LEGISLATIVE COUNCIL

Thursday 14 March 1991

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

PETITION: SELF-DEFENCE

A petition signed by 872 residents of South Australia concerning the right of citizens to defend themselves on their own property, and praying that the Council will support legislation allowing that action taken by a person at home in self-defence or in the apprehension of an intruder is exempt from prosecution for assault, was presented by the Hon. Diana Laidlaw.

Petition received.

PARLIAMENT HOUSE ACCOMMODATION

The PRESIDENT: On Tuesday 12 March 1991, the Hon. Mr Elliott asked me a question concerning Parliament House accommodation. In the course of my reply I undertook to give a considered response as to whether the Occupational Health and Safety Act regulations apply in Parliament House. I quote from *Erskine May*:

> Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law.

Thus, when the Economies Royal Commission proposed to investigate expenditure in connection with parliamentary services, the Speaker of the House of Representatives said that, as it had no authority from Parliament to interfere in any way with the various services of Parliament, it was his duty to call attention to the proposed serious encroachment on the rights and privileges of Parliament by a tribunal to inquire into matters over which the legislature had absolute and sole control.

The nature of Parliament is that it is in charge of its own destiny and is not subject to other bodies. However, Parliament does not deliberately set about to flagrantly breach laws imposed on the rest of the community. Hence, Parliament in enacting the Parliament (Joint Services) Act, which deals with Parliament's joint services and administration, made specific provision for certain Acts such as the Industrial Conciliation and Arbitration Act 1972. Parliament legislated to provide that no inspection or investigation is permitted without the joint approval of the Presiding Officers.

If an inspection is certified by the President of the commission as necessary, the President and Speaker shall jointly give due weight and consideration to the certificate. Furthermore, any such approval may be given subject to such conditions as the President and Speaker think fit.

Returning to the honourable member's specific inquiry concerning the occupational health and safety regulations, these do not apply to Parliament House because of the nature of the parliamentary institution. However, every endeavour is being made to apply the spirit of this legislation to the Parliament as, for example, a committee has been formed voluntarily with representatives from all sections of the Parliament to consider the health and safety aspects of the parliamentary working environment.

All members must realise that the unsatisfactory accommodation problems are not confined to any one area or group of persons—it is a fundamental problem which, it is becoming increasingly clear, can only be resolved by major capital expenditure.

MINISTERIAL STATEMENT: POTATO CYST NEMATODE

The Hon. BARBARA WIESE (Minister of Tourism): I seek leave to make a statement.

Leave granted.

The Hon. BARBARA WIESE: The Minister for Agriculture in another place wishes to report further to the Council on the major outbreak of the serious potato disease, potato cyst nematode (PCN) to which he referred last week, that has occurred in Wandin, Victoria. He reports that the Department of Agriculture has acted quickly to address any possible impact on South Australia's potato growing industry. As a consequnce, we are confident that this devasting disease will have little effect on the health of out potato crops.

As he advised on 6 March 1991, amendments to the plant standard under the Fruit and Plant Protection Act now prohibit the entry of potatoes grown within a 20 km radius of the Wandin property where the PCN outbreak has been declared. After extensive consultation with potato growers and industry groups the industry has recommended these new restrictions as an essential safeguard for the South Australian industry at this time. Essentially these restrictions were ratified on 1 March and also apply to potato seed, bulbs and field plant nursery stock. As one of South Australia's major horticultural crops, it is vital that we protect the potato industry from the threat of PCN. South Australian potato growers have relied on Victoria for seed potatoes to establish plantings and it is essential that this supply be monitored to prevent the spread of PCN. These restrictions will help to protect the South Australian potato industry from PCN and at the same time ensure the preservation of our status with important export markets such as Western Australia.

Following further consideration of this issue, and in the light of the action taken by Western Australia, and after consultation with industry, we will be introducing major 'fork' testing and soil testing services in South Australia so that the Western Australian Government can be reassured that PCN is not being transported to their State from South Australian potatoes. This will be an expensive process, and the Department of Agriculture will have to charge a fee for service to cover the costs of employing field survey staff to carry out the testing. However, the investment made here will go a long way to protecting South Australia's $13 million potato trade to Western Australia. It is essential, for their own protection, that all South Australian potato growers observe the new restrictions. This is especially important because the extent of the PCN outbreak in Victoria is unknown and will remain so until a total survey is completed. The Minister of Agriculture wishes to assure the Chamber of the Government's commitment to maintaining a healthy and viable potato industry in this State.

QUESTIONS

VICTIMS OF CRIME SERVICE

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Attorney-General a question on the Victims of Crime Service.

Leave granted.

The Hon. K.T. GRIFFIN: Earlier this week the Victims of Crime Service indicated publicly that there had been a dramatic increase in the number of professional contacts with victims of crime so that available resources are stretched to the limit. I understand that in January and February 1991 there were 800 victim contacts by professional staff with victims of armed robberies (including bank tellers who were affected), assaults and other serious crimes. That represents a 60 per cent increase on the same period last year.

This level of work does not take into account the court companion service activities which have doubled in the past 12 months and have expanded from the metropolitan area to the South-East and the Iron Triangle. It also excludes the public speaking commitments and other professional work such as contact with police cadets at the Police Academy and a close continuing relationship with police, particularly through the Victims of Crime Section of the Police Force.

I am told that, among police and other groups, there is a significantly increasing awareness of the services provided by the Victims of Crime Service and the benefits that flow to victims of crime from their involvement. As a result, there is an exploding requirement for assistance to be given by the Victims of Crime Service. Obviously, the amount of resources available will determine whether or not the growing need can be met.

In the current year, the Victims of Crime Service received $180 000 from the Criminal Injuries Compensation Fund which, at 30 June 1990, had in it a total of $3.725 million. Of that, nearly $2 million came in that financial year from levies on offenders. Another $500 000 came from interest on the fund. With the increase in offences and the dramatic increases in on-the-spot traffic fines, particularly from speed cameras, one could expect a sizeable increase in the fund in this and subsequent years. My question to the Attorney-General is: in the light of the significant increase in requests for assistance, the demand for services and the need for greater resources, can the Victims of Crime Service expect to receive a reasonable increase in grant from the Criminal Injuries Compensation Fund to meet the expanding need?

The Hon. C.J. SUMNER: I do not know the answer to that question, because any application for an increase in grant will have to be considered as part of the budget process, which has commenced in its preliminary stages at least. I would invite, as I have done in the past, the Victims of Crime Service to put forward a submission indicating whether or not any increase in funds is required by it. If that submission is made, it will obviously be considered by the Government. In the past, this Government has given considerable attention to alleviating the plight of victims of crime in the criminal justice system, including significant funding through the Victims of Crime Service.

The Hon. K.T. Griffin: Technically, it doesn't impinge on the budget.

The Hon. C.J. SUMNER: The honourable member says that technically it does not impinge on the budget. It may not technically impinge on the budget at the moment, but it may impinge on the budget if the Criminal Injuries Compensation Fund is not sufficient adequately to cover the claims for compensation. That position has not yet been reached, but the optimistic view of the state of that fund, which the honourable member included in his question, is not necessarily well founded. As the honourable member will know, the maximum amount of compensation available to victims of crime was last year increased to $50 000, and that is having an impact on payouts from the fund.

The Government is monitoring the situation very carefully. When the full impact of that $50 000 increase comes through, the amount in the fund is unlikely to be as healthy as it appears to be at present. I do not have the figures in front of me, but my impression is that in this financial year payouts in a number of months have exceeded the income.

While, on the face of it, it appears that there are sufficient funds in the Criminal Injuries Compensation Fund to meet the liabilities, that may not necessarily continue to be the case. Therefore, there could be an impact on the budget. However, the Criminal Injuries Compensation Act was amended to provide that money in that fund could be used generally to assist victims, not just directly by way of compensation, and obviously payments to the Victims of Crime Service fall within that category. The Government will want to ensure that it is able to carry out its job effectively.

I suggest that the greater number of victim contacts with the Victims of Crime Service has occurred to a considerable extent because of the Government's policies in encouraging victims' rights within the criminal justice system, and therefore encouraging victims to come forward. I suggest that victims' services are now much better known than they were in the past through publicity which has been given to them and also because of the victims of crime information pamphlet which is now handed out by all police officers to victims when the police are conducting inquiries into an offence.

I should also say that in the last budget for the Police Department additional resources were provided to enable the police to employ more persons to be concerned with victims of crime, both in the area of domestic violence and child abuse and also by way of victim contact officers.

The Government is proud of its record in this area in which we have led Australia. Indeed, we have been internationally innovative in a number of things that we have done. Obviously, one would hope to be able to continue that commitment. I will certainly examine any submission which the Victims of Crime Service puts forward for additional funding.

The Hon. K.T. GRIFFIN: On a supplementary question, will the Attorney-General provide in due course information about the current state of the fund and the trend in claims for the current year up to the present time?

The Hon. C.J. SUMNER: Yes.

VEHICLE THEFT AND JUVENILE OFFENDERS

The Hon. DIANA LAIDLAW: I seek leave to make an explanation prior to addressing a question to the Attorney-General on the subject of vehicle theft and juvenile offenders.

Leave granted.

The Hon. DIANA LAIDLAW: Motor vehicle theft is increasing at an alarming rate. For motorists this is a serious problem in terms of both cost and personal trauma. The statistics revealed in annual reports by the Police Commissioner are chilling. In 1979-80 there were 5 850 motor vehicle thefts or 8.49 thefts per thousand registered motor vehicles. Last financial year the total theft was 13 046 or 15.07 per thousand registered vehicles, with the cost to the insured community in South Australia being more than $9 million.

Over the past six months, from July to December 1990, the problem has become much worse with more than 8 000 vehicles reported stolen—one every 30 minutes. One insurance company to which I have spoken in recent days is now experiencing 90 claims per month which is a 50 per cent increase in the past 12 months. The same company

forecasts that the overall cost of claims will treble this financial year, which must be of concern to all motorists. This is an alarming prospect, considering that the Insurance Council has identified that the average car theft costs insurers $3 120.

I have also spoken to the police about this matter. They are of the opinion that most of the thefts are the work of joy riders, with many of the joy riders aged 17 years and younger. The police—and this applies not just to one individual police officer but to a number whom I have spoken with—are angry and frustrated that children as young as 10 years, as well as reoffenders, are appearing before children's aid panels on charges of vehicle theft and major driving offences, yet generally they are only counselled, warned or asked to give a commitment not to reoffend. In rare cases they are referred to the Children's Court but most cases are discharged without penalty.

Court delays were also identified as a further problem. In fact, in the northern suburbs one juvenile offender known to police, with a group of mates aged 10 to 15 years, is stealing high-powered vehicles. As of Monday this week, this young offender had 33 charges pending before the Children's Court. While the cases mount because of court delays, the youth is 'literally running wild' to quote one police officer, stealing cars and engaging the police in high speed chases. The youth knows that if the chase becomes a danger to the police officer or the public, the chase will be abandoned and he will simply get away with it. As the police appear to be waging a losing battle in their efforts to curb the rising level of motor vehicle thefts, I ask the Attorney:

1. Is he satisfied that the Children's Protection and Young Offenders Act is being applied effectively to help reduce such crime?

2. What action, if any, is he prepared to take to reduce current delays in having such cases heard before the Children's Court?

3. Will he ask the Minister of Transport when it is anticipated that the report of the working party on joy riding, which was set up last year, will be completed?

The Hon. C.J. SUMNER: The answer to the third question is 'Yes'; I will refer that matter to the Minister of Transport and obtain a report as to where that matter stands. I am a little surprised to hear about the delays referred to by the honourable member, because the latest information I have is that the Children's Court was not suffering undue delays. If the honourable member has the name of this person and the details of the case, I will chase the matter up to see why there are allegedly 33 charges pending that have not been dealt with.

However, the latest information I have, certainly from the Children's Court in the city, is that there were no undue delays, although I have heard of some examples where children have been charged and then, before the charges are dealt with, they commit other offences. I referred that problem to the Children's Court Advisory Committee, and the matter has been examined, although I am not aware of the full details.

The Hon. Diana Laidlaw: In the Elizabeth court.

The Hon. C.J. SUMNER: Generally, according to the information I have, the lists in the Children's Court do not indicate that there are long delays, at least in the Adelaide Children's Court. However, the honourable member has just interjected and said that this case was at Elizabeth and Para Districts, so I will try to establish the situation as far as any delays there are concerned, and ascertain what steps are being taken to reduce delays in bringing children before the Children's Aid Panel or the Children's Court.

My answer to the first question must be 'No'. In South Australia we have dealt reasonably successfully through the juvenile correction system with those offenders who come in contact with the justice system on only one occasion. The figures show that some 87 per cent of juveniles who come before a Children's Aid Panel do not subsequently appear before a Children's Court, and that is put forward as evidence that the juvenile correction system is working.

However, it could be argued that that 87 per cent would not come into contact with the Children's Court again in any event, irrespective of whether they went through the Children's Aid Panel. Whatever one says about it, 87 per cent of those who have contact with the juvenile correction system then do not reoffend and come back before the Children's Court.

The real problem that we have—and I have said this publicly on several occasions—is the other 13 per cent—the recidivist juveniles, the offenders who keep offending. It is fair to say that we have not dealt with those particularly successfully. They are the major problem in the Children's Court system.

As members would know, we have amended the Children's Protection and Young Offenders Act recently to increase the fines that can be imposed on children, to increase the amount of compensation that can be paid by children direct to victims and, by providing for discrete community service orders to be ordered as a sentencing option, to require children to clean up graffiti, to repair vandalism and the like. One problem with those amendments is that the community service orders apply only after conviction and in many cases, at least in the early stages, the children are not convicted.

The Government is aware of that, and I will be introducing a Bill, I hope next week, to correct that situation so that children whether or not they are convicted can be made to perform community service. Hopefully that will provide the opportunity for the courts to impose community service orders with or without a conviction at an earlier stage than is currently occurring and to bring home to offending children at an earlier stage some greater sense of responsibility for their behaviour. That is a sentencing option which should assist in bringing home to children a greater responsibility for their action, and not allow them to have a feeling that they have come before the court on several occasions and not had any real penalty imposed.

In the past 20 years, the Children's Court system has meant that there has been a reduction in the number of children incarcerated in youth detention or training centres quite significantly from the early 1970s to the present time. That also is put forward as evidence of the success of the Children's Court system, and most people involved in this area generally consider that to be a desirable result. I think it is fair to say—and most experts in this area would agree—that, if we incarcerate children who are well on the road to a criminal behaviour pattern, we would just exacerbate the problem for those other younger children. They will be put into a criminal culture which will not lead to rehabilitation but lead to further offending.

The policy of rehabilitation of juvenile offenders and not incarcerating them unless it is absolutely necessary has produced the result that there has been a significant reduction in the number of juveniles that have been given orders of detention. That has occurred over the past 20 years, irrespective of the Government that has been in office. However, the question that remains now is what we need to do in light of the lack of success the system has had in dealing with recidivist offenders—those young offenders who keep

coming back before the courts on repeat offences (part of that 13 per cent that I have mentioned).

One obvious option is to return to the earlier policies of incarceration. That would require significant capital expenditure to build new training and detention centres, and it is probably fair to say that most people involved in this area would say that that would not reduce the crime rate in any event. It may protect the public while the juveniles are locked away, but in the long term it will not reduce the crime rate—in fact, it may lead to an increase in the crime rate in the long term because those people, by being incarcerated with other criminals, will become part of a criminal culture, which they will keep with them for much longer in their adult life.

They are the issues with which the community has to contend. I certainly agree that we have to give more attention to the 13 per cent who are repeat offenders, the recidivists. I do not think that the system is an unqualified success in dealing with those children. I will not repeat the other answers I have given relating to the Government's innovative crime prevention policies, which also involve individual crime prevention, that is, people taking steps themselves to try to reduce their exposure to criminal behaviour. I should also say that what we are seeing with the phenomenon of motor vehicle theft and the like is not something that is exclusively a problem that South Australia has.

GRANTS COMMISSION

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

Leave granted.

The Hon. J.C IRWIN: The *Australian* and *Age* newspapers of 12 March this year carried stories of the proposed 10 year distribution plan of the Commonwealth Grants Commission. The plan will be accepted, rejected or modified at the June Premiers Conference. Members may be aware of the proposed massive decrease in grants for New South Wales and Victoria.

I do not recall the local paper carrying the story, despite the proposed gain to South Australia of $26.7 million to be phased in, presumably over a 10 year period. The *Australian* failed to mention South Australia's getting any dollar increase in the coming year and, frankly, the reports that I saw were so confusing that I do not blame anyone for not understanding what they are about.

The *Age* did mention South Australia on a graph as getting $87 million, but did not make it clear whether this was in the first year or a proposed allocation over 10 years. If over the next five years South Australia received the reported $26.7 million increase in addition to the present $60 million base, it would be just short of the $60 million inflated each year by 7 per cent, which is $84 million. In other words, there would be no real dollar increase. If it took 10 years to receive the extra $26.7 million, South Australia would be $32 million short in real terms, using the $60 million base.

That may well be an academic exercise, because no-one trusts the Federal Government to stick to any State funding formula for more than a few years. Will the Minister explain what she understands to be the proposed distribution for South Australia this year, which of course affects every council in this State? Does she understand that the $26.7 million that has been indicated as a gain for South Australia will be phased in over 10 years?

The Hon. ANNE LEVY: I am afraid that the Hon. Mr Irwin suggests a fairly confused situation, but the actual situation is even more confused than he is suggesting. The Grants Commission made a report in which it suggested two alternative ways of distributing the commission money between the States. One way would certainly result in South Australia's receiving an extra $27 million per year. However, that is only one of the two options it presented. The other option gave a lesser figure, which, I cannot recall, but I will certainly find it out for the honourable member.

As well, the commission suggested that, rather than introducing such a change in one go, the Premiers Conference should discuss three alternative ways of distributing the money between the States. These alternatives would result in much less extra money coming to South Australia. The lowest option would result in about $2 million extra for the State and another one would involve about $3 million, just in round figures. These are all based on different assumptions and, until the Premiers Conference takes place and a decision is made about what formula will be used for distributing the money this year, it is very hard to know whether South Australia will have $2 million or $27 million extra, or something in between.

I certainly hope that, for the sake of South Australia, it will be the higher figure but, as I say, I cannot prejudge what the Premiers Conference decision will be and, as a result, I suggest that local government should not start banking on a large increase until that conference has reached a decision about just what formula will be used both for this year and subsequent years.

The Hon. J.C. IRWIN: Mr President, I desire to ask a supplementary question. Does the Minister know whether the quantum to be distributed by the Grants Commission has been determined? Are we waiting to ascertain how it will be distributed or is there still argument on the quantum?

The Hon. ANNE LEVY: As far as I know the quantum has not been decided. The calculations, which used a total of five different formulae, are based on last year's figures, when South Australia received a total of $60 million. It is on the basis of those figures that the redistributive effects between the States have been calculated. As to what the quantum is for this year, that has not yet been announced, but these figures are based on what would have occurred last year had these different formulae been used.

FEDERAL ECONOMIC STATEMENT

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking a question of the Attorney-General, representing the Treasurer, about the Federal Government's economic statement.

Leave granted.

The Hon. M.J. ELLIOTT: Dumping has been an ongoing problem for Australian industry generally and, indeed, many South Australian industries. It has always been very difficult to prove that dumping has occurred. I note just a couple of examples from the annual report of the Anti-dumping Authority 1989-90 to illustrate the point. There were complaints about the dumping of sorbitol into Australia from a number of countries. The complaint was lodged in December 1989 but a positive preliminary finding was not made until June 1990, some six months later. It found that injury had been done to that industry.

