LEGISLATIVE COUNCIL

Tuesday 8 October 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:

Clean Air (Open Air Burning) Amendment, and
Holidays (Labour Day) Amendment.

DEATH OF MRS JOYCE STEELE

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

That the Legislative Council express its deep regret at the death of Mrs J. Steele, former Minister of the Crown and member of the House of Assembly; place on record its appreciation of her distinguished public service; and, as a mark of respect to her memory, that the sitting of the Council be suspended until the ringing of the bells.

Joyce Steele was a member of the House of Assembly in South Australia from 1959 to 1974. She was born in Perth in 1909, married Wilfred Steele in 1936, and lived in the Kimberleys where she and her husband managed properties for the late Sir Sidney Kidman. When her husband retired the couple and their children, Christopher and Jane, settled in Adelaide and Mrs Steele became a hardworking and committed member of the South Australian community.

In 1941 she became the ABC's first woman radio announcer in South Australia. She was instrumental in establishing the South Australian Oral School of which she became and remained President for more than 20 years. She worked hard to pave the way for a new attitude to educating the deaf. During this period she was also President of the Australian Advisory Council for the Physically Handicapped and a member of the Advisory Committee for Deaf and Hard of Hearing Children. Her great love of music also led Mrs Steele to become a foundation member of the South Australian Symphony Orchestral Association.

In 1959, at the age of 50, she became the first woman to be elected to the South Australian House of Assembly after winning Liberal and Country League preselection for the seat of Burnside. At the same election the Hon. Jessie Cooper was elected to the Legislative Council as its first female member. Today one finds it surprising that it was not until 1959 there were any female members in the South Australian Parliament.

Between 1966 and 1968 Mrs Steele became the Opposition Whip in the Lower House, the first woman to hold that position. In 1968 she became the State's first woman Minister. She was the Education Minister in the Liberal Government for two years and for three months in 1970 served as the Minister of Social Welfare, Aboriginal Affairs and Housing. Mrs Steele continued in Opposition until she retired from politics in 1974. She was awarded an OBE for her service to Parliament and to the community in 1981. I am sure that members will agree that Mrs Steele gave distinguished service to the South Australian community and I ask them to join with me in expressing our condolences to her family.

The Hon. R.I. LUCAS (Leader of the Opposition): I rise to second the motion. Looking back on the life's work of the late Joyce Steele, two headlines 'Matriarch' and 'Trailblazer in politics' have figured prominently in describing her contribution to South Australian politics. To borrow from another subeditor's headline 'Joyce Steele carved her niche in history.'

Joyce Steele (nee Wishart) was born in Midland, Western Australia, in May 1909, the daughter of a technical school headmaster. She moved to South Australia in 1939 after marrying in 1936 her South Australian born husband, Wilfred Steele, who had been an outback station manager for several properties in Western Australia. Joyce Steele's marriage eventually resulted in the birth of three children and it was the special needs or one of their children that drew Joyce Steele into community work for the physically disabled.

In 1947, she became a co-founder, and President for 22 years, of the South Australian Oral School for Deaf Children. Joyce Steele also occupied the presidency of the Phoenix Society, and was President of the Australian Council for Rehabilitation of the Disabled and Australian representative on the board of the International Society for the Welfare of Cripples.

Joyce Steele's involvement in the community extended to other areas. Early evidence of her ability to break new ground occurred in 1941 when she became the ABC's first female announcer in South Australia, beating 120 other applicants. At the same time she was also involved in raising funds to support the Adelaide Symphony Orchestra and, in later years, in bringing 'masters of music' to Adelaide to coach aspiring local musicians. She also became the first woman to serve on the South Australian Institute of Technology's governing council.

Elected to the State seat of Burnside in 1959, after beating both the sitting member and another contender, Joyce Steele again broke new ground by being the first woman elected to the House of Assembly in this State. Joyce Steele would eventually spend 15 years in State Parliament, successfully defending her seat at subsequent elections and, in fact, retaining her seat in 1970 when challenged by none other than the Hon. Anne Levy who now sits on the Government benches.

Her move into politics was, she would later remark, brought about by frustration with old school politicians and their lack of knowledge of the difficulties facing the handicapped. She made her maiden speech to Parliament on 21 July 1959, when she moved the Address in Reply, and in doing so became the first woman to move such an address. In that speech she was able to reflect on a comment by Eleanor Roosevelt, who 13 years earlier had become the only woman appointed to the United States delegation to the first General Assembly of the United Nations. Eleanor Roosevelt had observed that:

If I failed to be a useful member it would not be considered merely that . . . I had failed, but that all women had failed and there would be little chance of others to serve in the near future.

Joyce Steele, however, had little to similarly fear. Her respect among her Liberal peers was such that in 1966 she became the first female Whip in South Australian history, and according to press clippings of the day earned the title 'Mrs Whippy'.

Two years later, Joyce Steele again was breaking new barriers when she was sworn in as Minister of Education in the Hall Government, the first woman to occupy a Ministry in that South Australian Parliament. She promptly pursued the goals of smaller class sizes, increasing the number of teachers with higher qualifications, and introducing modern teaching methods aimed at making students think for themselves. Within the Hall Government, Joyce Steele initiated plans to introduce full three-year training of teachers with the aim that by 1973 every student leaving teachers

college would have undergone at least three years full-time training.

In 1970 Joyce Steele relinquished Education to take up the portfolios of Social Welfare, Aboriginal Affairs and Housing. In an interview at the time she revealed her attitude to women making their mark in what had previously been a man's world. She said:

> Although I am not a feminist, I am certainly in favour of women taking their proper place in the community based on their ability to do the job.

In Parliament Joyce Steele was a supporter of the need to change the franchise of the Legislative Council to permit full adult franchise on a voluntary enrolment and voluntary vote, because, as she put it, 'the Liberal and Country League cannot hope to win Government (again) until it can demonstrate convincingly to the public, particularly in the metropolitan area, that we are a truly democratic Party'.

From May 1970 to March 1973 Joyce Steele was the member for the newly created seat of Davenport. However, her decision to retire from political life in June 1972 came after she decided not to contest a challenge for the seat by the then President of the Young Liberals and member of the Liberal Movement Management Committee, Mr Dean Brown.

On retiring from Parliament, Joyce Steele reflected that someone had told her she was too young to retire. Joyce replied that was the reason why she was leaving. She said:

> It is good to get out when people believe that one should not go. I am leaving now because I hope that I have many good years ahead of me in which I can do the things I have wanted to do.

Joyce Steele was recognised for her work in the community with an OBE in the 1981 New Year's honours list for her work with deaf children spanning 30 years. Her almost 20 years of 'retirement' saw Joyce Steele travel widely, continuing her work for the Adelaide Symphony Orchestra and a continued enjoyment of her garden and entertaining friends.

Joyce Steele died on 24 September 1991, aged 82 years, and I can think of no more suitable accolade to give her than that provided by the Opposition Leader, Dale Baker, who described her as a pioneering Liberal politician. On behalf of Liberal members in this Chamber, I have pleasure in supporting the motion and offering my condolences to the family, friends and acquaintances of the late Joyce Steele.

The Hon. DIANA LAIDLAW: I, too, support the motion and express my condolences to Joyce Steele's family. Joyce Steele was a great friend of my family and a personal friend and supporter. I record my thanks to her publicly on this occasion, as I have many times privately, for the support and the advice that she gave to me when, as a very naive young female, I stood for preselection for this place. She told me a great deal about how to deal with male colleagues in the Party room. She suggested that I need not learn billiards to get on within the Party, but she cautioned me about mixing with the members in the bar. I took her advice in respect of billiards, but not the bar.

I was shocked at the news of Joyce Steele's illness in September and, soon after, her death. She had spoken without notes and notice just three months earlier at the 80th anniversary of the Women's Council of the Liberal Party. She stood in her usual dignified manner and spoke with great integrity and humour about her experiences in this place. It was a shock to all Liberal women members at that meeting that, so soon afterwards, we would lose her. But, to Liberal women generally, and I think to all women in this State, she was a great example for women striving in public and parliamentary life. She has been a great example in terms of integrity and commitment to work and greater opportunities for young people and families and families with children with disabilities. She has been a great inspiration to South Australians generally.

I had not appreciated that Joyce Steele was the first woman broadcaster at the ABC, but I note that Nancy Buttfield, who was the first woman to represent this State in the Senate, had also been a broadcaster, and perhaps that public speaking background gave both women a great deal of confidence to get up and debate in this place and in the community at large. She will be greatly missed and I am pleased to have this opportunity to note my personal thanks to and respect for her.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I join in supporting this motion and pay a tribute to Joyce Steele for what she represented as one of the two women to first enter this Parliament. She and Jessie Cooper were elected the same day, and it was a milestone for women in South Australia when they entered this Parliament. As the Hon. Mr Lucas mentioned, I did oppose Joyce Steele at the election in 1970. It was my first foray into such political activity. I can certainly assure the Council that it was a very dignified and well-behaved campaign on both sides, without any animosity. I am sure that the realities of the electoral situation in Burnside were such that neither candidate had any doubt as to who would win the election. I did not know Joyce Steele as a member of Parliament, as she retired before I was elected.

I understand that throughout her time as a member she always took tea in the lounge and never entered the members' bar. I understand that Mrs Cooper and Mrs Byrne, also women members at the time, likewise did not enter the bar but took their tea in the lounge. When I was elected it was expected that I would follow their example and refrain from entering the bar. I am sorry to say that I disappointed a lot of people on my first day. Joyce Steele certainly will go down in the history books as one of the two women elected to this Parliament for the first time in 1959.

