LEGISLATIVE COUNCIL

Tuesday 19 March 1991

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

ASSENT TO BILLS

Her Excellency the Governor, by message, intimated her assent to the following Bills:

Education Act Amendment,

Valuation of Land Act Amendment.

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions, as detailed in the schedule that I now table, be distributed and printed in *Hansard*: Nos 82, 125, 131, 139-142, 144, 147 and 148.

TOURISM SOUTH AUSTRALIA

82. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism: Is it correct that:

1. Award restructuring is likely to impose costs as high as $250 000 on Tourism South Australia in the first year, rising to $450 000; and

2. The agency has been advised that these costs will have to be found internally?

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

1. The cost to Tourism South Australia of award restructuring may be as high as $250 000 in the first full year of implementation, rising to a possible $450 000 in later years.

2. Yes. All Government agencies have been asked to absorb these costs.

TANDANYA

125. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: In relation to works of art purchased by and on behalf of the Aboriginal Cultural Institute:

1. Does the budget include a specific line for this purpose?

2. If so, how much?

3. How much has been spent to date and of this sum what amount has been recouped?

4. What is the value of current holdings?

The Hon. ANNE LEVY: The replies are as follows:

1. Tandanya has, as part of its exhibition budget, a line for the purchase of works of art.

2. $40 000 was provided for this purpose in the 1990-91 budget.

3. Tandanya's accounting has been of some concern, which is one of the reasons a temporary administrator was appointed. The administrator's tasks will include an examination of Tandanya's accounting systems, to rectify any deficiencies in the present systems and to establish exactly what the financial position now is in all areas. In addition, the Minister of Lands has been formally requested to arrange an investigation by the Auditor-General of Tandanya's financial situation.

Any specific answers to questions on Tandanya finances are, therefore, based only on current information which might change as a result of these investigations. Present information is that, to the end of December 1990, a total of $22 600 had been spent on the purchase of artworks and $23 800 received through sales.

4. The current cost value of stock on hand is $54 000.

TOURISM MARKETING BUDGETS

131. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism: Acknowledging that each State and Territory has traditionally adopted different accounting methods to determine expenditure on tourism marketing, what progress, if any, has been made in recent years to reach agreement on the common components of marketing budgets in order to allow important comparisons to be made of marketing appropriations between respective State and Territory Governments?

The Hon. BARBARA WIESE: During 1990, the Australian Standing Committee on Tourism (ASCOT) discussed ways to categorise tourism marketing expenditures. This was not only to facilitate comparisons between the States but also to enable individual States better to evaluate their marketing programs when making treasury submissions. The States have previously distributed consolidated budget reports to ASCOT for circulation to members, but, as the honourable member implies in her question, different accounting practices have made comparisons between them very difficult.

At the ASCOT meeting on 15-16 March 1990 it was agreed that Tourism Tasmania would develop a standard pro forma containing categories of expenditure for the 1990-91 financial year and circulate it to members. The categories would separate salaries and overheads from direct expenses for a range of agency functions, such as national and international marketing, retail and wholesale operations, research and development, computerisation and so on.

Tourism Tasmania produced the proforma as arranged and forwarded it to the States in August. Tourism SA had considerable difficulty, as did a number of other agencies, in reallocating its budget to the new categories, but did so as best it could and returned the form to Tourism Tasmania in October. Tourism Tasmania collected data from all the States and then sent the collated material to the Secretary of ASCOT late in January this year, who distributed copies of all the data to ASCOT members. It is intended that ASCOT will collect, collate and distribute the data in future.

While this process is a step forward in helping the States to understand each others' budgets, it has by no means reached the point where direct, reliable comparisons can be made. Because of the very great differences in the way each agency conducts its business, and in the functions for which each is responsible, the categorisation in some instances is quite arbitrary. For instance, Tourism SA was forced to categorise a range of costs to 'other' because they did not fit any of the categories defined, while the Northern Territory Tourism Commission was unable to categorise any of its costs and merely gave totals of each of the specified functions. Further discussion between the States will be necessary before these sorts of problems can be resolved.

On the comparative basis used, the respective total marketing budgets are:

	$m
Victoria	12.197
New South Wales	10.596
Queensland	10.540

Northern Territory	10.313
South Australia	8.254
Tasmania	6.930
Western Australia	5.851
Australian Capital Territory	2.358

Funds allocated to marketing, not including salaries and overheads, comprise 43 per cent of the South Australian budget—a figure only exceeded by NSW at 48 per cent. The equivalent proportions for the States and the ACT (not including the NT) ranged from Queensland's 16 per cent to NSW's 48 per cent and averaged 31 per cent.

SOUTH AUSTRALIAN FILM CORPORATION

139. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: In relation to the Government's decision to loan the South Australian Film Corporation $2.4 million from the South Australian Government Financing Authority:

1. What are the terms of the loan including the duration of the loan, the rate of interest and conditions for repayment?
2. Has the Government or SAFA established conditions for which the loan funds are to be applied and, if so, what are these conditions, for instance, the payment of salaries?

The Hon. ANNE LEVY: It should be noted that the advance to the South Australian Film Corporation is not a SAFA loan but a non-interest bearing capital advance, of up to $2.4 million, to be provided from the Consolidated Account, as required. Specifically, replies are as follows:

1. An advance of up to $2.4 million till June 1992; the advance is non-interest bearing; the advance will be drawn down, on a monthly basis, as required, subject to a financial statement.
2. The funds are to be used for working capital purposes; an amount of up to $200 000 is to be provided from this advance for project development.

140. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: Does the $2.4 million loan to the South Australian Film Corporation incorporate provision for redundancy payments and for paying out contracts?

The Hon. ANNE LEVY: The funds are to be used for working capital purposes. There is no need to include provisions for redundancy payments, as salaried staff have achieved redeployment status. There is provision within the advance for contract payments.

141. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: In relation to the short-term loan that the South Australian Film Corporation negotiated with the South Australian Government Financing Authority to pay for salaries:

1. When did the loan become effective?
2. What was the value of the loan?
3. What was the interest rate on the loan?
4. Has the entire loan been drawn upon?
5. What are the arrangements, including the time frame, for repaying the loan, or have these commitments been paid out as part of the arrangements associated with the most recent $2.4 million loan?

The Hon. ANNE LEVY: It should be noted that the advance to the South Australian Film Corporation is not a SAFA loan but a non-interest bearing capital advance, of up to $2.4 million, to be provided from the Consolidated Account, as required. The $500 000 facility was put in place by SAFA but not drawn against. The corporation's subsequent needs have been provided for from the $2.4 million advance.

142. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: In relation to the South Australian Film Corporation's plans to produce the television mini-series *The Battlers*:

1. What funds are required to be raised to complete the production?
2. What funds have been sought from the Film Financing Corporation and what proportion of the overall budget does this sum represent?
3. When is it anticipated that the corporation will learn whether or not its application to the Film Financing Corporation has been successful?
4. Have production funds been secured from the sources and what proportion of the overall budget do these funds represent?

The Hon. ANNE LEVY: The replies are as follows:

1. Currently budgeted at $5 million.
2. The amount to be sought from the Film Financing Corporation has not been determined pending an offer from an overseas distributor.
3. An application to the Film Financing Corporation has not yet been made.
4. Some production funds have been secured, details of which are commercial and confidential.

144. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: When is it anticipated that the South Australian Film Corporation will begin advertising for a new Managing Director and:

1. What remuneration package will be offered?
2. What will be the term of the contract?
3. Has the Minister accepted the recommendation of consultants KPMG Peat Marwick that the new managing director not be appointed to the board?

The Hon. ANNE LEVY: The position of Managing Director, South Australian Film Corporation, was advertised on 9 February and closed on 8 March 1991. Specifically:

1. The contract for the South Australian Film Corporation Managing Director will be negotiated within a commercial environment; hence details concerning the remuneration package are confidential.
2. To be negotiated.
3. The new Managing Director will not be appointed to the board.

147. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: In relation to all the persons working under contract at the South Australian Film Corporation:

1. What position do they hold, when was the contract signed, what is the duration of the contract and when will each contract expire?
2. In each instance, what are the terms of remuneration and what are the terms for terminating the contract?

The Hon. ANNE LEVY: The replies are as follows:

1. Following is a list of South Australian Film Corporation contract staff and the terms of their current contracts.

Name	Position	Commenced	Expiry Date
Peter Gawler	Executive Producer Feature Films Drama Script Editor	1 Feb. 1989	31 Oct. 1991
Jock Blair	Head of Drama	3 March 1990	11 June 1992
Gus Howard	Supervising Producer Drama	13 March 1989	19 June 1992
Peter Smith	Sound Technician	19 Aug. 1989	15 Aug. 1992

Name	Position	Commenced	Expiry Date
Michael Rowan	Manager, Hendon Studios	5 Jan. 1990	4 Jan. 1993
Jim Currie	Head Sound Mixer	1 July 1990	30 June 1993

2. All contracts for the South Australian Film Corporation staff have been negotiated within a commercial environment, hence details concerning remuneration packages are confidential.

TANDANYA

148. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: in relation to the exhibition that the board and management of Tandanya took to Edinburgh last year:

1. How many works of art were included in the exhibition and what was the value of the exhibition?
2. How many works were sold?
3. What was the gross sum recouped by such sales and what was the sum retained by Tandanya after providing for payment to the artist and allowing for freight and handling costs?
4. Is it proposed that the works not sold to date will be brought back to Adelaide and, if so, when?
5. What is the anticipated cost of returning the works to Adelaide and will Tandanya bear the cost in full or in part for the return of the exhibition and, if so, has provision been made for such expenses in the revised budget of $80 000?

The Hon. ANNE LEVY: The replies are as follows:

1. Thirty-one works of art were included in the exhibition, with a retail value of $100 000, of which $45 000 was owned by Tandanya, and $55 000 was on consignment.
2. A total of five paintings and three didgeridoos were sold.
3. The gross sum recouped from the sale of the artworks was $5 698. After allowing for payments to the artists, freight and handling costs applicable to the artworks sold an amount of $2 578 was retained by Tandanya.
4. It is proposed that works not sold overseas will shortly be returned to Adelaide. Negotiations are still taking place with staff at South Australia House regarding dispatch arrangements. As soon as all arrangements have been finalised the works will be dispatched immediately and should therefore be returned within the next two to three weeks.
5. Preliminary estimates indicate that it will cost Tandanya in the vicinity of $2 000 to $3 000 for the remaining works to be returned to Adelaide. This cost will be borne by Tandanya. It is expected that the net cost of the Edinburgh trip will be within the forecast $80 000 deficit.

PAPERS TABLED

The following papers were laid on the table:

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

Rules of Court—Local and District Criminal Courts Act 1926—District Criminal Court—Criminal Proceedings.
Occupational Health, Safety and Welfare Act 1986—Regulations—
Asbestos Work Processes.
Construction Safety—Asbestos.
Industrial Safety—Asbestos.

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

Trustee Act 1936—Regulations—Custom Credit Corporation.

By the Minister for the Arts and Cultural Heritage (Hon. Anne Levy)—

Director-General of Education—Annual Report, 1990.
Metropolitan Taxi-Cab Act 1956—Issue of Licences.

By the Minister for Local Government Relations (Hon. Anne Levy)—

City of Port Lincoln—By-law No. 25—Dogs.

MINISTERIAL STATEMENT: RIVERLAND FRUIT FLY OUTBREAK

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

Leave granted.

The Hon. BARBARA WIESE: The Minister of Agriculture in another place wishes to advise honourable members of the progress of the Government's efforts to bring the fruit fly outbreak in the Riverland under control. Following the trapping of three Queensland fruit flies in the Department of Agriculture's lure grid system an outbreak was declared on Friday 15 March. The department then immediately implemented an eradication program. Honourable members may be aware that a fourth fruit fly has since been trapped. Fortunately, it was within the outbreak area and will not result in any widening or extension of the area currently under treatment.

By the afternoon of 16 March, all properties within a 400 metre radius of the outbreak had been fully baited using a chemical attractant, which is 97 per cent water, 2 per cent protein and 1 per cent malathion. The chemical is used at a rate considerably less than that found in common treatments for head lice in humans. An intensive trapping grid within a 1.5 kilometre radius of the outbreak was completely baited by 18 March and a second baiting of what is known as the 'red zone', 400 metres from the outbreak, had been baited a second time. The red zone is being baited twice a week and the outer zone of 1.5 kilometre radius is being baited once a week. This will continue for 12 weeks.

The intensive trapping grid within the 1.5 kilometre eradication area is being examined daily for further evidence of fruit fly. The total area to be treated is approximately 708 hectares, which includes 200 hectares of cereal stubble which obviously will not be affected. All growers and their families have been very cooperative and the Department of Agriculture has been able to fit its baiting program in with the normal harvesting and irrigation schedules. Extensive negotiations have been taking place between the department and exporters, processors and interstate quarantine authorities to ensure South Australia's access to interstate markets is maintained as far as is practicable.

It is important to realise that the Riverland no longer enjoys area freedom status in terms of interstate trade. As a consequence, fresh fruits and vegetables known to be fruit fly hosts must meet specific interstate conditions of entry. The impact on the Riverland of this outbreak is very serious. The horticultural industry in that region is worth $170 million. It will only be through the combined and consistent efforts of the whole community, in concert with the Government, that we will bring this outbreak under control and thus preserve for South Australia its valuable horticultural industries.

QUESTIONS

EDUCATION EXPORTS

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister representing the Minister of Employment and Further Education a question about education exports.

Leave granted.

The Hon. R.I. LUCAS: I refer to recent press reports that the Federal Government's export education drive may be in jeopardy, due primarily to changes to regulations covering the issue of students' visas. In one of the reports, in the *Age* yesterday, it was reported that at least 13 private colleges for overseas students have collapsed in the past nine months, leaving more than 4 000 Asian students in crisis. In another, it was reported that the number of students entering English Language Intensive Courses for Overseas Students (ELICOS) colleges from Hong Kong and Taiwan fell by 45 per cent in the calendar year 1989 to 1990.

Here in South Australia we have so far been fortunate that no language colleges have folded. However, there is some concern among Adelaide ELICOS colleges that a combination of inept Federal Government policy and rigid immigration rules are having their own effect on Asian student enrolments. For example, one college reports that previously it had a good market in Thai students enrolling in its English language courses, but this year virtually none. Previously it had up to 20 Korean students studying English, whereas this year it now has one or two. There has even been a drop off in Japanese students studying English. The reasons are varied but foremost has been the Hawke Government's making it more difficult for students to obtain visas and, more specifically, stigmatising students from certain countries by classifying them as 'high risk'; in other words, likely to overstay their visa.

As a result, students from countries such as Thailand, Hong Kong and the People's Republic of China who want to study English in Australia have to pay an upfront $230, non-refundable provisional visa application fee. Students from these so-called 'high risk' countries also have to undergo a more rigorous and lengthy screening process before they are allowed to enter Australia to study.

The Federal Government, perhaps finally aware of the detrimental effects such measures were having on its $500 million a year education export industry, decided to relax the regulations. Last June, it advised Adelaide language colleges the new regulations would come into effect from 1 January. However, on 19 December at least one of the colleges received a letter from the Department of Employment, Education and Training (DEET) saying that the new regulations would not come into force until March 1991. This, of course, was a totally useless decision as far as the colleges were concerned because they wanted to advise students considering starting their course in January or February 1991 what the new regulations would be. It has been put to me that such bureaucratic dilly-dallying does nothing to foster confidence in the Australian further education system or the politicians making such policy decisions. Increasingly, many foreign students are turning to the United Kingdom or the United States not only to learn English but later to undertake tertiary studies.

In one college that I have contacted, the loss of two or three dozen Asian students so far this year could cost the education export industry up to $5 800 a student, for a nine month course. But when it is realised that those lost students may have gone on to do three or four year undergraduate courses, and possibly post-graduate degrees, with the associated fees, the full extent of the financial losses becomes apparent. My questions to the Minister are:

1. Is he concerned that Australia's $500 million education export industry might be in jeopardy because of the restrictive policies imposed by the Hawke Government?

2. Does he have concern that local colleges that run English Language Intensive Courses for Overseas Students (ELICOS) have noted a fall-off in some students from Asian nations because of Australian visa restrictions?

3. If so, what submissions has the Minister made to his Federal counterpart in a bid to ensure Australia's and, in particular, South Australia's education export industry thrives again?

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

ELECTORAL ADVERTISING

The Hon. K.T. GRIFFIN: My questions are to the Attorney-General, as follows:

1. Has the Attorney-General or the State Government made any representations to the Federal Government or Federal ALP members or engaged in any consultations in relation to the proposed ban on television and radio electoral advertising? If so, what representations were made and what consultations have been held and, if not, is it proposed to make any representations or request any communications on the issue?

2. Does the Attorney-General share the view of some of his Federal colleagues that electoral advertising on television and radio should be put in the same category as tobacco advertising and banned?

3. Does the Attorney-General acknowledge that it is bizarre that citizens may be persuaded by television and radio advertising to attend the football, the cricket, the Grand Prix and other events, to buy motor cars, alcohol, clothes, books, food, and a wide range of other products and services relevant, and maybe irrelevant, to their lives but may be prevented by the Federal Government from being informed or persuaded by those with issues and points on so fundamental a matter as democratic representation from hearing or seeing those arguments on radio and television?

The Hon. C.J. SUMNER: The answer to the first part of the first question is: not to my knowledge. The answer to the second part of the first question is: No. The answer to the second question is: it is a matter for the Federal Government. The answer to the third question is: No.

ARTS ASSISTANT DIRECTOR

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage a question about the appointment of the Assistant Director, Department for the Arts and Cultural Heritage.

Leave granted.

The Hon. DIANE LAIDLAW: The Government is seeking applicants for a new position within the Department for the Arts and Cultural Heritage, that of Assistant Director at a salary of $62 500. The position was first advertised in the Government's 'Notice of Vacancies' Bulletin on 6 March—a mere eight days after the Minister took to Cabinet on 26 February her recommendation that Ms Anne Dunn be appointed head of the department and a mere six days after Ms Dunn's appointment was approved by Executive Council on 28 February.

While some may welcome this remarkably short time frame as evidence that Government bureaucracy does not always operate at a monotonously slow snail's pace, the 6 March advertisement suggests that negotiations between the Minister, Ms Dunn, and the Chairman of the Government Management Board, Mr Strickland, for the appointment of Ms Dunn and the creation of an Assistant Director's position must have been proceeding for some considerable time prior to the announcement of Ms Dunn's appointment—and all that time behind the back of the then Director of the Department for the Arts, Mr Amadio. I ask the Minister the following questions:

1. Why has the creation and advertising of the position of Assistant Director of the Department for the Arts and Cultural Heritage been pushed through with unseemly haste prior to the finalisation of the structure of the new department?

2. Why did the Minister and Mr Strickland agree to the creation of an Assistant Director's position when the Government's own structural efficiency guidelines require the elimination of such 'one-on-one' positions—those one-on-one positions being the appointment of a person to directly help the CEO manage the department, as opposed to the appointment of managers responsible for clearly defined areas of responsibility within a Government agency?

3. As the notice of vacancy identifies that all inquiries regarding the position are to be directed to Ms Dunn, instead of the old number at Local Government, what is the selection process for the appointment of the Assistant Director? For instance, will there be a selection panel, and who will be on that panel?

The Hon. ANNE LEVY: I would first like to say that it is extremely unlikely that any discussions were occurring between Ms Dunn and Mr Strickland before her appointment, as she was totally unaware of her forthcoming appointment.

The Hon. L.H. Davis: Out of the blue, was it?

The PRESIDENT: Order!

The Hon. ANNE LEVY: She was certainly totally unaware of it until the Cabinet decision was reached, and I informed her of the—

The Hon. Diana Laidlaw: Did you ask her whether she would even accept it?

The PRESIDENT: Order!

The Hon. ANNE LEVY: I am surprised also that the honourable member calls it 'unseemly haste' when, in the same breath, she complains about the length of time that Government appointments usually take. It seems to me that she is trying to have her cake and eat it, too. Further, with regard to the honourable member's questions, I presume that the usual selection panel will be set up and that the correct and normal Public Service procedures will apply. But, to set the honourable member's mind at rest, I will seek information from the Commissioner for Public Employment to bring back to her.

MULTIFUNCTION POLIS

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister of Consumer Affairs, representing the Minister of State Development, a question relating to the multifunction polis.

Leave granted.

The Hon. I. GILFILLAN: Comments made at the weekend in Adelaide by members of the MFP International Advisory Board raised a number of questions about the project. In the *Advertiser* of both today and yesterday, some rather interesting and challenging observations were made. The International Board members were quoted in the media as saying, among other observations, that the Government needs to consider a range of tax incentives to encourage international commitment to the project. Although members may have read yesterday's article, I will quote from it, as follows:

> Mr Phillip Hughes of Britain, Mr Pyong-Hwoi Koo of South Korea, and Professor William F. Miller of the United States said they had been well briefed on the project but were anxious to learn more from the MFP-Adelaide management board today.

That is, yesterday, 18 March. One of the members, Mr Koo, Chairman of the Lucky-Goldstar International Corporation and Chairman of the Korea committee of the Pacific Basin Economic Council, said he was in the process of forming his opinion on the MFP. Mr Koo said Korea was Australia's third largest market for imports and there needed to be 'economic cooperation and challenging projects'. Professor Miller, a business management and computer science professor at Stanford University in California. said the MFP was a very serious project, which fitted with the Federal Government's plan to create a clever country and a value-added approach to industry.

Although it does not pose a direct question, it is interesting that, in this morning's paper, Mr Saito, through an interpreter, said:

> Japan had promoted the project from the outset and had 'unilaterally supported the idea of establishing a new model city for the world'.

The report continued:

> He described the proposed MFP site at Gillman as 'wonderful' and said it was a suitable location for what he hoped would be an 'ideal city which is open to the world'. He said it would not become an enclave of Japanese in Adelaide because the trend for Japanese people living abroad was to establish closer relationships with the local people rather than keep to themselves.

These articles point out that Mr Koo of Korea stated the need for economic cooperation and challenging projects and that Professor William Miller believes the MFP fits in with a plan to create a clever country and a value added approach to industry. The board has met and has been further briefed, so the questions that the Minister can answer for all of us come from those observations.

First, what type of tax incentives were proposed by the Advisory Board and do they have the support of the State Government? Secondly, can the Minister provide examples of '... economic cooperation and challenging projects...' that Mr Koo is reported in the *Advertiser* to have said need to exist between South Australia and countries such as Korea, Britain and the United States in the MFP project? Finally, will the Minister tell the Council the range of value added industries that are proposed for the multifunction polis, as referred to by Professor William Miller of the USA?

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

GOVERNMENT ACCOUNTS

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Small Business a question about slow payment of accounts by Government agencies.

Leave granted.

The Hon. L.H. DAVIS: About two years ago the Premier and Treasurer (Mr John Bannon) put out a directive that all Government agencies should pay accounts within 30 days, and that policy was made known publicly. Indeed, that policy was confirmed by the Minister herself just over

one year ago when, in answering a question in the Legislative Council on 22 February 1990, she said:

> During the past few years the policy of the Government has been to ask departments when meeting their commitments to pay promptly and to pay within 30 days.

She went on to say:

> There have been, I believe, surveys from time to time of Government departments to see what their performance in this area has been, and during the past three years there has been significant improvement in the payment record of Government agencies.

On Sunday, as I suspect the Minister of Small Business may be aware, the Liberal Party conducted a small business phone-in, which attracted 131 calls from metropolitan Adelaide and rural South Australia. Indeed, another 30 calls have been received yesterday and today from small businesses, many of which are in some distress.

Notwithstanding the Premier's directive of 1989 and the Minister's assurance last year about the prompt payment of Government accounts, eight complaints were made of slow payment by Government agencies, and one can only surmise that this is the tip of a very big iceberg. The complaints covered the Departments of Agriculture, Woods and Forests and Education, and the Queen Elizabeth Hospital, and there were three complaints about SACON, aptly named. Some complaints were of account totals of thousands of dollars remaining unpaid for up to four months and in at least two cases—and I have checked with these businesses again this morning—the businesses are fighting for survival.

As one small business proprietor bitterly observed, Government economic policies have forced his business to the edge of extinction and, if that is not enough, the Bannon Government pays its account more slowly than do any other of his customers. I just list these factual examples of slow payment of Government accounts. First, a supplier to the Department of Agriculture and Woods and Forests said that 60 days is quick; 90 days is common. Another supplier to the Queen Elizabeth Hospital rendered his account in October last year and received payment in late February—a payment blow-out of at least four months, and that was for an account of several thousands of dollars. Another person harangued a department to get a payment of $25 on a casual order. It took him four months to get that payment. He was very upset, understandably, that such a small amount took such a long time to pay.

Another example again involves SACON. It took three months for the account to be paid and every time the supplier rang to ask for payment he was told that the invoice could not be found and no-one seemed to be responsible. He could not find whom to speak to. He said it was a merry-go-round; a nightmare; a frustrating experience. In another example involving SACON, the proprietor of a small country business said he often had to wait up to four months and sometimes more for payment; then, with the Education Deptartment, at least three months.

Finally, a small business proprietor raised the matter of a cheque that sat on a desk in a public department for 10 days and no-one was prepared to process it because the public servant responsible was on leave. That cheque was for tens of thousands of dollars and obviously cost that proprietor a lot of money in lost interest.

So, that phone-in revealed, I think, a very serious situation and, quite clearly, a Government that is not in control of its agencies and the payment of accounts. My questions are:

1. Can the Minister of Small Business advise the Council, as a matter of urgency, whether she has insisted that small business in South Australia should be paid promptly, and certainly within 30 days at this particular time of economic crisis?

2. When was the last survey taken of Government departments to measure their performance in the matter of payment?

3. Who conducted that survey and what were the results?

4. In any event, will the Minister, as a matter of urgency, send a memo to all Government agencies requesting that they comply with the Premier's publicly stated guideline, also asking them to detail for her, as the Minister of Small Business, the number and value of accounts that have remained unpaid for three months or longer this financial year?

5. Will the Minister, as a matter of urgency, bring back a report to the Council detailing the results of this investigation?

The Hon. BARBARA WIESE: I shall be happy to inquire when the last survey of Government departments took place to ascertain the promptness of the payment of accounts and provide that information for the honourable member. But, as I indicated last year, my information has been that Government departments have improved their record in paying accounts promptly. I would suggest that a sample of eight businesses from all of those hundreds of thousands of businesses in South Australia is not a very large number of businesses upon which to base the view—

Members interjecting:

The PRESIDENT: Order! The honourable Minister.

The Hon. BARBARA WIESE: —that somehow or other Government departments at large at all times are derelict in fulfilling the responsibility that has been charged of them by the Premier's circular to which the honourable member referred. I will make the inquiries concerning the payment of Government accounts that the honourable member has requested and bring back a report. I am sure that, if Government departments are regularly not paying their accounts, action will be taken to ensure that they do. I repeat that a sample of eight across all the businesses in South Australia is not an alarming number.

SPEED CAMERAS

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Emergency Services, a question about speed cameras.

Leave granted.

The Hon. J.F. STEFANI: In a response to various questions and concerns raised by the Liberal Opposition concerning the use of speed cameras, yesterday the Government named 10 top target locations where speed cameras have been used in an effort to curb the road toll and reduce the incidence of serious accidents. The Police Department has further advised that speed cameras are being operated at 300 different locations throughout the Adelaide metropolitan area and country centres. My questions are:

1. Will the Minister provide the name of all locations where speed cameras are being used?

2. Will the Minister give an undertaking that speed cameras and speed detection devices will be used as a priority at black spot high accident areas before being used at any other location?

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

GOVERNMENT PURCHASING

The Hon. M.J. ELLIOTT: I seek leave to make a brief statement before asking the Minister of State Services a question about Government purchasing.

Leave granted.

The Hon. M.J. ELLIOTT: The Federal Government has recently established an environmental futures group or 'Green Team' charged with scrutinising Government purchases from toilet paper to building materials, and making recommendations on increasing the use of environmentally acceptable products and practices. The team comprises eight members drawn from the media, the environment and consumer groups, unions and Government departments. There are some who are cynical about the motivation of the Federal Government, but I will leave that to one side. The Federal Government, with $10 billion of purchasing power, saw that it had an ability to influence the direction of industry in a substantial way. Moves to use that power to encourage more environmentally sound products and practices deserve credit. Among the stated aims of the group is improving the cost effectiveness of environmentally acceptable products and practices and encouraging industry to expand and establish in relevant areas.

Considering that the South Australian Government spends several billion dollars each year, it also has an ability to influence the market in a positive way, certainly within the State. I have raised a similar question once before concerning fluorescent light globes. The first Australian State which moves to take on some of these products has a real chance to attract the industries that manufacture the products. To give an example of the effects that Governments can have, or at least large purchases can have, recycled paper just one year ago was $3 a ream more than ordinary white paper but, with the increase in demand, the price differential now is only 40c, and the gap is closing.

I ask the Minister whether or not the Government has considered setting up a body similar to that established by the Federal Government to examine purchasing, particularly in respect of environmentally sound products and, if it has not done this, why it has not.