A complaint by BTR Engineering about the dumping of pipe fittings from Korea and Taiwan was made in November 1989 and a positive preliminary finding was not made until May 1990. Once again, positive injury was done to

the industry. As to bulk brandy from France, a complaint was lodged in June 1989 but it was not until October 1989 that a positive preliminary finding was made. It is not until those findings are made that countervailing duties are put into place.

In each of those cases an Australian industry was facing dumping and material damage for a period of six months, and there have been other cases extending much longer than that. I have been aware that the citrus industry has gone for much longer before it has been able to prove that dumping has occurred. South Australia has a number of industries susceptible to dumping, particularly white goods, horticultural products and dairying, just to name a few.

The Hon. L.H. Davis: Our timber.

The Hon. M.J. ELLIOTT: I agree that our timber would be susceptible from places such as Chile and New Zealand. As our industries are small at international level, despite efficiency, they are prone to even modest dumping. Tariffs have offered not only the obvious protection to industries that perhaps the Government wants to get rid of, because it says they encourage inefficiency, but they have also had the effect of acting as a buffer against dumping. In his announcement on Tuesday that he would reduce tariffs, the Prime Minister suggested he would tackle also the question of dumping. I ask the Attorney-General:

1. Does he agree that the removal of the tariffs as proposed by the Government will expose Australia and South Australia not just to competition but much more to dumping?

2. Does he agree that our present anti-dumping procedures are grossly inadequate and far too slow?

3. What submissions has the State Government made to the Prime Minister concerning the matter of dumping?

The Hon. C.J. SUMNER: I will refer the question to the appropriate Minister and bring back a reply.

FINANCIAL INSTITUTIONS DUTY

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Small Business a question about a lethal weapon called financial institutions duty.

Leave granted.

The Hon. L.H. DAVIS: In the past few days I have surveyed some small businesses in country South Australia and metropolitan Adelaide on the impact of the Bannon Government's financial institutions duty. The Minister will probably recollect that, last August, in the 1990-91 State budget, the financial institutions duty was increased by a massive 250 per cent, from .04 per cent to .1 per cent. South Australia now boasts—if indeed that is the correct word—the highest FID in the land. I want to provide the Minister with the following three examples, which reveal that this level of FID is a lethal weapon for small businesses, particularly those with high turnover but very low profit margins.

The first example is from a rural small business supplying agricultural goods, parts and fuel to the nearby farming community. The proprietor tells me that quite often he will receive $80 000 to $100 000 from his clients which, in the past, he has been able to invest for four or five days before in turn paying his suppliers. He points out that, if he invests the $100 000 at, say, the going rate of 10 per cent, in the money market with a bank or other financial institution, he has to earn four days of interest before he has earned enough to cover the FID payment of $100. In other words, he is better off not investing the money at all if he has it for four days or less. He points out, quite rightly in my view, that FID is a positive discouragement to the efficient investment of surplus funds, apart from costing him thousands of dollars each year.

Secondly, I spoke to the proprietor of a metropolitan service station with a turnover of $4 million per year. That might sound a lot to the Minister, but in service station terms it is not a lot. He is barely making a profit. He is operating on exceptionally low margins. He works seven days a week, 14 hours a day and, on that $4 million turnover, he is paying $4 000 in financial institutions duty, which is $80 per week.

Thirdly, I spoke with a small metropolitan travel agent where the margin, as the Minister would know, particularly given that she is also the Minister of Tourism, is extremely low. For instance, on a domestic air ticket, it could be as low as 5 per cent. This travel agent is paying $40 per week in financial institutions duty, which represents the wage of a person working a few hours on a busy Saturday morning. In fact, I understand on good authority that one of South Australia's largest travel agents now sends all its cheques and credit card transactions to Queensland for the obvious reason—to avoid financial institutions duty.

I spoke with an accountant about this phenomenon, which is afflicting small business, the lethal weapon in the Bannon armory of taxation. The accountant pointed out that, understandably, in an effort to escape financial institutions duty, many of the small businesses for which he prepares tax returns are not banking cash where they can or taking short cuts in their transactions which, at the end of the year, ends up costing them more because there is such a maze of transactions to untangle for taxation purposes.

The point is made also that, because every time there is a credit into an account, FID becomes payable, so some transactions such as the sale of a business or the sale of real estate have the potential to have a double whammy of financial institutions duty. In other words, they attract two payments of FID, and I instance the example of the sale of a business where the amount will first be payable into the trust account of, let us say, the land broker who bills the client for the FID payable, and, secondly, when the client eventually receives the money into his account.

In some cases, I understand that transactions are being organised to minimise the FID which of course could lead to unscrupulous people taking advantage of the situation. In other words, it has undesirable social consequences as well. My question to the Minister of Small Business is simple: is she aware of the anger of small business about the impact of this lethal weapon called FID, which discriminates particularly against some small businesses more than others? Will she ask the Treasurer (Mr Bannon) to comment on the examples that I have provided this afternoon?

The Hon. BARBARA WIESE: Of course I am aware that people in small businesses, or any businesses at all, in Australia would prefer that Governments did not tax them in any way and would much prefer the opportunity to get on with their business free of any sort of impost. However, that is not possible in a community such as ours, and everyone accepts that there must be a taxing regime of one kind or another if we are to enjoy the range of community services that people in business or anywhere else demand in their community, services such as schools, hospitals, police forces and other things. Although I am aware that there are some who would—

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —complain about taxes in general and may also complain about the financial institutions duty, it would be acknowledged also by anyone who

looks at the taxation system and compares the various forms of taxation that, in overall terms, the financial institutions duty is probably one of the more equitable taxes that a Government could apply. I will certainly be happy to pass on the honourable member's comments about the financial institutions duty to the appropriate Minister, but it would have been of much greater value if I could have passed on also the honourable member's alternatives to a financial institutions duty. Then we may have been in a position to think about it in a serious way—

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! The Council will come to order.

The Hon. BARBARA WIESE: —instead of having to listen constantly—

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —to the honourable member's barrage of complaints.

Members interjecting:

The PRESIDENT: Order! The Minister has finished her reply but I do not know whether anybody heard it.

Members interjecting:

The PRESIDENT: Order! I suggest that no-one should start answers or replies until they have the silence to which they are entitled.

FOREIGN DOCTORS

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Health, a question on the recruitment of foreign doctors.

Leave granted.

The Hon. BERNICE PFITZNER: It has been reported that the South Australian Health Commission has knowingly committed breaches of the South Australian Medical Officers Award and has encouraged health units to do the same. The major breach concerns the recruiting of foreign doctors.

The Hon. T. Crothers: Has the union been informed of this?

The Hon. BERNICE PFITZNER: I do not think so. In 1988 an undertaking was given by the South Australian Health Commission to withdraw from recruiting foreign doctors for South Australian public hospitals. This was given in the Industrial Commission in order to settle the trainee medical officers dispute. I understand that at least 10 foreign doctors have been recruited by the Doctors Locum Service on behalf of the South Australian Health Commission. My questions are:

1. How many foreign doctors have been recruited by the Doctors Locum Service, and are more to be recruited?

2. Are these foreign doctors offered the same terms and conditions of employment as local doctors and, if not, what are the foreign doctors' terms?

3. Is assistance being given at taxpayers' expense for the foreign doctors' air travel and accommodation?

4. If such recruitment is occurring, given the large output of medical graduates in South Australia and given that we have the highest doctor/population ratio nationally, why is this recruitment necessary?

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

RURAL ASSISTANCE

The Hon. PETER DUNN: My question to the Attorney-General, representing the Premier, relates to the Premier's advice to Federal Minister Kerin on rural assistance. Can this Council expect the Premier, as President of the Australian Labor Party, to be more successful when lobbying Minister Kerin regarding rural assistance than he was when lobbying on behalf of this State's motor vehicle industry?

The Hon. C.J. SUMNER: I do not know.

DISUSED RAILWAY STATIONS

The Hon. J.C. BURDETT: I understand that the Minister for Arts and Cultural Heritage has a reply to the question that I asked on 19 February on disused railway stations.

The Hon. ANNE LEVY: My colleague, the Minister of Transport, has advised that prior to 1975 all railway stations in South Australia were owned by the then South Australian Railways. The Railways (Transfer Agreement) Act 1975 gave approval for the transfer of the non-metropolitan railways of the State to the Commonwealth to be administered by the Australian National Railways Commission (AN). Under this legislation AN has the use of the land and assets for railway purposes which are returned to the State when they are declared surplus to railway needs.

Railway signalling equipment and/or emergency telephones are often located within railway station buildings, and this has prevented their return to the State. For example the Tanunda railway station, which contains a train control telephone, is in a poor state of repair, but remains under the control of AN.

The STA does not have the funds to expend on the maintenance of railway station buildings which are not part of its operational requirements. Railway stations which are returned to the State by AN are predominantly derelict, and sometimes beyond redemption. The STA has a program of disposal with respect to these assets to enable future occupiers the opportunity of restoring the buildings and maintaining them appropriately.

The North Adelaide Railway Station, which is owned by the STA, has been offered to the Adelaide City Council for its use after redevelopment concepts proposed by the STA (including a restaurant) had been rejected by the council on planning grounds. A current proposal to use the building as mutual headquarters for the South Australian Touring Cyclist Association and the Equestrian Federation of Australia Inc is experiencing funding difficulties.

TEACHERS' 10-YEAR PLACEMENT SCHEME

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister for the Arts and Cultural Heritage, representing the Minister of Education, a question on the teachers' 10-year placement scheme.

Leave granted.

The Hon. R.I. LUCAS: My office has received numerous complaints about problems with the Education Department's 10-year placement scheme for teachers and, specifically, one case that is having a detrimental effect on special education. The case concerns a 16 year old youth who is a student at Minda school. The youth is autistic, deaf and behaviourally disordered. His foster parents relocated the family from Victor Harbor to Adelaide at substantial social and financial expense three years ago because they were advised it would be in their foster son's best interests.

For the past two years the youth has received adequate tuition from teachers with abilities in signing, but this year—due to the 10-year placement scheme—those qualified teachers have had to move on to other schools.

The youth is now under a teacher of 33 years experience—unfortunately, none of it in special education. The teacher can call on the assistance of an aide to act as an intermediary, but, because this aide only has a signing ability of about 50 words whereas the youth has an ability of 150 words and can understand up to 500 words, there is an obvious problem in communicating. I understand that the family has sought help from the Intellectually Disabled Services Council and the southern area office of the Education Department, but to date they have not been able to help. My questions to the Minister are:

1. Will the Minister seek from his department a review of the decision that has resulted in Minda school now being without a qualified teacher with advanced abilities in signing?

2. Will the Minister also seek a review of similar decisions by the department where it appears that little forethought has been given to replacing teachers with specific qualifications who must move to another school under the 10-year placement scheme?

The Hon. ANNE LEVY: I will refer that question to my colleague in another place and bring back a reply.

TELEVISION CAMERAS

The PRESIDENT: Before I call any other questions, I should like to make a statement about the television cameras in the Chamber. I had occasion to reprimand the television camera operators on how they have been photographing in the Chamber. Guidelines are laid down. However, it has been drawn to my attention that some members have been making private arrangements with television that contravene those guidelines. I would ask all members and also the press to be aware of those guidelines.

The Hon. Anne Levy: Who has been doing that?

The PRESIDENT: It does not involve any other members of the Chamber; it is just on a documentary system. I ask all members to make themselves aware of those guidelines and the press to observe those guidelines.

BARLEY MARKETING

The Hon. M.J. ELLIOTT: I believe that the Minister of Tourism has an answer to a question I asked on 25 October 1990 about barley marketing.

The Hon. BARBARA WIESE: The answer is as follows:

In response to the honourable member's question the Minister of Agriculture has provided the following response:

No; however, my colleague fully supports the concept of a national export barley marketing authority but believes that events occurring in other States will require some time before the structure of an appropriate grains authority is agreed to by industry.

My colleague is therefore recommending that initially the Australian Barley Board should operate under new legislation to enable it to function more effectively. The ABB should continue to compulsorily acquire the total barley crop grown in South Australia and Victoria, control export barley and freely issue permits enabling direct grower to buyer sales of barley and trade in other grains as appropriate.

REPLIES TO QUESTIONS

The Hon. DIANA LAIDLAW: I have received advice from the Minister for the Arts and Cultural Heritage that she has two answers to questions that I asked about State Bank sponsorship on 14 February and Tandanya on 7 March, and also that she has an answer to a question asked by the Hon. Dr Pfitzner on 14 February regarding planning powers. I would ask that they all be inserted in *Hansard.*

The Hon. ANNE LEVY: Mr President, I do not know whether you accept one member asking on behalf of another.

The PRESIDENT: If the other member is absent, I am quite happy to accept it.

The Hon. Anne Levy: She is not. She is sitting right there.

The PRESIDENT: No. I do not accept it if the member is present.

The Hon. ANNE LEVY: I seek leave to have the following replies to questions inserted in *Hansard.*

Leave granted.

TANDANYA

In reply to **Hon. DIANA LAIDLAW** (7 March).

The Hon. ANNE LEVY: Further to the information provided to the honourable member on 7 March, I advise that after being instructed by the board Mr Tregilgas returned to Tandanya the computer purchased in Singapore.

As at 31 January 1991, the value of all Mr Tregilgas's known outstanding personal liabilities to Tandanya was $1 283. These liabilities were personal expenses incurred using a corporate Visa card whilst in Edinburgh, Europe and Adelaide upon his return to Australia. All expenses were incurred on the full understanding that they would be repaid to Tandanya.

Tandanya's financial affairs for 1989-90 were audited by Mr R.J. Wishart of Genders and Wishart, Chartered Accountants, 123 Waymouth Street, Adelaide. The audited reports were received and examined by the Department for the Arts in October 1990. As I have mentioned previously, reports were received for the institute and each of its enterprise activities, namely, the cafe and retail outlet. The cafe and retail statement were qualified, prompting the department to instigate a review of Tandanya's accounting procedures and the subsequent overhaul of Tandanya's accounting systems.

STATE BANK SPONSORSHIP

In reply to **Hon. DIANA LAIDLAW** (26 February).

The Hon. ANNE LEVY: Initial inquiries have indicated that the State Bank's sponsorship program for the arts in South Australia will be unaffected by recent events at the State Bank. Current commitments will be met and future sponsorship proposals submitted by arts and cultural organisations will continue to be considered and funded on merit.

The honourable member will appreciate that sponsorship funds are never easy to come by as companies rightfully expect a reasonable return on their sponsorship dollar. Through its high quality product, the arts and cultural heritage in South Australia provide this return by significantly enhancing the State Bank's profile in the South Australian community. I therefore see no reason for the State Bank to change a sponsorship policy which has been to the mutual benefit of the bank and the arts in South Australia.

SMALL BUSINESS REPORT

The Hon. L.H. DAVIS: I understand that the Minister of Small Business has an answer to a question I asked on 4 December regarding small business.

The Hon. BARBARA WIESE: I have that reply, and I seek leave to have it inserted in *Hansard* without my reading it.

Leave granted.

The House of Representatives Standing Committee on Industry, Science and Technology's report on Small Business in Australia (the Beddall report) investigated many of the complex issues currently confronting the small business sector and made a total of 66 recommendations for changes to Government policy and administration.

While the majority of these recommendations relate to matters requiring action by the Commonwealth Government, a number of them also fall within the interests of responsibilities of State and Territory Governments.

The following list summarises the actions being taken in South Australia. In some instances, the South Australian Government already had measures in place addressing the report's recommendations, while others are in the process of implementation and will be progressed over time:

- Greater consideration of small business issues in Government policy formulations;
- Participation in a Commonwealth-State ministerial forum;
- Development of specific industry profiles as an aid to policy formulation;
- Initiatives to drive home the value of business management training before starting in business;
- Continuation of deregulation initiatives taking particular account of small business perspectives by:
  - — Reducing the frequency and detail of reporting;
  - — Identifying forms which can be reduced or eliminated;
  - — Building sunset clauses into new legislation;
  - — Examining opportunities for co-regulation or industry self regulation;
- Development of national standards and uniform regulations in cooperation with the Federal Government and the other States;
- Simplification of licensing procedures;
- Feasibility studies into the establishment of a one-stop shop business licensing centre covering both State and Federal requirements;
- Parties to shop leases have recourse to the Commercial Tribunal to arbitrate in disputes between landlords and commercial tenants;
- Representations to the Federal Small Business Minister requesting that a high priority be given to examination of the report's taxation reform recommendations;
- Introduction of the Business Bookkeepers Program encouraging bank officers to develop a greater empathy with small business;
- Initiatives ensuring the National Information Awareness Program is used to maximum advantage;
- Inclusion of small business management education as part of curricula for all secondary and tertiary institutions and apprenticeships training;
- Development of industry specific business management education and training programs;
- Integration of private sector agencies (for example, accountants, solicitors) into the network of small business advisory services;
- Publication of forward procurement plans providing the opportunity for businesses to participate more fully in State Government purchasing arrangements.

At the Commonwealth level, the 1990-91 Federal Budget contained a range of initiatives to assist and stimulate small business activity in Australia, consistent with the thrust of the Beddall report. In November 1990, the Minister for Small Business released the Federal Government's formal response to the report. In December 1990, in response to a recommendation of the Beddall report, South Australia participated in a meeting of State and Territory Ministers with responsibility for small business. The agenda for this meeting was based on issues canvassed in the report and included regulatory reform, retail and commercial tenancy, franchising, small business education and training, and small business data and research.

PLANNING POWERS

The Hon. BERNICE PFITZNER: Has the Minister for the Arts and Cultural Heritage an answer to my question concerning planning powers asked on 14 February?

The Hon. ANNE LEVY: Yes, I have the reply, and I seek leave to have it inserted in *Hansard* without my reading it.

Leave granted.

My colleague, the Minister for Environment and Planning, has informed me that the changes referred to by the honourable member came into effect on 14 February 1991. All councils in the State have been fully informed of the changes and the Government does not anticipate any problems in the acceptance of new responsibilities by councils.

The Government is conscious of the need to continually improve the efficiency of the development control system and remove duplication and waste. Under the system applying until 14 February, both councils and the State Government, through the Planning Commission, considered applications in a number of sensitive areas of the State. This involved inevitable duplication. Since the Planning Act commenced in 1982, the State Government and councils have devoted considerable attention to improving the development plan, the policy base on which development control decisions are based. In the areas affected by these changes, including the hills face zone and Mount Lofty Ranges, the policies in the plan have now become considerably clearer and reflect the Government's firm policies for conservation and controlled development. With these improved policies, and increased council expertise since 1982, there is no justification for the previous duplication at State and local level. These changes mean that councils will now consider applications against firm regional policies and in the light of local knowledge.

I assure members of the House, however, that councils cannot approve a range of developments contrary to the rules in the development plan. Inappropriate development is prohibited throughout the affected sensitive areas. Should a council wish to approve a prohibited development in the light of local knowledge, it must seek the South Australian Planning Commission's concurrence. Thus, while administration has passed to local government, the commission maintains effective control through its total veto over prohibited development.

The changes are welcomed by local government and are totally consistent with the Local Government Association's 1990 policy manual. They also have the support of the Royal Australian Planning Institute (South Australian Division).

The changes arose originally from a working party comprising the then President and current Secretary-General of the Local Government Association, the Chair of the South Australian Planning Commission and the Director of the Planning Division of the Department of Environment and Planning. The amendments were endorsed by the Planning Commission as appropriate changes to its role,

and supported by the Minister's Advisory Committee on Planning.

