LEGISLATIVE COUNCIL

Tuesday 9 April 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:

Pharmacists,
Physiotherapists,
Road Traffic Act Amendment (No. 3),
Workers Rehabilitation and Compensation Act Amendment (No. 2).

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 76 and 151.

FISHERIES LEGISLATION

76. **The Hon. PETER DUNN** asked the Attorney-General:

1. *(a)* Is he aware of the recent High Court decision of *Kelly v Kelly* which found fishing entitlements of various kinds in South Australia have for some years possessed proprietary characteristics?

(b) Does he agree that this decision binds South Australian public servants in their administration of fisheries legislation?

2. Does he interpret the *Kelly v Kelly* judgment as confirming the property nature of fishery licences issued between 1984 and 1990, as well as the property nature of licences, authorities and permits issued prior to 1984?

3. *(a)* Is he aware of a recent statement by the South Australian Director of Fisheries, reported in this House, alleging the High Court may have erred in making the ruling that there was a property right involved in past South Australian fishing entitlements?

(b) Will he comment on the appropriateness of the Director's public stance in view of the binding nature of the High Court's decision?

4. *(a)* Can he confirm whether an 'A' class fishing licence and rock lobster authority, issued to a B.N. Anderson of Port Lincoln, under the Fisheries Act 1971, were claimed as after acquired property by the official receiver around 17 May 1984, as well as licences subsequently issued in their place around that date?

(b) Was such action taken as a result of negotiations with the South Australian Fisheries Department, and did the department at that time acknowledge the official receiver's claim on advice from the State Crown Solicitor?

5. Can he advise the nature of advice received by the State Fisheries Department from the Crown Law Department, in relation to the property element of B.N. Anderson's licences in 1984?

The Hon. C.J. SUMNER: The replies are as follows:

1. *(a)* Yes; however, the case of *Kelly v Kelly* concerned rights arising under the now repealed Fisheries Act 1971 and has limited relevance to licences issued under the present Fisheries Act. The High Court accepted for the purposes of the case that an abalone authority was capable of being partnership property.

(b) The decision of *Kelly v Kelly* has little relevance to the administration of present fisheries legislation as it deals solely with the previous legislation (I point out that the issue of whether licences granted under the 1971 Act may be dealt with as property is presently the subject of eight Supreme Court actions and is therefore *sub judice*).

2. *Kelly v Kelly* does not confirm the property nature of licences issued either before or after 1984. All *Kelly v Kelly* confirms is that a pre-1984 abalone authority is capable of being partnership property.

3. *(a)* I am advised that the Director of Fisheries, when advising industry of the Crown Solicitor's amended advice as a result of the Chief Justice of the Supreme Court's ruling in *Pennington v McGovern* that fishery licences are proprietary in nature, also advised that the Government was seeking advice on an opportunity to intercede in an appropriate action to clarify whether this is supported in a higher court. Intercession opportunities explored included the then High Court action in *Kelly v Kelly*, or any appeal against the Commissioner of Stamps application of stamp duty on fishery licence transfers as a result of the *Pennington v McGovern* ruling.

The Department of Fisheries' need to address this arose from the Crown Solicitor's advice to the department of concerns that the Chief Justice in the *Pennington v McGovern* case 'misinterpreted' sections of the fisheries legislation and the need to clarify what effect the ruling had on the Minister and Director of Fisheries to administer their respective responsibilities under the Fisheries Act 1982.

(b) I consider that the Director of Fisheries' response to the industry to be appropriate as it was aimed at ensuring industry was fully aware of the complexities of this situation and possible further action.

4. *(a)* Yes.

(b) Yes.

5. The advice from the then Crown Solicitor was contained in a two paragraph minute written by an officer employed in the Crown Solicitor's Office. In the minute the Director of Fisheries was advised that the licence was after acquired property.

The issue of whether fisheries licences were 'property' was further examined by the Crown Solicitor in 1986. The Crown Solicitor advised the Director of Fisheries that a fisheries licence was not property. This latter advice was re-examined after the judgment of the Full Court of the Supreme Court in *Pennington v McGovern*, and the Commissioner of Stamps and the Director of Fisheries were advised that, in light of the judgment of the Supreme Court, fisheries licences should be treated as proprietary in nature.

HOMESTART LOAN REPAYMENTS

151. **The Hon. L.H. DAVIS** asked the Attorney-General: Will the Premier, within seven days, ensure that answers are provided to the following questions:

1. In relation to the HomeStart loan portfolio recently transferred to SAFA, what are the number of loans with repayments in arrears and aggregate amounts outstanding in the following categories as at 1 February 1991—

(a) 0-29 days past due;
(b) 30-59 days past due;
(c) 60-89 days past due;
(d) 90-119 days past due;
(e) 120 or more?

2. How many borrowers whose HomeStart loan repayments are in arrears 60 days or more have not made any repayment on their loans, and what is the amount of loans outstanding for this category of borrowers as at 1 February 1991?

3. What are the number and aggregate value of HomeStart loans outstanding as at 1 February 1991 which—

(a) were under notice of mortgagee intention to take possession; or

(b) have been subject to mortgagee sale since the introduction of the HomeStart scheme?

4. (a) As at 1 February 1991 how many HomeStart loans have been taken out since the introduction of the HomeStart scheme?

(b) How many of these loans involve the re-finance of existing debt from other financial institutions?

5. As at 1 February 1991 what number of HomeStart loans have been advanced to lenders whose individual/family annual income is in excess of—

(a) $40 000;
(b) $50 000;
(c) $60 000;
(d) $70 000;
(e) $80 000;
(f) $90 000;
(g) $100 000?

6. As at 1 February 1991 what number of houses for which HomeStart loans have been approved have a value in excess of—

(a) $100 000;
(b) $125 000;
(c) $150 000;
(d) $175 000;
(e) $200 000;
(f) $225 000?

The Hon. C.J. SUMNER: For reasons of administrative convenience, the information used to answer questions 1 to 4 relates to the period ending 31 January 1991 rather than close of business on 1 February 1991, which is the date nominated in the question.

1. In relation to the whole HomeStart loan portfolio, the following table shows the number of loans with repayments in arrears and aggregate amounts outstanding as at 31 January under various categories:

	No. Loans	Amount Outstanding $
0-30 days	216	119 032.87
31-60 days	52	59 337.74
61-90 days	24	40 701.77
91-120 days	5	10 608.00
121-151 days	6	12 355.00

Most of the 0-30 days arise from difficulties with direct debiting arrangements occurring at the first loan payment.

2. At 31 January 1991 no repayments have been made on four HomeStart loans for which repayments were in arrears 60 days or more. The arrears outstanding under this category at that date was $8 370.56.

3. At 31 January 1991 there were no HomeStart loans which—

(a) were under notice of mortgagee intention to take possession;

or

(b) have been subject to mortgagee sale since the introduction of the HomeStart scheme.

However, on 13 February 1991 four notices of mortgagee intention to take possession were issued as a means of bringing the four borrowers into meaningful dialogue in order to address their arrears.

4. At 31 January 1991, 4 963 HomeStart loans had been settled since the inception of the scheme; 783 of these loans re-financed existing debt from other financial institutions.

The most recent information available has been used to answer questions 5 and 6 in lieu of the earlier date specified in the question.

5. As at 28 February 1991 HomeStart loans had been settled and the following number of loans that had been advanced to both single and joint applicants is as follows:

		No.
over (a)	$40 000	926
(b)	$50 000	285
(c)	$60 000	79
(d)	$70 000	16
(e)	$80 000	7
(f)	$90 000	2
(g)	$100 000	5

6. As at 28 February 1991 the number of houses for which HomeStart loans have been approved (but not necessarily settled):

		No.
(a)	$100 000	755
(b)	$125 000	141
(c)	$150 000	40
(d)	$175 000	15
(e)	$200 000	1
(f)	$225 000	5

PUBLIC WORKS COMMITTEE REPORTS

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

Aldinga Beach-Port Willunga limited sewerage scheme,
International standard velodrome at State Sports Park.

AUDITOR-GENERAL'S REPORT

The PRESIDENT laid on the table the Auditor-General's Supplementary Annual Report for the year ended 30 June 1990.

PAPERS TABLED

The following papers were laid on the table:

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

Rules of Court—Supreme Court Act 1935—Supreme Court—Costs.

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

Metropolitan Taxi-Cab Act 1956—Issue of Licences.

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

Senior Secondary Assessment Board of South Australia—Report, 1990.

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

Corporation By-laws—Renmark—
No. 1—Permits and Penalties;
No. 4—Inflammable Undergrowth;
No. 8—Park Lands;
No. 13—Garbage Containers;
No. 15—Repeal and Renumbering of By-laws.

QUESTIONS

OPEN ACCESS COLLEGE

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister for the Arts and Cultural Heritage, representing the Minister of Education, a question about the Open Access College and early retirement packages.

Leave granted.

The Hon. R.I. LUCAS: In October last year 11 teachers from the Education Department's former Correspondence School (now known as the Open Access College) met with the department's Director of Personnel, Mr John Wauchope. At that meeting the teachers were told a Cabinet decision had been taken regarding Government department restructuring and, as the Correspondence School would be closing in December 1990 to make way for the Open Access College, early retirement packages would be offered to employees aged 55 years and over. Details of early retirement and long service leave calculations were handed out to all 11 teachers.

At the meeting Mr Wauchope pointed out that accepting the packages was optional; however, it would be a once only offer. If teachers declined, they would be unable to change their minds at a later date. As a result of the meeting, five teachers advised the department that they would accept an offer. The teachers were told that a further meeting would be arranged when all the details and documentation were ready. The teachers were most concerned to receive a letter in November of last year from the then Director of the department's northern area office, Mr Denis Ralph, advising that details of the retirement package had still not been finalised.

Subsequently, the Correspondence School's principal (Mr Vic Stone) contacted Mr Ralph, who assured Mr Stone that the packages would go ahead. Later, Mr Stone was again reassured by another senior departmental officer that the packages were in the pipeline and would go ahead. The five teachers were officially farewelled from the Correspondence School at the final school assembly in 1990 and tributes announcing their retirement were published in the school's magazine. Later, print-outs of teachers' names for 1991 were sent out to parents. The five teachers intending to retire were not included in that list, nor were they included in staffing numbers for the new Open Access College, as it would be, in term one of 1991.

With all this done, teachers had no hint whatsoever that the retirement packages would not proceed, particularly when, on the last school day for 1990, the Open Access College's principal (Ms Beagley) was told by the northern area office that the retirement packages would go to Cabinet the following Monday and that the five teachers would most probably be contacted during the Christmas holidays. The teachers were dismayed when contacted literally on the eve of the 1991 school year and told that they should report for duty to the college as the retirement packages had been withdrawn. I understand that this appalling treatment of the five teachers has had a very traumatic effect on them. In one case a teacher has sold a home and has now had to rent the new home she planned to purchase, because the retirement package was dropped.

Another teacher (with 33 years teaching experience) has been employed this term packing books in the Open Access College's dispatch section since her unplanned return this term. This woman has found the whole affair so dispiriting that she will resign, presumably in disgust, in nine days time. The five teachers, in reporting to the college at the start of the 1991 school term found, naturally, that there were no jobs or desks for them. Some have been employed in packing books, others in writing course notes or in checking for errors in course materials.

All this disruption and upheaval for the teachers might have had some mitigating circumstances if the retirement packages had posed some huge financial problem for the department. However, I understand that in most of the five cases the retirement packages would have been around only $40 000 each. Will the Minister order an urgent review of the department's handling of this case and ensure that the department complies with the terms of the original offer made to these teachers?

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

PROSTITUTION LAW REVIEW

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Attorney-General a question about prostitution law review.

Leave granted.

The Hon. K.T. GRIFFIN: On Saturday, the *Advertiser* reported that Mr Matthew Goode, said to be a senior lecturer in law at the University of Adelaide, would conduct a review of prostitution laws in South Australia and report to Parliament in the August session, although I suspect that what that should have said was that he will, in fact, report to the Attorney-General. The newspaper report indicated that Mr Goode would also review legislation introduced by private members, presumably including the Hon. Mr Gilfillan's Bill—when we see it. No mention was made in the report of any other Bill such as that of the Hon. Carolyn Pickles, which was introduced several years ago.

According to answers given by the Attorney-General to questions I raised in August last year, Mr Goode is actually full time in the Attorney-General's office as a policy officer and adviser to the Attorney-General until the end of this year, and is not presently a lecturer at the university. My questions are:

1. Will Mr Goode's review be subject to any policy direction by the Attorney-General?
2. Will the review give the factual position of the law or will it include an embellishment reflecting Mr Goode's own views or those of the Attorney-General and any preferences that Mr Goode might have as to the law?
3. What Bills is Mr Goode expected to review in the context of the task that has been set for him?

The Hon. C.J. SUMNER: Mr Goode is a senior lecturer in law at the University of Adelaide—that is his substantive position. He has been working in the Attorney-General's office last year and this year and, under the present arrangement, will remain at least until the end of this year. He is involved in a review of the criminal law, full details of which have been provided to the Council. Furthermore, discussion papers on a number of aspects of reform of the criminal law have been produced and legislation is being prepared in relation to them. Additionally, Mr Goode is involved in discussions at a national level looking at the question of some agreed uniform principles on criminal law that might be adopted at the Commonwealth level and in each of the States.

Mr Goode is well recognised as an eminent person with respect to his knowledge of the criminal law as he is a senior lecturer in law at the University of Adelaide specialising in the criminal law. Therefore, I believe that he is eminently suitable to carry out the review. It is also worth noting that

in his private capacity Mr Goode has served as the Mayor of St Peters for a number of years. That office will bring to his experience the perspective of local government which, of course, is important in any consideration of the review of prostitution laws.

Prostitution laws are dealt with as part of the criminal law in this State and, accordingly, I think Mr Goode is in a position to conduct the review. He will examine previous attempts to decriminalise prostitution in this State and, no doubt, he will comment on the options that have been presented in the past and any that might be presented tomorrow by the Hon. Mr Gilfillan.

Mr Goode will review the laws in other States and, no doubt, he will examine the discussion paper that has been issued already by the Criminal Justice Commission, I think it is, in Queensland. In any event, that paper is no doubt available already to members through the Parliamentary Library if they are interested. Mr Goode will examine also—and I think that this is probably the most important part of his work—the experience in Victoria, because Victoria has taken the most radical steps, I suppose, in this area.

However, there is considerable debate as to whether or not the so-called legalisation of prostitution in Victoria has been successful. Some of the material that I have seen has indicated that, whilst the legal prostitution industry has been regulated, an illegal prostitution industry still flourishes in Victoria. So, obviously, an important part of Mr Goode's review will be to look at what has happened in that State.

I have said in this Council, and I will repeat, that any consideration of a change in prostitution laws must have at least as one of its aims an attempt to eliminate organised crime, drug dealing and the like, from the prostitution industry. No doubt Mr Goode will discuss with me the matters that he is examining. He will principally be involved in putting together a factual statement of the law relating to prostitution in Australia, including, I should add, a factual statement about enforcement of the law relating to prostitution. He may also comment on that law, but basically the review will be designed to provide members of Parliament with the most up-to-date information that they can have on this topic.

Members will recall that a discussion paper on prostitution law was produced when the Hon. Ms Pickles introduced her Bill some years ago. Mr Goode's review will update that statement and, as I said, he will take particular account of what has happened in other jurisdictions in Australia, and in particular I suggest that Victoria is the one that will need to be looked at most closely. So, in summary, Mr Goode is eminently qualified for this task. Basically, the review will produce a factual position at law and in practice, as far as the operation of prostitution laws around Australia is concerned. Mr Goode may also comment as to any future policy changes that might be desirable but, in the ultimate analysis, it will be up to Parliament to make its own assessment of what changes to the law it might want. Mr Goode's paper will be better to inform members so they can be in a position to make up their minds.

ADELAIDE-MELBOURNE RAIL LINE

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage, representing the Minister of Transport, a question about the standardisation of the Adelaide-Melbourne rail line.

Leave granted.

The Hon. DIANA LAIDLAW: Following the release in the past three weeks of two major papers outlining future State and Federal Government initiatives in road transport, it would appear that the standardisation of the broad gauge railway line between Adelaide and Melbourne is to be put on hold, and at best it is seen to be a distant dream. The report of the National Rail Freight Initiative Task Force presented to Federal, State and Territory Ministers last Friday states on page 26:

> The task force is of the view that at an estimated direct cost of $154 million (1990 prices) over the first three years of the NRFC operations, the investment for the Melbourne-Adelaide standardisation is currently not commercially justifiable.

I note also from a speech by Mr Peter Crawford, Director of the South Australian Department of Industry, Trade and Technology on 13 March outlined to the Business Council of the Chamber of Commerce and Industry, the Bannon Government's concept of a transport hub, involving the development of Adelaide as Australia's most reliable international express freight gateway and domestic distribution centre. Mr Crawford's address omitted all reference to rail until his concluding remarks, when he stated:

> The hub investment, public and private, is expected to be in the vicinity of $440 million staged over 15 years. This includes proposed upgrading and standardisation of the Adelaide-Melbourne rail link.

As both these conclusions are most disappointing and appear to be at odds with the twin goals of establishing Adelaide as the headquarters of the National Rail Freight Corporation, and of establishing Adelaide as a transport hub, I ask the Minister:

1. On what grounds did the task force on the National Rail Freight Initiative determine that the standardisation of the Adelaide-Melbourne line is not a commercially viable option?
2. Did the Transport Minister's conference last Friday endorse this conclusion or has it ordered a further assessment, involving private capital?
3. At what stage during the next 15 years do the designers of the transport hub concept envisage that a start would be made on the standardisation of the Adelaide-Melbourne line?

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

MINISTERIAL STATEMENT: MEMORANDUM OF UNDERSTANDING

The Hon. ANNE LEVY (Minister for Local Government Relations): I seek leave to make a ministerial statement on the memorandum of understanding.

Leave granted.

The Hon. ANNE LEVY: I first seek leave to table a copy of the memorandum of understanding.

Leave granted.

The Hon. ANNE LEVY: It gives me great pleasure to table a copy of the memorandum of understanding executed on 26 October 1990 between the Premier and Malcolm Germain, who was then President of the Local Government Association of South Australia. The memorandum commits the State Government and the Local Government Association, on behalf of councils, to a process of negotiation about the respective functions performed, and services provided, at each level of government, the financing of those activities and the legislative framework established for local government.

The memorandum has been freely available since October and some members will be quite familiar with it. However,

I have decided that it would be appropriate to table formally this significant document. The memorandum records the desire of the State Government and the Local Government Association, representing its member councils, to establish new relationships reflecting a co-operative approach to the productive and effective provision, planning, funding and management of services for the South Australian community. Overcoming barriers to the rationalisation of functions, finances and regulations between the three spheres of government is fundamental to the development of this country.

In the same month as this memorandum was signed, the first of the special Premiers' Conferences to consider the reform of the structure of the Australian Federal system was held. The reform of State/local government relations has the same basic objective as the Federal reform initiative—better use of public resources.

The negotiation process established under the memorandum is under way and is to be concluded by June 1992 at the latest. A four-person team from State Government (the Director of the Cabinet Office, Under Treasurer, the CEO of a State Agency and an officer representing social justice issues) and a four-person team from local government (the Secretary General of the Local Government Association, a metropolitan CEO, a country CEO and a community services officer) are meeting fortnightly. The State team is supported from the new State-Local Government Relations Unit in the Department of Premier and Cabinet, whilst the local government team has drawn its support from the staff of the association and from councils.

The teams will report progressively to the Premier, through the Minister for Local Government Relations, and to the State Executive of the Local Government Association. The teams have already recommended an 'interim' protocol for consultation by State agencies with local government and they are currently considering the future of functions now located within the Local Government Services Bureau. Included in those functions are the tasks of advising councils and members of the public, dealing with complaints and developing subordinate legislation.

One or two members have expressed to me some concern or confusion about the fact that the negotiation teams will be recommending how these functions should be dealt with in future and will also recommend a new legislative framework for the future operation of local government. These recommendations, and recommendations the teams may make about roles, responsibilities and revenue sources, are inter-related. However, it is clear from the first principle attached to the memorandum that a recommended legislative framework must recognise the desirability of maximising local government autonomy, independence and the sector's capacity for self-management.

Principle 7 specifically concerns self-regulation by the local government sector. It provides that, where it is proposed that local government should manage new or extended functions, mechanisms should be negotiated to protect the public interest and allow for input from State Government. The aim is not to remove all limitations on the exercise of powers by local government or all constraints on local government operations. All governments must be accountable, behave equitably and be vigilant about the rights of citizens. However, the ultimate aim is to have the minimum number of restrictions so that wastage, inefficiencies and delay can be avoided.

Officers are currently working on a paper for the teams which will identify the issues involved in reviewing the legislative framework for local government, commencing with the Local Government Act. There are any number of ways in which powers may be statutorily delegated to local government with different administrative systems accompanying them. All of the principles which are to guide the negotiation process about the legislative framework are necessarily general and qualified by words such as 'appropriate'. There will no doubt be some lively discussions in the teams about what is 'appropriate' in specific cases.

At this stage, I do not know what the terms will recommend, but members will easily be able to think of a number of different approaches to the legislation and subordinate legislation of the State which deals with local government. For example, some areas may be able to be deregulated entirely, or powers expressed as purposes and objectives, which are capable of being fulfilled in a number of different ways. Codes of conduct or practice could be developed to set appropriate standards in particular areas and encourage self-regulation. These could be incorporated in legislation or legislation might deal only with what happens when there is a breach of a code. Rather than controlling a particular activity in detail, legislation might provide that there are no specific controls unless a particular state of affairs develops. Some matters dealt with in legislation might be better organised administratively between the two levels of government or *vice versa*.

Members can be reassured that nothing in the memorandum or in statements I have made about regulations being developed by the local government sector commits me, the Premier, the Executive government or the Parliament to becoming a mere 'rubber stamp' for proposals developed in the negotiation process or in the local government sector. Obviously, no such agreement could or would be made. Parliament will ultimately determine the form of the legislative framework for local government in this State. However, the memorandum represents an important political compact between the Local Government Association and this Government. It has the capacity to transform the relationship between State and local government and create a new level of partnership. We are in the same business of serving the public and, for that reason, I know that members of Parliament will give the most serious consideration to proposals which come out of this negotiation process.

REGIONAL TOURISM

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Tourism a question about the Regional Tourism Division.

Leave granted.

The Hon. M.J. ELLIOTT: Last Friday I attended a meeting of the Regional Development Association of South Australia. Representatives from a number of regions expressed concern about reports that the razor gang—GARG—in South Australia was contemplating a cut-back in funding for the Regional Tourism Division. This caused great concern to the Regional Development Association and its member councils because tourism is recognised as one of the major growth industries possible in country areas. In light of the other problems that the rural areas are experiencing, they argue that they can little afford to lose support for regional tourism. Is the Regional Tourism Division within Tourism SA under review by GARG? Does the Minister believe that it is a fair target for cost cutting? Does she acknowledge the importance of tourism to rural communities and the fact that any threat to the Regional Tourism Division of Tourism SA would constitute an abandonment of those communities?

The Hon. BARBARA WIESE: The submission Tourism SA has put to GARG has become a fairly public document.

Certainly, along with all the other divisions of Tourism SA, the Regional Tourism Division has been mentioned, because it is considered appropriate that every division of the organisation be reviewed as part of the GARG process. A report concerning the Regional Tourism Division will be forthcoming in the next few months. At this time I cannot say what that review might recommend.

One of the options canvassed in that paper was the idea that, first, there should be a review of the way regional tourism is handled by other tourism authorities in Australia. If one looks around the country one will find that there are numerous ways of handling this matter. Some States have a regions division to concentrate on marketing and providing support for regional associations, as we do here in South Australia. Other States, like Victoria, have abandoned that way of assisting people in the regions and have dismantled their regions division and instead provided tourism grants to regional associations which they, in turn, can put towards their own marketing campaigns.

It seems to me that every State must make its own decisions about what is appropriate for their own regions, based on the level of development of the regional organisations. I believe that in this State the response we must have is to be flexible about the way we assist regional organisations. Some regions in South Australia are better equipped; they have professional staff and local councils that provide a higher level of financial support, and they have the capacity amongst their own operators to raise a higher amount of money for marketing purposes than do other regions in the State. For that reason, during the last couple of years in particular regions adjustments have been made to the level of support given by Tourism South Australia, based on the preferences of the people in those regions and their capacity to undertake the range of tasks that they believe are appropriate.

I think that that is the approach that we should take. I do not believe that in the near future all the regions of South Australia will be able to undertake the range of marketing and other supports for regional operators on their own without the support of Tourism South Australia. Therefore, I would be very surprised if there were to be a recommendation that such support should be withdrawn in the near future. However, as I indicated, we must take a flexible approach to this matter. The tourism industry is a rapidly growing industry. It is a dynamic industry, and we must be prepared to adjust the supports that we provide to regional tourism in future should that be deemed an appropriate way to go, by consultation with the various industry bodies. My view is that at this time it is unlikely that there will be changes in the short term to the supports that the Government gives to regional tourism. However, a report will be forthcoming in the next few months that will look at some of the options that the industry should be considering in future years.

The final point I want to make is that, whatever happens in South Australia in the future, it will occur after extensive consultation by all those people who want to take part in that process. I hope that the Government will be in a position to work cooperatively in the interests of the regional operators and to respond in a way that is deemed to be most appropriate.

The Hon. M.J. ELLIOTT: I have a supplementary question. The Minister talks about consultation and a report that is to come out in a few months. Will the consultation occur before the report, and certainly well before the State budget is decided, or will it all happen after the event? Also, what is the Minister's personal view on whether or not there should be cuts at this time?

The Hon. BARBARA WIESE: I think I have already indicated to the Council that it is my view that, in the short term, there should be no changes to the regional structure of tourism in South Australia. I am certainly not supporting cuts to the budget that we currently give to the regions division. In fact, I am on record as having indicated at various tourism gatherings over the past couple of years that I would like to increase the budget for the regions division when resources become available, because currently we are unable to provide some supports to regional tourism that I believe are desirable.

The GARG submission has not recommended that there should be cuts to the regions division of Tourism South Australia. What it has done is to canvass some of the options that have been adopted—I might say, in a very superficial way, and a proper review needs to be undertaken at a later time—and the range of courses of action undertaken by other States in Australia. It has suggested that, in the years to come, some of those options should at least be canvassed for South Australia. But they are options for the future. In this coming financial year, I would not support a change in the structure or a cut in the budget. But, like all other Ministers who sit around the Cabinet table, I will have to participate in the budget discussions. I will have to accept the views of Cabinet as to the budget for Tourism South Australia and will have to make decisions based on what is possible and what is not possible, when we know what the overall tourism budget is.

MINISTERIAL STATEMENT: MOBILONG PRISON

The Hon. C.J. SUMNER: I seek leave to table a copy of a ministerial statement that was made in another place by the Hon. Frank Blevins, Minister of Correctional Services, on escapes from the Mobilong Prison.

Leave granted.

OVERSEAS WORK CONTRACTS

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister of Consumer Affairs a question about overseas work contracts.

Leave granted.

The Hon. R.R. ROBERTS: Recently in the press an advertisement appeared in relation to work in Kuwait. They were looking for a range of qualified people and also for suitable trades assistants. The advertisement stated that the salaries ranged from $3 000 to $5 000 per week and that for further information and registration forms a fee of $14.60 should be forwarded and a large self-addressed envelope should be provided. I am informed that in the *News* of Friday 5 April an article stated that inquiries had flooded in, to the extent that the post box was full and another security box had to be used to collect the mail.

The article was headed 'Kuwait—job scam dupes hundreds'. I have had inquiries from a number of people around the State, and an AWU shop steward from Roxby Downs has been attempting to contact me today. What has caused concern is that many of these people have lodged their $14.60 and their self-addressed envelope and, in light of the press release, are feeling very uncomfortable. I noted that on 6 April 1991 an advert with a different format was printed in the *Advertiser*. That talks about registration of interest, rather than about jobs. It talks of salaries from $3 000 negotiable per week. It states that, for further information, one must send a large self-addressed envelope. So,

the $14.60 has disappeared. On 8 April a further article appeared, stating that an Adelaide man has alleged that misinformation was printed due to a typographical error. My questions to the Minister are:

1. Will the Minister report to Parliament on the investigations of her department, which I understand from the *News* article have been taking place?

2. Will she give an assurance to those hundreds of people who have made application that they will not lose the $14.60 that they have lodged with this person?

The Hon. BARBARA WIESE: Officers of the Office of Fair Trading have been very vigilant in this matter. Following the placement of the advertisement in the *Advertiser* of 3 April, officers of that office contacted the Director of the company called New Life Roofing Pty Limited, a Mr Martin Nicholls, and interviewed him about the nature of his advertisements and what was intended therein. Mr Nicholls informed the officers that a firm in London is tendering for various construction jobs in Kuwait and, if successful, that firm will require approximately 500 trades people in various categories to fulfil the contract. Mr Nicholls, in turn, is negotiating with the London firm to supply the necessary labour. As I understand it, it is Mr Nicholls' intention to work in Kuwait himself as a subcontractor if the London firm is successful in winning the contract. The $14.60 that he has asked people to pay, he says, is to cover such costs as advertising, accountancy fees and solicitors' fees.

He has assured officers of the Office of Fair Trading that that money will be placed into the trading account of New Life Roofing Pty Limited; that a detailed record will be kept of all letters and money received; that he will return the cheque of any applicant who is immediately assessed as being unsuitable for the work available; and that he will return all money if he is unsuccessful in obtaining the subcontract agreement.

So far, the Office of Fair Trading has itself received approximately 300 inquiries about this matter and, after the first advertisement appeared in the newspaper, the Office of Fair Trading advised Mr Nicholls that, since he had indicated that he was planning to place it again, he should alter his advertisement, to indicate clearly that at this stage he was asking for registrations of interest, and that he should not in any way mislead possible employees about there being work available.

In addition to that, Mr Nicholls has undertaken to substantiate his claims with documentation from the firm in London, to give information about the terms and conditions of the subcontract agreement and the terms and conditions of employment packages and other relevant information. In the meantime, the Office of Fair Trading will monitor this situation and, no doubt, will keep in touch with Mr Nicholls to ensure that he honours the undertakings that he has given, that those people who register an interest in the potential work available through this London company either will be successful in achieving positions or have their money returned to them if unsuccessful.

NON-PAYMENT OF FINES

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Attorney-General a question about non-payment of fines.

Leave granted.

The Hon. J.C. IRWIN: I have had representation from a concerned member of the Police Force regarding non-payment of fines. Non-payment of fines and costs warrants are issued when a person who is penalised in court by a monetary fine, order of compensation, court costs or victim of crime levy fails to pay the amount stipulated within the relative time period allowed. Once the court staff issue the warrant and the police locate the person named on it, he or she is given a chance to pay the outstanding amount, which will now include an additional amount for the issue of the warrant, or be arrested. Once arrested, supposedly, the offender is to serve in prison a period of days in lieu of payment. This is roughly set at one day for every $50.

