build-up to an election are in fact honoured by the successful Party winning Government.

This Bill deals with a measure to relieve victims of extraordinarily high interest rates in the matter of purchasing their homes and I intend to deal with that in a little more detail. Before I do, however, I would like to take the opportunity of indicating that the Democrats have been arguing and lobbying for, and promoting, a measure that we believe would dramatically reduce the number of Australians who are dependent on borrowed money and who are currently in the stressful situation of having to pay interest rates that are dictated by overseas pressures as a result of the virtually complete deregulation of the financial system in Australia. It is interesting that the argument that we should reregulate to immunise interest rates on domestic funds for domestic use is only an extension of a system that, to a degree, exists already, in that we have had ceilings put on home loans—13.5 per cent, as it was on 30 April 1986—and, in a way, this measure is in itself an attempt to reregulate the banks and financial institutions.

An argument that I believe should be taken seriously by the Federal Government and argued for by all members of political Parties in Australia is that it is patently obvious that deregulation failed. It failed to achieve or deliver any of the aims for which it was purportedly brought into practice originally. With the precedent of statutory reserve deposits or non-callable deposits, as they are currently called, the system is already in place in Australia for reregulation so that, for our internal domestic use and particularly for small business, home buying and farmer carry-on finance and other specific causes, we can have credit available at an interest rate that can be controlled by this country, not by other countries and other money manipulators from overseas.

It is unfortunate that home purchasers in South Australia are the victims of this irresponsible and thoughtless move in allowing interest rates to blow out. In that context, the Democrats indicate our serious concern that the continuing deregulation of the banks will only continue to expose Australians to extremely high interest rates. Home interest rates of 17 per cent must be considered along with 25 per cent and over for many small businesses. Unfortunately, the interest rate issue was lost sight of in the latter days of the campaign prior to the Federal election. However, it is still a critical issue in the lives of so many thousands of South Australians.

I return to the situation that existed prior to the State election, The ALP policy statement, 'Families of the Future' of 13 November 1989 very clearly promised a program called Homesafe, which was to begin on 1 January 1990, and to end when interest rates for home loans fell below 15 per cent. It covered first home buyers who had bought since 2 April 1986, or second or subsequent home buyers who had bought before 2 April 1986 and who were paying more than 30 per cent of household income in home loan repayments.

It is time now to pause to compare this with what eventuated, because certain things changed. First, there was a change of name, and for that I do not necessarily hold the Government culpable; it is just an unfortunate fluke. It became 'Homesure', but the name was to cover the same promise. The coverage has now changed since January 1990 to first or subsequent home buyers who purchased since 2 April 1986 and who are paying more than 30 per cent of household income in repayments—a very dramatic restriction of those who are covered.

As for eligibility, the written loan cannot exceed $90 000 and the term of the loan must be 20 years or over. There is a list which I will not go into in detail, as it has already been spelt out, but income must be no greater than $40 040 for those with no dependants, up to $55 640 for those with more than four dependants. Applicants may own no other property that could be sold or occupied. The actual payment amount which was to apply and which was spelt out very clearly in this promise of 13 November 1989 was $86 per month ($1 040 per year) paid quarterly to the registered owners or, by agreement, to the principal caregiver of the family, or directly to the lending institution. There was no question of grades or limits, and there was an option of to whom the money would be paid—the registered owner, principal caregiver or the lending institution.

In the eventuality, in January this year the most dramatic change was that no longer would a flat $86 a month apply. Rather, it was 'up to' $86 a month—the very top. This would be paid directly to the nominated lender at the end of each month. There was a further change from the promised administration; the Office of Housing in the pre-election promise became the South Australian Housing Trust in the eventuality. I doubt whether that is a matter of any great concern to anyone in particular, but it is an interesting change.

The next category in the analysis is the target. In the policy speech, it was clearly spelt out that up to 35 000 families would be affected by this scheme and the projected cost would be $18 million per year. In introducing the Bill, the Hon. Legh Davis gave some details of the statistics to that stage, and the Minister (Mr Mayes) has indicated disappointment at the number of people who are benefiting from this scheme. The latest information that I can get is that no-one knows what is the current situation.

Today, I made the effort to get some information from Homesure, and the officer there referred my query on to Mr Mayes' office. The response from that office was that a new costing has not been worked out since January and the target has not changed. However, the experience has been that demand has been lower than expected, so it could be said that both the target and the projected cost would be lower than estimated in January. My feeling is in agreement with that of the Hon. Legh Davis: it will be dramatically lower than that which was promised in January.

The Hon. L.H. Davis interjecting:

The Hon. I. GILFILLAN: Yes. The detail of the scheme is calculated at $1 per week for every .01 of a per cent for which an applicant's interest rate exceeds 15 per cent. That is the scheme as spelt out in the Homesure brochure, and it is interesting, more or less academically, to compare it with the Liberal promise, which was put out in its policy statement. I do not think there is a lot of advantage in pondering over the Liberals' promise. Fate may well have had me standing on my feet condemning the Liberal Party for not honouring its promise, because I think it is essential that the Democrats' support for this Bill does not make any judgment that the Labor Party is any worse or any better

than the Liberal Party when it comes to honouring election promises.

It is an important and significant move by the Hon. Legh Davis to take the step of introducing into this Chamber a Bill which seeks to enforce a promise which was very, very clearly spelt out prior to the last State election, at a time when such a promise was critical to elector support and when the Premier (Mr Bannon), in his campaigning, had not made any profound statement about the Homesafe cum Homesure scheme. It leaves very serious misgivings that this was not a blatant attempt to catch up with what was accurately judged to be a big vote-catching promise by the Liberal Party. It was a sort of spontaneous combustion of a promise, and we are now seeing the consequences of it. It was cobbled together in haste, it was irresponsibly put together, and then, I believe, it was immorally destroyed after the election in what has turned out to be the Homesure scheme that has been offered to the people of South Australia.

It is important to reflect a little wider. One could spend a lot of time looking at the perfidy and the prevarication that goes on with pre-election promises but, in the same category as we are looking at this failure to honour a promise, on page 10 of the 'Families of the Future' policy document, this statement is made in a very succinct little paragraph:

> The next Bannon Government will keep increases in major domestic charges below CPI for the full four year term of office. This applies in the category of household charges.

It will be interesting to note how accurately that promise is kept in the next four years. I will reflect on that, again on the basis that debate on this Bill should be more than just one particular issue: it should really involve the issue of the obligation of Governments to honour their promises.

Is it not irresponsible to make a promise like this at the beginning of a four year term when a Government can have no idea what pressure there may be on its financial situation and that of the State, and on any of these particular services that will be covered under household charges? My feeling is that this highlighting of the failure to honour the Homesafe promise should flow into all election promises in future elections so that a Government will be embarrassed if it makes these sort of reckless statements prior to an election.

I highlight again that this particular statement stood out when I read it as being the sort of glib vote-catching phrase used by both Labor and Liberal Parties. In my opinion, it is very irresponsible for it to have been made prior to a four year term of office. It may well be that the verbal or superficial keeping of a promise like this means that there are distortions of the way in which funds are raised and costs are levied from other areas of Government control and revenue.

In indicating the Democrats' support for this Bill, I repeat that we believe clearly and categorically that the Bannon Government reneged on a promise made before the election, a promise which was an outstanding vote catcher at the time, and that it should stand shamed for not honouring that promise and for having irresponsibly grabbed at votes prior to the election. It is fair to emphasise just as strongly that we do not believe that the Labor Party stands alone in being guilty of breaking election promises, but I believe that the time has now come and that this Bill can serve as a pointer, when Parliament and the people of South Australia will not tolerate or take quietly the blatant breaking of pre-election promises. It is a sorry fact that there is no legal redress for promises made or advertisements which can be proved to have been patently wrong. I indicate that the Democrats will support this Bill.

The Hon. R.R. ROBERTS secured the adjournment of the debate.

GROUND WATER CONTAMINATION

Adjourned debate on motion of Hon. M.J. Elliott:

That this Council urges the Government to instigate a full public inquiry into ground water contamination in the South-East, and that all information held by Government departments in relation to ground water contamination be made available to the public.

(Continued from 14 February. Page 124.)

The Hon. T.G. ROBERTS: The Hon. Mr Elliott has moved for a public inquiry into ground water contamination in the South-East. He states as the reasons for the need for that inquiry that there is a serious lack of information available to the public on ground water contamination and the impacts of this contamination on the environment, public health and agriculture. If the accusations were true, then the definitions of his impacts would be true. Other reasons are that the level of knowledge on ground water contamination is limited, that the E&WS Department is withholding information to cover up past mistakes, and that the public has a right to be informed on these issues.

In opposing Mr Elliott's motion, I will argue that, although some of what he has stated may have in fact been the case at one time, the Government has undertaken work to correct some of the mistakes of the past. Reference is made to various pollutants. In many cases, timber millers have used copper chrome arsenates. Dangerous chemicals were alluded to in the treatment of timber and in the pulp and paper industry resulting in the contamination of a lake. Agricultural chemicals are said to be the source of pollution of underground water supplies, and there is the build up of nitrates from the disposal of whey and other leftovers from the butter, milk and dairy industries. I guess those accusations are in some cases accurate. Many of the sources of information to which the Hon. Mr Elliott referred were also available to me. I have spoken to some of the people who were involved in the phone-in and also those involved in highlighting the problems to the department, members of Parliament and interested community groups.

The sensitivity of the ground waters of the South-East to contamination has been a concern to the Government and the community for some time. These issues were reviewed in depth in the 1986 South-East Region Water Resources Management Review prepared by the E&WS Department. That document was publicly available and widely circulated in the region. The review considered both point source pollution, which results from major spillages of contaminants from industry, and diffuse source pollution, which results from numerous small pollution sources across the landscape, for example, fertilisers, animal wastes and septic tanks.

Last night, the Hon. Mr Dunn discussed some of the problems associated with the new Water Resources Bill. He said that the Government was going a little bit too far with some of its definitions, particularly those of wells and bores, and its application to areas in the South-East that have ground water which comes to the surface through springs and bursts through the surface naturally. He raised some of the problems associated with that proposed legislation.

However, that highlights the problems that occur in the South-East with the high level of reliance on underground water for drinking, agriculture and industry, and the balance that is required to be maintained by the Government in conjunction with the department's policing of the use of

those waters to try to prevent any contamination from crossover use by all the competing people and organisations wanting to use the underground water supplies.

It is a difficult task, and I guess mistakes were made in the 1950s, particularly when the dairy industry had butter and cheese factories in nearly every country town. They have long since been shut down and there has been a centralising of that industry to within a 15 to 20 kilometre radius of Mount Gambier. The disposal of waste is now very sophisticated and, in a lot of cases, it is put into products that did not exist in the 1940s and 1950s. The animal source contamination nitrates presented a problem in those days also when people kept pigs and dairy animals, and just hosed and washed the wastes into drains that eventually led into the underground water supply via the pot-holed and honeycombed area in the South-East through limestone escapes into fresh water supplies.

That highlights the other problem with the South-East—it is honeycombed with sink holes and underground streams which make it more sensitive. That means the Government has to maintain more control over the possible source of contaminants. Since those days the Government has come to recognise the sensitive balance between competing users. The users themselves have become more sensitive to the community's wish to maintain pristine water supplies underground. There is now not just a local or State but a national and international perspective on environmental use and protection, so that people living outside the area are now able to raise points of view in relation to how the South-East uses its water resources and how industry and individuals should behave in preventing the contamination of those very valuable resources underground.

We have come a long way since the 1940s, 1950s and 1960s when people thought that out of sight was out of mind and disposed of their contaminated chemical wastes and wastes from the butter and cheese factories straight into the sink holes that led to the underground water supplies. The monitoring performed by the E&WS Department picked up the fact that there was a high underground nitrate level in many areas. This was not general but localised, and the source of many pollutants was the individual use of septic tanks by private householders. The tanks were contaminating the underground water supplies from which people were directly drawing their drinking water.

The Government now has control over the use, depth and size of septic tanks. Communities have become more aware that drinking water sources must be isolated from septic tank use. I was raised in Millicent in the South-East, and not a great deal of attention was paid to the source of drinking water supplies in the 1950s. Many people were drinking water from underground supplies once the rainwater tanks were empty. Although no links were drawn in any public statements I remember reading at the time (even though I was very young in the 1950s, I could still read), there were many cases of polio, scarlet fever and what was known later as encephalitis, although it was not diagnosed as such at the time. Health problems were later found to be associated with the poor use of underground water supplies for drinking, in association with the disposal of septic tank wastes and common household effluent.

Only in the late 1950s and the 1960s was the E&WS able to trace the flow of underground water from the north around Penola and Coonawarra to Mount Gambier in a north-south direction. The water flow changed course around Mount Gambier, going back through the Blue Lake and out through the west. It flowed to the sea from east to west. The E&WS was able to ascertain not just the general flow of the underground water, but the localised flow of the water in many of the residential areas. As a result, it closed down many septic tanks. Many country towns, including Millicent, were put on to a sewerage system. Millicent had many of the waste disposal problems associated with an increase in population. Its extensive underground water supply was very close to the surface. Each winter the water-table would rise and the septic tanks would flood. Millicent then experienced the problems to which I referred earlier with respect to its drinking water.

Members can see that we have come a long way. Departments have cooperated in an attempt to overcome the health problems associated with the underground water supply. The health problems associated with points of contamination have been isolated. In recent times the E&WS has played an important role in monitoring the groundwater supply and competitive use by industry and people generally has meant that the E&WS has been able to identify correctly the source of contaminants from industry and the general public.

It is very easy for us to come into the Parliament and identify solutions to longstanding problems. It would be very easy for me as a member of Parliament to get on my high horse and say that there are serious problems of contamination of our resources in the South-East, the Riverland, and the Port Pirie area. To identify the problems is one thing; it is another to provide solutions within a timeframe that would allow those in particular geographical locations to come to terms with the problems and to develop alternatives to the contaminants they are using.

Some contaminants, particularly those being used in the agricultural chemical area, have been known for many years to be dangerous. Many chemical companies through the stock firms put pressure on farmers to buy their chemical products to make productivity lifts in their fields of endeavour. The pressure was too great for the farmers to resist and many resorted to the use of chemicals before looking at alternatives in agriculture and horticulture. Consequently, they used sledgehammers to crack walnuts by using chemicals such as DDT and others that had been banned for some time in overseas countries. Farmers were using DDT and other chemicals to address crop growing problems. Farmers sprayed their pastures with very dangerous chemicals to get rid of weevils. Soon after I came into Parliament a number of properties were isolated. The contaminant source was identified by the department. In some instances, farmers had to ensure that no stock fed off the pastures because they were contaminated to such an extent that the meat of the stock was also contaminated, thus affecting overseas markets.

People in the industry grew to understand that the chemicals such as copper chrome arsenate and the chlorinated process used at Apcel—which process is now a hyperoxide one—could be replaced by alternative chemicals which are less harmful, although not completely free of problems. Many people thought that if the problem was out of sight underground it was not a major problem, so, alternatives to chemical use were never looked for. That is no longer the case. The Hon. Mr Elliott would recognise that there is now a more sophisticated community level of understanding. Philosophical demands are being placed on Governments by communities which expect to live and work in safe environments. Governments are responding to those demands.

We are starting to come to terms with other problems raised by the Hon. Mr Elliott. I cannot see any reason for an independent inquiry to be set up. The pioneering legislation introduced in 1976 radically changed the situation. However, we are left with legacies of the past waste disposal

practices I mentioned earlier. The department's review, which I mentioned before, outlined a management strategy to deal with groundwater contamination issues. A copy of the report is tabled herewith. On the final page of the report is a list of priority actions arising from the review. Significant progress has been achieved with respect to water quality actions, in particular. The department will again review the situation comprehensively soon to produce a revised management strategy by the end of the five-year cycle in 1991.

In regard to the toxic waste phone-in, I report that the Government is giving a high priority to the investigation of reported pollution incidents. The E&WS conducted a public phone-in so that public concern about hidden pollution issues could be brought to the attention of the department. Although the phone-in was conducted over only one day, 19 May 1989, additional reports were received from the public for several days following. It is emphasised that information of this nature is always welcome from the public as it is of considerable assistance to the department in managing the quality of our water resources. Both the community and the Government have a role to play. If people in the South-East think that the problems with respect to the sources of contamination have not been addressed, I would like them to contact me so that I can take up those problems with the department if I do not think it is following them up and policing the potential contaminant sources as strongly as they should.

I also had the same experience as the Hon. Mr Elliott. When people contacted me with respect to investigating source pollution problems, I gave them advice on how to proceed. In some cases, they were union members in factories or mills, who were concerned about their jobs and wanted their anonymity maintained. However, it is impossible to follow up accusations unless one has the basis of the information to follow up to obtain a result on the accusations being made. It is probably in those areas that the Hon. Mr Elliott and I would part company in that a number of people would use any investigation to get back either at neighbours or at competitors, and one must ensure that the information one is given is followed through and its accuracy determined.

The other problem in relation to potential pollution in the South-East is that the city of Mount Gambier is placed at the foot of an extinct volcano with a number of craters and, particularly during the winter, as the Hon. Mr Lucas would know, the clouds hang very low and hold the residues that are burned in a number of panelboard and other wood industries around the area until about 11 o'clock in the morning, when the first winds blow and the contaminants are blown away.

What tended to happen, as reported to me quite regularly, was that a number of boiler operators would be asked to burn contaminated wood products overnight so that people would not notice the pollution coming out of the stacks. That was followed up on a number of occasions, not just by me but by reports to the department. I hope that those practices have ceased, although I suspect there is still the temptation to avoid the obligations of the Clean Air Act (and I suspect that this is happening in the metropolitan area as well) by getting rid of some of the problems that should be dealt with in ways others than by burning under cover of darkness.

People are now coming forward to say that they are not keen on bypassing the legal obligations placed on them as members of the public and are notifying individuals who are prepared to come in on their side and defend their position if they go public. I think that the criticisms the Hon. Mr Elliott laid at the feet of some members of the committee (that they are just lay people who have no particular expertise in pollution problems) need to be addressed. There needs to be cooperation with the Government to ensure that the standards the Government sets in its legislation are maintained by the community. If people are bypassing those legislative measures put into effect to prevent the very problems they are trying to get around, it is up to the communities to police this action.

I am not saying that the Hon. Mr Elliott is doing this for political reasons; he is probably doing it for good, sound reasons associated with his principles. He is as concerned about those problems as we are, but he has a different method of coming to terms with them. He has no political axe to grind at all: he is trying to come to terms with the problems as I have outlined.

I am sure that the Government and I, as a single member of the Government, can cooperate with the Hon. Mr Elliott. We can share information, if he has information to pass on to the department. If he believes that the department is not acting swiftly enough and that he needs some more weight to carry, I am sure that any number of people on the Government side of the Council will be prepared to assist him, not only to collect his information but to have it analysed and passed on to ensure that any breaches of the Act are policed and followed up.

Since the phone-in of May 1989 the department has conducted extensive follow-up investigations where significant contamination has been identified. The department has established individual strategies with the companies involved, including identification of the extent and seriousness and, where appropriate, has ordered remedial programs to be implemented. In cases where pollution was able to be confirmed, there was follow-up action. In some cases where contamination was suspected and it was able to be followed up and confirmed the trails had gone cold, while in others denials were made.

In those cases one really needs the cooperation of all individuals working in the same direction to obtain the required results. Obviously, if persons are burning residual wood off-cuts containing CCAs, and are doing it at night in a clandestine fashion, we cannot have inspectors sitting at the top of smoke stacks continuously monitoring those things.

These offences need to be reported by people in the area, particularly by those who have been asked by their employers to breach Acts. They need to report them straight away, then it is up to the unions (whose members, hopefully, they are) and the Government to protect those individuals from any victimisation that may occur if they are asked to become parties to a breach of the Acts the Government has in place.

Let me outline what has taken place since the phone-in and what was involved in the investigations. The first step was to interview those people who provided the information during the phone-in, to gather as much information as possible, although many of them wished to remain anonymous and could not be interviewed. This was followed by interviews and site inspections of the organisations alleged to have been causing these incidents. The interviews and site inspections were conducted during June, July and August 1989.

At that stage the significance of each pollution issue was assessed and plans for follow-up investigations established. It was concluded that some of the reports provided a basis for further investigation but others could not be substantiated or were not significant, and that no further investigation was warranted. The small investigations have been undertaken by the department and have now been completed. In the more significant cases, however, the organi-

sations involved have been requested to engage expert consultants to undertake the required further investigations, and these are in progress.

It is pointed out that in some cases management practices of some organisations involved were in accordance with Australian Standards, and the Hon. Mr Elliott and I would probably be in agreement that the Australian Standards need to be looked at. As more information becomes available, some of those standards are seen to be dated. In many cases, when the Australian Standards are compared to some of the overseas standards, they are quite conservative in their levels of tolerance as regards exposure ratings of harmful chemicals.

I can tell the Hon. Mr Elliott and anyone who reads *Hansard* (as well as the very few people in this Chamber listening today) that this is an area in which I take a keen interest, and I have contacts not just in Australia but overseas, I monitor the various standards in relation to harmful chemicals, particularly in the nuclear power and uranium industries, which standards are constantly changing. However, after extensive monitoring, it has been found that some standard practices are inappropriate in the South-East, even according to the Australian Standards that now exist.

However, after extensive monitoring it has been found that some standard practices are inappropriate in the South-East even according to the Australian Standards that exist now, and because of the sensitive nature of groundwater resources in this region and the cold winter weather conditions in the South-East which result in longer periods being required to fix copper chrome arsenate in timber, improved management practices had to be recommended and have now been implemented in many of these cases. It should also be noted that immediate action was taken to prevent pollution occurring and continuing in all cases where this was observed.

As most workers in these industries knew and know, and have been reporting for a long time, run off, exposure and negligent practices have occurred in the past. However, I believe that with the steps that are being taken and the cooperation that is expected by the Government, as well as the cooperation that has been extended by those who have been involved (and basically that includes the whole industry) I am confident that, with that community monitoring and the change in attitudes by those organisations involved, a clean up will occur.

The Hon. Mr Elliott has criticised the effectiveness of the Citizens Liaison Group in dealing with the groundwater contamination issues and has alleged that the department has withheld information from them. The purpose of this Citizens Liaison Group was to monitor the department's handling of pollution issues and ensure that the investigations and follow-up action were appropriate. Their terms of reference were to monitor the findings and actions from the toxic waste phone-in, and provide comment on other environmental issues of concern. The terms of reference given to the group were clearly not restrictive. The group was free to set its own agenda and to seek information from any sources. The department was requested to report on and to provide details of the phone-in reports, the interviews, results of laboratory testing, videos of site conditions, and so on. Also, the investigation strategy was discussed with the group, and it received their endorsement.

The Citizens Liaison Group provided news releases on the results of their work in September, October and November 1989 and in January this year. These news releases are tabled herewith. Perusal of the September 1989 news release shows that the group had reviewed the list of pollution issues and had determined that eight of them were of a minor nature. Each of the eight issues is described in the release, and it is clear that they were minor issues. The release indicates that further information was required on the remaining issues and that this information was anticipated to be available for the next meeting of the group.

A news release in response to an article in the *Border Watch* of 31 October 1989 outlines an investigation by the E&WS Department at the Woods and Forests State mill. The news release of November 1989, to which is attached a report from the Engineering and Water Supply Department's regional manager, expresses satisfaction with the progress of the investigations and concern at the misleading press and media reports by the Hon. Mr Elliott.

The attached departmental report provides a comprehensive summary of investigations to that date. This report, which was available publicly in November 1989, illustrates that the pollution issues were being thoroughly investigated by the department. It can also be seen that the Citizens Liaison Group was receiving all relevant information needed to perform its task.