The Hon. ANNE LEVY: As Minister of State Services I am responsible for the State Supply Board, which is responsible for not all but a large part of the purchasing for the Government. Previously I have indicated to the Council, though I am very happy to repeat it, that the Government did decide to encourage the use of recyclable or recycled material. In doing so, it asked all agencies to consider purchasing environmentally friendly goods, in particular, goods made from recycled paper, though certainly not limited to that. It agreed to apply a 5 per cent price preference for six months so that, as we recognised at that time, the large differential in price between standard items and environmentally friendly ones was often due to the low demand for environmentally friendly products.

Certainly, since the 5 per cent preference was brought in the price of recycled paper has fallen considerably relative to that of virgin paper, and while there is still a price differential the gap is narrowing. I am sure that this is due to the greater demand for recycled paper not only from the South Australian Government although the use by this Government of recycled paper has contributed considerably to the demand for recycled paper and hence to the narrowing of the gap in price.

I point out that the preference that the Government applied to environmentally friendly products was to last for six months only, as it was felt that six months was certainly sufficient time for manufacturers to prove their products and produce in sufficient volume to bring the price down. We were not willing to inflict on the taxpayer a preference lasting longer than six months. The six months must be close to being up by now and I would be happy to seek a report from the State Supply Board on the effect, as it is able to determine it, of this policy once the six months is up, and provide such a report to the honourable member.

The Hon. M.J. ELLIOTT: I have a supplementary question: does the Minister agree that what the Federal Government is doing is substantially different from what the State Government has done so far, in that what the State Government is doing relates only to recycled materials and only allows for 5 per cent tolerance? The Federal Government is using larger tolerances to bring prices down.

The Hon. ANNE LEVY: I realise that there are differences. If the Federal Government is establishing a list of preferred products from an environmental point of view, I am sure that those products will apply in South Australia as much as anywhere else in Australia, so there is no need for the work to be done twice. Certainly, the South Australian Government decided on a 5 per cent preference and stands by that figure as being a reasonable figure, which will encourage the production of environmentally friendly materials without imposing an unreasonable burden on the taxpayer who, after all, is paying for these purchases that the Government makes.

ESCAPED PRISONER IDENTIFICATION

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Minister for Crime Prevention, representing the Minister of Emergency Services, a question about attempts to identify an escaped prisoner.

Leave granted.

The Hon. J.C. IRWIN: My office was contacted today by a taxi driver who related a rather incredible tale. His taxi was sideswiped about 9.45 a.m. yesterday, 18 March. The other vehicle did not stop. The taxi driver recorded the registration number of the vehicle as it took off. He went to the police immediately and reported the incident. About an hour later it suddenly occurred to him that the driver, whose face looked familiar, could be the prison escapee Sean Cox, who escaped from custody on 3 March this year.

The taxi driver rang Angas Street police, who put him on to the Major Crime Squad, which in turn put him on to the CIB. The CIB told him to ring Holden Hill. He wanted to have a look at the photo of the escapee to see if indeed it was the same person. Holden Hill told him to go to Elizabeth to view the photo there. Why he was told to go to Elizabeth escapes me, because Elizabeth police did not have a photograph. The taxi driver rang the CIB and they did not have a photo. The taxi driver was contacted late yesterday and told to go back to Elizabeth as they had managed to get a polaroid photo for the taxi driver through Correctional Services. This was at about 7.30 p.m. On viewing that photo, he could not be certain beyond reasonable doubt that it was the escapee.

The Hon. R.R. Roberts interjecting:

The PRESIDENT: Order!

The Hon. J.C. IRWIN: The taxi driver is still waiting for a call from the police to let him know about the owner of the car that swiped him. He is upset because he feels he has been given extraordinary treatment when he was genuinely trying to help the police—and, consequently, the people of South Australia. As it has been reported that the escapee may be in the Elizabeth area, he cannot understand why the police do not hold a photograph there as well as

at some central place so that the public can view it immediately if there are sightings. The taxi driver telephoned the Minister of Correctional Services yesterday and so far has received no satisfaction regarding his complaints. My questions are:

1. Is it usual for photographs not to be kept by the police, anywhere it seems, of convicted persons, especially an escaped criminal?

2. Is it acceptable that a person genuinely trying to help the police is sent all over the metropolitan area in order to do his or her duty—and this person went to Elizabeth twice?

3. Will the Minister ensure that, in the interests of crime prevention and apprehension, up-to-date photographs are available and kept in a central location?

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

PORT LINCOLN CULTURAL CENTRE

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage a question about a cultural centre for Port Lincoln.

Leave granted.

The Hon. PETER DUNN: Members of the Council would know that there are cultural centres in the regional cities of Mount Gambier, Renmark and Port Pirie.

The Hon. Anne Levy: And Whyalla.

The Hon. PETER DUNN: And Whyalla, correct, and they are very good. At this stage there is not one at Port Lincoln. It is the only large provincial city that does not have a cultural centre of any size—and Port Lincoln is further from Adelaide than the other cities. I suppose Ceduna could come under that category, although it has a much smaller population. The Port Lincoln City Council has asked on several occasions if it could have some money. Originally, it asked for $3.5 million to upgrade the present town hall which is now not used. That application was rejected. About 12 months ago, it asked for the modest sum of $1.3 million, but that was rejected. Just recently, after a further request, it was made an offer of $50 000 for curtains and carpet. The Minister has obviously not given this matter much consideration. My questions are:

1. Is there any intention to provide funds for a cultural centre at Port Lincoln?

2. Will it be further delayed and, if so, for how long?

3. Was the $50 000 a once-only offer?

The Hon. ANNE LEVY: It is true that South Australia is the envy of other States in our having four wonderful regional cultural centres around this State. As the honourable member mentioned, they are extremely fine facilities, located in Whyalla, Port Pirie, Renmark and Mount Gambier. They are regional cultural trusts and, as such, serve regions rather than towns, and the cultural trusts which are responsible for the particular facilities have membership from over a wide regional area. Port Lincoln is part of the Eyre Peninsula Cultural Trust and I think that two members of the trust live in Port Lincoln and certainly take part in the work of the Eyre Peninsula Cultural Trust.

With regard to a facility in Port Lincoln, the Eyre Peninsula Cultural Trust does maintain an art gallery in Port Lincoln, being the only art gallery outside the Middleback Theatre in Whyalla, which the Eyre Peninsula Cultural Trust maintains. So, it cannot be said that the cultural trust is ignoring Port Lincoln. It does have the art gallery there and has recently allocated considerable funds for upgrading that art gallery in Port Lincoln. The Eyre Peninsula Cultural Trust is certainly cognisant of the cultural needs of Port Lincoln, along with all the towns and townships on Eyre Peninsula, all of which form part of its mandate.

The old town hall in Port Lincoln is the property of the Port Lincoln council. It is not the property of the cultural trust or the Government. The Port Lincoln council built its new municipal chamber and premises next door to the old town hall—

The Hon. Peter Dunn: Somebody else built them and they rent them.

The Hon. ANNE LEVY: Well, the council had a partnership with a developer to provide new premises next door, and it no longer uses the old town hall. There is no doubt that the old town hall is capable of being renovated to provide a much better arts facility than it currently provides. But it is not an inadequate site at the moment and is used as an arts facility by local groups and visiting groups to Port Lincoln. I can well understand that the people in Port Lincoln would like to have it upgraded and improved as a site for cultural activity, but there is no question (and there never has been) of providing a new cultural centre in Port Lincoln as we have at Whyalla, Port Pirie, Renmark and Mount Gambier. These were new purpose-built buildings. Port Lincoln comes within the ambit of the Eyre Peninsula Cultural Trust, which is based at Whyalla.

Regarding the upgrading of the old town hall, the council has made approaches to the Government at various times. I might say it is not alone in doing this. Many places throughout South Australia make application to the Government in regard to upgrading their cultural premises, but the Government's funds are not unlimited. I have spoken about this matter to members of the council in Port Lincoln on several occasions and have made clear to them that, in the current economic circumstances, there is no way that the Government would be able to provide sums of between $1 million and $2 million required for a complete upgrading of the old town hall. We have suggested to them that they should examine a more modest proposal which would be more within the resources of the district.

The Government is very happy to provide such assistance as it can from the arts facilities capital grants fund, which is a small fund to which applications are made from right around South Australia for small grants to improve certain arts facilities. The $50 000 was given for lights and curtains, and that is a very proper use of this fund, the purpose of which is to provide grants to improve the arts venues around South Australia. Sums such as this can be applied for and used to improve cultural facilities in the country regions.

Indeed, many such grants are given each year, rarely of the size of $50 000. It is much more usual that they are in the range of $5 000 to $10 000. However, they are grants which are very much welcomed by the recipients, and they have done a great deal to improve the cultural venues throughout South Australia, to the great benefit of the country people in this State.

The Hon. PETER DUNN: Can I have an answer to my first question? Has the Minister any intention of providing funds for a cultural centre in Port Lincoln?

The Hon. ANNE LEVY: Mr President, I have answered that question. There is not and never has been any question of providing another cultural centre of the type which exists in Whyalla, Port Pirie, Renmark and Mount Gambier. That has never been suggested by anyone, and it is not the intention of this Government to do that.

The Hon. Diana Laidlaw interjecting:

The Hon. ANNE LEVY: No Government has ever suggested that—Labor or Liberal. It has never been suggested. It has not been suggested by—

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: I stress that it has not been suggested by the Port Lincoln council, either.

COMMUNITY SUPPORT INCORPORATED

Dr BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Family and Community Services, a question about Community Support Incorporated.

Leave granted.

The Hon. BERNICE PFITZNER: It has been reported that a community support scheme has received joint funding of $1.6 million from the Commonwealth and $1 million from the State for the HACC (Home and Community Care) program. It is further reported that the community support scheme funds will be managed by a new organisation called Community Support Incorporated, about to be formed. This organisation, Community Support Incorporated, will be a resource pool and support service to the designated specialist agencies targeted at people with intellectual disability, brain injury, autism, behaviour disorder and psychiatric disability. The designated specialist agencies are Julia Farr Centre, IDSC, Mental Health Services, the Management Assessment Panel and the Autistic Childrens Association of South Australia. My questions are:

1. Why are the designated specialist agencies not given this funding to implement their own community support programs?

2. Is this new organisation—Community Support Incorporated—just another bureaucracy of the off-shore type to eat up the funds in administration instead of services?

3. Why will this new Community Support Incorporated provide home support and respite care instead of residential accommodation and respite care, which is what the people who look after these disabled people are requesting and need?

4. With the impending closure of the Hillcrest Mental Hospital, is this a ploy to try to pressure the psychiatric disabled to be managed at home?

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

EQUAL OPPORTUNITY

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General a question about the Equal Opportunity Act.

Leave granted.

The Hon. M.J. ELLIOTT: Perhaps a letter I have received will best put the position before the Attorney-General. I will delete the names of the people involved, and particularly that of the insurance company. The letter reads:

> Further to today's phone call I am writing, with the backing of my association, to complain about the refusal of ('x' insurance company) to detail to me why they will not offer to accept my application for 'mortgage protection insurance'. As you will be aware, this type of insurance is designed to assist people who, because of retrenchment, illness or accident, are unable to make their normal home loan repayments.
>
> Except for an 18 month overseas study tour in 1985-86, I have had gainful employment since 1980. For the last few years I have received an income of near average weekly earnings. My present employer is very happy with my work and recently requested me not to accept an offer to move to a higher paid position interstate. I have never defaulted on a home loan, personal loan or bank card repayment.
>
> I therefore can see only one reason why there may be some question about me getting this type of insurance. When I was seven I had a spinal turmour and recently I needed an operation to correct problems related to my disability (I use a wheelchair because of paralyses of both legs). Despite this medical history the AMP were happy to cover me for life insurance.
>
> I understand that under the Equal Opportunity Act an insurance company may refuse an application if they have actuarial data that indicates the applicant is an unacceptable risk. As paraplegics only entered the workforce in large numbers in recent years I defy them to produce any data that would support such a claim.
>
> In any event, if ('x' insurance company) are concerned about my disability I would have thought it reasonable to offer me insurance with an escape clause. That clause could be that they would not pay if I defaulted on my home loan repayments because of a situation arising directly from my disability. In this case they would fund me if I could not make a repayment because of accident, retrenchment or time off work because of a medical condition not related to my disability (e.g. heart attack).
>
> As it is, they refuse to tell me why they will not insure me and insist that the issue is 'not negotiable'. I am left in the dark and apparently meant to accept their high-handedness with no thought of questioning their Machiavellian bureaucratic policies.
>
> I, and this association, refuse to accept this proposition and therefore request that the policies, practices and procedure used by the insurance company to assess eligibility for insurance be fully investigated to ensure that they do not violate equal opportunity principles.

I have copies of correspondence between this insurance company and the individual. The insurance company has used its words very carefully. They talk about 'careful and sympathetic consideration'. They also say that the 'application was not acceptable as a standard risk'. They say also that their 'underwriting guidelines . . . are confidential to us' and that their decision is not negotiable. They very carefully never said that at any time it related to this person's disability.

I ask the Attorney-General whether or not he feels that equal opportunity is adequate to cope with this sort of situation, where a person quite plainly is capable of servicing the insurance. At the very least there could have been some qualification clause in the policy. However, he is simply being refused, and that makes the question of housing much more difficult than for other members of our community.

The Hon. C.J. SUMNER: If the honourable member lets me have copies of the correspondence, I will take up the matter.

MULTIFUNCTION POLIS

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Industry, Trade and Technology, a question about the MFP.

Leave granted.

The Hon. J.C. BURDETT: The *Advertiser* of Saturday 15 September 1990 had a full page on the MFP. It said that this page was prepared by the MFP Adelaide project team for the people of South Australia. It had a large headline on the left hand side at the top: 'MFP Adelaide—The Facts'. There is a note from the Premier, and then 10 alleged facts are set out. The one to which I wish to refer is so-called fact 9 'Law and Governance—Australian laws apply', which reads:

> The new areas to be settled will be governed by Commonwealth and State law and operate in accordance with normal local government requirements.
>
> Residents of MFP Adelaide will have the same status before the law as every other member of the Australian community.

This will include laws relating to immigration, citizenship, foreign investment and taxation.

This had been a concern of mine, and I have spoken about it in this Chamber before. I am concerned whether there will be one law for those in the MFP and another for the rest of us. I now refer to page 10 of today's *Advertiser*. The Hon. Mr Gilfillan, in a slightly different connection, referred to this. Under the headline 'Go ahead given international push on MFP', the article is as follows:

The MFP International Advisory Board has agreed to an extensive program of global activities to generate international awareness and investment in Adelaide's multifunction polis proposal. The board, which met for the first time in Adelaide yesterday, also suggested measures such as immigration and tax incentives—

which were referred to by the Hon. Mr Gilfillan—

to increase domestic and international interest.

So, already there is a change. First, we were told that the laws would be the same as the laws of the State and Australia; now we are told that suggestions are being made in regard to immigration and tax laws, and that incentives are being sought. My questions are:

1. Does the Minister support the concept of the taxation and immigration laws being changed with regard to the MFP?

2. Which of the other so-called facts on the 'Facts page' will be abandoned?

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

STATUTES AMENDMENT (CRIMINAL LAW SENTENCING) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave to introduce a Bill for an Act to amend the Criminal Law (Sentencing) Act 1988, the Children's Protection and Young Offenders Act 1979 and the Correctional Services Act 1982.

PRIVATE PARKING AREAS (DISABLED PERSONS PARKING) AMENDMENT BILL

The Hon. ANNE LEVY (Minister for Local Government Relations) obtained leave and introduced a Bill for an Act to amend the Private Parking Areas Act 1986. Read a first time.

The Hon. ANNE LEVY: I move:

That this Bill be now read a second time.

In January 1988 the Private Parking Areas Act 1986, repealing and replacing the Private Parking Areas Act 1965, was brought into operation together with regulations and a code of notices, signs and road markings. The owners of private car parks (that is, supermarkets, hotels, etc.) may, by the erection of prescribed notices, signs and road markings, establish certain parking controls under the Act. Pursuant to section 7 (2) of the Act, the owner has the discretion to set aside any part of a private parking area as a disabled person's parking area, and these are generally characterised by wide parking spaces located near main buildings for particular use by disabled persons with wheelchairs or other aids. Where time limits have been imposed in private parking areas, vehicles displaying a disabled person's parking permit are allowed 90 minutes in excess of the time limit.

In respect of the use of areas set aside for disabled persons, section 8 (2) provides that a motor vehicle must not be parked in a disabled person's parking area unless a disabled person's parking permit is exhibited in the vehicle. By definition in the Act, 'disabled person's parking permit' means:

(a) a permit issued by the Registrar of Motor Vehicles under section 98r of the Motor Vehicles Act 1959;

or

(b) a similar permit or authority issued under the law of another State, or a Territory, of the Commonwealth.

The maximum penalty for the unlawful use of a disabled person's parking space is $200 and, alternatively, where the private parking area owner and the council of the area have entered into an enforcement agreement under section 9, an expiation fee of $20 is applicable. In the absence of any agreement between the owner and the council, no expiation powers apply and the owner may only follow up an offence by issuing a summons. The decision to confine the exercise of expiation powers for parking offences committed on private parking areas to local government authorised officers, and members of the Police Force, was one of policy arrived at after consultation with the Crown Law Office.

It was considered that only members of the Police Force and trained and experienced local government authorised officers, who are also engaged in policing and enforcing the on-street parking regulations and other expiable offences under legislation such as the Dog Control Act and the Clean Air Act, should be empowered to issue expiation notices for parking offences in private parking areas. However, since the commencement of the re-enacted legislation and in response to the concern expressed by disabled persons' organisations, it is apparent that there are limited guidelines for the uniform implementation of parking facilities for the disabled in private parking areas. Furthermore, where they are provided, the Act has not resulted in adequate enforcement of those parking areas.

The demand for disabled persons' parking permits has grown, but it appears that the machinery contained in the Act is not being used to provide disabled parking which can be enforced in private parking areas. Although there are some exceptions, few owners have taken steps to provide the prescribed notices, signs and pavement markings to give effect to parking restrictions or have entered into agreements with councils. Allied to this, some councils are also reluctant to police private car parks, due perhaps to their perception that the financial implications will be unfavourable. The present situation is that:

(a) despite powers being available under the Act, councils have not become involved to any significant extent;

(b) some members of the public are parking unlawfully in disabled parking spaces to the exclusion of permit holders;

and

(c) this unlawful parking is not being penalised.

To more clearly identify the problems and establish ways to overcome them, the South Australian Local Government Engineers Association, known by the acronym SALGEA, was funded jointly by the Department of Local Government and the Disability Adviser's Office, Department of the Premier and Cabinet, to engage a consultant to undertake a study to investigate and recommend measures to improve the provision and policing of parking for the disabled in private parking areas. In November 1989 the chosen consultant, Ian Bidmeade, prepared a report entitled 'Parking for People with Disabilities in Private Parking Areas—Some Options for Improvement'. The options contained in the

report were appraised by a SALGEA subcommittee for the consideration of a steering committee.

In 1990 a steering committee was formed comprising members of SALGEA, the Disability Adviser to the Premier, and the Executive Director, Disabled People(s) International (South Australian Branch) and it was chaired by an assistant director, Department of Local Government. A project officer was appointed for a limited period. Funding for this person was provided by the State Government's social justice program. As the first step to implement change, the committee has recommended that local government councils be empowered to police and enforce disabled persons parking areas in neighbouring private parking areas, notwithstanding that no enforcement agreement has been entered into between the owner and the council.

As a second step it is proposed to amend the private parking areas regulations to increase the expiation fee for unlawful use of a disabled parking space from $20 to $50. It should be noted that a Planning Act supplementary development plan for centres and shopping development is under preparation and the committee has ensured that there will be provision for a fixed ratio of disabled parking spaces relative to the total area. Concurrent with this, a concise reference to the provision and enforcement of disabled parking in the form of guidelines is being prepared for issue to local government councils and developers to ensure that a consistent and fair approach to disabled parking is adopted by all parties concerned.

In addition, Cabinet has also approved the drafting of amendments to the Motor Vehicles Act to review and upgrade eligibility qualifications for a person seeking to obtain a disabled person's parking permit. In this context it is proposed to follow the example of some other States and introduce a permit for organisations which frequently transport people with severe disabilities in specially adapted vehicles. That measure will be brought before Parliament in the August session.

The opportunity is also being taken to amend the Act so as to enable the Minister to incorporate a national standard on parking signs into the code that sets out the requirements for signs, notices and other markings in private parking areas.

There has been consultation on the thrust of the principal amendment contained in the Bill with the Building Owners and Managers Association, Westfield Shopping Centre Management Co. Pty Ltd, the Local Government Association, the RAA and other organisations. To date I am not aware of any opposition to the Bill. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 inserts a new section 8a. The new section provides that the offence of parking in a private parking area in a space marked out for use by disabled persons may be enforced by local council inspectors and members of the Police Force whether or not there is a formal enforcement agreement between the council and the owner of the area.

Clause 3 amends section 15, the general regulation-making power. The amendment makes it clear that the regulations may allow the Minister to establish a code of signs, etc., for use in connection with private parking areas.

Clause 4 inserts a new section 16. The new section enables a regulation or code under the Act to incorporate or operate by reference to a code or standard as in force from time to time or as in force at a specified time. The new section also includes evidentiary provisions relating to such codes or standards.

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

STATE SUPPLY (MISCELLANEOUS) AMENDMENT BILL

The Hon. ANNE LEVY (Minister of State Services) obtained leave and introduced a Bill for an Act to amend the State Supply Act 1985. Read a first time.

The Hon. ANNE LEVY: I move:

That this Bill be now read a second time.

The State Supply Act 1985 became effective on 30 September 1985. As a means of ensuring that the legislation continued to meet the objectives of Government, section 23 of the Act required the Minister to have a report prepared on the operation and effectiveness of the Act after a period of three years. This report was prepared and laid before this Parliament in February 1989. The report concluded that the objectives of the Act, as specified at the second reading stage of the Bill, had been achieved. It highlighted the change in emphasis in public sector management towards agency autonomy and accountability, and recommended that the objectives of the Act, and in fact the Act itself, have a broader focus. It proposed that the Act should apply directly to agencies as well as the board, and a greater recognition be given to supply as a means of facilitating the service delivery of agencies and Government.

The objectives of the Act have been redefined as follows:

(1) To establish a framework for public sector supply which will facilitate the cost-effective delivery of services by public authorities.

(2) To establish a mechanism through which public sector supply activities can be carried out objectively and independent of political persuasion.

(3) To establish a mechanism which will ensure public accountability, fairness, consistency and high ethical standards in public sector supply.

(4) To provide a mechanism whereby public sector supply activities can be used to assist in the achievement of social, economic and environmental objectives of Government (for example, provide assistance to Australian industry).

During the past two years the State Supply Board has taken a number of steps to change the emphasis of management of public sector supply towards agency autonomy and accountability. The policies of the board have been rewritten to support these changes and provide assistance to agencies to gain the benefits of more effective procurement and supply practices. In addition, the board has taken action to encourage agencies to use quality management principles for the management of their supply operations. The Government proposes, in this Bill, to focus a greater responsibility for supply with individual agencies and clarify the responsibility of chief executive officers in regard to supply activities.

Although the board has worked closely with the Department of Industry, Trade and Technology in developing and implementing strategies to use public sector procurement to assist local industry, it is considered important to continue with these initiatives, develop new initiatives and ensure that the impetus is maintained. Therefore the Government proposes, in this Bill, to increase the number of members of the State Supply Board by one so as to specifically include

a person with expertise in economic and industry development.

Notwithstanding that the existing functions of the board are confined to the acquisition, distribution, management and disposal of goods, the board has found it necessary on a few occasions to let contracts for services (for example, car hire, light plane hire and burial services), because no other central agency has the facilities to provide this service. Therefore it is proposed, in this Bill, to amend the Act to enable the board to establish service contracts on behalf of consenting agencies or where the Minister requests such action.

In addition, this Bill provides for a further review of the Act to be made by 31 December 1994. This should provide the mechanism for ensuring that the framework within which public sector supply is conducted continues to be appropriate for the ever-changing demands on Government and public sector management generally. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides for the measure to be brought into operation by proclamation.

Clause 3 inserts two new definitions in the interpretation provision, section 4 'chief executive officer' is defined as the person appointed to, or acting in, the office or position (however named or described) of chief executive officer of an authority. 'Supply operations' is defined as the acquisition of goods required by an authority for its operations and as including the distribution and management of the goods and their subsequent disposal.

Clause 4 replaces section 7 with a new provision dealing with the constitution of the State Supply Board. The board is, under the new provision, increased from five to six members. The additional member is to be a person with knowledge and experience of economic and industrial development. The qualifications for the other members remain the same as under the current provision.

Clause 5 makes a consequential amendment relating to the chairing of meetings of the board.

Clause 6 amends section 13 of the principal Act which relates to the functions of the board. The clause restates the functions making use of the term 'supply operations' and giving priority to the function of controlling (rather than undertaking) public sector supply operations.

Clause 7 inserts new sections 14a and 14b.

Proposed new section 14a provides that the chief executive officer of a public authority is responsible for the efficient and cost-effective management of the supply operations of the authority subject to and in accordance with the policies, principles, guidelines and directions of the board.

Proposed new section 14b authorises the board to undertake the acquisition of services on behalf of a public authority at the request of the authority or the Minister.

Clause 8 makes an amendment to section 15 that is consequential on the introduction of the defined term 'supply operations'.

Clause 9 amends section 23 of the principal Act so that it will require the Minister to cause a report on the operation and effectiveness of the Act to be made on or before 31 December 1994.

The schedule makes amendments of a statute law revision nature only, correcting obsolete references, introducing gender neutral language and adopting current drafting styles.

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

SUPPLY BILL (No. 1) (1991)

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The Bill provides for the appropriation of $850 million to enable the Government to continue to provide public services during the early months of 1991-92.

In the absence of special arrangements in the form of the Supply Acts, there would be no parliamentary authority for expenditure between the commencement of the new financial year and the date on which assent is given to the main Appropriation Bill.

It is customary for the Government to present two Supply Bills each year, the first covering the estimated expenditure during July and August and the second covering the remainder of the period prior to the Appropriation Bill becoming law. This practice will be followed again this year.

Members will note that the expenditure authority sought this year is approximately 6 per cent more than the $800 million sought for the first two months of 1990-91. This is broadly in line with increases in costs faced by the Government and should be adequate for the two months in question.

Clause 1 is formal.

Clause 2 provides for the appropriation of up to $850 million and imposes limitations on the issue and application of this amount.

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

ROAD TRAFFIC ACT AMENDMENT BILL (No. 4)

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

WORKER'S LIENS ACT (REPEAL) BILL

Adjourned debate on the question:

That this Bill be now read a second time,

which the Hon. K.T. Griffin had moved to amend by leaving out the word *'now'* and adding after *'time'* the words *'this day six months'.*

(Continued from 22 November. Page 2174.)

The Hon. C.J. SUMNER (Attorney-General): The Government has noted the comments made regarding the timing of the repeal of the Worker's Liens Act but does not agree that this matter should be postponed. The fact is that the complaints about the Worker's Liens Act and the problems with it have been around now for many years. The Government has bitten the bullet to have the Act repealed and it should be repealed now, and those who refuse to repeal it now will I believe be condemned as being just bloody-

minded, difficult to get on with and unable to cope with the simplest matter of law reform.

The Hon. Mr Griffin has moved an amendment to put off consideration of the second reading for a period of six months. That should be seen for what it is—a move to effectively kill off the Bill. It will not then be able to be introduced again in this session of Parliament.

The Hon. Mr Gilfillan has indicated that he opposes the Bill. He refers to an attempt by him in 1988 to enact legislation designed to establish a trust fund into which interim payments would be placed. At the time the Government opposed the Bill for three reasons. First, the Bill would not work; it would do nothing for consumers and would not do for subcontractors what was claimed. Secondly, the trust account scheme proposed in the Bill would be cumbersome to comply with and prohibitively costly to administer and supervise. Thirdly, it was an inappropriate amendment to the Builders Licensing Act.

The Government still holds this view. In fact it was supported by the select committee of the House of Assembly which stated that the cost to the public to establish, enforce and police such a fund would bear heavily on the industry, and I should add that that House of Assembly select committee comprised members of the Government, Mr Martin Evans and the Liberal Opposition. That select committee unanimously recommended that the Worker's Liens Act be repealed and that sections 41 and 42 be transferred to an appropriate Act. The select committee recommended that industry consultation occur on a number of issues, and that in fact has been occurring.

As indicated in the second reading, the Minister of Housing and Construction has initiated consultation with industry in respect of trust funds, voluntary or compulsory insurance schemes, direct payments and bank guarantees to protect labourers or small contractors and suppliers of materials. The Minister established a working party to examine the issues. The working party has recently reported, and its report has been made public. It examined safeguards for all those involved in the building industry—developers, contractors, subcontractors and building workers.