I give some examples of warrants issued recently. Warrant No. 1, covering three offences, should have paid $571 or spent 16 days in detention. The offender was charged at 1.15 p.m. and released at 2.25 p.m. The detention time spent was 1 hour 10 minutes. Warrant No. 2 was for $132 or five days in detention, yet the detention time was 30 minutes. Warrant No. 3, covering three offences, should have paid $209 or spent five days in detention. The offender was charged at 11 p.m. and released at 5.15 a.m. The detention time was thus 6 hours 15 minutes. Warrant No. 4 covered six offences with fines totalling $830 or 17 days, yet the detention time was 4 hours 13 minutes.

I am reliably informed that the above information is correct and very recent. This situation is nothing short of ludicrous, keeping in mind the spiralling crime rate. The criminal element has become aware of how easy it is to cut out the fine and, if the offenders are smart enough and present themselves at mealtimes, they may even manage to get a free feed from the Government. The police have become cynical, frustrated and outraged.

Realistically, can anyone blame them, when they spend many hours trying to catch these people yet, not long after, watch them walk away without having served their time or having paid a fine. It is not uncommon for police to issue offenders with infringement notices or to arrest or report them and hear them say, 'You may as well issue the warrant now and lock me up; I'm not going to pay the fine or any penalty,' or words to that effect. Why should the honest pay their debts when many others get away with virtually no penalty and, in many cases, keep re-offending? My questions to the Attorney-General are:

1. Is he aware of this ridiculous situation?

2. Having regard to the fact that the Adelaide Remand Centre is full and Yatala is having to accept the overload, what solutions is the Government looking at so that the penalties under the South Australian criminal justice system will return to those that actually punish and inconvenience offenders, compensate victims and the community and offer some deterrent value?

The Hon. C.J. SUMNER: This problem has arisen because the gaols are full. Additional accommodation has been provided at Yatala, and it is anticipated that those beds will be open shortly. Further, planning and, I understand, construction are proceeding at Port Augusta and some other regional gaols which should increase the capacity of the prisons.

The situation outlined by the honourable member is clearly unsatisfactory, but it is anticipated by the Government that it will be largely overcome when the additional prison accommodation is made available. If the honourable member is not satisfied with the present situation, he will have to decide whether he wants to advocate the construction of another prison in South Australia at a cost of some $30 million or $40 million. In the meantime, the Government is proceeding to increase the number of cells available. As I have mentioned, additional cells will be available at Yatala, and that accommodation should be opened shortly.

The Government anticipates that at least in the immediate future additional accommodation will overcome the

problem. However, problems have come about because the prisons are currently full, so the expedient, to which attention has been drawn by the honourable member and which was referred to last week by the Chief Justice in his annual report, will no longer be necessary.

The Hon. J.C. IRWIN: As a supplementary question: The Attorney-General kept referring to the fact that Port Augusta and F Division at Yatala will be opened shortly. Is he aware of any time frame, particularly in relation to F Division, which was physically opened by the Minister of Correctional Services in December of last year, and what is the situation with regard to Port Augusta?

The Hon. C.J. SUMNER: I do not have those dates, but I will refer that question to the Minister of Correctional Services and obtain a reply.

LOCAL GOVERNMENT GRANTS

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Minister for Local Government Relations some questions about Commonwealth grants to local government.

Leave granted.

The Hon. T. CROTHERS: Last Thursday in this Council the Minister for Local Government Relations raised the issue of Commonwealth grants to local government.

Members interjecting:

The Hon. T. CROTHERS: Consequently, for the erudition of members of the Opposition who are interjecting repeatedly, I now direct the following questions to the Minister:

1. Will she explain to the Council the importance of changing the current methodology used by the Commonwealth Grants Commission to that of horizontal fiscal equalisation?

2. Which of the two methods will be of more benefit to the State and to all South Australians?

Members interjecting:

The PRESIDENT Order! The honourable Minister.

The Hon. ANNE LEVY: It is very obvious that there are members of this Council who do not realise the importance of this matter and who make light of it to the detriment of all local Government in this State.

Members interjecting:

The PRESIDENT Order! The honourable Minister.

The Hon. ANNE LEVY: It was only last week, as the Hon. Mr Crothers said, that the Opposition spokesperson decried and objected to the principle of horizontal fiscal equalisation in terms of distributing grants to local government. His whole question—

An honourable member: Read his question again.

The Hon. ANNE LEVY: I am quite happy to quote the honourable member's question. The honourable member said, 'Does the Minister acknowledge that there is now a very obvious impediment in the Grants Commission formula?' He is referring to grants within South Australia and is saying that there is an impediment. The South Australian Grants Commission distributes Federal money to the 120 councils in this State on the basis of horizontal fiscal equalisation which, as I explained to the Council last week, is a way of taking account of the disabilities that different councils may suffer, and it is an attempt to standardise the resources and services that local government can provide to its communities.

The honourable member opposite indicated quite clearly his disapproval of the principle of horizontal fiscal equalisation. My quotation, if read in the context of his question, makes it very clear that he does not approve of that principle, which, as I said, is used within South Australia for the distribution of money to local government. What is occurring at the Federal level is the consideration of whether this same principle should be used in the distribution of money for local government between the different States. That situation does not apply at the moment, as grants are distributed on a per capita basis. However, the Commonwealth Grants Commission has brought down a report in which it states quite clearly that to use the principle of horizontal fiscal equalisation is much better, fairer and more equitable than the current system of per capita grants.

I remind the Council that this report from the Commonwealth Grants Commission arose from the submissions and urgings by our Premier at the Premiers Conference two years ago. The New South Wales Government has bitterly opposed this report from the Commonwealth Grants Commission, because one of the results of applying—

The Hon. Diana Laidlaw: Are you reading what you said last Thursday?

The Hon. ANNE LEVY: I am not reading anything.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT Order! The honourable Minister.

The Hon. ANNE LEVY: The New South Wales Government has strongly opposed the recommendations by the Commonwealth Grants Commission. It does not want the principle of horizontal fiscal equalisation to be used in distributing the money between States. The situation is that the Opposition in this Council supports Mr Greiner rather than South Australia. The honourable member made it quite clear that he does not approve of horizontal fiscal equalisation. One cannot oppose it within the States but support it between the States—there is such a thing as logical consistency.

I and this Government support horizontal fiscal equalisation for the distribution of local government grants within South Australia as it currently applies, and we also support it for distribution of local government money between States, which the Hon. Mr Greiner certainly opposes. Obviously, he is supported in his opposition to this matter by the Opposition in this place, which objects to the principle of horizontal fiscal equalisation.

An honourable member interjecting:

The Hon. ANNE LEVY: It is very clear if one reads what the honourable member said last week. He complained about the horizontal equalisation formula which is used by the Grants Commission and which shows significant drifts of grant money, and he asked the question: 'Does the Minister acknowledge that there is now a very obvious impediment in the Grants Commission formula?'

The honourable member is calling horizontal fiscal equalisation an impediment. Obviously, he does not like that principle, but it seems to me that he cannot object to it intra South Australia and not logically object to it between the States. In this, he is following the Liberal Government in New South Wales, no doubt for ideological reasons. However, I am sure that many people in local government realise only too well that, in doing so, the honourable member is acting against the best interests of South Australia.

If the principle of horizontal fiscal equalisation is adopted at the Premier's Conference in May, it will result in considerably more money for local government in South Australia, and this will lead to a considerable increase in the money that will go to all councils in this State.

It is amazing how members of the Opposition are still continuing to make fun of this matter. I should have thought that they would be highly embarrassed that they have been caught out in this way; in opposing the principle of hori-

zontal fiscal equalisation they are acting against the best interests of all local government in this State. It is incredible. I should have thought that the people opposite us here would put South Australia first, rather than the interests of New South Wales, as they do in opposing this principle. I would certainly hope that all South Australians support the principle of horizontal fiscal equalisation—as, I am sure, do all in local government—because it will be to the benefit of all local government in South Australia. Instead, we have there that rabble who continually mutter completely absurd comments and refuse to take seriously what is obviously—

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: —of great benefit—or will be, if it is adopted at the Premiers Conference—to local government throughout the length and breadth of South Australia.

HOMESTART

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister of Tourism, representing the Minister of Housing and Construction, a question about HomeStart.

Leave granted.

The Hon. L.H. DAVIS: The HomeStart scheme was introduced in September 1990. This slow-start interest payment scheme was designed initially to assist lower income families and individuals to purchase an established house or to build a new house. During 1989 and 1990 there was no effective delay in processing applications for HomeStart. After the original application form was submitted, for reasons not completely clear to everybody, a second form was sent to applicants, asking whether it was their intention to buy a new or established house, although this information had already been gained from the first application form. Once that second application form was received by HomeStart, the applicant was formally registered and received a very prompt answer—almost immediately.

However, apparently coinciding with the State Bank collapse, there has been an extraordinary delay in approving HomeStart applications. This fact has been confirmed by a leading real estate firm and also an applicant who has suffered as a result of a tardy response from HomeStart. In fact, this applicant has had to wait at least eight weeks and as a result of that delay, which was not expected by the financial institution or the real estate firm involved in this application, the applicant now faces a penalty of $800 from the builder, because they will be forced to commence the house behind schedule. In other words, although the applicant, the real estate firm, the financial institution and the builder involved have done everything right, this family faces a payment of $800, which it can ill afford. Even a plea to HomeStart has fallen on deaf ears.

The question in real estate circles is a simple one: why does it take HomeStart eight weeks to approve an application to build a home when other institutions can give a same day reply to applications for housing finance? This eight week delay quite clearly creates complications for real estate agents and builders, and causes much distress to families seeking HomeStart finance. Will the Minister explain as a matter of urgency why there is a delay in the HomeStart scheme and whether this delay will be remedied in the future; if not, why not?

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

PUBLIC HOUSING

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Housing and Construction, a question about public housing.

Leave granted.

The Hon. I. GILFILLAN: The Council will soon be asked to ratify in legislation the Commonwealth-State Housing Agreement, which has been wrangled over for many months, with South Australia suffering a dramatic drop in funds available for public housing. This drop will mean a dramatic reduction in the Housing Trust program, and this is very stark and dramatic news, taken alongside the fact that 40 000 people are currently on the waiting list of the Housing Trust in South Australia. That is with the current production of the Housing Trust of 2 500 units per year, averaged over the past eight years. In the first year of what is a three-year wind-down to take into effect the dramatic drop in funding, Housing Trust production is expected to drop from 2 500 units a year to 700 units a year in this financial year and to 350 units in the year 1991-92 and thereafter. So, in the course of two years we will see a drop in Housing Trust production from 2 500 units to 350 units a year, while there is a waiting list of 40 000 and a waiting time this year in the metropolitan area of approximately seven years.

As outlined, this program allows for an increase in the State contribution to public housing; this is a relatively modest increase, but still an increase, from a State that is strapped for cash. Recognising that the sums show that there will be 1 350 fewer units available in the metropolitan area each year, it is easy to see that we will have a crisis in the provision of public housing for the 40 000 people who are waiting. It is reasonable to calculate that this waiting time will blow out to at least a decade in the next two or three years. That does not allow for what may well be quite a big movement to the city by the rural population, who will be looking for housing here as they lose their jobs or farms in the country.

Therefore, I think it is quite appropriate to highlight what stares stark in the face of South Australia, namely, an absolute crisis in public housing, with an increasing number on the waiting list, and those on the waiting list having to wait over a decade, right through their child raising years, before they can get a house.

I ask: does the Government agree with the prediction that the waiting time could blow out to at least 10 years in the next two or three years; if not, what is the Government's predicted waiting time for the metropolitan area? Is this an acceptable time for those people who are in need of public housing? If not, how much extra funding is the Government planning to put into public housing in the next financial year and subsequent years, and from what source will the additional funding come?

The Hon. BARBARA WIESE: It is acknowledged by most people who know anything about these matters that public housing is an enormous and growing problem in Australia, but few Governments have done more than the Bannon Labor Government has done in this State in providing public housing. I will refer the honourable member's questions to my colleague in another place, and I am sure that he will be able to provide appropriate information for the honourable member.

REMM-MYER DEVELOPMENT

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, as Leader

of the Government in the Council, a question about the Remm-Myer site.

Leave granted.

The Hon. J.F. STEFANI: I have been advised that, during the construction phase of the project, the developer, Remm Construction SA Pty Ltd, prepared several building programs, and I have been informed that these programs were supplied to and accepted by the South Australian Government and the State Bank. My questions are:

1. What were the dates when the Government received the various construction programs from Remm?

2. Did the Premier accept the programs on behalf of the Government?

3. If so, what were the dates when the programs were accepted?

4. Did the Government consult the State Bank about the programs?

5. Did the Government assess the impact which the revised building programs would have on the financing agreement between the State Bank and Remm Construction?

The Hon. C.J. SUMNER: In so far as it deals with relationships between the State Government and the State Bank, that matter is already covered by the terms of reference of the royal commission which has been established. In case the Premier wants to add anything further, I will refer the questions to him.

STAMP DUTY

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Agriculture a question about stamp duty on the transfer of properties.

Leave granted.

The Hon. PETER DUNN: We noticed last year, when the State Bank put forward a plan to the rural community for people who had high debts on their properties, that the bank itself took over part of the land and, in so doing, the State Government forwent its stamp duty on the transfer. There are cases now of sons and daughters taking over properties from their parents because the parents are getting older, and those properties have very high debt ratios on them. In addition, the Rural Assistance Branch often consolidates debts which are owing on a property, which may be from numerous sources; for instance, several banks may be involved, there may be a hire purchase agreement, and so on. The Rural Assistance Branch, in taking over those debts, aggregates them and takes out one mortgage. In doing so, it is again incurring stamp duty. I understand that the stamp duty is not extremely high when small debts are incurred, but when a land transfer is involved it gets high. The rate is 25c for the first $10 000 and 35c per $100 after $10 000, so it does get quite high.

Will the Government look at these in-house transfers where a property is going from, say, a father to a son and consider forgoing stamp duty, as did the State Bank in a similar operation when attempting to fix up debts for people within its own bank?

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

PARKS COMMUNITY CENTRE

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister for Local Government Relations a question regarding the Parks Community Centre.

Leave granted.

The Hon. BERNICE PFITZNER: Last week, the Parks Community Centre Amendment Bill passed through this Council. During the debate my colleague, the Hon. Mr Irwin, made the point that perhaps the centre was not utilised by the local residents. The Minister assured us that about 500 registered users were local residents.

However, it has been reported that, although the health section is well used by the local residents, the community section is being used by unregistered residents from farther away who live in more affluent suburbs. Furthermore, it is suggested that, because of the relatively high charges for the use of the pool and the aerobic/gymnasium area, these facilities were priced beyond the local residents' means but were reasonable for the residents of other more affluent councils areas. As I have worked in this area as a medical doctor, and later as a political candidate, I know how essential the Parks Community Centre is for the local community. My questions are:

1. Will the Minister collect statistics from the community section of the Parks regarding the frequency of use of the pool and the gymnasium according to age, sex and place of residence? In this way we can substantiate or refute the claims and reasons behind the poor usage of the Parks community facilities by local residents.

2. Will the Minister also investigate the reason behind the alleged decline in the use of the pool and the gymnasium, especially by local residents, as distinct from the health centre?

The Hon. ANNE LEVY: I am happy to request such information from the Parks Community Centre if it is available. The figures that I quoted last week were the numbers of local residents in the Parks who have taken the trouble to register as users of the Parks Community Centre. There can be a very large number of people living in the area who make use of the various facilities of the Parks without bothering to register as users. I am sure that people living farther afield make use of some of the facilities of the Parks. I have attended theatrical performances which have been presented in one or other of the very fine theatres at the Parks. I am sure that many other members of this Council have also taken part in various activities at the Parks without necessarily living in the area. There is no reason why people who live outside the Parks area should not make use of those facilities, such as attending theatrical performances. No-one has ever suggested that there should be passports or visas to go into the Parks Community Centre.

I will certainly seek information from the Parks as to whether it has statistics with the details that the honourable member is requesting. It certainly has information about the total number of registered users; it probably has some statistics on the use of different sections or divisions of the Parks; but I do not know whether such statistics have ever been disaggregated by sex and place of residence. I will certainly inquire and, if they are available, I will provide them to the honourable member.

The Hon. BERNICE PFITZNER: As a supplementary question, I hope that the Minister has not missed my point that there could be a lot of overuse of the Parks by people who—

The Hon. ANNE LEVY: On a point of order, Mr President, I do not think that is a question. A supplementary question cannot have an explanation; it must be a question.

The PRESIDENT: A question must be the basis of a supplementary question. Perhaps the honourable member will rephrase her remarks.

The Hon. BERNICE PFITZNER: I will rephrase the question. Will the Minister further investigate whether the people from outside the councils were more numerous than the local residents who were using the area, because I believe that these two groups were both unregistered, so we cannot quite define whether or not that was the situation?

The Hon. ANNE LEVY: I have already said that I will get whatever figures are available from the Parks, but I do not know whether, in collecting statistics on the use of separate sections or divisions of the Parks, these figures can be disaggregated by place of residence and sex. It may be that those figures in which the honourable member is interested do not exist. However as I have said, I am happy to request of the Parks, any such statistics that it may have, and I will make them available to the honourable member.

RURAL BANKING PRACTICES

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question about rural banking practices.

Leave granted.

The Hon. M.J. ELLIOTT: There have been recent media reports that a group of farmers in the Nyngan area of New South Wales is taking legal action in relation to the lending practices of the local Commonwealth Bank manager from 1983 to 1986. The farmers are saying that the loans, which were often made after approaches from the bank to customers of other banks, created a mini property boom in the area, which has left their community financially devastated. They say that the loans were promoted in the area and made easily obtainable to enable the bank manager to accrue points on the bank's Individual Commitment to Excellence in Selling program. Under the ICES scheme staff apparently received monetary bonus awards and promotional awards based on the number of points gained.

I have been told that a similar scenario has occurred in South Australia in relation to a person who was the Manager of the Commonwealth Bank branch at Streaky Bay and, subsequently, at Kadina. This person received Lender of the Year awards for his work in these areas and is now at head office in Sydney. I have heard that up to an average $500 000 was lent, on occasions, on the basis of a handshake. I am further informed that the State Bank and the ANZ Bank in South Australia have similar incentive schemes for their employees. My questions to the Minister are:

1. Is the Government aware that the Commonwealth Bank was operating in this manner in South Australia?

2. Does the Government acknowledge the financial difficulty in which these practices have placed many individuals and communities?

3. Has the State Bank of South Australia been involved in any similar incentive schemes? If so, what has been the effect of these schemes on rural borrowers, and is the State Bank potentially exposed to legal action as a result of those loans?

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

TWO-UP

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Recreation and Sport, a question about two-up.

Leave granted.

The Hon. R.I. LUCAS: I am sure the Minister will recall the question I asked of her in this Chamber on 5 September 1990, when I referred to decisions taken by the New South Wales and Victorian Governments, partially in response to representations from the RSL, that the playing of two-up on Anzac Day be legalised. In my question I indicated that presently under the Lotteries and Gaming Act two-up is deemed to be an unlawful game with the provision of fines of $200 for participants, $40 for spectators and a $1 000 fine, or 12 months imprisonment, for the owner or occupier of premises allowing two-up to be played.

The Minister indicated on 5 September that she would refer my question to her colleague, the Minister of Recreation and Sport in another place, and bring back a reply. On 10 September there was publicity in the afternoon newspaper—the *News*—under the heading 'Two-up is likely to be legalised in South Australia for one day a year—Anzac Day'. The article quotes a spokesman for the Premier, as saying that the Government was sympathetic to such an idea. He said that two-up had been legalised on Anzac Day in 1988 during the bicentenary and that Mr Bannon was examining the legal aspects of such a move. Given that the Minister gave that undertaking on 5 September to refer the matter to the Minister of Recreation and Sport and to bring back a reply, will she be prepared to take up the matter urgently with the Minister of Recreation and Sport and say whether a reply might be brought back before the Parliament rises, potentially on Thursday of this week?

The Hon. BARBARA WIESE: As the honourable member is probably aware, the Minister of Recreation and Sport is currently overseas pursuing the State's Commonwealth Games bid. Therefore, it will be impossible for me to take up the matter directly with him. However, I will raise the question with the Minister's staff to see whether it is possible for a reply to be provided to the honourable member before Parliament rises. If not, hopefully a reply will be forthcoming very shortly thereafter.

COORONG GAME RESERVE

The Hon. J.C. BURDETT: Has the Minister for the Arts and Cultural Heritage an answer to my question of 6 March about the Coorong Game Reserve?

The Hon. ANNE LEVY: I seek leave to have this and the following two answers incorporated in *Hansard* without my reading them.

Leave granted.

Further to the information provided to the honourable member on 5 March, the Minister for Environment and Planning has advised that Labor Party sub-branches and trade unions are as welcome as any other community based organisation to participate in the public consultation process on the management of the Coorong.

COORONG OCEAN BEACH

The Hon. J.C. BURDETT: Has the Minister for the Arts and Cultural Heritage an answer to my question of 7 March about the Coorong ocean beach?

The Hon. ANNE LEVY: My colleague the Minister for Environment and Planning has provided the following information in response to the honourable member's questions:

John Bransbury and others received an amount of $1 500 in 1982 to conduct a hooded plover count on the Coorong ocean beach. A further $2 160 has been provided since 1982. These moneys were grants from the Wildlife Conservation Fund. Access to the grants is through applications in response to annual advertisements. The Beach Users' Group is welcome to apply for a grant for relevant research. There are no proposals to close the Coorong beach. The use arrangements for the beach are detailed in the Coorong National Park Plan of Management.

BICYCLE TRACKS

The Hon. J.C. BURDETT: Has the Minister for the Arts and Cultural Heritage an answer to my question of 20 February about bicycle tracks?

The Hon. ANNE LEVY: My colleague the Minister of Transport has indicated that many facilities for safer cycling have already been introduced throughout Adelaide. This work has been encouraged by the Government with the establishment of a fund to provide a subsidy to councils to build such facilities. The fund, which is administered by the Department of Road Transport on the advice of the State Bicycle Committee, has been increased to $250 000 for 1990-91. Generally the subsidy for approved proposals is on a two for one Government to council basis.

The fund is also assisting councils to prepare local area bike plans which identify modifications to the street system to provide for safer cycling through and across council boundaries. The Westside bikeway is being constructed at present in the disused Holdfast Bay railway reserve and will provide a safer route from Adelaide to Glenelg for cyclists.

Signing is proposed to identify streets and areas adjacent to the path. A survey to determine appropriate signing of the bicycle route along the Torrens Linear Park/North East Busway has recently been completed and presented to the River Torrens Committee. It is understood that the committee will shortly be submitting a signage package to the respective councils for their agreement prior to implementation. The 'on road' bicycle facilities are served by the usual street signing to which the honourable member referred.

DEPARTMENT FOR THE ARTS AND CULTURAL HERITAGE

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 departmental communication with the Minister.

Leave granted.

The Hon. DIANA LAIDLAW: Since taking up her appointment last month as Director of the Department for the Arts and Cultural Heritage, Ms Anne Dunn has issued an instruction that she plus the Director of Programs, Ms Caust, are to be the only two officers in the department (amongst the senior officers, at the very least) to have direct contact with the Minister and the Minister's office. This instruction overturns long standing practice. It also has led to the ludicrous situation where a departmental project officer who contacted the Minister's press secretary about a routine matter related to the content of a speech to be delivered by the Minister was advised to channel the information through the Director.

While I am surprised to learn that the Director would wish to become bogged down with such mundane matters and not be seeking from the start to use her time more constructively, the instruction has wider ramifications in terms of the future administration of the arts in South Australia. It certainly has wider ramifications in the department, but the Minister may have already noticed those vibes.

For instance the instruction appears to be reminiscent of practices adopted by Ms Dunn when Director of the now defunct Department of Local Government—and members will recall the seemingly endless controversies the Minister faced when she isolated herself from the advice of experienced officers in the Department of Local Government. I ask the Minister:

1. Was she consulted and did she approve of the instruction, prior to the Director of the Department of the Arts and Cultural Heritage determining that she as Director, plus the Director, Arts Programs, would be the only two officers to have direct contact with the Minister and the Minister's office?

2. Was she consulted and did she approve of the Director's recent decision to change the status of the policy and program unit headed by Ms Caust to that of a separate division within the department, thereby destroying past efforts to ensure the policy, planning and programs function of the department had an overriding role to assess in conjunction artistic, cultural and financial matters relevant to all major organisations that received funding from the department?

The Hon. ANNE LEVY: In the light of recent events, the honourable member would be very familiar with the sections of the Government Management and Employment Act. I gather she has been studying it quite intensely and I would have thought that she would have realised that the organisation and management of a department is the responsibility of the CEO of that department. I have regular contact with numerous members of the department. In fact, I rang one of them shortly before lunch today; I met with another one yesterday morning.

The Hon. Diana Laidlaw: Can you overturn the Director's instruction?

The PRESIDENT: Order!

The Hon. ANNE LEVY: I thought that the honourable member would know the provisions of the GME Act under which the CEO has responsibility for the organisation and management of a department. But, under the GME Act or any other Act, CEOs do not give instructions to Ministers. The line of instruction goes the other way. It is Ministers who give instructions to CEOs.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: I will continue to act as I have always done, and have dealings with the department as and when I think fit. I can well understand that it is not unreasonable for the CEO, particularly a new CEO, to want to know what is going on in the department and to wish to know what communications are going to the Minister's office. That seems to me to be perfectly reasonable. But, as I say, it is for the CEO to organise the management of the department.

NATIONAL PARKS

The Hon. I. GILFILLAN: I believe that the Minister for the Arts and Cultural Heritage has an answer to a question about national parks that I asked on 13 March.

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

Leave granted.

My colleague, the Minister for Environment and Planning, has advised that there is no recognised tendering process for the supply of wholesale goods for retail sale in national parks kiosks run by the General Reserves Trust. The availability of honey at the Rocky River Trading Post kiosk was the result of the initiative of a local producer who saw the opportunity and offered a packaged product at a reasonable wholesale price. This is a trial and no specific commitments have been entered into. Other dealers have now similarly made honey available and this is sold in competition.

REPLIES TO QUESTIONS

The Hon. C.J. SUMNER: I seek leave to have the following answers inserted in *Hansard* without my reading them.

Leave granted.

BAIL LAWS

In reply to **Hon. K.T. GRIFFIN** (20 February).

The Hon. C.J. SUMNER: The Minister of Emergency Services has provided the following report regarding the matters raised by the honourable member:

At about 6.50 p.m. on Sunday 17 February 1991 two male adults entered the Caltex Service Station at Pooraka. Both produced hand guns and one threatened the console operator. The console operator handed between $400 to $800 to the offenders. At about 7.15 p.m. that date one offender was arrested. He made partial admissions, refused to nominate the second offender, and no property was recovered.

Members of Elizabeth CIB who arrested the offender nominated no objection to bail with substantial cash surety, at least one guarantor, and to report to Para Hills Police Station three times per week. At 11.24 p.m. on Sunday 17 February 1991 the offender was granted police bail to appear in Para Districts Court on 19 February 1991. Conditions of his police bail were: to reside at 5 Galloway Avenue, Salisbury East; own recognisance of $5 000; to report to Para Hills Police Station between 9 a.m. and 9 p.m. Monday, Wednesday and Friday, commencing 18 February 1991; guarantor of $5 000.

At about 9.50 p.m. on Monday 18 February 1991 two offenders carrying hand guns entered the Caltex Service Station at Salisbury Downs and one threatened the console operator. The amount of $468 plus some cigarettes were stolen. Shortly after this robbery three offenders were arrested nearby, two pistols, balaclavas and money were recovered and admissions made. One of the offenders had been previously arrested for the robbery of the Caltex Service Station at Pooraka. Police refused bail for all three offenders.

On 19 February 1991 the three defendants appeared in the Para Districts Court. No applications were made for court bail and they were remanded in custody until 26 February 1991. On 26 February 1991 the three offenders appeared before Mr Fredericks SM in the Para Districts Court. The case was put off until 12 March 1991 and the Police Prosecutor opposed bail for all three offenders. Two of the offenders, one of whom was the offender for the first robbery were remanded in custody. The third offender was granted court bail to 12 March 1991 in the sum of $8 000, plus two guarantors each of $8 000. To this time he has not arranged guarantors, and the three offenders are still in custody until their next court appearance on 12 March 1991. The bail conditions were reasonable and in line with present bailing guidelines for indictable matters.

POLICE PROSECUTION RESOURCES

In reply to **Hon. K.T. GRIFFIN** (12 March).

The Hon. C.J. SUMNER: The Minister of Emergency Services has provided the following report regarding the matters raised by the honourable member:

1. The Commissioner of Police has investigated the reasons for the dismissal of the charges. They involved three separate cases of accessory before and after the fact to robbery, indecent assault, and housebreaking offences.

In respect to the accessory charge of robbery, the file was introduced to the court while further investigations were being carried out. Consequently, the file was incomplete. Since the completed documentation was unable to be placed before the court the charge was dismissed. In due course the charge will be relaid before the same court.

A similar situation existed with the indecent assault charge where there was insufficient evidence of identity at the time the case was before the court. That particular matter has been returned for further investigation and will be relaid, if the deficiency in the evidence can be cured.

With the breaking charges the prosecution file was incomplete due to an office administration problem which caused the brief to be misfiled at Christies Beach Prosecution Unit. The file is to be forwarded to the Crown Prosecutor for consideration of an *ex officio* indictment.

2. Immediately following the dismissal of the three charges mentioned above, a senior officer from Prosecution Services conducted a managerial audit of the Christies Beach Prosecution Unit. He found the staffing to be adequate. However, a series of factors affected up-to-date office management to a point where some files were not being assessed properly prior to court. These included:

- the introduction of a computer system for the management of prosecution documents which involved running a dual manual system, and also required the training/tutoring of staff in the use of the computer;
- staff promotions which caused a senior and experienced prosecutor to leave and be replaced by a less experienced prosecutor;
- a staff transfer which saw another experienced prosecutor being replaced by another less familiar with that jurisdiction; and
- staff sickness which required the use of relief prosecutors from other areas.

These problems no longer exist. The Commissioner of Police is satisfied that the existing staff is in a position to satisfactorily carry out the daily functions. He advises that support staff from Adelaide has assisted the local prosecutors at Christies Beach in bringing the office completely up to date. No further problems are anticipated.

VICTIMS OF CRIME SERVICE

In reply to **Hon. K.T. GRIFFIN** (14 March).

The Hon. C.J. SUMNER: Each financial year the Victims of Crime Service submits a proposed budget which is considered taking into account the availability of funds from the Criminal Injuries Compensation Fund and the operating needs of the organisation. Funding in recent financial years has increased significantly as shown in the following figures:

Funding for financial year 1988-89, $100 000; 1989-90, $126 000; and 1990-91, $184 000.