It is also clear that the public was kept informed on the progress of the toxic waste phone-in by the group established by the Minister to ensure that the departments were doing their job. The details presented in the various news releases demonstrate that the Government was not engaged in covering up information. It is a pity though that the *Border Watch* did not see fit to print the November 1989 release which contained so much detail of the investigations. All this was taking place in the election climate, so it was not the best of climates for setting up and putting into place a longstanding community action monitoring group because of its potential for politics.

A summary of progress to date on these issues is now tabled herewith for the information of honourable members. This and other more detailed information has been presented to the Citizens Liaison Group, which has performed its role creditably and with integrity, and the Government and I believe that the community appreciates the work being done by them. This does not mean to say that the role of the Citizens Liaison Group is finished. I am sure that if the problems are still manifesting themselves in the South-East, other citizens liaison groups will be set up, and they will make the same demands as those made by the previous Citizens Liaison Group and the community generally. If there is any weakness in the Citizens Liaison Group make-up, it is perhaps that it does not have the specialised expertise that may be required to enable it to do some of the analyses.

The terms of reference basically set for the Citizens Liaison Group were open: that it was free to set its own agenda. However, the problem occurs in analysing in detail some of the information that it picks up and finds, and the timeframe by which some of the reports must be made.

If the monitoring is to be done over a long term, there are no problems with citizens liaison groups finding independent people to do independent analyses of any of the investigations that they want done. Many individuals are prepared to do those tests in chemical laboratories, in areas in which they have the required expertise. This can happen either in local areas or in the metropolitan area, and these tasks will be performed for nothing because they have an interest in the issues of maintaining a clean environment.

So, I oppose the motion. I do not think there needs to be a separate public inquiry, the cost of which one has no control over. I would prefer to see the monitoring done by local interest groups with specialist support and assistance provided when required. Also, the determination of the priorities should be set by the communities that may from

time to time make requests of the department for specialist analyses to be done, and, if they do not trust the department's analysis, that analysis should be able to be done by private individuals. So I would therefore argue that the time, effort, energy and finance that would go into a separate inquiry could very well go into the monitoring of groundwater supplies in other parts of the State. It is with this explanation that I oppose the proposition put forward by the Hon. Mr Elliott, and I submit that the motion should be dismissed.

The Hon. DIANA LAIDLAW: I do not intend to speak at anywhere the length on this motion as the Hon. Mr Roberts has done. I wish to indicate that the Liberal Party supports the motion moved by the Hon. Mr Elliott. As Mr Roberts indicated, this is a sensitive issue. The Liberal Party did have some misgivings initially about the allegations raised by the Hon. Mr Elliott and the manner in which they were raised. I, too, have read the various issues of the *Border Watch* and believe that perhaps the election climate may well have been a factor in relation to some of these issues.

My colleague, the member for Mount Gambier, has certainly voiced publicly his concern that a number of the statements about allegations of contamination of water supplies have lacked detail. However, in recent days he has advised me that he believes the full public inquiry into groundwater contamination in the South-East as proposed by the Hon. Mr Elliott does warrant the Liberal Party's support. The honourable member argues that further information has come to hand since the Citizens Liaison Group met and reviewed a number of issues raised in the local community last year.

In addition to the concerns raised by the member for Mount Gambier, I am also concerned about the limited role that the Government determined for the Citizens Liaison Group. I do not wish to reflect on the motivation or integrity of the members of that group, nor the manner in which they sought to conduct their investigations. Notwithstanding the Hon. Mr Roberts' response to my interjection, the fact remains that the Minister who set up the Citizens Liaison Group also provided it with narrow terms of reference. The group looked only at the report of the Engineering and Water Supply Department's investigation of a phone-in on a number of local issues. Apparently, some 22 issues were raised during this phone-in, and the E&WS did monitor that exercise and write the report, the contents of which the Citizens Liaison Group was then to monitor and ascertain what progress, if any, had been made on a number of these issues and whether there was any substance in a variety of issues raised in the phone-in.

In my view, the Citizens Liaison Group was hampered in its investigations by the very fact that it relied on the advice from the Engineering and Water Supply Department and the Waste Management Commission. There is reason to question whether these two departments, having initiated the phone-in, monitored the calls and written the report, could therefore also be asked to take follow-up action in terms of helping the Citizens Liaison Group in its investigation. I believe that it was unfair to place representatives of those departments and commissions in that role.

Various issues were raised in the phone-in report and various comments and reflections were made by the Citizens Liaison Group following the four meetings on the matters raised in that phone-in report. I note with interest that the action that was taken to establish the Citizens Liaison Group has prompted the timber industry in the area to form several committees to look at various problems. They are doing that in cooperation with the E&WS Department and the Waste Management Commission.

A further timber related committee is investigating the usage and disposal of glue products. I think that those initiatives are very positive ones, and I hope that we see further such positive initiatives in the area to address not only the substance of allegations but also the very issue of the treatment and management of waste products. Notwithstanding those initiatives, I, along with my Liberal Party colleagues, believe that there is reason for this full public inquiry into ground water contamination in the South-East. The Opposition supports the motion.

The Hon. M.J. ELLIOTT: I should have thought that, if the Government wished to oppose the motion, it would have produced a more substantial argument against it. As I was sitting taking notes through the speech, I was wondering what I would criticise because, with respect, the speech said almost nothing. However, I want to respond to a couple of items.

The Hon. Mr Roberts made mention of a review in 1986, and suggested that, after that time, things improved considerably. I have to inform the Hon. Mr Roberts that, while some things may have improved, many of the very problems that went to the phone-in occurred after that date; in fact, some of the problems were still occurring on the day of the phone-in. To take it a step further, there was a major spill of copper chrome arsenate—600 litres—three days after the phone-in. So, it is all very well to say that the 1986 review improved things, but a number of very serious problems still continue right up to the present.

The Hon. Mr Roberts dwelt on the mistakes made in the early 1950s and earlier—problems such as those created by cheese factories, etc. I think everyone acknowledges that in the past those factories were responsible for significant pollution of ground water, due both to nitrates and various organics but, once again, talking about the ancient history still does not acknowledge the continuing problems of the 1990s.

In the 1990s we have a new sewerage works near Port Macdonnell at Cape Northumberland, theoretically to cope with much of the waste in the Mount Gambier area. It has been under-designed and cannot cope with all the wastes created. A huge amount of whey from cheese factories cannot go into the sewerage system, because the system cannot cope. The whey was to be used by the piggeries, but they are not large enough. I presume that whey is being spread on the ground at the moment. Several cases of land spreading are occurring now in the South-East. The E&WS Department acknowledges that land spreading should not occur as a means of disposal, but it is occurring right now in the South-East.

The copper chrome arsenate plant has only just received approval—and I refer to the plant that produces the CCA itself and not treated timber. It has been placed in about the worst possible site. It has been placed right over a system of joints in the limestone formations. There is a large number of caves in the area. That sort of planning approval has occurred in our so-called enlightened times. Yes, we have come a long way, and we have learnt a fair amount about some contamination, in particular, nitrates, and perhaps some of the organics, but we know very little about many others.

Even where the E&WS Department and the CSIRO now have maps which show distribution of nitrates, those maps are very much ones that best fit the wells that the department has put down. The wells it has used are a long way apart and they are still largely guesstimates. Through all

those testing programs for nitrates, there was no testing for a large number of other substances that need to be tested for. I raised in this place a question about arsenic being found in a bore near Kalangadoo. We did not—and still do not know for sure—precisely where that arsenic came from, but it is worth recounting again how that arsenic—

The Hon. T.G. Roberts: Some farmers have tipped sheep dip down bore holes.

The Hon. M.J. ELLIOTT: That is the claim, but it is worth looking at how it was discovered. The fellow who had the bore had had problems with foul smelling water, and he worried about what might have been contaminating the bore. He had some friends who had been involved in the fight to stop the copper chrome arsenate plant at Cafpirco Road.

They said that they could arrange for water to be tested for him. He gave the water to them and it was passed on. The laboratory got its wires crossed and, knowing that this group was opposed to a copper chrome arsenate plant, it tested for arsenic accidentally and found it. It was an absolute sheer chance that that arsenic was found. Whether it was from sheep dip or anything else is irrelevant; the fact is that the bore was contaminated and it may just as well have been used by people as by animals. I use that as a case in point to show just how ignorant we are about what is in the water in the South-East. We are extremely ignorant, and there is a need for an intensive testing program. It may be expensive but it needs to be done, and it needs to be done soon.

The Hon. Terry Roberts made the point that it is easy to identify problems. In a broader sense, I agree. I am certainly not claiming here to have the answers but I am also suggesting that we need an inquiry to look at the problems more clearly, to identify precisely how serious the problems are and then start pointing the way towards answers. That is the sort of role that an inquiry should be playing.

I have not set about trying to attribute blame in this place. I am getting increasingly angry and frustrated by people who are acting as blocks to what I believe are reasonable requests. I remind members that it all goes back to a question I asked 12 months ago about what testing was being done and what had been found; a question that was never answered. I think I know why—because there has been very little testing and, therefore, there was nothing to report. That is how we got into what is turning into a bun fight at times, although I have been careful not to attack individuals. I might state that I have been attacked by a number of individuals, including the Minister, who has got on her high horse on a number of occasions.

There is a host of problems which need to be identified and which we have not even started to look at. In the United Kingdom they have identified problems such as underground petrol tanks and service stations experiencing fine cracks that leak very slowly. There is no way that that would have been checked at the present time. We do not know what is happening, and that is just one of what could be many examples.

On the matter of the phone-in, I have tried time and again to make it clear that I cast no reflections upon the members of the Citizens Liaison Committee. I believe that they were given a job that was too narrow. I saw the letter that was first written, inviting people to join the committee, and the terms were narrow. This committee did none of its own investigation, and it did no site inspections; they were all done by others. They had only four business meetings. As I said previously, and as, I think, the Hon. Mr Roberts conceded, they really did not have a lot of relevant expertise, particularly in relation to water quality—which is the very question that is being raised.

The Hon. Terry Roberts also said that there are different methods of solving these problems when we become aware of them and he illustrated this by his own example where he had had reports of illegal burning of wastes in boilers and the other pathways he could follow. Interestingly though, he undercut his own argument, because he admitted that he did not know whether the illegal burning had stopped. That is the very reason I am saying that we need a public inquiry to put the results on the record and publish reports so that people know what has been reported, what has not, and what investigations have occurred. If somebody is responsible for it, it would be clearly on the record—otherwise, we will continue to have these late night practices.

The Hon. T.G. Roberts: The burning will not be picked up by your motion—the smoke is airborne pollution.

The Hon. M.J. ELLIOTT: I quite agree with that. That is another question and I have already raised that in relation to copper chrome arsenate treated timber in relation to the Woods and Forests mill in Mount Gambier, which, by the way, was approved by the Waste Management Committee and went on for many years. In addition, as I may have put on record, the ash from that, high in copper chrome arsenate, was buried somewhere out in the forests near Mount Gambier and God only knows where it was. That information has not got to me yet but there is a real risk that that also is contaminating groundwater. I agree that the air pollution problem is a separate one but the example given illustrates why it is necessary to have an inquiry and why in the long run things may need to be put on the record. Perhaps another mechanism may be required to protect people when the initial accusation is being made, but we have to be very careful that that does not produce the ability to have a total cover up.

The Hon. Terry Roberts said that perhaps we need to look at the Australian Standards. I agree with that and I think the Australian Standard is really set at some sort of average condition. It has to suit Australia as a whole. The South-East is a special case. There would be very few places in Australia which are virtually totally reliant on underground water. That being the case, the Australian Standards may not be suitable for the South-East and this is another job to give to the inquiry. They would ask 'What are the special problems that exist here?' The water underground takes a long time to move. Whereas with surface water, a river empties out in a couple of days and is constantly being recharged at a rapid rate, the underground water moves very slowly. We probably do need much stricter standards and for that reason we need an independent inquiry to look at that sort of thing.

I would hope that people will not forget that the phone-in itself occurred after I raised doubts about some practices in the South-East. I had made some allegations. The Minister said that the allegations were unsubstantiated and accused me of scaremongering. The phone-in was set up and it did find some serious industrial malpractice. Here I was accused of scaremongering and yet the phone-in did find some very serious problems. The E&WS Department has been active in pumping groundwater out from under one Woods and Forests mill. It has had to close off some farmland next to another mill. I know it has a testing program going on around another mill. I found that out quite by accident but I have no idea what results are being obtained at this stage.

A lot of action has been stimulated from what was alleged to be scaremongering. I am saying that we are still only at the tip of the iceberg. I have had a lot more evidence come

to me. Beneath a Mount Gambier rubbish dump there is heavy metal and various short chain fatty acid contamination. We know that somewhere out in the forest there is a dump of the ash from the Woods and Forests mill. I know that substances have been dumped in several quarries around Cafpirco Road. In fact, a lot of quarries around Mount Gambier have been used as rubbish dumps by all sorts of people for a long time.

I believe that much of the information about what has occurred has simply not been reported at this stage and the committee as a whole has no way of knowing. I may be accused of scaremongering again but I was not wrong last time and again I believe that I am not wrong. I am not on a witch-hunt. With so many relatives and friends living in the South-East and with my responsibility as a member of Parliament I think we should be doing this.

We have before us at the moment a Bill that looks at the question of water resources and protecting water quality. I believe that, if the Government is fair dinkum about that, one of the jobs it needs to do very early is to make a thorough investigation of the current condition of the waters in South Australia—what we might call baseline studies. That is one of the things this inquiry would do. I do not see it as being necessarily exorbitantly expensive. I do not believe it will be expensive. They are inquiries that should be carried out, anyway, to facilitate the further functioning of the Water Resources Bill. I am not asking for extra expenditure but I am saying that, for goodness sake, the South-East is singly probably the most sensitive area. We have fiddled around for too long; let us get on with it. I hope that Government members will perhaps reconsider their position and support what I believe is a very responsible motion.

The Council divided on the motion:

Ayes (11)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, Peter Dunn, M.J. Elliott, I. Gilfillan, K. T. Griffin, Diana Laidlaw, R.I. Lucas, R.J. Ritson, and J.F. Stefani.

Noes (8)—The Hons T. Crothers, M.S. Feleppa, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner, and G. Weatherill.

Pair—Aye—The Hon. J.C. Irwin. No—The Hon. Barbara Wiese.

Majority of 3 for the Ayes.

Motion thus carried.

CONTROLLED SUBSTANCES ACT AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

I apologise to the Council for the fact that, because of the lack of resources available to the Opposition and the pressure of other legislation, it has not been possible to prepare a typewritten second reading speech and make copies available to relevant and appropriate members of the House. Nevertheless, it is not uncommon with private members' Bills for that position to prevail. The Bill introduced into the House of Assembly sought to do two things. First, it sought to repeal section 45a of the Controlled Substances Act, a section which introduced cannabis expiation notices for certain cannabis related offences. Its second objective was to lower the quantity limits for cannabis beyond which tougher penalties apply under the Controlled Substances Act.

In the House of Assembly, the repeal of section 45a was defeated and, during the course of the debate on this Bill, I will seek to insert the repeal of section 45a. In relation to the second matter, the Independent Labor member of the House of Assembly (Mr Martyn Evans) indicated his support and, consequently, that part of the Bill passed.

As we receive it, the Bill amends section 32 (5) (1) of the principal Act. Section 32 deals with the manufacture, production, sale, supply and administration of drugs, and having drugs in one's possession for the purpose of sale, supply or administration. Under that section, if the quantity of cannabis or cannabis resin exceeds a prescribed amount, a penalty of $500 000 and 25 years imprisonment will be the maximum penalties that a court can impose. Otherwise, the maximum penalties applicable presently are a $50 000 fine and 10 years imprisonment. Other drugs of dependence are treated similarly.

Regulations determine the exposure to the penalty and deal with the quantities of not only cannabis, cannabis resin and cannabis plants but also other drugs of dependence and prohibited substances. With respect to cannabis, the regulation provides the dividing line as 100 kg of cannabis, 1 000 cannabis plants and 25 kg of cannabis resin. If a person commits an offence under section 32 of the Controlled Substances Act relating to any of those three substances, and the quantity exceeds those amounts, the maximum penalty is $500 000 and a 25-year prison sentence.

One needs to remember that one plant at maturity is worth, so I am told, at least $2 000. So, with 999 plants, for example, worth nearly $2 million, the maximum fine under the principal Act can only be $50 000 or 10 years imprisonment. I am sure that all members would agree that that is a ridiculously low penalty for that quantity of cannabis plants. As I said, the quantity was fixed by regulation. The Bill seeks to override that regulation and to reduce by a factor of 10 the quantities of each of those substances.

So, a person who is convicted of an offence under section 32, where the offence involves more than 100 plants, 10 kilograms of cannabis and 2.5 kilograms of cannabis resin, will be liable to a penalty of $500 000 and 25 years imprisonment. If a regulation prescribes some lesser quantity or amount, that quantity or amount will prevail. For anything less than the quantity specified in the Bill or by regulation, the penalty will be $50 000 and 10 years imprisonment.

I recognise that we will be considering also a Government Bill dealing with controlled substances and the principle of increased penalties, with some specific reference to quantities in the legislation. Obviously, one will need to look at both Bills to ensure that they are compatible. As I said, when the Bill is being considered by the Council, I will seek to reinstate in the Bill a provision which repeals section 45 *(a)* of the principal Act. That section relates to cannabis expiation notices which were enacted in 1986 and which came into effect on 30 April 1987. They have been the subject of considerable debate since that time.

In the course of the debate in the other place, I noticed that the argument used by Mr Martyn Evans, MP, and several other members was that, now that the cannabis expiation notices had been in operation for about five years, they regarded that as an acceptable period of trial. The fact is that expiation notices have been in operation for only three years. In the first two months, from 30 April 1987 to 30 June 1987, the Government collected $8 000 in revenue. In 1987-88, it collected $244 000 and in 1988-89 it collected $242 000, a substantial increase in the penalties which had been collected as a result of summonses having been pur-

sued in the courts prior to the introduction of cannabis expiation notices.

The Hon. C.J. Sumner: What's wrong with that?

The Hon. K.T. GRIFFIN: It demonstrates, if it is related to the number of offences detected—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: They are relevant. The Attorney can correct it later if he wants. I am just quoting the correct figures in context.

The Hon. C.J. Sumner: Quote the report as well.

The Hon. K.T. GRIFFIN: I have already quoted that in other places. The fact is that, even on the basis of that report, there is a substantial increase in the number of cannabis related offences which have been detected since the cannabis expiation notice system has been in operation. As I say, there will be an opportunity in the course of the debate on this or the other Bill that we will be considering to raise that issue in more detail, and I would seek to do that at the appropriate time. For the moment, the Bill before us deals with one important tightening of the law, and I am pleased that it has been passed by the House of Assembly. I hope that it will eventually pass this Chamber.

The Hon. CAROLYN PICKLES secured the adjournment of the debate.

STATUTES AMENDMENT (VICTIMS OF CRIME) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Criminal Law (Sentencing) Act and the Criminal Injuries Compensation Act. Read a first time.

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

That this Bill be now read a second time.

The provisions of this Bill implement that part of the Government's election policy on victims of crime which requires legislative action. One of the highest priorities for the Government is the protection and security of the community. A vital part of community security is caring for victims of crime.

Since 1985 the Government has taken decisive steps to improve the position of victims in the criminal justice system. Our work has been acknowledged by the National Committee on Violence which noted in a 1989 discussion paper on victims of violence:

> The South Australian Government became the first Australian jurisdiction formally to recognise the rights of victims when it took steps toward implementing the United Nations Declaration.

An increasing number of victims are receiving compensation from offenders as a result of orders for compensation being made by sentencing authorities under section 53 of the Criminal Law (Sentencing) Act 1988. To ensure that courts turn their minds to the question of compensation for victims by offenders, that section is amended to require a court, if it does not make an order for compensation, to give reasons for not doing so.

The Criminal Injuries Compensation Act 1978 is amended, as promised, by increasing the maximum amount of compensation payable to a victim of crime under that Act from $20 000 to $50 000. Provision is also made for the payment of the funeral expenses of a person who dies in consequence of a criminal offence. The amount payable is the actual cost of the funeral or $3 000, whichever is the lesser. The $3 000 limit is in line with the maximum amount payable for funeral expenses under the Workers Rehabilitation and Compensation Act 1986.

Both Acts are amended to provide that no compensation may be awarded under the Acts where an offence arises from breach of a statutory duty by an employer in relation to employment of the victim and the injury is compensable under the Workers Rehabilitation and Compensation Act 1986. This amendment is made because that Act provides a code for an employer's liability to compensate a worker in these circumstances.

A further amendment is made to the Criminal Injuries Compensation Act 1978 to empower the Attorney-General to make *ex gratia* payments to victims of crime even though an offence has not been, or cannot be, established. It is quite often evident that a person has suffered injury as a result of an offence but for one reason or another no person is convicted of the offence. In such cases the usual practice is for an *ex gratia* payment to be approved and paid out of general revenue. This amendment will enable the compensation to be paid out of the Criminal Injuries Compensation Fund.

Minor drafting amendments are made to sections 11 (2a) and 13 of the Criminal Injuries Compensation Act 1978. 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 for commencement on a day to be fixed by proclamation.

Clause 3 amends the Criminal Law (Sentencing) Act 1988. Section 53 of the Act is amended to require a court that does not make an order for compensation to give reasons for that decision and to make it clear that a court cannot order compensation under the section against an employer in favour of an employee or former employee if the offence arises from breach of a statutory duty related to employment and the injury, loss or damage is compensable under the Workers Rehabilitation and Compensation Act 1986.

Clause 4 amends the Criminal Injuries Compensation Act 1978. Section 7 of the Act is amended to provide that a person who pays or is responsible for the payment of the funeral expenses of a victim may, within 12 months of the funeral, apply to the court for an order for compensation in respect of funeral expenses incurred. The amount that the court may order to be paid is the actual funeral costs incurred or $3 000, whichever is the lesser amount. The section is also amended to increase the maximum amount of compensation payable under the Act from $20 000 to $50 000 and to make it clear that no compensation may be awarded under the Act if the offence arises from breach of a statutory duty by an employer in relation to the employment of the victim, and the injury is compensable under the Workers Rehabilitation and Compensation Act 1986.

Section 11 of the Act is amended so that where the Attorney-General is contemplating reducing the amount to be paid in satisfaction of an order for compensation under the Act in view of other compensation that the claimant has or would be likely to receive apart from the Act and the Attorney-General is of the opinion that the other compensation does not adequately compensate for pain and suffering and other non-economic loss the Attorney-General should not reduce the amount to be paid below the amount that represents the deficiency or $10 000 (instead of the current $5 000), whichever is the lesser amount. The section is also amended to empower the Attorney-General to make an *ex gratia* payment to a person who would be a victim of crime but for some reason (not reflecting adversely on the victim) an offence has not or cannot be established.

Section 13 (6) is amended to make it clear that the reference to 'court' is not necessarily the District Criminal Court (which is the definition of 'court' in the Act) but means the court that convicts a person.

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

LEGAL SERVICES COMMISSION ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Legal Services Commission Act 1977. Read a first time.

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

That this Bill be now read a second time.

It makes a number of amendments to the Legal Services Commission Act 1977. The Bill inserts a new section 18a which empowers the Legal Services Commission to impose a statutory charge over real property. The imposition of a statutory charge will enable the Legal Services Commission to extend the number of persons qualifying for legal aid.

The purpose of the statutory charge is to secure the right of the commission to require a contribution from some clients and to guard against the wasting of legal aid funds. It is not intended that the commission will automatically foreclose on properties as soon as the matters for which legal aid were granted are finalised. The question of recouping funds would be assessed in each case. The rights pursuant to the charge would normally be exercised when the property is sold or transferred or when the applicant dies. However, the commission would have a discretion to foreclose at an earlier time.