In order to reduce the impact of building industry insolvencies, the working party recommended a four-point plan to reduce the exposure of individual participants to the insolvencies of others and to limit the flow-on effect where an insolvency does occur. The points of the plan involve education, builders licensing reform, the jurisdiction of the Commercial Tribunal to be extended to include non-payment of subcontractors and some other amendments to its investigative powers, and a proposal for trade indemnity insurance.

The Minister has given interested parties an opportunity to respond to the report. Therefore, the Government is in fact actively taking steps to look at safeguards in the building industry. Whether any of these will be able to be implemented it is not possible to say at present, and in fact they may not be able to be implemented. The Government considers that there are deficiencies in the operation of the Worker's Liens Act. This position has been put to the Government consistently for many years by a number of organisations. It is clear that it does not function effectively and that it can hold up the payments to the people who expect to be paid when there are difficulties with the insolvency of a building contractor carrying out work.

The select committee, after hearing evidence from all parties, confirmed the view that the Worker's Liens Act should be repealed. The Government agreed with the findings of the select committee, and this Bill will repeal the Worker's Liens Act as should happen. The Government certainly does not consider it necessary to postpone the second reading or repeal of the Act, but, as I have indicated in private correspondence to the Hon. Mr Gilfillan and the Hon. Mr Griffin, it is prepared to allow a lead time before proclamation to allow the new report to be assessed and, if appropriate, implemented. The response I have received from those two honourable members is that the Opposition and the Democrats will oppose the repeal of this Bill.

The Hon. I. Gilfillan: At this time.

The Hon. C.J. SUMNER: Yes, you are going to oppose it; you are going to oppose the repeal of this Bill.

The Hon. I. Gilfillan: If you are going to quote me, quote the full text of it.

The Hon. C.J. SUMNER: A Bill is currently before you and you have the opportunity to vote on it now. You have seen the select committee report. You have had the representations. You know the defects in the Worker's Liens Act and there is no point in tying the repeal of the Worker's Liens Act to those other matters that are being looked at. The select committee did not make it a pre-condition of its recommendation of the repeal of the Worker's Liens Act that there should be some other unspecified mechanisms in place before the repeal went ahead. The repeal stands on its own.

What is also interesting is that in another place the Liberal Party was apparently quite prepared to accept a 12 month delay for proclamation; that is the amendment that Mr Ingerson, the member for Bragg, moved in the House of Assembly. However, what was apparently good enough in the House of Assembly is not good enough for the members in this place. What is even more surprising is that the only organisation, as I understand it, that was opposed to the repeal of the Worker's Liens Act—the Building Industry Specialist Contractors Organisation of Australia (BISCOA)—as I have indicated to the Hon. Mr Griffin and the Hon. Mr Gilfillan, in correspondence to me on 19 February 1991 (a copy of which I sent them) stated:

> We would support the Bill passing in its present form if you could ensure that a reasonable period of time is allowed before the legislation is proclaimed. We would like to recommend that these events would be achievable by 30 June 1991.

So, with that organisation's being prepared to agree to this Bill to repeal the Worker's Liens Act there is now no opposition to the repeal of that Act. There is no opposition now to its repeal.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: The letter dated 19 February of which I have given you a copy says that they would support the Bill being passed in its current form. Apparently, there is one organisation that has some power over the Liberal Party and the Democrats. One might ask what power it might have over the Liberals and the Democrats to somehow delay what is an important reform. With BISCOA's indication that it would be prepared to support the repealing Bill provided that there was included in the Bill an undertaking by the Government not to proclaim the Bill to come into effect immediately and to give some reasonable lead time, there is now no opposition to the repeal of the Act.

That being the case, it is quite clear that the approach by members opposite to it can only be described as and motivated by plain and simple bloody-mindedness. One would hope that, in the remaining few seconds before they have to vote on the Bill, they might grasp the nettle now to repeal an Act which virtually everyone agrees does not work. Not to take that chance now would be a mistake. The Government is certainly willing to indicate and to include in the Bill, if it would assist the situation, a clause to postpone the proclamation of the Bill for a time or even for a specific

time that honourable members might be prepared to agree to.

The Council divided on the question that the word 'now' stand part of the motion:

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

Noes (11)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, M.J. Elliott, I. Gilfillan, K.T. Griffin (teller), J.C. Irwin, R.I. Lucas, Bernice Pfitzner, R.J. Ritson and J.F. Stefani.

Pair—Aye—The Hon. T.G. Roberts. No—The Hon. Diana Laidlaw.

Majority of 3 for the Noes.

Question thus negatived.

The PRESIDENT: The word 'now' is struck out. I declare the second reading deferred for six months. This is done under Standing Order 281. The Bill must be withdrawn from the Notice Paper and cannot be revived during this session.

UNCLAIMED GOODS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 November. Page 1920.)

The Hon. K.T. GRIFFIN: As a result of what has just occurred, I understand that it it is no longer relevant to proceed with this Bill, which seeks to pick up several parts of the provisions of the Worker's Liens Act. As at this stage that Act is not to be repealed it would therefore not be appropriate to proceed with this Bill. It is important to recognise that the two Bills run in tandem and that the Liberal Party's view on the Worker's Liens Act is not that it should not be repealed at any stage but that, in the course of the consideration of the Minister of Housing and Construction's working paper, which the Attorney-General indicated earlier has now been released and submissions have been sought, alternatives to the scheme embodied in the Worker's Liens Act may be developed within a period of time.

The difficulty we saw in the passing of that repeal Bill and an undertaking to defer proclamation for a period of, say, six months was that there was no guarantee that within that time there would be a final resolution of the outstanding issue and the development of an alternative scheme. I think everyone recognises that there are unsatisfactory aspects of the Worker's Liens Act. The select committee reached that conclusion but, as part of the consideration of the issue by the committee into the Act, it was at least understood, and I believed agreed, that a Bill to repeal the principal Act would not be rushed into Parliament until there had been a reasonable opportunity to consider putting alternative mechanisms in place to provide the protections that at least contractors and subcontractors believed were in place under the Worker's Liens Act.

I did have a telephone conversation with the State Director of the Building Industry Specialist Contractors Organisation of Australia Limited, South Australian Office, in relation to her letter to the Attorney-General of 19 February 1991. The information she provided was that that letter was provided to the Attorney in the belief that the repeal of the Worker's Liens Act was a *fait accompli* and that the question of postponement of proclamation of the repeal was really the fallback position of BISCOA in an attempt to get some alternative provisions in place to provide some protections for contractors and subcontractors.

In dealing with the Unclaimed Goods Act Amendment Bill, I want to make it clear that, after a reasonable period of time (and we believe that six to 12 months is appropriate), hopefully there will be some alternatives ready to put in place and, at that time, we will quite readily support the repeal of the Worker's Liens Act. We believe that that is the preferred course to follow.

If the repeal, under the Attorney-General's proposals, were to be postponed for a period of six or more months, it does not achieve anything more than what we have just agreed. My preference with the Unclaimed Goods Act Amendment Bill is merely to leave the matter on the Notice Paper. There appears to be no merit in proceeding with it. Until the establishment of the alternative schemes of recognition of contractors' and subcontractors' difficulties, and the introduction of the Workers Liens Act Repeal Act again, it seems there is no alternative but to oppose the second reading of the Bill.

The Hon. I. GILFILLAN: In speaking briefly to this Bill, I support the approach taken by the Hon. Trevor Griffin. As I understand it, it is virtually a passenger on the Worker's Liens Bill and there is no point in debating it now. I take this opportunity to re-emphasise the Democrats' attitude to it. We accept that it is appropriate for the worker's liens legislation to be repealed or dramatically changed. However, it is important to realise that small companies or subcontractors in South Australia are very concerned at the repeal of the legislation until such other form of protection as regards their guarantee, or reasonable certainty, of getting paid for work done is in place. I believe that that is a totally reasonable position for them to have.

The Attorney-General said that it only involved one organisation. In fact, I have received correspondence from four separate contractors' associations through 23 separate companies, including painters and decorators, fire enterprises, bitumen paving, earthmovers, air-conditioning, engineering, refrigeration, concrete pumping, and so on. This is the life blood of those in small to medium size employment in South Australia, and they are scared that, if we were to proceed with this legislation, they would be even more exposed to not getting paid for work done and, therefore, not being able to pay employees in some circumstances, possibly even being pushed to bankruptcy.

The Attorney quoted a letter which he received from BISCOA on 19 February. I will read into *Hansard* the letter I received on 19 February from the State Director of BISCOA, Lynne Stapylton. It states:

> This organisation has argued strongly for the retention of the Worker's Liens Act for the last 20 years and it was certainly our view before the select committee (a submission which was supported by the Master Builders Association of South Australia) that the Act should be retained.
>
> Our support for the Act stems from the fact that the Worker's Liens Act is currently the only protection afforded to our members. The myriad of correspondence which you, and many other politicians have received from the organisation, our member associations and from the subcontractors themselves, shows the strength of support and the depth of feeling on this issue.
>
> The Hon. Kym Mayes, the Minister of Housing and Construction, has recently released a report of a working party on insolvencies in the building industry. The industry is working to address the problems and to develop clear cut guidelines for future building industry practices. However, it will be some time before any action is taken in regard to that report.

In his speech, the Attorney said the Government would get the report of the recommendations which would be implemented 'if they can be'. There is no guarantee that anything will be implemented. The letter continues:

> In the circumstances, this organisation has written to the Government urging it to take no further steps to replace the Worker's Liens Act until such time as the Minister of Housing and Con-

struction's four-point plan has been effectively reviewed and accepted by the industry across the board.

Your continued support to ensure the process allows sufficient time for new arrangements to be discussed and implemented would be seen as the most positive contribution to be made at this time.

Yours faithfully (signed)
Lynne M. Stapylton

I have no hesitation in holding up the repeal of the Worker's Liens Act at this time, until alternative protections are in place that are satisfactory to building contractors and, I might say, to the CMIEU, which has had serious concerns about the failure to receive payment from subcontractors through the failure of principal contractors and owners. The Attorney may well be surprised that there is very strong feeling that we ought not to scuttle the worker's liens legislation, with all its deficiencies and faults, until something better is actually in place and is able to work. The Democrats see no point in proceeding with debate on the Bill before us at the moment.

The Hon. C.J. SUMNER (Attorney-General): That was a fairly surprising remark, since the honourable member proceeded to debate the thing for five minutes and then decided that he should not debate it! Leaving that aside, the remarks of members opposite merely confirm what I said in the debate on the Worker's Liens Act, namely, that they are just being bloody-minded about this matter. There is no reasonable basis for opposing the repeal of the Worker's Liens Act.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: You are not protecting anyone by maintaining the Worker's Liens Act. This has been properly assessed by a select committee of the House of Assembly. That committee recommended its repeal, without any conditions—

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: They heard evidence from contractors, unions and others, and came to the conclusion that the Worker's Liens Act should be repealed. Everyone knows that it does not work; everyone knows that it is archaic. Everyone knows that it generally operates counter to the interests of the people it is supposed to protect because, once a lien is in place, it shuts up all activity on a building site, and no funding can be made available to keep the building work going, so nobody gets paid, and all it does is create a monumental mess. In the final analysis, I do not think it protects the people whom members opposite say they are protecting by its retention. It is archaic and should be repealed. It has been recommended unanimously by a House of Assembly committee that it should be repealed. There was no disagreement—

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: There were no conditions put on the House of Assembly's recommendation to repeal. There were no recommendations that there should be any conditions on the repeal of the Worker's Liens Act. The members of the select committee came to the conclusion that it was not working and should be repealed. That is what the Government believes should be implemented. In trying to justify their position, members opposite have indicated that they are not prepared to grasp an opportunity for some basic law reform which, in fact, would make the situation easier for the great majority of people caught in one of these insolvency situations. That having been said, there is no point in leaving this Bill on the Notice Paper. I therefore suggest that, consistent with the previous position, members opposite vote against the second reading.

Second reading negatived.

REHABILITATION OF OFFENDERS BILL

Adjourned debate on second reading.

(Continued from 14 March. Page 3634.)

The Hon. R.I. LUCAS (Leader of the Opposition): I rise to support the comments made by my colleague, the Hon. Trevor Griffin, in his second reading contribution to this Bill. The member outlined very eloquently and very passionately the reasons for Liberal Party opposition to this Bill. I certainly do not intend to traverse all the details that the Hon. Mr Griffin covered in relation to this Bill, although I want to address a matter of concern in relation to my own portfolio area of responsibility, and that is in relation to schools, child-care centres and, indeed, other institutions that might involve young children.

When one looks at the legislation, one sees that clause 4 (3) *(e)* seeks to apply different rules in relation to the operation of this Bill for institutions such as schools, child-care centres, etc. Clause 4 (3) *(e)* says:

The protection conferred by this Act on convicted persons in relation to spent convictions is subject to the following qualifications:

(e) in relation to persons employed, or seeking employment, in positions involving responsibility for the education, care, control or supervision of children, it does not extend to offences committed against the person;

On the legal advice available to me, when trying to interpret the practical effect of clause 4 (3) *(e)*, the important words 'responsibility for the education, care, control or supervision of children' would take into account teachers in schools and teachers or teaching staff in child-care centres, for example. It would, on the advice available to me, probably take into account ancillary staff; certainly it would include teachers' aides, and I guess there is an argument in relation to laboratory staff. Many schools would employ aides for looking after and handling the science laboratories, cleaning, preparing experiments, etc. Such persons are certainly not generally responsible for supervision. One could argue that indirectly they are responsible for education, although I think the teacher would accept that he or she is responsible for the education of the child. The laboratory assistant is just preparing material for an experiment, for example. However, certainly teachers and most ancillary staff would be covered.

Then one gets to a whole group of other people who are employed in schools, I refer in particular to ground staff, who look after the mowing of lawns and any of the other odd jobs that are done in a school, as well as to cleaners and caretakers, whether it be as permanent employees of the Education Department or of a non-government school, because this does not apply just to Government schools. Such persons are responsible during office hours or after school hours for the cleaning and maintenance of schools and school grounds. Perhaps it may involve the employment of bursars—that again would be a marginal example. Whether or not a bursar has responsibility for the education, care, control or supervision of children is a marginal argument. Certainly, the advice available to me indicates that definitely ground staff, caretakers and cleaners would not be covered by this attempted exemption under clause 4 (3) *(e)*.

If clause 4 (3) *(e)* does not cover occupations such as caretakers and cleaners, etc., it therefore means that those persons who perhaps 10 years ago committed offences against persons (I instance offences in relation to child abuse and perhaps other sexual assault offences) might have been sentenced for less than 2½ years or received a fine of less than $10 000. But, when one looks at offences in relation to child

abuse, in particular, one sees a growing trend, at least nationally, that if offenders are prepared to admit their guilt, the penalties are somewhat reduced, or markedly reduced, if they are prepared perhaps to undertake some sort of rehabilitation program in relation to the child abuse offence.

So, it is certainly not a hypothetical point that a number of serious offences could well result in offenders having sentences of less than 2½ years. Of course, my reading of the Bill indicates that, if one is sentenced to a 2½ year period in gaol, the 10-year provision in the Bill starts from the time of sentencing, so we really are talking about a period of only 7½ years in relation to an adult; or, if we are talking about a 17-year-old youth who has committed an offence, the period could perhaps be 2½ years in gaol. That 17-year-old youth, who might have been sentenced to 2½ years perhaps for a child abuse related offence, would then serve his period of detention. The Government is now seeking to argue, just 2½ years later, that that person's whole record can be wiped clean and that a person seeking employment in schools as a caretaker, ground staff or cleaner could conceal from their record the fact that they had so offended.

The other related matter is the concern of parents in the school community, particularly those on school councils, not only with that provision but also with the provision that, if a parent is aware of the prior criminal record of a 22 year old who offended at the age of 17, and informs the principal of the school or the school council of that record, that parent is liable to a fine of up to $8 000. If the parent commits that offence for a second time by going to the Education Department or the controlling education authority and informs on the prior record of the person involved, that parent would be guilty of an offence punishable by imprisonment for up to four years and a monetary penalty of up to $15 000.

I am sure that, when the parents of South Australia become aware of the major provision in the Bill, to which I have addressed some comment, and the penalty provision in relation to what parents might do in seeking to ensure a safe environment for their children in schools, they will be appalled at what the Bannon Government seeks to do in the legislation before us.

The second matter that one needs to address with respect to clause 4 (3) *(e)* is that it does not extend to offences against the person. As the Hon. Mr Griffin indicated with respect to teachers, what the Bannon Government is saying is that if a teacher has committed offences against property, for example, arson, larceny, embezzlement or fraud, 7½ years after having left gaol, for an adult, or 2½ years after leaving gaol for a juvenile, that teacher can have that offence wiped completely from his or her record. If in applying for a job at a non-Government or Government school the principal or the employing committee asks that job applicant whether he or she has a criminal record or committed any offence—

The Hon. R.R. Roberts: What would you say?

The Hon. R.I. LUCAS: I am quite comfortable; I can say 'No'. I am not sure what the Hon. Ron Roberts's response would be.

The Hon. R.R. Roberts: The same as yours.

The Hon. R.I. LUCAS: I am comforted to hear that. That job applicant would be able to deny completely having had any criminal record, even though the teacher might well have had offences for fraud, embezzlement, larceny or arson. I am appalled at that prospect, and I think that the parents of schoolchildren throughout South Australia will be appalled at the prospect that a potential schoolteacher, who might be in charge of the good moral conduct of their children, might well have a record of offences of such seriousness as larceny, embezzlement, fraud or arson yet, within 2½ years or 7½ years of having left gaol, that teacher would be able to legally lie about that criminal record and be placed in charge of teaching young children.

As I said, even more offensive is the fact that, if a parent were to complain, not only might that parent be fined but also he or she might end up in prison for informing on the criminal record of that particular job applicant. That is the major matter that I wanted to address in the second reading debate. On behalf of all parents involved with schools in South Australia, I have a concern about the ramifications of this Bill with respect to schools, child-care centres and kindergartens in South Australia. When this matter becomes more apparent to the general public, I am sure that great concern will be expressed to the Government and to the Australian Democrats about the possible passage of this legislation. I do not want to traverse all the other reasons for opposing the legislation, and I support the views expressed in general by my colleague the Hon. Trevor Griffin in his second reading contribution.

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

STATE BANK OF SOUTH AUSTRALIA (INVESTIGATIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 March. Page 3531.)

The Hon. K.T. GRIFFIN: The Opposition supports this Bill because it widens substantially the provisions of section 25 of the State Bank of South Australia Act. This is the second of two Bills that we have considered in relation to the State Bank. The other Bill, the Royal Commissions (Summonses and Publication of Evidence) Amendment Bill, passed last week. This Bill will enable a substantial part of the inquiry to be undertaken by the Auditor-General under provisions that largely reflect section 34 of the Public Finance and Audit Act.

Presently, section 25 of the State Bank of South Australia Act provides that the Governor may appoint the Auditor-General or some other suitable person to make an investigation and report under that section. Existing section 25 is narrow and, because the affairs of the State Bank Group are so complex, it is necessary to strengthen the powers of the person who is undertaking the investigation. New subsection (2) requires the investigator to investigate such matters relating to the operations and financial position of the bank or the bank group as are determined by the Governor, and the investigator must report on those investigations to the Governor. In the Bill which was introduced in the other place, new subsection (3), which is now new subsection (4), required the investigator to comply with any directions of the Governor published in the *Gazette.*

Those directions may relate to the manner in which the investigation is to be conducted, the manner in which the results are to be reported and the person or body to whom the report is to be presented, in addition to presentation to the Governor. There is no difficulty with either of those two provisions.

In the other place the Liberal Opposition sought to move two amendments. The first was to provide that included within the operations to be investigated were matters relating to any suspected ulterior or improper purpose, breach of duty or misconduct on the part of any director or officer of the bank or any subsidiary of the bank in connection

with the transaction and other matters. The context of that proposed amendment was picked up by the Government but, rather than being inserted in the Bill in a strong form, it was inserted in a manner which allowed the Governor to include within the scope of an investigation the purposes for and the manner in which any transaction was entered into in the course of the operations of the bank or the bank group.

The concern about that is that it is a matter for the Governor to identify any particular transaction, including any suspected ulterior or improper purpose, breach of duty or misconduct and the extent to which the bank or any subsidiary of the bank and the directors and officers of the bank exercised proper care and diligence in connection with the transaction. The Liberal Party's view has always been that an inquiry or inquiries such as those established could not be satisfactorily conducted unless they did examine particular transactions. Those transactions may relate to the relationship of the then Managing Director, Mr Marcus Clark, as Managing Director with Equiticorp in New Zealand and the advance which was made by the State Bank to Equiticorp. Also, it may look at investments in the National Safety Council, the extent to which proper, duly diligent inquiries were made and with what result, and a variety of other issues which particularly related to non-performing loans which had obviously gone bad and of which there was no reasonable prospect of recovery.

The argument that was put in another place was that the ordinary meaning of 'operations' extended to transactions, but I believe that that is at best arguable. 'Operations' tends to suggest the way in which the business of the bank was carried on and the way in which the affairs of the group were conducted as among members of the group, and between the group and the community at large, so it is arguable whether the inquiries, particularly the Auditor-General's inquiry, could examine issues such as specific transactions. It is interesting to note that in his ministerial statement the Attorney-General made the observation that the division of responsibility between the royal commission and the Auditor-General's inquiries was deliberately undertaken to not prejudice the ongoing operations of the bank and to protect the privacy of the bank's customers and therefore the viability of the bank itself. He said:

> A royal commission examination of financial transactions, which are often complex and may involve a number of parties and agents, is therefore likely to be protracted. The impact of a protracted inquiry on the bank is likely to be twofold. First, management and staff would be distracted from the important task of rebuilding the bank. Secondly, individual and corporate confidence in the bank may be undermined by a prolonged investigation and one which may require their affairs to be disclosed in a relatively public manner.

It was because of that, as I understand it, that the Government made the decision that the Auditor-General would deal more specifically with the internal affairs of the bank, including examination of transactions. As I said earlier, however, the concern which the Liberal Party had and still has is that the transactions of the bank or any member of the bank group may not be the subject of inquiry under the terms of reference which have been drawn—or, for that matter, under the amendments to the State Bank of South Australia Act. Notwithstanding that, the Opposition supported the inclusion of the additional provision which is now proposed new subsection (3) in the Bill before us.

In addition to that, the Opposition did move an amendment which sought to require the presentation of the reports of the Auditor-General, except to the extent that the Auditor-General or the other person who might be the investigator regarded the material as confidential, to have those reports presented to the President of the Legislative Council and the Speaker of the House of Assembly for tabling in both Houses of Parliament. The Government accepted that amendment, and I was pleased to see that that occurred.

The Government Bill in the other place also sought to apply the provisions of division 3 of Part III of the Public Finance and Audit Act for an audit or examination under that Act to the investigation under section 25 of the State Bank of South Australia Act. There was some doubt not only as to whether that amendment picked up the powers which the Auditor-General and authorised officers had under that division, but also as to whether it picked up sections 34 (2) and (3) of the Public Finance and Audit Act. I understand that the intention was that that should be the case, but there was at least an argument—and, I think, a reasonable argument—that that was not so and, as a result of that, the Government in the other place was prepared to accept an amendment which put that issue beyond doubt by including those two subsections specifically in section 25 of the State Bank of South Australia Act.

Section 34 of the Public Finance and Audit Act is a fairly wide provision. It gives the Auditor-General power to summons persons or to require the production of documents and to inspect documents; it provides that a person is required to answer truthfully all questions and to inspect buildings and premises and other items as well as providing power to enter any building.

Then it goes on to provide that if a person who has been served with a summons fails to appear without reasonable excuse, fails to produce a document without reasonable excuse, refuses to be sworn, refuses or fails to answer truthfully any relevant questions, or hinders or obstructs the Auditor-General, an offence has been committed. There is also a protection against self-incrimination but only to the extent that a person may object to answering a question on that ground. The Auditor-General or authorised officer makes a note of that objection and, although the person is required to answer the question, the answer will not be admissible against that person in any criminal proceedings except in proceedings for perjury or proceedings under section 34. All of those provisions are incorporated in the Bill.

There is also a mechanism incorporated by which the Auditor-General or investigator may request a magistrate to issue a summons, and failure to comply with that summons results in an offence. That is designed to endeavour to have persons interstate either appear or produce documents and papers under the Service and Execution of Process Act. I was concerned that it may be that the investigator did not have adequate protection against defamation whenever a proceeding was undertaken, but I was persuaded that the new subsections (11) and (12) do provide adequate protection against claims for defamation where the investigator is acting in good faith or in the purported exercise of the power conferred by the section.

The only other area of concern was the definition of 'subsidiary'. In the Bill as it came into the House of Assembly there was a provision that the definition of 'subsidiary' under the Corporations Law would be applicable, and when one translated that it meant that any corporation in which the bank or a subsidiary of the bank held more than one-half of the issued share capital would then be a subsidiary of the holder of those shares. But, from the list of companies in which the State Bank or its subsidiaries have an interest and which, in the annual report of the State Bank, were described as 'group associated companies', it was clear that there were a number of companies where the bank or a subsidiary of the bank held only 25 per cent of the issued share capital, and in other places less than 50 per cent. It seemed, nevertheless, that they were bodies which ought to

be the subject of inquiry and it was appropriate therefore to extend that definition so that all those companies would be the subject of inquiry if the Auditor-General regarded that as necessary. So, I am pleased that the Government again accepted that amendment.

In respect of the definition of 'subsidiary', I point out that in the commission for the Royal Commissioner 'subsidiary' has the same meaning as in the Corporations Law, and I would suggest that the Government ought to be looking at that in the light of the amendment to this Bill so that both the royal commission and the Auditor-General or other investigator may have the same ambit of investigation of corporations related to the bank or any of its subsidiaries.

I want to address one other area in relation to the Bill, and that relates to an amendment which I have on file and which I will deal with in more detail during the Committee stage. An investigator—in this instance the Auditor-General—should, in my view, have the power to continue investigating a matter where that person forms the belief or suspicion while undertaking any investigation that, in connection with any transaction, there has been a conflict of interest, breach of fiduciary duty or other unlawful, corrupt or improper activity on the part of a director or officer of the bank or a subsidiary of the bank or that there has been any failure to exercise proper care and diligence on the part of those persons, but must report that fact to the Governor together with an opinion as to what ought to occur thereafter.

That is a much more positive provision than the present new subsection (3), which the Government moved to include in the House of Assembly, because it does not depend upon a direction by the Governor to the Auditor-General or other investigator to look at particular transactions. From that point of view, it gives a broader scope to the inquiry by the Auditor-General. It requires reporting, and it is appropriate for the Governor, in the light of that report and the indication of the power of the Auditor-General by the amendment, to consider any directions that ought to be given to the Auditor-General in consequence of that.

The only other question I have raised before is in relation to overseas investigations, recognising that the State Bank Group conducted extensive operations overseas. It is important for the Government to consider the means by which the Auditor-General will be able to conduct inquiries into the various matters within the terms of reference of that inquiry outside Australia. I do not intend dealing with the background that led to the establishment of the inquiries; I already dealt with that in the debate on the motion several weeks ago when seeking an extension of the terms of reference. What I do want to say is that, in the light of the Attorney-General's ministerial statement, answers to questions and his reply on that occasion, I hope that the Auditor-General's inquiry will not be constrained and will allow the investigation of particular transactions which may or may not be the subject of public comment but which nevertheless are part of either the losses or non-performing loan portfolio of the State Bank Group. The terms of reference are framed in a way which at least suggest that that is not possible, but in the light of the statements made by the Premier and the Attorney-General I would hope that the limitation which it is possible to place upon the investigation by the Auditor-General will not in fact be so placed on it.

I repeat what the Liberal Party has said on a number of occasions: that we want the widest possible inquiry into what went wrong in the State Bank, and we want to ensure that the two inquiries get to the bottom of that and also identify whether or not there has been any conflict of interest, breach of duty, misconduct or other ulterior or improper act by anyone involved in any of the transactions that have created these problems for the State Bank Group. On that basis therefore we support the second reading.

Bill read a second time.

In Committee.

The Hon. R.J. RITSON: Mr Chairman, I draw your attention to the state of the Council.

A quorum having been formed:

The CHAIRMAN: I draw to the attention of the Committee the fact that, when any member calls for a quorum, he or she should remain in the Chamber. That applies to all members.

Clause 1 passed.

Clause 2—'Investigations.'

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

Page 1, lines 20 to 30—Leave out subsection (3).

As I said in my second reading contribution, subsection (3) is permissive in the sense that the Governor may include within the scope of the investigation the matters referred to in that subsection. I will seek to insert a more positive provision (new subsection (6a)), which is in similar form but allowing the investigator who forms the belief or suspicion while undertaking any investigation that there has been, in connection with any transaction entered into in the course of the operations of the bank or the bank group, the matters set out in paragraphs *(a)* and *(b)*—provided, of course, that subsequently, having reached that belief or suspicion, the investigator reports the matter to the Governor. I think that that is a proper safeguard. If in the light of that report the Government believes it is appropriate to give directions in that matter, the directions can be given. That is provided by the provision. It is my view that it does tighten up the provision and ensures that particular operations within the responsibility of the Auditor-General or the investigator under an investigation may be examined.