It is strange that South Australia had to wait so long before having any women members of Parliament. Whilst we gave women the right to vote in 1894, we had to wait 65 years before any women were elected to this Parliament. We were the last State to have women members of Parliament, the first being Western Australia in 1921 when it elected a woman, closely followed by New South Wales in 1924, I believe, Queensland in 1926 and Victoria in about 1936, with South Australia very much bringing up the tail end in being the last Parliament to elect women. We have since then made up for that lack and the current female membership percentage in this Parliament is about the same as applies in most other Parliaments in this country—still deplorably low but a lot better than it was at the time that Mrs Steele entered the Parliament. As I indicated, Mrs Steele will go down in the history books. For that reason alone she will be remembered by all South Australian women. I join those who send their condolences to her family at the time of her death.

Motion carried by members standing in their places in silence.

[*Sitting suspended from 2.36 to 2.50 p.m.*]

PETITIONS: PROSTITUTION

Petitions signed by 602 residents of South Australia praying that the Legislative Council uphold the present laws

against the exploitation of women by prostitution and not decriminalise the trade in any way was presented by the Hons J.C. Burdett, J.C. Irwin, Bernice Pfitzner and J.F. Stefani.

Petitions received.

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 6 and 10.

DEPARTMENT FOR THE ARTS AND CULTURAL HERITAGE

6. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: In relation to the new Corporate Services Division of the Department for the Arts and Cultural Heritage:

1. How many officers are employed in the division?

2. Of this number, how many are former officers of the Department of Local Government and how many are former officers of the Department of the Arts?

3. What are the names, positions and current responsibilities of the officers formerly employed by the Department of the Arts?

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

1. There are 30 employees (including six Government Management and Employment Act employees in the office of the Minister) in the Corporate Services Division of the Department for the Arts and Cultural Heritage. This number does not include the Chief Executive Officer, the Senior Adviser, Arts Promotions or the Executive Support Unit.

2. Of the 30 Corporate Services employees, 15 are from the former Department of Local Government; six are staff of the Office of the Minister (previously Department of Local Government); seven are from the former Department of the Arts; one is from outside of both agencies and one position is vacant.

3.

Name	Position	Current Responsibilities
Brokensha, L.	Finance Officer	Financial Services
Henry, B.	Manager, Admin. Services	Administration
Keynon, V.	Building Supervisor	Building Services
Martin, K.	Workshop Supervisor	Workshops
Paolo, B.	Clerk	Registry/Admin.
Rushbrook, E.	Personnel Consultant	Personnel Services
Shaw, F.	Clerk	Registry/Admin.

ADELAIDE FESTIVAL CENTRE TRUST

10. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage:

1. Why has Ms Anne Dunn resigned (5 September 1991) as a trustee of the Adelaide Festival Centre Trust, some six months after she was appointed CEO of the Department for the Arts and Cultural Heritage and some two years and four months before her term as trustee expired on 13 January 1995?

2. Why has Ms Dale Elizabeth Durie been appointed to the trust to fill the casual vacancy created by Ms Dunn's resignation?

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

1. Ms Dunn resigned from the Adelaide Festival Centre Trust on her own initiative and for personal reasons.

2. Ms Durie is currently the Director of the Arts Training Council of South Australia, a member of the Foundation of the Art Gallery of South Australia, a member of the Advisory Committee of the Migration Museum and formerly the Training Officer with the Community Arts Network. I am sure that Ms Durie will make a significant contribution to the operations of the Adelaide Festival Centre Trust.

MEMBERS' INTERESTS

The PRESIDENT: Pursuant to section 5 (4) of the Members of Parliament (Register of Interests) Act 1983, I lay on the table the ordinary returns of members of the Legislative Council.

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

That the Registrar's statement be printed.

Motion carried.

PAPERS TABLED

The following papers were laid on the table:

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

- Parliamentary Superannuation Scheme—Report, 1990-1991.
- Regulations under the following Acts—
  - Boating Act 1974—
    - Blanchetown Zoning.
    - Fees.
    - Hire and Drive.
  - Fences Act 1975—Exemption of Land.
  - Harbors Act 1936—Speed Limits in Harbors.
  - Land Tax Act 1936—Land Agents' Inquiry Fees.
  - Occupational Health, Safety and Welfare Act 1986—
    - Commercial Safety—Health and First Aid.
    - Industrial Safety—Health and First Aid.
    - Construction Safety—Health and First Aid.
    - Logging.
  - Stamp Duties Act 1923—Building Societies.
  - Summary Offences Act 1953—Cyclist Helmets.

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

- Reports, 1990-91—
  - Dental Board of South Australia.
  - South Australian Department of Housing and Construction.
  - Medical Board of South Australia.
  - Metropolitan Milk Board.
  - Pipelines Authority of South Australia.
  - Soil Conservation Council.
  - Veterinary Surgeons Board of South Australia.
- Regulations under the following Acts—
  - Chiropractors Act 1979—Renewal Fee.
  - Controlled Substances Act 1984—
    - Cannabis.
    - Injecting Equipment.
  - Metropolitan Milk Supply Act 1946—Milk Prices.
  - Public and Environmental Health Act 1987—Prescription of Diseases.
  - South Australian Health Commission Act 1976—
    - Recognised Hospitals Fees—Glenside and Hillcrest.
    - Recognised Hospitals—Compensable Patients—South Australian Mental Health Service.
    - Auditor-General Prescribed Hospitals—South Australian Mental Health Service.
- Racing Act 1976—Greyhound Racing Board Rules—Registration.

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

- Reports, 1990-91—
  - Adelaide Festival Centre Trust.
  - Metropolitan Taxi-Cab Board.
  - Office of Tertiary Education.
  - South Australian Museum Board.
  - Department of Road Transport.

State Opera of South Australia.
State Theatre Company.
State Transport Authority.
South Australian Waste Management Commission.
Health Sciences Education Review—Report, September 1991.
Department of Employment and Technical and Further Education—Corporate Review and Report 1990.
The University of Adelaide—Report, 1990 and Statutes.
Planning Act 1982—Regulations—Development Control—Land Fill.
Metropolitan Taxi-Cab Act 1956—Applications to Lease.
Highways Act 1926—Lease of Department of Road Transport Properties, 1990-91.

By the Minister for Local Government Relations (Hon. Anne Levy)—
Reports, 1990-91—
Local Government Finance Authority.
Parks Community Centre.
West Beach Trust.
Local Government Finance Authority Act 1983—Regulations—Local Government Training Authority.
Corporation By-laws—Henley and Grange—No. 14—Liquor Control.
District Council By-laws—
Yankalilla—
No. 17—Vehicles on the Foreshore.
No. 20—Motor Boats.
No. 27—Fences and Hedges.
No. 28—Caravans.
No. 30—Tents.
No. 31—Animals and Birds.

By the Minister of State Services (Hon. Anne Levy)—
State Supply Board—Report, 1990-91.

SELECT COMMITTEE ON CHILD PROTECTION POLICIES, PRACTICES AND PROCEDURES IN SOUTH AUSTRALIA

The Hon. CAROLYN PICKLES: I bring up the report of the committee, together with the minutes of proceedings and evidence, and move that the report be printed.

Motion carried.

QUESTIONS

EXPIATION NOTICES

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Minister of Consumer Affairs a question about expiation notices.

Leave granted.

The Hon. K.T. GRIFFIN: In the budget Estimates Committee the Minister was asked a series of questions by members on both sides of the Committee about the issue of multiple expiation notices to traders in Mount Gambier for alleged breaches of labelling standards. Recently another issue has been brought to my attention arising out of a period of operation by officers of the Department of Public and Consumer Affairs in the Mount Gambier area.

The information I have been given indicates that an officer of the department entered a chemist shop and there spoke to the chemist about sunglasses that were on display. Apparently, there were about 20 pairs, but they were not labelled in accordance with the labelling standards. Of those 20 pairs, there were two different types. The officer issued two infringement notices for each type of sunglasses for $200 each plus the $5 levy for criminal injuries compensation. The officer said that if the trader disputed the infringement notices or refused to pay the trader could be taken to court and could be charged for each pair of sunglasses—that is, each of the 20 of them—up to a maximum of $5 000 each.

The trader felt that this was rather threatening behaviour, although the threat is not really the complaint. The officer also mentioned that the department could actually fine the retailer, the wholesaler and the manufacturer for not labelling the goods—in other words, three bites of the cherry! The issue arises out of that information as to the policy that the department follows. My questions are:

1. Was the threat in the event of the non-payment of the expiation notices a fair threat and a reflection of departmental policy?

2. Is it the department's policy to issue expiation notices in relation to each group of products that do not comply with labelling standards, and if not paid issue summonses in relation to each item of a product even though no expiation notice may have been issued?

The Hon. BARBARA WIESE: The policy of the Department of Public and Consumer Affairs is to pursue the provisions contained in the legislation for the protection of consumers where trade standards and product safety is concerned. It has been the policy and practice of the Department of Public and Consumer Affairs over quite a period of time now to pursue education, monitoring and information as the preferred approach to making traders aware of their obligations under the various pieces of legislation administered by the Department of Public and Consumer Affairs.