The increase in funding over recent years to the Victims of Crime Service has exceeded CPI increases in recognition of the demands being made on the organisation. While a proposed budget for the 1991-92 financial year has not yet been received from the Victims of Crime Service, when received it will be given full consideration as have previous budgets.

As at 28 February 1991 the Criminal Injuries Compensation Fund shows a balance of $3.5 million. The activity of the fund in the first eight months of the current financial year reflects payments exceeding receipts by almost $200 000. This trend is expected to continue with an estimated balance of $3.2 million expected at the end of the financial year.

The main reason for the decrease in funds in the CIC Fund is the increase in compensation payments that have been experienced in recent years. Figures in the past three financial years are as follows: 1988-89, $1 million; 1989-90, $2.4 million and 1990-91 (estimated), $4 million.

In the eight months to 28 February 1991, actual payments of compensation to victims total $2.7 million. The increase in compensation payments experienced over recent years

reflects a greater public awareness of the fund and the effect of the increase in the maximum payment to $20 000 which has taken several years to be fully felt. With the maximum amount of compensation available to victims of crime being increased to $50 000 last year, the increase in compensation payments is expected to continue for some time.

While levy payments to the fund are expected to increase as a result of the introduction of speed cameras by the Police Department, these increases will tend to be offset by further use of community service orders and increased number of offences being expiated.

ENTERTAINMENT CENTRE

In reply to **Hon. R.I. LUCAS** (21 February).

The Hon. C.J. SUMNER: The Premier has provided the following response to the honourable member's questions:

1. and 2. The Grand Prix Board has appointed a committee of management for the Entertainment Centre which is responsible for the operation of the centre. The committee has not adopted a revised target figure for operating costs, nor has it advised the Government to accept a reduced return.

3. The estimated cost of construction of the centre, as advised to the Public Works Standing Committee, was $40.7 million plus or minus 10 per cent indicating an upper limit of $44.77 million (that is, within the limits advised to PWSC).

Additional expenditure not included in the fixed sum contract has been expended on catering fit-out and equipment and seating in the Entertainment Centre to enable the centre to comply with new Australian safety codes. The cost of these items is $400 000, bringing the total construction cost of $45.1 million.

Additional expenditure associated with the Entertainment Centre will be for associated works such as roadworks and pedestrian and traffic control. These works were not part of the original construction plan.

SPEED CAMERAS

In reply to **Hon. J.F. STEFANI** (13 March).

The Hon. C.J. SUMNER: The Minister of Emergency Services has provided the following report regarding part 3 of the honourable member's question:

The Highway Patrol is an operational police unit of the Traffic Support Division. Its principal duties include patrolling major highways throughout the State, paying particular attention to offences being committed on those roads and special attention to heavy vehicle transports.

The unit is supplied with marked and unmarked patrol vehicles. The unit comprises 19 members. The following equipment is on issue and is used for enforcement duties:

speed camera	1
mobile radar units	6
hand held radar units	3
digitectors	3

The speed camera was issued to the unit on 3 December 1990 and instructions were issued to police arterial roads outside the greater metropolitan area, country roads, freeways and arterial roads within country towns.

No written directions have been issued in relation to work expectations. Officers were experienced members and their work returns are of a high order. Highway policing activity is monitored by frequent reference to work returns and by audits of traffic infringement notice books.

Activity in relation to speed camera operation is based on achieving optimum kerbside hours per shift. It is on this basis that activity is assessed. A so-called 'quota system' does not exist in the unit and no reference has been made by the officer in charge to supervisors or subordinates on monetary results. There are no plans to change the structure or to alter manpower requirements of the unit.

PUBLIC SERVICE MALPRACTICE

In reply to **Hon. J.F. STEFANI** (12 December).

The Hon. C.J. SUMNER: The Minister of Labour has provided the following response:

1. and 2. On 12 February 1991 and 21 February 1991 the Minister of Labour made ministerial statements regarding allegations of patronage raised by both the Public Service Association and the Hon. Diana Laidlaw. Reports from the Commissioner for Public Employment were supplied on both occasions.

OFFICE OF DIRECTOR OF PUBLIC PROSECUTIONS

Order of the Day, Government Business, No. 1.

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

That this Order of the Day be discharged.

Order of the Day discharged.

REHABILITATION OF OFFENDERS BILL

In Committee.

(Continued from 3 April. Page 3963.)

Clause 11—'Regulations.'

The Hon. K.T. GRIFFIN: We reported progress at this clause to enable a number of matters to be considered by the Attorney-General on his return. I indicate that I will be seeking to reconsider clause 4, which deals with the question of the threshold at which this Bill comes into operation.

The Hon. I. GILFILLAN: I want to explain to the Attorney that part of the reason for not completing the Bill in his absence was because of concern that I had about clause 4, with the inclusion of a company director, and the eventual inclusion in Committee of other categories as a result of an amendment of the Hon. Trevor Griffin. I am not sure whether the Attorney has had a chance to consider these matters, but in my comments in Committee previously I made it plain he should consider this. Has he had a chance to consider this? If not, I will describe what I see as the dilemma.

The Hon. C.J. SUMNER: I have looked at the question of company director, and I will move an amendment (which is on file) in relation to it when we reconsider clause 4.

Clause passed.

Title passed.

Bill recommitted.

Clause 4—'Application of Act'—reconsidered.

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

Page 2, lines 27 to 30—Leave out subclause (2) and substitute:

(2) The following convictions are incapable of becoming spent convictions for the purposes of this Act:

(a) a conviction for an offence where the person is sentenced to imprisonment for an indeterminate term;

(b) a conviction for an offence where the convicted person is sentenced to imprisonment for a term exceeding 30 months (whether or not the sentence of imprisonment is suspended), or ordered to pay a fine exceeding $10 000;

or

(c) a conviction for an offence where the offence is one of two or more offences that are dealt with in the same proceedings, or that arise out of the same incident, and the penalties imposed for those offences, when added together, exceed—

(i) 30 months imprisonment (whether or not any sentence of imprisonment is suspended);

or

(ii) $10 000.

(2a) For the purposes of subsection (2), two or more offences arise out of the same incident if they are committed contemporaneously, or in succession, one immediately upon another.

(2b) If—

(a) a person is convicted of an offence or offences;

and

(b) the person is subsequently convicted of a further offence or further offences so that the person has, taking into account all offences for which the person has been convicted (including any offence the conviction for which has become spent), been sentenced to imprisonment for terms that, in total, exceed 30 months (whether or not any sentence of imprisonment is suspended), or ordered to pay fines that, in total, exceed $10 000,

then—

(c) any spent conviction will cease to be spent for the purposes of this Act;

(d) any conviction that has not become spent will be incapable of being a spent conviction for the purposes of this Act;

and

(e) any further conviction of the person for an offence will be incapable of becoming a spent conviction for the purposes of this Act.

When we were considering clause 4 last week, I proposed that the threshold ought not to be the actual sentence that was imposed upon the convicted person but should relate to the sentence or penalty prescribed by the Act which creates the offence. So, any offences for which a penalty of less than 30 months imprisonment or less than a $10 000 fine was prescribed would be the offences to which the Bill applied. That was not successful.

I now revert to what is in the Bill, except that I am still concerned about the situation where there are a number of offences that might be the subject of separate charges arising out of the one offence or dealt with by the court on the same occasion. I made the point during the course of the debate then that there is ample evidence that, on many occasions, persons appearing on a charge will also be charged with other offences and, frequently, convicted. So, there will be multiple convictions on which separate sentences of imprisonment will be imposed and, frequently, those sentences will be cumulative and not concurrent.

I do not intend to repeat the examples that I used last week, but there were examples of persons with four convictions all being recorded at the same time being sentenced to cumulative imprisonment in excess of six years and, in some instances, where an offence has been committed and a person is on parole, the parole is revoked with the balance of the original sentence to be served and the penalties on the additional offences being added so that they become cumulative.

There were a couple of such cases in 1989 referred to in the report of the Office of Crime Statistics, in which a prisoner had 14 years cumulative sentence to serve and, because the 10 years runs from the date of the most recent conviction, it is quite likely that those offenders will still be in gaol when the 10 years expires. It may be that the cumulative sentence for the subsequent offences may not even have been served at the time when the 10 year period has expired.

That is a ludicruous proposition, but one allowed by the Bill. I have lost that debate, but I want to put again, in a different form and relating to the sentences that have been imposed, a proposition that, where there is a conviction for an offence where the offence is one of two or more offences and the penalties, when added together, exceed 30 months or $10 000 in fines, then this legislation will not apply. I want to provide also, in proposed subsection (2b), that if a person is convicted of an offence or offences and those sentences of imprisonment that might be imposed have not expired and he is convicted of the other offences, where the total sentence exceeds 30 months then, again, the convictions for the original and subsequent offences will not be spent convictions.

It seems to me that that makes a much more logical scheme than that presently in the Bill, where each conviction is regarded separately and where no regard is to be had to the fact that cumulatively, arising out of the one event or where matters are dealt with in the same proceedings but arising out of different events, a person might be sentenced to a cumulative sentence well in excess of the 30 months and, as I said earlier, even up to 14 years, as one of the items referred to in the Office of Crime Statistics report of 1989 indicates. If that is not carried, the situation becomes farcical. I move the amendment that seeks to do those two things, acknowledging that my first series of amendments relating to the prescribed sentence in the statutes, was not successful, but hope that this will have a greater level of acceptance by the Committee.

The Hon. C.J. SUMNER: This matter has already been dealt with during the second reading debate, when I opposed the proposition. The position that has been introduced by the Government is that which has been introduced in the United Kingdom, in Queensland, in Commonwealth legislation and also in Western Australia, with similar legislation currently before the New South Wales Parliament. I do not see that there is any basis for shifting from that position which, apparently, has worked reasonably successfully in the United Kingdom and in Queensland (since, I think, 1987), and which it seems every other State in Australia is prepared to accept, including the National Party of Sir Joh Bjelke-Petersen in Queensland and the Liberal Party of Mr Greiner in New South Wales. However, for some extraordinary reason it is unacceptable to the Party of which the Hon. Mr Griffin is a member in South Australia. I am not sure what that says about him or about them, but it means that, given the fact that the Government's position is one that is now generally accepted, there is no basis for changing it. It is accepted and apparently works without major difficulties. Accordingly, I oppose the amendment.

The Hon. I. GILFILLAN: The Democrats oppose the amendment.

The Committee divided on the amendment:

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

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

Pair—Aye—The Hon. L.H. Davis. No—The Hon. G. Weatherill.

Majority of 1 for the Noes.

Amendment thus negatived.

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

Page 2, line 41—Leave out subparagraphs (iv) to (ix) (inclusive).

The Government has moved this amendment following consideration of comments made by the Hon. Mr Griffin and the Hon. Mr Gilfillan in relation to the exemption of a company director from the ambit of the Bill. After further examination of the matter, I have resolved to delete clause 4 (3) *(b)* (iv) from the Bill on the grounds that the current legislation covering corporations already deals with the matter of persons with previous convictions who wish to hold the position of director of a company. Similar provisions dealing with these matters are contained in the Building Societies Act 1990 and the Associations Incorporation Act 1985.

The Hon. K.T. GRIFFIN: I suggest that that short statement by the Attorney-General does not tell us anything about why company directors and others should be deleted from this part of the Bill, which provides that they should not get the benefit of the legislation. If this amendment is carried, it means that company directors and directors of

statutory corporations, such as CIC, the State Bank, the Electricity Trust and a whole range of other bodies including the Timber Corporation, credit unions, building societies, friendly societies, cooperatives, committees of certain associations, and accountants will hereinafter be able to lie about their past in relation to criminal records. I think that is an untenable position.

During the course of the debate, I acknowledged that there is a whole range of company directors—from those who have no public involvement, for instance, a small proprietary limited company that might act as a trustee for a family trust, up to those in major trading corporations such as banks and other corporations that deal with the public where securities are traded on the Stock Exchange—who I would have expected to be absolutely clean.

I cannot believe that we are now moving to a situation where the company director of a public company, in particular, should be able to refuse to disclose his or her previous convictions where they fall within the ambit of the Act. The conviction might be for fraud, embezzlement, larceny as a servant or a variety of offences. Whether they are breaches of the old Companies Code, the Corporations Law, the criminal law or other statutory law, if the sentence is for imprisonment of 30 months or less or a fine of $10 000 or less, after 10 years, with no further convictions they will be able to say that they have no previous conviction. That is an untenable position, particularly where such people deal with the public.

We have enough problems at the moment with some of the high flying companies around Australia where corporations have lost hundreds of millions, even billions, of dollars of shareholders' and creditors' moneys; yet, if they are convicted, the curious position will be that if they are imprisoned for 30 months on each of a number of offences, and if the sentences are cumulatively in excess of 30 months, and they stay clean for 10 years, no-one will be able to refer to those spent convictions, even in circumstances where they gained massive publicity at the time of the trials.

I just cannot believe that the Attorney-General is serious in suggesting that this legislation ought to provide for that sort of cover-up by persons who are company directors or who aspire to be company directors. It is just so inconsistent with the trend in the area of company law for full disclosure of a variety of matters. A director of a public corporation is able to say, 'No, I do not have a previous conviction,' when everyone knows, having read the newspapers 11 years ago, that that is a lie; it makes a nonsense of the law. So, for these and other reasons, which we have already canvassed in the early stages of the Committee consideration of the Bill, I am very strenuously opposed to the amendment that the Attorney-General has moved.

The Hon. I. GILFILLAN: I support the amendment. I believe it is important that some consistency be held within the Bill, and that is why I supported the extension that was moved by the Hon. Trevor Griffin of the other categories, which deal with credit unions, cooperative associations incorporated under the Associations Incorporation Act and others. It was on that basis that I supported that extension, and that is recorded in *Hansard.* However, I believe in the legislation being effective, and it is justified in being effective with respect to as wide a range of people as it is possible to include. I am uneasy that, even as it is presented, the extension is still wider than I believe is reasonable, and maybe some years hence we will see the good sense and the compassion of extending its effects and availability.

The Attorney's explanation for moving the amendment perplexes me somewhat. I understood that his great concession to and compassion for these people were based on the fact that he thinks they are hit elsewhere. I may have misinterpreted what he said, but I believe that that was the case. He was prepared to see them deleted because their respective Acts require them to expose any previous convictions. I may have misinterpreted what he said.

The Hon. C.J. SUMNER: I do not have the exact provisions in front of me, but the position is that there has always been a restriction on persons holding the position of company director if they have previously been convicted of dishonesty offences. The provision in the Associations Incorporation Act is that, with respect to certain dishonesty offences, persons are precluded from holding positions of company director for a period of five years, unless in some circumstances they can obtain the approval of the court to be company directors. So, basically, we have decided that the general provisions of this Rehabilitation of Offenders Act should apply to company directors, but in any event certain provisions restrict them to some extent from taking up the position of company director where they have committed certain dishonesty offences.

The Hon. I. GILFILLAN: In that case (if I understand the Attorney correctly), under the current legislation, if a company director or proposed company director has been guilty of a dishonesty offence with a penalty that is within the category provided by this Bill, that person would automatically be precluded from taking up that directorship for five years; is that correct?

The Hon. C.J. SUMNER: We will get the exact provision.

The Hon. I. GILFILLAN: While that information is being sought, I will refer to another matter. I am sorry that the Attorney-General was not here for the debate when I moved an amendment, which was brought to mind by the comments made by the Hon. Trevor Griffin, namely, that company directors will be able virtually to lie regarding their previous record of convictions. I realise that it is unlikely that this will be reviewed in the current debate on this legislation. For South Australia, it is green fields legislation, and I hope it will be looked at. I make the point again that it would be far more appropriate if people could not legally be required to disclose the details of a spent conviction. That seems to be a much more appropriate way to approach this issue of spent offences.

I will not labour the point now, but I think that, although the Hon. Trevor Griffin and I have substantial differences in connection with this Bill, we share strongly a profound disquiet that this is legislation to lie. The example he raised was where someone may have had front page publicity on a matter and then, in answering a legally expressed question asking for all details, that person will just as publicly be able to say, 'No; that material that was in the public media 10 or 11 years ago does not exist. It is no longer a fact.' I think that is a fatuous and stupid way for a law to allow people to ask and answer questions, and I repeat that in the fullness of time the track that I proposed in my amendment will provide that such a question in those circumstances cannot legally search for details relating to a spent conviction; a person can say 'No'—

The Hon. C.J. Sumner: How do they know the answer?

The Hon. I. GILFILLAN: This is if the question is legally restricted to details of convictions other than spent convictions. You as an ordinary citizen cannot ask me, an ordinary citizen, for details of convictions that can embrace any detail relating to spent convictions. It is not a legal interpretation of the question. If the Attorney-General wants to consider it further, he may refer to the amendments I have moved. I realise he is not likely to look at them in depth now, but I would urge him to consider them for future revision of the Bill. I am still very uneasy about this matter,

and I will continue to agitate for a change. I now refer back to the point that had me on my feet originally, namely, at what stage after a conviction company directors may be available to take up company directorships.

The Hon. C.J. SUMNER: The provision with respect to company directors is as I have outlined in general terms. If the honourable member wants me to provide him with details of the precise legislation I suppose I can find them, but no doubt his extensive research—

The Hon. I. Gilfillan: Your adviser went off at your behest to get the information.

The Hon. C.J. SUMNER: I do not have it here.

The Hon. I. Gilfillan: Well, that is okay. Then say so politely; you do not have to go on hammering at our research facilities.

The Hon. C.J. SUMNER: Well, you could. You have the research facilities to find out. As I have outlined, in general terms, when the Rehabilitation of Offenders Bill is passed it will apply to company directors in the same way as it applies to other people. However, with respect to company directors, the Corporations Act specifically restricts company directors, who have been convicted of certain offences, from being company directors for a period of five years. That is also the provision with respect to the Building Societies Act and the Associations Incorporation Act. The specific legislation will still govern company directors, but generally the Rehabilitation of Offenders Act will apply to them. Is that clear?

The Hon. I. GILFILLAN: Yes. That is exactly what the Attorney-General said earlier when he sent people scurrying off everywhere, but I do not know what for. The fact is that there is some protection for companies, and directors cannot serve if within five years they have been convicted of a crime of dishonesty. I am content with the wider ability of this legislation to cover company directors after the 10-year period. I will let the matter rest there. I support the amendment.

The Hon. K.T. GRIFFIN: I do not think that there is any guarantee of protection for shareholders or even creditors. It is conceivable, in the area of companies, that a person may commit and be convicted of a string of offences which, because the sentence is less than 30 months on each, are covered by the provisions of the Bill. If they go overseas for 10 years and then come back, they have a clean skin. I should have thought that investors, shareholders and creditors have a right to know whether someone who is surfacing as a company director and establishing a company is shonky. What happened 10 years ago is as relevant to determine whether that person is or is not shonky as what happened five or four years ago.

In many instances, under the old Companies Code, the provisions to which the Attorney-General referred came into operation, as I recollect, upon application to the court, not necessarily as an automatic consequence of conviction. I see no protection in this for shareholders, investors and creditors. It is amazing that we are trying to give so-called protection to people who want to run companies. I should have thought that the primary objective of any law was to protect ordinary, honest, law-abiding citizens, but this Bill protects the crook. It does not matter whether the crook—

The Hon. C.J. Sumner: It does not.

The Hon. K.T. GRIFFIN: It does protect the crook.

The Hon. C.J. Sumner: You are off the planet.

The Hon. K.T. GRIFFIN: I am not off the planet. It protects the crook. I cannot believe that the Attorney-General is serious about promoting it.

The Hon. C.J. SUMNER: The Hon. Mr Griffin, as I said, is off the planet as far as this legislation is concerned.

The Hon. K.T. Griffin: I am on a different planet from the one that you are on.

The Hon. C.J. SUMNER: You certainly are, and you are on a different planet from anyone else who has considered this legislation. I am astounded that you have been able to carry your party on this topic. Your deep-rooted conservatism and animosity towards people who may have offended has meant that you are not even prepared to accept legislation which is not particularly strong so far as the rehabilitation of offenders is concerned, but which has been accepted in the United Kingdom since the mid 1970s and has not been changed by a Conservative Government there during the whole of the 1980s. It has been accepted by the National Party Government in Queensland since 1987, it is currently being examined and, I understand, introduced by the Liberal Government in New South Wales, and it has been accepted by the Commonwealth and Western Australia. Apparently it is just too much for the Liberal Party in South Australia to accept that this very limited approach to the rehabilitation of offenders should be introduced.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: It is not very extensive. It applies to offences where the term of imprisonment is less than 30 months. That relates to the more minor offences. It astonishes me that the Hon. Mr Griffin has been able to lead his party by the nose on this topic, giving effect to his deep-seated conservatism and antagonism towards anyone who apparently in the past has had reason to appear before the courts.

This provision is to give those offenders—after 10 years, for goodness sake—a chance to be rehabilitated in the public mind when applying for a job. It is a very limited example of the rehabilitation of offenders, but it has been accepted generally throughout Australia. To say that it is a support for crooks is nonsense.

I point out that our research has shown that in the Queensland, Commonwealth and other legislation company directors are not specifically mentioned. Therefore, they are able to take advantage of the benefit of the Rehabilitation of Offenders Act in its general terms, but they are restricted as company directors by the specific legislation which might apply to them.

On the Hon. Mr Gilfillan's point about a question having to be asked in a particular way, I think that in practical terms that is unworkable. I considered the point that he raised. His amendment was on file in the week before the last occasion on which we were sitting. I considered his amendment and I do not think that it is practical because it would impose an obligation on an innocent person to ask a question in a particular way. I do not think that that is practical. What will one do if a person, who is seeking information about an offence, asks a question which does not contain the limitation to which the honourable member is referring?

The Hon. I. Gilfillan: You haven't read the amendment.

The Hon. C.J. SUMNER: The amendment is really a subterfuge; it does not mean anything. The question is a subterfuge; it does not mean anything.

The Hon. I. Gilfillan: You don't have to have the wording right—

The Hon. C.J. SUMNER: Is that right?

The Hon. I. Gilfillan: Yes.

The Hon. C.J. SUMNER: Then why didn't the Hon. Mr. Griffin support it? We considered the two amendments and I understand that the Hon. Mr Griffin's amendment went some of the way to meet the point raised by the Hon. Mr Gilfillan, and that was the amendment that was acceptable to the Government. In other words, the Hon. Mr Griffin's

amendment, which is now incorporated in the Bill, accommodates the point raised by the Hon. Mr Gilfillan.

The Hon. I. Gilfillan: It does not.

The Hon. C.J. SUMNER: I will have to leave it there.

The Hon. I. GILFILLAN: One of the problems with the amendment was that there was a misunderstanding that the wording of the question had to be framed in such a way that the detail of spent convictions was not asked in the question. I recognise the difficulty of that and the amendment I moved was that the question, however it was worded, was presumed at law not to search for details of the spent conviction and that is the same for oaths. That is where both of the amendments that I moved were uniquely effective.

In relation to the question, however it was worded, one did not have to have an exclusion saying specifically that one did not want the detail of the spent conviction, because legally in the context in which this question would be asked significantly, the question itself legally was restricted in getting information on spent convictions. That was the same as applied to oaths and affirmations. That was a refinement of the wording of my original thought. That is why I am labouring the point that it is not reasonable for the Howard League criticism of it to apply to the amendment that I eventually moved.

The Hon. K.T. GRIFFIN: I want to set a couple of things straight. I do not bear any animosity towards offenders, but I think that they have to face up to the fact that they are the ones who have committed the crime. It was under their control whether or not they committed a crime and, if they committed it, they have to face up to the fact that society calls them to account. They ought to be given assistance if they determine to go straight, to get a job and to be rehabilitated. However, as the Offenders Aid and Rehabilitation Service and the Victims of Crime Service said, this Bill is not about rehabilitation. It is about 10 years after rehabilitation should have commenced, when persons who have been convicted are released from prison and go about the task of restoring the community's respect for them and they make a useful contribution to society.

I think they ought to be given every assistance to achieve that objective, but writing off past convictions will not help them to come to terms with it. In fact, we are compounding the situation because this legislation will seek to allow them to cover up the past and to change history, which I do not think we can do and no ordinary person would expect us to try to change history by legislative enactment.

The Attorney-General said that this Bill deals with a range of offences that are at the minor end of the scale. That is just not correct. I have been over it time and time again and I will go over it again because the Attorney may not have had an opportunity to consider what I said during my second reading contribution and the Committee stage. If one looks at the official statistical report entitled 'Crime and Justice in South Australia 1989' published by the Office of Crime Statistics—in the Attorney-General's Department—and if one looks at the statisics for the Supreme Court and the District Criminal Court appearances, one can see at a glance that the crimes are not at the lower end of the scale: serious crimes are covered by this Bill.

The Hon. Diana Laidlaw: They are not just shoplifting.

The Hon. K.T. GRIFFIN: No, and that is serious enough in my view. For example, there are offences such as wounding with intent to do grievous bodily harm, which incurred a two year and six months sentence on the major charge and a one year sentence for a subsidiary charge of damaging property, giving a total sentence of three years and six months, which was imposed cumulatively. Wounding with intent to do grievous bodily harm is not accidental; one has an intention to bash someone up and do them grievous bodily harm.

There are a number of other examples such as that in this statistical section. There is an offence for assault occasioning actual bodily harm, which attracted two years imprisonment, and a one year penalty applied for false imprisonment. A false imprisonment charge does not mean that one is just friendly with someone; it means that one has kept someone else against their will from going about their own affairs. There are a number of cases of assault occasioning actual bodily harm, all of which attracted periods of imprisonment of three years or less.

A case of common assault attracted a penalty of three months, to be served cumulatively upon a sentence of nine years currently being served. So, that is nine years and three months. Members should remember that the 10 year period will run from the date of that conviction. There is armed robbery, assaulting police, and threatening life. On the major charge of armed robbery, the penalty was two years and six months imprisonment. Other charges attracted two years for burglary and six months for damaging property, giving a total of five years. There are one or two armed robbery cases where the penalty is up to 10 years, but there are several that are less than 30 months. There is an incest case that attracted a penalty of one year and six months for the major charge and, for the subsequent charges of unlawful sexual intercourse, the penalty was four years and six months, giving a total of six years. No-one can tell me that a charge of incest is at the lower end of the scale.

There are a number of drug related offences and forging and uttering. The forging and uttering offences attracted sentences of three years, one year, four years and three years. Certainly, those sentences of three years, four years and five years are not covered by this Bill. However, there is a case of fraudulent conversion, which attracted a sentence of two years and six months and two other charges of false pretences, one year and six months, and forgery, one year, giving a total of five years. There is another case of false pretences, where four people were charged and convicted, with a total cumulative sentence of six years—one year and six months on each of the four charges. There are then charges of housebreaking and larceny. Housebreaking and larceny was the major charge and the penalty was two years imprisonment. There are charges of shopbreaking and larceny, which attracted sentences of two years and charges for housebreaking and larceny, which attracted a sentence of two years. All sentences were to be served cumulatively on an unexpired portion of a non-parole period of one year and two months, making a total of seven years and two months.

There are charges of larceny of a motor vehicle, which attracted a sentence of one year, with four other offences and the total penalty was imprisonment of four years and five months. And so the list goes on. There is a charge of receiving and larceny from the person, accessory after the fact of felony, larceny in a dwelling house, larceny of a motor vehicle, and wilful damage. These are all serious crimes where the penalty is 30 months or less. As I have already said, no-one can tell me that these are crimes at the lower end of the scale. Pages of this 1989 statistical report—which I suspect are repeated in earlier and subsequent reports—show that the majority of crimes dealt with in the Supreme Court and the District Court are crimes that attract penalties of two years and six months or less. There are about eight or nine pages of them where a mere handful have attracted penalties of imprisonment individually in excess of two years and six months.

So, we are not talking about minor offences; we are talking about serious offences and a wide range of criminal activity, where criminals, after 10 years of not being caught and reconvicted, are off the hook. We will say that they can, in fact, cover up those convictions and sentences if they manage to keep a clean slate for that period.

As the Hon. Mr Gilfillan has said, both he and I have a very grave concern about the legislation in fact providing a licence to lie. I am reflecting my concern by opposing the Bill. The Hon. Mr Gilfillan has expressed his concern and moved an amendment, which I do not think was generally acceptable. But basically he will let the lie go through by continuing to support the Bill and is even suggesting that it ought to go further and cover a wider range of offences. That is something that neither I nor the Liberal Party are prepared to accept.

The Hon. C.J. SUMNER: I am prepared to examine the question raised by the Hon. Mr Gilfillan. In re-examining it, it seems to me that the amendment moved by the Hon. Mr Griffin to cover this question so-called of allowing people to lie is adequate and that what the Hon. Mr Gilfillan was seeking to do was not necessary because what the Hon. Mr Griffin proposed in his amendment in fact covered that situation. His amendment provided:

> A person who becomes a rehabilitated person will be treated, for all purposes in law, as a person who has not committed the offence the conviction for which has become spent, and who has not been involved in any circumstances surrounding that spent conviction.

So, the use by the Hon. Mr Griffin of the words 'for all purposes in law', providing that the person has not committed the offence for all those purposes, overcomes the problem that the Hon. Mr Griffin outlined, namely, that, according to him, this is a charter for people to be able to lie.

I thought that his amendment overcame that particular problem, although I still think it is a bit of a subterfuge, in any event, and is unnecessary. If the Hon. Mr Gilfillan wants to make it clearer, I am now examining whether or not what the Hon. Mr Griffin moved, and which is now in the Bill, can be incorporated somehow or other with what the Hon. Mr Gilfillan moved, and I will see whether Parliamentary Counsel can draft that up.

While the Hon. Mr Griffin is consistent in his argument of opposing the Bill because it enables people to lie about previous convictions. I do not agree with him in his interpretation of the legislation. Of course, he is being dramatic about it, no doubt for his own purposes. However, I do not accept that that is the effect of the legislation. At least he is being consistent in what he is saying about it, whereas the Hon. Mr Gilfillan seems to have adopted this curious position where he likes the Bill but does not like this particular provision which enables people to suppress the fact that they have previous convictions—which, in fact, is what the whole Bill is about. So, it seems he is trying to salve his conscience by this particular device, which is all it is really, to indicate that in fact people are not being required to lie.

This problem has not arisen in any other jurisdiction in which this matter has been debated. It strikes me as being somewhat extraordinary that it seems to be a particular preoccupation of members opposite in relation to legislation which, I repeat, despite what the Hon. Mr Griffin has said, is fairly narrow in its compass, applying as it does to offences of penalties of 30 months or less. While one can always find examples of serious offences where people receive sentences of less than 30 months, the fact that they received those sentences means that they were at the lower end of the scale of those offences. That is the reality of the situation.

All I can say is that the legislation has been introduced and has apparently worked satisfactorily in the United Kingdom for some 15 years. One could argue that we have been rather tardy in introducing what is, I think, a reasonable proposition as far as the rehabilitation of offenders is concerned. It exists in Queensland, and virtually every other State of Australia and the Commonwealth are introducing it. So, I find the opposition of members opposite to be somewhat peculiar. However, I will examine that question again, if it makes the Hon. Mr Gilfillan happy, to see if we can incorporate what the Hon. Mr Griffin moved with what the Hon. Mr Gilfillan had in mind; and there may be one other amendment that I wish to look at. For those purposes, I ask that progress be reported and the Committee have leave to sit again.