The Premier's planning review also supported the changes as being consistent with its emerging vision for the most appropriate development control system for South Australia. The fundamental principles for this vision were initially canvassed in its July 1990 issues statement entitled '20:20 Vision'. Public comment on that document has been assessed, and I am advised that its next public statement will be published for community debate shortly. The review also consulted its reference group and the Conservation Council on the changes prior to their finalisation.

As to the issue of council resources, it is clear that there was duplication under the previous arrangements with a council considering applications and advising the Planning Commission of its position. Now that councils are the controlling authorities, they can simply decide applications instead of advising. The double handling is eliminated without councils having to consider proposals not previously before them.

HOUSING ASSETS PACKAGE

The Hon. L.H. DAVIS: I understand that the Attorney-General has an answer to my recent question regarding the housing assets package.

The Hon. C.J. SUMNER: I understand from the Minister of Housing and Construction that the honourable member has now received a briefing on the housing assets package.

COUNTRY RAIL SERVICES

The Hon. I. GILFILLAN: Has the Minister for the Arts and Cultural Heritage an answer to my question of 19 February relating to country rail services?

The Hon. ANNE LEVY: Yes, and I seek leave to have it inserted in *Hansard* without my reading it.

Leave granted.

The Minister of Transport is not prepared to give an undertaking to impose a complete moratorium on all future line closures. Under the railway transfer agreement, the Government cannot withhold approval where there is no 'effective demand'. If it can be proved that there is 'effective demand', future line closures will be opposed.

The grain handling authorities have decided that the grain silos on the Balaklava to Gulnare line will be cleared by road rather than rail. The Federal Minister for Land Transport advised that Australian National saw no possibility of rail recapturing this traffic and was not prepared to maintain the line when its reason for existence had disappeared. Accordingly, the State Government had no valid objection to the request for closure.

The Minister of Transport has agreed to other line closures and, for the reasons already given, did not oppose the closure of the broad gauge Brinkworth to Snowtown and Port Pirie to Merriton lines. The Port Pirie to Merriton standard gauge line was by-passed by the Adelaide to Port Pirie standard gauge line in 1982. The Brinkworth to Snowtown line has not been used since the grain handling authorities opted to use road transport to cart grain from mid-north silos to Wallaroo.

PUBLIC SERVICE NEPOTISM

The Hon. DIANA LAIDLAW: The Attorney-General has advised that he has an answer to a question I asked on 13 December regarding public service nepotism. It has been read into *Hansard* in another place, and I am happy for it to be incorporated into *Hansard* in this place.

The Hon. C.J. SUMNER: I refer the honourable member to a ministerial statement made by the Minister of Labour in another place on 21 February. Headed 'Public Service Appointments', the statement addresses the allegations raised by the honourable member.

ROAD TRAFFIC ACT AMENDMENT BILL (No. 4)

In Committee.

(Continued from 13 March. Page 3553.)

Clause 11—'General speed limit.'

The Hon. PETER DUNN: I wish to make some comments on this clause before voting on it because I have looked at the statistics of the deaths per 100 000 of population due to motor vehicle accidents and the deaths per 100 000 motor vehicles registered in all the States of Australia. It is interesting to note, if we are going to pursue this argument that lowering the speed will lower the death rate, that the statistics are contrary to what has been said. The latest available figures are for 1987 and 1988.

It is interesting to note that in New South Wales, which has a speed limit of 100 km/h and a blood alcohol content of .05, they have 16 deaths per 100 000 of population. In Victoria, which is very similar in its specifications of 100km/ h and .05, they have a death rate of 14.7 per 100 000 of population. In Queensland (and I am not exactly sure of their speed limit), there is a figure of 17.6, but in South Australia, where we have 110 km/h and .08, the figure is 14.6 deaths. That is considerably lower percentage-wise—indeed some 16 per cent lower than New South Wales, just marginally lower than Victoria and considerably lower than Queensland. If one looks at the persons killed overall, that is, combining all the people in the cars, one sees that we are considerably lower, because New South Wales has 18.2 killed per 100 000, Victoria 16.4 and South Australia has 15.8. If one looks at it per 10 000 vehicles, one sees that it is lower. Even if we use the distance of 1 000 million kilometres travelled, the figures are still lower. It does not matter what figure you use, they are lower. So, where the argument—

The Hon. T.G. Roberts: What about Western Australia?

The Hon. PETER DUNN: Well, Western Australia is similar to us, as I understand it.

The Hon. T.G. Roberts: That's what I mean.

The Hon. PETER DUNN: Well, Western Australia has an even lower figure. They are down to 12.9 per 1 000, and we are 14.6, and New South Wales is 16. These are fatal accidents per 100 000 of population, so wherever you look at the figures—

The Hon. T.G. Roberts: All the other factors are taken into account.

The Hon. PETER DUNN: I am quoting three lots of factors.

The CHAIRMAN: Order!

The Hon. T.G. Roberts: Not enough.

The Hon. PETER DUNN: What about the per 1 000 million kilometres travelled? In New South Wales it is 10.2; in Queensland it is 11.2; and in South Australia it is 9.3. So, whatever the figures you use, we seem to be lower in this State. I therefore fail to see why we need to change. It seems to me that those States should actually change their

speed and raise their alcohol content if these figures are correct.

Members interjecting:

The Hon. PETER DUNN: Well, isn't it funny that when things are different they are not the same.

Members interjecting:

The Hon. PETER DUNN: It is amazing, isn't it?

The CHAIRMAN: Order! There is too much conversation in the Chamber.

The Hon. PETER DUNN: I would like to demonstrate that the statistics do not stack up when it comes to being blackmailed by the Federal Government to get $12 million for fixing up black spots. There is no reason at all for us to have to lower our speed limit from 110 km/h to 100 km/h or, for that matter, to lower our blood alcohol content from .08 to .05. I do not know how much this will cost, but I can imagine. At the moment we have a speed limit of 110 km/h, for which the road sign is a circle with a band across it, which means that the speed limit is anything up to whatever is the maximum speed limit for the State. Now that limit will be 100 km/h (and the Minister said yesterday that that may in fact be increased to 110 km/h on some major roads). The practice in the city, where a lowered speed limit comes into effect, is that we have a series of signs that continue along the road. Can you imagine driving from here to Alice Springs or to Perth with one of those signs every 10 or 20 kilometres? The cost of these signs would be astronomical.

I cannot see how it will work. Furthermore, each main road running off a main highway that has a speed limit increased to 110 km/h will need to have a sign saying that you can only do 100 km/h there. We cannot have a sign saying that there is no speed limit, as we have today, and that you cannot exceed the State maximum.

The Hon. Anne Levy interjecting:

The Hon. PETER DUNN: Yes, it will really cause enormous confusion. Today all signs tell you the speed you can do under 110 km/h. But now that the overall speed limit will be different, it will cause great confusion within the State. These are some of the facts, and I believe that this Chamber should vote against this clause because, as I said, the statistics just do not stack up, no matter where you look. By doing this, we are likely to increase our risk of injury and death on the roads in South Australia.

The Hon. ANNE LEVY: I seek leave to have incorporated in *Hansard* a table of road fatalities per 100 000 population by State from 1960 up to the preliminary figures for 1990, prepared by the Australian Bureau of Statistics. The document is statistical only.

Leave granted.

Road Fatalities per 100 000 Population, by State 1960-90p

Year	Aust.	NSW	Vic.	Qld.	SA	WA	Tas.	NT	ACT
1960	25.4	25.5	26.6	23.1	24.8	27.6	22.7	99.9	19.1
1965	27.8	27.6	29.4	28.4	22.8	30.5	25.3	26.0	16.9
1970	30.4	28.9	30.8	30.0	30.1	35.4	30.4	53.3	23.6
1975	26.6	26.1	24.0	31.0	26.8	26.3	29.7	68.9	16.1
1980	22.3	25.2	16.8	24.6	20.7	23.1	23.6	53.3	13.4
1981	22.3	24.7	19.4	25.3	16.8	18.3	26.0	57.1	12.7
1982	21.4	23.6	17.8	24.8	20.3	17.6	22.3	46.0	11.2
1983	17.9	18.0	16.5	20.5	19.7	14.8	16.2	36.1	11.7
1984	18.1	19.2	16.1	20.0	17.1	15.8	19.0	35.2	15.1
1985	18.6	19.5	16.6	19.5	19.5	17.1	17.6	45.1	13.1
1986	17.9	18.6	16.1	18.3	20.8	15.6	20.4	46.0	12.4
1987	17.0	17.1	16.7	16.5	18.3	14.2	17.1	53.0	13.7
1988	17.4	18.3	16.2	19.7	15.8	14.9	16.7	32.1	11.7
1989	16.7	16.7	17.9	15.1	15.5	15.3	17.7	39.1	12.2
1990p	13.9	13.9	12.7	14.2	15.8	12.3	15.5	43.6	8.6

Source: 1960-88 ABS Cat. No. 9401.0 and AES Cat. No. 3201.0
1989 State and Territory Authorities and ABS Cat. No. 3101.0

The Hon. ANNE LEVY: These figures differ from those quoted by the Hon. Mr. Dunn. The difference may arise from the method of collection. I am not sure of the source of the Hon. Mr Dunn's statistics. These figures come from the Australian Bureau of Statistics. Furthermore, they relate to calendar years, not financial years, and that may account for differences between them. Certainly, for the calendar year of 1989 New South Wales had 16.7 fatalities per 100 000 population, Victoria had 17.9 and South Australia 15.5.

In 1988, New South Wales had 18.3, Victoria had 16.2 and South Australia 15.8. However, I also have the final figures (and not just the preliminary figures) for 1990, which show that the road fatalities per 100 000 population in New South Wales were 13.9, in Victoria 12.7 and in South Australia 15.8.

The Hon. Peter Dunn: That's because of the Liberal Government in New South Wales.

The Hon. ANNE LEVY: I was not aware that the Liberal Government in New South Wales had much effect on Victoria, which has an even lower rate than that of New South Wales but, obviously, Mr Greiner has such considerable influence that he can lower the road fatality rate in Victoria more than he can in his own State! The road fatalities per 10 000 vehicles registered in 1990—and these are the final figures—are: New South Wales, 2.4; Victoria, 2.1—again, the Greiner effect having greater effect in Victoria than in New South Wales—and South Australia, 2.6.

So, in 1990 on the official figures South Australia had more road fatalities per 100 000 population and more road fatalities per 10 000 vehicles registered. On both measures in 1990 South Australia had worse figures than both New South Wales and Victoria, regardless of the political complexion of their two Governments.

Regarding the other question raised by the Hon. Mr Dunn in regard to the speed limit, the proposal in the Bill can be regarded as a fail-safe measure in that on rural roads, if a driver does not see a sign, he must assume that the speed limit of 100 km/h applies, as this will be the speed limit for the State. That will be the speed limit that applies unless there is any indication otherwise. As this is the lower of the two speed limits that will apply on open roads in rural areas, the situation can be regarded as a fail-safe measure.

The Hon. PETER DUNN: If that is the case, what happens in an 80 km/h hour zone? Can you still do 100 km/h and be fail-safe if you do not see the sign?

The Hon. ANNE LEVY: I indicated that the 100 km/h will apply if there are no signs indicating otherwise. If there are signs indicating 80 km/h, that is the speed limit. Failing to see a sign is no excuse now and will be no excuse in the future.

The Committee divided on the clause:

Ayes (11)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy (teller), Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner, G. Weatherill and Barbara Wiese.

Noes (10)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin, J.C. Irwin, Diana Laidlaw (teller), R.I. Lucas, Bernice Pfitzner, R.J. Ritson and J.F. Stefani.

Majority of 1 for the Ayes.

Clause thus passed.

Clauses 12 and 13 passed.

Clause 14—'Speed limiting.'

The Hon. DIANA LAIDLAW: I have a number of questions in relation to this clause, which addresses the speed limiting of vehicles. In relation to heavy vehicles, the Bill proposes that a person must not drive a vehicle that does not comply with regulations limiting the speed of the vehicle and, if a vehicle is driven in contravention of that provision, both the owner and the driver will be guilty of an offence. However, it appears that there is some confusion between what the Bill states and what was incorporated in the second reading explanation. I would like clarification on that matter. The second reading explanation, and not the Bill, refers to 'the fitting of the effective speed limiting devices', which suggests that the changing of the gear ratios of a vehicle would not be acceptable as a means of limiting the speed of a vehicle. I seek clarification on that matter, and also in respect of the maximum speed at which the Government proposes to set the speed limiters: will that be at 105 km/h, 110 km/h or 115 km/h?

The Hon. ANNE LEVY: As I understand it, speed limiting by gearing of heavy vehicles will be acceptable, and this will be made quite explicit in the regulations. The governors will be set at 100 km/h and I understand that the devices concerned do have a 5 per cent tolerance for a period of 10 seconds.

The Hon. DIANA LAIDLAW: How does the Minister or Government propose to administer the change of gear ratios in vehicles for that tolerance? If the Government accepts regearing of those vehicles, will it require that that be done at 105 km/h, 110 km/h or 115 km/h? By gearing those vehicles in that manner, I understand that tolerance would not be able to built in, especially not for a 10 second period.

The Hon. ANNE LEVY: I understand that, if speed limiting is done by altering the gearing, there is implicit in the process a certain tolerance.

The Hon. Diana Laidlaw: What tolerance would be acceptable to the Government?

The Hon. ANNE LEVY: I presume this would be determined by regulation in the light of the technical feasibility of the process. There are certain physical limitations involved in this matter which will obviously influence the resulting tolerance. I also understand there is no way in which a 10 second time period for such a tolerance can be built in if gearing alteration is used instead of speed devices such as governors.

The Hon. DIANA LAIDLAW: I reinforce what I indicated during my second reading contribution to the debate, that the Liberal Party agrees in principle with this speed limiting, and the need to require much stricter controls on safety grounds on heavy vehicles. However, we have some concerns about how that is to be applied, and I am heartened to hear about the Government's acceptance of a gearing ratio as one of its techniques. We put on notice now that we will look very closely at the practical implications when it comes to the regulations and, if not satisfied, we will be acting at that time to register dissatisfaction.

I know that the Minister of Transport, prior to the last election on 7 November 1989, indicated that the Government endorsed action for the installation of speed limiters on heavy vehicles, and we have seen that with this legislation. He then went on to say that he also supported action at a later time for technographs and tachographs. In an article in the *News* of 7 November technographs are mentioned, and in an article in the *Advertiser* of 8 November tachographs are referred to as a favoured course by the Government following the introduction of speed limiters. What are the current policies and proposals of the Government in respect to this matter?

The Hon. ANNE LEVY: I can assure the honourable member that the *Advertiser* won that battle and the *News* was incapable of getting the word right. It is a tachograph. As with New South Wales and Victoria, the intention is to monitor and observe the effect of the speed limiters before making any decisions regarding tachographs. Both New South Wales and Victoria are adopting this policy and South Australian experience will add to theirs before any decision is made.

The Hon. PETER DUNN: Once the speed limiters have been applied, how will it be determined that the vehicles are travelling at only 100 km/h? I hope we will not use speed cameras, because we have already seen that they can be fairly inaccurate. How will the speed of the vehicle be determined? The Minister talked of a 5 per cent tolerance. Does it allow for variations in atmospheric conditions, because all internal combustion engines perform differently in different conditions depending on whether it is moist, humid, dry, hot or very cold?

Is the speed to be determined theoretically or practically? I am dubious about the 15 or 10 seconds, and I am concerned about the 5 per cent tolerance in respect of overtaking. Horrendous accidents could be caused when passing, as the speed of a truck will suddenly drop from 105 km/h to 100 km/h, and it often takes up to 30 seconds to pass a vehicle. Will the Minister explain how that works? If there is to be a 5 per cent tolerance, it should be 5 per cent either way consistently. Certainly, there should not be a time limit, which could be horrendously dangerous.

The Hon. ANNE LEVY: A number of transport firms have already fitted speed limiters to their vehicles for economic reasons because there are considerable gains in fuel economy and less wear and tear on vehicles. The problem of extra time in overtaking has not been reported by these transport firms. The transport industry effectively uses CB radios in overtaking manoeuvres, and doubtless that practice will extend. Certainly, the situation is receiving a watching brief from ATAC's road safety group.

The Hon. PETER DUNN: That was not really what I asked. I understand what the Minister is talking about in respect of speed limiters. Every diesel engine is speed limited in the form of a governor that can be opened and closed and any driver of any consequence understands how that can be done, but that does not affect overtaking time in any way, other than by allowing the vehicle to go 20 km/h faster than the standard 100 km/h. People will get used to that. The Minister suggested that a time limiter would allow the truck to travel at 5 per cent over the maximum (105 km/h) for 10 seconds and then drop back, but I believe that would be dangerous. Have the Minister's officers thought that through?

The Hon. ANNE LEVY: I understand that it is part of the Australian Design Standard, that if the limiter is set for 100 km/h, it has a 5 per cent tolerance for 10 seconds. The machines are not always 100 per cent accurate and I believe

that a tolerance of up to 3.5 per cent always applies to the operation of the device.

The Hon. Peter Dunn interjecting:

The Hon. ANNE LEVY: As I understand it. I emphasise that these devices, which will become mandatory, are already being used by a number of transport firms and they have not reported any problems.

Clause passed.

Clause 15—'Safety helmets.'

The Hon. DIANA LAIDLAW: I move:

Page 5, lines 1 to 4—Leave out subsection (2a) and insert the following subsections:

(2a) A parent or other person having the custody or care of a child under the age of 16 years should take all reasonable steps to ensure that the child wears a safety helmet that complies with the regulations and is properly adjusted and securely fastened at all times while riding or being carried on a cycle.

(2ab) A person incurs no civil or criminal liability for failing to comply with subsection (2a).

This clause addresses the issue of safety helmets. We have had in South Australia for some years the compulsory wearing of safety helmets for motorcyclists. That has long been in the Act. The reference to safety helmets as applied to motorcyclists in the Act is now extended to cyclists where that cycle is a pedal cycle. The Liberal Party strongly supports new subsection (1), which provides:

A person must not ride, or ride on, a cycle unless the person is wearing a safety helmet that complies with the regulations and is properly adjusted and securely fastened.

In respect of the regulations, no doubt that will apply to the Australian Design Standard. However, we believe that the practical application of the words relating to parental liability should be amended. New subsection (2a) provides:

A parent or other person having the custody or care of a child under the age of 16 years must not cause or permit the child to ride or be carried on a cycle unless the child is wearing a safety helmet that complies with the regulations and is properly adjusted and securely fastened.

The words that concern us are 'must not cause or permit', and we propose that the provision should read 'should take all reasonable steps to ensure that the child wears a helmet'. In New South Wales and Victoria it is understood that it is compulsory to wear helmets. However, in neither of those States do the regulations attribute any parental liability in terms of fines. I understand that Victoria issues bicycle notices, which are a cautionary notice to the offender. That is a good move because it is the child or the person under 16 about whose safety we are concerned. In Victoria a bicycle notice is presented to the child, with a copy sent to the parents, and a number of courses of action can follow such a move.

In New South Wales, traffic infringement notices can be issued to any person of the age of 14 and over. Therefore, we in South Australia do not have quite the same circumstances as no traffic infringement notices can be issued to persons 16 years of age and under.