I think the honourable member would agree, when looking back through annual reports of the past few years, that by far and away that has been the approach taken by officers of the department in pursuing their obligations under the various Acts of Parliament. There have been occasions when prosecution was deemed to be an appropriate way to handle a particular issue, and on other occasions infringement notices have been issued to traders. Officers must use their judgment in most of these cases, depending on the nature of the particular infringement and the severity of the case with which they are dealing.

If the honourable member is asking whether some new direction has been given to officers of the department to suddenly start rushing around the State on a mission to ping traders, I can say that that is not the intention of the Commissioner for Consumer Affairs, the Director of the Office of Fair Trading or the individual officers within the organisation. I think that they take a very responsible attitude to their responsibilities in this area. They are sensitive to the situation in which many traders are operating and they try, first, to provide information to people.

In the case of the South-East, as I indicated to the Estimates Committee, approximately one year ago an exercise was undertaken by officers of the department whereby information was provided to traders, goods were monitored and other measures taken to inform traders in the region of their obligations under the legislation. In addition, attempts have been made to encourage traders to attend seminars that will provide further information about the legislation and their obligations.

In this current visit, which has caused some concern to a number of traders, although some 30 trader infringement notices were issued to individual traders I believe many more traders were not proceeded against in any way but were given information, directed to the legislation and given advice as to how they might ensure that they could operate within the law in a way that was reasonable in the interests of consumers.

No specific policy direction has been given to officers with regard to the implementation of trader infringement notices. Officers are asked to be reasonable and sensitive in their compliance functions, and I think that the record

shows that they are. Education and information is always the preferred approach to make sure that traders are operating in accordance with the law.

The Hon. K.T. GRIFFIN: As a supplementary question, in light of the answer, when the Minister has an opportunity to peruse the *Hansard* of my explanation, would she be prepared to address not the general policy issue that she has outlined but the specific question about prosecution policy if infringement notices are not paid or if, for some reason, they are disputed?

The Hon. BARBARA WIESE: I shall be happy to provide further information about prosecutions and the practice that has been followed in the past with respect to prosecutions in this area. If the honourable member would care to provide specific information about the chemist to whom he referred, I may also be able to provide further information about the discussion that was held with that individual and the Department of Public and Consumer Affairs officer.

TRAINS

The Hon. DIANA LAIDLAW: I seek leave to ask the Minister for the Arts and Cultural Heritage, representing the Minister of Transport, a question about trains.

Leave granted.

The Hon. DIANA LAIDLAW: Today, hearings commenced in the Industrial Relations Commission in Adelaide following a three month trial to assess the effectiveness of Government measures to improve safety on trains. These measures include the phasing out of guards and the phasing in of Transit Squad officers with drivers accepting increased responsibility for safe working practices in exchange for a 12 per cent increase in allowances. Members will recall that this three month trial was a key feature of an agreement reached on 5 July between the STA and rail unions to ensure that trains recommenced operating following a crippling 25 day shutdown of our suburban rail network.

While it is fair to say that passengers generally have welcomed the increased presence of Transit Squad officers on trains, the trade-off in terms of loss of user-friendly services has caused great inconvenience to passengers generally and has generated countless complaints to my office, and I know that members opposite have also received complaints in this regard. Complaints have been received from the following: bus drivers who claim trouble on trains has now been transferred to buses; parents travelling with young children and people with disabilities, who no longer receive much needed assistance when entering and exiting rail cars; passengers furious that they can no longer buy a ticket on a train, unlike passengers on a bus or a tram; passengers who are not impressed that the only STA officers now responsible for handling tickets on trains are inspectors who issue a $50 fine to any person without a ticket, rather than assist that person to purchase a ticket (often that person has been unable to purchase a ticket at a train station); residents living adjacent to railway stations who object to the instruction that drivers must blast their horns at each station to warn passengers of the impending departure of the train, because trains no longer have guards and in accordance with safe working practices; and train drivers who are anxious that the mirrors being installed at stations to help them determine whether all passengers have boarded or alighted safely are totally useless when it is raining and fog up when it is cold in the mornings. My questions are:

1. Does the Government or the STA intend to argue before the commission that the new safe working practices and new ticketing arrangements have been an unqualified success and, if so, on what grounds?

2. How many platforms are now equipped with mirrors; does the STA propose to install mirrors at all stations; and, if so, over what period of time and at what cost?

3. Video cameras have been installed on Westrail (the Perth suburban rail system) following a move to driver only trains in that State. I understand that STA officers have inspected that system. Does the STA propose to install such video cameras in the driver's cabin of all or some trains?

4. Finally, since the STA installed a ticket vending machine at the Adelaide Railway Station last month, has an assessment been made of passenger response to this initiative and, if so, what is the response?

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

SCHOOL CLOSURES

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 school closures.

Leave granted.

The Hon. R.I. LUCAS: In recent weeks, there has been some controversy about the Government's decision not to proceed with school closures and rationalisation proposals in the Semaphore electorate allegedly because of potential growth from the MFP proposal at Gillman. This proposal is especially controversial when one notes that a number of schools earmarked for closure or rationalisation in the electorates of Price, Spence and Albert Park and situated closer to the MFP site than the Semaphore schools were not treated similarly.

On 27 May of this year I attended one of a number of protest meetings against these proposals at the Ethelton Primary School. At that meeting, the member for Semaphore publicly discussed the possibility of bringing down the Bannon Government. This suggestion was greeted with loud acclamation by the audience of some 200 people. My office has been further advised that at one other meeting at least in June or July of this year similar comments were made by the member for Semaphore.

Official Education Department figures showed that one of the schools earmarked for closure in the Semaphore electorate was the Ethelton Primary School, which had a very strong case for opposing closure as it had almost 300 students and enrolments were predicted to increase next year. So, it is clear that declining enrolments could not be given as a reason for the proposed closure of the Ethelton Primary School. My questions are:

1. Was the Minister or any officer of his department advised by Education Department officers who attended protest meetings in May, June or July of this year that the member for Semaphore had publicly raised the possibility of bringing down the Bannon Government on the subject of school closures in his electorate?

2. Does he accept that the original projection of 100 000 people for the MFP at and around the Gillman site was progressively downgraded to, first, 50 000 and then 30 000 to 40 000, and that his Education Department demographers were aware of this fact from early this year?

3. What new information on population projections about the MFP became known to the Bannon Government and Education Department demographers in late July and early August of this year that allegedly caused such a dramatic change of heart by the Bannon Government?

4. How does the Bannon Government justify its view that this allegedly new information on the population growth of the MFP will not similarly affect enrolments in schools in the electorates of Price, Albert Park and Spence, which are as close or closer to the MFP site than the Semaphore schools?

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

FESTIVAL CENTRE TRUST

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage a question about the Festival Centre Trust.

Leave granted.

The Hon. CAROLYN PICKLES: There has been some discussion recently about the level of funding provided by the Government to the Festival Centre Trust, particularly with regard to funding for maintenance and equipment. Will the Minister explain how much money the trust has received from the Government and how that money has been spent?

The Hon. ANNE LEVY: This has certainly been a matter of some controversy in the media recently. It is perhaps not generally known that since the 1983-84 financial year the Government has provided to the Festival Centre Trust a total of $7 million for maintenance and equipment. This amount forms part of the total funding provided to the Festival Centre Trust in that period of $69 million. That amount comprises $28 million for operating costs; $23 million for debt servicing costs; $11 million plus for rectification of the plaza; and, as I have said, over $7 million for maintenance of equipment.

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: Some of the major maintenance projects that have been undertaken with this $7 million include repair to the roof membranes of the drama theatre with the Playhouse, the Space and the Festival Theatre; removal of asbestos throughout the entire complex; rust proofing of the structural steel in the centre; complete overhaul of the flying system; and upgrading and expansion of the Bass ticketing system. Equipment upgrading includes sound equipment, production equipment, air-conditioning, catering facilities, box office facilities, technical equipment and stage facilities, and the commencement of a program to re-cover all the seating in the complex and to replace carpeting in the foyers and the balconies. There has also been resignage throughout the complex. This level of funding surely indicates a major commitment by the Government over many years.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! The honourable Minister.

The Hon. ANNE LEVY: My comment—

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! The honourable member will come to order. The honourable Minister.

The Hon. ANNE LEVY: Thank you, Mr President. As I was saying, the level of funding that has been provided indicates a major commitment by the Government to the Festival Centre. This is supported by the fact that this capital funding exceeds the funding that has been approved through SACON for equivalent work undertaken at all the State's major cultural institutions put together: the Art Gallery, the Museum, Carrick Hill and the four History Trust museums. The total amount spent on those institutions is less than has been provided to the Festival Centre Trust.

In 1986-87 the Government set in place a four-year program of extra capital funds, which made up more than $2 million in total, for major capital upgrading projects at the Festival Centre. These funds were used mainly to upgrade and expand the Bass ticketing system, to recarpet various areas within the complex and to commence a technical upgrade of the centre.

The Government is developing a long-term capital strategy which incorporates the maintenance and equipment requirements of all State-owned theatre venues. Last year I commissioned SACON to carry out a study of all the Government-owned theatres, and through the Arts Facilities Capital Grants Committee $300 000 was allocated to begin this work. Every Government-owned theatre in the State competes for these funds, including the four regional theatres in Port Lincoln, Port Pirie, Renmark and Mount Gambier; also the Lion Arts Centre, Her Majesty's Theatre and the Festival Centre Trust in Adelaide. Last year the Festival Centre Trust received half of the total allocation of maintenance money through the Arts Facilities Capital Grants Committee, leaving the other six theatres to share the remaining 50 per cent.