The advantages of providing a scheme for the imposition of statutory charges are as follows:

It will allow an extension of legal assistance to applicants who possess valuable assets but who do not have sufficient liquid assets to pay legal costs immediately or the income to support borrowing against those assets.

It will allow applicants with fixed assets having reasonable incomes to qualify for legal assistance. The charge is then, in effect, collateral for a loan to be paid off over an agreed period of time according to financial means.

In certain borderline cases, where the merits are doubtful, but where the applicant is insistent on pursuing the claim, it will protect the legal aid fund against possible abuse. It would enable the commission to assess the application again, on the merits, when the case concludes in light of the findings of fact and all other relevant considerations, all of which are, by then, known quantities, rather than mere predictions.

In the case of elderly people, legal assistance could be made available and payment could be made from the estate at the time of death.

Where a legal aid client has a financial stake in the proceedings, in the form of a future liability to make a considerable contribution, they may be more inclined to behave in a reasonable fashion in giving instructions. This may assist to overcome criticisms which are levelled from time to time against legal aid bodies that they are funding unmeritorious litigants.

The Legal Services Commission has formulated preliminary guidelines relating to the imposition of a statutory charge. The circumstances where the Director of the commission may require the payment of costs to be secured by a charge on land include:

Where the commission's means test sets out a contribution in excess of $2 000 and (in the normal application of the test) aid would be refused on the basis that the applicant had sufficient means to take the matter to the assessed stage on a private basis before seeking reconsideration of the application for aid, but where it appears to the assigning officer that the contribution assessed cannot reasonably be raised.

Where the commission's means test sets a contribution in excess of $2 000 and taking into consideration the prospective costs of the matter, legal aid would be granted from the outset, then as a substitute to direct or instalment contribution, a charge to the level of the required contribution may be levied upon any interest in real estate registered in the name of the applicant.

In family law matters where aid is sought on behalf of an applicant to institute proceedings for property settlement and those proceedings may result in:

(i) an order for use and occupation in favour of the applicant in respect of real property in which the applicant has an interest;

(ii) a transfer of interest in real property to an applicant for legal aid costs, where there is no additional property settlement in favour of the applicant such as to enable payment of legal costs as a final contribution;

(iii) a purchase of the spouse's interest in real estate by an applicant for legal aid, the consideration for such purchase being raised by way of loan which does not incorporate sufficient funds to pay legal costs.

The Director, Legal Services Commission, has advised that the South Australian Legal Services Commission is the only legal aid body in Australia which does not have power to impose a charge either by reason of statute or by reason of the practice of the Lands Titles Office. The Lands Titles Office in South Australia will not register a statutory charge or a caveat for the commission, even when a client applicant has executed a written agreement, unless the property is also the subject of a litigation for which legal assistance is required.

The Directors of Legal Aid, in conjunction with the Office of Legal Aid Administration of the Commonwealth, have established a national and uniform means test for legal assistance. Although there are some State variations, the principles embodied are largely the same—the purpose being to ensure that legal assistance is equally available to all Australians. An important component of the uniform scheme is the ability to levy a statutory charge.

The Bill also provides for an increase in the Commonwealth representation on the commission from one to two. The involvement of Commonwealth representatives on the commission is a means of developing the Commonwealth's understanding of the work of the commission and of improving communication between the Commonwealth and the commission. The presence of two representatives should enhance the communication without adversely affecting the workings of the commission.

The Bill also amends section 15 of the Act dealing with the employment of staff by the Legal Services Commission. Currently, the section provides that a legal practitioner or other person shall be appointed and shall hold office, upon terms and conditions determined by the commission and approved by the Governor.

In consequence of this provision, whenever a person is appointed to the staff of the commission, the Governor approves the terms and conditions of the appointment.

The Legal Services Commission has requested that an amendment be made to the Act to remove the requirement for the Governor to be involved in the approval of the conditions of all staff. The current procedure is considered to be unduly cumbersome. The Bill provides for staff to be employed on conditions approved by the Minister from time to time on the recommendation of the Commissioner for Public Employment. This provision will provide greater managerial flexibility and is consistent with provisions applicable to some other statutory authorities.

Finally, the Bill makes a minor amendment to reflect the change in name of the Legal Aid Commission of the Commonwealth to the Office of Legal Aid Administration of the Commonwealth. I commend this Bill to members and I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal.

Clause 3 amends the definition of 'legal costs' in section 5 by setting out that it includes interest payable on account of legal costs. This ensures that interest as well as the principal sum owing on account of legal costs can be secured by a charge under new section 18a.

Clause 4 amends section 6 of the Act which relates to the constitution of the Legal Services Commission. The amendment provides for a further member to be appointed to the Commission, namely, a second nominee of the Attorney-General of the Commonwealth.

Clause 5 amends section 10 of the Act which sets out the functions of the commission. The commission is currently required under section 10 to cooperate with the Legal Aid Commission of the Commonwealth. This body is now known as the Office of Legal Aid Administration of the Commonwealth. The reference to the body is substituted with a reference to 'any body established by the Commonwealth for the purpose of the administration of legal aid'.

Clause 6 amends section 15 of the Act. Some obsolete subsections are removed and the section is amended to provide that the terms and conditions of employees of the commission are so approved from time to time by the Minister on the recommendation of the Commissioner for Public Employment. Currently, the Governor approves the terms and conditions in each individual case.

Clause 7 inserts a new section 18a into the principal Act. The section facilitates the securing of legal costs payable by an assisted person by a charge on land in which that person has an interest. The charge may be imposed pursuant to a condition of assistance and may be registered on the title. If default is made in payments on account of legal costs, the section provides the commission with powers of sale over the land. The section provides that registration fees and stamp duty are not payable in respect of such statutory charges.

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

STATUTE LAW REVISION BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Art Gallery Act 1939, the Bail Act 1985, the Bills of Sale Act 1886, the Equal Opportunity Act 1984, the Legal Practitioners Act 1981, the South Australian Health Commission Act 1976, and the Summary Offences Act 1953. Read a first time.

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

That this Bill be now read a second time.

This Bill contains various amendments of a superficial nature to seven Acts, namely, the Art Gallery Act, the Bail Act, the Bills of Sale Act, the Equal Opportunity Act, the Legal Practitioners Act, the South Australian Health Commission Act and the Summary Offences Act.

The amendments fall into four broad categories, namely:

(1) Conversion of penalties into divisional penalties placed at the foot of sections or subsections. In translating the various penalties into the appropriate divisions, no changes have been made to the level of the penalties except where no direct equivalent exists, in which case the penalty has been taken up to the nearest division.

(2) Conversion of all provisions into gender neutral language.

(3) Deletion of obsolete or spent material: for example, commencement provisions, arrangement provisions, exhausted transitional provisions, references to repealed Acts, etc.

(4) Substitution of old 'legalese' language ('hereinbefore', 'therein', 'thereafter', etc.) and other antiquated language with modern expressions, and substitution of the ubiquitous 'shall' with the now preferred plain English words 'must', 'is', 'will', as appropriate.

Care has been taken by the Commissioner of Statute Law Revision in preparing this Bill not to make any substantive changes to the law contained in the various Acts and to make as little change as is reasonably possible in implementing the Government's overall objective of achieving plain English, gender neutral legislation. I seek leave to have the 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 by proclamation.

Clause 3 effects the amendments contained in the seven schedules. Subclause (2) is a device for avoiding conflict between the amendments in the schedules and any subsequent amendment to an Act that may intervene between the passing of this Act and the bringing into operation of the schedules.

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

EVIDENCE ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Evidence Act 1929. Read a first time.

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

That this Bill be now read a second time.

This Bill makes a number of amendments to the Evidence Act 1929 ('the Act'). The Bill amends the law relating to proof of legislative instruments in legal proceedings.

This Bill also amends the Act to allow the admission into evidence of information which has been copied and reproduced by a computer and amends Part VIB of the Act with respect to reciprocal arrangements between the States as to the provision of evidence for use in proceedings.

It is a principle of common law that judicial notice will be taken of statutes but not of regulations and proclamations. This means that proof of regulations and proclamations must be tendered to the court. At present, it is necessary, in the prosecution of an offence against a regulation, to tender the regulation concerned as part of the complainant's case. Section 37 of the Act provides that evidence of the making of the regulation may be given by the production of a document purporting to be a copy of the *Gazette* that contains the regulations. The same procedure applies to proclamations.

From time to time the prosecuting counsel may, by inadvertance, fail to tender the regulations relating to the offence. The result of such a failure may be the technical dismissal of the complaint which in all other respects has substantial merit. The success of a prosecution should depend on the merits of the case and a failure to prove the content of a regulation should not be a ground for dismissal, especially given that the defendant is presumed to be aware of the existence of the regulation at the time of the commission of the acts alleged to constitute the offence.

Even when proceeding against a defendant *ex parte*, the prosecutor is still required to prove any regulations alleged to have been breached. This procedure is impractical—if only because of the expense involved and the need for the court to store the exhibit. The Commonwealth has already enacted legislation to provide that regulations and proclamations of the Commonwealth need not be proved in proceedings. The Government considers that such an approach should also be adopted in this State. The Bill amends the Act to allow the admission into evidence of information which has been copied and reproduced by a computer.

The State Government Insurance Commission (SGIC) intends to introduce a system whereby all its hard paper files in the compulsory third party claims area will be converted to computer retained documentation. To achieve this, SGIC proposes to use an optical character reader (OCR) which converts a piece of paper into a computer image for storage and later reproduces a file by the selection of all relevant documentation. As it is intended that, upon coversion, all hard copy documentation will be destroyed, SGIC wishes to ensure that the information produced by the OCR will be admissible in court.

The existing section 45c of the Act is concerned with the requirements for admission into evidence of a copy document as proof of the contents of the original document. However, section 45c (5) allows a court to require the production of the original document in some circumstances. The current section 45c has been repealed and replaced with a new section which modifies the 'best evidence rule' in so far as it states that a document which accurately reproduces the contents of another document will be admissible as the original document, notwithstanding that the original no longer exists. The court is provided with a number of bases upon which it may decide that a document accurately reproduces the contents of another.

The new section also makes provision for a reproduction to be made by an 'approved process' from which it will be presumed that the document is an accurate reproduction. The Bill also amends Part VIB of the Act which provides for the obtaining of evidence outside the State for use in proceedings within the State and for the taking of evidence in the State for use in proceedings outside the State. Part VIB was enacted in 1988 to replace existing provisions to implement the obligations under the Hague Convention on Taking Evidence Abroad in Civil and Commercial Matters. The Commonwealth Attorney-General is concerned that this provision, which duplicates provisions in the Mutual Assistance in Criminal Matters Act 1987, which came into force on 1 August 1988, will confuse Australia's ability to handle requests to take evidence.

The Commonwealth considers that its provisions cover the field in this area. If this is so, the State provisions are inoperative and evidence obtained under them for use in overseas countries will not be validly obtained. To avoid this possibility the State provision needs to be amended so that it applies only to the taking of evidence in criminal proceedings for use in the Australian States and Territories. Article II of the Hague Convention requires a contracting State to permit a person, whose evidence is being taken in Australia, to refuse to give evidence in so far as he or she has a privilege or duty to refuse to give the evidence under the law of the State of origin of the request for taking the evidence.

The article permits the privilege or duty to refuse to give the evidence arising under the law of the State of origin of the request to be specified in the letter of request, or, at the instance of the requested authority (such as the South Australian court), to be otherwise confirmed to it by the requesting authority. The Commonwealth Attorney-General is concerned that section 59f (6) does not make sufficient provision as regards claims for privilege on grounds based on the law of the State or origin of a request. Section 59f (6) provides that the South Australian court may permit a witness to decline to answer a question where, in the opinion of the court, the answer to that question might incriminate him or her or where it would in the opinion of the court be unfair to the witness, or to any other person, that the answer should be given and recorded.

It is arguable that section 59f (6) does give effect to the obligations under the convention, but to put the matter beyond doubt the section should be amended to make it clear that a person cannot be compelled to give evidence if the person could not be compelled to give the evidence in proceedings in the State of origin of the request. The Bill also makes a minor amendment to section 69a of the Act relating to suppression orders. The section currently provides for a court to make a suppression order when it is satisfied that an order should be made to prevent undue hardship to a victim of crime. The amendment refers to an alleged victim of crime. I commend this Bill to honourable members. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 repeals section 35 of the principal Act and substitutes a new section 35. The effect of this, together with the repeal and replacement of section 37 by clause 3 is to replace the existing provisions of the principal Act that deal with the proof of statutory instruments in court proceedings and the evidentiary value of matters contained in the *Gazette*. The new section 35, which effectively replaces the existing section 37, removes the necessity to prove a range of legislative instruments in court proceedings. The current section 37 sets out the means by which South Australian regulations, rules, by-laws, commissions, proclamations and notices can be proven in court. It can be done by production of the *Gazette* containing the instrument (or the relevant pages of the *Gazette*) or by production of an officially printed or certified copy of the instrument.

The new section 35 deals with a much broader range of instruments and requires a court to take those instruments into account if they are relevant to proceedings before the

court but provides that it is unnecessary for a party to the proceedings to prove the existence or provisions of those instruments. This applies to: South Australian statutes; statutes or ordinances of any other State or Territory; Imperial statutes forming part of the law in Australia; regulations, rules, by-laws or other forms of subordinate legislation made in South Australia or in any other State or Territory; and proclamations, orders or notices required to be published in the *Gazette* (or other official publication) of South Australia or of any other State or Territory of the Commonwealth.

Clause 3 repeals section 37 of the principal Act and substitutes a new section 37. The new section effectively replaces section 35 of the principal Act, which is repealed by clause 2. Section 35 of the principal Act provides that where the Governor or a Minister is authorised by any law to do any act, production of the South Australian *Gazette* containing a copy or notification of that act is evidence of the act having been done. The new section 37 broadens this evidentiary value of the *Gazette* by providing that the *Gazette* (or other official publication) of South Australia or of any other State or Territory of the Commonwealth is admissible in any legal proceedings as evidence of any legislative, judicial or administrative acts published or notified in it.

Clause 4 repeals section 45c of the principal Act and substitutes a new section. The current section 45c allows certified copies of documents to be admitted in evidence. It provides that a document that appears to be a facsimile copy of an original document is admissible as evidence of the contents of the original document if the copy is certified as a true and complete copy (once for the whole document and once on each page) by a person authorised to take affidavits. A copy of a copy is also admissible if similarly certified and if the 'original' copy would itself have been admissible in evidence. The court can still require production of the original even if these certification procedures have been followed. It is an offence to knowingly sign a false certificate.

The new section broadens the means by which copies may be admitted as evidence. It provides that a document that accurately reproduces the contents of another is admissible in evidence before a court in the same circumstances and for the same purposes as that other document. That is so whether the other document (that is, the 'original') still exists or not. Under subsection (2) the court has a broad discretion as to how it determines whether the copy accurately reproduces the original. It is not bound by the rules of evidence. It may relay on its own knowledge of the nature and reliability of the processes by which the reproduction was made or may make findings based on the certificate of a person who has knowledge and experience of the processes by which the reproduction was made. The court can make findings based on the certificate of a person who has compared the contents of both documents and found them to be identical, or it can act on any other basis it considers appropriate in the circumstances.

Under subsection (3), the new section applies to reproductions made by an instantaneous process. It also applies to reproductions made by a process in which the contents of a document are recorded (by photographic, electronic or other means) and the copy subsequently reproduced from that record, and to reproductions made in any other way. Subsection (4) creates a presumption that a reproduction is accurate if the reproduciton is made by an 'approved process'. An 'approved process' is one that has (under subsection (5)) been notified in the *Gazette* by the Attorney-General as an approved process. It is an offence of subsection (6) knowingly to give a false certificate for the purposes of the new section. The maximum penalty is imprisonment for two years.

Clause 5 amends section 59d of the principal Act, repealing subsection (2) and substituting a new subsection. The current subsection provides that Part VIB of the Act applies in respect of both civil and criminal proceedings. Part VIB of the Act regulates the taking of evidence outside the State for the purposes of court proceedings within the State and the taking of evidence within the State for the purposes of proceedings before a court outside the State. The new subsection (2) provides that these provisions now apply to proceedings originating in courts within or outside Australia in the case of civil proceedings but only to proceedings originating in Australian courts in the case of criminal proceedings. This means that the provisions in Part VIB no longer apply to criminal proceedings originating in courts outside Australia.

Clause 6 amends section 59f of the principal Act. Section 59f authorises certain South Australian courts to take evidence on behalf of courts outside the State. The amendment inserts a new subsection, subsection (7), which provides that where a State court is taking evidence pursuant to section 59f on behalf of a court outside the State, a witness cannot be compelled to give evidence on a particular subject if he or she could not be compelled to give evidence on that subject in the court from which the request to take evidence originates. This amendment also amends subsection (5) to make it clear that the decision as to whether subsection (7) applies or not is a matter for the South Australian court. Clause 7 amends section 69a of the principal Act to correct an anomaly.

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

CONTROLLED SUBSTANCES ACT AMENDMENT BILL (No. 2)

Second reading.

The Hon. ANNE LEVY (Minister of Local Government): I move:

That this Bill be now read a second time.

The purpose of this short Bill is to introduce substantially increased penalties for sale or supply of drugs to children. It is introduced against a background of concern for our young people. Young people today live in a world marked with stress and uncertainty. Traditional values and extended family support systems have been shaken. There are pressures at school; young people cannot be sure they can get the job of their choice or find any kind of employment when they leave school. Life's opportunities are uncertain. Young people are bombarded with media images of success, style and material wealth. Peer group pressure is a very powerful, real and often coercive force.

To those who would seek to exploit the vulnerability of our young people by selling or supplying drugs, the Government, by introducing this legislation, is giving a clear message—such reprehensible behaviour will not be tolerated. Under existing legislation, the penalties for trading or supplying illicit drugs are already severe. The Bill reflects the gravity with which the Government views the situation if young people are the target. Penalties for sale or supply of drugs to children (that is, persons under 18 years) anywhere it occurs in the State are substantially increased—fines will be doubled and prison sentences will be increased by 5 years. For example:

- in the case of large amounts of cannabis or cannabis resin, maximum penalties are increased to both $1 000 000 and 30 years imprisonment (currently both $500 000 and 25 years);
- in the case of smaller amounts of cannabis or cannabis resin, maximum penalties are increased to $100 000 or 15 years imprisonment or both (currently $50 000 or 10 years, or both);
- in the case of large amounts of hard drugs maximum penalties are increased to both $1 000 000 and life imprisonment, or such lesser term as the court thinks fit (currently both $500 000 and life imprisonment or such lesser term as the court thinks fit); and
- in the case of smaller quantities of hard drugs, maximum penalties are increased to $400 000 or 30 years imprisonment or both (currently $200 000 or 25 years or both).

The Government is very much aware that street youth are a particularly vulnerable group of young people. They are part of an environment which not only initiates drug use, but reinforces continued participation in drug-related lifestyles. The dangers inherent in such lifestyles are many—for example, intravenous drug use and needle sharing increase the risk of contracting the HIV virus and hepatitis B. The Government does not pretend that a legislative response is the only solution to the complex set of problems faced by this group of young people—but the message to dealers is unequivocal.

Children are any community's greatest resource. They must be protected from the possibility of being introduced to dangerous and addictive drugs and the many evils that are associated with illicit drug use. The Bill therefore seeks to establish drug-free school zones—any person in possession of drugs for the purpose of sale, who is found within 500 metres of a school, will also be liable to the higher penalties. The Government will not tolerate people lurking in the vicinity of schools, seeking to recruit young people into illicit drug use.

To ensure that the full weight of the Government's intention is given effect, the Bill also, as a third initiative, sets down certain matters that the courts will be required to take into account when fixing the penalties. For example, the amendments will allow certain places such as pinball parlours, amusement halls, specific streets etc., to be prescribed. In a case involving sale or supply to a child, if the offence took place at or near one of these places, the court must also take that into account in fixing the penalty.

The Government has consistently maintained that strategies for dealing with drug abuse must be comprehensive. Legislation is an important part of an overall strategy, but it must be underpinned by other elements, including education and preventive programs. These are important cornerstones of the Government's drug strategy. A number of programs are in place, or are proposed for primary and secondary schools—for example, Learning to Choose, Free to Choose, Life Education, and The TEACH Program, to name but a few—aimed variously at providing information and assisting children to make healthy choices and resist peer group pressure. Indeed, over $1.5 million is being spent on various education/prevention programs this year.

It is within this context of concern for young persons, that this Bill must be viewed. The vast profits that can be reaped from the illicit drug trade ensure that there will always be persons prepared to exploit the vulnerabilities of youth. This Bill introduces extremely severe penalties, for which the Government makes no apology. The community must protect itself and, in particular, its young people, who are the community's future, from the activities of an unscrupulous and dangerous minority—those who would seek to make profits from the possible addiction and death of young South Australians. The opportunity has also been taken to include provisions in this Bill to amend the definition of 'cannabis' following a recent court ruling on cannabis seeds. Honourable members are no doubt aware of the ruling, which was based on a submission that cannabis seeds do not contain cannabis resin and are fibrous or partly fibrous and therefore are not cannabis within the meaning of the Act.

The Government's intention when the Act was originally introduced was clearly that seeds should be included. Fibrous material that contains no resin was excluded from the definition to take account of hemp rope or matting. However, our advice is that very little, if any, of this material is currently available. The amendment therefore seeks to delete the reference to fibrous material in order to remove any doubt about cannabis seeds coming within the meaning of the Act.

The definitions of 'cannabis resin' and 'cannabis oil' are also amended to make them more precise. This is to remove difficulties being experienced by forensic scientists in scientifically categorising preparations as being resin or oil, and thereby achieving the gradation in severity from cannabis plant through resin to oil, as is contemplated by the Act. Further amendments seek to allow for the setting of limits on the number of cannabis plants that can be grown before it is deemed to be a commercial operation. Provisions are also included to enable a similar limit to be set in relation to a simple cannabis offence for the purposes of expiation under section 45a.

In keeping with the scheme of the Act these amounts will be fixed by regulation and will follow the process necessary for that to be achieved. However, I indicate that the Government believes 10 plants to be an appropriate threshold. It has come to our attention that much court time has been spent hearing disputes on production of a wide range of numbers of plants as being for own use. There have been findings, such as 200 plants for own use, with a value at the time of approximately $250 000. Clearly, this was not the Government's intention, and the amendments seek to remedy the situation. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without by reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides for commencement on proclamation.

Clause 3 redefines 'cannabis' so as to incorporate the existing definition of 'plant' which is accordingly deleted. 'Cannabis oil' and 'cannabis resin' are redefined in more precise scientific terms, so as to clearly delineate the difference in strength between resin and oil. A substance is oil if, when dissolved in hexane, it shows a concentration of more than 85 per cent, by weight, of soluble material in the quantity of substance tested. The definition of 'child' is recast so as to provide a general definition, as well as a definition relating to commission of offences. A definition of 'school zone' is inserted. A school zone includes not only the grounds of a primary and secondary school but also the area within 500 metres of the school boundary.

Clause 4 recasts the penalty provision in section 32. The penalties for selling or supplying drugs are increased where the sale or supply is to a child. The penalty for being in possession of a drug for the purpose of sale to another person is likewise increased if the offence occurs in a school

zone. The increases are in effect a doubling of the existing fines and adding five years to the maximum prison terms now available. Subsection (6), which provides for a much reduced penalty where production of cannabis is for the defendant's personal consumption, is amended to allow for a number of plants to be prescribed for the purposes of setting a limit beyond which the reduced penalty will not be available.