Progress reported; Committee to sit again.

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

Adjourned debate on second reading.

(Continued from 4 April. Page 4031.)

The Hon. K.T. GRIFFIN: I support the second reading of this Bill. My colleague the Hon. John Burdett has more than adequately dealt with the issues in it, but I want to raise several matters for consideration by the Attorney-General in several respects, and others in relation to the substance. The Bill deals with a number of Acts and is a composite Bill seeking to reduce the work required to process legislation by dealing with a number of matters within the Attorney-General's portfolio. I might say that I do not think it necessarily follows that there will be less time involved in the Parliament, because each matter will need to be considered by persons who have an interest in one or more of the Acts that are being amended by such a composite Bill.

As the Bill is before us, we really have no option but to deal with it. Most parts of it are good; some I think need to be questioned. The first is in relation to clause 5, which deals with an amendment to the Administration and Probate Act and allows the Governor, by notice in the *Gazette*, to appoint places for the safe custody under the control of the court of wills deposited with the Registrar, wills brought into the court for any purpose, wills of which probate has been granted and such other documents as the court may direct. I understand that that is because space is at a premium in the Supreme Court registry and some other arrangements have to be made for the custody of those documents in the registry.

The only concern I have about the amendment is whether the Chief Justice has any role in determining where the documents are to be deposited outside the court building but still under the control of the court. I would have thought it important to ensure that, because these documents are documents of the court, although the Government by notice appoints the places for safe custody they should be appointed on the basis of either a recommendation by or after consultation with and approval by the Chief Justice, because the documents do have to remain under the control of the court.

My colleague the Hon. Mr Burdett has made some detailed comments on clause 7, concerning the abolition of the year and a day rule, and has raised questions about the circumstances that would apply where a person has been convicted of an offence such as unlawful wounding, subsequently the victim dies and the person so convicted is subsequently

tried. In the Bill there is no specific reference to the earlier penalty having to be taken into consideration in fixing the non-parole period if the defendant should subsequently be convicted of murder. I am of the view that that ought to be expressly covered to ensure that the court is clearly directed by the Parliament as to how that matter is to be handled. The other issue, though, is one of some greater difficulty. Perhaps on an earlier charge the defendant has been acquitted, subsequently the victim dies and fresh charges are laid—and this is a matter to which I know certain persons in the legal profession wish to give further consideration, and I support that.

Clause 10 repeals section 360 of the principal Act, relating to the power of the court to order that a person be represented. I know that in his second reading explanation the Attorney-General said that this provision is now redundant because legal aid is dealt with by the Legal Services Commission. My recollection is that section 360 had its origins in the power of the court to order legal assistance for someone who was incapable or unable to afford his or her own legal assistance, and the court was of such a strong view that legal representation ought to be available that an order under section 360 could be made.

This has come up before in the past few years and, on the previous occasion, I recollect that we rejected the repeal of section 360. I am of the view that again we ought to reject that repeal. Quite properly, there are questions about who pays the legal aid if it is directed by a judge to be made available, but I think that, in practice, that works itself out. If the judge makes a very strong determination, the Legal Services Commission would take more notice of it than it may have done if the application were made initially by the defendant. I am reluctant to see section 360 of the principal Act repealed, for those reasons.

So far as clause 14 of the Bill is concerned, I support the provision that enables not only videotapes but also audio tapes to be made available. For a long time I have had the view that it will facilitate prosecutions to have video and audio tapes of questioning of witnesses and of suspects properly recorded. Undoubtedly, it will encourage more pleas of guilty and, if there has been some impropriety on the part of the police, that will become obvious at a fairly early stage.

Of course, there is always the difficulty that both video and audio tapes can be tampered with, but I think that largely this can be overcome by some of the controls I understand can be put in place to ensure the safety of at least one copy of a tape, whilst the other copy is, in a sense, the working copy available to both prosecution and defence. Certainly, appropriate procedures must be in place to ensure that there is no tampering with audio or videotapes but, if they are in place, I see no difficulty at all between audio taping and videotaping being made available (in terms of evidence and quality of evidence) and the use of police officers' notebooks.

There are many arguments about police officers' notes, when they were taken and what something in the notebook means. Hopefully, that will largely be avoided by the use of audio and videotapes, properly secured against tampering. This will facilitate, rather than hamper, proceedings. Also, it will mean that police officers will need to do much more preparation for the questioning of suspects and witnesses. They will need to think through what they want to ask and where they want to get with their questioning, and that is a discipline which that I think is important.

The use of audio and videotapes will also facilitate the work of the police. The old-fashioned notebook and typing up of statements is time consuming, and police ought to be freed from that time-consuming work as much as possible and have available to them modern technology to enable them to undertake their work efficiently, effectively and with a minimum of fuss. Subject to those matters, I indicate support for the Bill but I hope that, in relation to the year and a day rule, there will be further consideration by the Attorney-General of the matters raised by my colleague the Hon. John Burdett and by me. The change is an important change in the law. The other matters that have been raised are, in a sense, peripheral but, nevertheless, dependent upon the action that is being taken. I support the second reading.

The Hon. C.J. SUMNER (Attorney-General): If members consider that the abolition of the year and a day rule is too controversial as part of this amending Bill, they can take it out. This was meant to be an omnibus Bill, dealing with matters that were essentially non-controversial. Frankly, I did not think that the abolition of the year and a day rule was likely to be controversial but, if it is, and if that is the way that members feel, they need not proceed with that part of the Bill and we can reconsider it later in the year. Frankly, I do not think that that is necessary, and I will attempt to convince members that we can proceed with the Bill as it is.

The Hon. Mr Burdett has claimed that the Government has failed to consult with the Law Society in relation to the amendment of the year and a day rule. This is not, in fact, correct. While the form of the Bill was not sent to them, the fact is that the review of the criminal law conducted by Mr Goode dealing with the operation of the rule was announced and published in the press as early as October 1990 and again in January 1991. The Law Society did not make any comment about that matter.

Matthew Goode, who is conducting the review, attended two meetings of the Criminal Law Subcommittee of the Law Society late last year and informed the committee that it was likely that the rule would be abolished in the near future. Further, a discussion paper on the law of homicide was released for public comment on 14 February 1991. At that time, I announced that the Government had decided to abolish the year and a day rule. Matthew Goode then attended a meeting of the Criminal Law Subcommittee on 12 March to discuss the discussion paper and the law of homicide. At that time, despite it's having been raised previously, the matter of the year and a day rule was not raided by the committee.

The Government agrees that matters of a non-controversial nature are to be included in a portfolio Bill. As I have already stated, the matter of the possible abolition of the year and a day rule was first reported in the press in October 1990 and no comment has been forthcoming since that time. It is only since the drafting of the Bill that the Law Society has claimed that it was not advised of the amendment and has not had time to consider the change. Given the lack of response, it was the Government's view that this matter was non-controversial and could properly be considered in a portfolio Bill.

So far as the problem of sentence is concerned, the honourable member himself acknowledges that it is very difficult to conceive that the courts in sentencing for homicide would not take into account any previous sentence for a non-homicide offence in relation to the same event. The ordinary principles of sentencing will take care of this. The correct general principle is that sentences should be concurrent where they arise in relation to offences that are simply facets of one course of conduct. In addition, section 34 (7) *(a)* of the Criminal Law (Sentencing) Act already provides that, where a person is being sentenced for an offence and that

person is already serving a non-parole period, the court must take into account time already served in setting a non-parole period for the new or second offence.

Of course, these existing principles could be written into the new legislation. But, is should be borne in mind that nothing now prevents a person from being charged with murder or manslaughter, having been charged and convicted or acquitted previously with another offence in relation to the same victim if that victim dies less than a year and a day after receiving the eventually fatal injury. Indeed, nothing now prevents a person from being charged with a more serious offence, having been charged with and convicted or acquitted for a lesser offence, if the passage of time or fresh evidence shows that a more serious offence has been committed. The only law that is proposed to be changed is an arbitrary, indefensible time limit which applies only to homicide offences. All other principles of the criminal law evidence, practice and procedure remain unchanged.

Similarly, the double jeopardy problems fall to be considered by the normal principles of the criminal law. Again, it must be emphasised that nothing now prevents a person from being charged with murder or manslaughter, having been charged with and convicted or acquitted previously of another offence in relation to the same victim, if that victim dies less than a year and a day after receiving the eventually fatal injury. Indeed, nothing now prevents a person from being charged with a more serious offence having been charged with and convicted or acquitted of a lesser offence if the passage of time or fresh evidence shows that a more serious offence had been committed. There is, therefore, a deal of law on the subject going back to 1591. The leading cases on point were decided in 1857, 1867, 1890, 1916, 1949 and 1964.

The law on double jeopardy is complex, and this is not the time to go into it in detail. Suffice to say that the law on double jeopardy is unaffected by this measure, and that it applies as it would normally do and has done in the past. The difficulty of determining what the verdict of a jury means, as well as the questions raised by the Hon. Dr Ritson about double jeopardy in this connection, are questions which apply throughout the law of double jeopardy and the law on inconsistent verdicts as well.

It is not a difficulty created or exacerbated by the Bill, and it would be ludicrous to attempt to restate or reform the law on double jeopardy, *res judicata*, issue estoppel and inconsistent verdicts simply because one irrelevant procedural rule dating from the reign of Henry II should be abolished. This concern is, in short, a red herring. Moreover, it is a red herring without substance, for no-one has yet said more than there might be a problem. No-one has yet specified what that problem might be. It should also be pointed out that the Mitchell committee did not think there was a problem when it recommended that the rule be abolished, nor did the New South Wales Government when it introduced a Bill to abolish the year and a day rule.

The Hon. Mr Burdett seems to think that the abolition of this rule changes charging practice. He says:

> At the moment, if an offender commits a serious offence and his victim does not die but is in danger of death, he is not charged until a year and a day later.

As a matter of law that is not correct; as a matter of practice that is not correct. Indeed, the contrary is true: it is quite common for a person to be charged with a lesser offence and then to be charged with a greater offence once new information has come to light.

The honourable member asked whether there have been any other cases in which the year and a day rule has proven to be a problem. It is impossible to answer that, since the existence of the rule prevents the homicide charge and therefore there is the absence of a charge to be recorded rather than a charge. It is rather like asking how many accidents have been prevented by a set of traffic lights. The answer is not known because the accidents have been prevented. While the answer is not knowable, however, it is likely that there are a few such cases.

The honourable member further makes reference to the concerns of some health professionals. These comments have no relevance to this measure which, in accordance with the recommendations of a number of law reform bodies including the Mitchell committee, removes an ancient anomaly from the law of homicide which simply cannot be defended. It is wild nonsense to assert that this is a sort of 'gay bashing'.

I now turn to the amendment of section 360 of the Criminal Law Consolidation Act. The Hon. Mr Burdett has raised concerns in relation to the repeal of this section. The Legal Services Commission has for some time now supported the repeal of this section and, recently, the Chief Justice has requested that the section be repealed in the light of the current arrangements as to legal aid.

Section 360 of the Act was first inserted in 1924 when no provision was available for legal assistance and no body such as the Legal Services Commission. It has been stated that the section may be seen to be impliedly repealed by the Legal Services Commission Act, but a repeal would put the matter beyond doubt. In any event, I am advised that, where a court indicates that it would be appropriate for the commission to consider a grant of legal aid to an unrepresented accused person, that matter is fully considered by the commission. However, as it stands, the section has the potential to subject the commission to an order by a court to grant legal aid to a person in circumstances in which it would not otherwise do so. This situation is inconsistent with the policy of granting legal aid as intended under the Legal Services Commission Act.

Bill read a second time.

In Committee.

Clauses 1 to 4 passed.

Clause 5—'Safe custody of wills, etc.'

The Hon. K.T. GRIFFIN: In my second reading contribution I raised a question about this clause. My concern was that, although the documents referred to in paragraphs *(a)*, *(b)*, *(c)* and *(d)* are under the control of the court, there does not seem to be any provision which would require the Governor to appoint the places only with the approval of the Chief Justice. I would have thought that that was appropriate, considering that these are documents in the custody and control of the court. Can the Attorney-General indicate whether there has been any consultation with the Chief Justice on this provision; what was the outcome; and whether, if there is no requirement to have the approval of the Chief Justice, there is any intention to consult with him?

The Hon. C.J. SUMNER: This amendment was in fact proposed by the Chief Justice. I do not think the actual way in which it has been drafted has been referred to him but the amendment was requested by him. If this Bill passes, I can check with him before it is dealt with in the House of Assembly to see whether he is satisfied with the form of the amendment, but this amendment was requested by him.

The Hon. K.T. GRIFFIN: I think it is fairly important to do that. The area of wills, probates and letters of administration is a very important area of the court's jurisdiction and the disposition of wills, other probate and testamentary documents should be under the control not only of the court but also of places where they might be; in the interests of both preservation and accessibility it ought to be something over which the court has some control.

Clause passed.

Clause 6 passed.

Clause 7—'Abolition of year and a day rule.'

The Hon. J.C. BURDETT: I have heard the reply of the Attorney. Members of the Law Society, particularly those of the Criminal Law Committee of the Law Society, certainly had not considered or seen the Bill prior to my faxing it to them. I accept the explanation given by the Attorney of the occasions when it has been raised by Mr Gordon via him in his statements and that members of the Law Society had said nothing adverse about it. Certainly, however, when I faxed the Bill to them, the members of the Council of the Law Society did not see any difficulties, but members of the Criminal Law Committee did, as I explained in my second reading contribution, to the extent that they would have liked further time to consider it. It may have been that they should have considered it previously, but in fact they had not, and they certainly requested that the legislation be held over and that there be time to consider the matter and the objections they had raised, in one brief meeting one day after having seen the Bill. It is, after all, a change to the common law definition of murder, which is a pretty serious matter and one which the committee members felt that they would have liked to have had time to consider. I am sorry the Attorney has taken the attitude he has. I am sorry he is not prepared to let the Bill pass the second reading and leave it until the next—

The Hon. C.J. Sumner: I am; if you are prepared to do it, you do it.

The Hon. J.C. BURDETT: I am sorry that you are not prepared, having let the Bill pass the second reading, to let it stand over. As the Attorney is taking the position that he feels that it ought to proceed, I will not oppose it. I have made the points. The members of the Criminal Law Committee of the Law Society are well aware of the points made, and I have had a number of discussions with them. I have made my points and, if the Attorney wants to take the attitude that he is taking, namely, that the matter ought to proceed, it is on his head.

The Hon. I. GILFILLAN: Through my own tardiness I missed the opportunity to make a second reading speech. I did not have many points to put at that stage, but I have some observations relating to this so-called 'year and a day rule'. I indicate that the Democrats feel that it is a controversial plan to abolish the year and a day rule, and we do not support it. I believe that the Hon. Mr Burdett raised valid points about the handling of this amendment and the fact that the Law Society had not been consulted by the Government on this matter.

The Hon. C.J. Sumner interjecting:

The Hon. I. GILFILLAN: However, I must add that I have received a copy of a letter from Mr Matthew Goode of the Attorney-General's office stating that on two occasions he met with members of the Criminal Law Committee of the Law Society and told them the rule was to be abolished. Now, you see: you have nothing to complain about. All you have to do is listen.

The Hon. K.T. Griffin: Did you get a letter about that?

The Hon. I. GILFILLAN: Yes. We undertook some inquiries. Mr Goode claims that at both meetings no-one on the committee indicated any interest in that, and I would suggest that somewhere along the line there may have been a breakdown or misunderstanding about this issue. However, I believe that the rule, which the Hon. Mr Burdett has told the House dates back to at least the 1600s and which is well set out in Coke's Institutes, is worth retaining. First, the rule acknowledges that medical science is indeed not perfect in its attempts to keep people alive for extended periods.

The Hon. C.J. Sumner: Are you saying that?

The Hon. I. GILFILLAN: I am saying it, yes. You can hear my voice; watch my lips. If you watch very closely, you will see my lips actually mouthing the words.

The Hon. C.J. Sumner: I thought you were quoting a letter from someone.

The Hon. I. GILFILLAN: I have a prepared speech; I do not come in here casually and throw observations around.

The Hon. C.J. Sumner: Whose was it?

The Hon. I. GILFILLAN: It is my second reading speech, which I did not have time to deliver at the right time. I shall continue. Nor is medicine always capable of accurately determining the cause or causes of death of a person after an extended period.

Secondly, the provision in law of the rule removes the often onerous task from juries in attempting to make a judgment about the cause of death and whether it may be related to a crime and offence on that person that took place less than a year earlier. This judgment is usually made by medical or forensic experts and can often be quite difficult for such experts to determine. In the case of a year and a day having elapsed, that difficult judgment is not placed on the shoulders of a jury.

Thirdly, it provides some degree of finality for persons charged with or convicted of serious criminal offences involving bodily injury. Finally, it may be claimed that since the advent of AIDS it may seem just that the rule is abolished because of the time it takes for such a disease to have its final effect on a person. I can only suggest that perhaps the rule should be extended to take this into account or, in the case of life threatening diseases, why not exempt them from the rule?

Those are the observations I wanted to make. I am not sure what would have been the consequences of letting this matter stand over until the August session. I have not had discussions with anyone on that matter in any detail, but the Democrats do not support the abolition of the year and a day rule.

The Hon. C.J. SUMNER: I must say that is somewhat surprising. I do not know from where the Hon. Mr Gilfillan got his information, but obviously he has had representations from someone who has prepared the material that he has read into *Hansard.* However, it seems curious to me that he is prepared to read it into *Hansard* without attributing its source. Clearly it was written by someone with knowledge of the law. It would be interesting to know what the source of his opposition to the year and a day rule is. I am not trying to belittle what he said or the position that he is taking on the matter, but it would be interesting to know who is opposed to the rule. As we have said, apart from the Law Society feeling that there needed to be more consultation on the topic, the Government has not had any opposition to its proposals to abolish it. Indeed, it was announced for the first time as long ago as October last year. If there are people in the community, apart from the Democrats, who are opposed to its abolition, it might be interesting for the Committee to know who they are. Perhaps the Hon. Mr Gilfillan will care to enlighten us on that topic.

I want to make clear that I had assumed, when this was included in the Portfolio Bill, that it would be non-controversial because no opposition had been expressed to it when it was announced some months ago. I want to make clear to the Liberal Party as well, now that the Democrats are opposed to it, that if the Liberal Party wants to give more consideration to it and wishes to delete it from the Bill for

the moment, it can do so. I will not raise any objections if that is what the Liberal Party and the Democrats want to do, on the basis that they feel there is a need for further consideration of the issue.

My own view is that there is no need for further consideration. We have had it examined and I have given a fairly comprehensive reply to the issues raised by the Hon. Mr Burdett, including those raised by the Law Society, and we feel that the rule should be abolished. I should say that New South Wales has announced that it will abolish it and we had contact from the Victorian Attorney-General's office today indicating that it wanted a copy of the Bill and that it intends to abolish it as well.

The Hon. K.T. Griffin: Have you got the New South Wales Bill?

The Hon. C.J. SUMNER: I do not have the New South Wales Bill. I do not know whether the legislation has been introduced, but I recollect that the Attorney-General, Mr Dowd, announced that they were going to abolish the year and a day rule and he did that some time back. As I said, we have considered the matter. It was recommended by the Mitchell Committee 15 years ago, and I think it is time to grasp the nettle. However, this is a Portfolio Bill and, if members do not feel they have had sufficient time to consider it, it is up to them to take whatever action they consider to be appropriate.

The Hon. I. GILFILLAN: I am grateful for the Attorney's reflection on the quality of my comments in this place. The words, as I indicated earlier, were part of my second reading speech. I am sorry that he reflects on the normal quality of my speeches and assumed that what I had to say had to be written by some other person and had to come from some other authority. Yet he happens to be right. The legal material has come from discussions with qualified legal people in Adelaide. I would only say that I have not been able to give the year and a day rule adequate attention in order to determine arbitrarily yes or no at this time. I would feel more at ease if we had more time to consider it. I should not want to be prejudged as indicating that I am moving from my position, but if the Attorney-General wishes to offer this concession—and he has gracefully done so—I would appeal to the Hon. Mr Griffin and the Hon. Mr Burdett for their reaction. If they were to agree and it were held over for final determination, I would find that a preferable course of action.

Clause passed.

Clauses 8 and 9 passed.

Clause 10—'Repeal of section 360.'

The Hon. J.C. BURDETT: As I indicated in my second reading speech, I oppose this clause, repealing section 360. I can see no harm in section 360, which leaves in the hands of the trial judge whether or not to direct either solicitor and counsel or counsel only be appointed to represent the accused person. As the Hon. Mr Griffin intimated, there is the question of who pays and how is it paid for. It is clear from section 360 that, because one of the matters that the judge has to take into account is whether the accused person is unable to finance representation himself, it is intended that representation be funded out of the public purse.

I should have thought, as the Hon. Mr Griffin said, that that would work itself out under the Legal Services Commission procedures. If there is any problem, as the Hon. Mr Griffin and I have said, the Attorney-General can introduce amendments to clear that up. It seems to me that in such cases the matter ought not to be in the discretion only of the Legal Services Commission. There is merit in having the law as it is at present and leaving the matter for the trial judge. Obviously, when that section was introduced, there was considered to be reason for it. As has been said, the Liberal Party in the past has indicated that it does not agree with the repeal of section 360. For those reasons, I oppose clause 10.

The Hon. I. GILFILLAN: It is appropriate to indicate to the Attorney-General that the Democrats oppose the repeal of section 360. I indicate that opposition because we believe that the shifting of the discretion in assigning a solicitor to a defendant from the judge to the Legal Services Commission is not a desirable change. The Act appears to work reasonably well and I see no reason to change it.

The Hon. C.J. SUMNER: It does not work at all. The repeal of section 360 has been recommended by the Chief Justice and by the Legal Services Commission. It can lead to arbitrariness in the grant of legal aid. If a judge were to use the section to suggest that legal aid be granted in a particular case, that might be outside the guidelines for which legal aid is normally granted. Basically, it would mean that a particular defendant could get preferential treatment in terms of legal aid. It was put in there when there was no legal aid system. There is no valid justification for its continuation.

The Hon. I. GILFILLAN: Will the Attorney-General explain the problem with section 360?

The Hon. C.J. SUMNER: The problem simply is that there is a comprehensive legal aid system in place—the Legal Services Commission—which has certain criteria for the granting of legal aid. It is funded quite comprehensively by the State and Federal Governments and it lays down guidelines as to who is eligible for the granting of legal aid. It seems to me that, if we have a comprehensive legal aid system with guidelines, that is the way legal aid should be granted.

The Hon. I. Gilfillan: Isn't it working now?

The Hon. C.J. SUMNER: That is right: it is working, which is why there ought not to be section 360, which would enable a judge to make a recommendation for legal aid over and above what might be provided for through the Legal Services Commission. That would lead to arbitrariness and discrimination.

The Hon. I. Gilfillan: That is imputing the judge.

The Hon. C.J. SUMNER: It is not imputing the judge at all; it is suggesting that the judge might recommend legal aid for a person that is outside the basic guidelines under which the Legal Services Commission operates. A defendant might then be put in a privileged position as far as legal aid is concerned. There is no longer any need for section 360. It was introduced when there was no legal aid. We now have a comprehensive system of legal aid, which is granted according to certain guidelines laid down, and that ought to be the position.

Members interjecting:

The Hon. C.J. SUMNER: The Hon. Dr Ritson and the Hon. Mr Burdett interject saying that it is inadequate. In fact, very significant funds are made available throughout Australia for legal aid. It may not be a perfect system, but it is certainly much more substantial than it was in the past, and I do not believe that section 360, which would enable a judge arbitrarily to suggest that a defendant be represented and publicly funded for that representation, is justifiable because it might well lead to an arbitrary situation where particular people, because of the whim of the judge, are entitled to legal aid, whereas others who have gone through the Legal Services Commission and applied there may not be entitled to that aid.

A comprehensive legal aid system is in place, there are guidelines as to who should get legal aid and those guidelines

should operate fairly, equitably and uniformly. The existence of section 360 is inconsistent with that aim.

Clause negatived.

Remaining clauses (11 to 17) and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (CRIMINAL LAW SENTENCING) BILL

Adjourned debate on second reading.

(Continued from 4 April. Page 4031.)

The Hon. K.T. GRIFFIN: I have leave to conclude my remarks, which I commenced last week in the Attorney-General's absence. I sought leave to conclude because I wanted to take some further advice on the other clauses of the Bill. I am still receiving advice on the Bill, so I can do no more than indicate a tentative position on a number of other clauses. However, I indicated last week that the Opposition is prepared to support those parts of the Bill that are necessary to enable the courts to be given a further option for sentencing, namely, when guilt has been established but a conviction is not recorded, the court may impose community work. That will be at both the adult and young offender level, so there is no difficulty with that at all. Of the other provisions of the Bill, several are controversial. In saying that, I indicate that there is concern about them and the Opposition will oppose them. Perhaps I should deal with them one by one to ensure that the Liberal Party's position is on the record.

The Bill deals with a range of amendments to the Criminal Law (Sentencing) Act, the Children's Protection and Young Offenders Act and the Correctional Services Act. Apart from those to which I have referred, the matters dealt with in the Bill include the following: appropriate officers have been given jurisdiction to deal with matters such as the issue of warrants for sale of lands and goods and to issue warrants of commitment and to exercise some discretion in relation to those matters.

The Bill now provides that these responsibilities are to be under the jurisdiction of the courts, but that certain powers in relation to the issue of warrants are to be exercisable by the sheriff and clerks of court. As I understand it, the desirability for this is based upon the courts computerisation process, as well, as a concern expressed over a period of time that non-judicial officers should be exercising discretion in relation to certain matters affecting warrants. The next matter relates to the Parole Board and the Training Centre Review Board. These boards may not presently act to vary or revoke a condition of a release on licence of an habitual offender, or cancel such release. They have the power to grant the release and to impose conditions but not to vary or cancel, and the Bill seeks to give to the boards power to act on their own volition after first notifying the Crown and the offender of an intention to so act and considering any submissions that might be received.

Under the Bill, the Crown is given power to apply to a sentencing court for a non-parole period to be fixed in respect of a prisoner. The Attorney-General in his second reading explanation states that there are five life sentence prisoners who do not have non-parole periods, and four of them refuse to apply to the court for a non-parole period to be fixed. The argument is that the Department of Correctional Services says that prisoners without these dates create problems in terms of placement, sentence plans and re-socialisation programs and, because of that, it is a significant disability if prisoners do not have non-parole periods.

I must disagree with that. I would have thought that whether or not a non-parole period is fixed is a matter for the court, upon which the Crown can make submissions, but if a prisoner does not have a non-parole period then it really ought to be up to the prisoner as to whether or not he or she applies for a non-parole period. There may be a variety of reasons why those four life sentence prisoners refused to apply to the court for a non-parole period to be fixed, but it really ought to be a matter for them. After all, the court has imposed the indeterminate sentence. If the prisoners are comfortable living with that sentence then let them do it. If they want to spend the rest of their time in gaol, let them do it. I do not see that we ought to be providing the basis upon which the Crown can initiate action for a non-parole period when in fact the Crown is essentially a prosecutor and not the custodian of prisoners' rights. That is a provision that the Opposition will not be supporting.

The next matter relates to community service orders. The court is given power to extend the time within which a community service order is performed by up to six months. Obviously, there are many reasons why such a power may need to be exercised and presently the court does not have that power. The Opposition has no difficulty with giving the court that power. If it has the power to impose the order, it ought to have power to vary it in every respect.

The principal Act presently provides that community service cannot be required to be performed for more than eight hours in any one day, and the Government in its second reading explanation says that there are areas of community work, such as working on the Steamranger railway track, that require an offender to be away from the pickup base for more than eight hours in any one day, and they take into account the time for travelling to and from the site where the community work will be undertaken. I must say that I am not convinced that we necessarily ought to take into account the travelling time to and from the point where the community work is to be performed, but, for the purpose of this argument, what the Bill seeks to do is to give the Minister power to approve circumstances in which a probationer can be required to perform more than eight hours community service in any particular day, and again we have no difficulty with that.

An area where we do have difficulty is where the Minister is given, by the Bill, power to cancel unperformed hours of community service if there has been a substantial compliance with the order or bond, there is no intention on the part of the offender to evade the obligation and there is sufficient reason for not insisting on full compliance with the community service order. I have an objection to the Minister exercising this power. I think that if anyone is to exercise the power it ought to be the court. It falls into the category that was the subject of criticism by the Chief Justice last week, where executive decision waters down the decisions of the courts in relation to penalties and sentence. I am comfortable and the Liberal Party is comfortable with the court having that power but not with the Minister exercising it.

I gather that difficulties have arisen where courts of inferior jurisdiction are presently required to remand probationers who have reoffended to be sentenced by the superior court which was the court which fixed the original sentence, such sentence to be imposed not only for the breach of bond but also for the further offence. What the Bill does provide is that the lower courts will sentence for the further offence, and then if breach of bond proceedings are instituted they will be instituted in the court of superior juris-

diction which originally imposed the bond. Again, there is no difficulty with that.

By the Bill, a court is given power to deal with a breach of a bond by extending a bond by not more than six months. To enable community service to be performed, the court is also given power to extend the term of the bond and cancel the unperformed hours of community service or make any other variation to the bond. As I understand it, the present Act does not enable the court to vary to that extent. As I said earlier, if the court is to have that power I have no difficulty with that.

In relation to the courts' computerisation program. I gather that it is intended that, where there are pecuniary sums payable by defendants, the court is to enforce the payment of those amounts, and it is inconsistent with that proposal that pecuniary sums may be paid to a party to the proceedings rather than direct to the court. That, I can understand, would create some difficulty, particularly where a warrant of commitment is to be executed and the defendant says, 'I paid it to x, y or z,' and the court has no record of that. If the courts' computerisation program is to facilitate the execution of warrants for payment of sums of money I can see that there is a need to make a change to require payment of all pecuniary sums to be made to the court. So far as I can see, there is no difficulty created by that.

Under the present provisions, where there is an order for payment of a fine or a pecuniary sum, a warrant may not be issued in default of payment for less than a month. Some difficulties have arisen as a result of that. If a person is already in prison or liable to imprisonment, a warrant under the Bill may be issued even where the default has been for less than a month, and the term to be served under the warrant will be served cumulatively unless the court that imposed the pecuniary sum to which the warrant relates otherwise orders. There is no difficulty with that.

Where a person defaults in the performance of community service, the court is to be given power to refrain from issuing a warrant and to extend the order where a default is trivial. One can envisage a number of circumstances in which community service may not be performed for a trivial reason—perhaps because of a car accident or some family crisis, or for many other reasons—so the court should have power to refrain from issuing the warrant and to extend the order.