The Hon. M.J. ELLIOTT: I would not have thought that the existing subsection (3) and the Hon. Mr Griffin's later amendment (proposed new subsection (6a)) were mutually exclusive. It seems that the subsection he proposes to omit entertains specific instruction to go looking for and to take special note of particular problems, in particular, ulterior and improper purposes, breach of fiduciary duty and so on, whereas, the subsection that the Hon. Mr Griffin proposes to insert provides that, if in the course of other investigations, an investigator comes across those matters, he should investigate them further.

I would have thought that to leave in subsection (3) and insert new subsection (6a) would enable them to be complementary. I do not see the need to delete subsection (3) just so that proposed subsection (6a) might be inserted. Therefore, I seek comment from the Hon. Mr Griffin. I think it is still useful for the Govenor at the outset to give specific instructions for an investigator to look for particular matters, whilst along the way, if he comes across the other matters, he may still take them up.

The Hon. K.T. GRIFFIN: I am not fussed either way. I take the point that the Hon. Mr Elliott is making. The only difficulty I have is that, if we leave in subsection (3) and include new subsection (6a), it might be read down to relate only to those circumstances where the Governor has actually included particular matters within the scope of the investigation. Certainly, I would not want that to occur. On balance, I would still prefer to have subsection (3) left out and new subsection (6a) included.

The Hon. M.J. ELLIOTT: I invite the Hon. Mr Griffin to think carefully about the consequences of leaving in subsection (3). My preferred course is that it remain, while

still supporting the inclusion of proposed new subsection (6a). I invite the Hon. Mr Griffin to address the potential conflicts that might arise through that course.

The Hon. K.T. GRIFFIN: I hear what the Hon. Mr Elliott is saying, but my concern is that leaving in subsection (3) will, to some extent, control the application of subsection (6a). As I indicated earlier, my preference is still to delete subsection (3) and insert the new subsection (6a).

Amendment carried.

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

Page 2, after line 12—Insert subsection as follows:

(6a) Where the investigator forms the belief or suspicion while undertaking any investigation under this section that there has been in connection with any transaction entered into in the course of the operations of the bank or the bank group:

(a) any conflict of interest or breach of fiduciary duty or other unlawful, corrupt or improper activity on the part of a director or officer of the bank or a subsidiary of the bank;

or

(b) any failure to exercise proper care and diligence on the part of a director or officer of the bank or a subsidiary of the bank,

the investigator may, if practicable, investigate the matter (whether or not it falls within the matters determined by the Governor to be the subject of the investigation), and must in any event report on the matter to the Governor and advise whether, in his or her opinion, the matter should be the subject of further or other investigation or action.

Amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

LEGAL PRACTITIONERS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 12 March. Page 3428.)

The Hon. J.C. BURDETT: I support the second reading of this brief Bill. It does two things: first, it allows a legal practitioner acting on the instructions of the Australian Securities Commission, which replaces the Corporate Affairs Commission as the body administering corporate law in South Australia, to appear before a court or tribunal established under the law of South Australia. This is simply consequential upon the setting up of the Australian Securities Commission and is obviously a necessary step.

Secondly, the Bill allows the Legal Practitioners Complaints Committee to operate out of the same premises as the Law Society, with the approval of the Attorney-General. The second reading explanation perhaps did not go quite far enough where it states:

> . . . the Bill amends section 70 (6) of the Act to allow the Legal Practitioners Complaints Committee to operate out of the same premises as the Law Society.

The approval of the Attorney-General is required. The existing section 70 (6) of the Act provides:

> The Committee shall not meet to transact business on premises of the Society.

That prohibition remains, but the Bill seeks to add, 'except with the approval of the Attorney-General' after 'Society'. I certainly have no objection to that. It is only commonsense and has the safeguard that it needs the approval of the Attorney-General. It has been said that justice must not only be done but be seen to be done. I suppose there could be the question of seeing people come out of the same premises and wondering whether the committee is associated with the society. However, it operates on a different floor and its staff are quite different. With that safeguard of requiring the approval of the Attorney-General, I can see no objection to that provision. Therefore, I support the Bill.

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

REHABILITATION OF OFFENDERS BILL

Adjourned debate on second reading (resumed on motion).
(Continued from page 3688.)

The Hon. C.J. SUMNER (Attorney-General): Honourable members have raised a number of concerns in relation to this Bill. Before examining each of these matters in detail, I would like to note by way of general information that Governments have for many years shown an interest in the notion that people who have committed a crime and not reoffended for a period of years should be able to free themselves of the stigma of the old conviction. People do suffer damage as a result of an old conviction, as evidenced by the annual reports of the International Labour Organisation Convention on Discrimination in Employment. From 1973 to 1985, 158 complaints of discrimination in employment on the grounds of criminal record were handled under the ILO convention. There is also concern expressed about the stigma attached to an old conviction to members of Parliament, Ombudsmen and State Privacy Committees. My office has received a number of complaints from citizens who went through a difficult period in their late teens or early twenties, received a conviction and sentence, and still suffer in much later life the consequences for their early foolish deeds.

A United Kingdom report in 1972 found that the longer a person sustains a conviction-free period the less likely it is that he or she will commit another crime. A sample survey found that of 4 000 male first offenders convicted on indictment, 64 per cent had not reoffended for five years and 50 per cent for 10 years, and that the number of people who had been convicted after 10 years was minimal.

The report of the Howard League, published in the United Kingdom in 1972, made recommendations which formed the basis for the United Kingdom Rehabilitation of Offenders Act 1974. That Act contains the model which has had influence on recent Australian initiatives with regard to spent convictions legislation.

It is interesting to note that what apparently was acceptable in the United Kingdom in 1974 and has apparently worked satisfactorily in that country since then—a period of some 16 years—is apparently still not acceptable to Liberal members opposite. I also note that legislation similar to this was acceptable to the Government of Sir Joh Bjelke-Petersen in Queensland in 1986, which makes one wonder a little bit about honourable members opposite.

Under the United Kingdom Act, which came into force on 1 July 1975, convictions for criminal offences were to be regarded as 'spent' once the person had completed a 'rehabilitation period'.

As indicated, Australian Governments at both Commonwealth and State levels have shown interest in the possibility of legislating in this area. Prior to 1984, the item 'spent convictions' had been before the Standing Committee of Attorneys-General on several occasions. The matter was then referred to the Australian Law Reform Commission for examination. After a detailed consideration of the issues, the ALRC recommended that an offender should be able to consider a conviction spent after the expiration of a waiting period of 10 years. I should add, again, that the question

of the rehabilitation of offenders, or spent convictions, is now being dealt with in most jurisdictions in Australia.

I will now turn to the specific matters raised by honourable members. The Bill was named the Rehabilitation of Offenders Bill after the earlier United Kingdom legislation, already discussed. It is considered that, after a set rehabilitation period of 10 years (or five years in the case of children), a conviction must be treated in law as spent. While it is agreed that each offender may take different lengths of time to rehabilitate, the Bill attempts to provide a set period of time beyond which the law and society will presume that a person has become 'rehabilitated'.

Concern has been raised by the honourable members in regard to the legislative protection offered to an offender not to release information about a spent conviction. On this point, I refer honourable members to the ALRC's report No. 37 entitled 'Spent Convictions'. The ALRC reports that the rationale underlying any scheme under which old convictions become spent is based on their general irrelevance to decision making. As a conviction becomes older, it has less and less relevance in predicting the person's future conduct. This view provides the rationale for the approach adopted in the Bill. After consideration of the various possible approaches, the ALRC recommended that the appropriate legislative response should be to provide that there be no obligation to disclose a spent conviction. To achieve this, it would be necessary to make it lawful to deny, whether on oath or otherwise, the existence of the spent conviction. The ALRC went further and recommended that this protection should be extended to questions about charges, arrest and other matters related to a spent conviction. This approach has been adopted in the United Kingdom, Queensland and Federal legislation.

The Hon. Mr Griffin raises the matter of cumulative periods of imprisonment. The Bill concerns itself with each specific conviction and, even though a number of offences may have resulted in a cumulative sentence of above 30 months, each of the convictions which comprise the total sentence will be able to be spent, provided that all the requirements of the Bill are met.

The Hon. Mr Griffin also raised the matter of extending the exemption clauses to include directors of building societies, cooperatives, credit unions, etc. I would note at this point that a company director was exempted from the operation of the legislation as it is a current requirement under legislation dealing with companies that directors reveal a past criminal record for the benefit of shareholders.

There has been much careful consideration of the exemption clauses in the Bill. If one accepts the principle that when a person has made a sincere and successful attempt to live down a conviction and go straight then common justice demands that his or her efforts should not be prejudiced by the unwarranted disclosure of the earlier conviction, there is an argument for not having any exemptions from the legislation. However, in the interests of the public, it was felt that certain offences should not be capable of being spent for specific purposes.

The Federal Privacy Commissioner, in seeking applications for exemption from the Commonwealth legislation, took the same view; that is, any exemptions should be limited to those strictly necessary in the public interest and not extended to the point where the operation of the Bill is impeded. If we support the principles of this Bill, we cannot prevent its proper operation by incorporating too many instances where its provisions will not operate.

The Hon. Mr Griffin has raised the matter of a court, on an application for leave to adduce evidence, hearing the matter in the absence of the jury. Clearly, if the court was not to grant leave, the old conviction would be made public which operates against the intention of the Bill. The Hon. Mr Griffin has also raised the matter of referring to the existence of a spent conviction which applying for leave to have such evidence adduced in a court. It will no doubt be necessary to return to the original proceedings in the course of such an application but the matter of public disclosure of a spent conviction, in the event that leave is granted, should be left to the discretion of the court.

The Hon. Mr Gilfillan has raised the matter of clause 3 (2). The clause defines the meaning of the phrase 'circumstances surrounding a spent conviction'. To adequately allow a person not to reveal information in relation to a spent conviction, it is necessary to take the matter further than simply not revealing the conviction itself. The intention of the Bill would be defeated if an employer or any other person could seek information surrounding the conviction but not information in respect of the conviction itself.

The Hon. Mr Gilfillan has asked for an explanation of the meaning of 'offences against the person' in the context of clause 4 (3) *(d)* of the Bill. This phrase contemplates violent offences against the person, such as assault. The honourable member has also looked to section 11 (2) of the Queensland legislation entitled 'Revival of convictions'. I respectfully submit that the Queensland provision seems more complex and open to discretion than the wording of the Bill on this matter. Our Bill deals with three clear instances in which a conviction for a further offence will be disregarded: where the conviction is quashed or set aside, where the convicted person is pardoned and lastly, where no penalty is imposed or only a fine not exceeding $100. For the sake of clarity and ease of administration, I believe the wording of the Bill before us is preferable.

The honourable member also looks to section 5 of the Queensland legislation which concerns itself with matters excluded from a person's criminal history. As I understand it, such a provision has not been inserted in the Bill because the police have in place a policy not to reveal any information in relation to a charge which is not proved. The record is kept on their premises but for the purposes of public information no details are provided.

The Council divided on the second reading:

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

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

Pair—Aye—The Hon. T.G. Roberts. No—The Hon. J.C. Burdett.

Majority of 1 for the Ayes.

Second reading thus carried.

[*Sitting suspended from 5.24 to 7.30 p.m.*]

FREEDOM OF INFORMATION BILL (No. 2)

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

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

Page 1, line 15—After 'proclamation' insert 'or six months after assent, whichever is the earlier'.

The Opposition is of the view that it is important to bring this legislation into operation at the earliest opportunity. We recognise that it may be necessary properly to inform

members of the Public Service and others who may be affected by the obligations placed upon them by this legislation, but its implementation ought not to be delayed indefinitely. Of course, if clause 2 remains as it is, it is entirely a matter for the Government as to when it will be proclaimed. We must remember that the Bill may not necessarily come out of consideration by both Houses in a form that the Government likes completely. For that reason, I think it is important to have some date by which, if the Government has not brought it into operation, it comes into effect.

My amendment provides that the Act will come into operation on a day to be fixed by proclamation or six months after assent, whichever is the earlier. I am amenable to some discussion as to whether it should be three, six or seven months or some other period, but ultimately this Parliament has to be in control of the latest time by which the legislation will come into operation. For that reason, I specifically move this amendment.

The Hon. C.J. SUMNER: The Government opposes this amendment. This is certainly not the normal situation. The Government brings most pieces of legislation into operation by proclamation, and that is the normal situation. There is no reason to alter it in this instance. Obviously, the Government would want to have the legislation implemented as soon as reasonably practicable. However, budgetary considerations have to be met, and obviously they will not be dealt with until the Bill is passed; also, employee training will have to be undertaken in various departments. I think that imposing a specific time limit is unreasonable.

The Hon. M.J. ELLIOTT: When one considers that this legislation has been promised for nine years, I am certainly attracted to the possibility that, once this legislation has received assent, there should be a deadline for its coming into operation. Six months may not be long enough, but I should like to see an absolute deadline. In the absence of any other amendment, I shall support this one.

Amendment carried; clause as amended passed.

Clause 3—'Objects.'

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

Page 2—
Line 9—leave out 'prompt'.
After line 11—Insert new subclause as follows:
(3a) This Act must be administered so as to make the maximum amount of information of the kind referred to in subsection (3) available to members of the public promptly and inexpensively.

My first amendment seeks to place a greater emphasis on the desirability of the Act being administered to make the maximum amount of information available to members of the public promptly and inexpensively. The amendment seeks to delete the word 'prompt' from clause 3 (3) *(b)*, but to include it in my proposed new subclause, which also adds two other principles: one is the maximum amount of information referred to in proposed new subclause (3) being made available and that it be made available inexpensively. I think they are criteria which, in an objects clause of this nature, are important to record as well as the intention of ensuring that the information is disclosed promptly. So, in an attempt to expand the objects to make those points I have moved the amendments.

The Hon. C.J. SUMNER: The Government opposes the amendments. The question of the intention being to facilitate and encourage the prompt disclosure of information is already covered. Obviously, we would want to do this as inexpensively as possible but, on the other hand, the Government does want some concept of cost recovery in the Bill and, in that, we are relying on the Liberal Party's stated position through its former Leader, the Hon. Mr Cameron, who made quite an explicit statement that he was prepared to accept cost recovery in this area. The fact of the matter is that freedom of information legislation is incredibly expensive to operate; it imposes an enormous burden on taxpayers, and to include a clause like this would impose an even greater burden on taxpayers. In my view, there should be some provision for cost recovery, and the people who want the information should pay for it.

The Hon. M.J. ELLIOTT: With regard to the question of inexpensiveness, I do not think that the inference need be that there is not some form of cost recovery, either total or near. I think the inference is that this will work as efficiently as possible to keep the cost down. There is a very real danger in relation to the way the Bill is now drafted that, with the Government able to charge whatever it now costs to recover, there is no real pressure to bring costs down and, if there are inefficiencies in the way that information is stored, retrieved, analysed, and so on, they would remain. Using the word 'inexpensively' within the objects is worthwhile, and I do not think it is a comment one way or another on cost recovery; it is just to say that, in an ideal world, access to information should be kept as cheap as possible. The question of promptness—

The Hon. C.J. Sumner: It doesn't say 'as possible'; it says 'inexpensive'.

The Hon. M.J. ELLIOTT: That is my interpretation of it. The word 'promptly' is already there and, as for the question of the maximum amount of information, I agree with that as well. I do not believe it is adequately covered elsewhere within the objects, so the Democrats will support the amendment.

Amendments carried; clause as amended passed.

Clause 4—'Interpretation.'

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

Page 2, line 19—After 'established' insert ', for a governmental purpose,'.

I am concerned that the definition of 'agency' is very wide, particularly where it means 'a person who holds an office established by an Act' because, as I think I indicated in my second reading speech, there are offices established under Acts of Parliament that are unrelated to a governmental purpose, such as the office of Chancellor of the University of South Australia. The Attorney-General responded that at least one university has indicated that it has no difficulty with the legislation. I presume that that means it has no difficulty with the way in which the legislation applies to the university. However, it seems to me that 'agency' would include not only a university but the respective offices that have been established by an Act, and I am not sure that that was intended.

So, I wish to insert in paragraph *(b)* a provision that qualifies the term 'office' to mean 'a person who holds an office established for a governmental purpose by an Act'. It seems to me that that qualifies the definition of 'office' sufficiently to identify that it is not private offices that are caught and that it relates specifically to those of a governmental nature. I cannot see that there is any prejudice to the intended scope of the legislation by relating the definition of 'office' to offices that are established for a governmental purpose.

The Hon. C.J. SUMNER: This is a curious thing, because members opposite are all in favour of freedom of information legislation unless it could possibly be interpreted as impacting on people who they do not want to have to provide the information, such as people in the private sector. It often occurs to me that, if freedom of information is good enough for the public sector, it is good enough for at least some aspects of the private sector as well. There is

no doubt that public companies impact just as much on individuals as do Government agencies. Of course, the Liberal Party would be absolutely horrified by the prospect that privately owned public companies should be covered by freedom of information legislation, but—

The Hon. K.T. Griffin: We have never said that.

The Hon. C.J. SUMNER: Well, that is the implication, because you are trying to narrow the scope of the freedom of information legislation.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That is right; that is exactly my point. You want to apply it to government. You have certain double standards about these matters.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Sure, and how do you think private companies keep going?

Members interjecting:

The CHAIRMAN: Order!

The Hon. C.J. SUMNER: They exploit consumers every day of the week. The honourable member knows that as well as I do. Companies have just as much if not greater impact on the lives of individual citizens as do Government agencies. The honourable member knows that as well as I do. But his standards say that they can be private, that there can be nothing disclosed to the public in any general way—

Members interjecting:

The CHAIRMAN: Order!

The Hon. C.J. SUMNER: —but for government there should be freedom of information. That is all right, but I want to make the point in passing that the honourable member is trying to limit freedom of information by this amendment. My amendment clarifies the point raised by the Hon. Mr Griffin. It seeks to clarify the definition of agency as it relates to a body corporate. The Hon. Mr Griffin has indicated that the term 'for a public purpose' is too broad and may include companies and associations: that is exactly his point.

The CHAIRMAN: I draw to the Attorney's attention that we are on line 19 and have not yet got to his amendment.

The Hon. C.J. SUMNER: I am talking to them all. The Hon. Mr Griffin has suggested an amendment that refers to a body that holds property either directly or indirectly on behalf of the Government. The Government does not support the proposal to link coverage to property ownership. However, to clarify the matter raised by the Hon. Mr Griffin, the Government has proposed an amendment that refers to a body corporate established for a public purpose and comprising or including or having a governing body comprising or including a Minister or a person or body appointed by the Governor or the Minister.

The CHAIRMAN: I remind the Minister that we are dealing with the amendments one at a time. We are now dealing with the Hon. Mr Griffin's amendment to line 19.

The Hon. K.T. GRIFFIN: I draw the Attorney's attention to clause 3 (1), as follows:

> The objects of this Act are to extend, as far as possible, the rights of the public:
> *(a)* to obtain access to information held by the Government; and
> *(b)* to ensure that records held by the Government concerning the personal affairs of members of the public are not incomplete, incorrect, out-of-date or misleading.

The issue of access to non-governmental records or information is not the question that we are debating. It is all very well for the Attorney to try to make a debating point about freedom of information by Government as opposed to freedom of information by the private sector, but the fact is that it is irrelevant to the consideration of this Bill. After all, it is the Government that has the power over people's lives and activities—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: They are subject to the law.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Sometimes the way they act does not suggest that they are subject to the law, but Governments are elected and spend taxpayers' money. They have the power of taxing and of raising revenue. Through their legislative initiatives they can effect the lives of citizens. As I say, the Bill is designed to deal with access to information held by the Government. The long title states:

> An Act to provide for public access to official documents and records; to provide for the correction of public documents and records in appropriate cases; and for other purposes.

If the Attorney wants to include in the Bill an objects clause which relates to information and records held by the Government, he has to live by it.

The Hon. M.J. ELLIOTT: Will the Hon. Mr Griffin give a specific example to illustrate the problem? If he cannot, I may be loath to support the amendment.

The Hon. C.J. Sumner interjecting:

The Hon. M.J. ELLIOTT: At this stage we are dealing with the amendment to line 19.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: Why is that a concern?

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I want to put my view clearly on the record: I believe that information in the community generally should be available as freely as possible. Ultimately that will mean the private sector. However, that is not what we are debating right now. I would argue that as wide as we can, we should make information free. Of course, the private sector will be more difficult than the Government sector because of questions such as commercial confidentiality, and so on. That is not what we are debating here, and I would need specific examples of where there are problems. If the chancellor was raised as an example, I do not see that as a problem. I cannot think of one that would be picked up by the Bill as it now stands. Therefore, I will not support the amendment.

Amendment negatived.

The Hon. K.T. GRIFFIN: Before I move my amendment I think it is important to get some clarification from the Attorney-General as to what he regards as a 'public purpose'. I must say that I am inclined not to move my amendment but to defer to the Attorney-General on the basis that it is an amendment that clarifies paragraph *(c)*. However, I made the point during my second reading contribution that in my view it is possible to catch bodies corporate, incorporated under the old Companies Code—now the Corporations Law—particularly companies limited by guarantee, which are for charitable purposes and which provide a benefit to the public in the area of charity, or even similar bodies incorporated under the Associations Incorporation Act which are established for the benefit of members of the public, under this provision. The Attorney-General's amendment does limit that now to a body corporate whose governing body comprises a Minister of the Crown or a person or body appointed by the Governor or a Minister of the Crown. In that respect it is certainly much clearer. Will the Attorney indicate what he understands by 'public purpose'?

The Hon. C.J. SUMNER: It means just what it says: a public purpose. I do not think I can take it very much further than that. In any event, my amendment clarifies the position by ensuring that the body corporate about which we are talking must have as its governing body a Minister of the Crown. So, whatever the definition of 'public purpose' is (and it obviously has connotations of something for the

benefit of the public in a governmental sense), it is the phrase that apparently is common in this sort of legislation. In any event, the safeguard in relation to the concerns of the honourable member is that it must emanate from a body corporate or it must be a body that is responsible to a Minister of the Crown. I move:

Page 2, lines 20 to 21—Leave out paragraph *(c)* and substitute paragraph as follows:

(c) a body corporate (other than a council) that—
(i) is established for a public purpose by, or in accordance with, an Act;
and
(ii) comprises or includes, or has a governing body that comprises or includes, a Minister of the Crown or a person or body appointed by the Governor or a Minister of the Crown;.

The Hon. M.J. ELLIOTT: I support the amendment.

The Hon. K.T. GRIFFIN: I think the Attorney's amendment certainly clarifies the point. In that respect I am comfortable in deferring to him.

Amendment carried.

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

Page 2, line 27—After 'body' insert ', controlled by the Crown, or an instrumentality or agency of the Crown,'.

I think it is important that the declaration by regulation of a person or body to be an agency is related to a governmental purpose. The only remedy in relation to a regulation is to move for disallowance in either House of Parliament. That is not always easy to achieve, particularly because such a regulation may also contain other material that ought not necessarily be disallowed. I should have thought that if the Government is to have the power to declare by regulations a person or body which is to be an agency for the purpose of the definition and, therefore, subject to the Act, it ought to be a body of a governmental nature. My amendment is to insert 'controlled by the Crown, or an instrumentality or agency of the Crown,' to ensure that that occurs.

As it stands in paragraph *(g)* of the definition of 'agency', the power means that anybody, private or governmental (and there is no limit on it), can be declared to be an agency and, therefore, subject to the legislation. I therefore move my amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment. It is clear from the objects of the Bill that the intention is to deal with information held by the Government. Regulation making power would be read in the context of the scheme provided for in the Bill. It is clear that private organisations would be outside the scope of the Act.

The Hon. M.J. ELLIOTT: In his response, the Attorney did not outline precisely what difficulty there was. He said that he felt the matter was dealt with elsewhere, but he did not suggest that there was any particular difficulty with the words being included.

The Hon. C.J. SUMNER: It is unnecessary. It limits what is covered by the Act.

The Hon. M.J. ELLIOTT: In those circumstances, I will be supporting the amendment.

Amendment carried.

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

Line 36—Leave out 'an agency' and insert 'a person or body'.

This is a drafting matter.

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

Amendment carried.

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

Line 38—Leave out 'proclamation' and insert 'regulation'.

The definition of 'exempt agency' means any council; as a result of the Attorney-General's amendment, a person or body referred to in schedule 2; or an agency declared by proclamation to be an exempt agency. Proclamations are not reviewable by the Parliament. If an agency is to be exempt, it seems to me appropriate that at least we have the benefit of that being done by regulation so that there is some measure of review by the Parliament. I see no harm being caused as a result of the amendment I now move.

The Hon. C.J. SUMNER: The Government opposes this amendment. We do not accept that agencies should be exempted by regulations. We consider that an exemption by proclamation is appropriate. Similar provisions exist in other legislation; for example, section 4 (3) of the Ombudsman's Act provides for the Governor by proclamation to declare an authority or department to be or not to be an authority or department to which the Act applies.

The Hon. M.J. ELLIOTT: It seems to me something of a nonsense that we have schedule 2 at all, if the exemption can be later granted simply by proclamation to anyone the Government decides. I do not find it acceptable, and I will be supporting the amendment, as I had one in identical terms that I was going to move.

Amendment carried.

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

After line 38—Insert definition as follows:
'member of the public' includes an incorporated or unincorporated body or organisation:.

In a number of places in clause 3 there is reference to a member of the public being given certain rights. In his second reading reply, the Attorney-General suggested that there was no need to focus upon the definition of 'member of the public'. I expressed concern that there were organisations and associations (incorporated or unincorporated) which might not be strictly construed as coming under the term 'member of the public'.

Under the Acts Interpretation Act, the definition of 'person' includes a body corporate. I do not think there is any definition of 'member of the public' in the Acts Interpretation Act, and it is for that reason that I wanted to put beyond doubt the fact that 'member of the public' includes an incorporated or unincorporated body or organisation, so there could not be subsequently any debate as to whether the objects of the Bill extended to these bodies or organisations. I do not think any harm is done by including it. In a sense, it is out of an excess of caution.

The Hon. C.J. SUMNER: The Government opposes the amendment. The Government is of the view that the provisions relating to access extend to incorporated or unincorporated bodies. However, it does not consider that provisions relating to amendments of personal records should extend to such bodies. The amendment of records is generally perceived as privacy related. It is a complex issue whether non-natural legal persons, bodies corporate, should enjoy privacy rights accorded to natural persons. The general trend in Australia and other countries is that they should not. A general definition of 'members of the public' may cause confusion in this area.

The Hon. M.J. ELLIOTT: I find myself in a position where I appreciate the concerns raised by the Attorney but also those of the shadow Attorney. In this case, I support the amendment simply to keep the matter alive. The matters raised by the Attorney-General are important and need further attention.

Amendment carried.

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

Page 4, lines 12 to 15—Leave out subclause (6).

This amendment is consequential upon the change in the definition of 'exempt agency' from 'proclamation' to 'regulation'.

Amendment carried; clause as amended passed.

Clause 5 passed.

New clause 5a—'Retrospective operation of Act.'

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

Page 4, after line 18—Insert new clause as follows:

5a. (1) An applicant for access to a document containing information concerning his or her personal affairs is, subject to this Act, entitled to access to such a document although the document came into existence before the commencement of this Act.

(2) An applicant for access to a document (other than a document referred to in subsection (1)), is, subject to this Act, entitled to access to the document provided that it came into existence not more than 10 years before the commencement of this Act.

(3) Notwithstanding subsections (1) and (2), where a document contains information of a psychiatric nature concerning the applicant, the applicant is not entitled to access under this Act to the document if it came into existence before the commencement of this Act.

Proposed new clause 5a provides that an applicant for access to a document containing information about his or her personal affairs is entitled to access to such a document although it came into existence before the commencement of the Act, and that is subject to the provisions of the Act. Where an applicant seeks access to a document other than a document referred to in subclause (1), and is entitled to access to the document, that entitlement exists provided the document came into existence not more than 10 years before the commencement of the Act. There is a provision dealing specifically with information of a psychiatric nature concerning the applicant, where access is not an entitlement.

It seems to me that, although the Bill deals with access to information of a private nature, we ought to ensure that the information, whenever it came into existence, is available for access and that, where it does not necessarily relate to personal affairs, we can go back something like 10 years. In that respect, there is a provision later in the Bill that it applies to documents which come into existence only after the commencement of this legislation. That is an unreasonable limitation upon the rights of the citizen under freedom of information legislation.

The Hon. C.J. SUMNER: This is opposed by the Government. The Government introduced this Bill with this provision in it because it felt sure that the Liberal Party would not wish to go against its generally stated opposition to retrospectivity. The Government was surprised to find that the Opposition apparently thinks that retrospectivity is applicable in this case.

The Hon. K.T. Griffin: It doesn't prejudice the rights of citizens, does it?