In Victoria there is no parental liability in terms of a fine if a child does not wear a helmet for any variety of reasons. That is certainly the case in New South Wales for children under the age of 14 years. In all States, including South Australia, nothing can be done legally about children 10 years and younger. However, the Liberal Party believes that all this fuss about parental liability is warranted for children between the ages of 10 and 16, although nothing can be done other than issuing a caution to the child, telling the child that it is in their own best interests, or removing the bike, and that would be my suggestion to all parents of children 16 years and under. However, to suggest that, in some instances, the parents should be liable because it is seen that they are causing or permitting a child to ride or be carried on a bicycle is ludicrous. It assumes that the parent is guilty, and the parent then has to argue the case to get out of the traffic infringement notice. It is a reverse onus of proof.

I believe it is a waste of the parent's time, because they end up paying the fine, whereas the emphasis should be on the child. As I have said again and again, from my experiences in community welfare over a number of years, I have no doubt that, in 99.9 per cent of cases, kids aged 10 years and over can be rationalised with. They do understand what is in their best interests, and it is ludicrous to believe that parents, not the child, should be held responsible, if children between the ages of 10 and 16 do not wear a helmet. It would be stronger legislation if that were the case. I would be very keen to see the issuing of bicycle infringement notices to children between the ages of 10 and 16, as occurs in Victoria.

The Hon. G. Weatherill: Who will pay the fine?

The Hon. DIANA LAIDLAW: There is no fine. I am saying that parents should remove the bike; they have that power.

The Hon. G. Weatherill interjecting:

The CHAIRMAN: Order!

The Hon. DIANA LAIDLAW: If they are not wearing the helmet, the parent removes the bike. Surely we do not want the child riding the bike without a helmet. Parents cannot be held responsible for what happens around the pathway, yet, under this legislation, they will be held responsible. Then they will have to go to court or go to the police and argue that they did not 'cause' or 'permit'. We want the child's safety to be recognised by that child and for the emphasis to be on the child. As I say, this refers to the age group 10 to 16 years. We cannot do anything under the law for those under 10. Not even a parent can be held liable for a child under 10 or prove whether they 'cause' or 'permit'. It cannot be enforced under this legislation.

The Hon. ANNE LEVY: The Government opposes this amendment. Its effect would be to make the wearing of helmets for children voluntary. That may not be what the Opposition intends, but that would be its effect. If no parental responsibility is implied, and if there are no effective penalties, it would take about five minutes flat to be known around this age group, and that would be very sad indeed, and there would be no wearing of helmets.

Members interjecting:

The CHAIRMAN: Order! The honourable Minister has the floor.

The Hon. ANNE LEVY: Thank you, Mr Chairman. It is sad the way the Opposition asks questions and then does not want to hear the answers.

The Hon. Diana Laidlaw: It was such a ludicrous answer.

The CHAIRMAN: Order! The honourable Minister.

The Hon. ANNE LEVY: There has been a great deal of misunderstanding about the degree of parental responsibility set out in the Bill. This new subsection provides:

A parent or other person having the custody or care of a child under the age of 16 years must not cause or permit the child to ride or be carried on a cycle—

and the Hon. Mr Gilfillan did note the importance of the words 'cause or permit'. The legal advice that we have received is that 'causing' covers instructions to the child.

The Hon. Peter Dunn: What about 'permitting'?

The Hon. ANNE LEVY: I am talking about 'causing' first.

The Hon. Peter Dunn: I am asking about 'permitting'.

The Hon. ANNE LEVY: I will come to that.

The Hon. R.I. Lucas: Put the pressure on, Dunny!

The Hon. ANNE LEVY: How absurd! 'Causing' covers instructions to the child. If a parent said to the child, 'Ride down to the deli but don't worry about your helmet,' that

would be causing the child to go without its helmet and would be a most irresponsible act on the part of the parent, which I am sure no-one in this Chamber would want to condone. My legal advice is that 'permitting' requires knowledge of the act of the child not wearing the helmet; also, being in a position to prevent it from happening and also not taking the steps which could have been taken to prevent it from happening. That is all implied in the word 'permit'. So, the parent must be in a position to know that the child is not wearing the helmet to be able to do something about the child not wearing the helmet and then not doing what the parent should do to make the child wear the helmet.

It is very important to impose some responsibility on parents in this matter. In fact, I suspect that many parents would welcome having this additional strength when dealing with children who can at times be a bit difficult and headstrong. We will have a law that backs up parents as a general principle. It is something that Parliament should consider very seriously. It will be a law backing up parents in their responsibilities.

The Hon. DIANA LAIDLAW: As I indicated at the outset, the Minister does not seem able to read the Act or listen to me. Subclause (1) provides:

> A person must not ride, or ride on, a cycle unless the person is wearing a safety helmet . . .

That is in the law. We are not amending that. In fact, we endorse that very strongly. I cannot believe that the Minister—a mother to boot—believes that if a parent knows that that is their obligation to their child (that a person must not ride, or ride on, a cycle without wearing a safety helmet) that parent would need the Government to impose a fine to enforce what is already here.

Surely, the parent knows that is what the law is and can use their nouse and withdraw the bike. I find it extraordinary that a mother and Minister should even suggest that parents would be grateful to be fined if they did not abide by this law. It is ludicrous and it is sad. Does the Minister believe that it is compulsory for children under 16 to wear helmets in New South Wales and Victoria?

The Hon. ANNE LEVY: I understand that it is compulsory for children under 16 to wear helmets in Victoria and that it will be so in New South Wales from 1 July this year.

The Hon. DIANA LAIDLAW: Is the Minister aware also that there is no parental liability, no fining involved, in the enforcement of that compulsion? Therefore, as she accused me of supporting the voluntary wearing of helmets, is she also accusing Victoria, and eventually New South Wales, of having voluntary wearing of helmets for persons 16 years and under?

The Hon. ANNE LEVY: I understand that New South Wales will be issuing traffic infringement notices as penalties. Victoria has bicycle infringement notices—BINs, not TINs.

The Hon. DIANA LAIDLAW: I have indicated that in Victoria no fine is involved for persons 16 years and under in respect of bicycle infringement notices, and in New South Wales, when it comes into effect for persons 16 years and under, there is no capacity to introduce traffic infringement notices for persons 14 years and under. I can only assume from the facts as I have presented them, and from the Minister's statement, that she agrees that New South Wales and Victoria, for persons 14 years and under and 16 years and under respectively, have voluntary wearing of helmets, which she has accused the Liberal Party of supporting in this State. Her argument is up the wall. If a parent states that he or she did not cause or permit a child to ride or be carried on a cycle without wearing a helmet, how will that child be dealt with if it was not wearing a helmet?

The Hon. ANNE LEVY: I point out that a rather emotional Ms Laidlaw is imputing to me all sorts of motives and intentions which I categorically deny. However, I will not take up the time of the Committee to explain the matter in detail. I understand that enforcement will be a matter for the police and the courts; it is not a matter to be covered in the Road Traffic Act.

The Hon. DIANA LAIDLAW: Will the Minister explain how she understands that the police will administer this if a parent is able to prove that he or she did not cause or permit a child to ride or to be carried on a bicycle without a helmet?

The Hon. ANNE LEVY: The police have a very difficult job in enforcing all sorts of laws with regard to children. I think the general consensus in the community is that they cope with these difficult situations extremely well. However, if the honourable member wishes, I will refer the question to the Minister of Emergency Services to seek advice from the police.

The Hon. DIANA LAIDLAW: I would appreciate such inquiries being made. I understand that it will be enforced essentially by bluff, because there is nothing in this Bill or in other police powers that would require the enforcing of the wearing of a helmet in such instances. That is the point that the Liberal Party has been arguing about for some time. It is bluff.

The Hon. PETER DUNN: I think that the Hon. Ms Laidlaw's amendment is eminently suitable. I can see the position arising where a policeman, under the present Act, must go to a house and confront the parent, and the child will be there as well. Indeed, that puts the child against the police from the very beginning. The poor old policeman cops it again. However, that is not what this is about; this is about saying to the child, 'Please don't do it, even if your parents have told you.' The Minister knows quite well that a child will ride down the street, meet his mates, say, 'Oh, blow this helmet,' and take it off. I must say that as I walk to work each morning, several kids ride past me and I do not see any without helmets. They are wearing them already. I think that to put it in a heavy handed piece of legislation like this will be retroactive. I am sure that it will not have the effect that it should have.

I have another question. The Minister has given her opinion on what I am saying, but I am trying to emphasise that it is not clever to put it in like this. The Hon. Ms Laidlaw's amendment is better. We cannot effect the other one, anyway. It is only bluff. The police will not react to it, because they cannot do anything. All they can do is talk to the parents. This clause says that they must take reasonable steps. If they have not taken reasonable steps, surely the policeman will go around and say, 'I caught your son riding his bike without his helmet on. Don't you think it would be wise for him to wear it?' The Bill does not allow for any penalty, anyway. My question is: what happens on your own farm or in your own backyard? The Bill, as I read it, states that one cannot ride a bike unless one is wearing a helmet. Is that correct?

The Hon. ANNE LEVY: The legislation applies on public roads. It would not apply on the farm or in the backyard. However, it does not mean that it is not highly desirable that people should wear helmets. In the same way as the seat belt legislation, it does not apply to someone driving on their private property. Even though it is not illegal, surely it is highly desirable for someone driving on a farm to wear a seat belt. The same would apply to bicycle helmets.

The Hon. PETER DUNN: I appreciate the Minister's comments. What about workers compensation for somebody over the age of 16?

The Hon. ANNE LEVY: Perhaps the Hon. Mr Griffin, with his legal knowledge, may be able to delve further into this matter. But, as I understand it, entitlement to workers compensation when travelling to work does not depend on matters such as whether a seat belt was worn, and the wearing of a bicycle helmet would come into the same category: that does not affect the entitlement to compensation.

The Hon. Peter Dunn: It is an interesting answer.

The Hon. ANNE LEVY: I would be very happy to be overruled by further legal advice on this matter.

The Hon. K.T. GRIFFIN: I think that, if it was on the road, the question whether or not you were wearing a helmet would be irrelevant for workers compensation purposes because, if you are on the way to work, it is a journey accident for which you are liable.

The Hon. Anne Levy: That is the same as whether you are wearing a seat belt.

The Hon. K.T. GRIFFIN: That is irrelevant, but it is relevant, I would think, to compulsory third party bodily injury insurance under the compulsory third party scheme, to the extent of establishing contributory negligence, or otherwise—although, of course, even then there are specific provisions which reduce the amount of damages which an injured person can receive if that person was not wearing a seat belt. It does not apply specifically to not wearing a helmet.

I want to refer briefly to the obligation of a parent. I certainly support the concept of the legislation, that is, making it compulsory for children, because there is a lot of peer group pressure on kids not to wear ugly bicyle helmets. I think that, putting aside for one moment the question of parental liability and responsibility, this will give school teachers, principals of schools and parents some added authority, because no longer will children say, 'It is an ugly helmet and the other kids make fun of me if I wear it.'

Children will have to make a choice whether or not they ride a bicycle and, if they ride a bicycle, they will have to wear a helmet. That is the law, and it is not the sanction which I suggest is relevant in exerting that influence, but it is the fact that, for the majority of children, it is the law. And most people are law abiding citizens.

But, so far as parental responsibility is concerned, I prefer the Hon. Diana Laidlaw's amendment, because it establishes the principle. The fear I have about the new subsection 2 *(a)* in the Bill is that there may well be arguments about whether or not the parent has committed an offence in circumstances, for example, where the parent says to the child, 'Will you just take your bike and go down to the shop and get me 500 g of butter?'

The parent does not address the question whether or not the helmet has been put on, adjusted and securely fastened, in accordance with the Act. If the child takes off on the bicycle down the street to pick up 500g of butter and is not wearing a helmet, there is at least an argument that the parent is liable, because the parent has permitted the child to ride but has not gone further and addressed the issue of whether or not the child was wearing a safety helmet. It seems to me that there is at least an area of argument, and that has the potential to cause a problem for the parent as well as for the child.

We also have the other situation in which the child has put on the helmet and, closer to school, has taken the helmet off and ridden the rest of the distance to school without wearing the helmet, or the child does not wear the helmet as he goes out of the school gate. Members should remember that we are dealing not just with parents but with any other person having the care or custody of a child. So it could be the schoolteacher who has the care of a child under the age of 16 who might be doing gate duty at the school and sees the child ride out of school without a helmet but does not do anything to insist that that child puts on the helmet.

Certainly, there is a very strong argument that that teacher has a liability, since that teacher has permitted the child to ride the bicycle out of the school gate without insisting that the child wear a safety helmet that is properly adjusted and securely fastened. In those sorts of circumstances, it is unreasonable to place a penalty upon the parent or other person having the care or custody of that child, and I should have thought that, in an environment in which we are trying to develop a sense of responsibility in children, in teachers, in parents and in others who have responsibility for children, it is not the penal sanction that will be the catalyst for this but the law itself.

If there is an inadvertence, in a sense, then a parent or a teacher who is confronted by a police officer with a summons or an expiation notice could feel some antagonism towards not only the police but towards the law itself. This needs an appropriate educational program to deal with it, rather than the heavy hand of sanctions. I do not think that it is satisfactory to say that parents must be taught a lesson and the penalty must be imposed to help teach them that lesson. As I said at the beginning, the very fact that this is the law, for the very great majority of parents is sufficient to allow them to comply with the law.

That is why I believe that it is important to put in the principle of responsibility but not to attach sanctions to it as proposed in the Government Bill.

The Hon. ANNE LEVY: I agree with the Hon. Mr Griffin that most people obey the law because they are law abiding citizens and have no wish to break the law. However, there is always a small proportion of people who do not have that internal moral standard, and in this place we often deal with penalties and with how society can approach the few who do not abide by the standards that the majority happily accept. Certainly, the experience in Victoria was that after compulsion was brought into the law there was immediately a very high degree of compliance with the wearing of helmets.

With regard to the situations that the Hon. Mr Griffin has raised as hypothetical examples, the parent who told the child to go to the deli and the child went without wearing the helmet would not be permitting this to occur unless that parent saw the child take off, knew that they were going without a helmet and did not tell them to put on a helmet. The same applies to the child who sets off from home with the helmet and who, round the corner or half way to school, takes it off.

In no way could the parent be said to have caused or permitted that situation. The parent is unaware of it, is not in a position to stop it and would in no way be incurring a penalty in that situation. I am quite prepared to be corrected on legal matters, but that, as I understand from the legal officers of the Crown, is the legal position in those cases.

The Hon. I. GILFILLAN: The Democrats oppose the amendment. I explained during my second reading speech why I felt that the wording of the Bill was acceptable and not overly onerous on parent obligation. I wanted to raise one matter that I should have raised when dealing with the blood alcohol level, regarding insurance, and I want to refer to a letter that I received from the Royal Automobile Association. Can you advise me, Mr Chairman, whether I can

comment or ask a question about that now or after having concluded the final clause?

The CHAIRMAN: We have dealt with that particular clause.

The Hon. I. GILFILLAN: Would it be in order for me to seek leave to ask a question, or can I proceed to ask a question about that topic?

The CHAIRMAN: I have no objection if the honourable member wants to raise a question with the Minister, if the Minister is happy to comply with that. There will be the opportunity during the third reading, of course, but that might delay the answer for the honourable member. It might be easier for all concerned if the honourable member were to ask the question now.

The Hon. I. GILFILLAN: Thank you. Before I do, I reiterate a matter that I have raised before. It is in regard to the Hon. Diana Laidlaw's second amendment after line 10 and the question of the timing of the introduction of this legislation. As I understand it, the Minister implied to the Committee that the Government would have made an assessment of the availability of helmets in relation to the likely demand before the proclamation of compulsory helmet wearing came into effect. I would be grateful if the Minister would emphasise that again, as I believe that it is an important factor if, by passing this legislation, we are to expose a parent to a penalty for not having provided a child with a helmet.

That is one area where this legislation may simply find a parent deficient in his or her obligation, and that is to be shown not to have purchased a helmet and provided that helmet to a child. It will obviously be a very awkward situation if there are not enough helmets to go around. I ask the Minister to comment on that.

The Hon. ANNE LEVY: I understand that the department is currently satisfied that there are sufficient stocks of approved varieties of helmets commercially available at present to satisfy likely demand. However, I can assure the Committee that there will certainly be a check on the availability before proclamation occurs.

The Hon. DIANA LAIDLAW: I indicate that the matter which Mr Gilfillan just raised in his question and in the Minister's response is the second of the two amendments that I have for clause 15, and I was going to move it separately.

The Hon. I. GILFILLAN: I received a letter which was signed by the Chief Executive of the RAA, Mr J.A. Fotheringham of 13 March and which discusses the pros and cons of the .05 and .08 blood alcohol level, but that is not relevant to the matter I want to raise. In terms of insurance, the letter states:

> Subsection (3) of section 47c of the Road Traffic Act currently reads as follows;
>
> > Any covenant, term, condition or provision contained in a contract, policy of insurance or other document purporting to exclude or limit the liability of an insurer in the event of the owner or driver of a motor vehicle being convicted of an offence under section 47b is void.
>
> The intention of this provision was to ensure that a person remained eligible for insurance cover in the event of an accident even though, at the time, there had been a breathalyser offence committed.
>
> However, the insurance industry is still able to apply an exclusion for breathalyser offences. Motor vehicle insurance policies normally contain an exclusion to the effect that there is no cover if the driver has a blood alcohol concentration higher than that permitted by State legislation. The exclusion is not based upon conviction but simply on the BAC information and therefore the restriction imposed by the above subsection does not apply.
>
> The association has no objection to the exclusion provisions which are presently being applied whilst the prescribed concentration of alcohol in the Road Traffic Act is at .08.
>
> However, there are significant insurance implications with the proposed reduction to .05. The introduction of the reduced BAC will inevitably lead to a situation where a person involved in an accident at a BAC level of .05 will lose the protection of a motor vehicle insurance policy.

The letter continues:

> The association has not supported the reduced BAC on the basis that the move does not address the fact that drink-drive accidents generally involve drivers at high BACs rather than those in the .05 to .08 range, and that it will have little impact in terms of road safety. We now submit that the insurance implications are unacceptable. A situation is being created where a driver who commits one of the wide range of traffic offences (for example, fail to give way, exceed speed, etc.) and is involved in an accident still has the benefit of insurance cover whilst a person at .05 in similar circumstances will forfeit insurance cover. A .05 offence is considered by the Bill to be at the lower end of the scale in terms of seriousness (quite correctly), yet it will inevitably be at the top end of the scale in terms of insurance exclusion and consequent implications. This represents a significant anomaly.

Has the Government been aware of the matter raised in the letter? Will the Minister give an answer in relation to the Government's attitude to it?

The Hon. ANNE LEVY: Of course, this problem raised by the Hon. Mr Gilfillan is not new. It has applied up till now for .08 offences but, under the current Bill, it will be extended to .05. It's not creating a new problem: it is merely shifting the level at which it applies. I will certainly refer the question raised to the Minister responsible for the Act for him to consider the matter further. I understand that a further amending Act is contemplated in that there are a number of places where .08 is relevant and needs to be altered to .05 so that, if felt necessary, any consequent legislation could be brought in at that time.

The Hon. I. GILFILLAN: I understand that a copy of that letter was sent to the Minister. I take the Minister's assurance that this matter will be assessed and appraised by the Government prior to the proclamation of the Act. I believe that the RAA has raised a matter of concern, which would immediately apply, as I understand it, on the proclamation of the Act. Therefore, if it is an issue which the Government intends to address, it is important that it be done before the Act is proclaimed.

The Hon. ANNE LEVY: I was not saying that. I am sure the Government will look at this matter. A further Bill will come before the Parliament—

The Hon. Diana Laidlaw: This session or next?