The funding priorities through the Arts Facilities Capital Grants Committee for 1992 are yet to be determined. I understand that the committee will shortly be meeting to consider these allocations. I have no doubt that the Festival Centre Trust is likely to be a major recipient of funds again this year. In addition, the Arts Finance Advisory Committee has included $370 000 this year for equipment and major maintenance as part of its grant to the Festival Centre.

The Hon. Diana Laidlaw: The General Manager says they need $13 million.

The PRESIDENT: Order!

The Hon. ANNE LEVY: We accept that the trust is concerned about its future equipment and maintenance needs, but there is no doubt that it has fared relatively well compared with other cultural institutions in this State. The trust has been, and continues to be, a priority for funds for equipment and maintenance, but, along with everyone else, it must recognise the budgetary constraints that are facing the Government.

As the Hon. Diana Laidlaw has tried to indicate by way of interjection, the trust has claimed that it needs more than $13 million to upgrade all its equipment. At the moment, with SACON, we are assessing the trust's bid, but this is a complex task as much of the trust's equipment is of a highly technical nature. We need to assess which items from its list are essential and urgent, what can be delayed for a shorter or longer time and whether any of its bid comes into the wish list category. We are working with the Festival Centre to see what can be done, and we have inquired to what extent it may be able to contribute from its own substantial reserves.

VIOLENCE IN SPORT

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General a question about violence in sport.

Leave granted.

The Hon. M.J. ELLIOTT: The SANFL Grand Final last weekend has again raised the ugly spectre of violence in sport. Irrespective of the outcome of the match or where individual sympathies may lie, many people would argue that some incidents, in which players on both sides suffered

injuries, should not be accepted as part of the rough and tumble of a football match. Although the players involved will face disciplinary action from the SANFL tribunal, I have been asked by several people now why those people should not also face police charges for what, on the surface, appear to be incidents of assault.

Acceptance of deliberate and violent acts which are televised as part of a sporting event suggests that violence is condoned by our society. Football players—and I include myself as a player still—expect to be hurt during a game of football. One expects the possibility of limbs being broken and joints being destroyed in the rough and tumble of the game. It is, after all, a vigorous body contact sport. However, I do not know of too many players who, when they run onto the field, expect to be assaulted in a manner which, if it occurred in a pub, could lead to arrests and charges. I do not think too many players who go onto the field expect a player to come from behind and punch them on the side of the head. My questions to the Attorney-General are:

1. What is the Government's attitude to violence in sport?

2. Does the Attorney-General believe that there may be circumstances and incidents on sporting fields which warrant criminal charges being laid?

3. Are there any police investigations currently under way into any incidents which occurred in the SANFL Grand Final?

The Hon. C.J. SUMNER: The Government's attitude to violence in sport is one of opposition. Neither the Government nor the community can condone violence in sporting activity which goes outside the rules of the sporting event. The situation with respect to charges arising out of any sporting event is that it is a matter for the police to investigate if complaints are lodged with the police about the activities on the sporting field. I do not know whether any police investigations are under way in relation to Saturday's football match, but I can make inquiries and advise the honourable member. I think it is fair to say that assaults or violence which occur on the football field are generally dealt with by the governing body (that applies to Australian Rules football as well as to other codes) and its internal procedures.

However, an assault, if proved (and I make that clear), is an assault, whether it occurs in the street, at home or on the football field. Participating in a football match does not give to participants the right to contravene the criminal law by assaulting other players: that is quite clear.

The Hon. Peter Dunn: What about boxing?

The Hon. C.J. SUMNER: The Hon. Mr Dunn interjects, 'What about boxing?' Football is played according to certain rules which preclude assaults with fists or in certain other ways. It is not condoned by the rules. So, if one plays a game of football one expects to play within the rules of the game. The rules of the game do not involve assaults, and the situation with any code of football is such that if an assault occurs outside the rules it is no less an assault for having occurred on the football field than if it had occurred in some other place.

The Hon. K.T. Griffin: That is right.

The Hon. C.J. SUMNER: The Hon. Mr Griffin interjects and says, 'That is right.' Regrettably some people who play football believe that that is not the case. The police do not intervene generally in assaults on the football field because complaints are not usually laid. However, there have been instances of complaints laid. In the old Victorian Football League, Mr Leigh Matthews, who is the coach of Collingwood, was charged by the police with assault and convicted. There have been civil cases in our courts where individual footballers have taken civil claims against other footballers and have been successful. This clearly establishes what I have said, namely, that the presence of a player on the field does not mean that there is permission to carry out assaults or other violent actions that are not within the rules of the game. The situation is that there is an unwritten convention that, if no complaints are lodged either by other players—

The Hon. Diana Laidlaw: Or by spectators.

The Hon. C.J. SUMNER: —or by spectators, the matter will be dealt with by the governing body in accordance with procedures that it establishes. However, if a complaint is lodged it is my view that the police would be obliged to investigate. Whether there would be sufficient evidence to sustain any criminal charges would be a matter for the police to determine after conducting investigations, and the matter whether to proceed further if they were indictable offences would be for the Crown Prosecutor and the Attorney-General to determine. That is the situation.

I do not know whether any police investigations are proceeding. I cannot comment on whether charges are warranted as the matter would have to be determined after a police investigation if it was decided that such an investigation was necessary. As I have said before, police investigations are not usually carried out in those circumstances unless there is a complaint.

PARKING REGULATIONS

The Hon. J.C. IRWIN: I seek leave to make an explanation before asking the Minister for Local Government Relations a question about parking regulations.

Leave granted.

The Hon. J.C. IRWIN: Following a number of questions to the Minister recently on the new parking regulations, I am amazed that it is so obvious that neither the Minister nor the Local Government Bureau has advised councils on their obligations under the new regulations. The *South Australian Government Gazette* of 26 September this year published a number of examples of councils that are still astray in their understanding of the regulations. Even as late as September 1991—a week ago—some councils were still publishing a direction under the provisions of the parking regulations of 1981. The new regulations were gazetted on 5 August 1991. As this Council knows, it embraces, amongst other things, the new Australian standard signs. I cite the example of one city, which has gone one better or worse (depending on how one looks at it), and is still referring to the parking regulations of 1981, having gazetted a motion of council passed on 22 March 1990—18 months ago—and another passed on 28 May 1985—6½ years ago. The mind boggles!

The Hon. Anne Levy: Don't ever say again that I am slow!

The Hon. J.C. IRWIN: No, they are much slower than the Minister. All prohibited areas referred to by councils were not properly denoted under the old parking regulations, and, because they are still not properly denoted under the new parking regulations, they cannot therefore embrace the new parking signs. The number of fines being ripped from the people of this city to which I have referred (and it is not the city of Adelaide) is something that we will probably never know.

The number of parking fines being ripped out of people in many other council areas by councils not observing the proper use of parking regulations is again something that we will never know. I have taken up the matter with the Local Government Association, but as yet have not received a reply. Has the Minister yet been convinced that some

councils have been, and still are, putting up illegal parking signs, and does she condone this practice? When will she do something constructive to protect the motoring public from the misuse of the Government's own parking regulations?

The Hon. ANNE LEVY: Prior to the new parking regulations being brought in, lengthy and extensive consultation took place with all councils in this State. Because of the lengthy period of consultation with the councils, it took over 18 months to develop these new regulations. Councils were consulted on different drafts of the regulations, as well as on the Australian standards regulations. There were times when I thought that the consultation with the councils would never end and that we would never be able to develop the new regulations. Therefore, all councils were well aware of the new regulations because they had been consulted extensively in relation to them. Further, every council was notified that the regulations were coming into effect on 5 August, so they cannot plead that they did not have that information.

Also, following the signing of the memorandum of understanding between the Premier and the President of the Local Government Association nearly 12 months ago, numerous agreements have arisen. One of those agreements relates to advisory services. In that agreement, which was signed by the current President of the Local Government Association and by the Premier, there is an agreement that advisory services to councils will henceforth be provided by the Local Government Association.

The Hon. J.C. Irwin: Have you spoken with the Local Government Association?

The Hon. ANNE LEVY: There is an agreement that the Local Government Association provides the advisory services to councils.

The Hon. J.C. Irwin: These are Government regulations, not local government regulations.

The PRESIDENT: Order!

The Hon. ANNE LEVY: It is not a question of local government regulations.

The PRESIDENT: Order!

The Hon. ANNE LEVY: Advice to councils on local government matters is now provided by the Local Government Association, not by the Government of the State. This is done by agreement between the State and the Local Government Association, signed—I think it was in April this year—by the President of the Local Government Association and the Premier of the State.

Advice to councils on matters such as the implementation of parking regulations will be provided by the Local Government Association. I would be concerned if some councils were not abiding by the regulations as they should. However, that has not been drawn to my attention, and I presume that the Local Government Association is handling the matter following the signing by the President and the Premier of the agreement on advisory services.

SMALL BUSINESS

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister of Small Business a question about small business.

Leave granted.

The Hon. L.H. DAVIS: Late last week the *Advertiser* contained an extraordinary report from the Minister of Small Business. The Minister announced that a Labor Party survey taken in June of 566 small businesses in South Australia found that they were expecting the recession to end in the next six to 12 months. This survey found that small businesses expected that recovery would come sooner than predicted by many analysts. The Minister, Ms Wiese, said the results could mean that 'South Australia's recession could be shorter than it had been in other States'. On that very day, the Labor Party held a small business breakfast at a city hotel. I know that because I received several phone calls from some not very gruntled small business people who gave me a ball to ball description of proceedings.