Clause 5 adds another factor to the matters that the sentencing court must consider when fixing sentence for a drug offence. In the case of the sale or supply of a drug to a child, the court must have regard to whether the offence took place within a school zone or at or near any other prescribed place. In the case of possession of a drug for the purposes of sale, being an offence committed outside of a school zone, the court must have regard to whether the offence occurred at any other prescribed place.

Clause 6 amends the definition of 'simple cannabis offence' in the expiation section, by allowing for a number of cannabis plants to be prescribed which will determine whether or not cultivation is an expiable offence.

Clause 7 is a consequential amendment relating to regulations that can only be made on the recommendation of the advisory council.

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

STAMP DUTIES ACT AMENDMENT BILL (No. 2)

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill proposes three amendments to the Stamp Duties Act 1923. Two amendments provide additional concessions for taxpayers whilst the third closes a blatant tax avoidance scheme that has recently been developed.

First, it is proposed to amend the principal Act so that persons living in a *de facto* relationship are entitled to the same concession as married persons with respect to stamp duty payable on the transfer of a registration of a motor vehicle. *De facto* relationships are already recognised under the Stamp Duties Act for the purposes of exemption from stamp duty on the transfer of an interest in a matrimonial home. This amendment will result in a uniform policy in the motor vehicle area.

Secondly, it is proposed to amend the principal Act so that the period of time during which a refund can be made of stamp duty paid on a registration or transfer of registration of a motor vehicle where the vehicle is returned to the dealer from whom it was acquired is extended from 30 days to three months.

Currently, in many situations problems with a vehicle become apparent after the 30-day period has elapsed and in these instances owners of the vehicles are required to pay stamp duty again on any replacement vehicle provided by the dealer.

An extension from 30 days to three months is more consistent with the general warranty period on the sale of goods in the commercial sphere and is consistent with the warranty provisions of the Second-hand Motor Vehicles Act 1983. Defects in motor vehicles do not always become apparent within 30 days and three months is considered a more realistic time.

Thirdly, it is proposed to amend the principal Act so that sales or gifts of property or interest in property that together form or arise from substantially one transaction or one series of transactions, are charged at the rate of duty that would apply if there were only one sale or gift.

The current provision, section 66ab, only applies to land or interests in land being conveyed. Section 66ab was enacted in 1975 to counteract the tax avoidance practice of dividing land into smaller portions to avoid increased rates of stamp duty on higher value transactions.

The same problem has again arisen but in relation to other property, such as businesses and units in a unit trust. For example, one business was sold by way of 60 agreements between the same parties instead of by the normal commercial practice of execution of one document and instead of transferring 400 units in a unit trust scheme by means of one document, the vendor and purchasers executed 400 separate transfers of one unit each.

Clause 1 is formal. Clause 2 amends section 42b of the principal Act to include *de facto* spouses within the provision that reduces to one-half the stamp duty on a transfer of registration of a motor vehicle from the registered owner into joint names with his or her spouse, or from two registered owners who are married into the name of one of them. A *de facto* spouse will be defined as a person who has been cohabitating continuously with his or her partner for at least five years. New subsection (7) will strengthen the ability of the Commissioner or the Registrar of Motor Vehicles to require information to substantiate a claim for an exemption from, or a reduction in, the stamp duty payable under section 42b.

Clause 3 repeals section 42c of the principal Act on account of the inclusion of new section 42b (7).

Clause 4 extends from 30 days to three months the period under section 42d of the principal Act within which a person may return a motor vehicle and claim a refund of stamp duty paid on the registration (or the transfer of registration) of the motor vehicle. Clause 5 makes a consequential amendment to section 42e of the principal Act as a result of the repeal of section 42c.

Clause 6 provides for the repeal of sections 66a and 66ab of the principal Act and the enactment of a new section 67. The purpose of the new provision is to extend the operation of the existing legislation to counteract not only the practice of conveying land by separate instruments to avoid higher rates of duty, but also the practice of dividing other forms of property into separate parcels or interests and then conveying those parcels or interests by separate instruments to avoid higher rates of duty. The provision will only apply if the instruments arise from a single contract of sale, or together form, or arise from, substantially one transaction or one series of transactions. The legislation will apply not only to conveyances on sale and conveyances operating as voluntary dispositions *inter vivos*, but also to other instruments that are chargeable with duty as if they were conveyances. The provision will not apply to conveyances where transferees are taking the property separately and independently from each other, to conveyances of stock, implements or other chattels where section 31a applies, to conveyances on sale of marketable securities, or to prescribed classes of instrument.

Clause 7 strikes out subsections (1) and (2) of section 68. These subsections are not used in practice. Any situation to which they might apply is subject to the operation of section

66a or 66ab of the principal Act, and will be subject to the operation of new section 67. Under that provision, the Commissioner will have the power to apportion duty between the various instruments. The subsections may therefore be removed. Clause 8 provides for the repeal of section 69. The operation of this section will always be subject to the operation of section 67. It can therefore be repealed.

Clause 9 strikes out subsection (10) of section 71e. Section 71e (10) provides for the aggregation of transactions between the same parties for the purposes of section 71e. The provision may be removed as new section 67 (4) will provide for the aggregation of instruments (including instruments chargeable with duty as if they were conveyances) executed by the same parties within any 12 month period (unless the Commissioner is satisfied that the instruments do not form one transaction or one series of transactions).

The Hon. L.H. DAVIS secured the adjournment of the debate.

AGED AND INFIRM PERSONS' PROPERTY ACT AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendment No. 2 and had disagreed to amendments Nos 1 and 3.

STRATA TITLES ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

ABORIGINAL LANDS TRUST ACT AMENDMENT BILL

In Committee.

Clause 1—'Short title.'

The Hon. ANNE LEVY: Yesterday, when this matter was being discussed, I undertook to obtain some responses for Opposition members regarding matters that they have raised in the second reading debate. I can provide information on a number of matters which they raised. First, the Pitjantjatjara Lands Parliamentary Committee was established under the 1987 amendment to the Pitjantjatjara Land Rights Act 1981. Since the committee's establishment, Opposition members on the committee have been the member for Eyre and the member for Chaffey. The committee has had its reports tabled in the House of Assembly on 1 November 1988 and 5 September 1989. I presume that will give sufficient information for the inquirer.

Secondly, I turn to the following comment made by the Hon. Mr Peter Dunn in his contribution:

> This Bill is really aimed at places such as Koonibba, Yalata and perhaps Davenport in the Port Augusta area, but when we start talking about Point Pearce and Point McLeay we are talking about areas established within white communities and therefore white laws apply all round them. Thus a Bill such as this is applying an apartheid law, something that cannot be well policed.

I certainly do not say that. The Bill is very clear in ensuring that the provisions for the control of alcohol in Aboriginal communities will apply only on the application of the relevant Aboriginal community council constituted to administer the community concerned. Outside persons such as the Minister, the police, the community adviser or district council cannot apply. It is quite clearly the choice of the Aboriginal people themselves.

Although community councils such as Point McLeay or Point Pearce may exist within white communities, the community council may believe that it is in the interests of that community for these provisions to apply to certain sections of their land area. It is now the right of any Aboriginal community council in the State, irrespective of its location, to seek protection under this law. It is no more of an apartheid law than is any other dry areas legislation applying in this State.

Several references were made in comments from Opposition members to the police aide scheme, which has certainly been most successful in the Pitjantjatjara lands. I understand that the Police Department has made a firm commitment to extend the scheme to Yalata and consideration is being given to the Davenport community, Port Augusta, where a security service has been operating for the past several months. Further expansions to this scheme are being considered in current budget negotiations.

A question was also raised with regard to the provision of rehabilitation programs. The purpose of this Bill is to empower a magistrate to direct that a person participates in a rehabilitation program as part of a court order; in other words, if a person opts out of rehabilitation, he could be brought back before the magistrate for review of the penalty. This rehabilitation order could apply to programs conducted within his or her own community, where Aboriginal health organisations conduct a range of programs as part of their public health strategy. Alternatively, the order could require a person to attend a program away from his or her community. Under this Bill, attendance and participation are mandatory.

This Bill should not place any significant burden on existing services, as this provision is one of a number of sentencing options available to a magistrate and would be used in only selected cases. However, I can report on just a few of the rehabilitation programs currently available which provide real commitment to those unfortunate people who are unable to cope because of alcohol abuse.

Kalparrin Farm at Murray Bridge has provided magnificent service for the past 10 years and is available to Lands Trust communities, particularly Gerard, Point McLeay and Point Pearce. Only a couple of weeks ago, Kalparrin took over the control of a 20-bed hostel in Murray Bridge to complement its work with alcoholics. The Baroota Farm near Port Germein has just recommenced operations in alcoholic rehabilitation. The Pika Wiya Health Service at Port Augusta proposes to re-establish a day centre for alcoholics, and I understand that negotiations are still taking place with the Port Augusta council for approval.

Dry-out facilities have been established at Ceduna and Port Augusta. Mobile assistance patrols—a 24-hour on call service to pick up Aboriginal drinkers—have been established to cover the Adelaide and Murray Bridge areas. A working group has been established in the Riverland to work in association with the Berri Hospital and the Drug and Alcohol Services Council to establish rehabilitation and support programs for alcoholic Aborigines in that area. All these facilities and mainstream programs could be used by a magistrate under the provisions of this Bill.

Another comment made by speakers opposite referred to excessive boredom. Excessive boredom amongst Aborigines has deep cultural overtones, given that since white settlement, the traditions, customs and lifestyle of Aborigines have been decimated, and the whole meaning and purpose of life for traditional and many urban Aborigines has been destroyed. Alcohol and petrol sniffing have become perfect substitutes for this cultural condition. Unfortunately, many

non Aboriginal people have exploited this situation, and profited thereby.

The return to homelands movement has helped many traditional Aborigines to regain their sense of well-being and harmony with life. However, in the realities of twentieth century living, the Government has been strengthening its focus on education for the children and training opportunities for adults.

A major initiative to establish community control and to ensure that program priorities are determined at a grassroots level and not by outsiders and bureaucrats has been the establishment of the Aboriginal and Torres Strait Islander Commission (ATSIC) on 5 March this year. ATSIC is designed to give more power and autonomy to the Aboriginal community, where it rightly belongs. I am pleased that a South Australian, Lois O'Donoghue, is the first Chairperson of the commission, and she will help to shape the administrative and consultative framework in its developmental phase.

A final comment relating to statements made by Opposition members in the second reading debate relates to re-establishment of public and private property. The provision of essential services and property maintenance within Aboriginal communities is funded by Commonwealth and State Governments. The major responsibility for assessing work priorities lies with the Aboriginal Works Division of Sacon, a division specially set up to provide services to Aboriginal communities. New essential services agreements were negotiated between the Federal Minister and the State Minister of Aboriginal Affairs in February this year. I hope that covers the points that were raised during the second reading debate and that the passage of this Bill will not be further delayed.

The Hon. DIANA LAIDLAW: As to clause 1, I thank the Minister for the information she has provided in response to questions that I asked and issues that I raised during the second reading debate. I will not speak on behalf of the Hon. Mr Dunn, but I suspect that he, too, appreciates those responses. At no time have I sought to delay the debate. I only hoped that as a courtesy the Government might have responded to those matters yesterday. I am very pleased that it has done so now. The questions that I had intended to ask in respect of this Bill have been covered adequately in the Minister's reply.

However, I would ask for some clarification on the mechanisms for the commencement of this Bill. This Bill is unusual in the sense that, unlike almost every other Bill that comes before this place, there is no commencement date. I assume therefore it is simply assented to by the Governor and then it will be individually organised or set in place by the provisions of each community. I am not sure when it leaves this place and goes back to the House of Assembly, what the steps are for this legislation to be implemented by the various communities. It is unusual because there is no commencement date.

The Hon. ANNE LEVY: As I understand it, when an Act has no commencement date in it it becomes operative as soon as the Governor assents to the Bill. The Bill does not have to go to the House of Assembly; it has already been passed there so, as soon as it is passed by this Council it will become operative as soon as the Governor signs it, which, I presume, would probably be some time next week. At that stage, the Bill becomes operative but, obviously, the initiative then lies with Aboriginal communities to take the necessary action to decide that any Aboriginal Community Council can then make a decision that it wishes to implement the provisions of the Act in its area and will make application to the Government to do so, presumably, through the Minister. However, it will become operative and it will be open for Aboriginal communities to make such application once the Governor has given assent.

Clause passed.

Clause 2 and title passed.

Bill read a third time and passed.

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

WATER RESOURCES BILL

Adjourned debate on second reading.

(Continued from 27 March. Page 847.)

The Hon. K.T. GRIFFIN: I take the opportunity of speaking on this Bill because there are a number of hidden issues, most of which have been highlighted by my colleague, the Hon. Peter Dunn, but which need some support and which I might be able to approach from a somewhat different perspective. Right from the outset I say that the Bill is quite dramatic in the sense that it will give a Minister very wide powers over a whole range of property in relation to which there may be some form of water. I suspect that there are a lot of unintended consequences, if one might be so charitable to say so, of the way in which this Bill has been put together.

From the start, one should recognise that the Bill seeks to deal with surface water, which is water in a watercourse or lake, that a watercourse is a river, creek or other natural watercourse (whether modified or not), and an artificial channel, not a channel declared by regulation to be excluded from the ambit of the definition. A lake is defined as a natural lake and includes a natural lagoon, swamp, marsh and spring. That definition really takes the common understanding of 'lake' to some ridiculous extreme, particularly when one considers that even very small springs, which do not result in a large accumulation of water but perhaps in a small swamp or marsh, are included within that definition. That is quite an extraordinary extension of the common understanding of what a lake might be.

The Bill also extends the definition of a well in seeking to regulate the sinking of wells. In the definition, a well is not only an opening in the ground excavated for the purpose of obtaining access to underground water but also an opening in the ground excavated for some other purpose but, when excavated, coincidentally or even accidentally gives access to underground water. A well is also a natural opening in the ground that gives access to underground water. The Hon. Peter Dunn drew attention to the fact that, if he were putting down a post hole and struck water, that is a well within the meaning of the Bill.

I draw attention also to the fact that, for the purposes of this Bill, on many building sites (even the Remm site, which is meeting difficulty in a number of other contexts) excavation would be a well because a very large excavation is an opening in the ground which, although excavated for the purpose of a building, gives access to underground water. The mind boggles at the consequences of every large building site, or even a small building site, coming within the definition of a well and being subject in many respects to the jurisdiction of a Minister and to the vagaries of the application of this Bill.

One should also say that it is not just commercial developments, where there is a large and deep excavation which happens to strike water, that would be caught, but also many ordinary domestic sites where there is excavation for the purposes of providing, say, a cellar which, if the exca-

vation strikes water, would become a well for the purposes of this legislation.

I will deal with various provisions of the Bill. I could do that in the Committee stage but it would probably be helpful to highlight some of the concerns I have on a clause by clause basis so that the Minister can get some advice and perhaps shorten the consideration of the Bill during the Committee stage. Under clause 10, the Minister has some quite extraordinary powers because the Minister may install, maintain and operate any machinery and erect or construct and maintain any building structure or works for a variety of purposes. They include controlling the flow of water in a watercourse; using any surface or underground water; protecting or improving the qualities of any surface or underground water; draining, treating, storing or discharging water used for irrigation; storing water in ground water basins; and for any of the other functions that are set out in clause 9 of the Bill.

That means that, at least impliedly but I would think expressly also, the Minister has power to enter private property, and to exercise those powers in relation to any watercourse at all, not just a proclaimed watercourse, whether it be the largest river or the smallest creek, even if that creek does not flow, except after unusual rains at particular times of the year. The powers are extraordinarily wide.

There are some checks on the abuse of that power in the form of appeals to the Water Resources Appeal Tribunal, but there is always a cost involved and the Minister is always in the position of being the initiator of action against which a citizen may then appeal. Because of the resources and the initiation of action, the Minister is frequently in the box seat when it comes to both the initial action and the appeal process.

Those powers which the Minister has under clause 10 may be delegated under clause 11. That delegation by the Minister may be any of the Minister's powers or functions. Of course, the power of delegation is accepted, but all the Minister's powers or functions—the power to control the flow of water in a watercourse; to install and operate machinery; even to grant licences—may be delegated to a water resources committee or any other body, person or the person for the time being occupying a particular office or position. I suppose one has to have some reservations about the delegation of some powers to a water resources committee but at least it is one of the bodies established by this Bill.

The concern I have is about the very wide power of delegation to any other body or person who may not necessarily be accountable—except to the Minister, but not by statute. That person need not be a person subject to the disciplines and powers of the Government Employment and Management Act. Any other body may not necessarily be a statutory body. It could be any other organisation out in the community. For the Minister to have power to delegate powers or functions such as the granting of licences and permits in such a broad fashion to me suggests an irresponsibility. I would be very concerned about that and I would be giving some consideration in the Committee stage to some form of limitation on that power of delegation.

To raise it now is not the first time that I have expressed concern about the powers of delegation of Ministers. Frequently they are very broad. In some instances they can be acknowledged as appropriate but in many cases there is this broad power of delegation which ignores the overriding need to have a Minister fully accountable. Powers such as issuing authorisations of prosecutions and granting licences are particularly important and significant for the ordinary citizen and in my view ought not to be delegated to just anybody at the Minister's whim or convenience, but only to those who have a special expertise and responsibility and who are subject to the disciplines of a statute.

I move now to clause 22. The Water Resources Appeal Tribunal consists of a District Court judge or magistrate nominated by the Senior Judge, a person appointed by the Governor who has relevant expertise and experience in engineering, a person appointed by the Governor who has knowledge and training in a relevant field of science, and one or more persons selected by the presiding officer (the District Court judge or magistrate) from the panel established under subsection (4) to hear a particular appeal.

I have concern about the provision in clause 22 (2) that a permanent member must be appointed for a term not exceeding three years and that that person will, on the expiration of a term of office, be eligible for reappointment. I think at least the term ought to be fixed. One can envisage a situation where a person is appointed, say, from year to year and, in those circumstances, one cannot assert that that person is truly independent. If there is a minimum period of three years permanent and fixed appointment, then the prospect of the member exercising a responsibility with one eye on whether or not he or she will be reappointed in the future is at least reduced.

The prospect of a year by year appointment or even a six month by six month appointment or some other period suggests impermanence and is contrary to the whole concept of judicial independence and has been substantially criticised by the Supreme Court judges in their Annual Report—I think is was the 1988 Annual Report which has been tabled in Parliament. They made the point that, with these *quasi* judicial tribunals, where appointment is for a short period of time, in particular, there was direct prejudice to the very important principle of our democratic system that judicial functions ought to be exercised by bodies which are independent of the Executive of the day, and that short-term appointments in particular were prejudicial to that principle.

In relation to clause 22, I would like to see a period of appointment fixed. I think three years is too short, and that period ought to be longer, but it certainly ought not to be as flexible as it is at the present time because of the prejudice to the principle of independence. After all, the tribunal exercises some very wide powers and is an important body in the course of determining citizens' rights, particularly where licences may be granted or refused and discretions exercised.

One of the concerns about much of this sort of legislation is the appointment of authorised officers and the powers that they are given. They are frequently given powers which are broader than the powers of police. Frequently they are given power to act without a judicial warrant and, in those circumstances, one has to be very careful about the granting of those powers, particularly because those sorts of people are not trained in the finer points of individual rights or civil liberties and they are not able to recognise the potential for abuse of powers.

Police are under constant scrutiny by their own internal investigation sections, anti-corruption units, the Police Complaints Authority and the National Crime Authority, yet we have a number of pieces of legislation with authorised officers exercising power as wide as the powers of police—in fact, wider in many cases—where there is not the same sort of obsession with supervision and accountability. This is one of those. Clause 29 of the Bill provides:

> An authorised officer may at any reasonable time exercise any of the following powers—

There is a long list of them, from paragraph *(a)* down to paragraph *(m)*. They may '. . . enter any land, vehicle, vessel or aircraft'. It does not say they must have a warrant—they can just do it, and they can do it anywhere. It does not matter whether it is at your home, farm, or factory, or whether you are out camping. The authorised officer has power at any reasonable time to enter any land, vehicle, vessel or aircraft. It does not say even that they have to enter it on the basis of having some reasonable suspicion that an offence has been committed or is about to be committed.

If we look at the Summary Offences Act Amendment Bill which will come before us later we see that the powers of police are limited. They have powers in certain circumstances to search vehicles at a road block, but the establishment of the road block has to be reported and they can search only in certain circumstances. They do not have a general power of stopping and searching vehicles. This legislation, on the other hand, enables such a search for no reason, not even one associated with the enforcement of the legislation. That power is quite extraordinary.

Paragraph *(b)* enables an authorised officer to inspect any land, including any stratum lying below the surface of the land, and the surface and underground water on or under any land. Notice of such inspection is not required. An authorised officer can without warning just march on to somebody's property—

The Hon. R.R. Roberts: 'At any reasonable time' an authorised person may do so.

The Hon. K.T. GRIFFIN: But anyone can get the stamp of approval from the Minister.

The Hon. R.R. Roberts: Authorised officers?

The Hon. K.T. GRIFFIN: Yes, but so what? Is the honourable member saying that the police should also have this power?

The Hon. R.R. Roberts: If it has been authorised by the Minister, yes.

The Hon. K.T. GRIFFIN: Police have to go through a two-year training program. An authorised officer can be any Tom, Dick, Harry, Jane or Jill—who may not even be a member of the Public Service.

The Hon. Anne Levy: At any reasonable time.

The Hon. K.T. GRIFFIN: So what? I am appalled at such an interjection from a Minister who has professed in the past to be so conscious of civil liberties.

The Hon. R.R. Roberts: What is reasonable?

The Hon. K.T. GRIFFIN: It does not matter what is reasonable or not reasonable. What matters is what powers are being exercised. The power is for an authorised officer to enter any land, vehicle, vessel or aircraft. What is a reasonable time? Is it Sunday afternoon or Monday night before 7 o'clock or 8 o'clock during daylight saving? Who knows? That is not the issue. The issue is that the officers have power to make such an entry without warning or warrant and can do it for any purpose. Members should read the clause.

The clause also gives officers the power to inspect any vehicle, vessel or aircraft and for that purpose give a direction to stop or move the vehicle, vessel or aircraft. The police cannot do that. They can defect a vehicle or stop someone who has committed a traffic offence. Under the Summary Offences Act Amendment Bill, police will be able to stop someone at a road block, but their powers are limited. They cannot stop someone anywhere just for the purpose of inspecting a vehicle. However, this clause will enable authorised officers to stop a vehicle any time to inspect it.

The Hon. R.R. Roberts: It doesn't say that.

The Hon. K.T. GRIFFIN: It does say that. Clause 29 empowers an authorised officer, at any reasonable time, to inspect any vehicle, vessel or aircraft and for that purpose give a direction—

The Hon. R.R. Roberts: It says 'enter any land'.