The Hon. C.J. SUMNER: It certainly may do. The Government does not support general retrospectivity although, as we all know, on occasions retrospective legislation is passed by Parliament when it is justified. In this case, the personal affairs of people are already covered by general right of access, irrespective of the age of the document. That is the principle that is already in place, in any event, with the administrative guidelines relating to privacy. Furthermore, there is no time limit where access is reasonably necessary to enable a proper understanding of another document to which an applicant has lawfully been granted access. To make it retrospective would mean that a document created when freedom of information legislation was not in place would be available. Authors of documents would not have expected access to be given to them. Some of the information may have been received in confidence and, in that case, there could be significant prejudice to individuals who may have provided that information in confidence.

Information regarding the receipt of that information may be hard to ascertain and, of course, there are the practical difficulties in accessing documents that are no longer current. The Government introduced this provision because it was convinced that it was in accordance with Liberal Party policy against retrospectivity. The Government asks the Committee to abide by it as one of the general principles in relation to this matter.

The Hon. M.J. ELLIOTT: Retrospectivity is a red herring in this matter. Retrospectivity is about changing the rules to the adverse effect of members of the public in general. That is primarily what it is about, and in this case it guarantees what is not in legislation so far, that is, an absolute legal guarantee to personal information, and that is reasonably sought. That is the first proposed new subclause of this amendment.

The second subclause recognises that there is information other than personal documents in which people are interested. As an example I will relate something with which I have been involved. If a person in the South-East wants to know whether the Government has been testing water quality and, if so, what it has found, that is something that a member of the public has the right to know. How on earth retrospectivity can be used as an excuse to refuse to disclose that information is an example of other matters about which the public has a right to know but about which it cannot get information. I was asking questions in Parliament and I could not get answers. That information should be made available to the public and it is necessary that there be an amendment to guarantee that that sort of information becomes available.

There are difficulties with some documents created before the commencement date. Proposed new subclause (3) of the Hon. Mr Griffin's amendment takes note of part of that in relation to information of a psychiatric nature. If there are others, the Government may need to address them quickly.

I have an amendment later which tackles this question of making information available more generally. I was looking at a phasing in period—making all the information available over a number of years rather than immediately, simply to prevent the rush of applications that the Government fears, although I doubt in reality that that would occur. I do not know how successful my amendment will be later, but I am attracted to subclause (3) of the clause, which is something that I had not tackled in my own amendment. At this stage at least, I am supporting this amendment.

The Hon. K.T. GRIFFIN: The Attorney-General's statement that the Bill was designed to accommodate the Liberal Party's view on retrospectivity is nonsense. The Government was forced or embarrassed into introducing a Bill. We have done it on a number of occasions in this place but, when the independent Labor member Mr Martyn Evans came in to his position of power, the Government saw the writing on the wall: it was going to get something anyway, so it had to put something up. He is an avowed supporter of freedom of information legislation, and at long last the Government has had to face the issue fairly and squarely. To suggest that it should not have some retrospective operation because the Liberal Party is opposed to retrospectivity is nonsense. The Government is seeking to ensure that anything which comes into operation prior to the commencement of this legislation, which has not been documented in accordance with the provisions of the Bill, should not see the light of day. There will be many of those documents to which the public ought to have access but to which they have not been able to get access for one reason or another.

The Liberal Party's stand on retrospectivity basically is that, where legislation seeks retrospectively to prejudice the rights or entitlements of citizens, it objects to it. We have never said that universally retrospective legislation is wrong. What we have said is that where it retrospectively preju-

dices, takes away, amends or varies existing or accrued rights or benefits or even prejudices retrospectively a citizen, we should not support it. That is consistent with our position on a number of Bills which have come before us in the past few years in relation to retrospectivity.

Access to governmental information which affects the citizen or citizens generally ought not to be restricted merely because it has taken the Government eight to nine years to bring in freedom of information legislation. If the legislation had been in operation soon after the Government took office, in accordance with its promise, we would not have had to worry about any sort of retrospective application.

The Hon. Mr Elliott has indicated that modifications may be needed to subclause (3) to deal with specific issues that might come to the attention of the Government between now and when the Bill is finally dealt with in the House of Assembly, but I am happy to listen to those and, where appropriate, accommodate them. However, as a matter of principle I see no reason why documents, other than those which are covered by the exemption provisions in this Bill, should not be made available under the freedom of information legislation. I can understand that there would be an argument if we went back 15, 20 or 30 years, when maybe the documentation was not as well indexed or archived as it is now; but I think that 10 years is a reasonable period from which to start the operation of this Bill. That is why I have moved the amendment.

New clause inserted.

Clauses 6 to 8 passed.

Clause 9—'Publication of information concerning agencies.'

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

Page 5, line 20—After 'agency' insert '(including of any board, council, committee or other body constituted by two or more persons that is part of the agency or has been established for the purpose of advising the agency and whose meetings are open to the public or the minutes of whose meetings are available for public inspection)'.

A concern was raised with me by some individuals on examination of the Bill, and all my amendment seeks to do is to make clear what structures and so on need to be covered within the information statement, so it is simply a clarification of clause 9 (2) *(a)*.

The Hon. C.J. SUMNER: The Government opposes this amendment; the Government is not convinced of the need for it. Some of the boards and so on may fall within the definition of an agency within the purposes of the Act and would have to have a separate reporting mechanism in any event.

The Hon. K.T. GRIFFIN: I do not think it matters if some of the bodies referred to may have to report separately. The proposition of the Hon. Mr Elliott is reasonable and I support it.

Amendment carried; clause as amended passed.

New clauses 9a and 9b.

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

Page 6, after line 16—Insert new clauses as follows:

Statement of certain documents in possession of agencies to be published

9a. (1) This section applies, in respect of an agency, to any document that is:

(a) a report, or a statement containing the advice or recommendations, of a prescribed body or organisation established within the agency;

(b) a report, or a statement containing the advice or recommendations, of a body or organisation established outside the agency by or under an Act, or by the Governor or a Minister, for the purpose of submitting a report or reports, providing advice or making recommendations to the agency or to the responsible Minister for the agency;

(c) a report, or a statement containing the advice or recommendations, of an inter-departmental committee whose membership includes an officer of the agency;

(d) a report, or a statement containing the advice or recommendations, of a committee established within the agency to submit a report, provide advice or make recommendations to the responsible Minister for the agency or to another officer of the agency who is not a member of the committee;

(e) a report (including a report concerning the results of studies, surveys or tests) prepared for the agency by a scientific or technical expert, whether employed within the agency or not, including a report expressing the opinion of such an expert on scientific or technical matters;

(f) a report prepared for the agency by a consultant who was paid for preparing the report;

(g) a report prepared within the agency and containing the results of studies, surveys or tests carried out for the purpose of assessing, or making recommendations on, the feasibility of establishing a new or proposed Government policy, program or project;

(h) a report on the performance or efficiency of the agency, whether the report is of a general nature or concerns a particular policy, program or project administered by the agency;

(i) a report containing final plans or proposals for the reorganisation of the functions of the agency, the establishment of a new policy, program or project to be administered by the agency, or the alteration of an existing policy, program or project administered by the agency, whether or not the plans or proposals are subject to approval by an officer of the agency, another agency, the responsible Minister for the agency or the Cabinet;

(j) any material prepared within the agency that is intended to form the basis on which legislation (including subordinate legislation) is prepared;

(k) a submission prepared within the agency (other than by the responsible Minister for the agency) for presentation to the Cabinet;

(l) a report of a test carried out within the agency on a product for the purpose of Government equipment purchasing;

(m) an environmental impact statement prepared within the agency;

and

(n) a valuation report prepared for the agency by a valuer, whether or not the valuer is an officer of the agency.

(2) The principal officer of an agency must:

(a) cause to be published in the prescribed form as soon as practicable after the appointed day a statement (which may take the form of an index) specifying the documents to which this section applies that have been created since the commencement of this Act and are in the possession of the agency;

(b) within 12 months after first publication of the statement required under paragraph *(a)* and thereafter at intervals of 12 months, cause to be published in a prescribed form statements bringing up to date the information contained in the previous statement or statements.

(3) This section does not require a document of the kind referred to in subsection (1) containing exempt matter to be referred to in a statement published in accordance with subsection (2), if the fact of the existence of the document cannot be referred to in the statement without exempt matter being disclosed.

(4) In this section:

'the appointed day' means—

(a) in relation to an agency in existence on the commencement of this Act—the day of that commencement;

or

(b) in relation to an agency that comes into existence after the commencement of this Act—the day on which the agency comes into existence.

Notices to require specification of documents in statements

9b. (1) A person may serve on the principal officer of an agency a notice in writing stating that, in the opinion of the person, a statement published by the principal officer under

section 9a (2) does not specify a document as described in section 9a (1) that was required to be specified in the statement.

(2) The principal officer must:

(a) make a determination within 21 days of receiving a notice as to whether to specify in the next statement to be published under section 9a (2) *(b)* the document referred to in the notice;

and

(b) cause the person to be given notice in writing of the determination.

(3) Where the determination is adverse to the person's claim, the notice must specify:

(a) the day on which the determination was made;

(b) the rights of review and appeal conferred by this Act and the procedures to be followed for the purpose of exercising those rights;

and

(c) the reasons for the determination and the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based.

Essentially, these are the clauses in the Bills that were introduced by the Hon. Martin Cameron when he was a member. They are designed to require an agency to publish information in a standard form to provide members of the public with information about what may be available within the agency and that in itself, of course, gives information to the public about documents that might be accessible and about matters which may affect them individually or generally.

If we look at new clause 9a, we see that it applies in respect of an agency to any document that is a report or a statement containing the advice or recommendations of a prescribed body or organisation established within the agency; a report or a statement containing the advice or recommendations of a body or organisation established outside the agency, by or under an Act or by the Governor or a Minister for the purposes of submitting a report or reports; and of various other reports or statements. If we look further into the sorts of reports which should be notified publicly, we see that they include those containing final plans or proposals for the reorganisation of the functions of the agency; the establishment of a new policy, program or project to be administered by the agency; any material prepared within the agency that is intended to form the basis on which legislation, including subordinate legislation, is prepared; and valuation reports and environmental impact statements within the agency. The object is to make publicly available information about the sorts of documents which are within the agency. That may take some time to put together, although I would be surprised if any agency that was being administered efficiently and properly did not already have an index of the documents available.

Clause 9b allows a person to serve on the principal officer of an agency a notice that a statement that has been published by a principal officer, under section 9a (2), does not specify a document and, in effect, to pick up on something that has been omitted from the list which in fact should have been included. I think that this is a useful obligation placed upon agencies and principal officers, and I believe that it enhances the quality of information that will be available to members of the public, by an agency, having been required to make the information available publicly, identifying the areas of its activity departmentally.

The Hon. C.J. SUMNER: The Government opposes the amendment. The provision is far-reaching. It will require the publication of detailed lists of the types of documents created and held by agencies. It would certainly require significant work to keep and update such a statement. It would be nothing more than a job creation scheme for public servants, for no good purpose.

The Senate Standing Committee on Legal and Constitutional Affairs considered this matter in its report on the operation and administration of the Commonwealth freedom of information legislation. The Committee did not support such proposal. In the committee's view, it is sufficient that, upon request, such material may be made available under the FOI legislation.

The Hon. M.J. ELLIOTT: The Democrats support the amendment.

New clauses 9a and 9b inserted.

Clause 10—'Availability of certain documents.'

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

Page 6, line 28—After 'policy' insert 'document'.

This relates to a drafting matter.

Amendment carried; clause as amended passed.

Clause 11—'Application of this Part.'

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

Page 6, lines 40 to 42—Leave out paragraph *(a)* and 'or'.

During the second reading debate I raised the point that the Bill should apply to Ministers who are 'corporations sole'. The clause provides:

This Part does not apply to—

(a) an agency that is a Minister (unless the agency is declared by regulation to be one to which this Part applies);

In my view, this takes much greater licence with the Bill than I think it ought to take. In effect, the Attorney-General's own amendment to clause 4 largely picks up the corporations sole point, because it refers to a body corporate which comprises a Minister of the Crown, among others. So, largely that point is covered. Notwithstanding that, to me it seems inappropriate to exempt an agency that is a Minister under the provisions of clause 11 *(a)*.

The Hon. C.J. SUMNER: This amendment is opposed. Clause 11 applies only to Part II, that is, the publication of certain information. The agencies under a Minister's control will be required to provide the information required in clauses 8 and 9. The Government does not consider that the requirements regarding publication of information should apply generally to Ministers. I think that would be quite wrong certainly as far as the basic principles are concerned and in relation to the other principles contained in the legislation relating to the protection of Cabinet material.

Presumably, if Ministers are included, information held by their personal staff in their personal files which they might prepare for particular matters that they are dealing with will be subject to freedom of information. That is quite bizarre. However, where it is appropriate for the Minister to provide information, a regulation can be made to require the Minister to comply with Part II, but in any event those matters that are properly governmental within departments are covered, even though the Minister is responsible for that department. To provide that freedom of information should apply to Ministers as such is, as I said, a fairly extraordinary proposition.

The Hon. M.J. ELLIOTT: Would the Attorney-General illustrate by a specific example the sort of thing that he is concerned about? Sometimes an example states the point one way or the other.

The Hon. C.J. SUMNER: Apart from what I have said, it is not applicable to apply Part II to a Minister. The agency has to provide the information. In fact, the legislation provides that the Minister responsible for an agency has to provide the information under clause 9. So, the information has to be provided by an agency, that is, an agency for which the Minister is responsible. The structure of the Act is that it does not apply to Ministers as such. That is appropriate. Therefore, this exemption is provided. However, if a Minister does happen to be a corporation, as

some Ministers are in the legislation, that agency can be declared by regulation to be one to which this part applies.

The Hon. M.J. ELLIOTT: I am not terribly persuaded one way or the other, although the general attitude that I am taking right through the Bill is that, if anything makes information more likely to be available, I will support it unless someone can put up a good argument why it will cause a real and substantial difficulty. The Attorney-General said that this part should not apply to Ministers, yet clause 11 *(a)* provides 'unless the agency is declared by regulation to be one to which this part applies'. Clearly, it entertains the possibility that in some cases it will apply.

In this case the Attorney still has not put up a concrete example of the sort of difficulty that could be created. The very worst I have heard so far is that it will probably not apply in any case, in which case there is nothing to worry about.

The Hon. K.T. GRIFFIN: I have listened with interest to what the Attorney has said and I have some sympathy for the view that Ministers personally should not necessarily be covered by this Part. My intention was to ensure that Ministers as corporations sole were subject to the provisions of the Bill.

What I am contemplating is some form of amendment: I wish to proceed with this amendment now and maybe have the clause recommitted at the end of the Committee stage to ensure that there is that distinction between a Minister acting as a Minister in executive office as opposed to a Minister acting as a corporation sole. I indicate that if the amendment passes, I will seek in any event to have the clause recommitted if there is an appropriate amendment available.

Amendment carried; clause as amended passed.

Clause 12 passed.

Clause 13—'Application for access to agencies' documents.'

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

Page 7, line 11—Leave out 'the agency may determine' and insert 'may be prescribed'.

This amendment relates to the question of fees. Although the agency may determine fees in accordance with guidelines, it gives an agency particularly wide power to determine what fees will or will not be charged on application by a citizen for access to an agency's documents. The scheme that the Liberal Party proposes is that fees should be fixed by regulation and that certain matters relating to fees ought to be dealt with under clause 53, setting out legislatively a fairly detailed scheme pursuant to which the regulations may be enacted.

The Liberal Party and I have in mind that the fees are fixed by regulation and the fees and charges for access to documents fixed in accordance with the regulations will be calculated by the agency in accordance with the following principles or where the principles required will be waived. That is, a fee or charge must cover only the time that is reasonably necessary to provide access to the document; the fee or charge must be fixed on an hourly rate basis; a fee or charge may be made for the identifiable cost incurred in supervising the inspection by the applicant of the material to which access is granted; a fee or charge may be made for the reasonable costs incurred in supplying copies or documents, in making arrangements for viewing documents or in providing a written transcript; a fee or charge must not be made for any time spent by the agency in searching for a document that has been lost or destroyed; a fee or charge must not be made for the time spent by an agency in examining a document to determine whether it contains exempt matter; a fee or charge must be waived if the application is a routine application for access; a fee or charge must be waived or be reduced if the applicant's intended use is a use of general public interest or benefit or if the applicant is impecunious; a fee or charge must be waived if the applicant is a member of either House of Parliament; and a fee or charge must not exceed such amount, being not more than $100, as may be prescribed by regulation from time to time.

There are other provisions in the amendment to provide for the review of fees or charges for access to documents. I provide for a mechanism by which the Auditor-General may review a fee, not in any judicial sense but as an administrative act, so that the reasonableness of the fee can be determined.

The real difficulty is that once an agency gets hold of a request, it is possible for the work involved to grow like topsy and for the fees also to grow in that fashion without any adequate control over the work that is done. It may be that the search may not be undertaken efficiently; it may be that the rates charged are fees charged by a monopoly without any sort of competitive ingredient; that is, an ingredient which keeps the rates down rather than keeps them up. There is a whole range of factors that can influence the fees. The Liberal Party seeks to provide a mechanism that fixes the fees by regulation and then provides for review, the regulations being enacted on the basis of certain principles that are set out under our clause 53. The important factor is regulation and the next important factor is, in a sense, the standards that are to be complied with in fixing those fees and in undertaking the work that brings a fee or reward. Basically, the scheme that I am proposing will allow cost recovery but will ensure that reasonable costs are recovered and that the whole thing does not get completely out of control.

The Hon. C.J. SUMNER: The Government does not support an amendment to clause 53 to provide for fees and charges to be prescribed in regulations. In this respect we have followed the legislation passed by the New South Wales Parliament, which was introduced by the Liberal Government. The Government considers it is reasonable to allow agencies to determine their own fees and charges, subject to the safeguards provided in the guidelines. The Government believes that FOI should be a user-pays system but, at the same time, accepts that there may be a need to waive or reduce fees in appropriate cases.

Clause 53 (2) *(a)* requires the Minister, when establishing guidelines, to ensure that disadvantaged persons are not precluded from exercising their rights merely because of financial hardship.

The Hon. M.J. ELLIOTT: The Democrats have an amendment identical to that of the Hon. Mr Griffin in relation to the current clause, that being that fees should be charged by regulation and not by a charge set by the agencies themselves. We also have amendments in relation to clause 53, but they have taken a somewhat different tack from those which the Liberal Party has taken. I concur in many of the arguments put forward by the Hon. Mr Griffin. It is worth taking a look at the sorts of inquiries that are being made to start off with. They appear to come under three groupings, as I see it.

The first comprises people who are making inquiries that relate to the personal interest of the applicant, and almost all of those are documents about that individual. We have a second lot of applications, which I believe in the United States amounts to approximately 80 per cent, and those are what could be called commercial applications, in that bodies are seeking information for their own commercial benefit.

It seems to me that we need a fee structure that charges them differently from other groups.

A third group comprises people who are making inquiries in the public interest. It would seem to me reasonable that there should be three levels of fee. Probably, the personal interest inquiries would be the lowest and the public interest inquiries would probably be of a somewhat similar level, but people who are making what are clearly commercial inquiries should be charged a much higher fee. I also believe that the fees should be in two parts, the first being an application fee. As I see it, that application fee should cover reasonable processing costs, search fees, etc.

There should then be a fee for copying documents, whether the copying be photocopying, audio tapes or video tapes, etc.; in other words, the final processing. That second charge would be a varied one, as I see it, relating to the number of pages or the amount of tape, whichever has to be produced. I do not see that the Hon. Mr Griffin's amendment is saying that there should not be a reasonable fee charged, looking at cost recovery, but I do have a concern (and it must be a concern expressed by the Hon. Mr Griffin) that there must be some pressure on the various agencies to work efficiently.

I believe that, if there is some degree of pressure on fees, the agencies will seek to become more efficient to gain that full recovery. If whatever inefficiencies they have can simply be claimed for—in other words, if it takes them three hours to do what they could have done in one and they can charge for three—what pressure is placed upon the agency to take the lesser time? If people can take their time about determinations and charge for the time taken, once again there is no pressure on them to streamline that.

There is no doubt that there needs to be a reasonable fee charged, from two perspectives. We do not want to see the Government out of pocket. There are enough problems with money for Governments as it is. On the other hand, it should not be possible for fees and charges to be used as a way of denying people information. I had a couple of major concerns with this Bill: one was that the way fees, charges and other costs were presented within the Bill to begin with meant that there was the very real possibility that people would be denied information simply because of the cost of seeking it. We are talking about freedom of information, but it is certainly not free. What I want to be certain of is that it is not outrageously expensive.

The Hon. R.I. LUCAS: If we are talking about the whole question of fees and charges, what is the situation in relation to members of Parliament regarding fees and charges under the Government proposal?

The Hon. C.J. SUMNER: That matter will be laid down in the guidelines.

The Hon. R.I. LUCAS: I accept that it is to be laid down in the guidelines, but does the Government have a policy position in relation to the charging for FOI requests by members of the State Parliament?

The Hon. C.J. SUMNER: The Government's view is that the general provision should apply to members of Parliament. One of the great abuses of freedom of information legislation has been in Victoria where masses and masses of public money has been wasted in chasing requests by members of Parliament.

The Hon. R.I. LUCAS: I thought that was the case and I therefore share the concern of my colleague the Hon. Mr Griffin. I just want to pursue the Hon. Mr Elliott's amendments, in trying to understand them. As we are discussing the whole package, the substantive part of fees and charges, if the Government was to support the Hon. Mr Elliott's package, for example, I take it that that position would mean there would be no stipulation within the Act—and I am not just talking about members of Parliament but I would like to clarify the State Parliament's viewpoint—that members of Parliament would have fees waived? Given the policy attitude as enunciated just then by the Attorney-General, and that the Attorney-General and the Government would be promulgating the regulations, if that is the way the Hon. Mr Elliott sees the scheme of things, the Parliament then has an opportunity to disallow the regulations, but we would then have to disallow the whole package of regulations.

The Hon. Mr Elliott's general premise is: let's get as much into it as we can at this stage. If he has a concern that members of Parliament, whether they be Democrat, Liberal, Labor or Independent, might be in effect prevented from pursuing on behalf of their constituents general freedom of information requests, as has occurred in many other States, he might consider whether it would not be better to ensure that we get as much as possible into the amendment during the Committee stage. As he has indicated, if there were some carry-over questions that he might have in relation to various scales of amendments—he talked about three levels—perhaps that might be something we could more productively pursue at a later stage.

The Hon. M.J. ELLIOTT: There are some elements of the amendment foreshadowed by the Hon. Mr Griffin to which I am attracted. One is a differential charging system, and there may be one or two other elements also. There are matters which he has not picked up but which I think are worth pursuing, such as commercial inquiries, where I think the charge should be significantly more than for anyone else. Perhaps the healthiest position is something of a hybrid between the two proposals. We are doing this somewhat on the run at this stage. Getting back to the amendment before us, both the Liberal Party and the Democrats support it. There may be some argument later on about which is the most appropriate way to set those fees and charges under regulation.

Amendment carried; clause as amended passed.

New clause 13a—'Acknowledgement of application.'

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

Page 7, after line 18—Insert new clause as follows:

13a. (1) An agency must, within seven working days after receipt of an application, cause to be given to the applicant a written acknowledgement of the acceptance of the application by the agency.

(2) An agency is not required to accept an application if the application fee has not been paid.

What I am attempting to do relates particularly to people who have lodged applications through the mail and may also apply to people who have lodged applications over the counter. The Committee will debate later whether an agency should have 30 days or 45 days to deal with an application, but I hope to ensure that, within the first seven working days of an application's being received, an agency has done a first analysis of the application, that it has within its own mind clearly what is being asked for and decided whether there is some difficulty with the application or whether it is a little vague, and that the agency at that stage is considering asking the applicant to narrow down his or her request. The agency is not being asked to do anything other than take a first look at the application and be satisfied that it understands clearly what is being sought and that the application is in order. The applicant should also be notified that the application has been received and is generally in order.

The Hon. C.J. SUMNER: The Government opposes the proposed new clause. It will require an agency to acknowledge an application within seven working days of receipt. Such a provision is not necessary. The Bill already provides

time frames dealing with requests. It makes clear that agencies must assist the applicant with a request if there is insufficient information.

The Hon. K.T. GRIFFIN: The Opposition supports the proposed new clause.

New clause inserted.

Clause 14—'Persons by whom applications to be dealt with, etc.'

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

Page 7, line 25—Leave out '45' and insert '30'.

Just as with fees, where the higher the fee an agency can charge the more money it will spend trying to administer it, the more days we give an agency, the longer it will take. I do not think that 30 days is unreasonable. I expect that, in processing many of these applications, most of the work will be done in the last five days. Whether we give agencies 30 days or 45 days, the amount of work needed to be done will not change, and it simply means that the information will be made available to the applicant more rapidly. In legislation overseas, the time is considerably shorter than 30 days.

The Hon. C.J. SUMNER: The Government opposes the amendment. The 45 day time limit is the general standard across Australian jurisdictions. Obviously, many applications may be dealt with in a shorter period. It is important to have a realistic period, one that takes into account the time needed to process the more complex requests. In any event, clause 14 (2) provides that the application must be dealt with as soon as practicable; 45 days is the outside limit.

The Hon. K.T. GRIFFIN: The Liberal Party will not support the amendment. We accept that 45 days is the generally accepted time frame across Australia and, whilst one would like to think that Government agencies can operate more quickly than 45 days or what is effectively just over six weeks, there will be occasions when requiring action within a month will be unreasonable.

We have to remember that, if there is no response within the time limit that we fix, there is a right of review. My concern is that, if we fix it at 30 days, that means more applications for review, which might have been unnecessary if the 45-day time limit had been provided. Whilst we support the general principle of requiring a Government agency to deal with an application expeditiously, we think that the general standard of 45 days is not an unreasonably long time, particularly if an application is made, say, before the Christmas/New Year period. If we take that out of a 45-day period, it does not leave a very long period for an agency to operate. It may be that the Minister is away at a ministerial conference, or something else might intervene which causes disruption to the very tight timetable. For that reason, we are not prepared to support the reduction to 30 days.

The Hon. M.J. ELLIOTT: I am disappointed with the Hon. Mr Griffin's reaction. In the United States processing takes 10 days, and, if there are deliberate delays, members of the public have a right to sue the agency concerned. The point made by the Hon. Mr Griffin is one that I had considered—the difficulties that there may be with a holiday period. However, I think that a simple change in relation to the number of working days would very quickly solve that sort of difficulty. I make the point again that an agency will take as long as it is allowed to take in almost all cases. As for subclause (2), which talks about applications being dealt with as soon as practicable, I think that is nonsense. There is no penalty for not dealing with an application as soon as practicable, as I see it, and it is almost unprovable whether or not it has been dealt with as quickly as it may have been. I see that as being totally useless. Clause 14 really says that people will have to wait for 45 days in almost all cases.

Amendment negatived.

The Hon. R.I. LUCAS: I should like to put a question to the Attorney-General. In the anticipated processing of FOI applications by Ministers, does the Attorney-General envisage that requests for information from departments will have to be processed in some way through ministerial officers—that is, receiving the oversight of the Minister's ministerial officer—before approval can be given for the release of information or at least advice to the Minister's office of requests by certain categories of people?

The Hon. C.J. SUMNER: No.

The Hon. R.I. LUCAS: I place on record that not much can be done in relation to amendment of this provision and that concern has been expressed in the Victorian Parliament. Specific indications were given by Labor Government Ministers in that State that there was no oversight, to use the word, of requests provided by ministerial officers within Ministers' offices. Evidently—and it was revealed subsequently—most applications that came from members of Parliament were processed not in accordance with the strict provisions of the Act, but by going through the Minister's office, and advice was provided by the Minister's personal officers within that office which then went back through the department. I place that on record as what has occurred in the Victorian circumstance. I guess people can judge the Attorney-General's comment in that light.

Clause passed.

Clause 15 passed.

Clause 16—'Transfer of applications.'

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

Page 8, lines 7 to 13—Leave out subclause (6) and substitute subclause as follows:

(6) An application that is transferred from one agency to another must be dealt with as soon as practicable (and, in any case, within 45 days after it was received by the agency that transferred the application).

Clause 16 deals with transfers of applications. Under the scheme of the Bill it is possible for an agency to transfer an application for access to information to another agency, and it is possible for that agency to transfer to yet another agency, and so the merry-go-round can continue. One of the Liberal Party's concerns is that, by limiting the time within which an agency must deal with a matter to 45 days, it allows successive periods of 45 days to accumulate by virtue of a transfer from one agency to another, and so on. We hold the view that there ought to be some restriction against that sort of behaviour which, hopefully, will not occur on many occasions or at all, but I think, being realistic, it is likely to happen where a 'hot potato' is being passed from one agency to another.

Members ought to recall that, under clause 16 (1) *(a)*, an agency may transfer the application to another agency if the document is not held by the agency but is, to the knowledge of the agency, held by the other agency and, under clause 16 (1) *(b)*, where it is held by the agency but is more closely related to the functions of the other agency. I suppose that is where something may be more likely to do the rounds of agencies than it would under paragraph *(a)* but, in all of that, what we want to try to do is to ensure that within some time frame these transfers occur and that the potential for extended time is contained to an absolute minimum. That is the reason for providing that, where an application is transferred from one agency to another, 45 days overall is a reasonable time within which to deal with the application, that is, the time from which the first agency received the application.