After the Premier, Mr Bannon, had spoken on small business, there were questions from the floor. All questions were hostile or critical of the Labor Party's policies, and answers were not well received. Mr Bannon, for example, explained that his Government was keeping State taxation down—which, as one person present told me, was hard to comprehend, given that there had been a budgeted 11 per cent plus increase in State taxation in this current year, and a budgeted 18 per cent increase in State taxation last year.

I have received a growing number of telephone calls and letters about that small business breakfast in recent weeks, underlining the growing frustration, anger and despair for small business in South Australia. This was also reflected in a major article in the *Advertiser* of Saturday 5 October written by Malcolm Newell, who is easily the most informed commentator on small business in South Australia. Mr Newell is not prone—as members opposite would know—to making strong criticisms. He concluded a pungent article on small business by stating:

> The din of complaints reaching my desk growing daily suggests we need a Minister who at least has a basic understanding of what small business is all about.

That is from the gentle Mr Newell. These comments mirror exactly my experience in recent weeks and are at odds with the Minister's current comments about the survey. There were several curious features about the survey, one of which related to the Labor Party's taking this survey in June, a cool four months ago. My questions are:

1. Why did the Minister take four months to make the results of this survey public? Does she believe, given that the economy has further deteriorated since that date, that those results are still relevant?

2. Did the Minister, in her comments to the media, mean that the recession would end six or 12 months from June or six or 12 months from October?

3. Was the survey a random sample or was it taken by phone or other means? It would be useful for the Minister to advise the Council of that because, like Mr Newell, I was left very much in the dark.

4. Were respondents asked about the increase or decrease in profit levels in this survey over a previous corresponding period and, if so, what were the results of that?

5. Will the Minister explain how the results of the survey taken in June could justify her remarkable statement that 'South Australia's recession could be shorter than it has been in other States'?

The Hon. BARBARA WIESE: The honourable member summed it up correctly when he said he was left in the dark like Mr Newell. I suggest that the honourable member is as blind as a bat. When it comes to small business issues, the honourable member is fast developing a reputation in this State as the foremost purveyor of doom and gloom. That is the message that I am getting from small businesses in South Australia. The feedback that I have received from small business people who have attended the breakfasts that have been hosted by the Australian Labor Party during this past few months has been extremely positive.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The honourable member has asked his question.

The Hon. BARBARA WIESE: Many of the small business people who have attended those breakfasts have indicated to me by telephone calls and by correspondence that they previously had never contemplated voting for the Labor Party; they had never supported the Labor Party; and—

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE:—they considered—as have many members opposite—that members of the Labor Party had two heads or something rather peculiar about their anatomy; and, when they—

Members interjecting:

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

The Hon. BARBARA WIESE: —heard Labor Party representatives addressing them at these breakfast meetings on issues of mutual interest, they found that the Labor Party has a very well-developed economic development strategy and a philosophy that is in keeping with their own objectives, and that which is sympathetic to the needs and aspirations of people in small business.

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: The honourable member can say whatever he likes about the Australian Labor Party's small business breakfasts. The fact is that the people who come to those breakfasts in large part have very much appreciated the opportunity to specifically question, in a frank and open way, State and Federal Ministers who have some responsibility in the area that affects these people's interests and future. Whatever the honourable member cares to say—and he does keep repeating his false statistics in the Parliament from time to time—about the State Government's record in taxation, the fact is, and he cannot refute it, that South Australia is the second lowest taxing State in Australia. Over the past few years this Government has done much to ease the tax burden on businesses in this State. The most recent budget, as I have indicated on previous occasions, is no exception to that. Measures have been taken that are of direct benefit to business in South Australia, and those measures concern payroll tax, land tax and many other forms of taxation and charges.

The Hon. L.H. Davis: Answer the question!

The PRESIDENT: Order!

The Hon. BARBARA WIESE: This Government recognises the needs of business in this community. We recognise that in difficult economic times, such as those we are now experiencing, we must do as much as we can to make it as easy as possible for businesses to survive what is, in everybody's opinion, a very tough economic period. The honourable member suggested that I have made predictions about the recession being over in six to 12 months. Like Mr Newell, who wrote an article in Saturday's *Advertiser*, the honourable member has entirely misrepresented the press release that I put out.

In fact, what I was doing was reporting the views of a sample of small businesses in our State which responded to a questionnaire that was circulated to a number of small businesses. It was a random sample, and 566 businesses chose to respond. They were asked to complete a written questionnaire, and the results have only just been tabulated. The information that is contained in that survey in some respects is quite predictable. As I indicated in my press release, there are issues relating to Government taxation and charges, interest rates and other matters that they identified as very significant issues affecting their businesses. I also indicated in my press release that the State Government, in the areas where it has some power in this matter, is attempting to alleviate the burden that those businesses identified as being key issues of concern to them.

Over half the businesses that surveyed in this questionnaire indicated that they expected the economy to improve within six to 12 months and that they expected to employ more staff during that period. That is their view, and the honourable member does not like their view because the famous purveyor of doom and gloom, for whom bad news stories are the only good news stories, does not like the result of this survey. He does not like the fact that a large number of businesses in this State feel that the economy may be improving and wish to employ new people in their businesses.

The PRESIDENT: Order! Time for questions having expired, I call on the business of the day.

DIRECTOR OF PUBLIC PROSECUTIONS BILL

Adjourned debate on second reading.

(Continued from 21 August. Page 360.)

The Hon. K.T. GRIFFIN: The Liberal Party is proposing to support the second reading of this Bill and the establishment of the Office of Director of Public Prosecutions. However, we will seek to move a number of amendments that will make the Office of Director of Public Prosecutions more independent, and I will identify those areas of independence later in my speech. Let me first identify the principal features of the Bill. Any legal practitioner of at least five years standing is eligible to be appointed by the Governor as Director of Public Prosecutions for a term of office not exceeding seven years on terms and conditions determined by the Governor. At the expiration of a term of office the Director will be eligible for reappointment, and there is no limit on the number of terms of reappointment.

The Government may terminate the appointment if the Director is guilty of misbehaviour, physically or mentally incapacitated, becomes bankrupt, is absent without leave of the Attorney-General for 14 consecutive days or for 28 days in any period of 12 months, carries on legal practice outside the duties of his or her office, engages without the consent of the Attorney-General in any remunerated employment, or has a direct or indirect pecuniary interest that has not been notified to the Attorney-General.

The powers of the Director of Public Prosecutions are: to lay charges of indictable or summary offences against the law of the State; to prosecute them; to enforce civil remedies arising out of prosecutions; to take proceedings in relation to the confiscation of profits of crime; to grant immunity from prosecution; to exercise appellate rights as well as entering a *nolle prosequi* or otherwise terminating a prosecution; and to carry out any other functions assigned to the Director by regulation.

While the Director is to be independent of direction or control by the Crown or any Minister or officer of the Crown, the Attorney-General may give directions and furnish guidelines which must be published in the Director's annual report. The Director may give directions or furnish guidelines to the Commissioner of Police or other persons investigating or prosecuting offences on behalf of the Crown, and such directions or guidelines must also be published in the Director's annual report. There are a number of jurisdictions in which the Office of Director of Public Prosecutions has been established, and in each of those jurisdictions the objective is to provide an office that coor-

dinates crime prosecutions and is relatively free of political interference.

The most recent work that I have been able to find dealing with the Office of Director of Public Prosecutions and the relationship of that position to the Attorney-General or the Minister of Justice, as the case may be, is a report of the Canadian Law Reform Commission, working paper No. 62, published in 1990 and entitled 'Controlling Criminal Prosecutions: The Attorney-General and the Crown Prosecutor'.

The Law Reform Commission of Canada makes some recommendations for an independent prosecution service. Before I identify those recommendations, it would be helpful to reflect upon the position in other jurisdictions where there is an Office of Director of Public Prosecutions. I will certainly not deal with all of them, but a reasonable cross-section will help in an appreciation of the role of the Director and the relationship with the Attorney-General of the day. They range from the office of Director, which is subject at all times to the direction of the Attorney-General, to a situation in which the Director is not in any way accountable to the Attorney-General.

At one end of the scale one has the arrangements that exist in, say, England and Wales, and at the other the position of the Director of Public Prosecutions in Victoria. In England and Wales, serious criminal offences are generally prosecuted through the Office of the Director of Public Prosecutions. Formal responsibility for criminal prosecutions is given to the Attorney-General. In England and Wales, the Attorney-General has the power to take over private prosecutions and to terminate them through the use of the *nolle prosequi* power. In England and Wales the position of the Attorney-General is quite different from that which applies in Australia, because in England and Wales the Attorney-General is not a member of the Cabinet. The Attorney-General generally attends Cabinet meetings and gives advice, but is not formally a member of the Cabinet.

The Office of Director of Public Prosecutions in England and Wales was established in 1879 by the Prosecution of Offences Act. Until 1985, the Director had responsibility for only a small percentage of the total number of criminal prosecutions in England. The great majority of prosecutions were handled by counsel briefed by local chief constables, who were, of course, the chiefs of their respective local police forces. That situation changed in 1985 when the Prosecution of Offences Act was passed.