The Hon. K.T. GRIFFIN: But paragraph *(d)*, provides:

. . . inspect any vehicle, vessel or aircraft and for that purpose give a direction to stop or move the vehicle, vessel or aircraft;

It does not say where such vehicles may be required to move to. All I am trying to indicate is that these powers will be held by a person who is is not necessarily trained to identify the sensitivities or the civil libertarian issues involved. This person has more power than the police. It is extraordinary that they have that power. Under this provision, authorised officers also have the power to:

(g) inspect any machinery or equipment on land on a vehicle, vessel or aircraft;

(h) inspect any well on land and any pipes, fittings or equipment connected to or used in conjunction with any well;

(i) take photographs, films or video recordings;

(j) put to any person on land or to the person in charge of a vehicle, vessel or aircraft any question relating to the administration of this Act;

That is the first time 'relating to the administration of this Act' has been mentioned in this clause. Officers can also:

(k) require any person on land or the person in charge of a vehicle, vessel or aircraft to produce for inspection records relating to any material that, in the officer's opinion, has entered or may enter surface or underground water and in the case of a record that is not a documentary record in English, require the person to produce a written statement in English of the contents of the record;

That paragraph relates to the entry into surface or underground water of certain material. They are quite extraordinary powers. In exercising those powers, the authorised officer may be accompanied by such assistants as are reasonably necessary in the circumstances. An authorised officer could have 10 people as assistants. They could all surround a vehicle, whereupon the authorised officer could say, 'Stop! I want to search this vehicle.' The others could encircle the vehicle. I know that is probably taking it to extremes, but it is possible, and we must recognise the possibilities. The poor citizen would be able only to ask to see proof of identity. But what defence is that? It is an extraordinary power. Subclause (4) states:

An authorised officer may use force to enter land, a building or structure on land or a vehicle, vessel or aircraft—

(a) on the authority of a warrant issued by a justice;

For the first time, reference is made to a warrant. However, the clause further says that if the officer believes, on reasonable grounds, that the circumstances require immediate action to be taken, entry can be forced. I even have some reservation about the power to break into land on the authority of a warrant issued by a justice, particularly if someone's home is involved. That is quite possible under this Bill. An authorised officer with a warrant from a justice can break into someone's home. At least a safeguard is provided in subclause (5), which provides:

(5) A justice must not issue a warrant under subsection (4) unless satisfied, on information given on oath—

(a) that there are reasonable grounds to suspect that an offence against this Act has been, is being, or is about to be committed;

or

(b) that the warrant is reasonably required in the circumstances.

I have some reservations about paragraph *(b)*, but paragraph *(a)* offers a greater protection against abuse by an authorised officer of the power to break into a land, building or structure, or a vehicle, vessel or aircraft. No such protections

are provided in subclause (1), so I have real concerns about the powers.

The legislation provides certain consequences for a citizen who hinders or obstructs an authorised officer engaged in the administration of the Act or who fails to answer a question or who produces a written statement that is false or misleading. There are some fairly awesome consequences for anyone who does not comply with the requirements of an authorised officer, even if the requirements are not expressed to be subject to any judicial oversight.

Clause 31 allows the Minister to take water from any watercourse, lake or well notwithstanding that the right of any other person to take water from that or any other watercourse, lake or well is prejudicially affected. That suggests that the Minister, through delegated authority, can enter land and take water from a creek running through a farmer's property, for example, or even enter a householder's property, for that matter. It does not matter whether prior notice has been given. We know how widely defined a lake is and a well could be in someone's back yard. If my understanding is correct, that is a particularly wide power not subject to any reasonable oversights by some independent body such as the court or even the Water Resources Appeal Tribunal.

I am not suggesting, however, that the tribunal is the appropriate place for that sort of entry to be authorised. Riparian rights are recognised, but they are subject to the right of the Minister to take quantities of water and to the right of any other person to take water pursuant to a water recovery licence. A water recovery licence is defined as a licence granted under the Act entitling the holder to take water from a watercourse, lake or well. Again, that is a very broad power.

As I see it, it does not give the person who has the primary benefit of those riparian rights any opportunity to object to the way in which the Minister exercises that power and, in those circumstances, some form of right to have the Minister's decision reviewed might be appropriate. However, I may be missing something in the context of the Bill, which already provides that sort of safeguard against abuse by a Minister or a Minister's officer.

Clause 39 (1) provides as follows:

> The Minister may, by notice published in the *Gazette*, authorise the taking of water from a proclaimed watercourse, lake or well for a particular purpose specified in the notice.

I do not think there is any great difficulty with that. The Bill contains special provisions dealing with proclaimed water courses, proclaimed lakes, or proclaimed wells, but I am concerned that, when it comes to revocation of that authority, notice is published in the *Gazette*. I draw to the Minister's attention that there is a problem with the *Gazette*: not everyone reads it. It is not readily available in many country areas, in particular. Whilst the authority to take water may be publicised in the *Gazette*, no significant consequences for the citizen arise from that.

On the other hand, there are significant consequences for a citizen who acts in breach of a notice that might be published in the *Gazette* which has varied or revoked the appropriate authority by the Minister to take water from a proclaimed watercourse, lake or well. It becomes even more significant under clause 40, because where the Minister is of the opinion that the rate at which water is taken from a watercourse, lake or well—and it does not have to be a proclaimed watercourse, lake or well—is such that the quantity of water available can no longer meet the demand or there is a risk that the available water will not be sufficient to meet future demand, and if certain other consequences follow, the Minister may, by notice published in the *Gazette*, prohibit or restrict the taking of water from the watercourse, lake or well.

If a person then acts in breach of that notice, there is an offence with a very hefty fine—a Division 6 fine for a natural person and a Division 5 fine where the offender is a body corporate. The point I make is that, in addition to advertising in the *Gazette*, the Minister ought to be prepared to consider advertising in either a newspaper circulating in the area to which the notice applies or in a daily newspaper circulating throughout the State. The former is probably more appropriate, since most people in rural areas will get the local newspaper but not necessarily the State-wide newspaper, and I think that it is fair and reasonable that they be given notice of something which, if they act in contravention of it, will constitute an offence for which they will be liable to prosecution.

Whilst publication in the *Gazette* has traditionally and legally been the basis for notification of Government decisions, it is not the most widely read publication and is frequently not available except in, say, regional libraries. Certainly, it is not readily available in many less populous areas. It may be available at the local council office or the police station, but I do not believe that that is the case in every location. I am suggesting that there ought to be broader dissemination of information which will have the consequence, if a person acts in contravention of it, of making someone liable to prosecution.

I now turn to clause 42, which talks about the degradation of water. I do not have any difficulty with the concept that the person who allows material to enter surface or underground water such that it will degrade the water should be liable to a penalty, but I wonder whether it is the Government's intention to cover a very broad area such as the use by a farmer (as I think my colleague, the Hon. Peter Dunn has mentioned) of some sprays which may not degrade within a day or so but which will degrade over a period of time.

However, if there happens to be a rainstorm or downpour that washes some of that material into a watercourse then, I suppose, by act of God, the material has degraded the surface water and may degrade the underground water in the short term, although in the longer term it would effectively break down. If, in fact, it had not rained, that event would not have occurred. I wonder whether the Minister will clarify in her reply whether it is intended to catch those sorts of circumstances.

Clause 45 causes concern, because it provides:

> A person who stores or disposes of material, or permits the storage or disposal of material, at a depth below ground level that exceeds 2.5 metres or such other depth as may be prescribed is guilty of an offence.

'Material' is defined for the purposes of this Part as 'solid, liquid or gaseous material'. It seems rather curious that any material, whether likely to degrade or not, should be the subject of a penalty if it is stored below 2.5 metres. That seems to me what is intended, if we relate clause 45 to the definition in clause 41.

Again, if I am interpreting it correctly, it seems to me that quite an extraordinary offence is created which puts at risk almost every person in South Australia with either domestic or commercial premises which go below 2.5 metres or such other depth as may be prescribed.

One can talk about basements in city buildings—material is stored there. There will be a variety of materials stored in a basement and that will be below ground level. In domestic dwellings basements are frequently more than 2.5 metres below ground level and yet much material is stored there. I would like to have some clarification of what is proposed because as clause 45 stands at the moment it is

extraordinarily wide and I do not believe it can be justified on any reasonable assessment of the provision as it reads.

I turn now to clause 46 and I express my support for the use of a regulation rather than proclamation in restricting or regulating particular activities, and they will become subject to review by the Joint Standing Committee on Subordinate Legislation.

Clause 47 is evidentiary but it provides that, if there is a prosecution against sections 43 or 44, the very fact that material has escaped from or on to land or from a vessel or aircraft, will be presumed, in the absence of proof to the contrary, to have been permitted to escape by the owner of the land or the person in charge of the vessel or aircraft. The Hon. Peter Dunn knows more about what sort of material can escape from an aircraft whilst it is flying, let alone on the ground. It would seem to me that it may be that there is a discharge which would immediately bring the aircraft pilot or, more particularly, the owner into conflict with the Act. This Bill then raises questions of constitutional power, particularly if the aircraft is flying from one State to another. I suppose another concern is crop-dusting or crop spraying, where material does escape from the aircraft. It is released and may in fact fall foul of the legislation and in those cirumstances one has to ask what is intended in relation to that technique of dealing, either with spreading of fertiliser or other activities conducive to agriculture.

I notice in clause 48 that this Bill is to override any other Act or law. It provides that, subject to the Act an offence is committed notwithstanding that the disposal, escape or storage of the material or the act or activity alleged to constitute the offence was authorised by some other Act or law. I would like the Minister to identify and list what other Acts or laws presently allow disposal, escape or storage, before we consider this provision.

Clause 56 contains a definition of 'public authority'. The definition of 'public authority' extends to the Crown and the statutory authority declared by regulation to be a public authority. I would like the Minister to identify what 'public authorities' are proposed to be identified for the purpose of this definition by regulation.

Part VI applies to all proclaimed watercourses and lakes and to an unproclaimed watercourse or lake that is vested in or under the management and control of a public authority, and clause 58 contains some very wide restrictions—in fact, prohibitions—against what may or may not be done. For example, if one deals with a creek (or even a river) which might be under the management and control of a public authority, that public authority is not then permitted to destroy vegetation growing in the bed or on the banks of a watercourse or lake unless authorised to do so by permit issued by the relevant authority. That is pretty heavy handed. An example which was drawn to my attention yesterday is the watercourse at Burra Creek where trees have been planted in the creek that quite obviously will obstruct the flow of water. If there is a major flooding, as there has been on a number of occasions in the past, those trees will obstruct the watercourse and may well create substantial flooding in Burra, but because the watercourse is under the management and control of a public authority the council would not be able to remove any of them without a permit. I cannot guess whether such a permit is likely or not likely to be granted.

Let us take some other examples. One might consider a creek in the Flinders Ranges, and I am not sure who has authority for them but it is likely to be under the management and control of a public authority. It is probably unlikely to be a proclaimed watercourse. The Highways Department presumably would have to obtain a permit to be able to cut through a river or creek bank to allow vehicle access to the creek and across the creek. It is somewhat ludicrous that a permit should be required for that purpose. Obviously in a number of other areas, there is conflict with the Pest Plants Act where obnoxious weeds, blackberries, and other plants are required to be destroyed if they occur in a watercourse or lake that is vested in or under the management and control of a public authority. That authority would have to obtain approval to get rid of that vegetation.

Whether it is a large watercourse or the smallest creek, it seems to me that that permit is required in those circumstances. Even vegetation such as reeds clogging the watercourse in or under the management or control of a public authority could not be removed without a permit. So, a lot of bureaucracy is involved and I am concerned about the way in which that is likely to be administered.

Clause 62 deals with wells. Fortunately, Part VII does not apply to wells that are 2.5 metres or less in depth or a well that is not used for the purpose of obtaining access to underground water and in relation to which requirements imposed by or under the Mining Act or the Petroleum Act are in force. Presumably, that provision has been included because of the opal fields. One only has to go up there to see that there are mines which are subject to the Mining Act but which nevertheless might have been caught by the provisions of this Bill.

The appeal provisions in clause 69 can effectively be widened. They do not presently appear to deal with a renewal. The question of vicarious liability in clause 73 should be addressed because an employer or principal is liable for an act or omission of an employee or agent unless it is proved that the act or omission did not occur in the course of the employment or agency. I would suggest that also the employer or the principal should not be liable if the act or omission was outside the authority of the employee or agent.

In respect of clause 74, there seems to be absolute liability upon a member of a governing body of a body corporate and the manager where the body corporate is found guilty of an offence but, whilst there is a general defence in clause 76, it seems to me that that is not adequate to deal with the usual proviso which, even though it be a reverse onus of proof for directors and managers, nevertheless does provide some safeguards against harsh, unjust and unreasonable consequences for directors and managers of bodies corporate.

The Minister might care to indicate why a defence provided in clause 76 (1) is not available under clause 76 (2) to an offence against section 43 (2) or section 44 (2). In relation to clause 77 (3), I would like the Minister to identify the reasons why proceedings for an offence may be commenced by an authorised officer, or any other person with the authorisation in writing of the Minister. Does that mean that the Minister envisages some form of citizen prosecution, provided that the Minister authorises that to occur? I see no reason at all why the words 'or any other person' in paragraph *(a)* should remain in the Bill.

In respect of clause 78, I must say that I am surprised that this Government persists with a view that it ought to have priority for rates, taxes and other charges, because clause 78 deals with a first charge on land being created where money is due to the Minister under the Bill. It is a first charge on the land. It suggests that it may override other charges and priorities. If that is the case, I think it is objectionable, particularly where, for example, there may be a mortgage to a bank or other financier on property, and—

The Hon. Anne Levy: That has always applied.

The Hon. K.T. GRIFFIN: No, it has not always applied.

The Hon. Anne Levy: Taxes, for instance, take preference over mortgages.

The Hon. K.T. GRIFFIN: Everybody knows that council rates are a charge and that land tax is a charge: it has been around for 50 or 100 years.

The Hon. Anne Levy: It takes priority—it always has.

The Hon. K.T. GRIFFIN: It takes priority, but there was a view when we were in Government that the Crown should not get priority and I understood that the Attorney-General, at some stage during the course of his period as Attorney-General, was working towards removing the priority which is given to the Crown. The Federal Government gets preference for unpaid Federal income tax. The argument is that, if Governments were not protected, they would take a much more diligent approach towards recovering, at an earlier stage, liabilities which are owing to them.

The Hon. Anne Levy: But at the moment the Crown always has priority.

The Hon. K.T. GRIFFIN: Not always has priority, no, that is not correct. In some instances it does and in some instances it does not. You are not talking about a rate, tax or charge which has been around for the past 50 or 100 years; you are talking about something totally new which you will now impose for the first time on land where there may be mortgages to a bank, for example, and the bank, in granting the mortgage, has searched the title and has got its section 90 statement from the Lands Titles Office that lists about 50 charges.

The Hon. Anne Levy: I was not arguing that case. I was just questioning your comment about the Government's having first priority.

The Hon. K.T. GRIFFIN: So what? We are not at odds. I am saying it does not have it in every instance. The Crown does not have a charge in every instance.

The Hon. Anne Levy: It does with all rates.

The Hon. K.T. GRIFFIN: It does with land tax and that is it—land tax.

The Hon. Anne Levy: Rates.

The Hon. K.T. GRIFFIN: Council rates.

The Hon. Anne Levy: That is a Government charge: it is local government, not State Government.

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: There is State Government and local government.

The Hon. Anne Levy: And Federal Government—it is all Government.

The Hon. K.T. GRIFFIN: The Federal Government does not have any charges over land.

The Hon. Anne Levy: Not over land—it has priorities.

The Hon. K.T. GRIFFIN: We are talking about a charge over land and that means that if money is due to the Minister or public authority in respect of the Minister's or the authority's costs in carrying out the requirements of a notice served on the owner of land, even though there might have been a mortgage on the property for 10 or 20 years, and that has been granted by a bank or other financier without there being any charge at all notified in respect of the land, and suddenly the Minister goes in and does $50 000 worth of work, for example, then under this Bill the Minister appears to immediately have a first charge. It leapfrogs over the bank and the bank takes second best. That is outrageous. I do not mind the Minister's having a charge.

The Hon. R.R. Roberts: Isn't the impost on the owner of the land?

The Hon. K.T. GRIFFIN: No, it is on the land. The owner has to pay and I have no quarrel with that at all. The owner has a primary liability, but this says that the Government also takes first priority against the land. It is a charge and it is effectively registered because it is created by statute.

The Hon. G. Weatherill: Don't leapfrog or you might fall in one of those wells—

The Hon. K.T. GRIFFIN: The bank will fall in a hole if it gets first charge. The fact is that the charge is a security. If the land has to be sold, then the Government gets its money out first and the bank might get what is left behind, even though when the bank lent its money there was no other charge on the land. What I am saying is that I have an argument about its being a first charge on the land by virtue of this legislation suddenly creating a priority which previously has not existed. One can argue about it later but in my view there is a major concern with that provision.

Members will be pleased to know that my last comment relates to regulation making power (clause 82 (2) *(k)*). Fines can be prescribed by regulation but they must not exceed a division 5 fine, and division 5 provides for $8 000. I think it is outrageous that any regulation should prescribe a fine as high as $8 000. I suggest that it should be no more than $1 000, which is the usual amount. I know that there are other regulations which do provide higher fines, but they are the exception rather than the rule. The regulations are relatively minor. If there are to be penalties such as $8 000 maximum, they ought to be imposed by statute, not by regulation. So, I have a concern about that.

I therefore join with my colleague the Hon. Peter Dunn in raising many matters in what I regard to be of important substance in the Bill, and I hope they will be given attention by the Minister in her reply.

The Hon. M.J. ELLIOTT secured the adjournment of the debate.

MARINE ENVIRONMENT PROTECTION BILL

Adjourned debate on second reading.

(Continued from 22 March. Page 758.)

The Hon. M.J. ELLIOTT: The Democrats support this legislation, which is long overdue. It has been promised since about 1980. All States gave an undertaking to legislate in this area, and South Australia has been the last, by quite a long time, to do so. In fact, an officer was appointed to the Department of Environment and Planning specifically to draft such legislation, and he already had a first draft ready for Cabinet some three years ago, as I understand it. However, at that stage it died an early death. Why it died can never be absolutely proven, but it is certain that there is a great deal of concern amongst certain industries about the fact that tough requirements may be made in terms of the release of pollutants from point sources into the marine environment. Indeed, whilst we do not generally have the problems that some of the other States experience, we do have a couple of outstandingly bad cases of pollution from point sources.

The most serious pollution we have is at the top of Spencer Gulf. The main cause of pollution up there are the BHAS smelters, although there are also two other significant polluters, one being the steel works at Whyalla and the other being the ETSA power station at Port Augusta. All three of those operations up there are putting varying amounts of heavy metals into Spencer Gulf.

By far the most serious, as I have already said, is BHAS. Historically, huge amounts of heavy metals have gone in via the air. Large amounts of heavy metals go up the smoke stack and settle into the ocean over a large area. The amount

of emissions has been reduced significantly and, significantly, the chimney was put up higher, which spread the pollution over a greater distance and thereby lessened the concentration of contamination. However, about 200 tonnes of various heavy metals per year still go into the sea via liquid effluents from BHAS. In this respect, I refer to metals such as lead, cadmium, zinc, tin, arsenic and antimony. That is quite a list.

A CSIRO study of about seven years ago looked at contamination at the top end of Spencer Gulf, and it found that there had already been significant ecological changes in response to the levels of heavy metals. Over several square kilometres close to Port Pirie, quite a few fish species have disappeared, so there is no question but that there have been significant ecological changes. CSIRO also did some studies to determine whether or not there were possible health hazards. The general finding appeared to be that, with highly migratory species that are not too far up the food chain, the levels of heavy metals are acceptable at this time. However, some species—I believe the blue swimming crab and razor fish—were extremely high in heavy metals. The only reason they were considered safe was the fact that people do not eat a lot of razor fish—at least, that is the stated reason—but the fact is that some people do eat quite a lot of razor fish.

The other concern is that discharges are continuing, so there is a steady accumulating load of contamination at the top of the gulf. Nevertheless, we have been aware for some time that considerable contamination is coming from BHAS, and very little has been done about it. BHAS has some plans, but it seems to be waiting for the legislation. Indeed, it has been waiting for years. I suppose the next concern is whether or not this legislation will be strong enough to improve the situation significantly.

The E&WS Department is perhaps the second major polluter of the marine environment here in South Australia. The sewerage works at Port Adelaide and Glenelg put their sludge out to sea—something which does not happen at the Bolivar sewage works—and the sludge has been responsible for killing significant areas of seagrass. It has killed the seagrass by encouraging the growth of small algae, which have cut down the amount of light reaching the seagrasses: as a result, they have died. The seagrass having died, the seabed itself starts to erode because there is nothing binding the sand together. I think water turbidity has also been a significant cause of the decline of the seagrasses. Nevertheless, those areas are still growing, and the E&WS continues to put sludge out to sea.

The sewerage works also cause problems with the release of liquid effluents; it is not just the sludge. There is no doubt that the liquid effluent going from the Port Adelaide sewerage works into the Port Adelaide area itself has been responsible for the red tides which have caused fishing and the taking of shellfish to be banned for long periods. To get red tides, which are dinoflagellates, a number of conditions are needed. One of those is warm water, which is why it tends to happen during summer, calm water so there is not constant stirring and they are near the surface, and high levels of nitrates and organic material. Both nitrates and organic material are provided in sewerage effluent.

Quite simply, it is not acceptable for this to continue and, whilst our problems are not as severe as those in New South Wales, no-one could ever suggest that the situation in South Australia is tolerable any longer. I believe that Port Adelaide sewerage works could be and should be shut down almost immediately. There is already a trunk main which connects the Port Adelaide sewerage works with the Bolivar sewerage works, and all the effluent can be diverted up to Bolivar. I visited Bolivar on one occasion when there had been some trouble with Port Adelaide and all the material was being pumped there then.

If further work needs to be done at Bolivar so that it can cope with that extra load over an extended period, that should be done. The Port Adelaide sewerage works is small, inefficient and outdated and I do not think that we can justify spending money to upgrade that works. All our effort should be put into upgrading the Bolivar sewerage works. Its sludge does not go out to sea and there are a number of alternative uses for the liquid effluents, such as the production of cut flowers and the growth of trees. A number of options are available and we are just starting to fiddle around with the edges at the moment. The important thing is that pressure is put on the Government to make sure that it acts.

In the South-East, there are problems with paper mills. An Engineering and Water Supply Department works down at Mount Gambier is not large enough. Its capacity cannot cope with what is sent down to it, and we have already spoken today about the problems of ground water contamination in the South-East. It means that the sewerage works needs to be expanded to cope with a lot more than is being sent to it now. At the moment, abattoir waste is being spread on ground, as is whey and other materials. They should be treated properly and probably need to go to some sort of sewerage works. At the end of the day, they must not find their way out to sea, either. Action is necessary down there.

The question that I have already broached in parts is why the Government has taken so long to act. I have some interesting documentation, letters which have passed between Mr Parkes of Broken Hill Associated Smelters (BHAS) and the Premier of South Australia (J.C. Bannon). A letter dated 28 May 1987 from Mr Parkes, addressed to Ms Cathy McMahon, the Senior Cabinet Officer of the Department of Premier and Cabinet, states:

> BHAS Environment and Economic Improvement Plan (EEIP)
>
> Further to our discussion yesterday, we enclose herewith a Proposal on Environment Matters, Waste Management and Planning Procedures by BHAS as a final signed document.
>
> We understand that this document, together with the Statement of Understanding and the Statement of Specific Undertaking, will be submitted for Cabinet endorsement on 9 June.
>
> At this point, BHAS would like to restate its position on the implementation of this project subject to its ultimate approval. BHAS is a proud member of the South Australian industrial community and will use its best endeavours to ensure that South Australian resources will be used wherever possible in the implementation of the EEIP subject only to normal economic and technical considerations.

When one looks through the document to which he referred, particularly in relation to liquid effluents—those that find their way out to sea—page 3, part *(d)* of the document states:

> Liquid Effluent
>
> The EEIP includes the installation of a large thickener at the Sinter Plant, which would also serve as a first stage for any future effluent treatment plant. BHAS understands that the Department of Environment and Planning is drafting legislation and preparing regulations to control land based discharges to the marine environment. It is expected that the regulations will include schedules of permitted levels of discharges of heavy metals.
>
> BHAS further understands that the approach which is likely to be taken in these schedules is the classification of receiving waters so that differing capacities to accommodate pollutants are recognised. This classification would primarily consist of ambient water quality criteria derived from the Californian 'Water Quality Control Plan'.