The Hon. M.J. ELLIOTT: I support the amendment, although I would like to suggest a further amendment to his amendment. If he is worried about the potential for a transfer merry-go-round, I suggest that the last 'transferred' should be replaced by 'initially received', otherwise, if the application has been through three agencies, this applies to 45 days after the second agency received the application and then transferred it on. The 45 days would not cover the three agencies through which it had passed. So, I think a minor change is needed to the Hon. Mr Griffin's amendment, and he could consider that.

I think it is a perfectly reasonable proposition that it still be done within the 45 days, particularly in the light of an amendment which I moved, which has been accepted by the Committee at this stage and which requires that, within the first seven working days, a response must be made to the applicant. In that case, what we have effectively done is require the agency that received the document to have a first, reasonably close look at the document and, if it realises it really should not have been sent to that agency, it can move it on pretty quickly.

In the light of the acceptance of that amendment, it means that the 45 days referred to here is certainly not unreasonable. In any event, does the Hon. Mr Griffin feel that the use of the word 'transferred' secondly appearing is adequate, if the document has actually been in the hands of several agencies, in which case it seems to me that the 45 days would refer only to the agency that had it most recently.

The Hon. K.T. GRIFFIN: It is an interesting point. I had intended that it would mean 45 days from the date when the application was first received by an agency. If the honourable member wishes to amend my amendment and insert the word 'initially' or 'originally' before 'transferred' where it appears in the second to last line, I would be comfortable with that.

The Hon. M.J. ELLIOTT: The word 'originally' does attract me and, accordingly, I move to amend the Hon. Mr Griffin's amendment as follows:

Insert 'originally' before 'transferred' second occurring.

Amendment to amendment carried; amendment as amended carried; clause as amended passed.

Clause 17—'Agencies may require advance deposits.'

The Hon. K.T. GRIFFIN: The Liberal Party opposes this clause. It deals with advance deposits and provides that an agency may require the payment of an advance deposit by an applicant where the agency is of the opinion that the cost of dealing with an application is likely to exceed the application fee. That advance deposit is such amount as the agency may determine. That is a very wide power for the agency, and I understand that a system of advance deposit or deposits has been used fairly effectively in Victoria, as I recollect, to place a deterrent burden upon an applicant for access to information. For that reason, we oppose the clause.

The Hon. C.J. SUMNER: The Government supports the retention of this clause. It is similar to the provision in the New South Wales legislation.

The Hon. M.J. ELLIOTT: I said earlier that I have concerns about the potential for costs being used as a deterrent. The Democrats also proposed that clause 17 be struck out, and therefore we support the Hon. Mr Griffin's position.

Clause negatived.

Clause 18—'Agencies may refuse to deal with certain applications.'

The Hon. K.T. GRIFFIN: The Opposition also opposes this clause. This allows an agency to refuse to deal with an application if it appears to the agency that the nature of the application is such that the work involved in dealing with it would, if carried out, substantially and unreasonably divert the agency's resources from their use by the agency in the exercise of its functions.

The refusal by the agency to deal with the application is a determination for the purposes of the Act and is therefore subject to review. To that extent, there is protection for the citizen. On the other hand, one could expect that the power given to the agency to refuse to deal with an application could be arbitrarily used by the agency to avoid providing information about documents in its custody or possession. We appreciate that, as a consequence, there may be what might be regarded as totally unreasonable applications for access to information, but we tend to come down on the side of the citizen rather than the Government agency in respect of this matter. For those reasons, we oppose clause 18.

The Hon. C.J. SUMNER: Obviously, the Government wants to maintain clause 18. It is an important protection against abuse of the system. It is the same as in the New South Wales legislation. Virtually every FOI provision in Australia either has such a clause or wishes that it did. Such a clause is contained in the New South Wales and Commonwealth legislation. The Queensland Electoral and Administrative Review Commission and the Victorian Legal and Constitutional Committee recommend it. In the final analysis, although it is not provided in the New South Wales legislation, external review is provided for in this legislation, so there is an added protection in addition to what is available in the New South Wales legislation. Clearly, this could be a charter for abuse if it is removed.

The Hon. M.J. ELLIOTT: I had intended to oppose this clause, but I see problems that can arise such as a request for information that is so broad that the person is asking for virtually everything contained in a department's files. Quite clearly, this would divert the agency's resources to an extent that could not be tolerated. On the other hand, I am concerned about what is considered to be substantial and what is considered to be unreasonable. How does one measure that? What seems to be substantial and unreasonable now is almost anything because agencies are not used in general terms to giving out information.

So, precisely how does one measure 'substantial and unreasonable' and, indeed, how can a court, given the opportunity to make such a determination, do so? I would like the Attorney-General to provide a further response to that matter: what measure is to be applied to 'substantial and unreasonable' and what can courts use as a measuring stick in relation to such matters?

The Hon. C.J. SUMNER: It is not possible to answer that question. Courts have to deal all the time with these sorts of provisions contained in Acts of Parliament. The whole concept of reasonableness is in the law in many areas, and the courts have to adjudicate on it. Courts must apply commonsense and reasonable standards to the question. However, it is not possible to give a once only answer to a question because it will depend on the individual case and circumstances surrounding it which will have to be adjudicated on by the court.

The Hon. M.J. ELLIOTT: I understand that subclause (8) is not contained in other Acts—not that I would like to use the Acts of Parliament in Australia on this matter as being a good measure, because the Acts concerning freedom of information throughout Australia are appalling. Nevertheless, subclause (8) provides a protection that is not offered in New South Wales and possibly in other jurisdictions and, in that case, I will not support the amendment.

Clause passed.

Clause 19 passed.

Clause 20—'Refusal of access.'

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

Page 9, line 40—After 'usually' insert 'and currently'.

It concerns me that we could be in a position where a document that is usually available may be out of print and may not go back into print for a considerable time. Therefore, it is necessary not only that the document should be usually available but also that it should be currently available.

Amendment carried.

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

Page 9, after line 40—Insert 'or' between paragraphs *(c)* and *(d)*.

This amendment is consequential upon my insertion of new clause 5a, as are all my amendments on this clause.

Amendment carried.

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

Page 9, line 41—Leave out paragraph *(d)* and substitute paragraph as follows:

(d) if it is a document that—
(i) was not created or collated by the agency itself; and
(ii) genuinely forms part of library material held by the agency;.

My amendment seeks to further define the material that genuinely forms part of a library. The material that libraries would not expect to provide would include a book obtained from overseas. It is a document that is a Government document only by way of purchase. It is not a document that they have created or collected in any other way than through purchase. My amendment provides that, if a document is not created or collated by the agency and genuinely forms part of library material held by the agency, the agency may refuse access. The amendment defines a little more what genuinely forms part of library material.

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

Amendment carried.

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

Page 9, line 42—Leave out 'or'.

This is a consequential amendment.

Amendment carried.

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

Page 10, lines 1 and 2—Leave out paragraph *(e)*.

This amendment is consequential on the insertion of new clause 5a. I would have thought also, without hearing the Hon. Mr Elliott, that my amendment to insert new clause 5a really supersedes his amendment to substitute paragraph *(e)*.

The Hon. M.J. ELLIOTT: I support the amendment at this stage and will not proceed with my amendment. However, I think there are elements of it that may deserve a closer examination later. The amendment that the Hon. Mr Griffin accepted earlier allowed existing documents to become immediately available. It might be worth examining—as I believe has happened in relation to other legislation—that when it is brought in just to avoid the initial rush, that there is a phase-in period for documents so that for the first 12 months documents of a certain age become available and, in the next period, successive older documents become available. I am not pursuing my amendment at this time, but I suggest that it might be worth later consideration. I support the amendment.

Amendment carried.

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

Page 10, lines 12 and 13—Leave out paragraph *(a)* and substitute paragraph as follows:

(a) it is practicable to give access to a document consisting of—
(i) a copy of the restricted document from which the exempt matter has been deleted;
or
(ii) an extract from the restricted document containing such parts of the document as do not consist of exempt matter;.

I flag to the Committee that I consider this to be one of the more important amendments that I have moved, at least the intent of it is more important. Whether or not it achieves what I hope, I guess time might tell. This legislation, like probably most of the legislation that has been passed in Australia, is deficient because it is not truly freedom of information legislation: it is essentially freedom of document access legislation, because it is about documents rather than information.

The position in which we find ourselves is that there is a large number of documents that, for various reasons, require exemptions, and quite reasonably so. I will illustrate my point by example. Under the first schedule, Cabinet documents, Executive Council documents and so on are given wide exemptions. There are probably documents which, for a whole range of reasons, are given exemptions, and it seems to me that the major reason for those documents being given exemption is the context in which they are produced and, perhaps, Cabinet does not want everyone to know what matters are being discussed at a particular time. Certainly, Cabinet does not want made known the decisions being made and the opinions being formed within Cabinet. I think that that is perfectly reasonable. What is being sought in restricting documents in general terms through schedule 1, is reasonable, although I have a few minor amendments. However, just because matters of a factual or statistical nature happen to be in Cabinet documents or to be granted exemption on other grounds, that is not sufficient reason for their being restricted.

I believe that people are making applications for two different things: they are making application for documents, which usually involves people seeking personal information, or for information. Quite frankly, I do not think they care what document information is contained within: all they want is the information. They want to know how many of this or how many of that or whatever. Usually they want the facts; they are not interested in opinions or the context in which a document itself is being created. It seems to me that we can offer all the protections and exemptions necessary for documents while still making information itself available.

In paragraph *(a)* (i) we are looking at a copy of a restricted document with the exempt matter being deleted or an extract of a restricted document can be provided. By 'extract' I mean that it is possible to simply take out the information and retype it to represent it in some way so that the information can be available and other matters that the Government wishes to keep from the public for legitimate reasons can continue to be so restricted.

It is a matter of recognising that this Bill has not adequately addressed the question of freedom of information: it is more about freedom of access to documents. I believe that it has been far too narrow. It is an important proposition and we need to address it if this is genuinely freedom of information legislation.

The Hon. K.T. GRIFFIN: I have some sympathy for the amendment, although I am not sure how practical it is: I can see what the honourable member is trying to get at. I have had only a limited time to consider this during the late afternoon, therefore for the moment I indicate that we support the amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment. It is completely unnecessary. The Bill as introduced by the Government is adequate to give access to

information that might be included in an otherwise exempt document.

Amendment carried.

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

Page 10—
Line 17—After 'copy' insert 'or extract'.
Line 18—Leave out 'to the document'.

These are consequential amendments.

Amendments carried; clause as amended passed.

Clause 21—'Deferral of access.'

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

Page 10, after line 30—Insert subclause as follows:
(2) Where a document to which subsection (1) applies is required to be published, presented to Parliament, or submitted to a particular person or body on or before a particular day, access may not be deferred for more than three months after that day.

My concern is that the deferral process made possible under clause 21 can be used as an excuse for a very long period of denial of access. I cite the example of clause 21 *(a)*. Many documents are required by law to be published, and I can think of many that are supposed to have been published and presented to Parliament that have come up to two years late. That is not reasonable.

The Hon. K.T. Griffin: As well as reports.

The Hon. M.J. ELLIOTT: And reports. Information contained in a document can be denied to people because the document is due to be published or presented before Parliament but has not been. That sort of wait for information is not tolerable. The amendment I am moving is probably being more than reasonable in general terms, as I am providing three months. Perhaps I have been far too conservative.

Nevertheless, it is necessary that the deferral process just does not go on and on; some reasonable time must be given. The reason why I chose three months is that, if it is something legitimately to go before Parliament, we have breaks of around three months duration on occasion (and I think we are heading towards one now), but I would not tolerate a wait of longer than that. Even annual reports of agencies, etc., should not be more than three months late. They have due dates and that should be it. Certainly, information should be available after that time.

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

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

Amendment carried; clause as amended passed.

Clause 22 passed.

Clause 23—'Notices of determination.'

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

Page 12, lines 15 and 16—Leave out ', having regard to the sum of any advance deposits paid in respect of the application'.

This is consequential on the deletion of clause 17.

The Hon. M.J. ELLIOTT: I have an amendment in identical terms, so the Democrats support this amendment.

Amendment carried; clause as amended passed.

Clause 24 passed.

Clause 25—'Documents affecting inter-governmental or local government relations.'

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

Page 12, line 33—After 'access' insert 'under this Act'.

This amendment makes clear that the provisions of section 25 operate only within the scheme of the Freedom of Information Act. Some concern has been expressed that the provisions in clauses 25 to 28 may interfere with the legitimate transfer of information outside the scope of this legislation. Obviously this is not the intention. Whilst it is considered that the existing drafting would be interpreted to restrict the provision to access under the Act, this amendment will clarify the matter and remove any further argument.

Amendment carried; clause as amended passed.

Clause 26—'Documents affecting personal affairs.'

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

Page 13, line 16—After 'access' insert 'under this Act'.

This amendment is consequential.

Amendment carried.

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

Page 14, lines 8 to 13—Leave out subclause (5) and substitute subclause as follows:
(5) A reference in this section to the person concerned is, in the case of a deceased person, a reference to that person's closest relative who is of or above the age of 18 years.

This seeks to remove paragraph *(b)* dealing with children and persons of legal incapacity. The Bill which was introduced in April 1990 did not contain this provision. However, more recently, the new provision has been criticised as it does not recognise the rights of older children who have certain rights to their own privacy as well as an ability to consent to matters on their own behalf. This would cause particular difficulties where it is the guardian who is seeking the information against the wishes of the child.

On checking the New South Wales and Victorian legislation, it was noted that neither had such a provision. From discussion with New South Wales, it is apparent that the legislation in that State caters adequately for the rights of children's guardians without any specific reference. Therefore, it is proposed to remove paragraph *(b)*.

The Hon. K.T. GRIFFIN: Subclause (5) *(a)* provides that a reference to a deceased person is a reference to that person's closest relative who is of or above the age of 18 years. I had a concern that that did not deal with the possibility of the legal personal representative of that person, who might have an interest in the matter, an interest that might be quite legitimate and one of some significance; yet the legal personal representative would not have any opportunity to be consulted in relation to this issue. I am comfortable with the Attorney-General's amendment but it would be better if I moved an amendment to his amendment, as follows:

Leave out the words 'that person's closest relative' and insert 'the personal representative of that person or any of that person's close relatives'.

Amendment to amendment carried; amendment as amended carried.

The Hon. R.I. LUCAS: Clause 26 (2) provides:

An agency must not give access to a document to which this section applies (except to the person concerned) unless the agency has taken such steps as are reasonably practicable . . .

Can the Attorney-General indicate, from the briefings with which he will have been provided in respect of interstate and Commonwealth experience, whether this is relevant in the equivalent interstate and Commonwealth legislation? Can he say what is being interpreted as 'reasonably practicable'? Are we talking of one letter and telephone call or is the normal procedure that, as a matter of practice, agencies endeavour to contact on two separate occasions?

The Hon. C.J. SUMNER: Most of this legislation was based on the Liberal Party's freedom of information legislation in New South Wales. That is why we are very surprised at the number of amendments moved by the Liberal Opposition in this State. We had assumed that there would be no problem if we introduced legislation based on New South Wales as opposed to legislation introduced by a Labor Government in Victoria. This is based on the New South Wales legislation. I do not know whether there is any interpretation of 'reasonably practicable' in New South Wales that will give us any guidance.

The Hon. K.T. Griffin: Does it exist in the Commonwealth or Victoria?

The Hon. C.J. SUMNER: I understand there are similar provisions in other States, though perhaps not identical. I do not have ready access to any decisions on this topic.

The Hon. K.T. GRIFFIN: I should like to pursue the question of adoption records and papers. I presume that this clause would relate to adoption records and papers and that they would not be made available unless 'reasonably practicable' steps had been taken to obtain the views of a person concerned in relation to those adoption papers. On the other hand, it may be that the Adoption Act overrides the provisions of the Freedom of Information Act, because it deals specifically with the problem. Is that so?

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

The Hon. R.I. LUCAS: Under clause 26 (3), if, having sought the views of the person concerned, the views of the person concerned are that the document is an exempt document, there is a procedure by which the agency can still give access to the document. If the agency has been unable to contact the person concerned, is there any intention by the Government or the agency in due course to advise the person concerned about the action that the agency has taken?

It may well be that, under clause 26 (2), the agency has written to somebody who did not reply for whatever reason—they moved house, they went interstate or went into hiding—and the agency goes ahead and issues the information. Is there any intention—there does not appear to be, in the Bill—that, with the passage of time, the agency would advise the person concerned in writing that information has been issued about them? If there is not that intention, is there a particular reason why the Attorney-General believes that that should not occur?

The Hon. C.J. SUMNER: I think the point is that the opinion of the person concerned is sought prior to the information being available, and if the person concerned cannot be found then, it is unlikely that they can be found after the information has been made available.

The Hon. R.I. LUCAS: I would agree that in a number of circumstances that is probably the case but, equally, I think there would be circumstances where, under clause 26 (2), the agency would write to Fred Smith at such-and-such a street in relation to an application under this provision, and that may well be interpreted by the agency and the Attorney as a reasonably practicable step to try to contact the person. It may well be that the procedure adopted by the Attorney-General when the FOI Act is in place is that, within 30 days of having received no response from that person, the agency has done all it could reasonably be expected to do and therefore it can proceed with the application. As I said, it may well be that Fred Smith has gone overseas for 30 days, or even six months, or is spending six months interstate or in the country.

I am not insisting, and the Attorney obviously would not agree, that the agency should send out investigating officers as, for example, the electoral commission does eventually when it does not get a response, and investigating officers are sent out to check to see whether someone is still living at a particular address. Clearly, FOI legislation does not envisage Government officers running out to try to establish whether or not a person is living at a particular address. If the agency sends a letter, the person has moved to another address or is just holidaying interstate or overseas and there is no response, personal information is released about that person.

I still have some concern about those circumstances, but I cannot see how we get around that and, therefore, I am not seeking to amend it. All I am wondering is why we as a Parliament could not provide for a letter to be sent to the address, advising of the action that the agency has taken, that is, 'We wrote to you; you did not respond; we have now issued the following information about you', followed by the employment record or whatever it is that is required. When that person comes back from overseas or interstate or wherever they have been, they will at least be aware that the agency has issued information about them. They may not be happy—in fact, they might be a bit grumpy—but at least advice has been issued. I have not had an amendment drafted; I am really only asking the Attorney the question to get a response to something that I think we as a Parliament ought to address. I would be interested in the Attorney-General's response to that.

I accept that in certain circumstances a person has disappeared from the face of the earth, the agency has made one attempt and the person may not be back there again but, equally, I think the Attorney would concede that there would be some examples where the sort of circumstances I have outlined would occur. I would have thought that we ought to consider providing advice to the persons concerned that personal information about them has been released.

The Hon. C.J. SUMNER: The Government does not believe that there is any need to go any further. The Parliament can do what it likes, of course; but we think that taking reasonable steps to get in touch with the person concerned is adequate.

The Hon. R.I. LUCAS: Some clauses will be recommitted later. I indicate that in the intervening period I intend to have some discussions, perhaps with my colleagues the Hons. Messrs Griffin and Elliott, to see whether there is agreement along the lines referred to.

Clause as amended passed.

Clause 27—'Documents affecting business affairs.'

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

Page 14, line 21—After 'access' insert 'under this Act'.

This is consequential.

The Hon. K.T. GRIFFIN: The Opposition supports it.

Amendment carried.

The Hon. R.I. LUCAS: My understanding is that 'person' covers an individual, a company, or whatever. In relation to a law firm or an accountancy practice, or something like that, with a large firm, a junior lawyer or a lawyer at middle level, or an accountant at junior level, would not have access to all the information about what is going on in the business. There would be things going on at higher levels that that person would not know about. I refer to the matter of such a junior lawyer or junior accountant seeking release of information under this provision. Take the instance of information concerning trade secrets or something of commercial value to a person having been given to a Government agency and then the junior accountant at Peat Marwick, or somewhere, applies for release of that information. The junior accountant might well be about to leave the firm and branch out on his or her own. Under this provision, does the junior accountant have access to the information? Can a person in that position get that sort of information, even though they might not have access to it in the firm for which they work?

The Hon. C.J. SUMNER: Anyone could apply but, if the information fell within the coverage of clause 27, of documents affecting business affairs, the person would not be given the information. In relation to the example put by the honourable member, if someone was behaving in that manner, I anticipate that the remedies would exist within the firm itself.

The Hon. R.I. Lucas: How would the firm know?

The Hon. C.J. SUMNER: It might not, but I do not know whether one could do much about it. If someone purports to represent a firm, the Government cannot conduct an investigation to find out whether the person intends to use the information for some other purpose. I cannot see that that is a practical proposition.

The Hon. R.I. LUCAS: In the example that I have given, if the junior accountant requests information that might have been submitted by the senior partners of that firm to a Government agency for a contract, the junior accountant could under this legislation get access to that documentation. The Government agency would not advise the accountancy firm of a freedom of information request from a junior officer. So, is the Attorney saying that in that case the junior accountant of that firm would have access to that information under the provisions of clause 27?

The Hon. C.J. SUMNER: It would depend on the circumstances. There would be no obligation to give out the information but, presumably, if the representative of the firm is on behalf of that firm seeking information that had previously been given by the firm to a Government agency, then the Government agency could make it available to that firm's representative. Problems would arise if someone within the firm were engaged in some kind of subterfuge to diddle the partners. In that case, they would have to take up that matter under the general provisions of the law—presumably under the Partnership Act—and the duties that are owed either by a partner to a partner or by an employee to his employer.

Clause as amended passed.

Clause 28—'Documents affecting the conduct of research.'

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

Page 15, line 4—After 'access' insert 'under this Act'.

The Hon. K.T. GRIFFIN: I agree with the amendment.

Amendment carried; clause as amended passed.

Clause 29—'Internal review.'

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

Page 15, line 28—After 'made by' insert 'a principal officer of an agency pursuant to section 9b or'.

This amendment is consequential upon the insertion of new clause 9b.

Amendment carried.

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

Page 15, line 32—Leave out 'the agency may determine' and insert 'may be prescribed'.

This amendment is consequential upon some earlier decisions.

Amendment carried.

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

Page 15—After line 41—Insert subclause as follows:

(3a) If on a review the agency varies or reverses a determination so that access to a document is to be given (either immediately or subject to deferral), the agency must refund any application fee paid in respect of the review.

When a person has paid a fee so that a review may be carried out and there is a finding in that person's favour, I believe the fee should be returned. I have expressed a concern from the outset that fees should not be used as a disincentive. Where a review has found in a person's favour, an additional fee is unwarranted and unfair.

The Hon. K.T. GRIFFIN: I am sympathetic to that position and we will support the amendment.

Amendment carried.

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

Page 16, line 5—After 'agency' insert '(other than pursuant to section 9b)'.

This is consequential on an earlier amendment.

Amendment carried; clause as amended passed.

Clauses 30 to 39 passed.

Clause 40—'Right of appeal.'

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

Page 20—

Line 3—After 'including' insert ', subject to subsection (3),'.

After line 4—Insert subclause as follows:

(3) the appellant is not liable to pay the agency's legal costs associated with the appeal if the court confirms the determination to which the appeal relates.

The amendment is similar to the theme I have already raised. The risk of high cost should not be a way of deterring people from making or pursuing applications. It is reasonable that, where a person fails before a court in an appeal, they should pay their own costs, but the possibility that they may have to pick up the Crown's costs over which they have no real control is unreasonable. It is common in overseas legislation for this sort of approach to be taken so that reasonable access to courts is given to the public where people have disputes with government.

The Hon. C.J. SUMNER: The Government opposes the amendment. Costs should be left to the discretion of the court. Clearly, the applicant for review should have to pay the costs in some circumstances, and to suggest otherwise is again a charter for abuse.

The Hon. M.J. Elliott: They still have their own costs.

The Hon. C.J. SUMNER: So what? It should be left to the discretion of the court. The Bill makes clear that the court can make such orders, including an order for costs as the justice of the case may require. This will allow the court to consider all relevant matters when making a decision as to costs. It may be that the courts will adopt the usual procedure or rule, which is that costs follow the result of the case. In my view there is no reason to depart from that situation in this case.

The Hon. K.T. GRIFFIN: I generally support the view that the Attorney has put that decisions in relation to costs ought to be left to the court determining the appeal. That is the basis on which I start out. As it is a matter on which I would like further consultation, I indicate that I will support the amendment for the time being in order to keep it alive, and I will give the issue further consideration.

Amendments carried; clause as amended passed.

Clause 41 passed.

Clause 42—'Procedure for hearing appeals'.

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

Page 20, lines 19 to 22—Leave out subclause (2).

I have some difficulty with the onus being placed upon the applicant and giving the sort of weight that this subclause envisages to the views of the Minister, because this seeks to provide that the court must uphold the assessment of the Minister that there are grounds of public interest for refusing access unless the court is satisfied that there are cogent reasons for not doing so. It is my present intention to support the amendment.

The Hon. C.J. SUMNER: In my view this is an important issue of principle that I do not think gets dealt with properly in Parliament, generally because of the contempt in which parliamentarians are held by the community and, indeed, by each other. I think that is a great pity and, in fact, that it is detrimental to democracy. I am generally opposed to unelected officials, in the form of courts, making decisions on policy matters or, indeed, making determinations as to what the public interest may or may not be. It seems to me that that is the role of elected officials and, in the case of Ministers. Ministers who are elected and responsible to Parliament. Over the years, Parliament has ceded to the courts far too many powers in the area of administrative review of decisions and, in this case, administrative review of decisions taken under a freedom of information Act.

There are many other examples of where this has occurred, principally because the public does not give credibility to members of Parliament and Ministers making decisions in this area. In the final analysis, that has been to the detriment of the democractic process because unelected officials in the form of judges, with all their own prejudices about what life should be, are accountable to the law but not accountable to any electoral process.

While it is appropriate that judges make judgments about the rights of individuals under the law, it is not appropriate for them to make judgments about what are essentially policy matters or determinations of issues that may be in the public interest. I think it is important that, on policy determinations of what is in the public interest, those decisions should be firmly and clearly made by Ministers who are accountable to Parliament, because they are elected. The more we give decision-making powers to the courts, the more we are not taking up our own responsibilities as members of Parliament and the more I believe that the access of people to the decision making of members of Parliament is detracted from. I think that is an unfortunate development. It has occurred over the past decade or two: members of Parliament and Ministers have had taken from them large areas of decision making, including areas of policy and determination of what is in the public interest.

My view is that those matters should rest fairly and squarely with a Minister responsible to Parliament, a Minister elected by the people. That is the essence of democracy, and what we have done in this area over the years has been to detract from the democratic process and from the democratic accountability of Ministers to their Parliament.

The Hon. M.J. ELLIOTT: While I agree with some of the sentiments expressed by the Attorney-General in terms of the role of the courts, and that many decisions that they are making they properly should not make, the Attorney also used terms such as 'essence of democracy', 'role of Parliament' and 'democratic process'. I believe that an evolutionary process is taking place in our democracy, one whereby members of the public are demanding a greater and greater role and a greater say in what is happening.

We have a public push for greater participation in the democratic processes. The most fundamental aspect to the involvement of the public is information. What we are seeing and what has happened with this whole freedom of information argument so far is that an argument is developing between the power of the Executive and the power of the people. The question is who knows best, and the Attorney-General is putting the view that the Minister knows best—that, if in his or her view it is in the public interest, that is his or her decision.

I believe that we should always err on the side of making information available. As the clause now stands, it errs in favour of information not becoming available. It is one of those cases in which we need an independent arbiter to look at whether or not the information is in the public interest, because as I see it there are too many occasions on which the Minister is worried not about the public interest but about his or her personal political interest, and that is a very real danger.

I have an amendment in exactly the same terms as those moved by the Hon. Mr Griffin, and I believe that they are very important. I note that the Attorney-General is quite happy to quote the New South Wales legislation when it suits him but, in this case, he does not mention the fact that the New South Wales legislation does not contain a similar subclause. He has been quite happy to follow the New South Wales legislation almost everywhere it suits him, but he now deserts it.

The point I make—and I have made it before—is that Australian legislation is not a good example anywhere. We should be after genuine freedom of information, and I believe that clause 42, with subclause (2) included, is a very clear violation of true freedom of information. I will be supporting the amendment.

The Hon. C.J. SUMNER: The reason why I did not mention the New South Wales legislation specifically is that I made the point that I specifically disagreed with the trend that has occurred in Australia in recent years, that is, to take away from Parliament and from Ministers the capacity to make the decisions they are elected to make, which are decisions on policy and on the public interest. To me it is quite abhorrent—and I use that word advisedly—in a democracy that we should be handing over to the courts the capacity to make decisions that are properly decisions that should be made by people who are elected to Parliament and not by people who are unelected and unaccountable except to the law.

It is reasonable that they are accountable to the law and to the legislation but it is not reasonable that they make broad decisions about policy and what is in the public interest. In a democracy that is a function of democratically elected representatives of the people. In my view it is a very fundamental principle. We have undermined it in this country—including in New South Wales and in the Federal Parliament with the way in which Parliament has conducted administrative appeals, and in a number of other areas—because members of Parliament and Ministers are held in such contempt in the community that no-one will trust them to make these decisions.