The Hon. ANNE LEVY: Probably next session—to tidy up what needs to be done because of the change from .08 to .05. As to the matter that the honourable member raises, if it requires legislation, it can be introduced at that time. I stress that the questions that the Hon. Mr Gilfillan raises are not suddenly being created by this legislation. Every argument he has used applies now to .08. The Bill merely shifts the problem from applying to .08 to applying to .05. The nature of the problem has not changed, it is merely the level at which it cuts in. It is not creating a new problem as it is merely shifting the level at which it applies.

The Hon. I. GILFILLAN: I appreciate the Minister's remarks but I indicate that insurance companies may have chosen .08 specifically as being acceptable, but will it be an automatic transfer to .05 by the proclamation of the Act? Its ramifications might be quite dramatic on people. We all accept that a .05 offence is a lesser offence and it may well be that, in the judgment of the insurance companies, .05 is not a level at which they would look for this exemption to be effective. I do not know what is the experience in other States. It is not a matter that I have had a chance to investigate thoroughly, but a number of us could be at risk and find that our insurance policies are null and void as a result of the passage of this legislation. Will the Minister refer this matter urgently to her colleague in another place so that any amending legislation can be dealt with so that

there is not a gap during which many people could be in stressful circumstances through having been caught with a .05 offence, which the Government clearly does not regard as being a horrendous offence because it is expiable.

The Hon. ANNE LEVY: Certainly, I will urge my colleague in another place to give his urgent attention to this question.

The Hon. DIANA LAIDLAW: I received the same letter from the RAA last night. I had not intended to raise the matter in respect of bicycle helmets, but at the third reading stage I intended to indicate that it reinforced the argument and concerns that the Liberal Party expressed earlier about lowering the blood alcohol limit. I am not sure whether the Hon. Mr Gilfillan would agree that, if the Minister seeks to obtain information, it should be provided before we vote on the third reading.

The Hon. I. Gilfillan: No.

The Hon. DIANA LAIDLAW: The Hon. Mr Gilfillan does not seem to believe that the matter is as important as that, which is disappointing. I will not elaborate on that subject now because there is much more business before the Chamber to be deal, with this evening.

The Committee divided on the amendment:

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

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

Pair—Aye—The Hon. J.F. Stefani. No—The Hon. T.G. Roberts.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. DIANA LAIDLAW: I move:

Page 5, After line 10—Insert new subsection as follows:

(2d) This section does not apply in relation to a child under the age of 16 years riding or being carried on a pedal cycle until 6 months after the commencement of section 15 of the Road Traffic Act Amendment Act (No. 4) 1990.

This amendment provides for two commencement dates for the compulsory wearing of helmets, the first being six months earlier for persons 16 years and over. A similar provision has already been introduced in New South Wales and we believe strongly, as that State has argued, that part of the issue at stake is to get older people wearing their helmets first in order to provide a positive influence and encouragement for younger people, and that the provision be applied to younger people six months later.

The Government could easily accommodate my amendment. In response to my questions yesterday on clause 2 about the proclamation date, the Minister stated:

The Commonwealth requirement is that the helmet provisions be implemented by 1 January 1992 and, while I do not know exactly when it will come into operation, there will be a phase-in period for that part of the legislation.

My amendment provides for such a phase-in period, and I propose that it be six months from 1 July this year for cyclists 16 years and over and then from 1 January 1992. It would accommodate the Government's phase-in period and the Federal Government's requirements.

The Hon. ANNE LEVY: The Government opposes the amendment. The phase-in period can be achieved by the time of proclamation, as I indicated yesterday. The Government does not support a different time for commencement of compulsory helmet-wearing for adults and children. To do so can be taken to imply that the lives of children are not as important as those of adults. Both adults and children should have the same date of commencement of this helmet-wearing legislation.

Amendment negatived; clause passed.

Schedule and title passed.

Bill read a third time and passed.

PHYSIOTHERAPISTS BILL

(Second reading debate adjourned on 12 March. Page 3249.)

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

PHARMACISTS BILL

(Second reading debate adjourned on 7 March. Page 3367.)

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Interpretation.'

The Hon. BARBARA WIESE: I move:

Page 1, lines 22 and 23—Leave out the definition of 'company' and insert the following definition:

'company' means a company as defined in section 9 of the Corporations Law:.

This is a fairly straightforward amendment. When this Bill was introduced, the Companies (South Australia) Code was the correct reference, but since that time the Corporations (South Australia) Act has been enacted and the definition of 'company' must be changed to be consistent with the new Corporations Law.

Amendment carried.

The Hon. R.J. RITSON: I move:

Page 2, after line 21—Insert the following definition:

'the tribunal' means the Pharmacists Professional Conduct Tribunal.

Although the heap of amendments that we have on file looks frighteningly large, many of them are consequential. There are only four points that the Opposition will debate. This is the first—the insertion in the clause of the definition of 'the tribunal'. This will be taken as a test of all the other consequential amendments which would set up the tribunal and determine its membership and rules of conduct.

The idea of dividing disciplinary functions between two bodies—a board and a tribunal—was developed by me in about 1980 and introduced into the Medical Practitioners Act by the Labor Government which took up the legislation when the Tonkin Government lost office. It is born of the concept of the separation of powers. I will review the sorts of functions that a board like this performs. A board like this will receive a number of complaints. Some of them will be born of irritation or anger, perhaps due to a misunderstanding or personality clash, or simply having a tired pharmacist or an irritable customer. These complaints can be dealt with by relatively informal methods of counselling and conciliation and such simple things as apologies. Where the complaints are justified, in many cases they can be dealt with by admonition. Where a formal discipline is needed, in many cases the facts are not difficult to ascertain.

Apart from that sort of work, the board also deals with applications for registration with academic standards and perhaps disputes relating to the way in which one professional treats another professional ethically. So, a large quantity of work is suitable for dealing with at that level rather than in a *quasi* judicial way. But sometimes—not very

often—a case arises where a person will be accused of something which, if it were true, would be very serious and warrant severe disciplinary action. In such a case the facts are difficult to ascertain, the evidence of witnesses conflicts and it is necessary to examine, cross-examine and decide who is to be believed.

When a board gets to that stage it is in a very difficult position. For a start, it is usually a matter which will be in the public eye. The person who is complained about will certainly want a very fair hearing and the board will want to be seen to give a very fair hearing. The difficulty is that if the board gathers the evidence, assesses it, interrogates witnesses and makes the case and then proceeds to a *quasi* judicial trial of its own case, it is policeman and judge wrapped up in one in what may be serious matters. Sometimes, it is important that the organisation that investigates the complaint and makes the case against the person complained about should not be the body that goes on and does the judging of its own case.

The Medical Practitioners Act created a tribunal which did not sit for two years—it is not a very busy institution—because the board by and large can deal with all the other matters in its own way administratively. Often it is not too hard to ascertain the facts beyond reasonable doubt or the facts are not disputed. But, once in a while, I think the board would be very glad to have such a tribunal to which it could refer for judging the case that it had made against someone, together with the witnesses who required examination and cross-examination and who had already been interrogated and cross-examined by the board.

That is what it is all about. The Medical Complaints Tribunal has probably sat less often than I have fingers on my hands in the years since 1983. However, when it has sat it has been a valuable instrument to deal with cases requiring *quasi* judicial decision. It provides a forum where the investigator, the policeman and the Crown Prosecutor, does not then turn around and become the judge.

In a spirit of good will, I offer the Government the chance to consider putting a tribunal in this Bill. The Minister in another place, replying to the Liberal argument there, said, 'There is not the case law; show us where all this case law is.' I do not claim that there is much of it. Certainly, there is not a lot in the case of the Medical Complaints Tribunal. However, it is not a big deal to maintain it. It does not own a building; it does not retain salaried personnel; and the people who serve on it are already employed elsewhere. Really, the main cost is clerical, recording the proceedings and sitting fees, when it does sit, which may be once a year or even less.

I suspect that, if we do not create a tribunal, some time over the next few years there will be an occasion when a difficult matter is before the board and a *quasi* judicial decision must be made. Legal tests of evidence may have to be made to decide which parties or party to believe. It may be felt that, without a tribunal, it is a case of the policeman being his own judge.

I cannot say much more about it than that. I think that it can do no harm. It can be a useful thing to have lying there if needed. There does not have to be a lot of case law or precedent. For instance, in matters involving sexuality or perhaps harm caused by a drug, one really must grill people to find out whether the error was in the dispensing or in the administration. It would be very useful to have an independent *quasi* judicial authority, to which the board, of its own motion, could decide to refer for decision a case that the board had made against a person.

This amendment simply introduces into clause 4 the definition of 'the tribunal', and I will regard it as a test as to whether or not all these other consequential amendments go in. Those other consequential amendments are in a potted form, lifted virtually from the Medical Practitioners Act. They are formal and routine.

The Hon. BARBARA WIESE: This amendment and those that are consequential on it were moved in virtually an identical form in another place, so there has been ample time for the Government to consider the matters that the honourable member has raised.

The Government opposed those amendments in another place and continues to do so. It does so not out of any sense of downplaying the importance of disciplinary matters being dealt with as matters of the utmost seriousness; nor does it suggest for one moment that a person on a disciplinary charge should not be given a fair hearing. Quite simply, we believe that the provisions in this Bill will achieve both those ends quite adequately. Indeed, the Government is rather surprised that the Opposition, which has been critical of the numbers of statutory creatures of various kinds and has sought to review them, sunset them or abolish them, is now proposing to set up a brand new one.

I think it is important, in considering this matter, that we look at the record of the profession that we are now discussing. In South Australia, there are some 1 005 pharmacists on the register, and I am advised that, during the past six years, there have been the following number of disciplinary inquiries: in 1985, two; in 1986 and 1987 there were none in either year; there was one in 1988; one in 1989; and there were three in 1990. So, I put it to the Committee that this hardly indicates that we are dealing with a reckless profession.

One also needs to consider that there will be some cost to the profession in establishing and maintaining a separate tribunal. I think one needs to remember also that, under the Bill, the board is opened up, so to speak, from being a body composed entirely of elected pharmacists to one which will include a lawyer and a consumer. So, we are now dealing with a different set of circumstances from that which has previously applied. The board may consider it prudent to include the lawyer member or the consumer member in determinations or decisions relating to investigations and inquiries. Certainly, the flexibility is there for that to occur.

In summary, the Government opposes the amendments not, I would emphasise, out of disregard for the seriousness of disciplinary matters but on the basis that the legislation already contains provisions to handle such matters without needing to resort to the creation of a new and separate statutory body and the expense that that may incur.

The Hon. M.J. ELLIOTT: I appreciate the concerns of the Hon. Dr Ritson, but the Democrats will not support the amendment.

The Hon. R.J. RITSON: In view of the response, I can count, and I realise that the amendment is lost. I think that, in view of the amount of business with which we have to deal, there would be little point in dividing. I slightly regret that the Minister sought to bring politics into the Parliament by making allusions to the number of statutory authorities and the Liberals' attitude to them because, really, this would be a very small one.

The Hon. Barbara Wiese: It would be added to the list that you have used against us if it were to be—

The Hon. R.J. RITSON: Let us leave politics out of this. It would be a very unobtrusive and inexpensive authority but, in view of the hour, there is not much point in my debating this.

Amendment negatived; clause as amended passed.

Clauses 5 to 9 passed.

Clause 10—'Quorum, etc.'

The Hon. R.J. RITSON: I move:

Page 4, line 6—Leave out 'Subject to subsection (2), five' and insert 'Five'.

This amendment, which stands on its own, deals with the matter of a quorum. It has the effect of requiring the quorum to be five all the time. The existing wording provides that the quorum shall be five but, when sitting on a disciplinary matter, it may be three. The Opposition believes that it should be five on each occasion. This is no reflection on the present members but, in fact, we are generally suspicious of small quorums and believe that a quorum of three out of eight would require only that the Chairman get one buddy, and then the Chairman and that person could control all the sittings. Admittedly, there are few of them.

I understand the Government's view that it is often hard to get people together and that there would be convenience in having only three out of eight members needed for a quorum. But, nevertheless, on a matter of principle—and principle alone—I support the view that when sitting as a disciplinary board the quorum should still be five and should not be reduced to three.

The Hon. BARBARA WIESE: The Government opposes this amendment on the following grounds: for the purposes of inquiry, the Bill provides for a quorum of three, which allows for five members of the board to decide whether or not to have the inquiry. So, it is important to separate the functions and to ensure that those people who are making the decision to conduct an inquiry are not, at the end of the day, sitting in judgment on it and, for that reason, the quorum of three has been included in the Bill and is considered to be the appropriate course.

The Hon. R.J. RITSON: Perhaps my English has deserted me, but clause 10 (2) provides:

For the purposes of a decision or determination of the board under part IV of the Act, three members of the board (of whom at least two are registered pharmacists) constitute a quorum of the board.

It appears that three members will decide or determine these disciplinary matters. The Minister has just explained to me that the three members are simply to inquire, perhaps to discover evidence, and I then interpreted the Minister's explanation as meaning that, for the purpose of inquiry, the quorum was three but five would actually make the decision. Was that not what the Minister just said?

The Hon. BARBARA WIESE: I suggest that there is a misunderstanding over the use of the word 'inquiry'. I think that a distinction needs to be made between the two forms of inquiry that will be undertaken here. A group of five members will decide whether or not there should be an inquiry, so, in effect, they are undertaking the preliminary inquiry about whether a matter ought to be heard. It would then be the responsibility of three members who would be appointed by the board to undertake the formal inquiry or the trial, if you like. There are, therefore, two forms of inquiry being talked about, and it is that separation to which the quorum requirement applies.

The Hon. M.J. ELLIOTT: I am not sure that the Minister's explanation is adequately covered by the wording of part IV of the Bill. Unless I missed a clause somewhere, a designation that there is to be a subcommittee of the board, if you like, that will act as that later inquiry is not specifically set out. Is it intended that there will be three and only three people designated to be an inquiry, or is it intended that at least three will be designated to be such an inquiry? In either case, I do not think that the Bill explicitly spells that out.

The Hon. BARBARA WIESE: The Government intends that at least three members will constitute the committee to inquire into a matter, and it is important to ensure that those three people do not have prior information about the matter into which they are inquiring.

The Hon. R.J. Ritson: Are you making a complaints tribunal, separating powers within the board?

The Hon. BARBARA WIESE: Yes, that is exactly the point that I am making. There will be a clear separation of responsibilities and power in the matter of formal inquiries.

The Hon. R.J. RITSON: I should have thought that it would make more sense to have one or two of the board members conducting the original gathering of evidence. What may be needed is discovery of documents and conversational inquiries with witnesses. Then that matter is put before the board and, under subclause (2), a decision or determination—nothing about an inquiry—which may be a punitive one, of course, is to be made by three members of the board.

We have up to five members of the board gathering evidence and preparing a case, then three members of the board make the judgment and determine the disciplinary action. I should have thought that it would make more sense to have a couple of board members, as a sort of mini complaints subcommittee to make the case and then to have the wisdom of some five board members, other than the couple who did the hack work, making the judgment. We are not going to the wall about this, because it is virtually a peer quality assurance type of legislation, and I do not wish to produce anything that the pharmacists will violently object to working with. I should have preferred the disciplinary decision to be made by more than the three people provided for.

The Hon. BARBARA WIESE: I take up again the point made by the Hon. Mr Elliott, who asked specifically where in the Bill it was made clear that, for the purposes of a disciplinary hearing, the panel would consist of three people. I draw to his attention clause 10 (2), which provides:

For the purposes of a decision or determination of the board under part IV—

and part IV relates to disciplinary hearings:

... three members of the board (of whom at least two are registered pharmacists) constitute a quorum of the board.

That makes the point clearly.

The Hon. M.J. Elliott: The quorum is not full size, but only the number necessary.

The Hon. BARBARA WIESE: That is correct.

The Hon. M.J. Elliott: It does not spell out who can and cannot participate in that board.

The Hon. BARBARA WIESE: No, it does not, but it is the intention that three people would participate in the matter of disciplinary hearings. One reason for doing that is that one can envisage circumstances in which two hearings might take place at once, and you would want sufficient numbers of members available to undertake that process.

The Hon. Dr Ritson makes the point that it would be the Registrar who undertook the preliminary inquiry. However, that does not take away from the fact that it still will be the board that makes a decision based on that information that may have been gathered as to whether there should be a disciplinary hearing. The points made earlier about the distribution of power and authority in these two separate questions are still relevant.

The Hon. R.J. RITSON: Nevertheless, it does remain that up to five people will deliberate upon the material gathered by the Registrar, and may make further inquiries and then hand it over to possibly only three people to judge guilt and determine penalties. In practice, in a two to one decision only two members of a board of eight would actually pronounce that disciplinary sanction.

Amendment negatived.

The Hon. R.J. RITSON: In view of what has happened, I will not move my consequential amendments, including proposed new sections 17*a* to 17*g*.

Clause passed.

Clauses 11 to 17 passed.

Clause 18—'Qualifications for registration.'

The Hon. BARBARA WIESE: I move:

Page 6, line 25—Leave out 'traditionally' and insert 'commonly'.

This amendment follows an undertaking that was given by my colleague in another place to re-examine the wording of clause 18 (2) *(a)* (i) and, if necessary, to seek to have it amended to ensure that the clause is not more limiting than the application than was intended. As members would be aware, one can now buy a range of products from a pharmacy that some years ago one would not have expected to find. There seems to be a general acceptance that that is appropriate and convenient. However, one could perhaps draw the inference from the current wording in the Bill, 'carrying on any business traditionally associated with the practice of pharmacy', that there was some intention to step back in time or to impose some restriction on what is currently the practice. That was never the intention of the Government in having the Bill drafted. Therefore, the amendment seeks to spell out the situation a little more clearly.

Amendment carried; clause as amended passed.

Clauses 19 to 22 passed.

Clause 23—'Revocation or variation of conditions.'

The Hon. R.J. RITSON: I move:

Page 8, line 36—Insert 'by the board' after 'attached'.

This is a semantic amendment. In any contested interpretation it is probable that it was understood that the board, in revoking conditions attached to a registration, would be revoking its own conditions and not conditions attached by someone else. Indeed, conditions attached by other boards in other States are dealt with elsewhere in any case. So, it is merely the Liberal Party's attempt to make more certain what is fairly certain anyway, and it adds three words to the weight of the document.

The Hon. BARBARA WIESE: The Government has no objection to this amendment.

Amendment carried; clause as amended passed.

Clauses 24 and 25 passed.

Clause 26—'Obligation to the registered.'

The Hon. R.J. RITSON: I move:

Page 9, after line 16—Insert the following paragraph:

(ab) a company that carried on a business consisting of or involving pharmacy on 1 August 1942 and that has continued to do so since that date;.

This matter is causing the Liberal Party serious concern. The 1973 Act picked up a grandfathering of previous practitioners from 1942 and it described those individuals and those companies, although perhaps not being pharmacies at that time, owned at that time as registered pharmaceutical premises and employed pharmacists. When this Bill was brought in the intention was to continue to allow the practice through registered pharmacists by these people and by these companies.

With regard to natural persons, the Government continued the same descriptive language of the class of person who would be exempt, as was in previous Acts. However, with regard to the companies, the Government listed them by name instead of by description, and it has listed, too, the Mount Gambier United Friendly Society's Dispensary Inc., and the Friendly Society's Medical Association Inc. I have been informed that there are about five incorporated pharmaceutical firms, and this caused great concern to those that found that they were not listed—and they are lobbying even as we speak.

They are concerned that they have the principal Act, but they do not have the regulations the Minister undertook to introduce to remedy the problems. In another place, he talked about the regulating power, which indeed was inserted and will be dealt with consequentially to this amendment if it passes. He more or less admitted by his statements and actions that it was a mistake to enumerate by title some of the companies rather than continue the descriptive language of the previous Act, which would have embraced all that class of company.