It is interesting that it expected a schedule showing permitted levels and a classification or zoning of waters. Some other interesting material was included in that document,

but I will not spend time on that tonight. The Premier wrote back to Mr Parkes, stating:

I refer to BHAS's documented proposals for the South Australian Government . . . I understand that BHAS is seeking an undertaking or understanding from the Government that the Government will not take any action which would impose any more onerous obligations upon BHAS in respect of the matters covered by the proposals than BHAS has agreed to achieve in the proposals.

In other words, BHAS tried to set the rules as to what may or may not happen. The Premier continued:

The Government is appreciative and supportive of the efforts being made by BHAS to upgrade the smelting plant at Port Pirie.

There seems to be an implication that BHAS threatened not to stay there. The Premier's letter continued:

The Government takes the general view that the proposals are proper and appropriate responses by BHAS to the environmental and safety problems occasioned by the smelting plant.

The most that the Government can do is to give the following undertakings to BHAS:

(1) The Government will carry out its responsibilities of enforcing the law of the State to the best of its abilities.

(2) On the information currently available to it, the Government would not feel it necessary to introduce new legislation which imposed any more onerous obligations upon BHAS in respect of the matters covered in the proposals than BHAS has proposed to achieve in the proposals.

(3) On the information currently available to it, the Government would not expect that there would be any amendment or variation of the law of this State which would impose any more onerous obligations upon BHAS in respect of the matters covered in the proposals than BHAS has proposed to achieve in the proposals.

The rest is not relevant to these discussions. Some very detailed discussions went on between the Government and BHAS at the time that the original draft Bill was around. It was quite clear what was in the Bill in terms of schedules and that those schedules would set standards. It was also clear that there would be some form of zoning. I find it most interesting that the Bill that came into the House of Assembly three years later, and only after a great deal of fuss, had lost the schedules and did not set any standards whatsoever. I will get to that when I examine the Bill proper.

Any person who has a chance to examine a copy of the EEIP, which I also have, will see that a high priority was not placed on the clean up of liquid effluents, and I do not see it as something being done by anyone who is fair dinkum. Any member who wishes to look at those documents is welcome to do so.

The Bill that came into the House of Assembly was a very, very weak Bill. It has been improved to some extent but it needs further amendment. I am pleased at the amendments that the Opposition has on file, some of which are similar to the amendments that I will propose. Other amendments on file will need to be debated further as well.

I am hopeful that the legislation that comes out of the Legislative Council will be a very good Bill and one that will be somewhat comparable to those interstate, rather than being a joke of a Bill like the last one—the one we started off with.

Originally, it was intended that the Minister would prescribe what materials count as pollution and what materials do not. The Minister would grant licences allowing people to put prescribed matter into the marine environment. There is nothing in the Bill as proposed which would set any sorts of standards to comply with whatsoever. It was to be purely at the administrative whim of whoever the Minister of the day happened to be.

I would suggest that administrative whims are not very good for anyone. They are not good for the environment in terms of possibly a whim to have very loose standards. They may not be for the good of industry where standards are ridiculously strict. There is nothing in the way that the Bill was originally drafted that would offer any certainty whatsoever.

Once it was made clear to the Government that the Bill as originally introduced in the House of Assembly was not acceptable (not just by the other Parties but by environment and conservation groups and by groups representing fishermen) the Government then set about strengthening the Bill to some extent. Clause 6 in the Bill now before us provides that the Minister has to seek advice from the Environment Protection Council. That has moved part way in the direction suggested by the Democrats and, I note, also by the Liberals. The Democrats recommend the setting up of a Marine Environment Protection Advisory Committee and the Liberals recommend a Marine Environment Protection Committee. The committee would be set up for the specific purpose of advising the Minister on matters relating to the marine environment—for no other purpose at all. By comparison, the Environment Protection Council has a very wide brief.

All the people on a Marine Environment Protection Committee would have relevant expertise. The Environment Protection Council may have members who have expertise in the environment but possibly no particular expertise in the marine environment. It may have people with expertise in health but not necessarily in relation to water quality, etc. I think a great deal is to be gained by having a committee with a particular purpose, with members whose expertise is entirely relevant and not on the boundary. I note that the Minister suggests the possibility of co-opting extra people with special expertise, but that seems to me to be a patch job and not really tackling the problem head on.

The role of the Environment Protection Council, as envisaged in the Bill as we now see it, is simply an advisory role to the Minister. That is the same sort of role envisaged also for the Marine Environment Protection Advisory Committee that I am proposing. I envisage that this committee would seek to make recommendations to the Minister about appropriate water quality standards according to zones, in the same manner as is done in Western Australia, Victoria and, I think, Tasmania, and in the same manner as was expected by BHAS as referred to in its correspondence with the Premier in 1987. It involves a zoning system whereby you may define fishing, conservation and recreation zones, whatever, each of them having a relevant water quality standard.

The Minister would then, by regulation, promulgate standards. The Minister does not necessarily have to use the standards of the advisory committee, but I would suggest that to vary greatly from them would be inadvisable. Having promulgated those standards by regulation, the Minister would then only be able to grant a licence where he or she was satisfied that any releases into the marine environment from a point source would not cause the water quality standards which have been prescribed to be exceeded. I believe that gives a great deal of certainty, something that the Bill does not currently have.

As I said, I believe that it is in everyone's interests to try to get as much certainty in legislation as possible, and that is in the best interests of both those who care about the environment and those people working in industry who want to know what are the rules. It is no good trying to negotiate behind closed doors what rules are wanted. It means that some companies get cosy deals they should not have got and some companies get knocked on the head that perhaps should not have been. If the rules are known, and they are out in the open, in the long run I believe that everyone gains.

Clause 19 provides that exemptions can be granted. I see that clause as being totally unnecessary. I believe that the exemptions proposed there can be easily handled by way of licence. If there is to be a single, one-off release, they can still go through the licensing system. There is no need to have this exemption system which to me opens up potential loopholes and problems that I believe are unnecessary.

In relation to discharges where people have breached the Act, in a number of cases in the original Bill there were penalties of $100 000. This was amended in the House of Assembly to $500 000. I will propose an amendment to take the maximum penalty for breaches by a body corporate to $1 million. It is a hefty whack; there is no doubt about that, but it would be used only in the most extreme cases. One can consider the recent spillage from the tanker which ran aground in Alaska. I know that that was not a point source on land, but in considering the amount of damage caused a $1 million fine would be chicken feed, I believe, compared with the level of damage that occurred as a result of that very serious offence. If we had a spillage of that size, land based, caused by incompetence or malpractice, I believe that a penalty of that size would be justifiable and perfectly defensible. One would never expect minor spills to attract penalties anywhere near that amount.

Part V is concerned with the review of the decisions of the Minister. I note that the District Court is given the power to carry out a review. I will move an amendment that such reviews be carried out not by a District Court judge alone, but by a tribunal The tribunal to be set up should have on it not only a District Court judge, but also two other members appointed by the Government on the nomination of the Minister for Environment and Planning and the Minister of Fisheries.

The reason for proposing such an amendment is that, although judges may make determinations on points of law, the evidence can on occasions become very complex. A judge who may not fully comprehend extremely complex matters will probably tend to err on the side of leniency or may make a wrong decision because of an inability to understand the evidence put before him. It would be better to have a tribunal headed by a District Court judge who has legal expertise, together with two other people with relevant scientific expertise. I do not know how the Labor and Liberal Parties will react to this suggestion, but I point out to them that we now have before the Parliament the Water Resources Bill, which deals with water quality and contamination of land, and which provides for a tribunal to perform the same sorts of functions that I would propose be done by the tribunal that I recommend be set up under this legislation.

It would be highly inconsistent for parties to support a tribunal that would look at matters relating to contamination of land, and not support a tribunal that would examine contamination of the marine environment. I hope that people will look at that matter very carefully. I have been told that there is some concern about the proliferation of tribunals, but I suggest that that is another issue. These are the sorts of matters that are better handled by a tribunal than by a judge alone. I hope that both Parties will give the matter their earnest consideration.

I have not included in the amendments that I have circulated a reference to clause 23 (2), which provides that an inspector may only exercise the power conferred by subsection (1) *(a)*—which is to enter and inspect any land, premises, vehicle, vessel or place—if he has been issued with a warrant by a justice. I believe that to be an error. I can understand why it is necessary with respect to the power conferred by paragraph *(b)* of subclause (1), whereby a person is forcibly entering a place, breaking down doors, and so forth. If a company releases a substance or certain matter that should not be released, it will be less likely to be caught out if more time is given during which it might get a warning one way or another.

There is no doubt that some companies are pretty dodgy in the way they go about releasing substances which they know they should not release. For instance, when required to do their own testing, they do so when they are not releasing harmful substances. I know from talking to a number of people who work in plants such as the paper mill in the South East or the refinery at Port Stanvac, that quite frequently releases are made which would not comply with the standards. However, the companies do their own testing, they do not do the tests when making the releases; that is an obvious way of always complying with the law. If inspectors have difficulty in entering land, and they must seek a warrant, life will be made difficult for them and their chances of detecting an offence will be much reduced.

The Hon. R.R. Roberts: Do you see that as being applicable also to the Water Resources Bill?

The Hon. M.J. ELLIOTT: I must admit that I have not looked at the other Bill in that respect. I picked it up in this one only recently. At this stage, I think I have covered the major ground that I intended to cover with one exception, namely, the question of third party standing. I have raised the matter with respect to several Bills already, and I will continue to raise it because it is an important issue. When referring to third party standing, I am concerned in particular about people who do not necessarily have a direct financial interest being able to initiate proceedings to ensure that the Act is complied with.

As the Bill stands, it would be possible for a professional fisherman to establish a standing in a court and to try to prosecute the E&WS Department for polluting fishing grounds, although, if the department has been granted a licence by the same Minister, it might be somewhat complex. Surely an amateur fisherman, who likes skindiving, or a person who simply wants to swim at the beach, has some right to expect the water to be uncontaminated. If that person finds that contamination is occurring, contrary to the law, why should he be denied standing in a court of law so that he can insist that the law be complied with?

The situation is quite ridiculous. All members of the community have rights and, if the law says that something should not occur, a person should have the capacity to enforce that law whether or not their interest is a financial one. Their interest may simply be that they like swimming in seawater without catching some dreadful disease or that they like being able to catch a few fish knowing that they will be in a fit state to be eaten.

I hope that eventually I will manage to persuade at least one of the other Parties in this place that the question of third party standing is an important one. I do not believe that the courts or tribunals will be clogged up with thousands upon thousands of people making applications. Third party standing is already in place in one other State in Australia. It has been applied in New South Wales before the Land Environment Court, and I understand that more recent legislation grants wider standing. That is happening under the Greiner Government, so I hope that the Liberal Party in New South Wales is starting to look at it. I add that it was originally introduced by the Labor Party under Neville Wran, so both Parties in New South Wales have supported the concept of third party standing.

I hope that eventually the same two Parties in South Australia might see the commonsense of their colleagues across the border and support the notion. It is a right that

one would expect in a democracy, yet it is one of several democratic rights that we are still denied in South Australia.

I will have the opportunity to look in more depth at some of these matters during the Committee stage. At this stage I indicate that the Democrats support the Bill, which is long overdue. It was very weak at the time of its introduction into the House of Assembly. Although the Government has made some significant improvements to it, it is still a relatively weak Bill, and certainly the Democrats will to strengthen it in a number of key areas.

The Hon. DIANA LAIDLAW: The Liberal Party supports the second reading of this Bill, which aims to protect South Australia's marine environment. It is an important piece of legislation, as the Minister and the Hon. Mr Elliott have acknowledged, as there is no doubt that pollution from land based sources is insidiously killing marine life, threatening our fishing resources and posing a potential hazard to human health. Apparently, in South Australia there are some 80 examples of discharges from 92 places on our coastline where contaminants—chemical, nutrient and thermal—are discharged regularly into the sea.

In recent years, research conducted by the CSIRO and other Government departments has established that about 600 square kilometres of Spencer Gulf contain sediments with elevated levels of heavy metals, including concentrations of cadmium, lead and zinc of more than 10 times the level normally found in sea water. Of course, if heavy metals are ingested by humans via the food chain, they can cause illness, while the dangers, if any, associated with eating fish from such areas have yet to be determined.

Also, research has identified that contaminants regularly discharged into our coastal waters have been responsible for the loss or potential loss of some 4 000 hectares of seagrass off the Adelaide coastline, yet meadow seagrasses which produce as much organic matter or food for marine life each year as a similar area of tropical rainforest are vital nursery grounds for crustaceans and fish. They also bind sand and sediment.

Without seagrasses fish die, sands drift and sediment is stirred by waves, making the water murky. In the worst scenario, the water is turned into a dead sea incapable of sustaining life. Against this background, I note that in March last year the Federal President of the Australian Scuba Divers Association (John Mate) stressed the need for pollution controls in South Australia, particularly in Gulf St Vincent. He noted the opinion of members that:

> If something is not done within the next five to 10 years it could be too late, as gulf waters adjacent to our metropolitan coastline will be dead.

Today vast areas of our metropolitan seabed are already devoid of seagrasses, and this fact was amplified during the last State election when the then Leader of the Liberal Party, John Olsen—

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: It was an excellent dive, yes—accompanied by television cameramen—dived in waters off Outer Harbor. The exercise was undertaken to highlight the Liberal Party's determination to attack the pollution of our marine environment, including our commitment to cease the disposal of sewage effluent and sludge into our metropolitan waters by the year 2000. Seagrasses, of course, are killed by nutrient rich waters, and the main sources of nutrient rich pollutants are sewage effluent, wastes containing grain and fertiliser dust, waste from fish and other food processing plants, as well as agriculture and urban run-off.

However, this Bill is not only important legislation, as I have sought to highlight, but is also long overdue. Some 18 years have now passed since Prime Minister Fraser in 1972 signed for Australia an international agreement aimed at preventing marine pollution by the dumping of wastes. The first article of the so-called London Dumping Convention binds Australia 'to promote the effective control of all sources of pollution of the marine environment'. I understand that in May 1980 the then Tonkin Liberal Government initiated consultations in order to frame draft legislation. That was some 10 years ago.

This matter was also stressed by the Hon. Mr Elliott. Apparently, the Department of Environment and Planning finalised a draft Bill in 1987 but, for reasons unknown, the Bill simply disappeared somewhere into the recesses of the department. In 1989 the Government resurrected the issue with the establishment of an interdepartmental committee comprising officers from the Department of Environment and Planning, the Marine and Harbors Department, the Department of Fisheries and the Engineering and Water Supply Department. The Bill before us today is the outcome of the work of that committee.

In the meantime, I should note that all States (New South Wales, Victoria, Tasmania, Western Australia and, I think, Queensland) have now enacted comprehensive legislation to address marine pollution. Fortunately, with the introduction and passage of this Bill South Australia no longer will be the only Australian State with the unfortunate distinction of having no effective legislation to attack marine pollution.

While the Liberal Party acknowledges that this Bill is both important and long overdue, we hold the strong view that it can be substantially improved, and we propose to move various amendments to this end, which amendments I placed on file late this afternoon. Also, as the Bill is essentially a licensing measure, we recognise that the overall effectiveness of the provisions will depend upon the nature and quality of the regulations that are yet to be framed, upon the standard of administration and upon the resources to be applied to gathering accurate research data.

In recent days I have read with great interest the 51 pages of debate on this Bill as it went through the other place. After reflecting on the contributions made and on the fact that the Minister herself saw fit to move copious substantial amendments, I accept earlier advice presented to me that the Bill suffered because it was thrown together quickly. I remain concerned that the Minister for Environment and Planning, who ultimately will have responsibility for the administration of this legislation, had such a poor grasp of the key features of the Bill and the application of many of the provisions.

My misgivings on both counts reinforce my initial reservations about the wide discretionary powers that rest with the Minister, a concern shared by industrial organisations in this State and by conservation groups. In the other place, the Minister for Environment and Planning moved to allay real fears about her discretionary powers in this Bill, and the Bill before us now includes provisions for the Environmental Protection Council (EPC) to perform a number of specific roles and functions.

It is the Government's belief that this will provide an independent check on the Minister. The Liberal Party does not accept that the EPC is the appropriate body to undertake the specialised work required to control marine pollution in this State. We cast no aspersions on the capacity or integrity of the current members or on the role of the council as established by the Environmental Protection Council Act 1972 as amended. However, we are aware that there is a high level of frustration amongst members of the EPC who feel that their efforts and deliberations are not valued by

the Minister, because she will neither listen to nor heed their concerns.

This is a most unsatisfactory situation, and one which prompts the Liberal Party to question the wisdom of allocating to the council the additional responsibility for protecting our marine environment. We fail to see how the council will effectively address the massive and specialised workload that will flow from the passage of this Bill when it is frustrated in addressing to its satisfaction the many issues that it already has on its agenda.

Also, we question the practical application of the Government's proposal for the EPC to co-opt additional members to the council whenever any investigation or report is required on matters covered by this council. I will pursue those issues during the Committee stage. However, we have a further major objection to the EPC option favoured by the Government and now incorporated in this Bill relating to the question of public accountability and confidentiality.

Members who have an interest in the operation of the EPC (and the Hon. Ron Roberts interjected a few moments ago, and I suspect he is one such person) will be aware of the occasions in the past when the Council has sought to make public its findings and been prevented from doing so on various subjects, either by the confidentiality clauses in the EPC Act or the Minister's resistance to such public disclosure, or a combination of both.

The Liberal Party believes that on the question of marine pollution the general public has a right to be informed about the concerns of any specialist body established to advise the Minister on this important subject. Without that provision it will be almost impossible to ensure that a Minister is accountable for his or her actions or lack of action. Therefore, the Liberal Party is adamant that this Bill must provide for the regular public release of advice forwarded to the Minister by any specialist advisory committee established to address marine pollution. In fact, the Liberal Party believes it is reasonable to argue that, if such freedom of information provisions had applied in respect to marine pollution issues over the past two decades, then our metropolitan seagrasses would not be dying at the rate that they are dying at present and that our fishing resources would not be so vulnerable.

The Hon. T. Crothers: Don't forget you were in government in 1979.

The Hon. DIANA LAIDLAW: The Liberal Party was in government for three years, from 1979 to 1982, far too short for the benefit of this State, but we started work on this area. It has taken the Labor Government seven years to get to this stage of introducing a Bill which is totally unsatisfactory and far behind the standard in other States of Australia. If the Hon. Mr Crothers is proud of that effort, he ought to get out in the community and think again. Instead, we have a situation where in the Bannon Government successive Ministers of Environment and Planning have deliberately suppressed reports—

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW:—and information about the critical state of our coastal water. Last Wednesday, in this place, the Hon. Martin Cameron made reference to some of those reports when summing up the debate on his private member's Freedom of Information Bill. The Hon. Julian Stefani has also taken a considerable interest in this matter and he would know that such reports have now come to the public's attention despite resistance from the same Minister who now seeks to promote herself as a champion of the environment. The alarming content of those reports reveals that if such information had been in public circulation at the time the reports had been written an informed public would have demanded action years ago to stem, possibly even stop, the processes that are rapidly polluting our marine environment at present.

The Liberal Party is also keen to increase the maximum penalty for offences in relation to the discharge of pollutants and the production or disturbance of pollutants in declared inland or coastal waters. When the Bill was initially introduced in the other place the penalties for an offence was either $60 000 if a natural person was the offender or $100 000 if a body corporate was the offender. In the Bill before us the penalties are now $100 000 and $50 000 respectively. The Liberal Party believes these penalty rates should be a maximum fine of $150 000 and a division 3 imprisonment. (that is, seven years maximum) for a natural person and a maximum of $1 million for a body corporate. These rates apply in similar legislation in New South Wales, and we believe that the same standard should apply in South Australia. The Liberal Party rejects the argument of the Minister as presented in the other place that we should move to the lower standard in this field, in the interest of national uniformity. We have no objection with uniformity we would argue that we should move to the higher limit, not the lower.

In respect of industry, mining and agricultural practices, including those of the E&WS, that generate pollution that contaminates our coastal waters, I acknowledge that at the time the enterprises established their operations, they complied with the regulations in force at that time and BHAS, which is located in the area in which the Hon. Mr Ron Roberts lives, is such an example.

The Hon. R.R. Roberts interjecting:

The Hon. DIANA LAIDLAW: Well, my electorate also is in those terms.

The Hon. L.H. Davis: And my electorate as well.

The Hon. DIANA LAIDLAW: Everybody's electorate. I also acknowledge the general goodwill of such enterprises throughout the State to recognise their responsibility to do their best to find and pursue solutions to control the discharge of wastes into the sea, and also to accept their responsibilities to operate with environmental considerations in mind for the benefit of our community at large. As I say, I recognise their efforts and, in many instances, I applaud them.

This observation about the goodwill of industry, and so on, leads me to address what I see is an important deficiency in the Bill—the absence of any definition of pollutants. Every member in this Parliament acknowledges the importance of this Bill. As I have said, the Liberal Party and the Australian Democrats also seek to raise the maximum penalties for offences under this Bill to $1 million for a corporate body. In those circumstances, I believe that we owe it to industry and the like to exercise our minds and, at the very least, seek to define what we mean by pollutants. I consider that it would be the height of irresponsibility on our part merely to establish the framework for licensing provisions, to set up a structure for inspectors, and to impose heavy maximum penalties and then not even bother to define what we mean by pollutants.

The Government proposes that we should simply pass this responsibility over to a body of yet unappointed persons to define what we mean by pollutants. In this respect the Government argues that the committee to advise the Minister will prescribe pollutants, at which time the Parliament will have the opportunity to address the subject. Yet, together with my Liberal colleagues, I would argue that the importance of this legislation demands that we provide that committee with a framework, and therefore a definition, around

which this committee should work in terms of prescribing pollutants.

I wish to make a further point in regard to the definition of pollutants. It will be patently clear to anyone who reads the debate in the other place that the Minister and the members generally are confused about the ambit of this legislation. The Government's second reading explanation, both in the other place and in this Chamber last week, simply compounds this confusion. I wish to refer to one portion of the second reading explanation. It refers to the White Paper and then states:

> Although the White Paper indicated that the Coast Protection Act would be the vehicle affording control of what was termed 'point-source' pollution, public response to the White Paper strengthened the view that it would be sensible to anticipate the need to manage more diffuse sources of pollution from such things as stormwater run-off.
>
> Therefore, rather than restricting powers only to what was needed for point sources, the Government has prepared a Bill capable of encompassing a broader range of problems. There is, however, no intention to take action in respect of diffuse sources until the point sources have been dealt with and until there has been extensive liaison with local government.

I highlight that reference by the Minister because it is clear from the second reading debate in the other place that there is great confusion between what is meant by point source pollution and diffuse sources of pollution. If the Minister and members who make the law in this regard are confused on that point, I can only assume that those to whom this legislation will apply will also be most confused unless we seek to define in the legislation in general terms what we mean by the term 'pollutants'.

Throughout the debate in the other place the Minister and members made reference to stormwater run-off. However, in the Minister's opinion—and mine, I would add—that is a diffuse source of pollution, not a point source of pollution which this Bill seeks to address. The Minister said that diffuse sources of pollution, such as stormwater drainage and other run-offs from roads and the like, are currently being addressed by a working party established by the Minister to consult on this matter with local government. The Minister anticipates that legislation will be ready in about two years and that it will be companion legislation to this Bill. Yet, notwithstanding that, in the Minister's second reading explanation it is stated that the Bill is capable of encompassing a broader range of problems. I again quote:

> There is, however, no intention to take action in respect of diffuse sources until the point sources have been dealt with and until there has been extensive liaison with local government.

I believe that as it is the Minister's intention that this Bill does not at this stage relate to stormwater run-off but the fact that it is capable of doing so requires us to highlight, in terms of the definition, that this Bill does not at this stage deal with stormwater drainage and run-off. I make that point very firmly because almost to a person members in another place in their contributions and even during the Committee stage kept on harping about the role of local government in terms of run-off and stormwater drainage and the ultimate effect on the pollution of coastal waters.