That in itself is a terrible indictment on our democracy. What we are doing by this sort of amendment, in giving to the courts the capacity to make decisions on policy and what is in the public interest, is further derogating from what is the appropriate role of elected members of Parliament. I think it is a fundamental issue. There is no doubt that, at some time, the pendulum will swing back, because it has gone too far. Judicial review of policy decisions has gone too far with the courts and, in my view, it is time that Parliament asserted its proper role and function in relation to policy matters and in relation to determinations of the public interest. The New South Wales legislation on this point is merely an example of the very regrettable trend that we have seen in these areas over the past two decades.

The Hon. K.T. GRIFFIN: I agree that Parliament ought to exert itself, particularly in relation to the Executive arm of Government. There are many reasons why Parliament has, in a sense, abdicated responsibility. There is an utter frustration at an inability to gain information from the Executive arm of Government. Of course, in the Westminster system, there is a requirement for the Executive to be accountable to Parliament, but the difficulty is—and it has been evident over the past few years—that the Executive does not provide information to the Parliament in answer to questions. There are many occasions, when information is sought, when Ministers just waffle on in Question Time and prevent other members from asking questions. Even in that period of time, they do not give the information which is being sought. Freedom of information is really a consequence of an inability to gain information from Ministers under what has been a tradition of the Westminster system, certainly in the United Kingdom, where information is given by Ministers during Question Time and during the course of consideration of matters before the Parliament.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: We do not make political speeches.

The Hon. C.J. Sumner: You do. Every question that is asked is preceded by a statement which is usually loaded up with political rubbish.

The Hon. K.T. GRIFFIN: That is nonsense and you know it is nonsense.

Members interjecting:

The CHAIRMAN: Order!

Members interjecting:

The CHAIRMAN: Order! The Committee will come to order.

The Hon. C.J. Sumner interjecting:

The CHAIRMAN: Order! The honourable Attorney-General. The Committee will come to order. Everyone can enter into the debate in a proper manner. The Hon. Mr Griffin has the floor.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: If you want to get into a debate about Question Time, I am happy to oblige.

The Hon. C.J. Sumner: You started it.

The Hon. K.T. GRIFFIN: Of course I started it. The Attorney-General was talking about Parliament abdicating its responsibilities to unelected judicial officers. I have a concern also that the judges are being given responsibilities which ought to be exercised by Governments which ought to be accountable to Parliaments. The frustration, particularly in Australia, that is felt by Oppositions and Independent members of Parliament against the Executive arm of Government, is that they cannot get information. I am not saying that it is limited only to Labor Governments or that it is Liberal Governments: I think it applies across the board.

That is one of the reasons that we have seen a trend in this Parliament towards a greater number of select committees on issues in which Government is directly involved. It is an attempt to gain information. Nothing would please me more than to have a system in operation that provides for true ministerial accountability and, when Ministers are held to account, they accept the ultimate, that is, if there has been a misleading of Parliament, even as a result of relying upon departmental advice, the Minister resigns. That is what happens in the British Parliament and it is what happened in Federal Parliament until Mr Hawke became Prime Minister. It does not happen now.

The Hon. C.J. Sumner: That's not right.

The Hon. K.T. GRIFFIN: It is right. All I am saying is that there is a frustration about the lack of accountability of the executive arm of government, and it is reflected in many ways. I do not want to prolong the debate, but it is reflected in many ways in respect of the relationship between the Executive and Parliament and in the information that is given by the Executive to Parliament and the opportunities for questioning. It may be that, in the longer term, the pendulum will swing back, and I will be pleased about that. It may be that we move more and more towards a system of questioning Ministers, not just before the Estimates Committees of the other place. We may have more detailed questioning of Ministers and officers as occurs in the congressional committees of the United States Congress. But that is for another day. At the moment, the concern in relation to this matter is that, although the sentiments expressed by the Attorney-General are shared by all members, it is a question of emphasis. The deletion of subclause (2) will have a better prospect of ensuring access to information than not.

The Hon. R.I. LUCAS: The Attorney-General has made the same speech on a couple of occasions. He uses fine words such as 'democracy' and 'accountability' and, when he last delivered this speech, he spoke about Ministers being answerable, accountable or responsible to Parliament and said that the public interest could be determined in this way by Ministers and the executive arm of government making decisions and then being held accountable to Parliament. The Attorney-General knows that is nonsense and, whilst it might make him feel good to sprout wings on that, and whilst he might pretend to believe it, he knows it to be nonsense, as the Hon. Mr Griffin has indicated.

The Attorney-General speaks about accountability and responsibility, yet he stood in this Chamber and defended one of his colleagues, the Hon. John Cornwall, who had been caught out over a period of nine months deliberately, not inadvertently, misleading this House of Parliament, not telling the truth to this House of Parliament, about market research, drug surveys and related issues. On behalf of the Government, this Attorney-General defended in Parliament that Minister who had been caught out, even after a motion of no confidence against the Minister had been passed in this Chamber. The Attorney-General stated that the people should trust Ministers, as elected office bearers, to take decisions because they are answerable to the public through Parliament for those decisions. Yet by his own actions in this Chamber he denies that, and he denies it absolutely.

Further, in relation to answers to questions, following a point made by my colleague the Hon. Mr Griffin, I will give one example. For two years in this Chamber, I have sought information from the Attorney-General on the costs of media monitoring used by the Attorney-General and all other Ministers. I first asked the question two years ago as a question without notice. When the Attorney-General did not reply, last August, eight months ago, I placed on the Notice Paper detailed questions to the Attorney-General and all other Ministers. I know, as does the Attorney-General, that those answers are sitting on a desk but he, together with the Government, refuses to release that information.

They are two examples of literally dozens. All members in this Chamber could give examples of this Government, the Attorney-General and Ministers not being accountable. They refuse to be accountable to the Parliament. They thumb their noses at the Parliament whenever and wherever they can. They cannot have their cake and eat it, too, and then stand up and make what they think is a fine speech which makes them feel good to the effect, 'Trust me as the Attorney-General, or Minister, to determine the public interest.' They say that they are accountable to Parliament, but by their very actions they know that they are not. If they are prepared to demonstrate in most of these things that they are prepared to be accountable and answerable to Parliament, we in the Liberal Party and, I presume, the Democrats might be prepared to view some of the Attorney-General's speeches and our attitude to Government legislation in a slightly different way.

The Hon. C.J. SUMNER: It is all right for the Hon. Mr Lucas to be insulting. The fact is that I was putting a position which is right in principle. Whether one agrees with the mechanisms of accountability or not is another matter, but they do exist in Parliament. The point that I was making, which is still the fundamental point in any event, is that Ministers, whether there are defects in the methods of accountability in Parliament—which in my view is irrefutable to anyone who is a democrat—as elected members of Parliament, responsible for the implementation of policy, ought to be making decisions on matters that might be determined as being within the public interest, not the courts. That is the debate. It was not about the methods of accountability within Parliament, which can always be addressed through Standing Orders and the like; it was

about where appropriately the decision-making power on those issues should lie. In my view, it should lie with Parliament and those who are democratically elected through the Parliament to ministerial office, not with the courts. That is the principle.

The Hon. M.J. ELLIOTT: I agree with the Attorney-General and, as I understand, the Hon. Mr Griffin said the same. There is concern about some delegation of decision making to the courts, but ultimately we have to ask: what is the practical effect of this delegation? The practical effect is that information that should become public is more likely to do so. The sad fact is that Ministers, of whatever political Party, are not held in high regard, and they have brought that upon themselves. Information is power and information of a delicate nature is likely to be withheld, not because of public interest, but because of personal interest. Ultimately the Minister becomes an arbiter on something which is more in his or her interest than anybody else's. Unfortunately, it is necessary for some other body to make a final decision on that matter. The parliamentary process has fallen into disrepute. The need for freedom of information has become even greater because of the way that Parliament behaves and the increasing power taken by the Executive of whatever the ruling Party is at the time.

Amendment carried; clause as amended passed.

Clause 43—'Consideration of restricted documents.'

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

Page 20, lines 40 to 42—Leave out subclause (4) and substitute subclause as follows:

(4) After considering any document produced before it, the District Court may make a declaration—

(a) if satisfied that there are reasonable grounds for the claim—that the document is a restricted document by virtue of a specified provision of Part I of schedule 1;

(b) if not satisfied that there are reasonable grounds for the claim—that the document is not a restricted document.

This clause sets out a framework within which a ministerial certificate can be reviewed. The ministerial certificate may be issued by the Minister to the effect that the document is a restricted document. The District Court can review that and, if the District Court is not satisfied that there are reasonable grounds for the claimant, may make a declaration to that effect. From there, the Minister considers the declaration and, within 28 days of the District Court decision, the ministerial certificate comes to an end unless the Minister gives further notice that the certificate is confirmed. This is one of those difficult areas, because somewhere along the line someone has to make a decision as to whether or not material in the document is restricted.

It is possible for some documents to fall within the categories provided in schedule 1, Part 1 ('Restricted documents') and, in fact, to be restricted documents, but it is also possible for other parts of the material not to fall within those categories. It may be claimed that it is an official record of Cabinet; the ministerial certificate may be given on that basis but, when a closer examination of the document is made, it may well be that it does not come within that categorisation. What concerns me is that, as the Bill is structured, it seems that the ministerial certificate can be given and the District Court can give its opinion but, if the District Court finds that the material is not within the definitions of 'Cabinet document' or 'restricted document', nothing much more can happen, except that the finding is published and the Minister decides whether or not to confirm and, if to confirm and report to Parliament, the certificate remains.

My amendment seeks to find a mechanism by which the factual situation can be determined. It leaves out subclause (4), substitutes a new subclause (4) so that the District Court may make a declaration that the document is a restricted document, in which case the ministerial certificate continues; and, if not satisfied that there are reasonable grounds for the claim, that the document is not a restricted document. Following that, the other clauses (7 to 12) are deleted. I recognise that most probably the Attorney-General will make the same argument that he made in relation to the last amendment, but what I seek to do is genuinely to try to find some balance, and that is also a reason for providing in clause 45, with which we will deal later, a broader right of appeal to the Supreme Court by both Minister and applicant to ensure that ultimately that factual issue of what is or is not restricted is adequately exposed and dealt with.

The Hon. C.J. SUMNER: Again, the Government opposes this amendment. It deals with the same principle that I have already spoken of, but I think even more emphatically so. The provision in the Bill is that, if the Minister confirms the certificate, despite the opinion of the District Court, that has to be reported to Parliament and that matter can then be dealt with in the appropriate forum, the proper forum, the parliamentary forum, as to whether or not the Minister has properly exercised his role.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: Well, it could be dealt with by debating it; it could be dealt with by way of a motion; it could be dealt with by any of the means that Parliament has at its disposal to deal with these matters. If members opposite felt so very strongly about it, they could establish a select committee on the matter and call for the papers, and get them, and then determine whether the Minister had exercised his role in a proper manner. But this brings the matter back to where it ought to be. It ought not to be in the courts. This is an Executive function, a ministerial function. It ought to remain a ministerial function. Disputes about it should be resolved in the forum of Parliament, using the powers that Parliament has. Parliament's powers are not inconsiderable, as honourable members have already pointed out. Select committees can be established on things; they can get access to papers, on a whole range of topics.

The Hon. R.I. Lucas: You've got no problem with a select committee seeking Cabinet documents?

The Hon. C.J. SUMNER: Obviously, we are not talking about Cabinet documents exclusively. In relation to this legislation generally, we are talking about a whole range of documents to which you can get access. Obviously, as far as Cabinet documents are concerned, the ministerial certificate in relation to Cabinet documents applies with even greater force, because that is at the very basis of ministerial responsible Government and the confidentiality of Cabinet discussions. If members opposite think they could function without having some Crown privilege relating to Cabinet documents, well, fine; the fact is that that is not possible. One cannot run an organisation without some degree of confidentiality of Cabinet documents.

So, in general terms, in my view, the decisions relating to documents in the final analysis, particularly if they relate to general policy, what is in the public interest, etc., should be determined by Parliament. In the case of a conclusive certificate dealing with Cabinet documents, the principle applies to even greater effect, that the appropriate place to dispute those matters is in the Parliament itself. The Bill introduced by the Government provides that, if the ministerial certificate is confirmed, it has to be reported to Parliament, so that Parliament can be made aware of what the situation is.

On this point, the Government's Bill is the same as the New South Wales legislation. The most recent independent comments on this topic, if you like, as opposed to politically

motivated comments, have come from the Queensland Electoral and Administrative Review Commission, which has also recommended the use of certificates for restricted documents in this way. That is not a parliamentary group. It is an independent group, established in that State. It is doing it for the very good reasons that I have already outlined in debate.

The Hon. K.T. Griffin: What does it say?

The Hon. C.J. SUMNER: It has this provision. The Queensland Electoral and Administrative Review Commission has recommended provisions for the use of certificates for restricted documents similar to those that we have in this Bill, as introduced by the Government—the same as in New South Wales and the same as the Commonwealth.

The Hon. M.J. ELLIOTT: The Democrats support this amendment.

The Hon. C.J. Sumner: Surprise, surprise!

The Hon. M.J. ELLIOTT: It is not a surprise at all. The same sorts of concerns that were expressed earlier apply to this clause. The Attorney-General should take the time to consider the amendment which he opposed but which was carried, that I moved earlier in relation to exempt material. I recognise clearly the difficulties with Cabinet and other documents. The Attorney appears to be concerned about problems relating to Cabinet and ministerial documents which contain recommendations and opinions expressed and all those sorts of considerations that need to be kept confidential, but I feel that they still contain material which rightly should be made available to the public. If that very clear distinction could be made, many of the difficulties that we are now facing and about which the Attorney-General is concerned would largely dissipate. So, I ask the Attorney-General to consider that matter further. I do not dispute the need to protect documents in many of these cases, but some of the material contained within them that would have been made exempt by way of a ministerial document should not have been made exempt.

The Hon. R.I. LUCAS: I strongly support this amendment. I do not intend going over the detail made in my second reading speech, but I want to place on the public record that this amendment in relation to what is or is not a Cabinet document was, in my view, at the centre of the dispute in Victoria in relation to the operation of a general freedom of information legislation or a fraud of a piece of legislation.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: I traced the history of the battles between Mark Birrell, my counterpart in Victoria, and John Cain over opinion polling documents and whether or not they were Cabinet documents. John Cain and his Ministers bent every interpretation of the law. They tried to introduce regulations, to amend the Act, and to do everything to, in effect, allow them to define almost any document as a Cabinet document.

No-one would argue that genuine Cabinet documents ought not to be exempt documents under FOI legislation. That is the Attorney-General's strawperson argument when he says that we are trying to get away with not accepting Crown privilege. That is not the argument at all. It is a question of whether or not a document is a genuine Cabinet document. The Attorney backed himself into a corner. He said that under the Government proposal the Minister would have to report to the Parliament and that the Parliament is the appropriate forum for such matters to be discussed. The simple fact is: how on earth can you discuss a document that is invisible or if you do not know what exists within the document? You might know that it is a report on something, but the Minister says that he will not release it because in his view it is a Cabinet document.

So, how on earth do you discuss that in the Parliament? You stand up here and ask the Attorney-General to release it and he says, 'No' and sits down. You put a motion in the Parliament calling for a release of the document and it is passed by the majority of the House, but the Attorney says, 'No.' You put questions on the Notice Paper for eight months or two years calling for the release of the document and the Attorney says, 'No.' The Attorney then suggests that we establish a select committee so that we may then gain access to those documents. Of course, when we interject: 'Are you suggesting that it is proper for select committees to gain access to Cabinet documents,' the Attorney-General suddenly finds that he has five reverse gears. He backed off from that question at a rate of knots, attempting to suggest that we were not talking about Cabinet documents. Of course, we are; clause 43 refers to restricted documents.

We have four separate classifications of restricted documents and the one that we have all discussed in the second reading and in Committee has related to Cabinet documents. The Attorney knows that the forum of the Parliament does not allow a final resolution of these matters. The only way that we can prevent the sort of abuse that political colleagues of the Attorney in other States such as Victoria have engaged in is to look at something along these lines.

The Attorney and the Government accepted in their own proposal that the District Court can look at the question of whether or not a Minister has properly categorised a document as a restricted document and under subclause (4) the District Court can make a declaration to a certain effect as to whether or not it is restricted. But then the rest of the provision is a convoluted way of getting around that by saying, even if the Minister has incorrectly or improperly categorised a document as a Cabinet document, the Minister can ignore the decision of the court, and in some way by notification of Parliament supposedly get his conscience off the hook.

It is not satisfactory to have this sort of a procedure in relation to restricted documents, in particular Cabinet documents. As I indicated in the second reading, I strongly support the amendment moved by my colleague.

Amendment carried.

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

Page 21, lines 5 to 25—Leave out subclauses (7) to (12).

The amendment is consequential on the amendment just passed.

Amendment carried.

The Hon. R.I. LUCAS: If the Government's proposition was to prevail in the discussion between the two Houses, would there be a record of ministerial certificates? Is it reported annually by someone, or by each individual Minister?

The Hon. C.J. SUMNER: I do not know whether it would or would not be, but I do not see any objection to that.

The Hon. R.I. LUCAS: Based on my reading, if someone goes through the procedure of the District Court challenge and appeal, in that limited number of cases that would be advised to the Parliament, but I cannot see whether somewhere else that I have missed there would be a record where it is not challenged but where Ministers will be issuing certificates.

The Hon. C.J. SUMNER: There is nothing specific in the Bill which deals with this matter, but it is a matter I believe that would be reported by the Minister responsible for the Act in his report to Parliament.

The Hon. R.I. LUCAS: I have discussed with my colleagues whether, when clauses are recommitted, they would be willing to support an amendment, perhaps to formalise a requirement that ministerial certificates ought to be part of that reporting process to which the Attorney has referred.

Clause as amended passed.

Clause 44—'District Court may report improper conduct.'

The Hon. K.T. GRIFFIN: This clause provides that, where there is an appeal and the District Court is of the opinion that an officer of an agency has failed to exercise honestly a function under this Act, the court can take such measures as it considers appropriate to bring the matter to the attention of the responsible Minister. I oppose this clause and will move to replace it with a new clause 44 so that the District Court, where it reaches a conclusion that a person has been guilty of a breach of duty or of misconduct, and the evidence is of sufficient force to justify it in doing so, may bring the evidence to the notice of the responsible Minister or the principal officer of the agency, where, in the first instance, the person is the principal officer of an agency and, in the latter instance, is an officer of an agency. The scheme I am proposing is somewhat more comprehensive.

The Hon. M.J. ELLIOTT: I had concerns about clause 44 as it stood and this amendment appears to address my concerns. Therefore, I oppose it.

Clause negatived.

New clause 44—'Disciplinary action.'

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

Page 21, after line 25—Insert new clause as follows:

Disciplinary action

44. Where the District Court, at the completion of an appeal under this Act, is of the opinion that there is evidence that a person, being an officer of an agency, has been guilty of a breach of duty or of misconduct in the administration of this Act and that the evidence is, in all the circumstances, of sufficient force to justify it in doing so, the Court may bring the evidence to the notice of:

(a) if the person is the principal officer of an agency—the responsible Minister;

or

(b) if the person is an officer of an agency but not the principal officer of the agency—the principal officer of that agency.

New clause inserted.

Clause 45—'Appeals to Supreme Court.'

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

Page 21, line 34—Leave out subclause (2).

Subclause (2), provides that an appeal to the Supreme Court is limited to questions of law. I indicated earlier that if the wider responsibility of the District Court was accepted—and so far it has been—that it is therefore appropriate for the District Court to be made more accountable not only in respect of questions of law but also on questions of fact.

Some of the matters that we have previously supported are questions of fact, and some are questions of law. I think the wider appeal from a decision of the District Court to the Supreme Court will ensure full accountability which will cut both ways, both for government on the one hand and the applicant for information on the other hand.

The Hon. M.J. ELLIOTT: I support the amendment.

Amendment carried; clause as amended passed.

Clauses 46 to 52 passed.

Clause 53—'Fees and charges.'

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

Page 22, after line 39—Insert new clause as follows:

53. (1) Any fee or charge that is, in accordance with the regulations, required to be paid by an applicant before access to a document is given, will be calculated by an agency in accordance with the following principles or, where those principles require, will be waived:

(a) a fee or charge must only cover the time that is reasonably necessary to provide access to the document and in any event must not exceed the time required to conduct a routine search for the document;

(b) the fee or charge in relation to time made under paragraph *(a)* must be fixed on an hourly rate basis;

(c) a fee or charge may be made for the identifiable cost incurred in supervising the inspection by the applicant of the material to which access is granted;

(d) a fee or charge may be made for the reasonable costs incurred by an agency in supplying copies of documents, in making arrangements for viewing documents or in providing a written transcript of the words recorded or contained in documents;

(e) a fee or charge must not be made for any time spent by the agency in searching for a document that has been lost or destroyed;

(f) a fee or charge must not be made for the time spent by an agency in examining a document to determine whether it contains exempt matter, or in deleting exempt matter from a document;

(g) a fee or charge must be waived if the application is a routine application for access to a document;

(h) a fee or charge must be waived or be reduced if the applicant's intended use of the document is a use of general public interest or benefit or if the applicant is impecunious;

(i) a fee or charge must be waived if the applicant is a Member of the Legislative Council or of the House of Assembly;

and

(j) a fee or charge must not exceed such amount, being not more than $100, as may be prescribed by regulation from time to time.

(2) Where a person requests that he or she be allowed a preliminary inspection of a document (not being an exempt document) to determine whether or not he or she requires further, or more extensive, access to the document under this Act, the agency in possession of the document must allow the person a reasonable opportunity to inspect the document without fee or charge.

(3) If in the opinion of an agency a charge may exceed $25 or such greater amount as is prescribed by regulation, the agency must notify the applicant of its opinion and inquire whether the applicant wishes to proceed with the application.

(4) A notice under subsection (3) from an agency to an applicant must—

(a) state the name and designation of the person who calculated the fee or charge;

and

(b) inform the applicant of—

(i) the applicant's right to apply for a review of the fee or charge;

(ii) the authority to which the application for review should be made;

and

(iii) the time within which the application for review must be made.

(5) Subject to this section, the fees and charges set by the regulations must be uniform for all agencies and there must not be any variation of fees or charges as between different applicants in respect of like services.

I have moved a new clause 53 which deals more comprehensively with questions of fees and charges for access to documents. The fee or charge must be in accordance with regulations and is required to be paid by an applicant before access to a document is given. The fee is to be calculated in accordance with principles which are set out in my amendment.

I know that the Hon. Mr Elliott has his own clause 53 to move and, to some extent, the two are compatible. I suggest that my amendment be supported and that at some later stage we give consideration to the issues raised by the Hon. Mr Elliott in his amendment, if it is not possible immediately to pick the best from both.

The Hon. C.J. SUMNER: The Government lost the substantive point on this earlier, but of the two amendments we would support that of the Hon. Mr Elliott.

The Hon. M.J. ELLIOTT: At the end of the day I should like to have a method by which the fees are set by regulation and which takes into account some of the matters raised by the Hon. Mr Griffin in his amendment and some of the matters raised in mine. I have spoken briefly to Parliamentary Counsel, but doing it on the run is impossible. I am not sure that it matters a great deal at this stage which amendment is carried, as it is a matter that will need to be recommitted later in the debate before this Committee or to come back to us via a conference.

There are certain matters in the Hon. Mr Griffin's amendment which are not in mine but which I would like to see pass, and some matters with which I disagree. In the circumstances, however, I do not think that it matters a great deal.

The CHAIRMAN: You are not proceeding with your amendment?

The Hon. M.J. ELLIOTT: I am debating with myself at this stage. The Attorney-General has indicated some support, at least, for my amendment, but I indicate that there are matters within the Hon. Mr Griffin's amendment that I believe also deserve further analysis. I will move my amendment, as it would be quite a nonsense not to move an amendment that is generally in the preferred form. However, I indicate that as things proceed further there are matters within the Hon. Mr Griffin's amendment that I should also like to have included. I therefore move:

Page 22, after line 39—Insert the following new clause in place of clause 53:

Fees and charges

53. (1) The fees and charges payable under this Act will be prescribed by regulation.

(2) The fees payable on an application for access to a document may vary according to the following factors:

(a) whether the application is made—

(i) in the personal interest of the applicant;

(ii) in the commercial interests of the applicant;

(iii) in the public interest;

(b) the cost of providing the applicant with a copy of the documents or of giving access in some other way.

(3) The fees and charges prescribed by regulation may vary as between agencies.

Clause negatived.

The Hon. M.J. Elliott's new clause 53 inserted.

Clause 53a—'Right of review against fees or charges for access to documents.'

The Hon. K.T. GRIFFIN: I move to insert the following new clause.

53a. (1) A person who has applied under this Act for access to a document may apply to the Auditor-General for a review of a fee or charge that is required to be paid before access to the document is granted (whether or not the fee or charge has already been paid by the person).

(2) An application to the Auditor-General must be made within 60 days from the day on which notice of the fee or charge is furnished by the relevant agency under section 53 (3).

(3) On an application for a review of a fee or charge, the Auditor-General may, according to the Auditor-General's determination of what is fair and reasonable in the circumstances of the particular case—

(a) confirm or vary the fee or charge;

(b) waive the fee or charge;

(c) give directions as to the time for payment of the fee or charge.

This new clause will provide a mechanism for review of fees or charges. In my amendment I have suggested that the Auditor-General, who obviously would have access to all Government documentation in relation to the matter, would be in the best position to make the independent decision as to whether or not the fees charged were fair and reasonable in all the circumstances. Of course, the Auditor-General would be in the best position to know whether or not the fees that have been charged have been inflated by virtue of unnecessary work by the Government agency or at a rate which was not reasonable in the circumstances.

The Hon. M.J. ELLIOTT: The amendment is not relevant to the general form of fee structure that I have proposed. I entertained a fee in two components, one being an application fee not being variable except between the three categories I have suggested (and therefore could not be disputed), or an additional charge which would be *pro rata*, per page or per time of tape or whatever else. Once again, it is fairly hard to dispute the number of pages provided.

The Hon. K.T. Griffin: But you can dispute the time.

The Hon. M.J. ELLIOTT: At this stage I have not entertained a time factor.

The Hon. K.T. Griffin: You just mentioned time.

The Hon. M.J. ELLIOTT: If I did, it might be because of the time! I am not certain; it seems to me to depend upon the final form of fee making regulations that we end up with. It is not relevant, according to the form that I have proposed, but it does have relevance in relation to some of the matters raised by the Hon. Mr Griffin. At this stage I will oppose the amendment but, if there is further change to clause 53, such a review process would need to be included.

The Hon. C.J. SUMNER: The Government opposes it.

New clause negatived.

Clause 54—'Reports to Parliament.'

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

Page 23, line 13—Leave out '31 December' and insert '30 September'.

This issue concerning the date by which reports should be presented arises from time to time. The time frame generally varies but legislation which we have passed in the past year has included the date of 30 September for presentation of reports. In others it is 31 October. Generally speaking, a report ought to be available by 30 September and presented to the Minister, after which it can be laid before both Houses of Parliament. It is for that reason I have moved the amendment.

The Hon. M.J. ELLIOTT: I support this amendment. It is consistent with an amendment I moved earlier where I insisted that, if reports were not in within three months, the information should no longer be protected in terms of its being withheld from interested members of the public. I think three months is an adequate time.

Amendment carried.

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

Page 23, after line 26—Insert new subclause as follows:

(4) Without limiting the generality of subsection (1) or the kinds of the information which an agency might be required, in pursuance of subsection (3), to furnish to the Minister, a report of the Minister under subsection (1) must include in respect of the year to which the report relates particulars of the operations of each agency under this Act including, in relation to each agency—

(a) the number of applications made to each agency;

(b) the number of determinations that an applicant was not entitled to access to a document pursuant to an application, the provisions of this Act under which those determinations were made and the number of times each provision was invoked;

(c) the name and designation of each officer with authority to make a determination in relation to an application, and the number of determinations made by each officer that an applicant was not entitled to access to a document pursuant to an application;

(d) the number of applications under section 29 for review of a determination and, in respect of each application for review—

(i) the name of the officer who made the determination under review;

(ii) the name and designation of the officer who conducted the review and the determination of that officer;

and

(iii) if the officer conducting the review confirmed, in whole or in part, a determination that an applicant is not entitled to access to a document in accordance with an application, the provision of this Act under which that determination was made;

(e) the number of appeals to the District Court under section 40 and, in respect of each appeal—

(i) the decision of the court;

(ii) the details of any other order made by the court;

and

(iii) if the determination appealed against was a determination that an applicant is not entitled to access to a document in accordance with an application, the provision of this Act under which the determination appealed against was made;

(f) the number of applications to the Auditor-General under section 53a and, in respect of each application, the decision of the Auditor-General;

(g) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;

(h) the amount of fees and charges collected by the agency;

(i) particulars of any reading room or other facility provided by the agency for use by applicants or members of the public, and the publications, documents or other information regularly on display in that reading room or other facility;

and

(j) any other facts which indicate an effort by the agency to administer and implement the spirit and intention of this Act.