Under the Bill, the Sheriff or Clerk of Court can make an order or decision in relation to a warrant of imprisonment or other warrant, and a right of review is to be given, but there is a provision in the Bill with which I have difficulty, that is, the right to abrogate that right of review by rules of court or regulations. There is no indication as to the circumstances in which that right may be abrogated. Certainly, I support the right of review but have difficulty at the present time with the abrogation of the right of review by rules of court or regulations, and unless there is some persuasive reason why the right should be abrogated I propose that this part of the relevant provision be opposed.

Where the Parole Board has imposed community service on a parolee, the Bill provides that the Minister may approve the circumstances in which a person can be required to perform more than eight hours of community service on any particular day, and that is supported. In terms of the Correctional Services Act, a provision is inserted that makes it clear that a prison manager must comply with the execution of process in relation to tribunals, royal commissions and other similar bodies, as well as the process of a court. Again, I do not see that that is anything more than tidying up.

They are some of the matters the Bill deals with. As I indicated, some are subject to debate and are controversial, but I thought it important to indicate, at least, that a substantial part of the Bill does not appear to be controversial. I would still propose moving the resolution of which I have given notice, with a view to splitting the Bill, only to facilitate the consideration of that part which the Attorney-General has indicated is desirable to be passed in the current session, to enable us then to give some further consideration to the other matters.

However, I do not want it to be said that there are substantial parts of this Bill that are likely to be opposed, because the bulk of the Bill is satisfactory and can be supported. At this stage of the session the difficulty lies in trying to sift them out and deal with them expeditiously, to enable all parties to be adequately satisfied. Subject to that, I indicate support for the second reading of this Bill.

The Hon. C.J. SUMNER (Attorney-General): I thank the honourable member for his comments. The Government is prepared to delete all those clauses except those that are essential to be passed in this session. That is the method I have used and I have an amendment on file to that end. My amendment would enable that to happen and would leave in the Bill only those clauses that deal with community service orders being able to be imposed by a sentencing court, whether or not there has been a conviction recorded. However, I would be prepared to modify my amendment to allow the passage of any other clauses to which the honourable member felt he had no objection.

If the honourable member felt he was able to sort that out within the time available—and I think that we should probably pass this this evening, if possible—and if he was able to indicate the other clauses to which he had no objection, they could go through, together with those that I have mentioned relating to community service orders. If, however, the Opposition feels that that task is not possible because of the time constraints, I am happy just to move the amendment that I have on file.

Bill read a second time.

INDUSTRIAL CONCILIATION AND ARBITRATION (COMMONWEALTH PROVISIONS) AMENDMENT BILL

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

Australia is currently undergoing a period of fundamental change. At the centre of those changes are the major reforms occurring in our industrial relations system at the national level. While South Australia's outstanding industrial relations performance is on the record and is nationally acknowledged, there can be no complacency about the continuation of that record in the face of the international competitive pressures facing South Australia and the nation as a whole. The challenge of providing a suitable legislative framework which supports and encourages the national agenda for reform is more urgent now than it has ever been. It is essential that Government, employers and workers be

partners in achieving that reform quickly, fairly and with the minimum of industrial friction.

The capacity for trade unions to participate constructively in the reform process depends to a crucial degree on the relevance of their structure. The need for a more rational union structure at the national level has been recognised and appreciated for some time now, by almost all involved in industrial relations. It has been emphasised in numerous economic reports to Government that the current multiplicity of unions is an impediment to industrial and economic efficiency.

The union movement itself recognises that there is a need for its rationalisation along broad industry lines and that the process of reform should not be unduly complicated by unnecessary administrative hurdles. The Federal Government has gone a long way towards developing a national industrial relations system which can more effectively respond to the needs of our times.

Most notable in its achievements has been the passage of the new Commonwealth Industrial Relations Act 1988. Amongst many things, this milestone piece of legislation has laid the groundwork for a more integrated and effective relationship between the Commonwealth and State industrial systems and improved mechanisms for the rationalisation of Australia's trade union structure. The major thrust of the proposed measures contained in this Bill is the reform of South Australia's industrial relations system in order to complement the Federal Act, particularly in respect of the greater coordination of the State and Federal arbitral authorities and the rationalisation of the union structure in this country.

The main provisions of the Bill's complementary elements are:

- provision for State and Commonwealth commission members and inspectors to exercise concurrent powers under the State and Federal Industrial Relations Acts;
- the adjustment of various definitions in the Act, and commission powers and procedures to provide greater uniformity in the operation of the two Acts and to facilitate the exercise of concurrent powers;
- the abolition of specialist tribunals and committees and the transfer of their functions to the commission;
- complementary registration arrangements for the recognition (but not incorporation) of federally registered organisations within the State jurisdiction.

The proposals in this Bill for concurrent appointments of commissioners and inspectors will result in the State and Federal Governments both being able to utilise their resources in more effective and efficient ways. As well, it will facilitate simpler procedures for dealing with industrial disputes which have overlapping effects in both jurisdictions; for example, in industries which have both State and Federal awards.

These issues are of particular importance in South Australia, where approximately half of the workforce is covered by State awards and half by Federal awards. As a complement to concurrent appointments, it is necessary to amend a number of definitions and commission powers and procedures in the State Act in order to establish greater uniformity in the operation of the two commissions. Clearly, the exercise of concurrent powers would be made more effective by a greater degree of uniformity between the two Acts.

Accordingly, definitions to be brought into line with the Federal Act include:

- demarcation dispute;
- industry; and
- business.

Powers and procedures to be amended to provide for uniformity include:

- requirement to encourage dispute settlement procedures;
- requirement for the commission to have regard to the provisions of the Equal Opportunity Act SA 1984;
- power to make a provisional award;
- power to grant preference to members of registered associations;
- conditions for legal representation before the commission;
- procedure for dealing with summons and evidence;
- appeal procedures;
- power for the Minister to initiate a review of awards or decisions on the grounds of public interest;
- provision for the establishment of industry consultative councils;
- conditions for the establishment of the state of mind of a body corporate in relation to particular conduct. This is relevant in actions relating to underpayment of wages.

Further complementary provisions provide for:

- regular consultation between the State and Federal commission;
- the holding of regular conferences of commissioners of the State commission;
- change of name of the Act;
- requirement for commissioners to disclose interests, and;
- procedures for the rescission of obsolete awards.

The Federal Act does not make provision for specialist tribunals or committees with powers independent of the commission.

Again to ensure uniformity and to facilitate the exercise of concurrent powers, the Bill provides for the abolition of conciliation committees, the Teachers' Salaries Board and repeal of the Public Service Arbitration Act.

The final area of complementary provisions concerns the registration arrangements for associations. In this, the Bill has two major aims:

First, to provide registration arrangements for federally registered associations which will more appropriately complement the Federal Act. In particular, the Bill provides for a recognition of such bodies without conferring incorporation, and as such prevents 'dual incorporation' 'Moore/Doyle' problems.

Secondly, to ensure that any registration, amalgamation or rule change for associations under the State Act will support and not be inconsistent with the process of rationalisation of associations that is occurring at the national level. The Government strongly supports the process of rationalisation that is taking place within Australia's trade union structures but acknowledges that the principal decisions in this area should properly occur at the national level. As a consequence, this Bill is supportive of that national process of rationalisation by providing for:

- Guidelines on the registration, amalgamation or rule change for an association, which require the commission to have regard to the prinicples of any relevant awards or decisions of the Commonwealth Commission. These guidelines will provide a complementary link between the two commissions, and so assist with the orderly passage to a more rational national union structure.
- Revised provisions for locally based associations including—
  - An increase to the minimum size for associations seeking registration;

— streamlined provisions for amalgamations;
— Provision for the holding of office for a term after amalgamation;
— Simplified provisions for registered associations to change their name;
— Associations to be able to use funds to promote amalgamations;
— Commission powers to change rules as an alternative to deregistration.

Other Amendments

The Bill also makes a number of other amendments which fine-tune existing provisions or are of a technical nature, and includes appropriate transitional provisions.

The major additional amendments deal with:

1. Jurisdiction of the court: the Bill expands the jurisdiction to deal with claims for underpayment of wages arising out of all contracts of employment, including contracts of employment in award free-areas. Workers in award free-areas already operate at a disadvantage and it is only just, that they have access to this low cost and expeditous avenue for recovering unpaid or underpaid wages that workers covered by awards have access to.

The Bill also includes a provision for underpayment claims relating to employment based superannuation. This is a major area of non-payment, and because of its special nature requires separate provisions tailored to cover the circumstances that could arise in relation to such claims.

2. Unfair dismissals: because of backlogs being created by lengthy cases involving senior management and other high salaried occupations, it is proposed to place a limit on access to this provision by excluding applications from employees whose remuneration is not governed by an award and exceeds $65 000 per annum.

3. Industrial agreements: the Bill precludes unregistered associations from being able to register future industrial agreements. This is consistent with the provisions of the Federal Act and the encouragement of the rationalisation of the number of registered associations.

4. Limitations of action in tort: it is proposed to stop actions to recover damages for economic loss within the state jurisdiction, in cases which have been declared to be resolved by the full bench of the commission. The current provision restricts the taking of tort actions but an aggrieved employer can still subsequently seek damages, even though the dispute has been resolved.

5. *Industrial Gazette:* The Bill discontinues this method of publicising relevant awards and decisions and replaces it with notice (via) a daily State newspaper.

6. Applications to the commission: to support the activities of registered associations, it is proposed to increase the minimum requirement that must be met before an employer or group of employees can lodge and application, from 20 employees to 200 employees.

7. Punishment for contempt: the Bill expands the powers of the court and commission to deal with contempt in relation to interlocutory orders or orders (not being on order for payment of money) to do, or refrain from a particular Act. This matter was raised by the South Australian Industrial Court and commission which expressed concern at the failure of parties to comply with requests for further and better particulars and orders for discovery of documents, etc., particularly in cases of wrongful dismissal.

In summary, the Bill is primarily concerned with two major objects; the development of a closer and more effective relationship between the Federal and State Industrial Commissions, and the Establishment of a complementary legislative framework which will facilitate orderly progress towards a more rational union structure at the national level.

These are important national objectives which the State must support if our industrial relations systems are to remain relevant to meet the challenge of the 1990s. I accordingly commend the Bill to the Council.

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 provides for a new short title for the principal Act, being the Industrial Relations Act (South Australia) 1972.

Clause 4 inserts two new paragraphs relating to associations into the objects clause of the Act.

Clause 5 relates to the various definitions used in the Act. A new definition of 'association' is to be inserted. A 'demarcation dispute', as defined, is to be included in the definition of 'industrial matter'. The definition of 'industry' is to be made consistent with the Commonwealth Act. References to conciliation committees are to be deleted.

Clause 6 relates to the jurisdiction of the Industrial Court under section 15 of the Act. The Industrial Court will be entitled to hear and determine a claim for a sum due between an employee and employer under the Act, an award, an industrial agreement or a contract of employment. (The Act presently refers to claims under the Act or pursuant to a contract governed by an award or industrial agreement.) The Industrial Court will also be given jurisdiction to hear and determine claims relating to superannuation.

Clause 7 relates to the office of Commissioner. The amendments will allow the Governor to appoint a Commissioner on a part-time basis, or for a specified term. A commissioner will not be entitled, without the consent of the Minister, to engage in remunerative work outside the duties of his or her office. A commissioner will not be entitled to be a member of a registered association. A new provision will address the ability of the Governor to remove a commissioner from office.

Clause 8 will enable a commissioner to be appointed as a member of another industrial authority so as to hold concurrent offices. Equally, a member of another industrial authority will be entitled to be appointed as a commissioner under the State Act. The extent to which a commissioner will be able to act in the concurrent office will be determined by agreement between the President and the head of the other industrial authority.

Clause 9 will require a commissioner to disclose any interest that he or she may have in proceedings and will provide for the withdrawal of the Commissioner if the President so directs or a party to the proceedings does not consent to the Commissioner participating in the proceedings. A similar provision exists in the Commonwealth Act.

Clause 10 relates to the jurisdiction of the commission under section 25 of the principal Act. New subsection (3) will expressly provide that the commission must have due regard to the provisions of the Equal Opportunity Act 1984 as to discrimination in relation to employment. New subsection (4) will require the commission, in dealing with a demarcation dispute, to have regard to the objective of achieving a coherent national framework of employee associations and any relevant awards or decisions of the Commonwealth commission directed at achieving that objective. New subsection (5) will allow certain demarcation disputes to be heard by the full commission. New subsection (6), which is consistent with section 92 of the Commonwealth Act, will require the commission to have regard to the extent to which the parties to an industrial dispute have complied with any procedures for settling the dispute contained in any relevant award or industrial agreement. New subsection

(7), which is similar to section 91 of the Commonwealth Act, will encourage the commission to invite the parties to a dispute (after settlement of the dispute) to explore ways of improving the processes of conciliation and arbitration and to agree on procedures to prevent or settle future disputes.

Clause 11 amends section 26 of the Act to delete a provision relating to conciliation committees.

Clause 12 amends section 27 of the Act to delete various provisions relating to conciliation committees.

Clause 13 will ensure that section 28 of the Act is consistent with other provisions of the Act, especially in the use of the words 'awards' and 'decisions'. (This is because, by definition, 'award' includes an award or order of the commission.)

Clause 14 amends section 29 of the Act to allow the commission to make provisional awards.

Clause 15 revises the provision in the Act relating to the power of the commission to grant preference to members of registered associations.

Clause 16 revises the provisions of section 30 of the Act in relation to the persons or bodies who are generally entitled to commence proceedings before the commission. In particular, an employer or group of employers will be required to be employing at least 200 employees (compared to 20 under the existing legislation) and a group of employees will be required to be constituted by at least 200 employees (compared to 20 under the existing legislation) before an application can be made. In addition, any registered association of employers or employees, the United Trades and Labor Council, the Chamber of Commerce and Industry and the Employers Federation will now be entitled to make an application before the commission.

Clause 17 relates to the operation of section 31. This provision entitles an employee to apply to the commission for relief in a case involving a harsh, unjust or unreasonable dismissal. It is proposed that an employee will not be able to make an application under this section unless the employee's remuneration is governed by an award or industrial agreement, or the employee's annual remuneration is less than $65 000 (this sum being indexed for future years).

Clause 18 will remove subsection (2) of section 33, which empowers the commission to vary or reopen an award. These matters will be dealt with by appeal, or by new application to the commission.

Clause 19 provides that leave is not required under section 34 (1a) of the Act in order that a party can be represented by a legal practitioner if the legal practitioner is an officer or employee of an employer who is a party to the proceedings, the United Trades and Labor Council, or any registered association, or if the legal practitioner is a representative of the Minister.

Clause 20 relates to the arrangements that the President may make under section 40 of the Act in relation to the activities of the commission. In particular, the President will be required, at least once in each year, to convene a conference of all members of the commission for the purpose of preventing, and ensuring the fair and expeditious resolution of, industrial disputes. A similar resolution appears in the Commonwealth Act (section 39). Other amendments will ensure that presidential members of the commission, as well as commissioners can be given assignments under section 40 of the Act.

Clause 21 is intended to facilitate further cooperation between the various industrial authorities in Australia.

Clause 22 will amend section 46 of the Act to enable the court or the commission to require that evidence or argument be presented in writing.

Clause 23 revises section 49 of the Act relating to the appointment of inspectors. In particular, it will allow persons appointed as inspectors under the Commonwealth Act to be authorised to exercise the powers of an inspector under this Act.

Clause 24 makes a consequential amendment to section 50 of the Act.

Clause 25 provides for the repeal of Part V of the Act. This Part provides for the constitution and functions of conciliation committees.

Clauses 26, 27 and 28 make amendments that are consequential on the abolition of conciliation committees.

Clause 29 will amend section 91a of the Act to require the Registrar to ensure that each award is examined at least once in every five years to determine whether the award is obsolete. A similar provision appears in the Commonwealth Act (section 151).

Clauses 30 and 31 are consequential amendments.

Clause 32 relates to the rights of appeal provided by section 96 of the Act. The opportunity is taken to make the provision consistent with the other terms in the Act, as they relate to the words 'award' and 'decision'. New subsection (4) will allow the full commission to direct that two or more appeals be joined, or that an appeal be heard jointly with appellate proceedings under the Commonwealth Act.

Clause 33 revises section 97 of the Act, the provision that determines who is entitled to commence an appeal.

Clause 34 amends section 98 of the Act so that an appeal must be lodged within the time allowed by the rules or such further time as may be allowed by the full commission. It will no longer be necessary to publish a notice of the outcome of an appeal in the *Gazette*.

Clause 35 re-enacts subsection (1a) of section 99 of the Act in a more suitable form.

Clause 36 revises the operation of section 100 of the Act. The new provision will empower the Minister to apply to the full commission for a review of an award or decision of the commission, or of an industrial agreement, where the Minister considers that the award, decision or agreement is contrary to the public interest.

Clauses 37 and 38 are consequential amendments.

Clause 39 relates to the approval of industrial agreements under section 108a of the Act. The commission will no longer be able to approve industrial agreements to which an unregistered association of employees is a party (unless the agreement varies an agreement in operation before the commencement of the amendment). New subsection (4a) will require the Commissioner to consider whether it should consult with appropriate peak councils representing employer or employee associations, and to have regard to the objective of achieving a coherent national framework of employee associations and to any relevant awards or decisions of the Commonwealth commission.

Clause 40 makes a consequential amendment.

Clause 41 strikes out subsection (3) of section 110 of the Act.

Clause 42 revises Part IX of the Act. This Part relates to the registration of associations under the Act. An association will either be registered as a locally based association under Division II of Part IX (and thus gain incorporation under this Act), or as a federally based association under Division III of Part IX. An association will be eligible to be registered under Division II if it is an employer association consisting of employers who employ (in aggregate) at least 1 000 employees (the current figure is 20 employees), or an employee association consisting of at least 1 000 employees (the current figure is 20 employees). An organisation, or a branch, section or part of an organisation, registered under

the Commonwealth Act will not be eligible for registration under this Division. The criteria to be considered in relation to the registration of locally based associations are set out in proposed new section 117. It is noted that these criteria include, in relation to employee associations, that there is no other registered association whose continued registration is consistent with the objective of achieving a coherent national framework of employee associations to which the members of the applicant association might conveniently belong. The commission will be required to consider whether it should consult with an appropriate peak council in relation to an application for registration. An association will be eligible for registration under Division III if it is an organisation registered under the Commonwealth Act, or a branch of such an organisation, and the rules of the organisation provide for a South Australian branch and confer on the branch a reasonable degree of State autonomy.

Clause 43 relates to the operation of section 143a of the Act concerning actions in tort. It is intended to delete the provision that allows an action in tort to be brought once an industrial dispute has been resolved by conciliation or arbitration under the Act.

Clause 44 will require that notice of an award or decision of the commission must be published in a newspaper circulating generally throughout the State.

Clause 45 will empower a commissioner, with the President's consent, to assist in the formation or operation of a consultative council for a particular industry.

Clauses 46 and 47 are consequential amendments.

Clause 48 amends section 166 of the Act. This provision relates to contempt. A new subsection will empower the court or the commission to take appropriate action where a party to proceedings fails to comply with an interlocutory order or an order (not being an order for the payment of money) to do, or refrain from, a particular act.

Clause 49 is a consequential amendment.

Clause 50 relates to conduct undertaken by, or on behalf of, a body corporate.

Clause 51 makes a series of consequential amendments.

Clause 52 repeals the Public Service Arbitration Act 1968.

Clause 53 amends the Education Act 1972.

Clause 54 amends the Technical and Further Education Act 1976.

Clause 55 sets out various transitional provisions required as a result of the amendments to the principal Act.

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

HOUSING AGREEMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

A new Commonwealth-State Housing Agreement has been enacted in the Commonwealth Housing Assistance Act 1989, to operate for 10 years from 1 July 1989. The new agreement replaces the previous agreement, enacted in 1984. The Premier signed the agreement on 31 May 1990. The purpose of the Housing Agreement Bill 1991 is to incorporate the new agreement into South Australian legislation. The previous agreement, incorporated in the Housing Agreement Act 1984, is to be repealed. The Commonwealth-State Housing Agreement provides the framework for the funding of housing assistance programs, including public rental housing and home ownership assistance.

The main features of the new agreement are that all Commonwealth funding for housing assistance will in future be in the form of grants; new requirements are established for State matching grants; Commonwealth funding will be distributed on a per capita basis between States after a three year transitional arrangement; the proportions of funds under the agreement available for the provision of rental housing, home purchase assistance, repayment of Commonwealth debt and non-capital programs are stipulated; a new cost-rent formula for public housing is established; and new rights are established for public tenants, including rights to security of tenure and an independent appeal mechanism.

The South Australian Government has strongly supported many of the principles of the new agreement, in particular the increased emphasis on rights for customers of housing assistance programs. It is no secret that the Government is not satisfied with the fact that this State will suffer reductions in Commonwealth funding under the agreement, if the base level funding established for the first three years is not improved upon. South Australia will continue to press for the indexation of the Commonwealth funding.

Clause 1 is formal.

Clause 2 provides a definition of the agreement between the Commonwealth, the States and the Northern Territory and the Australian Capital Territory.

Clause 3 repeals the Housing Agreement Act 1984.

Clause 4 provides parliamentary approval of the execution of the agreement.

Clause 5 authorises the Treasurer to impose terms and conditions when making a loan or grant and authorises the recipient of a loan or grant to expend the money lent or granted.

Clause 6 provides for the establishment of a tribunal to hear appeals from decisions relating to the provision of housing assistance under the agreement.

The schedule sets our the text of the agreement.

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

STAMP DUTIES (CONCESSIONAL DUTY AND EXEMPTIONS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This amendment updates the stamp duty cheque exemption, alters the mining concession and closes a tax avoidance loophole. At present the Stamp Duties Act provides for certain exemptions from cheque duty by reference to the Commonwealth (Savings Bank) Regulations. Because of the restrictions on the types of organisation which could operate a cheque account with a savings bank these regulations in

the past have essentially provided an exemption from cheque duty for a wide range of bodies not engaged or formed for the purposes of trading or acquiring pecuniary profit. With the deregulation of the banking industry the distinction between trading bank and savings bank activities has become increasingly blurred. The banks have found it more and more difficult to apply the exemption from cheque duty by reference to the Commonwealth regulations and differences in practice between the banks have begun to emerge. The Australian Bankers' Association has now written to the Treasurer advising him of the pending amalgamation of trading bank and savings bank activities. Clearly a new approach is required to the question of which cheque accounts should be exempt from duty.

It is therefore proposed to redraft the exemption from cheque duty and include a specific exemption embodied in the Stamp Duties Act. The exemption has been drafted to ensure that all charitable, community, sporting and benevolent bodies entitled and currently receiving a cheque duty exemption continue to do so. However, the exemption will be drafted so that it is clear that it is not available to certain bodies which engage in business activities. The Government has in the past received representations from certain businesses that they were at a commercial disadvantage with some other private sector organisations because of the effect of the previous Commonwealth Regulations which enabled them to obtain a cheque duty exemption. This amendment will put taxpayers on a level playing field.

The Government is aware that there is a need to rationalise the number of taxes that impact on banking transactions, particularly now that the States have technical responsibility for the debits tax. A detailed review of the options will be undertaken pending the transfer of full responsibility for the collection of this tax to the States and the Government's commitment to this process is shown in the Bill by providing the ability to abolish cheque duty at a date to be proclaimed.

One further measure is also included for the sake of uniformity. Up until the passing of the Commonwealth Cheques and Payment Orders Act cheques could only be drawn on banks. The Commonwealth Cheques and Payments Orders Act maintained the traditional meaning of a cheque but also recognised the role of non-bank financial institutions and provided a new form of cheque called a payment order. The Government is not aware of any South Australian non-bank financial institution currently issuing payment orders. As non-bank financial institutions now have a vehicle whereby they can issue payment orders in their own right rather than by their current arrangements through banks for the issue of cheques (upon which duty is paid) it is reasonable that these payment orders be liable to duty on the same basis as cheques issued or drawn by banks. This will ensure competitive neutrality and will maintain the current revenue base.

The same exemptions from cheque duty will apply to payment orders. Amendments are also to be made to the concessional rate of duty (currently $50) applying to the transfer of interests in mineral and petroleum exploration tenements. This concession was put in place in 1980 to encourage investment at the high risk stage of mineral and petroleum exploration operations and in particular to encourage further exploration to proceed. The Government has not been satisfied that the concession has achieved its aim as parties can qualify for the concession without providing any guarantee that extra exploration will be carried out.

It is therefore proposed to restrict the concessional rate of stamp duty currently applying to transfers of interests in exploration tenements to those transfers where consideration takes the form of a commitment to carry out further exploration work. The concession will also be modified to allow the transfer of a portion of a tenement to receive the benefit of the concessional rate of duty. Additionally the concessional rate of duty is to be increased to $1 000. The third amendment dealt with in this Bill is designed to stop a tax avoidance practice by certain unscrupulous operators who have obtained a stamp duty exemption when transferring the registration of a motor vehicle into this State. Applicants will now be required to satisfy the Registrar of Motor Vehicles not only that the vehicle was previously registered in another State or Territory in the name of the applicant but also that the applicant was either a resident and/or carried on business in that other State or Territory.

Clause 1 is formal.

Clause 2 amends section 46 of the Act to include a definition of 'payment order', and to include payment orders within the definition of bill of exchange.

Clause 3 includes payment orders within the exception to the operation of section 46a so that duty will be chargeable on payment orders, as is the case with cheques, but not on any other form of bill of exchange. New subsection (2) provides for the discontinuance of duty on cheques and payment orders on a day to be fixed by proclamation.

Clause 4 extends the licensing arrangements under section 48a (under which banks can issue cheque forms with the words 'Stamp Duty Paid' printed on the form, and pay the duty at a later date) to the issue of payment orders by non-bank financial institutions.

Clause 5 extensively recasts section 71d of the Act. This provision relates to the concessional rate of duty that applies to certain conveyances relating to petroleum exploration licences. The new provision will apply if the consideration (or part of the consideration) for the conveyance includes an undertaking to engage in substantial exploratory or investigatory operations in the future. The duty payable will be $1 000 if the value of the conveyance does not exceed the value of the undertaking, or if the value of the conveyance does exceed the value of the undertaking, an amount calculated to give a concession in relation to the value of the undertaking.

Clause 6 sets out various amendments to the second schedule. A number of amendments relate to the duty payable in relation to motor vehicles and recast exemption 15 so that an applicant will be required to satisfy the Registrar of Motor Vehicles that he or she was a resident of the relevant State or Territory, or carried on business there, before he or she can gain an exemption under that provision. Other amendments relate to the duty payable on cheques and payment orders. The duty on payment orders will be the same as the duty on cheques (10 cents). Exemption 4 is recast. Finally, the existing $50 rate of duty on conveyances to which section 71d applies is to be removed as a consequence of the substantive amendments to section 71d.

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

LEGAL PRACTITIONERS (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

RACING (SPORTING EVENTS BETTING AND APPEALS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill proposes various amendments to the Racing Act 1976. The Bill proposes minor amendments relating to the Racing Appeals Tribunal. It proposes to allow bookmakers to offer betting services on approved sporting events and remove the restrictions applying to bookmakers and bookmakers clerks regarding involvement in the liquor industry. It also proposes to amend the Act to remove the restriction that the Minister may not grant approval for TAB betting on some major sporting events unless a resolution is passed by both Houses of Parliament. To deal with the amendments in more detail:

Firstly, the Bill proposes amendments relating to the Racing Appeals Tribunal to remove some doubt as to the matters that may be the subject of appeals to the Tribunal and as to the hearing of evidence and orders for costs. The Government has consulted the codes on this matter and has their full support with respect to the proposed amendments.

Secondly, the Bill seeks to allow bookmakers to offer betting services on approved sporting events. This proposal is a recommendation of the Working Party established by the Government to examine the viability of licensed bookmakers. The main features of the amendments are as follows:

- It is proposed that the Minister be empowered to approve betting with bookmakers on major sporting events. It is considered appropriate, given the inevitable requests for future changes, that the sporting events not be listed in the Act but be approved by the Minister following consultation, where appropriate, with the particular sporting body. Should the local controlling authority of any sporting organisation object to the principle of bookmakers providing a betting service on their particular activity, those wishes will be respected. Consultation would not be needed however, on submissions relating to national or international sporting events such as Australian Football League matches or the Wimbledon Tennis tournaments.
- Approval of sporting events is to be published in the *Government Gazette*.
- Bookmakers are to be permitted to offer such bets only from within a race course or in registered premises at Port Pirie.
- The tax on those bets is to be 2.25 per centum. It is estimated the annual bookmakers turnover would be in the range of $1 million to $2 million and the turnover tax generated would be between $20 000 and $40 000 per annum.
- The money collected as turnover tax collected is proposed to be allocated in the same manner as for the current bookmakers' tax on racing events—that is 1.4 per centum to the sporting organisations, subject to the Minister's approval, on whose events betting occurs, and the balance to be paid to the Recreation and Sport Fund.

Currently licensed bookmakers in Victoria, Queensland, Tasmania and the Northern Territory are permitted to offer bets on approved sporting events. The Government has consulted closely with the racing industry on this proposal. While the industry supports sports betting with bookmakers in principle, there is some debate over the rate of turnover tax and the disbursement of that tax.

The Government has also consulted closely with a representative section of the sporting bodies on which sports betting is proposed to occur. Indications are, at this stage, that there is general agreement.

Thirdly, the Bill seeks to delete the restriction that the Minister may not grant approval for TAB betting on major sporting events, other than the Australian Grand Prix, America's Cup races conducted in Australia and international cricket matches conducted in Australia, unless a resolution is passed by both Houses of Parliament. Deletion of this restriction would bring the provisions for TAB sports betting into line with the scheme proposed for bookmakers. Given extensions to the availability of gambling such as Keno, TAB facilities in licensed premises and video gaming machines recently introduced into the Casino, it is considered appropriate to remove the current restriction. The racing industry supports this proposal.

Finally, the Bill seeks to remove the restrictions applying to bookmakers and bookmakers clerks regarding involvement in the liquor industry. The Government has consulted with the Commissioner of Police and he has no objection to the proposal. It is considered that the current situation seems to unfairly discriminate against bookmakers given that TAB provide betting services on licensed premises. The racing industry supports this proposal.

Clause 1 is formal.

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

Clause 3 amends section 41g of the principal Act which sets out the matters in respect of which an appeal lies to the Racing Appeals Tribunal. The section provides, amongst other things, for an appeal against a decision disqualifying or suspending a horse or greyhound from participating in the relevant racing code. This wording does not adequately cater for the decisions made in practice which include decisions to disqualify horses or greyhounds from the race in which a breach of the rules occurs. The clause amends the section so that it allows an appeal against any disqualification or suspension of a horse or greyhound provided that, as under the section in its current form, the disqualification or suspension is imposed in conjunction with the disqualification or suspension of a person or imposition of a fine exceeding the prescribed amount.