It is a very difficult issue to address. It is one that the Liberal Party and I would expect requires extensive liaison with local government as the Minister proposes and, therefore, I believe we should make it quite clear in this Bill by way of a definition of pollutant that this Bill does not at this time refer to such matters as stormwater drainage.

We will also move amendments in respect of funding for research. We believe very strongly that the committee that we propose must have at hand the most accurate, up-to-date information about what is actually happening in terms of the pollution of our waters, in terms of contamination by industry and other sources, and in terms of the effect on marine life. Without such accurate and up-to-date research it is most questionable that this committee will be comfortable with the conditions to issue licences adequately.

If the council is not able to have accurate facts and figures at its fingertips to undertake its responsible role, we certainly suggest from the start that the Bill is essentially a worthless piece of paper. We must ensure that the council is equipped with the scientific data that will ensure that its decision-making is sound, that its determinations are sound and that industry, the council, the Government and the community can work together successfully and without too much antagonism on the part of any party in addressing marine pollution.

I believe strongly that such a cooperative approach will not be possible without firm and credible research. Without such a cooperative approach we will not have a hope of stemming some of the pollution and its consequences for our coastal waters. Our amendments provide for a fund to be established and for a prescribed percentage of licence fees and penalties to be channelled into that fund so that such funds can be used to undertake research of our marine environment.

One of the difficulties in addressing this whole subject now is that so little research has been undertaken about marine waters in many years. As to establishing a marine environment protection committee, as we propose, some will argue that this is a further statutory committee that we do not need. A similar argument has been presented by the Hon. Mr Elliott in terms of assessing what opposition he may have to the tribunal proposed in his amendment. I believe that we have a fragmented approach to addressing marine pollution in this State.

Honourable members will be alarmed to learn that three provisions relate to marine pollution under the Fisheries Act, three provisions under the Food and Drugs Act and two provisions under the Harbors Act. There are also further provisions under the Boating Act in respect of requirements on boat operators. Other provisions exist under the Local Government Act, the Petroleum (Submerged Lands) Act, the Water Resources Bill now being debated in this Council, the Pollution of Waters by Oil and Noxious Substances Act 1987, the Federal Environmental Protection Sea Dumping Act 1981, the Mining Act 1971, the Planning Act 1982, the Mines and Works Inspection Act 1920-1970, the Coast Protection Act 1972-1975, the Dangerous Substances Act 1979, the Waste Management Commission Act 1979, the River Torrens Protection Act 1949, the Health Act 1935-1978 and the Noxious Trades Act 1943-1965.

If there was ever a case of over legislation and over regulation, one would suggest that it must be the area of marine pollution. The tragedy is that, although there has been so much regulation and legislation at Federal and State level, we have not actually addressed this matter until now. This Bill tries to deal with this very important and vexed issue on a comprehensive basis. I argue very strongly that, while this Bill must be strengthened and the necessary research must be undertaken before the issuing of licences to deal with this whole issue, in the longer term we as State members of Parliament and our Federal colleagues have an obligation to try to rationalise some of this legislation to bring together some of the regulations, the tribunals, the committees and the like, so that we do not have such a piecemeal approach to this very issue.

Given the range of Acts, Federal and State, I wonder whether any of the provisions are being administered properly or effectively. I question that when I see the frustration within the community at large about the pollution of our

environment and when they try to address those matters. It is an earnest hope of mine that, notwithstanding the passage of this further legislation, we can look in a mature fashion at this fragmented approach and, in time, have a much more coordinated, comprehensive and, as a consequence, effective approach to this issue.

In respect of the Democrat amendments to this Bill, the Liberal Party is still considering and discussing a number of them and, at this stage, I intend to reserve judgment on quite a number of the issues, including the review tribunal and the powers of third party standing before the tribunal and the courts in relation to matters under this legislation. The Liberal Party also has some reservations about the new definitions proposed by the Democrats in respect of an applicable water quality standard. There is some question that this may change the context in which we are seeking to address this Bill, which is at the point source of pollution. The issue of water quality standards raises questions of which sources and who may be responsible for such pollution in a set area.

We look forward to debate in the Committee stage of this Bill, and the Minister has our assurances that we support the second reading of this legislation. We look forward to its passage in a more strengthened form than that as introduced by the Government.

The Hon. R.I. LUCAS secured the adjournment of the debate.

EQUAL OPPORTUNITY ACT AMENDMENT BILL

In Committee.

(Continued from 27 March. Page 842.)

Clauses 2 and 3 passed.

Clause 4—'Functions of the Commissioner.'

The Hon. L.H. DAVIS: Although South Australia is the first State to move to introduce age discrimination legislation, I am aware that other States are moving in the same direction and, as I flagged in my second reading contribution, it is important, particularly for national employers, to have consistency of legislation. I am aware that the South Australian Equal Opportunity Commissioner, Ms Tiddy, has met with her counterparts in other States in recent weeks—I think it was last month. How confident is the Government that there will be consistency of legislation with respect to age discrimination?

The Hon. C.J. SUMNER: Not particularly.

The Hon. L.H. DAVIS: Not particularly concerned: so, you are confident that there will be consistency?

The Hon. C.J. SUMNER: No, I am not particularly confident.

The Hon. L.H. DAVIS: That is a matter of some concern to me. It is all very well to have legislation by itself, but I would hope that the Attorney-General—and I am sure he will—will use his best endeavours to develop a rapport with his opposite numbers to ensure that there is some consistency, particularly with respect to the employment provisions which account for probably two-thirds of the complaints with respect to age discrimination.

The other general matter I raise is in relation to the concerns that have been expressed by a number of bodies about the need for education. A letter addressed to the Attorney-General from the South Australian Council of Social Service signed by Gerard Menses states on the first page:

> We believe that though the legislation will provide an important backbone to social change, the legislation in itself will not be sufficient to create social change. We would therefore expect the Government to demonstrate its commitment to this project by engaging in a thorough advertising and education campaign which will have a great effect in producing attitudinal change, then any disciplinary reaction that may arise out of the legislation.

I understand that those remarks were echoed by employer groups and other parties that engaged in consultation with the Attorney-General earlier in the year. I would appreciate it if the Attorney could indicate what educational program is contemplated by the Government with respect to this legislation, if and when it is introduced.

The Hon. C.J. SUMNER: With respect to the honourable member's first query about consistency with other States, I understand that the Commissioner for Equal Opportunity has met with her counterparts in the other States on the proposals for age discrimination legislation in Australia. They have attempted to work towards getting consistency, but my experience of achieving uniformity and consistency in this and other areas is that States rights egos usually overwhelm commonsense and, unfortunately, the chance of getting complete consistency is probably remote. However, one can only work towards getting consistency. Certainly, since I have become Attorney-General, I have worked hard and long over a number of areas to try to ensure consistency and uniformity around Australia, on these sorts of issues, and we will continue to attempt to do that.

With reference to the honourable member's second question, the points made by the organisations referred to by him are taken. When equal opportunity legislation in the other areas has been introduced and an education campaign has been engaged in by the Commissioner for Equal Opportunity, that will occur on this occasion with whatever resources are available to be put into that area. There will be general education: guidelines will be prepared for employers. In other words, the sorts of things that have been done in other areas of discrimination will be done in this area as well.

The Hon. L.H. DAVIS: Is the Government in a position to indicate the sum involved in this community education program?

The Hon. C.J. SUMNER: No, it will be considered in the budget process.

The Hon. DIANA LAIDLAW: I am interested to hear that the Attorney-General cannot give an indication of the amount that will be provided for such an education program, because he would be aware, as I am, that the Commissioner has referred in repeated annual reports to her concern about the lack of provision for education in this area of equal opportunity, noting that education is a major function provided for by this Parliament in the Act. Other members and I will pay particular interest as to whether the Government, at the time of budget discussions, is earnest in seeking to educate the general public about age discrimination and how objectionable such practices are.

I apologise for being distracted at the time that clauses 1 to 3 were passed, but I wish to ask a question about the commencement of this Act in relation to functions of the Commissioner. I recall that, when replying to the debate last night and in response to my questions, the Attorney-General indicated that there would not be a staggered implemention period.

I had argued on behalf of employers for a staggered implementation period along the lines of the Federal Government's affirmative action legislation in the belief that such a staggered period would provide further opportunity for employers to be educated about the provisions of this legislation and also for the general public to understand what this Parliament was seeking to achieve. Apparently, the Government has opted to not have such a staggered

period, although the Attorney did say that there would be some delay in proclaiming the legislation. Perhaps he can now indicate what delay he envisages.

The Hon. C.J. SUMNER: I cannot do that. This Bill has to pass both Houses and I cannot say whether it will be passed by the House of Assembly before we rise for the Easter recess. The matter of resources to implement the legislation will have to be considered in the budget for 1990-91. However, the Government is mindful of the need for an adequate lead-in time so that people can be properly informed of the new legislation and their obligations under it. I anticipate that, once the Government has determined when the legislation will be proclaimed, an announcement to that effect will be made sufficiently prior to the proclamation date so that adequate arrangements can be made by those who will be affected by the legislation. It may be that some sections will not be proclaimed but, in general, it will be the intention of the Government to proclaim the whole of the Act to operate from that proclamation date. However, as I said, obviously this will not occur immediately, but once the Bill is passed there will be a sufficient lead-in time to advise people of their rights under the legislation.

The Hon. DIANA LAIDLAW: The Attorney will appreciate that I have intense interest in this subject having introduced three Bills on age discrimination in the past three years. Over that time I have worked with many groups including retired trade union members, DOME, SACOTA and many others. They would be as interested as I am in what the Attorney has in mind in terms of lead-in time.

If this legislation is passed by both Houses in this session and the Government determines by September of this year that it has the necessary resources, does the Attorney envisage that the legislation will be proclaimed by the end of this year? I remind the Attorney that this Bill was staged in such a way as to make the Government's initiative in this area a major election issue. In that context the Government must have some idea of what it proposes in regard to this legislation. I would also like some clarification on which sections the Attorney envisages may be proclaimed at a later stage if the whole Bill is not proclaimed.

The Hon. C.J. SUMNER: It is not envisaged that any sections will not be proclaimed, but it is possible that when one gets into the proclamation phase problems might arise which will require the non-proclamation of certain sections for a period of time. However, at this stage it is not envisaged that any sections will not be proclaimed.

The honourable member seems to be a little bit schizophrenic about exactly what is her attitude to this Bill. On the one hand, she wants it proclaimed as soon as possible but, on the other hand, she wants the proclamation delayed so that the employer groups can have adequate time to be prepared for the legislation.

An honourable member interjecting:

The Hon. C.J. SUMNER: That's all right. I know.

The Hon. Diana Laidlaw: I do not think you should use the word 'schizophrenic' in relation to me.

The PRESIDENT: Order! The honourable Minister.

The Hon. C.J. SUMNER: I did not mean it in any serious manner, as I am sure the honourable member knows.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! I think that if members addressed the Chair they would be better off.

The Hon. C.J. SUMNER: The point was that the honourable member was taking two positions on the issue. If the honourable member would prefer—

The Hon. Diana Laidlaw: I am able to represent all sides of the issue.

The Hon. C.J. SUMNER: Sure, that is right. But the honourable member does not seem to know which one she wants. Does she want immediate proclamation as a matter of urgency? Or does she want the proclamation delayed to accommodate the employer groups? That is all I was suggesting to the honourable member. I certainly would not want to be—

An honourable member interjecting:

The Hon. C.J. SUMNER: Come on! Don't be ridiculous. You know the context in which it was said. If you take it to some—

An honourable member: You can read it in *Hansard* tomorrow.

The Hon. C.J. SUMNER: Okay, I will. If you want to be a fool then you be a fool. I am sure that the honourable member is aware of the context in which that word was used, that is, basically to indicate that she seems to have two views about the matter.

The Hon. Diana Laidlaw: There are various views on the legislation.

The Hon. C.J. SUMNER: Of course, yes. One minute the honourable member is trying to say that she wants the legislation urgently, and then she says, 'No, we do not want it quite that urgently because we want the employer groups to be notified.' I have told the honourable member what the process is: it must be passed; resources must be obtained in the budget; and adequate lead time has to be given to the groups affected to enable them to be aware of their rights and obligations under the legislation before it is proclaimed.

The Hon. K.T. Griffin: What do you regard as an adequate lead time?

The Hon. C.J. SUMNER: I would think that four to six months of lead time would be—

The Hon. Diana Laidlaw: After resources have been determined?

The Hon. C.J. SUMNER: Well, resources will have to be determined in the coming budget negotiations. Obviously, as the honourable member would know, budgets are all—

The Hon. Diana Laidlaw: You are going to make this a very long session if you start picking at me.

The Hon. C.J. SUMNER: I am not picking at you: I am just trying to answer your question. I was trying to ascertain exactly what you wanted to know. I wanted to know whether you—

The Hon. Diana Laidlaw interjecting:

The Hon. C.J. SUMNER: Okay. Are you urging us to do it as quickly as possible, or are you urging us to take our time? If the Opposition has a view on this, then obviously we will take it into account when deciding when to proclaim the legislation. However, I have outlined the process that it must go through.

The Hon. DIANA LAIDLAW: I know that the Hon. Mr Davis has responsibility for this Bill, and I do not intend to upstage him on this issue. I even intend to give him some time to speak. However, I want to point out to the Attorney that on every Bill that I have introduced over some three years I have argued that education in this whole issue is absolutely vital and I have argued for a lead time and a staged introduction, as the Attorney admits.

Therefore, I was most interested to see that the Government was providing for some lead time. I simply wanted to know what the Government meant by 'adequate lead time' so that the community to whom it would apply, particularly people who believe that they are suffering because of discrimination on the basis of age—generally older people but sometimes young people—will have some idea of what

the Government had in mind. I would not have thought that that was an unreasonable proposition on my part.

The Hon. L.H. DAVIS: I will return to the point that I was developing, that is, the community education campaign. As I mentioned, the representatives of SACOSS, YACSA, SACOTA, the UTLC, the Employers' Federation, and the Chamber of Commerce and Industry, in that letter of 31 January 1990 all referred to the significant resources that were required to be allocated to the ongoing community education campaign and for the commission's provision of advice and guidance on the subject. I accept what the Attorney-General has said, namely that it will be considered in the budget, I also accept that there will be a lead time in the introduction of that community education program. In the public interest, I am simply trying to ascertain at what point of time the Attorney considers that this legislation is likely to take effect. Given that the budget period begins on 1 July 1990, and given also that an education program may take at least six months, it would seem reasonable that the Act would not come into effect until some time in 1991. Is that a reasonable assumption on my part?

The Hon. C.J. SUMNER: It may be.

The Hon. L.H. DAVIS: This Bill is directed specifically against age discrimination, and is history-making legislation not only in the sense that we will become the first State to enact legislation of this nature but also because this is the first Bill I can remember which has been introduced five times in two years. I want to make the point that this Bill, which is directed at the ageing, has been introduced by the Attorney-General representing the Minister for the Aged. The Government has created the position of Minister for the Aged. I wish to make the point that the New South Wales authorities, in looking at the problems of the ageing and age discrimination, expressed the view that the term 'aged' in itself is discriminatory and that the word 'ageing' should be used.

I have styled myself as the shadow Minister for the Ageing rather than shadow Minister for the Aged, and I gently suggest to the Attorney-General that that point should be taken on board. It may cost money in terms of changing the letterhead, but I believe that the Government has been discriminatory against the aged in adopting that styling with respect to its new Ministry.

The Hon. C.J. SUMNER: I will refer the honourable member's comments to the Premier and see whether he is prepared to change the title of Dr Hopgood.

The Hon. L.H. DAVIS: The last point I wish to make in my general remarks refers to an interesting paper delivered by the Commissioner for the Ageing (Dr Adam Graycar) in Tokyo in 1988. He makes the point that many countries have seen cuts in their public health care systems—and that is true in South Australia—as most users of public general hospitals in Australia are elderly people. That will, of course, be increasingly so. Does this fiscal austerity constitute discrimination against older people? Dr Graycar says that some people argue 'yes', although he would argue 'no'. One could not bring an action against any individual alleging age discrimination in this type of situation. However, I raise that in relation to the difficulties of dealing with legislation of this nature. I am not expecting the Attorney-General to respond to it.

Clause passed.

New clauses 4a and 4b.

The Hon. L.H. DAVIS: I move:

Page 1, after line 25—Insert new clauses as follows:

General powers of the Tribunal

4a. Section 25 of the principal Act is amended by inserting after subsection (4) the following subsection:

(5) Where, in the opinion of the Tribunal, any proceedings before the Tribunal are frivolous, vexatious, misconceived or lacking in substance, the Tribunal may dismiss or annul the proceedings.

Tribunal may award costs in certain circumstances

4b. Section 26 of the principal Act is amended by striking out paragraph *(a)* of subsection (1) and substituting the following paragraph:

(a) where in the opinion of the Tribunal the proceedings are frivolous, vexatious, misconceived or lacking in substance.

This amendment seeks to recognise that proceedings before the tribunal may be frivolous, vexatious, misconceived or lacking in substance and, if that is the case, the tribunal may dismiss or annul the proceedings. I recognise that section 25 of the principal Act gives the tribunal general powers, but there is no power at present for it to dismiss or annul proceedings. I accept it may be implied that it can do that, but it would strengthen section 25 if there were such a provision. If that amendment to section 25 is accepted, a further amendment would be required to section 26, which is set down in my amendment to insert new clause 4b.

The Hon. C.J. SUMNER: The Government opposes this amendment for the reasons that I outlined in my second reading reply. It does not consider that a specific power is needed to dismiss complaints which, in the opinion of the tribunal, are frivolous, vexatious, misconceived or lacking in substance. However, the Government accepts that some amendment is required to the Act to clarify the powers of the tribunal to dispose of matters where the respondent has not acted in contravention of the Act. A recent amendment to section 96 (1) limits the powers of the tribunal to make certain orders where the respondent is found to have acted in contravention of the Act.

The Government proposes to move an amendment to section 96 to allow the tribunal to dispose of the matter where no contravention has occurred. This will include proceedings which are frivolous, vexatious, misconceived or lacking in substance.

New clauses negatived.

Clause 5 passed.

Clause 6—'Insertion of new Part.'

The Hon. L.H. DAVIS: I move:

Page 4, lines 26 and 27—Leave out subsection (6) and substitute the following subsection:

(6) Subsection (5) will expire on a day to be fixed by proclamation, being a day not less than three years after the commencement of this Part.

Some questions need to be canvassed relating to discrimination in employment (Division 2). Perhaps I may again indicate the reservations of employer groups to the discrimination in employment provisions. There is concern about the need for education, which I have canvassed, and there is concern that matters which may be addressed more appropriately by the Industrial, Conciliation and Arbitration Act will be resolved by the commission. Another concern, which has been expressed to the Attorney, is that this legislation will encourage trade unions to seek the abolition of junior rates of pay. In a letter to the Attorney-General last year, when the Bill was first introduced, the point is made:

> Our experience is that claims for the abolition of junior rates of pay will result in a standard adult rate of pay. If this occurs, the net effect would be to reduce the career and employment opportunites available to younger people. At the opposite end of the spectrum, the proposed abolition of compulsory retirement ages will, in our assessment, potentially harm the very groups that the legislation seeks to protect.
>
> The existence of mandatory retirement ages serves to both protect persons nearing that retirement age and provide a guide for the financial pay-out commonly offered to persons in the form of early retirement packages. We believe this likely effect of the proposed legislation should be taken into account before the legislation is enacted.

I have already indicated to the Attorney that I am quite relaxed about the concept of abolishing standard retirement ages, although I believe that complex social and economic matters must be resolved before we deal with that matter.

With that as a backdrop, if I can proceed to ask some general questions: first, in terms of discrimination against applicants and employees, proposed section 85b (1) on page 2 provides that it will be unlawful 'for an employer to discriminate against a person on the ground of age ... in the terms or conditions on which employment is offered'. Could the Attorney give some indication of the guidelines that are likely to be set down with regard to advertising positions? There was some indication that the task force would produce guidelines in relation to advertising positions. What plans does the Attorney have in relation to that matter?

The Hon. C.J. SUMNER: That will be part of the education campaign that will be carried out.

The Hon. L.H. DAVIS: Am I right in assuming, as I indicated in my second reading contribution, that an advertisement will require no mention of age; that, for instance, a firm seeking to employ a person for behind-the-counter work in, say, a hamburger chain, would style the wording: 'Person required to serve in hamburger chain. No experience necessary. Hourly rate of pay $7'? In that way, the salary set and the fact that they have also mentioned that no experience is required would act as a guide to the age level required. Would the Attorney think that that is a reasonable assumption as to how the legislation would operate?

The Hon. C.J. SUMNER: The honourable member is correct in that an advertisement will not be able to specify age.

The Hon. L.H. DAVIS: With reference to advertisements, I have in front of me a letter addressed to the Attorney-General dated 17 January 1990 jointly signed by Gerard Menses, SACOSS, Ken Davey of YACSA and Ian Yates of SACOTA. On that second page, dealing with proposed section 85b (1) *(b)*, they state:

> We also understand the task force intends to recommend an amendment to the principal Act to prohibit requests for information in employment applications which would be used for discussion purposes (for example, date of birth, race or gender). We strongly support such an amendment which addresses fundamental attitudinal change.

I can see no direct reference to that proposition, but I am interested to know that the task force intended to recommend an amendment to prohibit requests for information in employment applications which will be used for discussion purposes on matters such as date of birth, race and gender. Is it the Government's intention that an application form would not even be allowed to provide for the date of birth, the race and the gender of the applicant?

The Hon. C.J. SUMNER: There is no intention to provide for that specifically.

The Hon. L.H. DAVIS: One of the important areas of concern for employers is how this Bill will operate in practice. I want to take the example of an employer group that has a range of people employed over a span of ages. For instance, it may have a particularly large number of old people retiring, or it may have an imbalance in their age range of people. In other words, in planning the profile of the firm, as many companies do, to plan for succession and to plan for experience through the firm, in a big firm in particular and in small firms as well, they will have people in a range of age groups. In other words, not everyone in the firm will be 55 and not everyone will be 25. There will be a span in the age of employees in a firm to provide for continuity and a range of experience. Does the Attorney-General believe that the introduction of this legislation impinges on a firm's ability to provide for that common sense approach to employment planning?

The Hon. C.J. SUMNER: No.

The Hon. L.H. DAVIS: One of the areas also where employers will express some concern—

The Hon. C.J. Sumner: This is bloody waffle.

The Hon. L.H. DAVIS: The Attorney-General says, 'This is bloody waffle.' I would hope that he has enough respect for the employers of the State and also for the fact that this is pioneering legislation with unknown practical implications for him to dwell in the Committee stage on what I would hope are perceived as fairly practical and sensible questions.

The Hon. C.J. Sumner: You've been going for about 30 minutes yourself, and I've spoken for about two minutes.

The Hon. L.H. DAVIS: If the Attorney-General is in such a state of mind that he prefers to report progress and come back when he wishes to approach the Bill more seriously, I am happy to do that.

The Hon. C.J. Sumner: I am approaching it very seriously.

The Hon. L.H. DAVIS: Mr Chairman, the Attorney-General, I find, is a man of many moods. I have listened to him when he has spoken for hours and now he is upset that I ask questions as pithily as I can. He is somewhat schizophrenic in his approach, if I may say so. I think the score is now 15 all and I will proceed.

Again, one of the problems that employers perceive with this legislation is that many people are employed in their junior years with little experience, and it is recognised that, as they become adults and their pay levels increase, they face retrenchment. It is a problem which people recognise, and employers have been under increasing pressure to stop that practice. One of the problems on the other side of the coin is the economic impact of such legislation.