This amendment merely brings back the language from the Act and grandfathers in any company that carried on business consisting of or involving pharmacy on 1 August 1942 and has continued to do so since that date. I ask the Government to accept the amendment. It is much neater to have that finished and done with in the principal Act rather than promising to rectify it by regulation later.

The Hon. BARBARA WIESE: As the honourable member indicated. this matter was raised by way of amendment in another place. Since then the Minister has had an opportunity to look at it more carefully and can now see no objection to the amendment, which the Government accepts.

Amendment carried; clause as amended passed.

Clauses 27 to 34 passed.

The Hon. R.J. RITSON: I move to amend the heading of Division IV, as follows:

Page 11, line 32—Strike out 'registered'.

This amendment is consequential on the Government's acceptance of the previous amendment in respect of incorporated pharmacies. The persons operating these pharmacies were not registered pharmacists, they operated through the employment of registered pharmacists and were exempt. By removing the word 'registered' it makes the clause compatible with exempt as well as registered pharmacies.

The Hon. BARBARA WIESE: The amendment is acceptable to the Government as long as it is taken in conjunction with the following four amendments on file. I indicate the Government's support.

Amendment carried.

Clause 35 passed.

Clause 36—'Alteration to memorandum or articles of association.'

The Hon. R.J. RITSON: I move:

Page 12, line 2—Insert 'or exempt under section 26 (2) *(ab)* from the requirement to be registered' after 'Act'.

Amendment carried; clause as amended passed.

Clause 37—'Companies not to practise in partnership.'

The Hon. R.J. RITSON: I move:

Page 12, line 7—Insert 'or exempt under section 26 (2) *(ab)* from the requirement to be registered' after 'Act'.

Amendment carried; clause as amended passed.

Clause 38—'Joint and several liability.'

The Hon. R.J. RITSON: I move:

Page 12, line 11—Insert 'or exempt under section 26 (2) *(ab)* from the requirement to be registered' after 'Act'.

Amendment carried; clause as amended passed.

Clause 39—'Return by companies.'

The Hon. R.J. RITSON: I move:

Page 12, line 15—Insert 'or exempt under section 26 (2) *(ab)* from the requirement to be registered' after 'Act'.

Amendment carried; clause as amended passed.

New Divison 1AA—'Proper cause for disciplinary action.'

The Hon. R.J. RITSON: I move:

New division, page 12, after line 23—Insert the following division in Part IV before Division I:

DIVISION IAA—PROPER CAUSE FOR DISCIPLINARY ACTION

39a. (1) There is proper cause for disciplinary action against a registered pharmacist if—

(a) the registration was obtained improperly;

(b) the pharmacist has been convicted, or is guilty, of an offence against this Act, an offence involving dishonesty or an offence punishable by imprisonment for one year or more;

or

(c) the pharmacist is guilty of unprofessional conduct.

(2) disciplinary action may be taken under this Part against a person who was registered as a pharmacist when the cause for disciplinary action arose but has since ceased to be registered as a pharmacist.

This is a rewording of the clause that might give rise to disciplinary action. It is basically old wording brought back and put at the head of this Division. In particular, the question of previous criminal activity was absent from this part of the Bill. It merely puts it at the head of that Division to make it clear as one begins to read the Division. It is not meant to be exclusive or exhaustive of what the board might find it had reason to inquire into, but I ask for the Government's consideration of it.

The Hon. BARBARA WIESE: The Government opposes this amendment because it believes that it is unnecessary.

New clause negatived.

Clauses 40 and 41 passed.

Clause 42—'Obligation to report incapacity.'

The Hon. R.J. RITSON: I move:

Page 13, line 16—Insert 'or to a person nominated by the board' after 'board'.

This clause deals with the question of sick pharmacists and is of great concern to me. I think I can be of help to the Government here. When proclaimed, written reporting to the board will be mandatory when a treating doctor has reason to believe that a pharmacist's illness either seriously impairs or may in the future impair the pharmacist's ability to practise pharmacy. The two most obvious problems about this are that it starts by tainting the doctor/patient relationship in an unhelpful way, and it finishes with a report before the board that the board may not know what to do with. When a patient comes to a doctor, there is a process of deductive reasoning, examination, investigation with scientific tests, and a certain amount of guesswork, if the truth must be known. It relies on the patient's volunteering all aspects of the condition, not censoring or holding back, fearful lest he be reported and lose his livelihood.

If the treating doctor believes that the illness may seriously impair, he has to report. That leaves no room for a trial of treatment or further investigation until it becomes clear that it will. This provision is similar to that in the Medical Practitioners Act. At least the members of the Medical Board would have a better opportunity to assess the clinical situation for themselves than would the members of the Pharmacy Board. Of course, they could always refer the pharmacist to consultants of their choosing, but in fact referology—the art of choosing the right consultant for the right conditions and the right patient—is a bit of an art in itself.

The medical profession has, in recent years, organised a group of doctors to care for sick doctors, and this group will in fact provide confidential and appropriate treatment, counselling and rehabilitation for people with conditions which would create difficulties in their public or medical life and which might otherwise deter them from seeking treatment.

That is not to say that in the final analysis the responsibility is not the board's: it is. If someone is to be prevented, it must be by the board. My amendment inserts the words 'or to a person nominated by the board', to leave it open for the Medical Board to approach a medical group to care for sick pharmacists (and I can give the Minister the names of the people who can do this). It is open, with my wording, for the Pharmacy Board to direct the treating doctor's referral to that group and that group can report to the board if somebody does not comply with treatment, or is untreatable and dangerous. I commend the amendment to the Committee.

The Hon. BARBARA WIESE: The Government thinks that this amendment is helpful, and therefore we will support it.

Amendment carried; clause as amended passed.

Clause 43 passed.

The Hon. R.J.RITSON: I move to amend the heading, as follows:

Page 13, line 29—Insert 'by board' after 'inquiries'.

This is a semantic amendment that adds two more words and can do no harm.

The Hon. BARBARA WIESE: The Government opposes it; it is unnecessary.

Amendment negatived.

Clause 44—'Inquiries.'

The Hon. R.J. RITSON: I move:

Page 14, lines 1 to 3—Leave out all words in these lines and insert—

or

(b) suspend the registration until the registered pharmacist has recovered from the incapacity or for such lesser period as the board determines.

These words replace the provision for a time-based almost penal tariff for sick pharmacists in which it sets a limit of three years suspension. My amendment replaces it with a suspension that has no time base but is based on physical and mental ability to resume practice. In other words, the pharmacist is suspended until the board considers that he is well enough to practise. I commend the amendment to the Committee.

The Hon. BARBARA WIESE: The Government believes that this amendment is helpful and will support it.

Amendment carried; clause as amended passed.

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

Clauses 45 to 50 passed.

New clause 50a—'Variation of conditions imposed by the court.'

The Hon. R.J. RITSON: I move:

Page 16, after line 39—Insert the following clause:

50a. (1) The Supreme Court may, at any time, on application by a pharmacist, vary or revoke a condition imposed by the Court in relation to his or her registration under this Act.

(2) The board and the Minister are entitled to object to an application under this section.

The Liberal Party considers this matter important. The position at the moment is that the Supreme Court, having made an order under this Act, may of its own motion vary or revoke conditions imposed in that order, and the board may vary or revoke orders that it has made; that is, if there were an order restricting the scope of practice of a pharmacist or suspending a pharmacist, either the board (if it made the order) or the Supreme Court (if it made the order) may of its own motion reconsider the matter from time to time. However, there is nothing that specifically gives the right to a pharmacist subject to such an order to apply (or in effect appeal) for reinstatement or for the lifting of conditions from time to time.

My amendment provides that these orders may be varied on the application of the pharmacist subject to the orders and, in turn, as a check or balance, the board or Minister may object to such an application before those authorities. It really speaks for itself, and I need say no more than that it is obviously only fair that a person suspended or restrained in this manner should be able from time to time to apply

for reinstatement, and that the board and/or the Minister should be able to appear in response to that application.

The Hon. BARBARA WIESE: The Government will support the amendment.

New clause inserted.

Clauses 51 to 58 passed.

Clause 59—'Regulations.'

The Hon. R.J. RITSON: I move:

Page 18, lines 19 to 23—Leave out paragraph *(j)*.

This is the provision by which the Government specifically intended to deal with this matter by regulation, that is, the matter concerning the grandfathering-in of the incorporated pharmacies which were not registered but were exempt, some of which were named in the Bill and some of which were omitted. The Government had intended to correct that omission specifically with the powers granted within these lines.

Since the Government has agreed to grandfather-in all the companies by generic description, this is no longer necessary. Therefore, I have moved for the deletion of these provisions.

The Hon. BARBARA WIESE: This amendment is consequential on a previous amendment that was carried, so the Government will agree to it.

Amendment carried; clause as amended passed.

Schedules 1 and 2 and title passed.

Bill read a third time and passed.

CHIROPRACTORS BILL

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Interpretation.'

The Hon. BARBARA WIESE: I move:

Page 1, lines 27 and 28—Leave out the definition of 'company' and insert the following definition:

'company' means a company as defined in section 9 of the Corporations Law:.

Since this Bill was drafted, the Corporations Law has changed. Therefore, the definition should be changed to reflect the provisions in the piece of legislation that has now been enacted, and that is what this amendment achieves.

Amendment carried; clause as amended passed.

Clause 5 passed.

Clause 6—'Constitution of the board.'

The Hon. BERNICE PFITZNER: I support my colleague in the other place in relation to clause 6 (1) *(a)*, which refers to regulations; no regulations were written. I am concerned about such sloppy legislation. The Minister of Health said that there would be a carbon copy of the dental regulations. This does nothing to improve the preciseness of legislation, nor does it acknowledge that this Bill is a Bill in its own right. Legislation should be looked at more precisely.

The Hon. BARBARA WIESE: I understand it is the intention that the regulations, when drafted, will reflect those that exist in the legislation relating to the dental profession. Therefore, that gives members a good guide as to what the Government has in mind. It is not uncommon for regulations not to be drafted prior to legislation being considered by the Parliament. In many cases, regulations will be subject to change because of the debate in Parliament and, therefore, in some cases it is a waste of time and energy for regulations to be drafted prior to the completion of debate and knowledge of Parliament's wishes in certain areas. As I said, it is not unusual for regulations not to be completed prior to the introduction of a Bill, but in this case I think the Government has given a clear indication of what is intended for the regulations.

I understand that, whilst the honourable member might have wished to sight the regulations before the Bill was introduced, she has no objection, given what she said, to the intentions of the regulations. I remind the Committee that Parliament will have an opportunity to view the regulations before they come into being through scrutiny before the Joint Subordinate Legislation Committee. There will be an opportunity for members of Parliament to have their say on that question.

The Hon. BERNICE PFITZNER: I acknowledge all that the Minister has said, but the Bill specifically provides, 'in accordance with regulations by registered chiropractors' and there are no regulations.

The Hon. BARBARA WIESE: Not yet.

The Hon. BERNICE PFITZNER: Not yet. If that was the Government's intention, it should read, 'in accordance with regulations by registered dentists', or something like that, and this was acknowledged by the Minister of Health in the other place.

Clause passed.

Clauses 7 to 17 passed.

Clause 18—'Qualifications for registration.'

The Hon. BERNICE PFITZNER: Clause 18 (1) *(c)* refers to qualifications and experience. I am pleased that this point has been clarified; we are told that experience would perhaps be in the form of an internship rather than just a free and easy experience that is not monitored. Further to that, clause 18 (2) *(a)* (i) provides:

The sole object of the company must be to practise as a chiropractor.

I raised this matter in my second reading contribution, as I received legal advice that practice as a chiropractor related only to service and hands-on treatment. I am pleased that the point has been clarified that practice as a chiropractor also includes teaching and lecturing in the education field.

Clause 18 (2) *(a)* (v) provides:

no director of the company may, without the approval of the board . . .

Again, it has been clarified that the approval of the board is required, and the board would look at a case sympathetically if the director was a senior partner and was trying to help a junior partner, perhaps, to establish another company. I am pleased that those points have been clarified, as they have been raised as concerns in the chiropractic community and were not clarified in the other place.

Clause passed.

Clauses 19 to 24 passed.

Clause 25—'Obligation to be registered.'

The Hon. BERNICE PFITZNER: I would like to clarify a vexed question in relation to 'for fee or reward'. In a logical sense, I would have thought that we could remove those words without any problem, because I do not feel that a chiropractor should practise if not registered or if not qualified. Indeed, the Minister has responded by saying that that logic is perhaps too idealistic and that we must be more practical, reasonable and realistic. However, when we as lawmakers legislate, we should legislate in an ideal sense and, although we aim for the sky, we might get only to the treetops.

I raise this point because it causes me concern. If we were to remove the words 'for fee or reward', unqualified people would not be able to manipulate. It is true that the intent is to prohibit unqualified practice for pay. But if the words 'for fee or reward' were removed, those who were unqualified would still be prohibited from practising.

Thirdly, I believe that that phrase has been included for the protection of, perhaps, an unqualified friend or relative who is practising some manipulation without pay. I do not

think that would be a problem, because that practice will not be identified in the general public arena. If the words 'for fee or reward' were left in, the provision would allow a qualified friend, at a party or a gathering to practise manipulation, perhaps on the spinal column, and not be paid. The manipulation might be overstrenuous, and I understand that some chiropractors have seen at least 15 cases a year where friendly manipulation, without pay, has caused serious results. For that reason, the inclusion of these words is of concern, although I realise that I do not have support for the deletion of that phrase, as it occurs in all the paramedical legislation and the dental and medical Acts.

Clause passed.

Clauses 26 to 28 passed.

Clause 29—'Practitioners to be indemnified against loss.'

The Hon. BERNICE PFITZNER: Subclause (2) provides that the board may, upon such conditions as it thinks fit, exempt a chiropractor. During the second reading debate, the Minister explained that this exemption may apply to chiropractors who take sabbatical leave or leave for study or research, or for other purposes. She went on to say that it is not intended for the exemption to apply to a person practising chiropractic. I suggest, however, that perhaps those taking sabbatical leave or undertaking research would not be practising chiropractic. In any event, subclause (1) is prefaced 'A person must not practise as a chiropractor unless . . .'. So, I feel that the provision is superfluous.

The Hon. M.J. ELLIOTT: I have not previously asked any questions in relation to clauses where I have felt that the position has been sufficiently clarified. Subclause (1) *(a)*, refers to agreements between chiropractors and a person approved by the board. Will the Minister expand on what exactly is anticipated will happen here? I take it that the 'person' referred to will be an insurer or an insurance company in most cases.

The Hon. BARBARA WIESE: The honourable member is correct in assuming that this provision relates to an agreement between a chiropractor and an insurer of some kind. Here, it is intended that there would be an agreement between the insurer and the board, which would relate to the amount of the indemnity that is deemed appropriate to cover a chiropractor for professional indemnity. Paragraphs *(a)* and *(b)* of subclause (1) cover this aspect.

The Hon. M.J. ELLIOTT: I am not sure that I understood the complaints made to me outside this place about this clause, but there seemed to be suggestions that the board may have been acting as an agent in some way for insurance. Is that correct?

The Hon. BARBARA WIESE: It is intended that the board as a matter of policy would decide what amount of money is considered appropriate to cover a chiropractor for professional indemnity insurance cover, but it would not be intended that the board in some way would act as a broker in these matters.

The Hon. R.J. RITSON: It is clear to me what is intended by the clause. As to medical malpractice insurance, in South Australia there are two competing societies, the medical protection society and the medical defence organisation. Those societies were formed by medical people in South Australia for the purpose of insurance and they have a big English insurance underwriter.

In fact, my insurance covers me for a large sum anywhere in the world but the point is that in order to protect the public, to ensure that practitioners are able to pay the sorts of sums that are likely to be awarded against them, the clause requires that whatever form of insurance they choose, and whomever they choose to underwrite it, the board will say whether or not it approves of that form of insurance. In no sense is the board a broker. It is the provision of quality assurance, in fact, insurance, quality insurance, if one likes, that the final decision whether a form of insurance is acceptable in the public interest will lie with the board.

The board could say, 'You have insured with Shonky Dodgy Un-Limited and we do not approve of that insurance.' I am sure that that is what it means. In no sense is the board directing, playing with or broking with insurance. I am not bothered by that provision, as I am used to that sort of control of my own professional life and responsibility to insure myself appropriately in a way that is approved.

The Hon. M.J. ELLIOTT: I appreciate what the Hon. Dr Ritson has said. I do not need to be persuaded about why it exists or about the need for it: I understand that. I was merely reflecting concerns relayed to me and I thought it was proper that I raise them in the Committee and explore those concerns so that the answers are on the record. The Hon. Dr Ritson said that there were two major societies for medical insurance. What is the position in respect of chiropractors?

The Hon. BARBARA WIESE: The main insurance company used by chiropractors at the moment is Steeves Lumley. Some independent chiropractors also use the AMP and Lloyds.

Clause passed.

Clauses 30 to 41 passed.

Clause 42—'Procedure in relation to inquiries.'

The Hon. M.J. ELLIOTT: During the second reading debate I indicated that there was some concern about the period of 14 days provided in clause 42 (1). A preliminary hearing may take place after the fourteenth day, and it has been requested of me (and I thought the request was reasonable) to move to amend the 14 days to 21 days. Although I have not circulated an amendment, I move:

Page 13, line 30—Delete '14' and insert '21'.

This simply guarantees a minimum period in which it is reasonable properly to prepare a defence if legal advice is needed.

The Hon. BERNICE PFITZNER: I am aware of the provision of 14 days. There have never been any complaints of which I am aware that the period of 14 days is too short. The subclause provides 'not less than 14 days'. As we know, the board meets once a month; therefore, there is a leeway. Also, the 14 days provision is also in the Physiotherapists Bill, the Pharmacists Bill, the Medical Practitioners Act and the Dental Act. Therefore, if we change this, we should also look into the other pieces of legislation.

The Hon. BARBARA WIESE: As far as the Government is concerned, it is not really a problem whether it is 14 days or 21 days. However, I agree with the comments made by the Hon. Dr Pfitzner, who points out that, if we were to change this from 14 days to 21 days, we would be drawing legislation for this professional group which is different from that covering the other professional groups. As I understand it, the 14 day provision has been in place for a very long time and, according to my advice, no problems have arisen as a result of that period of time being in place. I therefore oppose the amendment.

Amendment negatived; clause passed.

Clauses 43 to 46 passed.

Clause 47—'Operation of order may be suspended.'

The Hon. BERNICE PFITZNER: I want to identify the concerns of some of the people in the chiropractic community. There has been concern that the verb 'may' should be 'shall' in subclause (1), as 'shall' tends to identify that a person is innocent until proven guilty. However, using the verb 'may' gives more flexibility to the board. I feel that the verb 'may' possibly is a better word to use, as some of

these cases that need to be investigated may be in danger of repeating a misconduct. Therefore, I think that perhaps 'may' is more appropriate.

Clause passed.

Remaining clauses (48 to 55), schedule and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (WATER RESOURCES) BILL

Adjourned debate on second reading.

(Continued from 7 March. Page 3361.)