Clause 4 amends section 41i of the principal Act which provides for the proceedings on an appeal to the Racing Appeals Tribunal. Under the section appeals are required to be conducted by way of rehearing except where the tribunal determines otherwise. The clause amends the section so that it is clear that the right of a party to call or give evidence applies only where the tribunal determines that it will receive fresh evidence.

Clause 5 amends section 41m of the principal Act so that it is clear that an order for costs against a party to an appeal will be the exception and that each party will bear his or her own costs unless the tribunal considers that would be unjust.

Clause 6 amends section 84i of the principal Act which provides that the Totalizator Agency Board may conduct totalizator betting on the Australian Grand Prix, America's

Cup races in Australia, international cricket matches in Australia and other sporting events approved by the Minister. The clause removes the restriction that approval of other sporting events for TAB betting may only be granted in pursuance of a resolution of both Houses of Parliament.

Clause 7 amends section 85 to provide for approval by the Minister of sporting events as events on which betting with bookmakers may be conducted. Any such approval must be given by notice in the *Gazette*.

Clause 8 amends section 93 so that the Betting Control Board's functions extend to the control of betting with bookmakers on approved sporting events.

Clause 9 amends section 100 which provides for the licensing of bookmakers and bookmakers' clerks. The clause removes the restriction that a licence may not be granted to a person who holds a liquor licence for the sale of liquor for consumption on the premises to which the licence relates or to a person who is a full-time employee in such licensed premises.

Clause 10 amends section 105 so that the provision for registration of Port Pirie betting premises also operates in relation to betting on approved sporting events.

Clause 11 amends section 112 which provides for issuing by the Betting Control Board of permits for betting on races by licensed bookmakers within racecourses or in registered premises. The clause amends the section so that such a permit also authorises licensed bookmakers to accept bets on approved sporting events made within racecourses or in registered premises.

Clause 12 makes an amendment to section 113 consequential on the proposed extension of bookmaker betting to approved sporting events.

Clause 13 amends section 114 of the principal Act which requires bookmakers to pay a percentage of their betting revenue to the Betting Control Board. The clause amends the section so that bookmakers are also required to make weekly payments to the board of 2.25 per cent of the amounts paid or payable to the bookmakers in respect of bets on approved sporting events made during the preceding week. The clause requires the board to pay 1.4 per cent of the amount paid or payable to bookmakers in respect of sporting event betting to the body that conducted the event or some other related body in cases where the Minister has determined that such a payment is to be made. The balance of the money paid to the board in respect of sporting event betting is to be paid into the Recreation and Sport Fund.

Clauses 14 to 17 all make amendments that are merely consequential on the proposed extension of bookmaker betting to approved sporting events.

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

[*Sitting suspended from 6.6 to 7.45 p.m.*]

LAND AGENTS, BROKERS AND VALUERS (INCORPORATED LAND BROKERS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 4 March. Page 4034.)

The Hon. BARBARA WIESE (Minister of Tourism): I thank the Opposition for its support for this Bill, which is to provide mechanisms to allow licensed land brokers to organise their businesses, in the form of companies, like many other regulated professions and occupations. I also thank the Hon. Mr Griffin for his contribution to the second reading debate and for the various matters he has raised for my attention. In particular, I thank him for his assurance that the Opposition is not anxious to delay consideration of the Bill. However, the Hon. Mr Griffin has asked for my responses on a number of points.

I will be as brief as I can, because much of what the Hon. Mr Griffin raised in the Council last Thursday seems to take the form of second thoughts about provisions which are mostly identical with the provisions for incorporation that were contained in the Legal Practitioners Bill which the Hon. Mr Griffin introduced 10 years ago. Within the past few weeks, the same provisions have again been before the Parliament in the Pharmacists Bill and the Chiropractors Bill. Both these Bills were closely scrutinised by the Parliament, but the clauses that are the same as the major clause of this Bill passed almost without comment.

Before turning to the present Bill, I mention in passing that I will be happy to provide the Hon. Mr Griffin with updated information on the progress of claims against the Agents Indemnity Fund and on the state of the fund. I will accept his invitation to deal with that request after we have considered this Bill, in the bipartisan interest of avoiding delay.

The Hon. Mr Griffin raised two points which had been raised by the Real Estate Institute. The first concerned the provision which allows for family companies with only two directors to avoid the requirement that all directors must be licensed land brokers. He quoted from a letter from the REI to the departmental officer involved, in which the REI, quoting half of the relevant paragraph, apparently was anxious to help Parliamentary Counsel by suggesting that the word 'may' should be replaced by the word 'must'. The Hon. Mr Griffin, although he was happy to raise this issue, said at the same time that he was not convinced by what the REI had said on this; nor is the Government.

The problem raised by the REI in this instance is solved by the time-honoured technique of reading the rest of the sentence which the REI quoted in part. The REI had raised with the Government the undoubted fact that the Bill does not specify a number of shares which may be held by a spouse or relatives. The Hon. Mr Griffin repeated this too. As he did, I will defer answering that until I deal later with the other related issues.

Before that, though, let me deal with the correspondence between the Hon. Mr Griffin and the Land Brokers Society about possible administrative transitional obligations which may be imposed in relation to the trust accounts of land brokers when they change their practices from single person to corporate form. The Hon. Mr Griffin suggested that some amendment of that Act might be required, presumably to section 63, to facilitate dealing with this transition. The Government is satisfied that there is ample power to deal with the problem of renaming trust accounts, if it is a problem, by regulation. The matter will be further examined in that setting.

As I said before, most of the rest of what the Hon. Mr Griffin raised for my response concerned parts of the Bill which are substantially the same as the provisions for incorporation in the Legal Practitioners Act, where they have been since 1981, and in the recent chiropractors and pharmacists legislation. It is true that the present Bill differs in providing for employees who are not licensed brokers to be the beneficial owners of up to 10 per cent of the shares, but, apart from that, there are no differences of substance.

All the same, the matters have been looked at again. The Government is satisfied that the proposed stipulations in the memorandums and articles of association of land brok-

ing companies, like the provisions in other legislation, are adequate for their purposes as they stand. It is true that the involved and licensed land brokers who must hold all the voting rights in the company may in some circumstances do so as proxies of the beneficial owners. But the only other possible beneficial owners are other brokers who are part of the company, employees, or prescribed relatives of brokers. In practice, therefore, the objective of having the affairs of the land broking company controlled by land brokers is unlikely to be unduly prejudiced by this fact.

The Hon. Mr Griffin raised one more point, from clause 9 of the Bill, which provides for it being a ground for disciplinary action against a land broking company that it has insufficient funds for the payment of creditors. This provision duplicates the existing provision for disciplinary action for this sort of reason against incorporated land agents. It is considered that the expression used allows the cause for discipline to be established in the range of particular situations of failing or troubled companies which the Hon. Mr Griffin mentioned. Most of the particular processes mentioned by him would be clear evidence of an insufficiency of funds. I hope that this answers the matters raised in debate. I thank the Opposition for its expression of support and commend the Bill to the Council.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

The Hon. K.T. GRIFFIN: I thank the Minister for the response which she made in reply to the second reading stage. I was well aware that the provisions relating to the incorporation of professional practices were picked up in 1981 in the Legal Practitioners Act and, in fact, I probably mentioned that in the course of my contribution to the second reading stage. However, I thought it was appropriate to raise some further issues in relation to the way in which professional corporations would be structured, even though the bones of the structure had been established for about 10 years.

I must say that I am disappointed that a more considered response was not made to some of the specific matters that I raised. The rather cursory fashion in which the Minister said, 'Well, the Government has looked at it and is satisfied that it is okay' did not really address the specific issues that I raised.

I would urge the Minister at some stage to have those matters looked at. I do not intend to hold up consideration of the Bill on that basis, because land brokers in particular are anxious to have it passed during this session. However, I think there is a need to examine the issues from the point of view of the operation of the corporations law.

In relation to clause 3, I notice that the principal Act has a definition of 'corporation'. My quick research suggests that there is no definition of 'company', yet the Legal Practitioners Act, the Bill relating to chiropractors and the Bill relating to pharmacists do contain a definition of 'company.' Is the Minister satisfied that such a definition is not necessary, or is the exclusion of a definition an oversight?

The Hon. BARBARA WIESE: There is a definition of 'director' which relates to the company. That definition is taken from the Federal corporations law, so it is assumed that the issue is covered by the inclusion of that definition.

The Hon. K.T. GRIFFIN: I repeat that I do not want to hold up consideration of the Bill, but the Minister may care to look at this before the Bill is finalised in the other place. There is a specific definition of 'company' in the Pharmacists Bill, and an amendment was moved to the Chiropractors Bill to include a definition of 'company'. I do not want to waste a lot of time on it now, but I think that it needs to be checked.

The Hon. BARBARA WIESE: I am prepared to look at that matter. I will look at the chiropractors legislation and compare it with this. If that has occurred, my view is that there should be consistency wherever possible, and if it seems desirable to amend it I will consider the matter before the Bill goes to the House of Assembly.

Clause passed.

Remaining clauses (4 to 9) and title passed.

Bill read a third time and passed.

REHABILITATION OF OFFENDERS BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 4139.)

Clause 4—'Application of Act'—reconsidered.

The Hon. C.J. SUMNER: Mr Acting Chairman, I draw your attention to the state of the Committee.

A quorum having been formed:

The Committee divided on the amendment:

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

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

Pair—Aye—The Hon. G. Weatherill. No—The Hon. R.I. Lucas.

Majority of 1 for the Ayes.

Amendment thus carried.

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

Page 3, lines 8 to 10—Leave out paragraph *(e)* and substitute:
(e) in relation to persons employed, or seeking employment, in an organisation, institution or agency that provides health, welfare, educational, child care or residential facilities wholly or partly for children, it does not extend to offences committed against the person;.

Since this matter was before the Committee earlier today, I have had amendments prepared to deal with two matters. First, an amendment was moved by the Hon. Mr Griffin last week, dealing with another category of persons who are exempt from the expunction of records procedure, that is, persons employed, or seeking employment, in an organisation, institution or agency that provides health, welfare, educational, child care or residential facilities wholly or partly for children. I have had the opportunity to consider this matter further and, on reflection, I think that that is reasonable.

The Hon. K.T. GRIFFIN: I am pleased that the Attorney-General has had second thoughts about this matter. In the Opposition's view it is necessary to ensure that the protection of the Bill is not given to those who work in institutions or agencies providing certain care and other facilities to children. I support the amendment.

The Hon. I. GILFILLAN: I oppose the amendment. I believe that it smacks of hysteria to believe that because someone may be employed in this situation that it exposes children to any measurable increase in risk. The risk to children in our society is spread throughout the whole arena of their life—at home, moving to and from school, at play and, on very infrequent occasions, at school. On some occasions this involves teaching staff. It seems to me that there has been a hypersensitive reaction to this. Therefore, on the face of it, this is an unjustified extension of the exemption categories and I oppose the amendment.

Amendment carried; clause as amended passed.

Bill further recommitted.

Clause 7—'Information on previous convictions'—reconsidered.

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

Page 4, lines 10 to 16—After paragraph *(b)* insert new paragraph as follows:

(ba) if a person is asked for, or required to furnish, information relating to any conviction or any circumstance surrounding any conviction, the request or requirement will be taken not to include a request for, or a requirement to furnish, information relating to a spent conviction or any circumstance surrounding a spent conviction;.

I will not discuss this amendment any further as it has been fully discussed. It was a proposal coming from the Hon. Mr Gilfillan and I have considered it again and think that it is compatible with the Bill and with the earlier amendment moved by the Hon. Mr Griffin, which was supported by the Government. The two amendments can stand together.

The Hon. I. GILFILLAN: I am pleased and I congratulate the Attorney-General on being prepared to rethink an issue such as this. I think that it stands to his credit that he has done so.

Members interjecting:

The Hon. I. GILFILLAN: I am even-handed; I always like to give praise where I believe it is due. I think the canvassing of the argument is not necessary because it has already had two airings. For the record I repeat that it relieves from the person who is answering a direct question the very real embarrassment and disturbance of conscience that many people would have that they would knowingly have lied in the context of the previous wording of the Bill. I am very relieved that this amendment will be accepted. I believe that it will be better both in the legal sense and for the people who benefit as a result of spent offences.

The Hon. K.T. GRIFFIN: The Opposition does not oppose the amendment. It does improve the Bill, but it does not improve it sufficiently for us to support the overall concept of the legislation.

Amendment carried.

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

Page 4, lines 18 to 20—Leave out all words in these lines after 'declaration,' in line 18 and substitute 'the oath, affirmation or declaration will be taken not to require the person to provide information relating to a spent conviction or any circumstance surrounding a spent conviction'.

Amendment carried; clause as amended passed.

Bill reported with further amendments; Committee's report adopted.

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

That this Bill be now read a third time.

The Hon. K.T. GRIFFIN: Whilst the Opposition moved amendments, several of which were supported by the Council, and the Bill was therefore improved, we indicate that we will continue to resist the scheme that is proposed to be adopted by this legislation. The reasons for that have already been exhaustively canvassed during the second reading and Committee stages of the Bill.

We do not believe that it is appropriate to pass legislation of such breadth relating to past convictions, focusing on the offender rather than on other members of the community. Regardless of the words we put in about whether or not a person is deemed to answer questions about past convictions, and all the other fictions that are incorporated, it ultimately comes down to the legalisation of a lie. Our view consistently is that you cannot change history, and that legislatively it is not appropriate to endeavour to do so. For all the reasons we have expressed we regard this as an inappropriate piece of legislation and will oppose it at the third reading as we have opposed it at the second reading.

The Council divided on the third reading:

Ayes (9)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts and C.J. Sumner (teller).

Noes (8)—The Hons J.C. Burdett, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, Bernice Pfitzner, R.J. Ritson and J.F. Stefani.

Pairs—Ayes—The Hons G. Weatherill and Barbara Wiese. Noes—The Hons L.H. Davis and R.I. Lucas.

Majority of 1 for the Ayes.

Third reading thus carried.

Bill passed.

STATE SUPPLY (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 March. Page 3684.)

The Hon. L.H. DAVIS: The Opposition does not raise any great objection to the Bill. The amendments to the Act follow a review, that was prepared and presented to Parliament some two years ago, into the efficiency and effectiveness of the Act's operations as required after the third anniversary of the date of its commencement.

So, the Opposition readily accepts the benefit that flows from a review of what is a very important Act. The main thrust of the amendment is related to a change in the functions of the State Supply Board. It is proposed to change the emphasis in public sector management to encourage the autonomy of Government agencies and greater accountability by agencies. So, as the second reading notes, the objectives of the Act have been redefined, first, to establish a framework for a public sector supply, which will facilitate the cost effective delivery of services by a public authority; secondly, to establish a mechanism through which public sector supply activities can be carried out objectively and independent of political persuasion; thirdly, to establish a mechanism that will ensure public accountability, fairness, consistent and high ethical standards in public sector supply; and, fourthly, to provide a mechanism whereby public sector supply committees can be used to assist in the achievement of social, economic and environmental objectives of government.

So, the State Supply Board has in recent times been working towards a more efficient and effective operation. One can note from the annual report of the Department of State Services and from the annual report of the State Supply Board itself for the year ended 30 June 1990 the various initiatives that have taken place. Of course, it should be borne in mind that State Supply is one of the eight business units within State Services. State Supply is, as the annual report of State Services for the past financial year noted, responsible for purchasing, cataloguing, warehousing and the distribution of supplies to State Government agencies and to some public and benevolent institutions. It provides a tendering service, arranges period contracts, disposes of surplus stores and equipment, including vehicles, and organises customer clearances.

We are talking about a significant budget of some $26 million for State Supply in the past financial year. In terms of income, the expenditure of State Supply was just over $28 million. In fact, when all things were taken into account there was a deficit in State Supply of $340 000. It would

seem that this deficit was largely associated with problems with the computer system. A new distribution control system known as DCS, which was put into operation in September 1989, created some difficulties and was a major factor in the loss of $340 000. That was at variance with the targeted surplus of $490 000 for State Supply in the 1989-90 year.

Certainly, State Supply can point to some achievements in the past financial year. It has reduced its delivery cycle from its Seaton warehouse quite significantly. It has introduced a system that has allowed customers to place telephone orders. It now has an extensive range of catalogues through which a range of goods can be purchased by perusing photographs in the catalogues. It has broadened the range of items available for sale and introduced a scheme to encourage high schools to order through State Supply under the rebate system.

There are some positive measures that one can look at as achievements in State Supply which one can accept for what they are. In the annual report of the State Supply Board itself a good deal of information is given about the operations of the State Supply Act which came into force in 1985. It is worth noting, of course, that at that point the State Supply Board was created. Its central role is to supply to Government the goods and services that are required. State Supply is increasingly looking to centralise its operations in relation to tendering, contracting and warehousing. It has reduced duplication in that area, so we are told. The underlying philosophy of the State Supply Act 1985 was to establish centralised control with decentralised management of supply functions.

Recognition was made of the fact that we have various types of Government agencies and various different instructions were given to the different types of agencies. On the one hand, we have Government departments and, on the other hand, statutory authorities, hospitals and health centres, and education departments, which were given specific instructions on necessary procedures. Certainly, some Government authorities are exempt from the operation of the State Supply Act and are excluded from the necessity to purchase goods and services through the State Supply Board.

The Hon. Anne Levy: Nobody has to purchase through State Supply.

The Hon. L.H. DAVIS: Well, excluded from the jurisdiction of the State Supply Board, I should say. We can talk about authorities which are prescribed and which are specifically excluded from coming under the State Supply Board, such as the STA, the TAB, the Electricity Trust and the Housing Trust. There has been some forward planning. There are procurement plans for the triennium from 1989-90 through to 1991-92. The South Australian Government's forward procurement plan lists proposed purchases of goods in excess of $100 000 for each public authority.

The procurement plan for that triennium was published some time in 1990. The idea is to improve the efficiency and cost effectiveness of Government operations. Also, it is claimed that it will assist Australian business in knowing what is required. I see that as a commendable initiative. One thing which was designed to improve the efficiency and effectiveness of State Supply was an on-line procurement service known as OPS which was intended to provide the public sector with an alternative procurement service which would interface with the Treasury accounting system and the DCS. Unfortunately, OPS has not worked; the pilot trial was not successful and it is not being proceeded with.

So, State Supply, consistent with its aims of publicising what it was doing, has put out policy statements in the 12 month period, to 30 June 1990, on warehousing, purchasing, capital plant and equipment, overseas purchasing, optional equipment, air-conditioning for Government motor vehicles, and so on. As someone who does not follow matters of State Supply all that closely, I find that to be constructive.

Philosophically I do have some difficulties with some elements of State Supply. The Minister would know that only a fortnight ago I raised in this Chamber a matter of some moment, I thought—that the medical and surgical suppliers to public hospitals and to the health industry generally were being badly affected by an increasingly combative and aggressive State Supply operation. In fact, it was put to me by several of the firms operating in the wholesale medical supply markets that the private sector firms were being damaged severely by competition, which they regarded as unfair, from State Supply.

Liberal Party philosophy welcomes competition, and I do not want to be misquoted mischievously in any way by the Minister when she has her opportunity to respond to the second reading debate, but I think that it is fair comment to note what I believe are the valid objections of some people in the industry. Of course, I specifically quoted McNeil Surgical, a South Australian surgical and medical supplier, which made the point that it had been wholesaling in South Australia for 20 years, in particular to the hospital and general practice business, and that its share of country hospital sales had decreased dramatically along with public hospital sales, due largely to State Supply, which has set up warehousing and distribution in competition with not only the private sector but also with other Government instrumentalities. The Flinders Medical Centre was instanced as one Government agency that, effectively, was in competition with State Supply—which, to me, was bizarre.

The point that the McNeil Surgical group developed in its letter, which I read into *Hansard,* was that, whilst many items in hospitals and surgeries are sales tax exempt, that is not true for all of them. Of course, the questions they asked were: are State Government vehicles subject to sales tax? Are the salaries subject to payroll tax and WorkCover? Are delivery costs subsidised? What interest is paid on capital? In other words, they did not mind competition, provided that players were on an oval that had the same level.

The Hon. Anne Levy: I gave you the answers, and I have another answer sitting in my case. I gave you the slip a week ago.

The Hon. L.H. DAVIS: I've not seen it.

The Hon. Anne Levy: I put it on your desk.

The Hon. L.H. DAVIS: Well, I am sorry—I've not seen it.

The Hon. Anne Levy: I am very sorry.

The Hon. L.H. DAVIS: Your slip has gone missing, Minister!

The Hon. Anne Levy: You can ask for it tomorrow. I put it there a week ago.

The Hon. L.H. DAVIS: I find the growth in operations of State Supply, notwithstanding the no doubt genuine attempts to increase operations, something that I view with apprehension and concern. I have raised also in this place and in public the matter of the Hon. John Bannon's 'used car yard', which is the largest used car yard in South Australia, selling an enormous number of vehicles—without the warranties that are required of private sector used car operations—

The Hon. Anne Levy: There is no warranty ever required for an auction, and that is all State Supply does.

The Hon. L.H. DAVIS: Without even the opportunity for an intending purchaser to have an RAA inspection. It is a remarkable situation: 'Honest John's Car Yard'! It is

perhaps surprising that a sign just like that has not gone up. I feel that this aspect of State Supply is something that, quite properly, has caused enormous concern to the private sector.

The Hon. Anne Levy interjecting:

The Hon. L.H. DAVIS: Carolyn Pickles will never make a President. So, Acting Madam President, or Madam Acting President—I am sorry, you are not an acting madam, you are Madam Acting President—

The ACTING PRESIDENT (Hon. Carolyn Pickles): Will the Hon. Mr Davis just proceed with the debate.

The Hon. L.H. DAVIS: I should like to make the point that certainly on those two fronts there is reservation and concern in the Liberal Party about the operations of State Supply. The Bill itself seeks to define 'Chief Executive Officer' and to change the board to consist of the Chief Executive Officer of the Department of State Services as the Chairman, and five other members appointed by the Governor. Of those members, two must be members or officers of public authorities or prescribed public authorities, one must be a person with knowledge and experience of private industry or commerce, one must be a person with knowledge and experience of economic and industrial development and one must be a person nominated by the United Trades and Labor Council.

I know that back in 1985, when this Bill was first debated, the Liberal Party, in keeping with the Richardson report recommendations, suggested that someone with qualifications and experience in accountancy should be included. So I welcome the initiatives that include a person with knowledge and experience of private industry or commerce and a person with experience of economic and industrial development.

The Hon. Anne Levy: Only the latter one is new.

The Hon. L.H. DAVIS: Yes. I must say that the distinction between them is not necessarily apparent but, as the Minister has rightly interjected, clause 4 amends section 7 (2) *(c)*, which is the addendum, which provides that one must be a person with knowledge and experience of economic and industrial development. As we have said in the past, we really worry about whether we need someone from the United Trades and Labor Council, and we will be discussing that matter in more detail during the Committee stage of the Bill.

I am concerned about the possibility that exists with State Supply and the requirements to deal with union labour. That is an element that has continued to obsess this Government. It is a hallmark of legislation that has passed through this Parliament in recent times. I wish to indicate that, during the Committee stage, I will be asking questions about matters of that nature. Whilst I accept that this Bill is narrow in its operation, I will take that opportunity to ask some questions, without detaining the Minister for too long, about the operations of the State Supply Board.

I accept that in clause 6 the amendments to the functions of the board seek to put into legislative effect the recommendations of the three-year review. I also note that in clause 9 it is proposed that the operation and effectiveness of the Act be reviewed for a second time at the expiry of the third anniversary of this date—effectively, before 31 December 1994. I have no difficulty with that provision.

I also note the amendment and the insertion of new sections 14a and 14b, relating to the authority given to the chief executive officer, who is made responsible for the efficient and cost-effective management of the supply operations of the authority, subject to and in accordance with the policy, principles and guidelines and directions of the board. I would think that is a statement of how the real world would work, certainly in the private sector and, as has been intimated in the second reading debate, that is also how the Government requires the public sector to operate.

The Hon. Anne Levy interjecting:

The Hon. L.H. DAVIS: Yes, it does give effect to the recommendation of the review. So, with those thoughts, I support the second reading.

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

STATUTES AMENDMENT (CRIMINAL LAW SENTENCING) BILL

In Committee.

(Continued from page 4044.)

Clauses 1 to 3 passed.

Clause 4—'Interpretation.'

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

Leave out this clause.

My amendments are all to delete certain clauses—in fact, most of the clauses—from the Bill, which will leave only the provisions relating to the possibility of community service orders being ordered whether or not the offender is convicted. I indicated in my second reading reply that, if the Opposition was not able to deal with the balance of this Bill because of the time constraints of this session, I would seek to delete all those other clauses from the Bill and reintroduce in the Budget session a Bill dealing with those matters which we are now deleting.

So, all the amendments I have moved have as the final objective to leave a Bill that will deal only with the question of the possibility of community service orders being ordered as a sentence, whether or not the offender has been convicted in both the adult and children's courts. It may have been possible to deal with it by splitting the Bill, but certainly, I think this is the simplest procedure, and I will reintroduce again in August the clauses that we are now taking out of this Bill.

The Hon. K.T. GRIFFIN: I support the procedure that the Attorney-General is proposing. The time constraints have been such that it was not possible to take up his intimation this afternoon that we could proceed with any of the original matters of the Bill that were not controversial. In the short time that has elapsed since that intimation, I have been through the Bill and attempted to work out what we could or could not proceed with and, on the basis that some of the matters are contentious, I indicated to the Attorney-General a short time ago that I was not able to identify quickly other areas that could easily be left in the Bill.

So, I appreciate that this indication from the Attorney-General will mean that the remainder of the Bill will be reintroduced in the next session, and I indicate that when that occurs we will give speedy consideration to it. As I indicated, most of the matters will not be contentious, but several will be. However, we do want to ensure that the community service order provisions pass, so that it is another sentencing option available to both adult and children's courts in the intervening period between now and the commencement of the next session.

Clause negatived.

Clauses 5 and 6 passed.

Clauses 7 to 30 negatived.

Clauses 31 and 32 passed.

Remaining clauses (33 to 45) negatived.

Long title—'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.'

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

Page 1—
Line 6—After '1988,' insert 'and'.
Line 7—Leave out 'and the Correctional Services Act 1982'.

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

Amendments carried; long title as amended passed.

Bill read a third time and passed.

SUPPLY BILL (No. 1)

(Second reading debate adjourned on 4 April. Page 4028.)

Bill read a second time and taken through Committee without amendment.

MARINE AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 March. Page 3773).

The Hon. L.H. DAVIS: The Opposition strongly opposes this Bill. There are two major measures in this Bill to amend the Marine Act 1936: first, to increase the size of the State Manning Committee, as it is called, and, secondly, to change the sexist language in the principal Act.

The main purpose of the Bill, as I have explained, is to increase the size of the State Manning Committee which now consists of five persons, two of whom must be master mariners, one a marine engineer and two representatives of employers or agents of ships. I understand that the committee works well. There is a member, a mark 1 master mariner, who is with the Merchant Service Guild; one qualified marine engineer who is a member of the Public Service Association; two employer representatives; and another master mariner who serves as Chairman. Therefore, one has balance on this committee. There are two persons representing employer interests, two persons representing employee interests and a Chairman who is in the middle.

That committee of five has the important task of determining crewing levels. There are vessels in South Australian waters, such as the *Island Seaway*, the *Island Philanderer* and the *Island Navigator*, on which a crew is needed in addition to the regular master and deckhand. The principal reason for having a manning committee is to ensure that there is adequate safety in ships at sea.

The Australian National Maritime Association has commented on this legislation as follows:

> Experience with manning committees in the maritime industry generally has shown that small, balanced groups deliberating on manning questions can effectively deal with what can frequently be industrially sensitive issues.
>
> The expertise of participants in manning committees should be a key criterion for establishment of manning committees. Expansion of such committees inevitably introduces the industrial relations criterion, which our experience in the maritime industry in its broadest context shows is unreliable and historically a provocative method of determining manning levels of vessels.

That is a fairly strong comment. The Australian National Maritime Association is saying that the small committee is beautiful and best and that it is important to be sensible about issues of this nature. It is suggesting that small committees work better than bigger committees. Implicit in what it is saying is that people on these committees should have experience and that committees of this nature should have ballots.

What do we have here? We have a blatent attempt by this union-driven Bannon Government to increase the number of people on this committee: one person appointed by the Governor on the nomination of the Seamen's Union of Australia and one person appointed by the Governor on the joint nomination of the Merchant Service Guild of Australia and the Australian Institution of Marine and Power Engineers. That is not about maintaining balance; that is not about maintaining a small committee. I am disappointed that the Government has seen fit to introduce this amendment to the Marine Act 1936 given the acceptance that micro-economic reform in Australia begins as much as anywhere else on the wharves of this country.

Senator Bob Collins, who has been charged by the Prime Minister with cleaning up the wharves, has put his job on the line by saying that, if he does not get a 30 per cent increase in productivity, he will hand in his resignation. If this measure passes, the Bannon Government is effectively saying that Senator Collins will certainly not be in a job in 12 months, because, if this measure does go through, one would not need to be a yachtsman, a boatie or a master mariner to make the judgment that the balance of power in the State Manning Committee—as it is currently named—will change.

Of course, one of the little ironies of this legislation is that not only is it seeking to tilt the balance of power on the State Manning Committee in favour of the unions but is also designed to rid the legislation of sexist language. So, the Manning Committee will become the Crewing Committee, the Chairman will become a presiding member, and so on. Of course, that is lovely language and everyone has a warm inner glow about proposals that amend the language of the principal Act, but where is the Labor Party in this drive for non-sexist language? Surely the great irony is that we are inserting sexist language with this amendment, because we are requiring the nomination from the Seamen's Union of Australia. I would have thought that if the Labor Party were going to clean up its act and get rid of sexist language, it should start with its own. Why is it the Seamen's Union of Australia? Perhaps the Hon. Ms Pickles could make a contribution on that point.

The Hon. Carolyn Pickles: We can't tell the unions what to do.

The Hon. L.H. DAVIS: I believe that is true, but certainly we are finding that the unions can tell the Government what they want it to do, and that is exampled in this small but very important amendment to the Marine Act. I will be interested to see whether we will have an amendment to the name of the Seamen's Union to, perhaps, the Seapersons' Union or, perhaps, a Crewing Union. It would be a much more sensible name for a union if we wish to be consistent with the Labor Party drive for the abolition of sexist language.

The Opposition opposes this measure. Certainly, with the cost of crews associated with ships in South Australian waters, one can imagine in particular with ships traversing the Backstairs Passage between Port Adelaide and Kangaroo Island—and there have been many tales told about the overcrewing of those ships—extra crewing levels would increase costs and hinder microeconomic reform. The media of Australia have been full of stories of groups that have pulled up stumps in Australia because, although they are competitive in the cost of manufacturing, they simply cannot find a way to be competitive when it comes to the transport of goods.