The Attorney dismissed this fairly lightly yesterday by saying that he believed there was very little economic impact. I dispute that. There could be some economic impact. Can the Attorney be more precise? Has there been any consideration of the economic impact of this legislation and, if so, who was consulted and what were the findings?

The Hon. C.J. SUMNER: As I have said, it is not envisaged that there will be a large economic impact as a result of this legislation and I am not sure how I, the Government or Ms Laidlaw when she introduced her Age Discrimination Bill could assess the economic impact. No survey has been done. I am not sure what a survey would find out. Almost certainly, if you ask employers, they will say that there will be dramatic economic impact—they always do. They said that about every piece of anti-discrimination legislation ever introduced.

The reality is that employers have learnt to live with the Equal Opportunity Act. It has been beneficial for South Australia, certainly in social terms and also in the long run in economic terms because, if people are happy in their employment and do not feel disgruntled because they have been discriminated against for reasons of race, sex or, in this case, age, one would expect a happier and more productive work force. The key to employers not being economically disadvantaged by the legislation is to ensure that there is adequate education, that adequate guidelines are provided by the Commissioner for Equal Opportunity, that there are adequate facilities for employers to ask questions about the legislation and, finally, that the legislation is administered in a flexible, pragmatic and commonsense way.

I suggest to members that that has been the experience of the equal opportunity legislation in South Australia since

it was first introduced, such that in the long run, despite their initial concerns about it, employers have become used to it and have accepted it as a natural part of their employing life and their employer/employee relations.

The Hon. L.H. DAVIS: Can the Attorney advise the Committee of the position regarding voluntary workers under this legislation?

The Hon. C.J. SUMNER: They are included in the same way as voluntary workers were included in the other provisions of the equal opportunity legislation by the Bill passed last year.

The Hon. L.H. DAVIS: Clearly, voluntary workers have a different status in terms of their relationship with an employer.

The Hon. C.J. Sumner interjecting:

The Hon. L.H. DAVIS: That is right—in relation to the person they are working for. Can the Attorney see any practical difficulties in the relationship between a company or organisation and voluntary workers who are brought under the ambit of this legislation?

The Hon. C.J. SUMNER: The principle relating to volunteers was accepted last year when we dealt with the Bill that covered a number of miscellaneous matters and intellectual impairment. The arguments relating to volunteers were raised in the Chamber at the time and Parliament as a whole rejected those arguments and accepted that the legislation should cover volunteers. Members may want to rehash those arguments but, if they do, I can only refer them to the responses that were given when the Equal Opportunity Act Amendment Bill 1989 was before Parliament.

Obviously, there will need to be some working through in respect of volunteers, and the Commissioner has advised me that she will be ready to provide advice to deal with any employer concerns or problems about volunteers. In an extreme example, presumably a difficulty, an exemption could be applied for from the Equal Opportunity Tribunal. But, as volunteers have only just been included in the legislation, it is a matter of seeing how it works. If problems arise, we will have to have another look at it.

The Hon. L.H. DAVIS: What will be the impact of this division on the Australian traineeship system? Does the Attorney-General have any information on that?

The Hon. C.J. SUMNER: The honourable member will have to elaborate to some extent on the point that he is making and I will attempt to respond.

The Hon. L.H. DAVIS: It was a matter that was raised by the Chamber of Commerce, as I understand, in one of its letters to the Attorney-General. I thought he may have been up to speed on that matter, because it seems to have been of concern to the chamber in January.

The Hon. C.J. Sumner: What was the concern?

The Hon. L.H. DAVIS: The Chamber of Commerce expressed it like that and did not elaborate on it. I have not had the chance to follow it through. The traineeship may replace the junior wage system.

The Hon. C.J. SUMNER: In the light of his vigorous criticisms of my attitude to the Bill earlier on, if the honourable member has a point let him make it and I will get a response, either now if it can be given or, subsequently, before the matter is dealt with by the House of Assembly.

The Hon. L.H. DAVIS: It will expedite proceedings if that matter can be addressed subsequently and the information provided at a later date.

One of the arguments that has been raised, particularly by the Youth Affairs Council of South Australia and by my colleague, the Hon. Diana Laidlaw, is the likely impact of this legislation on junior rates of pay.

The Attorney-General would probably be aware that, in that very full and recent detailed document of October 1989, the Western Australian Equal Opportunity Commission stated that it believed that junior wages should be exempted from the operation of age discrimination. South Australian employers are quite anxious about this position. The Youth Affairs Council believes that such legislation will, in time, herald the abolition of junior rates of pay. What is the Government's attitude towards this? Does it believe that, in principle, junior rates of pay outside awards and perhaps in time within awards should be abolished? It is pertinent to raise this question, given that it is central to the argument on Division II.

The Hon. C.J. SUMNER: Junior rates of pay are excluded from the purview of this legislation, as the honourable member is aware. As to the Government's general approach to junior wage matters, I suggest he directs his questions to the Minister of Labour. It is not relevant to this Bill as it has been excluded from it.

The Hon. DIANA LAIDLAW: My question concerns industrial agreements made or approved under the Industrial Conciliation and Arbitration Act. Later in the Bill I note that all Government agencies and instrumentalities must look at their legislation and within two years report on provisions that incorporate references to age. Has the Attorney-General or the Government looked at such a time frame of two years in relation to seeking the cooperation of the trade union movement to conduct a similar exercise in respect of all South Australian awards and industrial agreements?

The Hon. C.J. SUMNER: I understand that the Hon. Mr Elliott has an amendment on file which deals with this matter, and I assume that is when we should discuss this.

The Hon. L.H. DAVIS: The youth sector response to proposed new section 85f (4) was that it was concerned that the Bill should tackle discrimination within awards and that the youth sector, and in particular the Youth Affairs Council, would like to see the operation of discriminatory rates of pay in industrial awards reviewed over the next two years by the Minister in the same way as statutes which discriminate are to be reviewed. That is picked up by an amendment to be moved later by the Hon. Mr Elliott. The letter continues:

> We are firmly of the view there is a strong link between the legislative and industrial dimensions as momentum builds to discriminatory rates of pay based on age.

I just wonder whether the Attorney accepts that proposition which has been put by the Youth Affairs Council of South Australia, that it is against the discriminatory rates of pay based on age. Does the Government support that?

The Hon. C.J. SUMNER: Again, the Hon. Mr Elliott has an amendment on file dealing with this issue. Why can we not talk about this issue in relation to the Hon. Mr. Elliott's amendment instead of wandering all over the place before we get to it?

The Hon. L.H. DAVIS: With respect, I think it can be justified in the sense that section 85f (4) does refer specifically to awards which are exempted from the operation of Division II with respect to discrimination in employment. The point I was going to develop for the Attorney, if he had more patience, was simply that a discriminatory situation does exist in the sense that awards under the Industrial Conciliation and Arbitration Act do discriminate.

The Hon. C.J. SUMNER: We know that, and there is an amendment that the Hon. Mr Elliott has on file in which he will deal with that topic. That is the point I make. Why not restrain yourself, deal with it and have a decent debate about the point when Mr Elliott moves his amendment? Then you can ask all the questions you like about it.

The Hon. L.H. DAVIS: With respect, that is not under Division II, it is under a later division.

The Hon. C.J. Sumner: So what? It is the same point.

The Hon. L.H. DAVIS: All right. I am just trying to develop a point here that I am interested in the Government's view on this important area of employment, and that relates to the division we are now talking about, discrimination in employment, rather than the miscellaneous provision under which the Hon. Michael Elliott's amendment rests. I am simply developing the point that an anomalous situation does exist. I am developing the argument—if the Attorney would give me the courtesy of listening—that the Youth Affairs Council believes that discriminatory rates of pay should be abolished. We accept that there are discriminatory rates of pay provided for under section 85f(4) of the Act. I am simply interested to know what the Government's attitude is towards this. Does it believe in discriminatory rates of pay as a principle, because it is important for employers to know that. There has been a lot of nervousness about junior rates of pay versus adult rates of pay, because that is what the argument is about. Does the Government accept that principle of discriminatory rates of pay based on age—yes or no?

The Hon. C.J. SUMNER: The Government's position is that this matter, as I said before, ought to be dealt with in the industrial arena. That is why we have not included it in the Bill. However, the Hon. Mr Elliott has no doubt received representations from certain groups to the effect that the question of awards ought to be covered by the legislation and that there ought to be a period of time allowed for a consideration of all the awards and the age discrimination provisions that currently exist in the awards, and that within, I assume, two years the same report that is envisaged under State legislation in relation to age criteria should be reported upon in relation to awards as well. So, his point is that it ought to be covered by the equal opportunity legislation. The point that the Government has taken to this point in time at least is that it ought to be dealt with industrially.

At this point of time I will not comment industrially one way or the other. However, I will listen to the Hon. Mr Elliott's contribution to determine whether the Government might be pursuaded by his remarks. It is clear that the Bill has been introduced excluding reference to age discrimination in the industrial arena, and in awards particularly. So, I cannot answer the question further except to say that there is an amendment—

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: If the honourable member was aware of the amendment by the Hon. Mr Elliott addressing this specific point, I do not know why he could not have restrained himself and we could have dealt with that matter, the Hon. Ms Laidlaw's issue and your questions as one issue. However, as you have pre-empted it and made your speech on another clause I have responded.

The Hon. L.H. DAVIS: If certain employees are not included in an early retirement plan, I suggest that this could well amount to age discrimination, under the present provisions. I am talking about a hypothetical situation of workers, say, in the 55 to 60 year age group, who are offered early retirement. Imagine that situation, which is common in South Australia, where people in the 55 to 60 year age group are offered early retirement—but people over 60, for example aged 63, are not because they will retire soon, anyway. Does the Attorney-General consider that that is an example of age discrimination, under the legislation as it is drafted?

The Hon. C.J. SUMNER: It could possibly be, depending on the facts of the individual case. One would have to examine the circumstances of the case to see whether age was the determining factor as to whether a particular package was being offered to one employee and not another. If the only reason for that was age, then it could be discrimination, under the legislation.

The Hon. L.H. DAVIS: I raise this as a practical example—and, I suspect, a not uncommon one—amongst employers in South Australia, facing an economic downturn and having to lay off staff. As the Attorney would know, this is often a very civilised way of avoiding retrenchment: people are given a golden handshake, as such, rather than just being fired, especially if it will be their last full-time job.

This is something which may be necessary if a company faces a downturn in sales or a fall off in orders in the tough economic times that we are experiencing—it may be necessary to retrench staff. The ironic situation may arise of some people in the 55 to 60 year age group saying, when offered a golden handshake, 'Thank you, that is wonderful, that is what I want', whereas others may say, 'You will hear from my lawyer because this is discriminatory, you are sacking me on the ground of age discrimination.'

I raise that as a practical example and as a problem that I suspect may exist. Quite frankly, I recognise the enormous dilemma of trying to draft legislation in this employment area because the example that I have just provided to the Attorney-General is one where there is a real danger of someone being able to launch an age discrimination action.

The Hon. C.J. SUMNER: I will examine that point. The honourable member may or may not be right. As I said, it depends on whether or not age is the determining factor in treating one employee differently from another. If it is work performance, and if the people who are chosen for a redundancy package or a golden handshake are those whom the employer has assessed and deemed to be getting tired and not as productive as they were—

The Hon. L.H. Davis: In which category are you?

The Hon. C.J. SUMNER: I am entering a new and very productive phase.

An honourable member interjecting:

The Hon. C.J. SUMNER: No.

The Hon. Diana Laidlaw: Well, you are much better after 11 o'clock than you were before 10 o'clock.

The Hon. C.J. SUMNER: That is because I have entered into the spirit of the Committee stage, which seems to be characterised by long speeches from the Hon. Mr Davis. When I tried to be short and to the point in my responses, he was dissatisfied. Therefore, I decided to give fuller answers so that the honourable member could be satisfied and so that he would not leave the Committee stage complaining—as he has been heard to complain, although not about me but about others—that he was not getting answers. Of course, present company on the front bench is excepted. However, I have heard criticisms made before of the frontbenchers, present company excepted and without reflecting on any of our predecessors.

To overcome that criticism I have decided to enter into the spirit of the Commitee stage and to provide the honourable member with complete and full responses, despite the fact that I know that the Hon. Mr Elliott is chaffing at the bit and wishing that the more cryptic phase of the Committee stage would be reinstated.

However, the point that I am making is that if the assessment of the employer is made on the basis of work performance or, as I said, productivity, the fact that the person may not be fitting into the job or whatever, age is not a

factor, and that may apply equally to a 40-year-old as to a 50-year-old or a 60-year-old. As I said before, it depends on the facts of the individual case and that will need to be determined. Employers will have to be advised, educated and informed about the circumstances. But, in the final analysis if the only criteria for the golden handshake is age, it would constitute discrimination under the legislation. However, if there are other factors which the employer is using—and which the employer ought to use—to determine whether or not someone should be put off, it would not contravene the age discrimination provisions.

The Hon. L.H. DAVIS: I accept those closing remarks of the Attorney-General, in particular, since the Commissioner for Equal Opportunity in Western Australia has said that equal opportunity in employment means employing the best person for the job so long as the choice is made fairly. That is where it all starts.

I want to turn to the question of retirement age, which is dealt with in this amendment. The Government seeks to do away with the standard retiring age in respect of employment at the expiry of the second anniversary of the commencemnt of this Part, as it is described in proposed new section 85f (6). I have already accepted that in Canada and the United States the abolition of a standard retiring age is something that has caused no great problems in the community. However, there are complex social and economic problems to be worked through in a federal system such as we have here. The Attorney-General would be well aware that both the Chamber of Commerce and Industry and the South Australian Council of Social Service (SACOSS) have some misgivings about it.

I quote from the very detailed and impressive SACOSS submission to the Attorney-General, dated 17 January 1990, as follows:

> Whilst the community supports the concept of abolishing compulsory retirement age, we are, however, concerned at the possible implications of doing so. We are uncertain as to what alternative measures will be put in place. We are concerned that there has been insufficient thought as to the social cost involved in reviewing the competence of older employees. Under this Bill people will no longer leave the work force automatically at 65 but will become vulnerable to being forced out of the work force through alleged incompetence. Under the present situation there may be circumstances in which an employee is retained because the employer knows that the person may well retire in a year or two.
>
> However, with no prescribed cut-off age, it is possible that people may be dismissed earlier, resulting in an increase in arguments on competence and unfair dismissal. We are concerned too about the implications for superannuation if there is no commonly recognised retirement age. More thought still needs to be given to issues concerned with superannuation, pensions and other forms of retirement income in order to provide for maximum flexibility for individuals to choose their own retirement age. In view of the possible problems and complexities, the community therefore suggests that subsection (6) be amended so that instead of providing for a sunset clause it provides for a review.

The submission recommended that that provision would then read:

> ... that the Minister must within two years after commencement of this part prepare a report on the operation of fixed retirement ages and that report must include recommendations from the Minister and relevant Government agencies and instrumentalities, as to whether subsection (5) should be retained or repealed.

The submission continued:

> Such an amendment allows the Government more flexibility in responding to what we believe is a very difficult issue. It is worthwhile noting that a lot of these concerns have come from the age sector within our constituency and these concerns have been echoed throughout our consultations.

Coming at it from another angle entirely, the employers, through the Chamber of Commerce and Industry, in their letter to Commissioner Tiddy of 3 October 1989, state:

> The inclusion of proposed new section 85f (6) in the Bill is the most controversial aspect of the proposal. The Government's own task force to monitor age discrimination, in its report, recommended that a separate detailed examination be made of the proposal to prohibit the imposition of a mandatory retirement age. The Social Security Act has a similar basis to identify those entitled to benefits.
>
> The effect of the elimination of a mandatory retirement age on the work force in this State is very complex. It is our submission that this proposal needs a detailed examination before it is put forward in any legislation.

I have given much weight to those two submissions, and that is why I have moved in this direction. The Government must proclaim new subsection (6). It will come into operation only on proclamation rather than automatically. I put the point of view that the task force to review age discrimination was established in 1987 and was due to report within one year. In fact, it took two years for that task force to report. Yet this working party that is established to look at this complex age will have to report within two years. Even if the report has major reservations, the provision, as it now stands, will be triggered automatically and standard retiring ages will disappear. I am concerned about that.

I raise the practical point of retirement ages which differ between men and women. The standard retirement age for men is 65 and the standard retirement age for women is 60. The Chairman of the Human Rights Commission, Dame Roma Mitchell, is on record as saying that she can see no justification for any difference in retiring ages for men and women. In an article, she states:

> The Social Security Act sets different ages for retirement for women and for men and a survey by the Australian Bureau of Statistics indicates that the majority of superannuation funds have as their basis the assumption that women will retire at 60 and men at 65.
>
> Perhaps chivalry led to it in the first place, but the statistical evidence that women on the whole live longer than men does not support the need for such a provision.
>
> If this anomaly were to be corrected, it seems to me to a large extent the problem of providing for the same retiring age and the same provision of superannuation by way of pension for men and women would disappear. But correcting the anomaly will not prove easy ... Perhaps the change should be effected gradually in each case until a common age of 63 is reached.

Another point that she illustrated about the difficulty of retirement ages relates to the lump sum payment:

> If one assumes that the recipient will invest in an annuity, then the woman will receive a smaller weekly sum because of the statistical assumption that she will live longer than the man.

Dame Roma Mitchell argues:

> Where women are permitted, but not required to retire at an earlier age than men, a scheme which permits them to take superannuation at that earlier age is an advantage to them and is discriminatory against men. However, if retirement is forced, then it is discriminatory against women.

Finally, in advancing this argument with some force, I should like to make a point of which the Attorney-General is well aware. At birth the male in Australia has a life expectancy of 71.23 years; a female 78.27 years. At the age of 60, the male has a life expectancy of 77.23 years; the female 82.02 years. The source for that is the Australian Life Tables 1980-82 provided by the AMP. At the standard retirement age of 60 a woman will have on average 22 years to live. A male at the standard retirement age of 65 will have just 12 years to live. In other words, a woman after retirement on average will live one decade longer than a man with present standard retiring ages. Clearly, there is a discrimination within standard retirement ages of 65 for men and 60 for women. I am not sure to what the Attorney-General is referring when he talks about the abolition of standard retiring age. Therefore, my question is: what does the Attorney-General mean by standard retiring age in the proposed section 85f (5)?

The Hon. C.J. SUMNER: The standard retiring age refers to the age that is determined as being the appropriate retiring age for the particular group of employees with whom we are concerned and in the Public Service that is 65. Perhaps another industry or another employer might insist that their employees retire at 60. I suppose it is theoretically possible that some organisations or industries might have a retiring age of 50.

So, it is possible for a particular employer to impose a standard retirement age in respect of employment of a particular kind and for that not to constitute discrimination under the legislation. It becomes part of the exemption. It would be illegal and contrary to the sex discrimination provisions for there to be different retiring ages for men and women.

The Hon. L.H. DAVIS: Does the Attorney-General accept, given the complications that I have outlined about the abolition of the standard retiring age, which I think in the public and private sector is generally said to be 65 for men and 60 for women, and the discriminatory nature of those different ages, that it is perhaps rash to—

The Hon. C.J. Sumner: The retiring age for women in the Public Service is 65.

The Hon. L.H. DAVIS: But generally 60 in the private sector.

The Hon. C.J. Sumner: It cannot be; it is contrary to the sex discrimination provisions. It is talking about pensions. That is an option.

The Hon. L.H. DAVIS: I am sorry. Does the Attorney not accept that to have proposed section 85f(6) automatically expiring on the second anniversary of the commencement of Part VA, irrespective of the problems that the working party may find, is a rash act?

The Hon. C.J. SUMNER: No, it is very courageous. It is part of the Bannon Government's policy of pressing ahead with social reform at a vigorous pace following its resounding victory at the previous election. The Government has considered this matter and believes that a two-year period will be adequate to consider the issues. We do not think that it should come into effect by proclamation at some later stage. Apart from the employers, most of the organisations—and, as I understand it SACOSS and SACOTA from which the honourable member obviously received voluminous representations—support the two-year cut-off period.

The Government is confident that the issues can be dealt with in that time. I suppose that, if it turns out not to be possible, we can always come back and look at the legislation again. However, the Government does not envisage that being necessary. We are trying to put in a deadline so that there is something for the bureaucrats to work to. That is more satisfactory than having it open ended, or more or less open ended, which is the proposal of the honourable member.

The Hon. L.H. DAVIS: In the spirit of compromise, because the Attorney-General knows full well that this side is genuine in its commitment to age discrimination legislation, I would be prepared to amend my amendment to make it two years by proclamation. That would overcome the Attorney-General's concern that three years is too long. Two years at least saves the requirement of coming back to Parliament if it is just too hard. It means it is an Act which the Government can undertake in a positive way by making a proclamation relating to subsection (5). There is nothing inconsistent with legislation we have had before that. If the Attorney-General is happy to accept that, I will amend my amendment in that way.

The Hon. C.J. SUMNER: That is not acceptable. That could mean that the proclamation could be made not less than two years but presumably in 20, 30 or 40 years time.

Honourable members: You'll still be in Government.

The Hon. C.J. SUMNER: Members are interjecting that we will still be in Government. I will not be here; I hope to have moved on to either more lucrative or more satisfying employment. The point is that the Government believes there ought to be a cut off point in the legislation. The honourable member's compromise achieves nothing. All it does is bring back the period from three years to two but it still provides that the proclamation may not need to be for five years or 10 years.

The Hon. M.J. ELLIOTT: For the sake of speeding up things a bit, for the time being I believe setting an absolute deadline of two years would sharpen the minds of many people, and I would not be supporting any amendment whether or not it has been moved as yet.

The Hon. L.H. DAVIS: The Attorney-General did not come back to the point that I made, namely, that superannuation funds now have, as their basis, the assumption that women will retire at 60 and men at 65. Some of the superannuation funds in existence do operate on that basis. I see that as a practical difficulty but, just out of interest, does the Attorney-General support the adjustment of the pension for women to 65 because that is one of the matters which influences very much the employment of women?

The Hon. C.J. SUMNER: I will not comment on that. It is a matter for broad Government policy, it has to be dealt with at a national level, and is not relevant to this legislation. As to the provisions in superannuation schemes which pre-suppose a retirement age of 60 for women and 65 for men, I am advised by the Commissioner for Equal Opportunity that there are now very few superannuation schemes where that is the case. That assumption has largely been eliminated and the superannuation industry has been working towards that. That is my advice. If the honourable member wants to argue the toss about it he can but I am not quite sure, even if he does that, what the point is that we are going to end up with. We will end up with the amendment moved by the Hon. Mr Davis, if he has moved it, defeated.

Amendment negatived.

Progress reported: Committee to sit again.

CRIMES (CONFISCATION OF PROFITS) ACT AMENDMENT BILL

Returned from the House of Assembly with the following amendment:

Clause 3, page 2, lines 32 and 33—Leave out subparagraphs (vii) and (viii) and substitute the following subparagraphs:

(vii) a provision of the *Companies (Acquisition of Shares) (South Australia) Code*;

(viii) a provision of the *Securities Industry (South Australia) Code*.

Consideration in Committee.

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

That the House of Assembly's amendment be agreed to.

These are technical matters. Apparently the Bill introduced earlier into this Council contained a reference to Acts that was incorrect and the amendment corrects the error.

The Hon. K.T. GRIFFIN: That appears to be correct, and accordingly I support the motion.

Motion carried.

RETIREMENT VILLAGES ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

RATES AND LAND TAX REMISSION ACT AMENDMENT BILL

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

REAL PROPERTY ACT AMENDMENT BILL

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

ADJOURNMENT

At 11.35 p.m. the Council adjourned until Thursday 29 March at 2.15 p.m.