The Office of Director of Public Prosecutions in England and Wales is created by statute. The Director is appointed by the Attorney-General and is paid a salary determined by the Attorney-General with the approval of the Treasury. The pension benefits of the Director are arranged individually with the Treasury unless, of course, the Director is appointed from the Civil Service. In the United Kingdom and Wales there is a Crown Prosecution Service, which is responsible for all non-private prosecutions throughout England and Wales. The Director of Public Prosecutions is head of the Crown Prosecution Service.

In England and Wales, private prosecutions may still be laid by information. There is no specific term of appointment, although it is generally until retirement, but the Director is subject to the normal terms and conditions governing civil servants. So, the Director could be removed from office for inefficiency or for falling foul of the law or the normal rules of conduct. The Director has a certain measure of independence with regard to staffing the Crown Prosecution Service because the Director appoints staff, although that is done with the Treasury's approval of the number of staff to be appointed. The Director is required to discharge his functions under the United Kingdom Act under the superintendence of the Attorney-General. Sir Michael Havers, a former Attorney-General of Great Britain, explained the nature of this superintendence in the following words:

> My responsibility for superintendence of the duties of the Director does not require me to exercise a day-to-day control and specific approval of every decision he takes. The Director makes many decisions in the course of his duties which he does not refer to me, but nevertheless I am still responsible for his actions in the sense that I am answerable in the House for what he does. Superintendence means that I must have regard to the overall prosecution policy which he pursues. My relationship with him is such that I require to be told in advance of the major, difficult, and, from the public interest point of view, the more important, matters so that should the need arise I am in the position to exercise my ultimate power of direction.

In the context of that description of the nature of the Attorney-General's superintendence in England and Wales, one can see that it is open to the Attorney-General to instruct the Director to take over proceedings that have been commenced privately and then to offer no evidence. Equally, the Attorney-General could instruct the Director to institute particular proceedings.

In its report, the Law Reform Commission of Canada observes that the independence of Crown counsel from political influence is protected for the most part, but nevertheless significantly, by tradition. The Director is required to present an annual report to the Attorney-General who, in turn, is required to table that report in the United Kingdom Parliament. That report must contain details of any changes to the code for Crown Prosecutors which gives general guidelines concerning whether to initiate or discontinue charges and so on. Actual prosecutors do have some measure of protection by virtue of the relative independence of their immediate superior, that is, the Director of Public Prosecutions. It is understood by the parties involved that the Attorney-General will not normally interfere with the Director's management of the office or the handling of particular cases. If this should occur it is understood that the Attorney-General will not act from partisan political motives and that the Cabinet will not attempt to dictate the appropriate course of action to the Attorney-General.

I turn now to the position in the Republic of Ireland. Since 1974 there has been a Prosecution of Offences Act. The Office of Director of Public Prosecutions has also existed from that date. The Director is a civil servant appointed by the Government. The appointment is based on the recommendation from a committee of five people. They include the Chief Justice and the Chairman of the General Council of the Bar of Ireland. The terms and conditions of employment, which include superannuation, are determined by the person who holds the position equivalent to Prime Minister, but in consultation with the Minister for the Public Service.

There is an office of Attorney-General. The Attorney-General is the adviser to the Government on matters of law and is responsible for the prosecution of crimes and offences other than summary conviction matters. The Attorney-General does not sit as a member of Cabinet and is not even required to hold a seat in the Irish House. The Attorney-General's independence is reinforced by the rule that the Irish House, or the Dail, even if he is a member, cannot call on the Attorney-General in the House to justify the handling of particular prosecutions.

Under the provisions of the Prosecution of Offences Act in the Republic of Ireland, section 2 (5) provides:

> The Director shall be independent in the performance of his functions.

There is a requirement for the Attorney-General and the Director of Public Prosecutions to consult concerning the functions of the Director, but that does not give the Attorney-General any right to give directions to the Director.

The independence of the Director is emphasised by a provision which prohibits communication with the Director's staff or the Director for the purpose of influencing pending criminal proceedings.

There are few restrictions on the Director. The responsibility for authorising prosecutions under Acts like the Geneva Conventions Act, the Official Secrets Act and the Genocide Act remains with the Attorney-General, as does the defending of challenges to the constitutional validity of laws, but these limitations do not amount to control over the Director. The committee which recommends the appointment of the Director of Public Prosecutions, as I have indicated, comprises the Chief Justice and the Chairman of the General Council of the Bar of Ireland, but also includes the President of the Incorporated Law Society, the Secretary to the Government and the Senior Legal Assistant in the office of the Attorney-General.

The Director can be removed by the Dail, but before that can occur the Dail must have before it the report of a committee consisting of the Chief Justice, a judge of the High Court and the Attorney-General. There are no specific grounds for removal. The committee can investigate the condition of health, either physical or mental, of the Director or the conduct of the Director, whether it relates to the execution of his office or otherwise. There is little control in the Republic of Ireland by the Government or the Attorney-General over the Prosecution Service and there are considerable institutional protections for the independence of that service. The law reform commission of Canada report observes that it has been questioned whether the degree of independence is not so great as to eliminate any real accountability for the Prosecution Service.

I turn now to the position in Victoria—very much closer to home. There is an Attorney-General in Victoria. The office is covered by the Constitution and it requires that the Attorney-General be a member of Cabinet. The Prosecution Service is not under the direct control of the Attorney-General, but it is administered through the office of the Director of Public Prosecutions. That office was created by the Director of Public Prosecutions in 1982. The Director is appointed by the Governor in Council. The Director's office prepares, institutes and conducts all criminal proceedings on behalf of the Crown in the High Court, the Supreme Court and the County Court, conducts preliminary inquiries and has the authority to take over proceedings in any summary offence.

The Director has the same power as the Attorney-General to enter a *nolle prosequi* in criminal proceedings, though the Attorney-General also retains that power. The Director is responsible to the Attorney-General for the due performance of his functions under that Act, but the responsibility does not affect or derogate from the authority of the Director in respect of the preparation, institution and conduct of proceedings under that Act. By that scheme, the Victoria Director of Public Prosecutions has virtually complete structural independence.

Again, the Law Reform Commission of Canada report states that the purpose of the arrangement is to insulate the Director from any control by the Attorney-General and thereby guarantee that the Director's decisions are made without reference to political considerations that might be feared to motivate the Attorney-General.

That insulation from influence is supported by other arrangements concerning the Director of Public Prosecutions. The Director has responsibility for selecting staff and controlling the budget of his office. The holder of that office of Director of Public Prosecutions is appointed until the age of 65, receives the salary and pension benefits of a puisne judge of the Supreme Court and is not subject to the provisions of the Public Service Act 1974.

The Director may be suspended by the Governor in Council. If the Director is suspended, a full statement of the grounds must be presented by the Attorney-General to Parliament within seven days or, if the House is not sitting, within seven days of the start of the next session. If Parliament does not within seven days of the report pass a resolution for the removal of the Director, then the suspension is lifted. That is the only mechanism for the removal of an incumbent Director.

The independence of individual prosecutions is further protected by restrictions on the Director's involvement at that level. The Director can furnish general guidelines to prosecutors whether they be police or other persons, but the Director is not entitled to furnish guidelines in relation to a particular case. Any guidelines of a general nature which are issued must be published in the *Government Gazette*. The Law Reform Commission of Canada report makes the following observation on the position in Victoria:

> The Victoria model is at the extreme end of independence in the prosecution of criminal offences. As with the Republic of Ireland, therefore, it is arguable that little room has been left for accountability. Further, even more than in the United Kingdom, it is open to the Government, and indeed the Attorney-General, to disavow responsibility for any unpopular or unwise decisions. The Attorney-General has no power to influence particular prosecutions, for proper or improper motives. The Director is similarly limited. The Government is not responsible for the actions of the Director, beyond having made the initial appointment, and so at no level above the individual prosecutor is there anyone who can effectively be held accountable.

I suppose in some respects that is one of the issues which has to be considered even in respect of the proposal in this Bill.

The next office examined by the Law Reform Committee of Canada in its report is that of the Director of Public Prosecutions at the Commonwealth level. As everyone would know, there is an office of Attorney-General which heads the Department of the Attorney-General and that incumbent is required to be a Senator or member of the House of Representatives. The Attorney-General is not excluded from Cabinet, but is not necessarily a member. The office is sometimes but not always combined with that of the Minister of Justice.

Control of prosecutions at the Commonwealth level have been placed in the hands of a Director of Public Prosecutions and that office has been created under the Director of Public Prosecutions Act 1983. The Director is appointed by the Governor General, and is paid remuneration determined by the Remuneration Tribunal. The staff of the Director's office are appointed under the Public Service Act with the Director having the powers of a permanent head under that Act of Parliament.

The Attorney-General at the Commonwealth level has retained the ability to be involved in the prosecution service, either through general guidelines or in dealing with individual cases. Subsection (8) of the Commonwealth Act provides:

> In the performance of the Director's functions and in the exercise of the Director's powers, the Director is subject to such directions or guidelines as the Attorney-General, after consultation with the Director, gives or furnishes to the Director by instrument in writing.

That section goes on to provide:

> Without limiting the generality of subsection (1), directions or guidelines under that subsection may—
>
> *(a)* relate to the circumstances in which the Director should institute or carry on prosecutions for offences;
>
> *(b)* relate to the circumstances in which undertakings should be given under subsection 9 (6); and
>
> *(c)* be given or furnished in relation to particular cases.