This amendment to the Marine Act, which has been perused and approved by the Cabinet, is a deliberate act to sabotage microeconomic reform. There has been no attempt in the second reading stage to say that the State Manning Committee—soon to become the Crewing Committee—is not working satisfactorily. There has been no attempt to justify the change. The only reason for the change is that the unions have the Labor Government by the throat. As the Hon. Carolyn Pickles interjected so very honestly, the Bannon Government cannot tell the unions what to do. She would know better than I the truth of that statement, and I accept its veracity as I am sure she will accept the truthfulness of my proposition that the unions have told the Bannon Government what they want. As a result, the Hon. John Bannon—microeconomic reformer extraordinaire—comes up with the goods for the unions. He has said, 'Let's increase the Manning Committee by two to ensure that we have extra crewing in South Australian waters.' Splendid stuff! That sort of stuff does not help make a clever country and the Liberal Party opposes it very bitterly.

The Hon. R.J. RITSON: The Bill does indeed make the union appointment to the committee and I think it remains to be seen what the consequence will be, because this is only a very small piece of a larger jigsaw picture. I do not want to appear to be broadly union bashing. If we did not have unions, perhaps we would still have nine year old children working in the mines. Certainly, people have a right to organise their labour and to have legal protection for the existence and the function of their union. I do not object to unions pursuing the legitimate claims of their industry.

With regard to Australian coastal shipping, over many years we have seen an almost self-destructive approach to the industry. We have seen labour costs give rise to modern designs to take the labour out of shipping. We have seen the roll-on/roll-off development, which was essentially a response to the cost of manual loading of ships. We have seen the design of ships go from the old ships' telegraph, on which orders were rung down to a large engine room crew, to bridge control of the engine room and bridge monitoring of the vital functions of the engine room, thus doing away with a large number of watch keepers. We have seen Australian shipping decline in quantity, and the closure of the Whyalla shipyards. We have seen the enormous costs to the people of Tasmania as a result of the cost of the crossing of Bass Strait. It may be that for every job saved by an Australian crew 10 are lost even in the multiplier aspects of the shipping industry.

Certainly, we have seen a decline nigh unto death of Australian shipping over recent decades. To see the decay of the industry, one has only to go to Port Adelaide to see the vacant wharves while the shipping movements in the newspapers show the daily gulf crossings of the *Accolade II* amounting to 50 per cent of shipping movement. Yet, of course, the empty wharves are jealously guarded, patrolled and looked after by the less seagoing employees of the Department of Marine and Harbors.

To some extent, past union pressure to conserve or multiply jobs at sea probably was one of the factors which led to the decay and which stimulated technological advances that reduced crew numbers and cost jobs in the multiplier extensions of the industry. That is the larger picture, and I do not think that it is possible to say either that arguments about crewing were the sole or the major cause of that decline or decay. We all regret and suffer from the troubles in the Australian shipping industry and on the Australian waterfront.

Certainly stories abound about crews demanding one toilet per two crew members and multiple choice meals which result in a vast excess of uneaten food, but it is not possible to say, looking at this Bill, whether it will be used to gain, from the Trades and Labor Council's suitably qualified nominated crew representative, a wise contribution in the interests of Australia, or whether it will be used to apply local pressure to an industry that has been in trouble for a long time. Needless to say, the Liberal Party is suspicious that it may be used in that way. But, I cannot see the future.

On the face of it the Bill appears to provide for a combination of professional and lower deck advice. I would be very interested in hearing the Hon. Terry Roberts' response to this because he has personal professional experience of this industry. The Liberal Party is suspicious, the suspicion arising from some instances in the past, that this looks as if it may be a provision that will enable activists to concentrate more on demands for extra crewing to the further detriment of the industry. Of course, it could be, as I have said, an opportunity for intelligent input for the good of Australia.

I think Australia has reached the point where unions will have to look seriously at how many jobs and how much prosperity they will lose for the country with every local workplace gain over the boss. As I say, I will not stand here and pan the principle of unionism and say that that will definitely happen; I am just saying that that is the cause of the Liberal Party's suspicion—that is, that this will be used or perhaps abused to continue to cosset jobs in an industry to the detriment of the larger aspects and consequences of that industry. I have lost my crystal ball. I do not know what will happen. I do not believe that the unions do not have a right to exist or a right to representation in the broad aspects of Australian public life. It is a question of use or abuse, and I do not have the answer. For various reasons I support the Hon. Mr Davis in opposing the second reading.

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, T.G. Roberts, C.J. Sumner (teller) and Barbara Wiese.

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

Pair—Aye—The Hon. G. Weatherill. No—The Hon. R.I. Lucas.

Majority of 1 for the Ayes.

Second reading thus carried.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Composition of committee.'

The Hon. T.G. ROBERTS: During the contributions of two members it was mentioned that problems associated with the crewing of ships under the Act was one of the problems inhibiting microeconomic reform. I suggest that both those honourable members look at the composition as designated: one comes from the Seamen's Union of Australia and the other comes from the Merchant Service Guild of Australia and the Australian Institute of Marine and Power Engineers. Those people are professionally qualified. The Merchant Service Guild and the Australian Institute of Marine and Power Engineers have association qualifications, and if members did their homework and looked at the nature of the industry they would find that it is not the professional people who are involved in the disputes. Mostly, the disputations that have taken place on the wharves have been associated with the poor organisational structure of the stevedores. The stevedores themselves have been

reforming their programs all around Australia in an effort to cut out many of the problems associated with—

The Hon. L.H. Davis interjecting:

The Hon. T.G. ROBERTS: No, it is to give a definition of those who have been employed. You cannot just throw a broad brush over the composition of the committee without having a look at the historical factors that make up the committee itself. I think that it is mischievous—particularly the Hon. Mr Davis's contribution—to use it as an exercise in union bashing, because the people involved not only in the committee itself but in microeconomic reform on the wharves are committed to changing those patterns that have historically held back reforms on the waterfront. Adelaide, particularly, has a good record of turnaround time when compared with other States in Australia. This State has been serviced well by those people in the Marine and Harbors Board itself and on the committee, in its previous form, the people who made up the crewing committees previously.

The Hon. L.H. DAVIS: I accept that the Hon. Mr Roberts' comments are made in good faith, but the point remains that the representative of the Seamen's Union and the representative from the joint nomination of the Merchant Service Guild of Australia and the Australian Institute of Marine and Power Engineers are both designated as employee representatives. I accept the professionalism of the representative from the Merchant Service Guild of Australia or the Australian Institute of Marine and Power Engineers, but the point that the Liberal Party underlines very strongly is that these are employee representatives. They have upset the delicate balance of power that has operated traditionally on this committee for many decades. The Government has yet to explain why it has chosen to alter that balance of power at such a critical time. I ask the Attorney-General that question: why has the Government chosen to give in to union demands and so alter the very critical balance of power that has existed for many years on the State Manning Committee, as it is currently called?

The Hon. C.J. SUMNER: The Government thinks that it is reasonable to have equal numbers of employer and employee representatives. I do not see that that is a particularly startling position to take. The second reading explanation says that the Bill proposes equal representation on the committee by employers and employees. That seems to me to be the position. I should have thought that, if you are trying to get waterfront reform, one of the ways that you need to ensure that is to get the cooperation of both employers and employees. Insofar as this crewing committee impacts on waterfront and shipping reform, getting a forum where there are equal numbers of employers and employees would seem to me to be a reasonable proposition.

Clause passed.

Clause 4 passed.

Schedule and title passed.

Bill read a third time and passed.

CITRUS INDUSTRY BILL

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 object of this Bill is to provide for the establishment of a new, restructured Citrus Board to organise and develop the citrus industry and the marketing of citrus fruit regulate the movement of citrus fruit from growers to wholesalers, set grade and quality standards for fruit, provide for powers to be used to set prices and terms of payment for processing fruit in the event of market failure and increase the flow of production and marketing information throughout the industry. The Citrus Industry Organisation Act followed the report of the Committee of Inquiry into the Citrus Industry in South Australia completed in 1965. The reason for the inquiry was because the distribution and marketing of citrus had become chaotic because of the increased citrus harvest in the years 1962 to 1964 and a dependence on fresh fruit markets.

Much of the increase in these three years was unexpected and fruit of a quality below normal came onto the market. Processors took 20 per cent of the fruit (now 70 per cent), and growers therefore had no alternative but to quit their fruit at reduced prices on the Adelaide and interstate fresh fruit markets. In the period 1962 to 1964 the Adelaide market comprised 17 per cent of the total South Australian citrus production (now 6 per cent).

The Citrus Industry Organisation Act was passed by parliament in 1965, and the Citrus Organisation Committee (later the Citrus Board of South Australia) was appointed to administer the Act. An orderly market was created by directing the supply of fruit onto the South Australian market by orders from licensed packers to licensed wholesalers at established minimum selling prices.

In December 1977, the Minister announced an Inquiry into Citrus Marketing in South Australia. This inquiry recommended several changes. Since 1978, the Act has remained unchanged apart from a change in name of the administering body from the Citrus Organisation Committee (COC) to the Citrus Board of South Australia (CBSA) and an increase in the number of growers required to call a poll, from 100 to 200 growers.

This Bill is the result of an extensive review of regulation of the citrus industry which began in April 1989 with the release of a green paper. This paper was widely distributed and submissions were received from every citrus grower and marketing organisation in South Australia and also from national bodies. Almost every submission was critical of some aspect of the board's structure, operations or powers, but the vast majority believed that the board was performing functions which had been of benefit to the industry and to consumers and should continue to exist.

The Government considered all the submissions received and recognised that regulation of the citrus industry had to be brought into the 1990's with a new direction and vigour to face the pressures now being experienced. The Government's intentions were stated in a white paper, released in May 1990. Almost all groups indicated support for these policies with the controversial aspects being phasing out the board's function of routinely setting prices and terms of payment for processing fruit and the structure of the new board.

The board will have the challenging task of guiding the industry in its adjustment from being predominantly oriented to the production of fruit for processing to more emphasis on producing a high quality product for fresh consumption in our domestic and export markets. It will be well placed to cooperate with the Australian Horticultural Corporation in the development of markets and to ensure

that initiatives taken in South Australia are coordinated with those taken in other States and by the corporation.

The Bill provides for the board to determine and set the standards for production, packing and marketing of high quality fruit in South Australia to meet the requirements of new markets such as in Japan and the USA. The board has been strengthened with skills and expertise in marketing, processing and packing. In addition, a new process of selecting the board is proposed. A selection Committee, representing the industry, will recommend appointments to the board. The board itself is not intended to be representative since the important factor is that the board has within its membership the skills to ensure that growers are kept fully informed on the Australian and world supply and demand situation and outlook, and all sectors of the industry are encouraged and assisted to pursue new products and markets.

In order to monitor production and marketing trends, the board will maintain a register of growers, packers, processors and volume retailers, collect statistical returns and ensure that this information and similar information about Australian and world production and marketing is regularly received by growers. The board will continue to have a reserve power for the setting of prices and terms of payment for processing fruit when markets are disorderly and with the approval of the Minister of Agriculture, but will not set prices for fresh fruit. The latter point simply formalises the board's policy of several years. The board will be required to develop a rolling five year plan and present this plan to industry meetings. The Board is fully industry funded and will be able to continue collecting contributions to fund its operations and will consult with the industry on any proposal to vary the contributions.

The Board will complement the national role of the Australian Horticultural Corporation in developing export markets and in the promotion of citrus. It will also have a role in assisting South Australian exporters work together for generic promotion and coordinated marketing in export markets.

Honourable members will be aware of the uncertainty pervading the citrus industry at present. Tariffs on imported frozen concentrated orange juice will continue to fall and the local content rule for sales tax reduction of 10 per cent if Australian juice is mixed in juices, cordials and drinks will be removed from 1 July 1991. These changes and the supply projections for orange juice concentrate indicate that the industry is facing a long term problem which will require strong and informed guidance and coordinated action on the part of growers, packers, processors and exporters and marketers generally. The proposed Citrus Industry Act provides for that leadership.

The Bill sets the regulatory framework for the development of industry in the 1990s. It is the Government's belief that the restructured board has a vital role to play in helping the industry through the difficult times ahead. I commend the Bill to honourable members.

Clause 1 is formal.

Clause 2 provides for commencement of the Act on proclamation.

Clause 3 provides the necessary definitions of expressions appearing in the Act. The definition of 'marketing' makes it clear, particularly in relation to the functions of the Board, that this Act is concerned with all the post-harvest procedures for dealing with citrus fruit.

Clause 4 continues in existence the Citrus Board of South Australia established under the repealed Act. It is confirmed that the board is a body corporate of full legal capacity.

Clause 5 provides that the board is to consist of seven members, one being appointed by the Governor on the nomination of the Minister and six being so appointed on the nomination of the selection committee. Of these six, three will be registered growers and three will be other persons who have expertise in the marketing of citrus fruit or other foodstuffs. The member nominated by the Minister will be the presiding member and one other member of the Board will be appointed as the deputy presiding member. Selection committee members are not eligible for appointment to the board.

Clause 6 sets out the usual provisions relating to terms of office for members of the Board. It is provided that members' allowances are to be paid out of board funds.

Clause 7 provides for the chairing of meetings of the board and sets the quorum at four members.

Clause 8 provides for the disclosure of interest by members of the Board, be it an interest of the member or of a person closely associated with the member. This provision is modelled on the conflict of interests provisions in other recent Acts of this Parliament, for example the Local Government Act.

Clause 9 establishes the Citrus Board Selection Committee as a committee of five persons drawn by the Minister from a panel of 10 names submitted by various citrus industry organisations on the invitation of the Minister.

Clause 10 provides that the selection committee members will be appointed to office for a term of three years, and that a casual vacancy may be filled by the Minister.

Clause 11 sets out procedural requirements for meetings of the selection committee. The committee cannot act if there is more than one vacancy in its membership. Where the committee is meeting to nominate candidates for the board, all existing members of the committee must be present. Four members constitute a quorum at other meetings.

Clause 12 provides for the declaration of conflicts of interest arising where a member of the selection committee is closely associated with a person who is under consideration for nomination to the board.

Clause 13 sets out the primary functions of the board, which are to develop policies for orderly marketing and minimum standards for citrus fruit and citrus fruit products, to encourage the export trade, to promote the consumption of citrus fruit and citrus fruit products, to keep track of marketing trends in the industry and to disseminate such data to persons within the industry.

Clause 14 sets out the general powers that the board has for the purpose of the performance of its functions. It is provided that the board may act in concert with interstate marketing authorities, it may develop codes of practice for the citrus industry, it may act as agent for the collection of Commonwealth levies and generally may enter into contracts, borrow money, deal with property, etc.

Clause 15 empowers the board to establish committees.

Clause 16 provides the usual power of delegation for the board.

Clause 17 provides that the board employs its own staff on terms and conditions fixed by the board. The staff are not Public Service employees.

Clause 18 gives the board the power to exempt specified persons or persons of a specified class from any provisions of this Act, the regulations or a marketing order. Exemptions are only effective when published in the Gazette.

Clause 19 empowers the board to require returns to be furnished by any registered person for the purposes of gathering information necessary for the proper administration of this Act.

Clause 20 requires the board to prepare and present to a public meeting a plan of its proposed operations over the next ensuing five years. This plan must be revised each year so that it continues to cover the ensuing five year period.

Clause 21 empowers the board to require all registered persons or a class of registered persons to pay contributions to the board towards the costs of carrying out the functions of the board. The board may determine the amount of those contributions and their method of payment or collection. Before the board changes existing contributions or requires a particular class to make an initial contribution, it must consult with the persons liable to pay.

Clause 22 requires the board to keep proper accounts and to have them audited at least once a year by a registered company auditor.

Clause 23 requires the board to furnish the Minister with an annual report (including the audited accounts and five year plan). This report must be laid before both Houses of Parliament.

Clause 24 provides that the board must maintain a register of all registered persons.

Clause 25 requires growers, packers, processors, wholesalers and volume retailers to be registered. A grower will be registered (unconditionally) on due application being made and on payment of the appropriate fee (if one has been prescribed). If the application is for registration as a packer or a processor, the Board must be satisfied as to the applicant's business knowledge and financial resources to run a business, as well as to the business premises, facilities and equipment being of a particular standard prescribed by regulation. Where application is for registration as a wholesaler or volume retailer, the board need only satisfy itself as to the standard of the applicant's premises, facilities or equipment. Registration is for a period of one year and is renewable on due application and payment of the prescribed fee. Registration may be subject to conditions, except for registration as a grower. The board can add to, vary or revoke the conditions of registration.

Clause 26 provides for cancellation or suspension of registration for contravention of the Act and for suspension of registration for default in payment of contributions or fees.

Clause 27 provides for a right of appeal to a court of summary jurisdiction against a decision of the board to refuse, cancel or suspend registration or to impose conditions (either initially or during the registration period). A decision of the board to cancel or suspend registration continues in effect during the appeal unless, on the application of the person concerned, the board or the court orders otherwise.

Clause 28 creates the offence of contravention of conditions of registration.

Clause 29 creates the offence of carrying on business as a grower, packer, processor, wholesaler or volume retailer without being registered as such.

Clause 30 creates a number of offences relating to the sale and purchase of citrus fruit. A grower is required to sell citrus fruit to a registered packer, a registered processor, or (provided that the fruit has first been prepared and packed in accordance with the regulations) a registered wholesaler or volume retailer. This does not prevent the grower from selling the grower's own fruit by retail in pursuance of a permit from the board. A packer is required to prepare and pack fruit in accordance with the regulations. Subclause (5) requires a packer to sell only citrus fruit that has been prepared and packed in accordance with the regulations. A processor is not permitted to sell citrus fruit except to another processor. A wholesaler is required to purchase citrus fruit only from a registered grower or a registered packer. A volume retaller must purchase from a registered grower, a registered packer or registered wholesaler, and any other retailer must purchase from a registered wholesaler. These restrictions on wholesalers, volume retailers and retailers do not apply in relation to citrus fruit purchased from a person outside the State. Subclause (9) creates an offence where a wholesaler or retailer purchases citrus fruit (for the purpose of resale) that has not been prepared and packed in accordance with the regulations.

Clause 31 empowers the board to issue permits to growers to enable them to sell their own citrus fruit by retail (for example on the roadside), subject to such conditions as the Board may impose.

Clause 32 empowers the board to issue orders, with the approval of the Minister, fixing prices for the sale of citrus fruit for processing, or setting the terms and conditions on which citrus fruit may be sold for processing. Orders fixing prices cannot endure for longer than three months. Those fixing rates of commission or terms and conditions of sale can continue for a maximum of 12 months. The Minister can waive the Minister's right of approval in relation to orders under this section, other than those fixing prices. The board and other persons are expressly empowered to meet and discuss price fixing under this section. This avoids any possible infringement of the Commonwealth Trade Practices Act.

Clause 33 empowers an inspector to enter and inspect land, premises and vehicles for the purpose of ascertalning whether the Act is being complied with or where he or she suspects an offence agalnst the Act has been or is being committed. Samples may be taken, false marks may be erased from packages, questions may be asked and fruit may be held pending completion of an inspection. Reasonable force may be used in exercising these powers, but a warrant is required where a building is to be broken into, unless the building is used as part of a registered person's business (not being his or her residence).

Clause 34 gives persons engaged in the administration of this Act personal immunity for acts done in good falth in the exercise or purported exercise of powers under this Act.

Clause 35 renders void any arrangement entered into for the purpose of evading this Act.

Clause 36 provides that offences under the Act are summary offences. The defence of 'no negligence' is provided for a person charged with an offence against this Act. Certain basic evidentiary matters are provided for.

Clause 37 is the regulation making power. All aspects of the marketing of citrus fruit (as defined in the Act) may be regulated. Subclauses (3) and (4) empower the Board to prescribe a registration fee that consists of both a fixed amount and an amount that varies according to factors determined by the board. A regulation prescribing a fee containing such a variable component may only be made on the recommendation of the board. Subclauses (5), (6), (7) and (8) deal with the incorporation of codes (whether published by the Board or any other authority) into the regulations. It should be noted that amendments to such codes also have to be adopted by further regulations.

The schedule repeals the current Act and deems all persons registered or licensed under the old Act to be registered under this Act for the balance of their previous registration or licence. Clause 4 provides for vacation of office by current board members on the new Act coming into operation so that fresh appointments can be made in accordance with the new Act. Clause 5 provides for contributions to continue to be payable by growers in accordance with the last determination of the board under the repealed Act until a new determination is made by the board under this Act.

The Hon. PETER DUNN secured the adjournment of the debate.

[*Sitting suspended from 9.35 to 10 p.m.*]

INDUSTRIAL CONCILIATION AND ARBITRATION (COMMONWEALTH PROVISIONS) AMENDMENT BILL

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

That the order made this day for the adjourned debate on the Industrial Conciliation and Arbitration (Commonwealth Provisions) Amendment Bill to be an order of the day for the next day of sitting be discharged and that the adjourned debate be resumed on motion.

Motion carried.

SOUTH AUSTRALIAN METROPOLITAN FIRE SERVICE (MISCELLANEOUS POWERS) AMENDMENT BILL

(Second reading debate adjourned on 4 April. Page 4051.)

Bill read a second time.

In Committee.

Clauses 1 to 6 passed.

Clause 7—'Powers of commanding officer at scene of fire or other emergency.'

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

Page 2, after line 4—Insert subparagraph as follows:
'(iiia) on a vessel whether at sea or anywhere not in a C.F.S. region (within the meaning of the Country Fires Act 1989);
or,

This makes clear that the Metropolitan Fire Service has jurisdiction to attend a fire on a vessel that is at sea, or anywhere else that is not in a Country Fire Service region.

The Hon. J.C. IRWIN: I accept the amendment. I believe that this matter was raised in another place and by me here in the second reading. This does clarify the position and I will not go into it any further. I am disappointed that no second reading reply has been made by the Minister in this place. Matters were raised that have not been addressed, and further opportunity will probably not arise too much in Committee stage. However, I indicate that we accept the amendment.

Amendment carried.

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

Page 2, lines 18 and 19—Leave out these lines.

Amendment carried; clause as amended passed.

Clause 8—'Substitution of ss. 48, 49, 51, 51a and 52.'

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

Page 4, line 1—Strike out this line and substitute:
'public building' includes any structure or place (whether permanent or temporary or fixed or movable) that is enclosed or partly enclosed—

We are talking about the definition of public building and my amendment seeks to expand that somewhat by including the words 'whether permanent or temporary or fixed or movable'.

The Hon. C.J. SUMNER: Accepted.

Amendment carried.

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

Page 4, after line 7—Insert new subclause as follows:
(2) This Division applies only to a building, vessel, vehicle or place in a fire district.

This refers to Division III—Fire and Emergency Safeguards. It will apply only to a building, vessel, vehicle or place in a fire district that is defined in the principal Act to be a district within the jurisdiction of the Metropolitan Fire Service.

The Hon. J.C. IRWIN: We accept the amendment and I believe again that it clarifies the position which was raised in the other place and which I raised here in the second reading debate.

Amendment carried.

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

Page 4, after line 39—Insert new subclause as follows:
(3a) Where a notice containing a rectification order is served on the occupier of the building, the Chief Officer or authorised officer must as soon as practicable cause a copy of the notice to be served on the Building Fire Safety Committee established under the Building Act 1971 for the area in which the building is situated.

Proposed new section 51 concerns rectification where safeguards are inadequate. Again, the question of heritage buildings and/or old buildings has been raised in debate. Many of those old buildings are Government owned, and, obviously, privately owned. In my second reading contribution I referred to the Government ownership of older buildings and whether they conform to a proper standard of safety. What is the position as far as those old buildings are concerned if they do not comply with proper safety regulations and/or do not have, for example, proper sprinkler systems or exit lighting—or whatever? How will they be brought up to a standard so that they can be used by the public with a fair amount of safety, without forcing enormous costs on both the private and Government sectors in making these buildings safe?

The Hon. C.J. SUMNER: I understand that, under Part VA of the Building Act, building fire safety committees are constituted, which have the authority to issue orders to upgrade fire safety provisions in older buildings.

The Hon. J.C. IRWIN: Section 51c relates to the non-compliance with the requirements of this Act or any other Act. Will this cover the situation where lack of maintenance of essential fire safety equipment or unsafe equipment is detected? As an example, I refer to the State Bank water tank, which honourable members would know was made of fibreglass. I understand that this was used as a cost cutting measure because it was cheaper to do that than to use a different construction for the water tank at the top of that building.

Have other large buildings in South Australia been inspected recently to make sure that fibreglass tanks, if they have them, are safe and will not burst, as the State Bank building tank did and left that building without water for putting out a fire for a number of days? Will section 51 (1) *(c)* cover the problems that might arise from the use of fibreglass tanks?

The Hon. C.J. SUMNER: I am advised that the fire service authorities do not know of any other fibreglass tanks which are in unacceptable situations. Apparently there are some fibreglass tanks which are approved. Fibreglass tanks in situations similar to the one in the State Bank building are not known to the Metropolitan Fire Service. Section 51 (1) *(c)* does not necessarily apply to that as it deals with non-compliance with the requirements of the Metropolitan Fire Service Act or any other Act. If there is noncompliance, the Chief Officer has the capacity to take whatever action may be necessary as set out further in section 51.

The Hon. J.C. IRWIN: My last question is on section 51 (1) *(e)*, which provides:

... in the event of overcrowding cause persons to be removed from the building.

Is that removal done by the police on instruction from the Chief Officer?

The Hon. C.J. SUMNER: Yes.

The Hon. J.C. IRWIN: In the amendment, I have sought to ensure that where a rectification order is given orally, the Chief Officer or authorised officer must, as soon as practicable, cause a copy of the notice to be served on the occupier of the building. That relates to section 51(3). I am asking that where a notice containing a rectification order is served on the occupier of the building, the Chief Officer or authorised officer must, as soon as practicable, cause a copy of the notice to be served on the Building Fire Safety Committee established under the Building Act 1971 for the area in which the building is situated. That is particularly to help with the communication and recording by the Building Fire Safety Committee of what action has been taken by the Chief Officer.

The Hon. C.J. SUMNER: The amendment is acceptable.

Amendment carried.

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

Page 5, after line 27—Insert new subclause as follows:

(5a) where a notice containing a closure order is served on the occupier of the building, the Chief Officer or authorised officer must as soon as practicable cause a copy of the notice to be served on the Building Fire Safety Committee established under the *Building Act 1971* for the area in which the building is situated.

I will not go over this as the same comments apply to this amendment as applied to the last one.

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

Amendment carried; clause as amended passed.

Clauses 9 to 12 passed.

Clause 13—'Substitution of sections 66, 67 and 68.'

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

Page 7, lines 26 to 29—Leave out these lines and substitute:

'*(a)* conceal, remove, interfere with or obstruct access to—

(i) a fireplug, hydrant, booster or suction point;

(ii) a mark or sign used for the purpose of indicating the presence of a fireplug, hydrant, booster or suction point;'

This is a simple and self-explanatory amendment to what is already in section 68a.

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

Amendment carried; clause as amended passed.

Clauses 14 and 15 passed.

Clause 16—'Power of Chief Officer, etc., to enter premises and search debris, etc.'

The Hon. J.C. IRWIN: Clause 16 amends section 73 of the principal Act by striking out subsection (2), which provides that a person shall not hinder any person acting in pursuance of this section. Why is that subsection being taken out?

I also want to ask a question about arson. Section 73 (1) *(c)* in the principal Act provides:

> . . . if in his opinion it is necessary to do so take possession of the land, building or structure for the purpose of an investigation or inquiry into the cause of the fire or other emergency.

I wonder how often that is done in view of the enormous amount of arson that is evident in our society in substantial buildings, school buildings and houses and the so-called fire bug activity particularly in the Adelaide Hills. I know that there is a problem with the suggestion of an arson reward scheme. One problem is that there may not be sufficient guarding of a site to satisfy the investigations that may follow. In every case of suspected arson is the fire site, whether it be a building or a scrub fire site, guarded by the relevant authorities until a proper investigation has been carried out in an effort to ascertain, to the satisfaction of a court if action is taken against the suspect, whether arson did occur?

The Hon. C.J. SUMNER: I understand that the Chief Officer's practice is to hold the property until the fire officers have completed their inquiries in cases of suspected arson, and also until the police have completed any inquiries that they have. I understand that the general practice is to hold the property in cases of suspected arson. I cannot say that it happens in every case, but I am advised that it is the general practice.

As to the first question, the removal of section 73 (2) is a technical matter because the offence that is covered by section 73 (2) is already, in fact, dealt with by the principal Act under the general offences in section 18.

Clause passed.

Clause 17, schedule and title passed.

Bill read a third time and passed.

INDUSTRIAL CONCILIATION AND ARBITRATION (COMMONWEALTH PROVISIONS) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 4149.)

The Hon. K.T. GRIFFIN: The Opposition will support the second reading for the purpose of enabling a number of matters to be considered during the Committee stages of the consideration of this Bill. That must not be taken as an indication that we will support the third reading of the Bill. Indeed, if we do not get the amendments which we believe are critical for this Bill, we will oppose the third reading.

It is unfortunate that the Bill, having been introduced in the House of Assembly quite some time ago, should only now be revived with a view to pushing it through before the end of this session. It was quite obvious that the Government was under pressure when the Bill was introduced because of the controversial issues which it addressed, including preference to unionists. The public and media criticism was quite extensive and prompted some reconsideration of the Bill and deferral until later in the session. The Government is now seeking to push the Bill through with as little publicity as possible in the expectation that the media will not focus more criticism upon the Government as a result of the matter being rushed through with a whole parcel of legislation in the regular end of session rush.

However, that does not mean that the Opposition will let the Bill pass without a fight. In the current economic climate, with the mood of the community being for less power in the hands of unions, more freeing up of the right of individuals to make their own decisions about employment and labour activity, it is a contradiction that this Bill should be introduced, a Bill that seeks to narrow rather than to widen opportunity and to give even more power to unions and unionists in a number of areas. That is particularly relevant in relation to the increase in the number of members or employees affected before action can be taken in the Industrial Commission, preference to unionists, the introduction of peak councils into the arbitration and conciliation process, further restricting the right for tortious action and gradually forcing out from the Industrial Commission the right of employers to negotiate with employees and to have agreements made between them, where a registered association is not involved, approved by the Industrial Commission. Added to that is the question of stronger action in relation to superannuation contributions not paid by employers, the unfair dismissal jurisdiction being broadened in some respects and narrowed in others and a range of other issues, and one can see why this Bill is controversial.

The Bill comes before the State Parliament under the guise of seeking to bring it in line with recent amendments

to the Federal Industrial Relations Act, with the long-term objective of eliminating some of the conflicts which presently exist in the system between the State and Federal jurisdictions. However, when one looks at the Bill closely, one sees that it does not even do that. There are many provisions of the Federal Act that are not reflected in these amendments. Some of the provisions of the Federal Act prior to February 1991 are picked up, but not the amendments to the Federal Act, which came into operation in February 1991. It is a general hotch-potch of amendments, picking up some of those provisions that are in operation at the Federal level and have been for some time and those that have come into operation recently. It picks up only those amendments that it suits the Government and its union mates to have incorporated into State legislation.