The Hon. L.H. DAVIS: The Opposition supports this Bill, amending, as it does, five Acts as a result of the Water Resources Act 1990. The Water Resources Act has been regarded universally as a very important and necessary piece of legislation. The introduction of that legislation has required consequent amendments to a series of Acts, including the Irrigation Act 1930. This Bill makes the taking of water from or any discharge of water into the Murray River or any body of water flowing through or adjacent to an irrigation area subject to the Water Resources Act. In effect, these amendments recognise the supremacy and importance of the Water Resources Act. There is no doubt that the Murray River, as one of the great rivers of the world, as an important source—

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: The Democrats oscillate in the most alarming fashion in their views on matters of environment. We saw the Democrats issue a press release only two weeks ago, making reference to the vulnerability of the South-East pine forests to imported timber yet, in a breathtaking somersault, they support the introduction of rating on commercial pine forests which has some economic significance.

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: I made what I think is a fairly reasonable statement, that the Murray-Darling Basin system is regarded as one of the great river systems in the world. It ranks fifteenth in length, if nothing else, among the river systems of the world, and in terms of its economic importance even the Hon. Mr Elliott might be aware that it is not insignificant, ensuring the Democrats some water to drink with their alfalfa sprouts at lunchtime.

I want to refer to the Murray-Darling Basin Commission, which is a very good example of bipartisan support for what is a most important concept, that is, the States joining together with the Commonwealth, with the various communities along the river system, to ensure a minimisation of pollution, to keep salinity under control and to maximise the economic benefits of that river system.

In August last year the Murray-Darling Basin Ministerial Council held a meeting in Melbourne, at which some very important contributions were made by Ministers of all political persuasions. The Hon. Barry Rowe, then Minister for Agriculture and Rural Affairs in Victoria, made the point that I must say did not appreciate, namely, that the Murray-Darling Basin accounts for one-third of the national output of agriculture valued at $10 million annually.

The Hon. Ian Causley, Minister for Water Resources in New South Wales, also presented a paper at that conference. He made the point that the report prepared for the Murray-Darling Basin Ministerial Council and the options for the drainage program for the basin highlighted the critical issues of waterlogging and salinity in the irrigation areas of the riverine plain. He stated:

> Currently, some 560 000 hectares in the irrigated areas of the riverine plains have shallow watertable problems. The cost due to lost production from salinity and waterlogging is estimated at $44 million a year. Without intervention, the total area with shallow watertables is expected to double and the losses to increase to $123 million per year in the next 50 years. There is clear consensus that the area of waterlogging and salinisation is increasing dramatically and that there will be significant productivity losses unless drainage is provided as an integral part of a broad-based strategy. Currently, 28 per cent of the area under irrigation has drainage. Up to 67 per cent requires drainage.

Again attacking the Democrats' economic ignorance, I make the point that woodlotting is seen as a very useful way of combating salinity along the Murray River. The point that I made quite forcibly in the debate on the Valuation of Land Act Amendment Bill was that, in time, salinity could be beaten, and that it is not unreasonable to hypothesise that the eucalypt wood lots may in turn become commercial plantations to be thinned or chopped down for commercial usage, which would, of course, attract rating.

The amendment of the definition of 'capital value' in the Valuation of Land Act Amendment Bill, which occurred without any consultation with anyone in the Murray River lands in the South-East and with the support of the Democrats, is an example of a Government that has lost touch with economic reality. The points made in these very important papers presented to the Murray-Darling Basin Ministerial Council only a few months ago underline the validity of what I am saying. Mr Causley states:

> The challenge for us is not to be defeated by these problems . . . There are hundreds of millions of dollars of infrastructure tied up in irrigated agriculture throughout the basin and the lives of many, many people are tied directly and indirectly to the continued viability of irrigation industries.

Mr Causley then highlights some of the points made in the drainage report, as follows:

> First, it addresses the critical strategic land and water management problems confronting irrigated agriculture in the basin. They, together with their impacts on Murray River water quality, were the driving forces behind the establishment of the Murray-Darling Basin Ministerial Council, and must remain the major focus of its efforts.

That is a particularly pertinent observation, given the recent headlines addressing the quality of Adelaide water and comparing it unfavourably with most other town water supplies in Australia. Mr Causley continues:

> Secondly, it deals with this problem within the broader policy and institutional context of the salinity and drainage strategy. Thirdly, it reflects a high level of inter-Government cooperation.
>
> Fourthly, it recommends an integrated approach to addressing these land and water management problems which will lead to long-term sustainable management of the basin's irrigated areas. In doing so it reflects the thinking in the Federal Governments discussion paper on 'Ecologically Sustainable Development' and, in the case of New South Wales, the recent 'New Environmentalism' statement by Nick Greiner.
>
> Fifthly, it proposes for community involvement with Government in developing and funding solutions.
>
> Quite clearly it reflects the move towards cooperative and sustainable resource management. In terms of maintaining the Murray-Darling Basin initiative's focus and momentum I consider that this document, and the associated spin-off issues such as water demand-side management, economic and social impacts, will provide a significant basis for our activities for some years.

Mr Causley then talks about the need to integrate six key components in programs tailored to the specific needs of individual areas, and he refers to the need for community involvement, the environmental component, the institutional component (the necessary legislative and administrative changes), the on-farm component (improving farm planning and management, internal drainage, water recycling, wood lots, irrigation scheduling and crop rotation). Mr Causley continues:

Economics and Cost Sharing—cost sharing along public benefit: private benefit lines; identification of sources of funding. District drainage component—options for major (or district) drainage; design criteria; linkages to community or private drains.

I have taken the liberty of quoting from that document because I think it highlights the Murray River system's importance to South Australia and the fact that the Irrigation Act is a critical element in the management of the taking or discharge of water into the Murray River.

This amendment, which has the Opposition's unfettered support, recognises the need for the Irrigation Act to complement the provisions of the new Water Resources Act. Other Acts that are amended as a result of the new Water Resources Act 1990 include the Local Government Act, and the Pollution of Waters by Oil and Noxious Substances Act 1987. Members would no doubt remember that the new Water Resources Act 1990 has as one of its major thrusts the control of pollution of inland water.

The Bill provides a new definition of 'State waters' for the purposes of the Pollution of Waters by Oil and Noxious Substances Act, limiting it to waters that are subject to the ebb and flow of the tide, hence restricting control to coastal waters. The Bill also amends the Public and Environmental Health Act 1987 and, finally, the Waterworks Act 1932. It is a Bill which we have discussed with the affected parties. I am pleased to say that consultation has occurred in this matter, and the Opposition supports the Bill.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I thank the Opposition for its support and its erudition in this matter, whether or not relevant, and look forward to a speedy passage of the Bill.

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

ROADS (OPENING AND CLOSING) BILL

Adjourned debate on second reading.

(Continued from 5 March. Page 3198.)

The Hon. L.H. DAVIS: I must say that the opening and closing of roads is not a subject of which I have a great knowledge, but I have taken the trouble to read extensively on the subject and, I must say, I find it fascinating. The fact is that in the 1990 calendar year there were some 170 road openings and closings. They were predominantly closings: about 70 per cent were closed and 30 per cent were opened. Given that a road is a public resource, whether or not it is used extensively, it is a matter of community interest. Quite clearly, it is a subject which should be looked at with the seriousness that it deserves. Certainly, it has over a long period taken up a considerable amount of time and effort of councils, predominantly those in country areas.

There is a sense of *deja vu* in reading the Roads (Opening and Closing) Bill second reading speech of 1990 and comparing it with the Roads (Opening and Closing) Bill of 1932. I commend the Minister and the officers of her department for the trouble they have taken in preparing the second reading speech. In sharp contrast to other speeches, this is full of information—and anyone such as I who did not pretend to understand very much about the opening and closing of roads, certainly could not escape a significant increase in knowledge after looking at that second reading explanation. However, the Roads (Opening and Closing) Bill of 1932 sounded very much the same as the Roads (Opening and Closing) Bill of 1990.

The Hon. R.R. Roberts: Haven't you ever tried to go parking out in the country on Good Friday?

The Hon. L. H. DAVIS: No. I haven't.

The Hon. R.R. Roberts: They put chains across the road.

The Hon. L.H. DAVIS: The Hon. Mr Roberts says that they put chains across the road to prevent him driving in the country. There may be good reason for that, given what the Labor Government has done to many people in the country. I can understand why they put chains around Mr Roberts' car. I am surprised that is all they did.

Anyway, the then Chief Secretary, in introducing the measure in 1932, said in the second reading explanation:

At the present time the law relating to the opening and closing of roads is contained in the Roads Act 1884. The provisions of this Act are frequently availed of by local government bodies, particularly district councils, for road purposes. The Act contains a large number of other provisions which are now obsolete or little availed of and the sections which deal with the opening and closing of roads are in some measure unsatisfactory; and, as they are scattered throughout the whole of the Roads Act 1884, it is probably a matter of no little difficulty for the councils concerned to ascertain the true state of the law in this regard. It is, of course, highly desirable that any Acts which are to be administered by local governing authorities should present the law in an accessible and simple form. It is proposed, therefore, to repeal the Roads Act 1884, and the amending Act 1913, and to re-enact provisions relating to opening and closing of roads.

There was then a lengthy debate. I must say that, in those days, the debates seemed to follow more predictable lines than they do today. They were set down for a definite date sometime in the future; whereas at the moment, of course, we take pot luck as to when a debate comes on. This often causes some inconvenience, particularly to the departmental officers who come down here to assist debate in Committee.

The Roads (Opening and Closing) Bill of 1932 completely revised the legislation that had existed for some 50 years. History is now repeating itself, because some 50 years later we again have a total rewrite of the opening and closing of roads legislation. I understand that it has been three years in coming to fruition. I suspect that not only was it a long time getting through Cabinet but also that there was a lengthy period of consultation.

For the uninitiated—and I refer, of course, to my colleagues opposite—when straightening a road or constructing a road deviation for example, that immediately creates an opening or a closing of a road. For example, the Highways Department has been putting in a new road north of Meningie. Once there is a deviation to that road it creates both an opening and a closing, in the sense that there are new parcels of land to be created as a road, and there are parcels of land that were formerly part of the road that has been closed, with the land to be sold, disposed of or resumed by the Crown or by the council, or taken up privately.

So, the opening and closing of a road comes into being, because of the action of straightening a road or deviating a road. Further, the legislation may be needed because of a subdivision taking place—an exchange of land. It is not uncommon, for instance, for a developer to exchange a parcel of land with the relevant authority, whether it be the Highways Department or the local council, to accommodate transport into that area and, again, that triggers the need to utilise the legislation.

The problem of the opening and closing of roads has been particularly noticeable in the Saddleworth and Auburn council area. The council ran into a series of problems not of its own making. Many roads were surveyed in the early years of settlement but they were never used commercially and for many years they have been treated as a part of the adjoining properties. They have been surveyed but ultimately have never become public roads.

In many cases there is no question that adjoining property owners were not even aware that they were surveyed as roads, and I suspect that in many cases rates were not even

paid for the use and enjoyment of the land that was deemed to be a road. In the case of the Saddleworth and Auburn council, as I have said, through no fault of its own it had a large number of these unused roads in its area and, when it came to closing them, the council encountered significant difficulties.

The Department of Recreation and Sport wanted them retained for walking trails. Given that bushwalking is a popular pursuit for many, and that the department has some clout, the council encountered some difficulty in developing an argument to close the roads. The existing Act did not help the council—whether it was Saddleworth and Auburn or any other district council—because the Act had significant problems.

The Act was cumbersome and was costly to councils, to the Department of Lands and to the client, because it often involved bringing in surveyors to reconfirm the roads. Most importantly, I discovered that the Act required people to pay for a parcel of land up front. On the closing of a road, if subsequently the road closure was disputed and the client was unable to take up the parcel as an adjoining land-holder, as he had paid up front he might be out of pocket for six or 12 months. If the land was the subject of dispute or if the sale fell through and he did not receive title, eventually he would be refunded, but he would be out of pocket for all that time.

The Hon. Anne Levy: He would not have paid rates.

The Hon. L.H. DAVIS: Certainly, he had not paid rates. There were advantages, certainly, but in the situation to which I have referred concerning the closure of roads, there were difficulties for all parties.

The Hon. T. Crothers interjecting:

The Hon. L.H. DAVIS: I can tell the Hon. Mr Crothers that it was a vexed question all round, and that there were not too many leprechauns at the bottom of the roads when they were closed. As I said, in 1932 the 1884 Act was reworked. That legislation made provision to open and close roads and was a big improvement on the 1884 legislation, but it did not force the issue of the disposal of roads when they were closed. In other words, when roads were closed as a result of the 1932 Act, they just sat there with the ownership remaining ambiguous. I understand that 60 years later there are still many roads which have been closed but which have still to be disposed of.

Following the Second World War, an amendment in 1946 introduced more rigid controls and required the disposal of roads, but it still did not cover the problem adequately. Often councils resumed the land but a sale did not take place—a council just took over the land and had it under its jurisdiction.

The Hon. Anne Levy: They could not get rates on it.

The Hon. L.H. DAVIS: That is right. Now we have a new Act which seeks to resolve all the difficulties, the cost, the delay, the ambiguity of ownership and the difficulty of resolving disputes, whether it be the opening or closing of a road. The new Act resolves the problem of disposal. A council will not have to worry any more about vermin control and all other problems associated with the unresolved issue of ownership. I understand that the Recreational Walkers of South Australia have been consulted, and the South Australian Recreation Institute has set up a process of looking at all roads which may come under the umbrella of this legislation or may be in the future the subject of closure. The South Australian Recreation Institute has offered to work together with councils to try to resolve priorities in respect of what roads could be used for recreational purposes.

Although closures have to be advertised in the *Government Gazette*—and anyone who reads the *Government Gazette* will see openings and closings regularly advertised (the opening and closing of roads is a very exciting part of the *Government Gazette*)—I will be asking the Minister in the Committee stage whether the new regulations to this legislation, which I hope will be minimal, will include a requirement that any openings and closings be advertised in the relevant local paper. I see that as important because one could conjure up a situation where the opening and closing of roads advertised in the *Government Gazette* may not be brought to the attention of interested parties in the relevant district.

I am not suggesting for one moment that councils would ever do deals or take advantage of a situation. However, in the public interest, such openings and closings should be advertised in the affected area, and there are enough South Australian country papers to ensure that that happens. This subject may not be as gripping as some of the other matters to be debated in this Council but, nevertheless, it is important. I indicate that the Opposition is pleased this matter has been so thoroughly canvassed. It is important legislation and I indicate that, subject to two very minor amendments, the Opposition will support it.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): Again I thank the honourable member for his support and for the history of the opening and closing of roads since 1836. Perhaps we are lucky that this colony did not go back further. Had we been situated in Italy, we could have had a great discourse on the opening and closing of Roman roads which, in the original Latin, could have been most enlightening! All joking aside, I thank the honourable member for his support. I indicate that the Government will not support his amendments.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

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

Page 1, after line 17—Insert new definition as follows:

'adjourning council', in relation to a road process or proposed road process, means a council whose area adjoins the area of the council that commenced the road process:.

Page 2, lines 41 and 42—Leave out all words in these lines and insert:

(e) any adjoining council;
and
(f) any other person who has an interest in land in the vicinity who would be substantially affected by the process:.

My first amendment provides a new definition of 'adjoining council'. As to my second amendment, under the definition of 'person affected' councils are not referred to except under paragraph *(e)* which provides:

any other person who would be substantially affected by the process:.

Paragraph *(c)* provides:

a prescribed public utility;.

I would argue that 'person affected' needs to include any adjoining council, and that we need to replace the existing paragraph *(e)* with a new paragraph to restrict the classes of people who can object to those who have land in the vicinity and to those who will be substantially affected by the opening or closing of a road. It ought not be possible for people who do not live nearby to object simply because they romantically believe that they will lose something of value.

The Hon. ANNE LEVY: The Government opposes these amendments. The Bill provides a definition as follows:

'person affected', in relation to a road process or proposed road process, means—

and then provides paragraphs *(a)*, *(b)*, *(c)* and *(d)*, and then paragraph *(e)*, as follows:

(e) any other person who would be substantially affected by the process.

'Person' in legalese need not be a natural person; it can include a council. By definition, 'person affected' includes any other body that would be substantially affected by the process, and that includes the adjoining council. Therefore, it is a superfluous definition.

The Hon. M.J. ELLIOTT: The Democrats do not support the amendments.

Amendments negatived; clause passed.

Clauses 4 to 12 passed.

Clause 13—'Objection or application for easement.'

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

Page 7, line 17—Leave out subclause (1) and insert new subclause as follows:

(1) Any person affected may object to a proposed road process.

Clause 13 (1) provides:

Any person may object to a proposed road process.

That seems unduly wide. I should be interested to know why the Minister believes that any person may object to a proposed road process.

The Hon. ANNE LEVY: The reason subclause (1) provides that any person may object to a proposed road process is that a road is a public resource. It is public property and, as such, is available to any person within the State. The amendment suggests that the only people who may object to a road process are those affected by it. People affected by it, by definition, are those who live nearby, whose properties adjoin, and so on. However, interest in a particular road may be considerable by people who do not live in the area, but who regularly use that road.

For instance, it may be an access to a beach. As such, it is a public resource which is of interest to anyone who wishes to go to that beach, not just to the people who live near that road. The broad possibility for anyone to object is because a particular road may be of interest to people who live anywhere in the State but who use or have an interest in that road. Because it is a public resource they should therefore have the right to object if it is to be removed as a public resource.

The Hon. L.H. DAVIS: I thank the Minister for her response.

The Hon. M.J. ELLIOTT: I should have thought that at the end of the day the word 'affected' would not make one iota of difference in any sense, because a person who is not affected will not lodge an objection. It might be argued that some people have very little interest, but 'affect' has no absolute size. As long as people think that they are affected, they are, even if it is an emotional effect. The reality is that the only people who will lodge any sort of objection will be those who are affected. I cannot see that it makes the least bit of difference whether the word is there or not. There is no measure of 'affect'.

The Hon. ANNE LEVY: While I appreciate what the Hon. Mr Elliott is saying, it is not completely true, because there is a definition of 'person affected' in the interpretation clause of the Bill. A person affected means a person who has an interest in land that is subject to the road process; a person who has an interest in land adjoining or in land adjoining the opposite side of the road; a prescribed public utility (obviously, the E&WS Department, ETSA, and so on, have interests because of the distribution of their resources to the public); a public authority; and any other person who would be substantially affected by the process.

With reference to a particular road leading to the beach, one might say that it would be hard for someone who does not live nearby to sustain the claim that he is substantially affected by the closure of that road. By making a detour of five kilometres, that person may be able to arrive at the same beach. Because of that, the objection may not be given much force. If we put in the person affected, such an individual may not be eligible even to lodge a complaint about the closure of that road. It seems to me that people should be able to do that, the road being a public resource.

The Hon. M.J. ELLIOTT: I was not going to support this, because I did not think it was necessary. Through her eloquence, the Minister has persuaded me even more not to support it, as it is unnecessarily restrictive. I will not be supporting the amendment.

Amendment negatived; clause as amended passed.

Remaining clauses (14 and 15) and title passed.

Bill read a third time and passed.

ROYAL COMMISSIONS (SUMMONSES AND PUBLICATION OF EVIDENCE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 March. Page 3530.)

The Hon. K.T. GRIFFIN: The Opposition supports this Bill which, in the scheme of the State Bank saga, plays a minor part. The Royal Commissions Act has been in operation for many years. It has been the subject of an occasional amendment to refine aspects of it, but those amendments have not been particularly significant except for an amendment made in 1980 to accommodate the royal commission into the prison system in that year. The amendment made then applied only to that royal commission and sought to protect witnesses by giving the royal commission power to determine to forbid the publication of the name of a witness or some person who might have been alluded to in the course of the inquiry, to forbid the publication of specified evidence and to direct that any persons specified by the royal commission should not be in the place where the royal commission was being conducted when particular evidence was given. The Government's Bill seeks to remove the restriction on the operation of that clause so that it applies to all royal commissions. There is some good sense in that, and we have no complaint with it.