Steps are taken to prevent the abuse of power by the Attorney-General because a subsequent subsection provides:

> Where the Attorney-General gives a direction or furnishes a guideline under subsection (1), he shall—
>
> *(a)* as soon as practicable after the time that is the relevant time in relation to the instrument containing the direction or guideline, cause a copy of the instrument to be published in the *Gazette* and;
>
> *(b)* cause a copy of that instrument to be laid before each House of the Parliament within 15 sitting days of that House after that time.

A provision exists to enable publication to be delayed where the interests of justice require. If there is a specific direction in the course of a specific prosecution, it may be inappropriate for it to be published until the prosecution has been completed.

The Director is protected by statute, enjoying greater security of tenure than would a civil servant. He is appointed by the Governor-General for a specific term not to exceed seven years, but is eligible for reappointment. There are grounds for removal before the expiration of that term, some of which make removal possible while others make it compulsory. The Governor-General may terminate the appointment for misbehaviour or for physical or mental incapacity. In the event of bankruptcy or engaging in outside employment, the appointment must be terminated. Pension arrangements are not specifically designed to give the Director greater independence than is enjoyed by a civil servant.

The Director of Public Prosecutions in the Commonwealth has charge of the prosecution service to direct its day to day operations, but the Attorney-General retains the ability to direct the Director of Public Prosecutions not only in general terms but concerning individual cases. Thus there is direct accountability by the Director to the Attorney-General by virtue of this control over the Director. The Attorney-General is also publicly accountable for actions taken with regard to the prosecution service.

Another country to which I wish to refer is New Zealand, which has no Office of Director of Public Prosecutions, although something similar to that office has evolved. It has an independent prosecution service in which it is accepted that the Attorney-General should play no role. The day to day operations of the service, as well as the provision of legal opinions and advice, are the responsibility and largely unhindered domain of the Solicitor-General. Although the Attorney-General is not prevented from giving directions to the Solicitor-General, or required to make public any directions, in practice no such involvement by the Attorney-General takes place. There is no statutory protection—it is just a matter of convention or tradition. It is interesting to note also that the position of Solicitor-General in New Zealand also does not exist by virtue of statute and there is no structural independence for the Solicitor-General.

The Law Reform Commission report proceeds to examine the need for change in Canada. Whilst Canada is a confederation with a need for a Canadian prosecution service to be properly integrated with the situation that applies across the provinces to some extent but more particularly to make it consistent with appointments of other statutory office holders, there are nevertheless, certain principles which can be established. The Law Reform Commission makes the following observations:

> In determining any new system to recommend for Canada, it would be well to recall the principles that were earlier suggested to be important. First, political considerations should normally have no place in individual prosecutorial decisions. Next, in those circumstances in which political considerations in the broad sense do arise, partisan motives, based on the political consequences to the Attorney-General or the Government of the day, must not prevail. One method of trying to achieve this is through the independence of the Attorney-General from Cabinet, but what is most important is a clear understanding of, and adherence to, the principle of non-partisanship by the decision-maker.
>
> Further, the distinction between partisan and non-partisan political considerations cannot always be drawn clearly. In such circumstances, public opinion must act as the arbiter, and the measure of accountability that one has acted not selfishly, but in the public interest.
>
> It is also instructive to note the wide range of models that has been found to operate satisfactorily in other countries. Systems that incorporate an extreme degree of institutional independence, as well as those with virtually no structural independence, both seem to be capable of producing an apparently unbiased prosecution service. It can be argued that what is crucial, therefore, are not the institutional arrangements, but rather adherence to the proper governing principles.

The commission then makes its recommendations as follows:

> 1. To ensure the independence of the prosecution services from partisan pollitical influences, and reduce potential conflicts of interest within the Office of the Attorney-General, a new office should be created, entitled the Director of Public Prosecutions. The Director should be in charge of the Crown Prosecution Service, and should report directly to the Attorney-General.
>
> 2. The Director of Public Prosecutions should not be a civil service appointment. The Director should be appointed by the Governor-in-Council, and chosen from candidates recommended by an independent committee.
>
> 3. The Director should be appointed for a term of 10 years, and should be eligible to be reappointed for one further term.
>
> 4. The Director should be removable before the expiry of a term. The grounds for possible removal should be misbehaviour, physical or mental incapacity, incompetence, conflict of interest, and refusal to follow formal written directives of the Attorney-General.
>
> 5. The Director should only be removable by a vote of the House of Commons, on the motion of the Attorney-General, following a hearing before a parliamentary committee.
>
> 6. The Director should be paid the same salary and receive the same pension benefits as a judge of the Federal Court of Canada.
>
> 7. The Attorney-General should have the power to issue general guidelines, and specific directives concerning individual cases, to the Director. Any such guidelines or directives must be in writing, and must be published in the *Gazette* and made public in Parliament. If it is necessary in the interests of justice, the Attorney-General may postpone making public a directive in an individual case until the case concerned has been disposed of.
>
> 8. The Director should have the power to issue general guidelines, and specific directives concerning individual cases, to Crown prosecutors. Any general guidelines must be in writing, and must be published in an annual report by the Director to Parliament.
>
> 9. The Director should have all of the criminal-law-related powers of the Attorney-General, including any powers given to the Attorney-General personally. The Attorney-General should also retain these powers.
>
> 10. The budget for the Office of the Director of Public Prosecutions should be included as a line item within the budget of the Attorney-General. Control over the funds allocated to the office should rest with the Director, not with the Attorney-General.

In their commentary, they say:

> In general, we favour the model of the Commonwealth of Australia, although we see benefits to be gained from salary and tenure provisions similar to those in the Australian State of Victoria, and appointment and removal provisions similar to those in Ireland. In addition, we do not wish to depart too dramatically from arrangements for similar Canadian offices.

They continue:

> Several advantages will flow from the creation of this office. Primarily, as noted, the existence of an office of Director of Public Prosecutions should increase the actual independence, and the public perception of the independence, of Crown counsel. In addition, removing direct control over prosecutions from the Attorney-General will help create a division of responsibilities which lessens the apparent conflict which now exists when a single Minister, exercising the dual roles of Attorney-General and Minister of Justice, acts as both the legal adviser to the Government and the head of the Government's litigation team. Further, placing control in the hands of a person with security of tenure, who will not change as each Government does, will provide greater continuity to the prosecution service.
>
> The Director, who will be a lawyer, will have charge of the criminal prosecution service, and report directly to the Attorney-General. The Director will not be a civil servant, but rather should be appointed by the Governor in Council. With regard to appoint-

ments, we propose adopting the approach of the Republic of Ireland, which is similar to the manner in which judicial appointments are made in Canada.

In relation to the term of office for 10 years with the right of appointment for a further 10 years, the Law Reform Commission of Canada says that it does not believe that the benefits from continuity of administration justify continuing any one person in the job beyond 20 years.

The Law Reform Commission also makes an observation about the salary. It indicates that it is not something that ought to be set by the Government or even negotiated with each incumbent. If it is linked to the salary which is paid to a judge of the Federal Court of Canada, that allows all sorts of partisan and personal issues to be eliminated.

The Victorian Director of Public Prosecutions, who is paid the salary of a Supreme Court judge, has said:

> The creation of independence, both in fact and in appearance, has been achieved by according the Director of Public Prosecutions the status of a Supreme Court judge. Apart from the inviolability of tenure a further advantage accruing from this situation is that any subsequent appointment of a Director as a judge of the Supreme Court of Victoria involves a lateral transfer of duties and interests, thus effectively nullifying any temptation to use the position of Director as a stepping stone in a career dependent for advancement upon future Government approval. A tangential benefit of investing the office with judicial prestige is that the decisions of a Director are more readily accepted by the community.

The Law Reform Commission of Canada goes on to adopt that approach by making a further provision for the Director in Canada that he or she should have the same pension entitlement as a judge of the Federal Court. With this guarantee, the Director will be less dependent upon reappointment and, therefore, he or she will be able to act independently.

That issue has also been drawn to my attention in some personal conversations I have had with the Director of Public Prosecutions in Victoria, who says that that security of tenure, that independence and that guarantee of salary mean that the Director can operate without fear or favour in any matter and is not dependent upon Government goodwill for reappointment. Of course, Victoria has no fixed term: it is an appointment until the age of 65 years.

The logic is the same, even if the appointment is for a period of, say, 10 years, with a right to be reappointed for a further 10 years. If removal is too easy, the Director may have—or at least be perceived to have—a motivation to please the Government of the day, and then be insufficiently independent. However, on the other hand, not to allow for premature removal of a Director would make the Director virtually unaccountable.

The Canadian commission overcomes that issue in the report by proposing a removal by a vote of the House of Commons on the motion of the Attorney-General. This gives the opportunity for public scrutiny and parliamentary debate, even if an Attorney-General proposes that it is likely to pass.

In this State, given the number of statutory appointments, the formula is a resolution of both Houses of Parliament which, of course, gives an added measure of protection for an incumbent of a particular statutory office.

Under the recommendations in Canada, the Attorney-General is to have the ability to give instructions to the Director in the form of both general guidelines and directives relating to particular cases and to require those directives to be laid before the Parliament and to be published in the *Gazette*. It was not envisaged that the Director could exercise control over the day-to-day decision-making involved in the prosecution service.

I suppose that is appropriate in Canada only because there is such a large prosecution service that it would be impossible for the Director to maintain surveillance over all the day-to-day prosecution activities of his or her prosecuting staff.