If the Government were really serious about bringing South Australian legislation in line with Commonwealth legislation, it would pick up all the Federal amendments and put them into this Bill. I am not saying that it should do that, but if it genuinely wished to reflect the position at the Federal level, that is what it would do. I have some difficulty with that only because the decisions relating to Federal legislation are decisions into which South Australians have had no input. I have reservations about picking up legislation—whether it is from the Commonwealth or other States—where there has not been any involvement in the legislative process of the South Australian Government or the South Australian Parliament. We should not blindly adopt provisions of other States without examining them to see whether or not they are appropriate to South Australian conditions.

The preference to unionists provision has been the source of considerable controversy. The principal Act already has a provision (section 29a), which gives a measure of preference to unionists. In the Liberal Party's view, even that goes too far and ought to be repealed. We will be seeking to do that, because we have a very strong view that a person ought to be free to choose whether or not he or she should be a member of a registered association or, in more common parlance, a union. There should be no compulsion to join a union, nor should there be compulsion to vote at State or Federal elections. Compulsion does not necessarily bring a responsibility; it frequently brings abuse. Preference to unionists suggests to the Liberal Party that there is a very real avenue of pressure then to be brought upon both employers and employees who may wish to be free of the tentacles of the trade union movement and to treat as between themselves, employers and employees, to establish fair and reasonable conditions of employment.

Voluntary unionism is an important principle that the Liberal Party supports. We believe that this is an appropriate opportunity to seek, once again, to achieve that objective and to reject any move towards even greater preference to unions and unionists. The present provision in section 29a of the principal Act provides that the commission may, by an award, direct that preference be given to such registered associations or members of registered associations as are specified in the award. Notwithstanding that direction under the present Act, an employer is only obliged by direction of the Industrial Commission to give preference to a member of a registered association over another person where all factors relevant to the circumstances of the particular case are otherwise equal, and no employer is obliged by direction of the Industrial Commission to give preference to a member of a registered association over a person in respect of whom there is in force a certificate issued under section 144, and that relates to consciencious objectors.

The question of all factors relevant to the circumstances being otherwise equal is a difficult concept and has, in fact, caused concern. What the Government sought to do in the Bill introduced in the House of Assembly was to provide for that same direction for preference to be given by the Industrial Commission, but to broaden the basis upon which it could be so directed. If the Industrial Commission believed that it was necessary for the prevention or settlement of an industrial dispute, it could order preference to unionists. If it was necessary for the maintenance of industrial peace, the commission could direct preference to members of a union, or if it was for the welfare of society or to ensure that effect would be given to the purposes and objectives of an award, in all those circumstances the commission could direct that preference be given.

Those determinations would mean that in every industrial dispute it would be a factor that preference should be given to unionists, and maybe the unionists would take the view that the dispute would not be settled unless that preference was given, and there might not be a continuation of industrial peace if preference was not given. In those circumstances the commission would be blackmailed into directing preference to members of a union. That was changed in the House of Assembly and the Bill now reaches us in a somewhat different form, but nevertheless with ramifications that are just as serious.

Where it is necessary to prevent or settle a demarcation dispute preference to unionists can be granted by the commission. Where it is necessary to further the objective of achieving a coherent national framework of employee associations, or to achieve consistency with any award or decision of the Commonwealth commission directed at achieving that objective then preference can be given. Where it would be appropriate, in the opinion of the commission, to protect persons who are members of a registered association from discrimination in employment again preference could be granted, and in circumstances where it was appropriate to facilitate the proper representation of a particular class or group of employees in respect of their rights or interest under the Act, an award, industrial agreement or contract of employment then preference could be directed. That is very much broader than the existing provision and is offensive in our view, as well as in the view of many members of the community and associations of employers.

The Chamber of Commerce and Industry, in relation to the preference to unionists provisions of the Bill, wrote that it was opposed to those preference provisions *per se*. It stated:

> This clause [15] provides for unlimited preference. Employment should be available to the best person for the job. This is based on sound principles of equal opportunity. The clause is discriminatory. The Government should not be trying to shore up flagging support for trade unions. This provision is tantamount to blackmail via economic pressure, that is if one wants to get a job to earn a living, they must join a union. Or, in times of retrenchment, union membership overrides all other considerations. The commission may not have this intent when inserting a preference clause in an award, but that will be the effect. This is totally unacceptable.

Similar comments are made by the South Australian Employers Federation, the Retail Traders Association and other employer groups. It is quite obvious from a statement made by the State Secretary of the Federated Clerks Union, Mr R.D. Clarke, on 13 February 1991, in commenting on the then draft Bill, that what is behind the preference to unionists clause is a desire by the Government to ensure that its union supporters gain members. He said:

> Clearly the FCU believes that a preference provision in any of its major State awards would be of benefit enabling it to recruit additional members in order to be able to offset losses that may well occur in other industries as a result of the union rationalis-

ation principles that the State Government supports as well as a number of major employer groups which they see as essential to the micro-economic reform of Australian industry.

The FCU in South Australia will still be responsible for the maintenance of its major common rule awards, for example, Clerks (South Australia) Award, and without an effective preference clause in that award for example it will be difficult to recruit new members in areas which have hitherto been non-unionised. Therefore, those remaining members of the Clerks Union after the union rationalisation process has been in place for some considerable period of time will bear an unfair share of the cost of maintaining those awards.

That is one union, and I believe that others are anxious to have a preference to unionists clause because it will assist them to prop up flagging membership. For that reason and others, I find such a proposition offensive.

We have a Government that does not believe in voluntary unionism. When it puts out contracts for the supply of goods and services there is always a condition that the successful tenderer or supplier is to ensure that union labour is used. That, too, is an offensive use of Government power to impose what is, effectively, compulsory unionism. We will oppose quite strenuously provisions in the Bill that seek to give a greater level of preference to unions and unionists and we will seek to remove from the principal Act any reference to the commission having power to grant that preference.

Another area of concern is the wholesale abolition of conciliation committees largely because the Federal legislation makes no provision for such committees and the Federal initiatives are directed towards reducing the number of bodies involved in the industrial process, whether associations of employers or employees or in the area where conditions of employment may be negotiated. In South Australia a number of conciliation committees, which are after all appointed by the Industrial Commission representative of employers and employees, do work very effectively and have been responsible for some notable achievements the most recent of which I understand is the negotiations on shop trading hours and the amendment of the award to accommodate that.

So, the abolition of the conciliation committees is something that causes us concern. In any event, there is already provision under the Act that, if the conciliation committees are not working effectively, they can be abolished by the Industrial Commission. It seems unwise to seek to remove them in wholesale fashion, even where they have proved to be extremely beneficial in maintaining industrial accord. The Bill also seeks to include the peak councils in the industrial negotiation process.

The United Trades and Labor Council, for example, is included as a body that has authority to deal with industrial disputation and award making procedures, something that the Liberal Party opposes. If there are associations of employers and employees, they ought to be the parties that are involved in negotiations, in settlement of disputes and in award procedures. The United Trades and Labor Council is not an association of employees but of bodies that represent employees, and there is clear evidence that, if the United Trades and Labor Council were party to an industrial award or agreement, it could not enforce compliance among its members, because it does not have individual members, only associations.

There is a significant change in the right of an employer or, for that matter, any person to take action at common law. Section 143 of the principal Act has always been a source of concern from the Liberal Party's point of view as well as from that of employers, because, as it presently stands in the Act, it interposes the Industrial Commission between an industrial dispute (that may well be causing significant loss and damage) and the ordinary courts of the land.

To me it has always seemed rather curious that participants in an industrial dispute should not be subject to the ordinary law of the land that applies to other citizens, whether it be common law in relation to injunctions or damages, or any other similar area of the law. I have always found section 143a to be an objectionable provision. Prior to its being enacted, with the support of the Australian Democrats, some successful actions were taken in the Supreme Court which, very quickly, brought the industrial dispute to a head and effectively resolved it. The Woolley dispute on Kangaroo Island, Adriatic Terrazzo, Seven Stars Hotel and a number of other actions in the Supreme Court very quickly brought the disrupters into line.

What is being proposed in this Bill is an amendment to that section 143a that will effectively rule out forever effective common law action in relation to State-based disputes. I return to the point that this Bill was introduced by the Government under the guise of seeking to bring it into line with Federal legislation but, of course, it does not address the issue of Federal trade practices legislation, particularly the well known section 45d, which has been used as an effective alternative to action in the Commonwealth industrial jurisdictions, to bring disputes to a head and to ensure that disrupters comply with the law. I know that members opposite will object to the way in which section 45d has been used, but there have been some notable successes in ending disputes.

The Hon. R.R. Roberts: With not necessarily just outcomes, though.

The Hon. K.T. GRIFFIN: Of course they're just! If unions are holding employers and the community to ransom they have to be subject to the general law. If they are not subject to the general law, they are above the law and, if they are above the law and will not talk and be reasonable, it is only fit and proper that they be brought into line.

Members interjecting:

The PRESIDENT: Order! The Council will come to order. The Hon. Mr Griffin has the floor.

Members interjecting:

The PRESIDENT: Order! All members will have a chance to enter the debate. The honourable Mr Griffin.

The Hon. K.T. GRIFFIN: If unionists will not comply with the ordinary law of the land and be reasonable, I see no reason at all why legislation such as 45d or common law action should not be used to bring them to heel and to meet some of the damages which unreasonable, disruptive action has caused. We will be seeking to repeal section 143a of the State Act, as well as opposing the Government's proposed amendments to that section.

The Bill also seeks to reduce the prospect of agreements between employers and employees being the subject of registration by the Industrial Commission, particularly where they have reached an agreement as between themselves without necessarily involving a registered association in the negotiation and conclusion of those agreements. We do have difficulty with that, and we will be seeking to minimise the constraints on employers and employees reaching reasonable agreements on conditions of employment which might apply in a particular enterprise. With all the statements of the Federal Government on enterprise-type arrangements, it seems strange that in South Australia we are looking towards tightening the straitjacket on employers and employees to negotiate reasonable terms and conditions of employment, away from the bureaucratic and monolithic structures of award determination.

The Federal legislation deals with demarcation-type disputes, but this Bill notably avoids picking up some of the Federal legislation which would in this instance give the Industrial Commission power to order that a particular union only should be involved rather than another. Section 118 of the Federal Act is something which we would seek to have incorporated in this Bill to give the Industrial Commission wide power to settle demarcation disputes.

In some respects, the Bill also seeks to widen the unfair dismissal jurisdiction to all contracts of employment, and we will certainly be opposing that. Yet, on the other hand, it seeks to impose an arbitrary limit of $65 000 salary as the threshold beyond which the Industrial Commission will not be involved. Rather than reducing the workload of the commission, it is suggested that that will increase its workload because of the arguments which will arise as a result of disputes about what is or is not a salary and wages within that figure.

Of course, one of the other unfair aspects of the amendment is that someone who is earning considerable amounts of overtime, which takes the whole salary package over $65 000, will still be able to argue unfair dismissal in the industrial jurisdiction, even though it is over $65 000, because overtime is excluded from the calculations.

There are matters relating to superannuation and the right of the commission to order payment of compensation for failure to pay employer contributions into the superannuation fund. That is very much open ended, with no time limit and does not relate to contributions and interest but to some difficult concept of compensation that is not defined.

A point is raised in the educational area about proposed sections 117 and 124, which suggest that smaller university staff associations which are of a specialist nature and which do serve their membership well will be precluded largely from continuing in operation, and larger unions without the rapport that these associations have with university management, will not be able to reach effective conclusions at a cordial level on salary and conditions negotiations.

The whole push towards larger unions is a matter of concern. The whole push towards South Australia's legislation falling in line with Commonwealth legislation is of concern, because it introduces a range of concepts which until now have been foreign to South Australian industrial law. As I said earlier, a significant amount of that has been enacted without any input from South Australia. One should not be surprised at what the Commonwealth does: they are isolated in Canberra from the real world and are not inclined to consult with persons who live in States such as South Australia and Western Australia. The power is focused in Canberra, Sydney and Melbourne and that is where the industrial relations club generally operates, to the detriment I would suggest of the whole community, both employers and employees.

Matters will be raised in Committee about staff associations, some of the principles to which the commission must have regard, and a number of other issues. Essentially, it is a Committee Bill and the Committee stage will be a long and arduous process because of the number of issues that have to be canvassed in consideration of the clauses. The areas to which I have referred are the major areas of concern, but there are also others with which I will deal in Committee. For the moment, I can indicate support only for the second reading with a reservation that, after the Committee consideration, we may well seek to oppose the Bill totally.

The Hon. J.C. BURDETT: I support the second reading of the Bill. The Hon. Mr Griffin has canvassed all the major areas of the Bill and I do not propose to repeat them. I propose to confine my few remarks to clause 15, granting preference to members of registered associations and clause 43, regarding the limitations of actions in tort. With regard to clause 15, relating to power to grant preference to members of registered associations, I would first say that I support trade unions and unionism. I remember many years ago attending a political meeting in Mannum, where I lived for many years. The speaker was Mr Mick O'Halloran, who was then Leader of the Opposition and who said:

> Some people think that exploitation of employees by employers is something that went out with buttoned boots. Gentlemen, I can tell you that in my electorate of Peterborough the other day I saw a man in buttoned boots.

I agree with Mr O'Halloran that exploitation of employees by employers still does go on. Trade unions are therefore necessary; people have the right to join them; and they also ought to have the right not to join them. They should have the option. I will not read clause 15 again; the Hon. Mr Griffin went through most of it. The present law provides that, when persons seek jobs, preference ought to be given to trade unionists. I do not agree with that; I do not think that any preference should be given at all but, one way or another, it ought to be optional.

Certainly, I am opposed to an extention beyond the question of preference at the point of employment. I would like to give one example of that, which occurred at the Hillcrest Hospital when a number of persons who had previously been members of the FMWU became disaffected with that union because they thought that it was not serving them properly. They left the union and joined another organisation, the Health and Allied Workers Association (HAWA). That organisation is not a registered body, although it is incorporated under the Associations Incorporation Act.

I will start this history by referring to an internal memorandum of the Hillcrest Hospital dated 22 August 1990, which states:

> As you are aware, a group of our employees have resigned from the FMWU and joined HAWA.
>
> When offering a position to a permanent (or contract) employee, that is, part time to fulltime, etc., please obtain proof that the staff member is a member of the FMWU. HAWA are not yet a recognised union body.
>
> This directive is in accordance with an industrial circular issued by the SA Health Commission stating positions should be offered to union members in the first instance.
>
> Please contact me if you require any additional information in this area.
>
> Thanking you,
>
> (Sgd)
> W.R. Feckner,
> Manager,
> Personnel Services

Representations were made to me by members of the HAWA and also by non-unionists who objected to this and who claimed that under the existing law at that time (and at the present time) preference to unionists was only at the point of employment and not in regard to rostering, standing down, or anything of that kind.

On 5 December 1990, I raised this question in this place and claimed that any question of preference to unionists under present Government policy ought to apply only at the point of employment. On 31 January 1991 I received a reply from the Hon. Don Hopgood, Deputy Premier and Minister of Health, who stated:

> In the current economic climate the management of all health units is under increasing pressure to monitor and review unit performance to ensure optimum utilisation of the public health dollar. As a consequence of this, management will from time to time implement changes to service delivery and, in some cases, staffing levels. In the latter case the health commission seeks to retrain and/or redeploy affected individuals into satisfactory alternative employment arrangements consistent with the Government's non-retrenchment policy.

I stress this part:

The matter of union or non-union membership is not an issue which would determine which individuals or groups of employees may be affected by any changes to staffing levels.

That letter was dated 31 January 1991, and on the next day, 1 February 1991, Mr W.R. Feckner, Manager, Personnel Services, Hillcrest Hospital, whom I quoted before, sent out another circular, stating:

PREFERENCE IN EMPLOYMENT TO UNIONISTS

A memo dated 22 August 1990 was placed on the notice boards within the cleaning and catering departments which referred to an industrial circular issued by the South Australian Health Commission dealing with preference in employment to unionists (copy attached).

Although this memo was written with good intentions, and thought to be correct at the time, it appears that the contents of this memo are not consistent with industrial circular No. 1.67 and do not reflect government Policy.

I am advised that industrial circular 1.67 specifically applies to those circumstances where initial employment appointments, (that is, first appointments) are being made.

Accordingly, all existing employees who elect to place their names on a roster in either the cleaning or catering department will continue to be considered for vacancies in accordance with the normal custom and practice that has always prevailed, that is, the person at the top of the list will be given first option to fill the vacancy. I regret any misunderstanding that the memo dated August 1990 may have caused.

So, it is clear that at one stage the Manager, Personnel Services, at the Hillcrest Hospital was trying to claim that the question of union preference applied not only at the point of employment but also in regard to rostering, and so on. He was pulled into gear after I asked the question in this Chamber, and the Minister stated that Government policy was that the matter of union or non-union membership was not an issue which would determine which individuals or groups of employees might be affected by any changes to staffing levels.

I must say that, on behalf of the people who approached me, I had occasion to approach people at senior level in the Health Commission who were involved in this, and they were quite clear and firm in saying that Government policy at that time was that preference to unionists was only at the point of first employment and not in regard to rostering or redeployment or anything of that kind.

What worries me in regard to this matter is clause 15. Obviously preference to members of registered associations (I have just been through that; FMWU against HAWA, which is not a registered association) is to be extended. In future, if the Bill passes, it will apply not only to first employment but also to the kind of situations about which I have been talking. That distresses me, because the employees at Hillcrest to whom I was talking—most of them being members of the HAWA, but some not being unionists at all—were perturbed about what would happen to them in future.

Everyone will know (as I have asked questions about this matter in this Chamber) that Hillcrest Hospital is to be closed. There is to be non-institutional care in houses and the people who have to be cared for in hospital will be cared for in other hospitals.

Employees at Hillcrest Hospital, many of whom have been employed there for a long time and who are members of the HAWA—mainly disaffected members of the FMWU—and others who have never been members of a union at all are very concerned about this Bill. They have been very pleased with the action that has been taken so far by the department and by the Minister and eventually by the personnel manager at Hillcrest after I raised the issue. It was then Government policy, which was loud and clear, that preference to unionists applied only at the point of employment and not thereafter, so it was irrelevant. However, they are concerned about what will happen if the Bill is passed, and they have been contacting me about it.

Clause 15 and new section 29a make it clear that preference to members of registered associations will apply not only at the point of employment, but at other stages after people have been employed and may have been employed for many years. It will apply in the kind of case that I have talked about with regard to retrenchments, rerostering and deployment of positions in the organisation in question, and I am totally opposed to that.

As I have said, I oppose preference to unionists. I support the right to belong to a union and the general cause of unionism, but I do not believe that there ought to be preference to unionists, and I make no secret about that. If there is to be preference, it ought to be confined to the point of employment, as at present, and not extended thereafter. I am aware that it has been said—and this has been said in the press from time to time—that a similar provision to the proposed new section 29a has been in Federal law for a long time and that it has not had very much effect. I do not know about that. I am concerned about the employees about whom I have been talking and other employees in similar situations; I am concerned about this Bill and State law; and I am opposed to extending preference to members of registered associations.

I said that there were two matters to which I would refer, and the other matter relates to the limitation of actions in tort (clause 43). I believe that all citizens, whether they are unionists, members of the Government or anyone else, ought to be subject to the same law—the criminal law and the civil law—and that includes actions in tort. I do not believe that there ought to be any limitation of this. If civil liability is incurred under the general law, it ought to apply to registered associations, to trade unionists, to members of the Government and to anyone else, including business tycoons.

There ought to be no exclusion. There ought to be equality under the law. Everyone ought to be the same and every organisation and corporation ought to be the same. Whether it is a company or a registered association, there ought not to be any discrimination, and I believe that any discrimination is gross discrimination in excluding registered associations in any way at all from the ordinary principles of civil liability. I am totally opposed to the measure to further limit actions in tort as is envisaged in clause 43. I support the second reading of the Bill. I support the remarks made by my colleague the Hon. Mr Griffin and I will certainly be considering the two matters that I have raised in particular and other matters in the Committee stage.

The Hon. L.H. DAVIS: The Government has sought to reassure the many concerned people of the contents of this Bill by using in the second reading explanation language of the most reassuring kind. The rhetoric is impeccable but the intent of the Bill is beautifully disguised. If one reads and examines the second reading explanation, one finds that there is no reference in the text to the preference to unionists clause; it is buried away in the explanation of the clauses. The second reading explanation blithely explains the Bill as being concerned with two major objects: first, the development of a closer, more effective relationship between the State and Federal industrial commissions; and, secondly, the establishment of a complementary legislative framework that will facilitate orderly progress towards a more rational union structure at the national level. Lovely rhetoric and, if one did not look behind the content of the Bill, it certainly would be rhetoric of the most reassuring kind.

The fact is that the Government has made slow work of this Bill through Parliament because it knows the force of the opposition against these proposals. The Government ignores the economic reality of our times. Notwithstanding the fact that we have had a sharp decline in economic activity in this State with unemployment most certainly heading to and through 10 per cent, in recent days, for the first time in a long time, South Australia has lost the mantle of the most strike-free State. It is a reputation that we have enjoyed for many years. Recent figures from the Australian Bureau of Statistics reveal that South Australia is not doing so well in that important measure of industrial harmony, and that in itself is a concern to me.

It is also a concern that these proposals are introduced in an economic climate unparalleled in our lifetime. There is no question that by the end of this financial year—in just two or three months—we will look back on a 12-month period that has seen the weakest set of economic indicators that this nation and this State have seen since the Great Depression of the 1930s. Notwithstanding the economic reality, the Government chooses to press on with draconian industrial relations measures, which are more appropriate for the age of the ark than for 1991.

Like my colleagues the Hon. John Burdett and the Hon. Trevor Griffin, I accept that there are some useful provisions in this legislation. However, as my colleague the Hon. Trevor Griffin has made quite clear, the Government has been most selective in picking up the provisions in the Federal legislation that it sees as useful in a complementary sense, but it quite ignored other areas. It is in some of these areas where inconsistency remains or where the State Government has moved alone, against all trends in other States around Australia, that the Liberal Party, together with many employer organisations, quite rightly expresses concern and alarm.

I will highlight some of the concerns that have been expressed by various employer groups. First, in responding to this legislation the Retail Traders Association notes its key objections to the Bill in a press release, as follows:

1. Expanded preference to unionists . . .
2. Extension of industrial jurisdiction . . . into management, executive and other award-free areas.
3. The granting of privilege status for the UTLC . . .
4. Failure to prescribe any time limit for claims for underpayment of occupational superannuation contributions.
5. Increased restrictions in making and approval of industrial agreements . . .
6. The wholesale abolition of conciliation committees.
7. Increased limitations on civil action in the event of industrial disputes causing loss or damage.

The retail industry does not believe that State industrial laws should be changed just because the Commonwealth has introduced new laws. As far as retailers are concerned, changes to industrial laws should occur only where each change is justified on merit and for no other reason. The retail industry is concerned that anti-business laws of this type could further erode business and public confidence, which is already under pressure in this State from the economic recession and the State Bank crisis. In an industry where union membership is already at a low level and declining—

and between 10 and 30 per cent of employees in the retail industry are unionists—

preference to union provisions cannot be justified. Preference to unionists provisions force employers to discriminate against employees, irrespective of merit. That is wrong in principle and practice. The retail industry will vigorously lobby members of Parliament to oppose these unacceptable provisions.

Mr Peter Anderson, the Executive Director of the Retail Traders Association, released that comment on behalf of the association. It is a vigorous and succinct summary of the list of concerns that that association has.

Members opposite should recognise that the retail industry accounts for 30 per cent of small business: it is a significant employer of labour. As Mr Anderson says, increasingly retail employees are non-unionists. Those observations should be read in conjunction with the comments of the Secretary of the Federal Clerks Union, Mr Clarke. A document from Mr Clarke which has come into the hands of the Liberal party puts the view frankly and perhaps too honestly from his perspective about why preference to unionists is desirable. The document states:

When one takes all the above amendments together, quite clearly over the next two to three years, a great deal of union rationalisation and award rationalisation will take place . . . Unfortunately it is a fact of life that the pressure occupationally based unions will face from other unions will be in those areas that are already unionised. No-one seems to want to do the hard job of effectively going out and seeking coverage of industries or workplaces which are non-unionised. Consequently, unions such as the FCU will increasingly have to look to expanding its membership base in areas which have hitherto been very difficult to unionise for a variety of reasons, not the least of which is the sheer number and variety of employers covered by the various common rule awards that the Clerks Union has responsibility for.

Clearly, the FCU believes that a preference provision in any of its major State awards would be of benefit enabling it to recruit additional members in order to be able to offset losses that may well occur in other industries as a result of the union rationalisation principles that the State Government supports as well as a number of major employer groups which they see as essential to the micro-economic reform of Australian industry. The FCU in South Australia will still be responsible for the maintenance of its major common rule awards, for example, Clerks (South Australia) Award and without an effective preference clause in that award, for example, it will be difficult to recruit new members . . .

That is an extraordinary admission from the Federated Clerks Union. It effectively says, 'We face rationalisation of union numbers because of the proposed rationalisation of unions. Therefore, with shrinking numbers, the only way we can maintain an increased membership is through a preference to unionists clause enshrined in legislation.' That plea from the FCU has been taken up by the Bannon Government, this wimpish Government which kowtows to unions, and we have it enshrined in this legislation before us. Let me give members another practical example.

The Hon. T. Crothers interjecting:

The Hon. L.H. DAVIS: The Hon. Trevor Crothers is talking but not making any sense.

The Hon. T. Crothers interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: I am not sure whether he is going for the *Guiness Book of Records*, Mr President. I do not think he would fall between the covers. There was a very practical example of the difficulties of employers in times of union rationalisation brought home in the recent Liberal Party phone-in. We had a phone call from a furniture manufacturer—

The Hon. R.R. Roberts interjecting:

The Hon. L.H. DAVIS: Only one furniture manufacturer; that comes as a surprise to the Hon. Ron Roberts. I agree that, given the state of the building industry, it could well have been many more, because so many furniture manufacturers are going to the wall. This particular furniture manufacturer to whom I spoke made the point that, with the rationalisation going on within the union movement, suddenly the employers in the furniture trades, the furniture manufacturers, were becoming the victims because, in the battle to get sufficient numbers to ensure that a union officer would have a place in the sun in the new, enlarged union group (which, I understand, will occur in that sector of industry) they needed to increase their membership—and quickly. So, all hell was breaking loose in the furniture industry. Never mind what it did to the furniture industry, it was all a matter of getting numbers on the board and preserving the security of tenure for a few officers in the industry.

The preference to unions is its clause, of course, will make that ever so much easier. I really become concerned that the Government has persisted in introducing this legislation. It does surprise me that it has done so, because it is at variance with the way in which the world is going in these matters.

Secondly, I want to refer to comments made by Mr Matthew O'Callaghan, the well respected Executive Director of the South Australian Employers Federation, who said:

> The federation would support the general thrust towards consistency between the State and Federal Industrial Relations Acts and a streamlining of the arbitration processes. However, we note that this consistency has been selectively applied by the Government and several areas of inconsistency have not been addressed by way of this Bill. That includes sick leave, long service leave and unfair dismissals.
>
> We would also note that there are a large number of provisions that are not based on the rationale of Federal consistency, and many of these specific amendments appear not only to be inconsistent with the Federal Act but are inconsistent with the overall trend of industrial law. In this regard, the federation is particularly concerned over proposals to reduce the existing flexibility in the system.
>
> The amendments to sections 108, 109 and 110, as examples, are in sharp contrast to the State Government's approach in supporting the enterprise flexibility framework of the current national wage case. Such support, while at the same time proposing restriction on what is an already heavily regulated industrial agreement provision, is irreconcilable.

Of course, that is a remark worth developing. One of the concerns of the Liberal Party relates to the situation of industrial agreements where non-registered employers and employees are involved. While, on the one hand, the Bannon Government in its submission recently to the national wage case argued in favour of enterprise bargaining, in this Bill we see that unregistered associations and unregistered employees are unable to get together and set up an enterprise agreement.

That, of course, is the point that Mr Matthew O'Callaghan makes in his observations, which I have just cited. In other words, what we are seeing is that the Government is just going back on a principle for which it argued in the national wage case. Furthermore, it can be said that South Australia now will be the only State in Australia which does not provide this very necessary flexibility for enterprise bargaining. Certainly, not everyone will wish to enter into an arrangement such as this, but the Government is pulling up stumps and making it impossible for them to do so. We reject that proposition and will be moving amendments to correct that deficiency.

The Hon. Trevor Griffin made mention of another area of concern to employer groups and to the Liberal Party and that is the area of tortious claims. It seems remarkable that any deliberate damage in an economic sense caused by an employee, or employee association or union to a business can be not countered by a civil action for damages. To limit that ability shows again the one-sided nature of the Bill. I believe it is essential that all businesses, particularly small businesses, which are the backbone of this community, should have that right so that they can appear in a civil court to seek damages for actions which have damaged their business.

We oppose strongly the proposal to abolish conciliation committees. Ironically, we saw only recently the retail trade conciliation committee used most effectively to negotiate a modified award which enabled Saturday afternoon shopping to be introduced. Conciliation committees bring together parties and invariably, as a result of the negotiations, much more goodwill is generated on both sides. With the case of Saturday afternoon trading, a flexible arrangement was agreed to as a result of the conciliation mechanism.

Another employer group, and certainly the largest employer group of all, the Chamber of Commerce and Industry, also sought to put out a media release on the Bill. It stated:

> The move by the State Government to introduce preference to unionists which will automatically result in compulsory unionism will have a devastating effect on the confidence of the South Australian community, Mr Thompson said today. The community is crying out for some direction and positive policies to overcome the onslaught of the Federal Labor Government which has forced this country into recession. Compulsory unionism is the last thing we need.

Of course, that is right, is it not? When we talk about preference to unionists, it is a euphemism for compulsory unionism. That is the only way in which the system will operate. My colleague the Hon. John Burdett, gave a good example of the way in which preference to unionism works in practice. It is disadvantaging those who have chosen the option of not joining a union. If people have the freedom to join a union, they simply must have the freedom not to join a union. We will be certainly moving amendments that are in line with the package of attractive industrial relations proposals we put to the 1989 State election, the so-called freedom package, which would remove the preference clause and guarantee voluntary unionism.

The Bill is useful at the edges but at the core it is rotten. I am staggered that this Government is so wimpish, so weak, so out of touch with economic reality, that it has chosen to go down the easy path laid out for it by Trades Hall.

It is legislation out of step with other States, particularly in regard to enterprise bargaining. It is legislation that is increasingly out of step with what is happening in other States such as New South Wales, and it is legislation that would not readily be seen being introduced in any other nation of the world, whether we are talking about the East or the West. It is legislation that is inappropriate in South Australia facing, as it does, the most severe economic downturn since the 1930s.

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

ADJOURNMENT

At 11.42 p.m. the Council adjourned until Wednesday 10 April at 2.15 p.m.