Presently, subclause (2) provides that the report will contain such information as the Minister considers appropriate to include. I do not think that it is a matter that ought to be left entirely to the discretion of the Minister and it is for that reason that at least some areas ought to be addressed specifically. They are identified in my amendment and include the number of applications made to each agency, the number of determinations made, where the determination was that an applicant was not entitled to access, and a variety of other matters that are essentially of a statistical nature and might well have been included, anyway. It would be helpful for all parties to know what sort of material ought to be included without restricting the opportunity of the Minister responsible for the Act to include more information if the Minister so desires.

The Hon. M.J. ELLIOTT: This is a reasonable amendment, and the Democrats will support it.

The Hon. C.J. SUMNER: The Government opposes the amendment.

Amendment carried; clause as amended passed.

New clause 54a—'Reports to Parliament by Government Management Board.'

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

Page 23, after line 26—Insert new clause as follows:

54a. (1) The Government Management Board must, as soon as practicable after 30 June, but on or before 30 September, in each year, prepare and furnish to the Minister a report on difficulties, if any, encountered during the period of 12 months ending on 30 June in that year by agencies and Ministers in the administration of this Act in relation to matters of staffing and costs.

(2) The Government Management Board must in its report under subsection (1) include advice regarding the practicability of extending the period of retrospective access provided under section 5a (2).

(3) The Minister must cause a report under subsection (1) to be laid before each House of Parliament within six sitting days of that House after receipt of the report by the Minister.

This new clause picks up from the Bill introduced by the Hon. Martin Cameron on a number of occasions the measure placing responsibility on the Government Management Board to prepare and furnish to the Minister a report on difficulties, if any, encountered during the period of 12 months ending on 30 June of that year by agencies and Ministers in the administration of the Act in relation to matters of staffing and costs. That is useful information that can be reported by the Government Management Board because, obviously, that board will hear of any difficulty. When the information has been received from the Government Management Board, it is proposed that it be laid before Parliament. Difficulties with administration need to be addressed, and it is appropriate to deal with it in this way.

The Hon. C.J. SUMNER: The Government opposes the new clause. This is absolute overkill—bureaucracy gone mad. There is already a reporting procedure on the Act. A report must be prepared for Parliament by the Minister, and it must be tabled in Parliament. Now we have the Government Management Board preparing a report as well and tabling it in Parliament. There is no basis for this provision except an attempt to make life difficult for everyone.

The Hon. M.J. ELLIOTT: The Democrats will not support this amendment. It is not necessary in light of the other reports that are already required.

New clause negatived.

Clause 55 passed.

Schedule 1—'Exempt documents.'

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

Clause 1, page 24—Insert 'specifically' before 'prepared' in paragraph *(a)* of subclause (1).

I have expressed concern previously about the possibility of matters not truly Cabinet documents becoming Cabinet documents. That is a sentiment that the Hon. Mr Lucas also expressed when he spoke to an earlier clause. It is important that, if a document is to be exempt due to its Cabinet status, it should have been specifically prepared for submission to Cabinet. I wish to put in the qualifying word 'specifically' to make that clause a little tighter.

The Hon. C.J. SUMNER: The Government opposes this amendment. Matters may be referred to Cabinet which were not specifically prepared for Cabinet but which clearly require to be considered as Cabinet documents.

The Hon. K.T. GRIFFIN: At this stge, I indicate support for the amendment and will consider the matter later.

Amendment carried.

The Hon. R.I. LUCAS: I move:

Page 24—

Insert 'or' between paragraphs *(d)* and *(e)* of subclause (1).

Leave out paragraph *(f)* of subclause (1) and 'or' immediately preceding that paragraph.

This is part of a package of amendments to clause 1 of the restricted document section of exempt documents. The intention of all the amendments, as I outlined in my second reading contribution, is to define more clearly what is or might not be a genuine Cabinet document and, again, I base this in part on the sad political history of the disputes in Victoria as to what was or was not deemed to be Cabinet documents.

The first amendment seeks to leave out a definition of Cabinet document which does not exist within the Victorian legislation, although I am sure the Attorney will find that it exists in New South Wales, Tasmania, Queensland or somewhere else—but it certainly does not exist in the Victorian legislation. The first four paragraphs of clause 1, particularly as amended by the Hon. Mr Elliott, fairly clearly seek to define what is a genuine Cabinet document. When we get to paragraph *(f)*, which involves a document that is a briefing paper prepared for the use of a Minister in relation to a

matter submitted or proposed to be submitted to Cabinet, we are going beyond the bounds of what could be defined as a genuine Cabinet document.

I would draw attention to my further amendment to insert new paragraph *(ac)* which, again, is taken from the Victorian legislation and is part of this package. It follows the same course as the Hon. Mr Elliott has taken with his amendment to clause 1 *(a)* with the use of the word 'specifically' and, as the Hon. Mr Griffin has indicated, at this stage the Liberal Party is prepared to support that, to assist with further discussion and definition of exactly what is a Cabinet document. Certainly, I believe we ought to be removing paragraph *(f)*, which extends the definition beyond what is a Cabinet document and, when it comes to that line, I will move an amendment to insert a new paragraph *(ac)*, which provides that if a document has been brought into existence for the purpose of submission to Cabinet, it comes into that category. So, I move the amendment as part of a package of amendments with the purpose of defining more clearly what is a Cabinet document.

The Hon. C.J. SUMNER: The Government opposes the amendment. The Hon. Mr Lucas's amendment to delete paragraph *(f)* dealing with briefing papers prepared for the use of the Minister in respect of the matter submitted or a proposal to be submitted to Cabinet, is opposed. The Government considers that this is a necessary restriction. It is necessary for advice from advisers or Cabinet officers, for instance, to be considered in the same light as Cabinet documents; otherwise, quite clearly, Cabinet confidentiality could be circumvented. It would make a nonsense of excluding Cabinet documents from the FOI legislation. If we accept that Cabinet documents are to be excluded, clearly, briefing papers prepared for a Minister to take into Cabinet to comment on a Cabinet submission must also be covered. It seems to me to be an inevitable conclusion for removing Cabinet documents from the purview of—

The Hon. R.I. Lucas: Wouldn't that be an internal working paper—advice from an officer?

The Hon. C.J. SUMNER: It may or may not be; I do not know. If it is a briefing, you should not have any objection to retaining it in the form in which it currently appears in the schedule.

As to the other paragraphs, paragraph *(ab)* is just a bit of a political point being made by the Leader of the Opposition, and there is no need to take it particularly seriously. As to the matter of research, the Government does not support the amendment to specifically single out one particular category of documentation, to say that it must be made available under FOI. The Government considers that the details of such research should be dealt with within the general scheme of the Act. There is no basis for highlighting such documents as relating to a general exemption under the clause relating to Cabinet documents.

Proposed new paragraph *(ac)* in clause 1 (2) is opposed, as it would allow matters, presented to Cabinet, but not brought into existence for the purposes of submission to Cabinet, to be released. Obviously, in the Government's view, such an amendment is detrimental to the concept of Cabinet confidentiality. I have discussed all the matters that the Leader of the Opposition intends to deal with, to get them out of the way.

The Hon. M.J. ELLIOTT: I am relatively satisfied with much of schedule 1 as it stands. However, I would like some guarantee that a distinction will be made between documents and information. I am raising this matter again for about the third or fourth time in this debate. The reason that I want to include the word 'specifically' before 'prepared' in paragraph *(a)* of subclause (1), and this certainly relates to the problem with paragraph *(f)*, is that the experience interstate has been that there has been an abuse of the Cabinet document system, in terms of matters being declared to be Cabinet documents simply as a way of hiding information. It is immaterial whether this is done by a Labor Government or by a Liberal Government, or whatever.

We need a system whereby information cannot be withheld from the public, as distinct from the proceedings of Cabinet or Executive Council or whatever else. I do not know what will come out in the wash as this Bill is further processed. At this stage, though, the amendment that I will move to try to sort out that problem still stands, but it may not survive. At this time, I support the removal of clause 1 (1) *(f)*, simply because it is a matter of concern that the Cabinet documents can be abused. I am not sure what will happen to other amendments put thus far. I think that clause 1 (2) *(ac)* is a useful addition to the schedule, and I will support it. I do not think that clause 1 (2) *(ab)* is necessary, because if FOI is working properly that sort of information would become available, anyway.

Amendment carried.

The Hon. R.I. LUCAS: I move:

Page 24—Leave out paragraph *(f)* of subclause (1) and 'or' immediately preceding that paragraph.

Amendment carried.

The Hon. R.I. LUCAS: I move:

Page 24—After paragraph *(a)* of subclause (2) insert paragraph as follows:

(ab) if it contains the results of research undertaken to gauge the extent of public approval or disapproval of—

(i) the Government, or any member of the Government;

or

(ii) the Government's policies or any of those policies,

in the State generally, or in any particular part of the State;.

I noted the comments of the Hon. Mr Elliott in relation to paragraph *(ab)*. As I indicated in my second reading speech, there has been a major problem in Victoria in relation to access to the opinion poll research conducted by the Government. Eventually, that research was released after two years of battling through the courts. I believe that the information that exists here is equally in the public interest and ought to be released. In my discussions with Parliamentary Counsel and others to try to ensure that there was no loophole to prevent such release, for every loophole that I closed off another one appeared. For example, new paragraph *(ac)* that I will propose, which is contained in the Victorian legislation, provides that, if a document was not brought into existence for the purpose of submission to Cabinet, it cannot be defined as a Cabinet document.

In relation to opinion poll research which is conducted for the Government by Rod Cameron, without that particular provision or a similar one, such as the one envisaged by the Hon. Mr Elliott, what could occur is that when the document is received—as the Attorney indicated in his response—it is presented to Cabinet. For instance, an honourable member might receive a consultant's report on market research and then present it to Cabinet. In Victoria, it would then be classified by the Government as a Cabinet document to which no access would be granted. I am not sure whether that would happen here unless, as I said, one fights a long and costly court battle, as happened in Victoria. So, that was the original intention.

In order for the Government to get around paragraph *(ac)*—and this is the legal advice that I have received—the Premier and the Cabinet could commission the research. They could say to Rod Cameron, 'Do a consultant's report

on market research on how the Government is going and how our services are being greeted.' Such a document would be brought into existence as a Cabinet submission that would go directly to Cabinet and not via some other agency.

In that way they can circumvent paragraph *(ac)*. Subclause (2) provides that if a document merely consists of factual or statistical material, you cannot claim it as a Cabinet document. That will not cover a Rod Cameron report, either. He does not just have factual or statistical material on an issue; he includes that the Bannon Government is on the nose, that its education services are terrible and that something is bad, good or whatever it is and he makes comment, as market researchers do, together with the factual and statistical material. He also recommends courses of action as part of the report. You cannot claim that subclause (2) overcomes the problem.

Whilst the Attorney has sought to dismiss paragraph *(ab)* as a politcal stunt—and I noted the initial comments (I hope not the final comments) of the Hon. Mr Elliott—the amendment is a genuine attempt to try to ensure the release of $1 million of taxpayers' money and the results of that market research. If there is another way of doing it, I tell the Hon. Mr Elliott that I would be happy to do it that way. I know that the procedure looks a bit strange in the way it is drafted but, if there is another way of doing it, I would be willing to support it. In all the other ways that I have envisaged and based on all the legal advice I have received, we have not been able to close all the loopholes.

We are in a position of leaving material in. In the end, I accept that the Hon. Mr Elliott might take the view that there is a better way of doing it if he agrees that we should do it (I would be willing to explore that with him). If there is not a better way, perhaps the Hon. Mr Elliott is willing to continue with support for the amendment. In the end, even if he puts the amendment in now, he may change his mind and think it is a political stunt not worthy of support, and I would accept that also. I urge the Hon. Mr Elliott at this stage to leave the amendment in so that we can talk about it further.

The Hon. M.J. ELLIOTT: I accept the pursuit of the particular information referred to in paragraph *(ab)* as matters legitimately sought. My response is that there are many bits of information that should be legitimately sought that may be withheld from the public in a similar manner and, unless we get the legislation right so that it addresses all of those, I do not see much point in getting at some of the public research that has been done of late that the Hon. Mr Lucas has been seeking. There must be a way of distinguishing between documents and the information contained in them. What the Hon. Mr Lucas is seeking in paragraph *(ab)* is the information contained in studies done by Rod Cameron. That is what he wants.

I do not think he needs the conclusion that the Government is on the nose and so on in education, because the numbers will tell him that. Opinions expressed and advice given to Cabinet are reasonably matters of Cabinet interest, and I do not have problems with that. What is important is that information generally is not withheld from the public. To support the amendment is to concede defeat in all the other areas. If it is necessary to do that, then it is necessary to do it for every other bit of information that we want and it means that we have not got things right. For those reasons, I will not support the amendment.

Amendment negatived.

The Hon. R.I. LUCAS: I move:

Page 24—After paragraph *(a)* of subclause (2) insert paragraph as follows:

(ac) if it has been submitted to Cabinet, or is proposed by a Minister to be submitted to Cabinet, but was not brought into existence for the purpose of submission to Cabinet;.

I have already explained the background. It is part of a package in relation to the deletion of paragraph *(f)* of subclause (1). It seeks to define better what is a Cabinet document.

The Hon. M.J. ELLIOTT: This is a good amendment and I support it very strongly.

Amendment carried.

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

Page 24—Leave out from paragraph *(b)* of subclause (2) '30' and insert '10'.

I believe that Cabinet documents eventually need to become public. It is a question of time. It is worth noting that in other legislation around Australia, as I understand it, 10 years has been considered reasonable. With 30 years, we are getting into ancient history. I think that 10 years offers all the protection that any Cabinet document should ever require. I cannot see any developments or anything else that Cabinet might envisage that will stretch it beyond 10 years, whereby the information should then be able to be made public.

The Hon. K.T. GRIFFIN: The Opposition is not persuaded to reduce the 30-year rule to 10 years. As I interpret this clause, it will allow immediate access to any Cabinet or Executive Council document that is more than 10 years old. My understanding of the position around Australia, but more particularly overseas, is that for archival purposes, 30 years is the period that applies after which Cabinet-type documents will be made available. I see no reason to change from what I understand to be the accepted position in the United Kingdom and in other parts of Australia, including at the Federal level. Therefore, I do not support the amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment.

Amendment negatived.

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

Page 24—Leave out subclause (3).

I am seeking to apply the 30-year rule to documents, whether they come into existence before the commencement of the clause or after. I see no reason for preventing that disclosure after 30 years. I suppose this means that if the legislation comes into operation this year that any Cabinet or Executive Council document produced prior to 1961 would be accessible under the terms of this legislation. For that reason, I move the amendment.

The Hon. M.J. ELLIOTT: The Democrats support the amendment.

Amendment carried.

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

Clause 2, page 24—Insert 'specifically' before 'prepared' in paragraph *(a)* of subclause (1).

I move this amendment for similar reasons to those that I gave in relation to Cabinet documents.

The Hon. K.T. GRIFFIN: The Opposition supports the amendment.

Amendment carried.

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

Clause 2—Leave out subclause (3).

This amendment is to provide that the 30 year rule applies to documents whether they came into existence before or after the commencement of the clause. It means removing the limitation.

The Hon. M.J. ELLIOTT: The Democrats support this amendment.

Amendment carried.

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

Clause 5, page 25—Leave out subparagraph (i) of paragraph *(a)* of subclause (1) and 'or' following that subparagraph.

This amendment applies to one category of documents requiring consultation, and I do not see any need to have that provision in the Bill.

The Hon. C.J. SUMNER: The Government opposes the amendment. This clause is in virtually every other FOI Act in Australia. It is certainly in the Commonwealth legislation.

The Hon. M.J. ELLIOTT: I need a little more convincing by the Hon. Mr Griffin.

The Hon. K.T. Griffin: It is a matter of judgment.

The Hon. M.J. ELLIOTT: As the Hon. Mr Griffin said, it is a matter of judgment. I move:

Clause 5, page 25, line 40—Leave out from subparagraph (i) of paragraph *(a)* of subclause (1) 'cause damage to' and insert 'seriously prejudice'.

The Hon. Mr Griffin and I are addressing basically similar terms, but I am not persuaded by the Hon. Mr Griffin that we need to delete the section totally. My proposed rewording of 'seriously prejudice' is fairly strong language. We still have the test of the public interest.

The Hon. Mr Elliott's amendment carried; the Hon. Mr Griffin's amendment negatived.

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

Page 25, line 50—Leave out from subparagraph (i) of paragraph *(a)* of subclause (2) 'damage' and insert 'seriously prejudice'.

This amendment is similar to the previous one which was accepted by the Committee.

The Hon. C.J. SUMNER: We support it.

Amendment carried.

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

Clause 6, page 26—Leave out from subclause (2) 'the truth of those allegations or suggestions has not been established by judicial process' and insert 'those allegations or suggestions have not been made in a court'.

I raised the point during the course of the second reading debate that what was meant by the truth of the allegations or suggestions of criminal or other improper conduct has not been established by judicial process.

I made the point that allegations may not have been specifically addressed in judicial proceedings to determine whether or not they had been established but the allegations or suggestions may have been made in the course of the proceedings. It is very difficult, I suggest, to identify that the particular allegations have actually been established by judicial process. It may be that, in a fraud case, for example, there are allegations that certain records have been manipulated, but only some of them may have been the basis for a jury to find guilt. My amendment avoids any judgment as to whether or not the truth has been established by judicial process.

The Hon. C.J. SUMNER: The Government opposes the amendment. It seems to me that the provision is an important protection to individuals. It allows documents containing unproved allegations against a person to be treated as exempt documents. If an allegation has been established by judicial process, the protection offered by this provision is removed. For example, if a person has been convicted of an offence by a court or found guilty of improper conduct by a tribunal, the provision would not operate in respect of those matters.

The Hon. M.J. ELLIOTT: The Democrats oppose the amendment.

Amendment negatived.

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

Clause 7, page 26—

Leave out from subparagraph (i) of paragraph *(c)* of subclause (1) 'agency or any other'.

Leave out from subparagraph (ii) of paragraph *(c)* of subclause (1) 'to have an adverse affect on those affairs or'.

A document is an exempt document if it contains matter consisting of information other than trade secrets or information contained within paragraph *(b)* concerning the business, professional, commercial or financial affairs of any agency or any other person. I cannot see that exemption ought to apply to the business, professional, commercial or financial affairs of any agency. After all, we are seeking to get information in relation to Government activities, and information on the business, professional, commercial or financial affairs of an agency is the sort of information to which one might be seeking access. Because the agency is an agency of government, it seems to me to be inappropriate to give that exemption.

The Hon. C.J. SUMNER: The Government opposes the amendment. The Government does not support the deletion of agencies from this provision. Statutory authorities engaged in commercially competitive activities are subject to the legislation. It is essential that FOI legislation contain an exemption to protect the need for secrecy in relation to such business activity. It is important that information regarding commercial negotiations, sales agreements, etc., is not available on terms that may have an adverse effect on the operations of an agency.

The Hon. M.J. ELLIOTT: The Democrats will not support the amendment.

Amendment negatived.

The Hon. R.I. LUCAS: I move:

Clause 9, page 26—Leave out subclause (1) and insert subclause as follows:

(1) A document is an exempt document if—

(a) it contains matter in the nature of—

(i) an opinion, advice or recommendation prepared by an officer of an agency or a Minister;

or

(ii) a record of consultation or deliberation between officers of an agency, between an officer of an agency and a Minister, or between Ministers,

in the course of, or for the purpose of, the deliberative processes of an agency, a Minister or the Government;

and

(b) its disclosure would, on balance, be contrary to the public interest.

I addressed this matter in my second reading contribution. This amendment picks up the provision in the Victorian Government's legislation. As I indicated in my second reading speech, I was concerned at the wide drafting of 'internal working documents' in this Bill. After the Cabinet document loopholes, I saw this as being potentially a very wide loophole through which the Government could drive almost any car or truck that it wanted. Officers of Government departments provide advice to a Minister, as I interjected earlier when the Minister talked about officers advising Ministers, and perhaps that document ought to be covered under exempt Cabinet documents, but I do not accept that and the Parliament has not accepted it either. I accept that, where public servants are advising Ministers, that sort of advice ought to be confidential.

In relation to the way that 'internal working documents' has been drafted, on my reading it involves not just discussions between officers and the Minister; basically, it refers to any consultation or deliberation that has taken place in relation to the making of a decision by the Government. That involves virtually any discussion that might have taken

place with a non-government agency or records of minutes of meetings with people outside Government departments in relation to a particular policy decision that a Minister or the Government is taking. That could be excluded under the 'internal working documents' section.

Secondly, 'any opinion, advice or recommendation that has been obtained, prepared or recorded' goes much wider than advice or recommendations being made by officers. Consultants' reports that have been undertaken for the Government could be defined or construed as internal working documents. I do not think that by any stretch of the imagination anyone could consider that consultation with outside agencies, the records of minutes or deliberations of outside agencies, or consultants' reports could be construed as internal working documents worthy of automatic exemption as exempt documents under the freedom of information legislation. The provision in the Victorian legislation, which I have sought to pick up in the amendment, is a little tighter. There are still loopholes in it, and I concede that, but it is tighter than the Government's definition. I would urge the Hon. Mr Elliott, given his basic premise in relation to this matter to get as much information in rather than locked out, to accept the amendment.

The Hon. M.J. ELLIOTT: I support the amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment.

Amendment carried.

The Hon. R.I. LUCAS: I move:

Clause 16, page 27—

Leave out from subparagraph (i) of paragraph *(a)* of subclause (1) 'prejudice' and insert 'have a substantial adverse effect on'.

Leave out from subparagraph (ii) of paragraph *(a)* of subclause (1) 'prejudice' and insert 'have a substantial adverse effect on'.

As I have indicated before, I am concerned about this provision. I cannot find an equivalent provision in the Victorian Act. I presume that this has come from the New South Wales legislation. I could not find one in the Commonwealth Act either.

The Hon. C.J. SUMNER: It is in the New South Wales legislation.

The Hon. R.I. LUCAS: I have some concerns in relation to tests that should be made publicly available concerning the marine environment and similar legislation and also testing, examinations and audits done within the Education Department. I think that this provision is too wide. I sought a more substantive amendment, but in the end I settled on only a slight tightening. Instead of 'prejudice' being included in the subclauses (1) and (2)—and we discussed that—I picked up exactly the same wording as appears in subclauses (3), (4) and (5), where the phrase 'substantial adverse effect' is used rather than 'prejudice'. I think that, for consistency and in an endeavour to tighten up the definition, we ought to use the phrase 'substantial adverse effect' throughout all the subclauses, rather than the word 'prejudice'.

The Hon. M.J. ELLIOTT: I indicated in the second reading debate some concern about clause 16. As I understand it, certain components of that in the Commonwealth legislation have resulted in 52 per cent of all denials of access to documents so, as innocuous as it looks, the clause is significant. I support the amendments proposed by the Hon. Mr Lucas.

Amendments carried.

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

Clause 19, page 28—Leave out paragraph *(a)* of subclause (2) and substitute paragraph as follows:

(a) the office of State Records;.

Amendment carried; schedule as amended passed.

Schedule 2.

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

Page 29—

Leave out 'or a' from paragraph *(a)* and insert 'or an officer or'.

Leave out 'or a' from paragraph *(b)* and insert 'or an officer or'.

The Hon. M.J. ELLIOTT: During the second reading debate, I expressed some concern about the range of agencies that are exempt, and I will give one example. The Auditor-General is an exempt agency. In Victoria, the Auditor-General's office is not exempt, and it was hardly deluged with inquiries in the period 1984 to 1987; I believe the Auditor-General received a total of 31 requests. Similarly, we see the Solicitor-General will be exempt in South Australia. I may be corrected, but I presume that would be a similar position to that of the Victorian Director of Public Prosecutions, who received a total of 15 requests in 1986 and 1987. Of those, four were granted in full and seven in part, which illustrates, first, that the office was not deluged and, secondly, that when put to various tests most people were given the information they sought. In such circumstances, how does the Attorney-General justify the number of agencies that are currently included in the second schedule?

The Hon. C.J. SUMNER: Generally, we have picked up those agencies that were exempt in other jurisdictions. The list is not exactly on a par with every other jurisdiction. It differs from place to place, Victoria, New South Wales and the Commonwealth, but I think that most of the agencies that have been picked up are those which come within the categories that are generally exempt in other States. I do not think it matters greatly whether the Solicitor-General is there or not. There is probably no point in having him there, because there is virtually nothing that the Solicitor-General would have which would be disclosable, anyhow, because basically he is dealing with legal advice, and the like, which is exempt in any event, under the normal rules of professional privilege. Anything relating to budgets, or what have you, would be provided under the Attorney-General's Department.

So, the list was prepared, taking into account what happened in other States and what were similar organisations in South Australia. The list is not exactly the same, but, generally, the categories that we have follow what has occurred in the other States, although there may be some additional ones in our list—but there are not many.

Amendments carried; schedule as amended passed.

Title passed.

Bill recommitted.

Clause 11—'Application of this Part'—reconsidered.

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

Page 6, lines 40 and 41—Leave out paragraph *(a)* and substitute:

(a) a Minister of the Crown acting in his or her Ministerial office in a personal as distinct from a corporate capacity (unless declared by regulation to be an agency to which this Part applies);

This relates to a point that the Attorney-General made about Part II not applying to a Minister of the Crown acting in his or her ministerial office in a personal capacity and documentation originating, say, from ministerial offices having to be disclosed. Also, it picks up my point that, where a Minister is acting as a 'corporation sole', then that capacity ought not to be exempted.

The Hon. C.J. SUMNER: The Government is still opposed to this amendment. We believe that the general principle of freedom of information not applying to Ministers should apply. If we are going to insert a clause such as this, it should be inserted in a more general section because Part II relates only to the publication of certain information concerning agencies and not with the general

question of access to information. As far as I am concerned, that issue may need to be looked at at some point, but the original argument that I put forward still applies and I do not think that the honourable member's amendment placed as it is in this provision is appropriate.

The Hon. M.J. ELLIOTT: It may need further consideration at a later stage, but the Democrats support the amendment at this time.

Amendment carried; clause as amended passed.

Clause 18—'Agencies may refuse to deal with certain applications'—reconsidered.

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

Page 8, lines 41 to 45 and page 9, lines 1 to 6—Leave out subclauses (3) and (4).

This amendment is consequential on the deletion of clause 17.

Amendment carried; clause as amended passed.

Clause 26—'Documents affecting personal affairs'—reconsidered.

The Hon. R.I. LUCAS: I move:

Page 13, lines 21 to 25—Leave out paragraphs *(a)* and *(b)* and substitute paragraphs as follow:

(a)—

(i) an agency determines, after having sought the views of the person concerned, that access to a document to which this section applies is to be given;

and

(ii) the views of the person concerned are that the document is an exempt document by virtue of clause 6 of schedule 1;

or

(b) after having taken reasonable steps to obtain the views of the person concerned—

(i) the agency is unable to obtain the views of the person;

and

(ii) the agency determines that access to the document should be given,.

This is not an overly significant amendment, but it is worthwhile and ought to be supported. It provides for the circumstance of an agency trying to obtain the views of a particular person about whom information of a personal nature is being sought. If the agency has been unable to find the person, it can release that personal information if it so determines. This would occur solely because someone has not been able to be found. As I indicated earlier, it may not be that a person has disappeared permanently—he or she may have gone away for three months, interstate, to the country or overseas. A letter might have been sent to that person by a Government agency saying, 'Someone wants personal information about you. What do you think? Do you want to claim an exemption under clause 6 of the exempt document provision of Schedule I?'

Because the person is not there, the person cannot respond and the agency may well go ahead and release the information. My amendment would require the agency to advise the person when he or she returns from the trip that the information has been sought and released, indicating that the agency tried to speak to the person, but the person was not there. The amendment is not as satisfactory as perhaps I would have preferred, but it is preferable to what exists in the Bill now, because the information can be released and the person may never know that personal information has been released. I urge the Committee to support my amendment.

Amendment carried; clause as amended passed.

Clause 54—'Reports to Parliament'—reconsidered.

The Hon. R.I. LUCAS: I move:

Page 23, after line 20—Insert subclause as follows:

(2a) A report under this section must specify, in respect of the year to which the report relates, the number of ministerial certificates issued under section 46 and, in respect of each such certificate, the document to which the certificate relates and the provision of Part I of schedule 1 specified in the certificate by virtue of which the document is a restricted document.

In retrospect probably the best way of approaching this would have been to amend the Hon. Mr Griffin's amendment. Perhaps at some stage down the track we might be able to tidy up this area. The amendment seeks to ensure that the number of ministerial certificates issued under clause 46 are recorded as part of the annual reporting mechanism. When we last discussed it, the Attorney's position was that he presumed that that would be the case, and the amendment merely seeks to formalise it.

Amendment carried; clause as amended passed.

Bill read a third time and passed.

ADJOURNMENT

At 12.20 a.m. the Council adjourned until Wednesday 20 March at 2.15 p.m.