The Bill seeks also to ensure that data stored or recorded by computer or other means can be obtained by the royal commission. It includes the definition of 'record' and that, too, is appropriate and updates the Royal Commissions Act to accommodate developments in information recording mechanisms.

The other issue that is important is designed to try, at least, to ensure that witnesses outside South Australia but in other parts of Australia can be compelled to attend the royal commission, and that those outside South Australia but in other parts of Australia can be compelled to produce documents and papers. That is done by a mechanism that was adopted in Queensland in, I think, 1988 by way of amendment to the Queensland Commissions of Inquiry Act, which provided the mechanism for a royal commission to apply to a judicial officer for the issue of a summons either to attend or to produce documents and papers. If the person to whom that was directed was outside the State, under the Commonwealth Service and Execution of Process Act the summons as well as a warrant, could be executed, outside the jurisdiction.

That mechanism is brought into the Royal Commissions Act by this Bill in an effort to ensure that witnesses can be brought from interstate, and documents can be required to

be produced where they are outside South Australia but in other parts of Australia. That is particularly relevant because the operations of the State Bank and its subsidiaries extended beyond the borders of South Australia to offices in the other mainland States, and most of the non-performing loans, so far as the Liberal Party can ascertain, were written outside South Australia. So, any inquiry of the royal commission can extend, and will need to extend, to an investigation of bank behaviour outside the State.

Those matters are not controversial. The more controversial aspect is one which I canvassed in this place last week in the debate, seeking to extend the terms of reference of both the royal commission and the Auditor-General's inquiry, but particularly the royal commission. However, I do not intend to canvass again the arguments that the Liberal Party put forward for a widening of the terms of reference of the royal commission. Suffice to say, we believe that it is a limited royal commission, that it relates essentially to communication and that it does not deal with the more substantial issues that should extend, I suggest, into an inquiry into and report upon the affairs of and transactions engaged in by the State Bank of South Australia and its subsidiary and related corporations and agencies.

Several matters need to be addressed. In the terms of reference of the royal commission, there is a reference to the subsidiary of the bank as having the same meaning as in the Corporations Law, assuming for the purposes of definition that the bank were not an instrumentality of the Crown and holding its property for or on behalf of the Crown. One amendment moved by the Liberal Party in another place to the other Bill to amend the State Bank Act, which runs in conjunction with this Bill, sought to ensure that corporations in which the State Bank or any of its subsidiaries held 25 per cent or more of the share capital would, for the purpose of the Auditor-General's inquiry, be regarded as part of the State Bank Group. I hope that that provision, which was supported by the Government in the other place, might be considered in relation to the terms of reference of the royal commission so that, at least in respect of definitions, there is a compatibility between the two inquiries.

There is that compatibility in relation to the definition of the operations of the bank or the bank group, which has been expanded in the amendment to section 25 of the State Bank Act, which we will consider later in another Bill. I suggest that the 'subsidiary' needs to have the same attention to bring it in line with the expanded definition of subsidiary in the State Bank of South Australia (Investigations) Amendment Bill.

The other matter which I think still needs attention and which I do not believe has been adequately addressed as yet by the Government is the taking of overseas evidence. Obviously, attention will have to be given to this, and I would like to see information given to Parliament when the Government has completed its research into the ways in which evidence can be taken outside Australia, both by the royal commission, if that were necessary in the view of the Royal Commissioner, or by the Auditor-General.

As I said last week during the course of the debate on the motion seeking to extend the terms of reference, there may well be Commonwealth legislation that would enable some reciprocal arrangement to be entered into with agencies outside Australia where the State Bank or its subsidiaries carried on business. It may be an intergovernmental arrangement; it may be under some treaty that currently exists. Whilst there is some reaction from the Government that the net may be cast too wide by reference to overseas evidence, nevertheless I believe it will be necessary for either or both of the inquiries to at least gain access to documents and maybe even to compel witnesses to attend and give evidence, as well as produce documents, particularly those who are not employees or officers of the State Bank or any of its subsidiaries, or are borrowers or participants in any borrowing scheme involving the State Bank or any of its subsidiaries.

So, at some time in the future I hope that the Government will be able to provide information about the way in which that issue will be tackled because, as I said, I believe that that will be of importance to both the Auditor-General and the royal commission. It might be much easier for the royal commission to achieve that objective of requiring evidence to be given and documents to be produced outside Australia, because it is a tribunal that will exercise what might be regarded as judicial powers, or at least quasi-judicial powers. On the other hand, the Auditor-General's inquiry is more of an investigation. The opportunity to gain access to documents and witnesses outside Australia might be more limited, because the Auditor-General will exercise powers more akin to investigatory powers rather than powers of a judicial nature. Nevertheless, they are issues that need to be addressed.

There will be more extensive discussion of the other Bill, which relates to the Auditor-General's inquiry under the State Bank Act, and the Opposition will seek to facilitate that as much as possible, because we believe it is in everybody's interest that these two inquiries are up and running at the earliest opportunity. However, so far as the royal commission is concerned, apart from the observations I have already made in relation to the terms of reference, the Opposition will support this Bill.

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

REHABILITATION OF OFFENDERS BILL

Adjourned debate on second reading.

(Continued from 13 March. Page 3542.)

The Hon. I. GILFILLAN: The Democrats welcome this Bill. It has been in the legislative reform pipeline, as I would call it, at least since 1974. As honourable members have already been told, Queensland passed its Criminal Law (Rehabilitation of Offenders) Act in 1986, which has a similar intention to the Bill before us. Western Australia passed its Spent Convictions Act in 1988, and again that has a similar intention, though I must say in passing that I was not as impressed with that Act as I was with the Queensland legislation, the pattern of which it seems to me largely has been adapted for the South Australian legislation. The Federal Government enacted the Spent Convictions Scheme legislation in 1990.

The Hon. C.J. Sumner: Introduced under the Bjelke-Petersen Government.

The Hon. I. GILFILLAN: Yes; I am not sure whether perhaps some honourable members might have predicted that they could benefit from that legislation in years ahead. It might have been some sort of rather prophetic vision into the future.

The Hon. C.J. Sumner: I wonder what that says about the Opposition?

The Hon. I. GILFILLAN: Some of the honourable members in Queensland may have expected to use it. I think the Attorney is making the point that the Liberal Opposition here should be reminded that it was the Conservative politicians in Queensland who enacted that legislation.

The Hon. C.J. Sumner: The National Party members, too.

The Hon. I. GILFILLAN: Yes. It seems that the interjections are going to keep flowing on this; I will just have to start ignoring them.

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. I. GILFILLAN: I want to make it plain that the Democrats support the principle of this legislation, on the basis that punishment for offences should not be indefinite. We believe that, in our society, an offender is punished by means of a prison sentence or a fine, or by whatever form of penalty it is that is imposed, and that when the offender has completed that punishment no further accumulating punishment should apply. It is important to recognise that an extension of circumstances can apply for years, with the burden of an offence overshadowing a former offender's life. I personally have known people now in their late middle age who have had continuing punishment—and I would call it that advisedly—through being constantly reminded of an offence, of a relatively minor nature, that they committed in their youth.

I believe that the legislation is based on a legal reform move that is justified, to minimise what can be a quite unjustified extension and extra burden of punishment, once an offender has completed the penalty that the courts have imposed. Generally, I do not think this is the intended outcome.

Prisoner's Advocacy supports this Bill but it indicates that it would like to see some amendments, including the widening of the application of the Act from 30 months to five years in respect of the term of imprisonment, lifting the level of the fine from $10 000 to $50 000 and reducing the elapsed conviction free time from 10 to five years for adults and from five to two years for children.

I would like to read the letter addressed to my research assistant, Mr Dewhirst, from Mr Greg Mead, who has written on behalf of Prisoners' Advocacy. The letter states:

Dear Kym,

Thank you for the opportunity to comment on the Rehabilitation of Offenders Bill 1991. In general terms we believe that this legislation is long overdue and a very welcome addition to the law in South Australia in relation to convicted persons. We congratulate the Government on its introduction.

We have had several ex prisoners comment to us on the extreme difficulty involved in remaking a normal life in society after being convicted and punished for a criminal offence. In many cases people who have genuinely rehabilitated themselves after offending early in their lives find themselves haunted and handicapped throughout the rest of their lives. Often their criminal conviction was incurred when for various reasons they made bad decisions at a time when their lives were temporarily unstable or unsatisfactory in some way.

Turning to the Bill's provisions: section 4 (2) is the crucial one which defines which convictions cannot become spent. It is our view that the range of convictions capable of being spent should be expanded at least to include persons sentenced to imprisonment for up to five years or a fine of up to $50 000.

As an example, one could take the case of a young person of say between 18 and 25 years who under the influence of drugs and in trying to maintain a drug habit holds up a business by threatening a person with a knife. If no-one was hurt and the amount of property taken was not substantial and the person does not have a particularly bad record he/she might be sentenced to five years in prison. During the sentence he/she might seek drug and alcohol counselling and emerge rehabilitated. Why should not such a person be eligible eventually to take the benefit of this legislation? And why should they have to wait until age 30 or 35 years to take that benefit? We would suggest an amendment of section 4 (2) so that the figures read 'five years' (instead of '30 months') and '$50 000' instead of '$10 000'. We would further suggest an amendment of section 5 so that section 5 (1) *(a)* reads 'five years' instead of 'ten years' and section 5 (1) *(b)* reads 'two years' instead of 'five years'.

In fact our submission would be that even in cases of murder there is a very good argument for convictions becoming spent after the lapse of a certain period of time. Frequently murder is a 'one off' offence committed in a situation of some extremity of emotion which is unlikely to repeat itself throughout the offender's lifetime. It would seem that in many cases a spent conviction scheme would be appropriate after the person has paid for his/her crime by spending what would usually be at least 10-12 years in prison. In other words, we would submit that there are good arguments for enabling almost all convictions to become spent. It is simply a matter, we would argue, of imposing appropriate conditions on the circumstances in which convictions for major offences can become spent.

We would also raise the question as to what the regulations referred to in section 4 (3) *(g)* will say. That subsection would give the Govenment a great deal of scope to narrow the effect of legislation which in our submission ought to be available to as many rehabilitated people as possible.

Clause 4 (3) *(g)* provides:

It does not apply in circumstances to which it is declared by the regulations not to apply.

The writer of the letter indicates that those regulations are not defined in the Bill and, therefore, are open to whatever interpretation the Government makes at the time. The letter concludes:

Thank you again for the opportunity to comment on this legislation.

Yours faithfully,

GREG MEAD (signed)

CC. Hon. C.J. Sumner
Hon. J.C. Irwin
Hon. K.T. Griffin

On deliberation, it is not my intention to move the amendments recommended in that letter. I believe that the thinking behind it is worthy of further consideration, but my concern is that we are introducing innovative legislation for South Australia, and it is better to err on the side of caution in the introductory stages and, in the fullness of time, it may well be that those amendments and others are appropriate to be considered.

Although I have indicated support for the Bill, I am concerned about some areas, including the title 'Rehabilitation of Offenders'. It is interesting that Western Australia has called its legislation the Spent Convictions Act. I feel there is some confusion over the meaning of 'rehabilitation' in the context of this Bill and in the normal use of the word in the community. If it is appropriate, I suggest to the Attorney-General that he consider renaming the Bill the Spent Convictions Bill. I would like to hear his reasons, perhaps when he sums up the second reading debate, for using the word 'rehabilitation' in the title.

In the context of this Bill, I ask what 'rehabilitated' means. Clause 3 (2) is unclear. It provides:

For the purposes of this Act, circumstances surrounding a spent conviction include—

(a) the fact that the rehabilitated person committed the offence or was involved in conduct that led to the conviction;

(b) the fact that the rehabilitated person was arrested for, interviewed in relation to, or charged with, the offence that led to the conviction;

(c) the fact that the rehabilitated person was involved in legal proceedings leading to, or consequent on, the conviction;

(d) the fact that the rehabilitated person was imprisoned or suffered any other form of detention or penalty, or was subject to any other order or direction, as a result of the conviction;

(e) the fact that the rehabilitated person is entitled to the benefit of this Act.

I look forward to a wider explanation of the meaning of that subclause, either in the Attorney's summing up or during the Committee stage. As a lay member of this place (in the legal sense), I find it difficult to translate the intention of that provision.

As I mentioned earlier, I am also concerned about what is a confusing use of the word 'rehabilitated'. At what stage is an offender considered to be rehabilitated? In the normal

use of the word, an offender could be rehabilitated in quite a full meaning of the word through the course of the imprisonment. It may be that it occurs some time after release from prison, or it may not fully occur until five years or 10 years after conviction. I believe it is unclear and that we would benefit from an explanation.

Also, I found the wording in clause 4 (3) confusing. The intention of these clauses, which relate to people to whom this legislation will not apply, is clear, but I found the wording a little confusing. As an example, clause 4 (3) *(d)* provides:

> The protection conferred by this Act on convicted persons in relation to spent convictions is subject to the following qualifications . . .
>
> *(d)* in relation to persons who are seeking, or have obtained, registration or employment as medical experts, it does not extend to offences committed against the person, or to offences involving the production, sale, supply, possession or use of a drug;

Maybe it is just the fact that the wording needs to be read carefully by whoever is trying to interpret it, but I found it confusing on my first reading. Obviously it is intended that a medical expert, or someone who is seeking employment, cannot expect to have the protection of this legislation and to cover offences committed against the person. I ask the Minister, either in the second reading reply or in Committee, for a wider explanation of what offences committed against the person involve.

Clause 5 (4) *(c)* provides the trigger that will terminate the time that has to elapse before an offence is spent. It is as follows:

> For the purposes of subsection (1), a conviction for a further offence will be disregarded if—
>
> *(c)* no penalty is imposed or only a fine not exceeding $100 or, if some other amount is prescribed, that other amount.

On the face of it, an offence that attracts a fine of $105 will be fairly petty in relation to the penalties that currently can be imposed. It may be quite unfair that a rehabilitated offender loses the benefit of the protection of this legislation because he or she has committed a misdemeanour (as I think some offences could be described) which involves a fine exceeding $100. I would be looking at that being reconsidered in Committee.

What concerns me most about the Bill is the way it will operate when it comes into effect. It seems totally appropriate that after a certain period of time an offender who has met the full demands of the punishment and can no longer be determined as needing further punishment should not have to carry the opprobrium, either publicly or privately, of offences that are in the past. The way in which this Bill spells out how that will be affected virtually condones a form of perjury that I find difficult to accept.

I imagine the circumstance where an offender, who strives to satisfy not only what the public requires as an honest answer to a question, particularly under oath, but also their own conscience (which may be even more troubling than what they might feel is an obligation on the public), under pressure to say what is the whole truth, does not give that answer. Can the Attorney consider the situation of an offender (or a person in the community who has no offence recorded against them), when asked to give details of a previous criminal record, being covered by legislation so that such a question will, by virtue of its definition elsewhere, exclude any matters related to spent convictions.

It is already assumed in the asking of the question to be answered under oath that the question itself cannot embrace an answer that would require details about a spent conviction.

The Hon. C.J. Sumner: The questioner might not know.

The Hon. I. GILFILLAN: Might not know what?

The Hon. C.J. Sumner: Might not know the answer.

The Hon. I. GILFILLAN: The questioner may not know the answer. That is the point. The point of the Bill is that a questioner is not entitled to know the details of a spent conviction. I am thinking from the offender's point of view. This is the dilemma that I share with others in respect of the way that the Bill is drafted. To answer that question and take advantage of the protection of the Bill, the offender has to lie. I suggest that if the accepted interpretation of that question, when it is formally put, is taken for granted, that question will not, does not and cannot seek information relating to spent convictions. The Attorney shakes his head. We can put it another way. If the request were, 'Will you answer honestly and to the best of your knowledge and give all details of previous convictions other than those relating to spent convictions?', and if that were the only way the question was put, the offender would not be put in the invidious position of having to lie, because the question would not be asking for details of a spent conviction. The question would frame its own exemption. I hope that I have made the point, because, as far as I am concerned, it is the only sticking point in the legislation, and the intention of the legislation is admirable.

The Hon. C.J. Sumner: How did they deal with that in Queensland?

The Hon. I. GILFILLAN: I do not know. I have a part copy of the Act and I was going to read a couple of sections from it. I am glad that I am having the chance to raise this matter in the second reading stage, because it will give the Attorney an opportunity to consider this point. I put the question: is it possible in the Oaths Act, or whatever is the appropriate legislation, to have this enshrined as a protection for anyone being confronted with the question to which I have already alluded, 'What are your previous convictions?'? That question, in the context in which we are attempting to protect the offender, however it is worded, cannot be extended to cover details of a spent conviction.

I do not have much more to say in my second reading contribution, but I have a copy of the Queensland legislation and there are a couple of sections that I would like to read to members before concluding my remarks. I found them of interest. Whether they are directly relevant to what we will be doing or could do here is for us to determine as we continue our debate perhaps in the Committee stage. I was referring to the very small category of offence which, if there is a conviction, will cancel out the spent conviction time. In this connection I quote from section 11 (2) of the Queensland Act, under the heading 'Revival of convictions':

> Subsection (1) shall not apply where the offence for which a person is subsequently convicted is a simple offence or a regulatory offence or an offence that if committed in Queensland would be a simple offence or a regulatory offence or an offence in respect of which the offender could be dealt with in summary proceedings unless the court by which the person is subsequently convicted is satisfied that, having regard to the public interest, previous convictions recorded against the person, or any of them, should be revived and pronounces accordingly in its order.

I suggest that that provision is more comprehensive and sympathetic to the situation of an offender who is wearing out the spent time of the offence than the one that we have in our Bill.

In relation to the final point I made, which was the difficulty I have with the oath and the pressure on an offender actually to lie, I cite sections 4 and 8 of the Queensland Act, with the idea that they may well be part of our consideration in Committee. Section 4, 'Construction of Act', provides:

> (1) This Act shall be construed so as not to prejudice any provision of law or rule of legal practice that requires, or is to be

construed to require, disclosure of the criminal history of any person.

(2) This Act shall be construed so as not to relieve any person from a responsibility that rests on him to disclose his criminal history in connection with his seeking admission to or offering himself for selection for any profession, occupation or calling declared by Order in Council.

Section 8, 'Lawful to deny certain convictions', provides:

(1) Where the rehabilitation period has expired in relation to a conviction recorded against any person and the conviction has not been revived in respect of him, it is lawful to claim, upon oath or otherwise, that he has not suffered the conviction, except upon an occasion when, as provided by section 4, this Act is to be construed so as not to prejudice a provision of law or rule of legal practice or to relieve from a responsibility.

(2) Where a person has made a claim declared lawful by subsection (1), evidence shall not be admissible in any proceeding to show the claim to be false.

I am a little uncertain whether the Queensland Act offers a more comfortable procedure than is proposed under our Bill, but I ask the Attorney to comment on that either in summing up the second reading debate or in Committee. Finally, section 5 of the Queensland Act, 'Matter excluded from criminal history', provides:

It is declared that a conviction that is set aside or quashed and a charge are not part of the criminal history of any person.

I assume that that has also been absorbed into the intention of our Bill, but I look forward to some explanation of these questions. I conclude by indicating strong Democrat support for the intention of the Bill.

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

SRI LANKA

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

WORKERS REHABILITATION AND COMPENSATION ACT AMENDMENT BILL (No. 2)

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

ADJOURNMENT

At 10.4 p.m. the Council adjourned until Tuesday 19 March at 2.15 p.m.