The other recommendation is that the Law Reform Commissioner in Canada believes it would be desirable if the Office of the Director of Public Prosecutions was physically separate from the Attorney-General's Department. The potential interaction between the policy making and prosecution functions would thereby be reduced, according to the commission, and the appearance of independence would be enhanced. The recommendations concluded:

> This arrangement would therefore result in benefits in both aspects.

I thought it was important to try to give that broad overview because it is important, in the issues that I now want to address in relation to this Bill, that there be an appreciation of at least the rationale for those proposals. The proposals that I make for amendment will, I suspect, in fact meet with the approval of lawyers, whether it be the Law Society, the Bar Council or individual practitioners, and will be consistent with a view that the Liberal Party holds that there ought to be, on the one hand, significant independence but, on the other hand, ultimately some accountability.

The first proposition for change to the Bill is that the appointment should be of a legal practitioner of at least seven years standing—that is the minimum qualification required of a Supreme Court judge—rather than the five years referred to in the Bill. The office of Director is an important one, and a person with experience ought to be appointed to that position. Instead of appointment for a term not exceeding seven years, which allows any period up to that, we will be proposing that the term be a fixed term of 10 years with an eligibility to be reappointed for up to a further 10 years. At least the initial fixed term gives security of tenure. We tend to the view that there should be only two terms of 10 years or one of 10 years and a further term of a period up to 10 years, because we do not believe that a person who is occupying the position of Director ought to become too entrenched in the service.

The Bill does not make any provision for salary. It provides that the Director will be appointed on terms and conditions determined by the Governor, and this means that that is effectively the terms and conditions imposed by the Government of the day and negotiated with the Director. The Liberal Party's view is that the salary should be fixed by the Remuneration Tribunal because the Director should be a statutory office holder, and statutory office holders' salaries and allowances are fixed ordinarily by the Remuneration Tribunal. However, we ought to ensure that the salary should be not less than the salary and allowances of a District Court judge.

We make that proposition because we can acknowledge that the office of Solicitor-General, which is an important one, probably has some marginal seniority over that of a DPP and, as I understand it, the Solicitor-General is paid a salary which is equivalent to that of a Supreme Court judge. The Solicitor-General's Act also provides that the Judges Pensions Act applies to the Solicitor-General as though he or she were a judge. We would suggest that for the Director of Public Prosecutions the same conditions ought to apply.

In terms of removal, we do not believe that it is appropriate for the Governor to terminate the Director's appointment but that the Governor should be able to suspend the Director of Public Prosecutions, with notice of such suspension to be tabled in each House of Parliament, and, if a resolution is not moved within 14 sitting days, the Director is to be restored to office. That position is similar to

that of the Auditor-General and the Ombudsman, and it provides the Parliament with a more direct role in the accountability of the DPP.

We believe also that the Director should have to inform the Attorney-General of any direct or indirect interest that is likely to raise a conflict in any matter within the responsibility of the Director. The Bill provides that the Director must disclose only direct or indirect pecuniary interests that the Director has or acquires in any business or in any body corporate carrying on business in Australia or elsewhere. We are conscious that 'pecuniary interest' can be somewhat limiting and that there may be interests—the membership of a body corporate which does not involve a pecuniary interest or some other association—which ought to be disclosed. So, we seek to broaden that.

We also propose that the Attorney-General may not give directions to the Director of Public Prosecutions in individual cases but may only furnish guidelines. We are of the view that the requirement for publication of guidelines in the Director's annual report is an inadequate mechanism for achieving accountability, recognising that annual reports may not be tabled for some 15 or 16 months after the commencement of a financial year to which a report relates, and that the information published in a sense becomes significantly outdated. However, we believe that if there are guidelines they ought to be published in the *Government Gazette* and laid before both Houses of Parliament rather than waiting for the Director's annual report to contain that information.

We also believe that any directions and guidelines given by the Director to the Commissioner of Police or other persons investigating or prosecuting offences on behalf of the Crown should be the subject of notice in the *Government Gazette* as well as be tabled in each House of Parliament, unless there is a good reason for delay in such notice until a specific case has been disposed of.

We believe that with these changes there will be a greater level of security of tenure for the Director and a significantly greater level of independence, as well as accountability to both the public and the Parliament. Subject to those matters, the Opposition supports the second reading of the Bill.

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

That the debate be now adjourned.

The PRESIDENT: I am sorry; the Hon. Mr Gilfillan has the call.

The Hon. C.J. SUMNER: What are you doing? We are going on with this today.

The Hon. I. GILFILLAN: The Democrats support this Bill, which provides for the establishment—

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. I. GILFILLAN: —of an independent office of Director of Public Prosecutions. It is important—

Members interjecting:

The PRESIDENT: Order! The Council will come to order. Order, the honourable Attorney-General!

Members interjecting:

The PRESIDENT: Order! I suggest that if members want to have a discussion they take it outside. Order! The Hon. Mr Gilfillan has the call.

The Hon. I. GILFILLAN: Thank you, Mr President. The Democrats indicate support for this Bill, which provides for the establishment of an independent Office of Director of Public Prosecutions. It is important, however, to raise some questions about aspects of the Bill to which I hope the Attorney-General will be able to provide answers—if he listens.

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. I. GILFILLAN: In recent years a Director of Public Prosecutions has been created in a number of other jurisdictions, most notably a Federal DPP, in New South Wales, Victoria, Queensland and the ACT. In addition, Canada is moving in that direction. This has given those States a focus to satisfy members of the community that there is indeed a commitment towards the development of an independent professional prosecution service.

According to the Attorney-General's second reading speech, the creation of such an office here in South Australia will mean the Office of Director of Public Prosecutions will not only be independent, but will be seen to be independent of political and ministerial influence or intervention. In the pursuit of a just and fair judicial system I believe this to be an integral part of that pursuit and therefore it has, in principle, the support of the Australian Democrats.

Under this Bill the newly created Director will have the power to lay charges of and prosecute indictable or summary offences against the law. Currently this procedure is handled by the Attorney-General and then delegated to the Crown Solicitor. However, in January this year Cabinet agreed to the establishment of an independent Office of Director of Public Prosecutions, a move that was subsequently endorsed with the release of the National Crime Authority Operation Hydra Report which recommended that such a position be established.

As with the creation of any office or position associated with the Government there is always the vexing question of cost, and I hope that the Attorney will, either in his summing up or in Committee, outline details surrounding the establishment of the Office of Director of Public Prosecutions in terms of overall cost for the following:

1. How many staff will be required, where will they be drawn from and at what annual cost to the taxpayer?
2. Where will the office of the DPP be located and what will the annual rental be for such premises?
3. What type of infrastructure does the Attorney imagine will be needed for this new office and what will the overall running costs be on an annual basis?

One other area I would like the Attorney to expand on in his response is the impact that the creation of this position will have on the collective roles of the Solicitor-General and the Crown Prosecutor.

I believe it is worth acknowledging that the Hon. Trevor Griffin has provided a detailed analysis of the history of the development of the role of the Attorney-General in other jurisdictions.

No doubt a Director of Public Prosecutions will go a long way to ensuring that often controversial criminal cases are handled in an independent way. I believe that South Australia now has the opportunity to learn from the mistakes of other jurisdictions in the creation of a DPP.

There are matters that need further serious consideration, such as the term of office to be served by a DPP and, given the drive for independence under which such an office is to be established, there must be an equally independent manner in which that position can be terminated or the office holder removed. A DPP's independence must be assured and, in so doing, I believe it is not acceptable for the Attorney to be able to give the Director instructions; guidelines yes, but not instructions.

I believe there are genuine and appropriate concerns about the reporting of policy guidelines and the need for that information to come before Parliament without having to wait for an annual report.

There are other areas of concern, that have been mentioned in part by the Hon. Trevor Griffin, such as decla-

ration of pecuniary interests, dismissal procedures, the setting of salary and the level of expertise needed to fill the position of Director.

I look forward to hearing the discussion on those matters in the Committee stage. I believe that by that process we will construct the best DPP that one can for South Australia and that it is in the best interests of South Australia that this be done. I indicate support for the Bill.

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

That this debate be further adjourned.

The Council divided on the motion:

While the division was being held:

The Hon. I. GILFILLAN: On a point of order, Mr President, I ask you to consider the fact that there was only one voice in the negative and more than one voice in the affirmative.

The PRESIDENT: I did not hear only one voice, so I will still call for the division.

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

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

Pair—Aye—The Hon. Bernice Pfitzner. No—The Hon. R.R. Roberts.

Majority of 3 for the Ayes.

Motion thus carried.

DISTRICT COURT BILL

Adjourned debate on second reading.

(Continued from 14 August. Page 143.)

The Hon. K.T. GRIFFIN: This is the first of a series of Bills relating to radical restructuring of the Magistrates Court and the District Court and to making a number of other changes to the law relating to committal proceedings in particular as well as jurisdictional limits. These Bills were introduced on 14 August and the Attorney-General indicated that it would not be his intention to proceed with them immediately so that those who had an interest would have an opportunity to give consideration to them with a view to progressing them this week.

The Opposition has considered these Bills and has sought the advice of those very much involved in the courts, namely, judges, lawyers and magistrates, as well as some who represent disadvantaged litigants, particularly in relation to the Enforcement of Judgments Bill. Contrary to what the Attorney-General said earlier, we are prepared to facilitate consideration of the various pieces of complex legislation before us, notwithstanding that we do not have research or other resources available to us.

Another factor which needs to be recorded is that the Law Society, which is the principal body representing the legal profession, whilst it had discussion papers which focused upon courts restructuring, did not receive these Bills until they were introduced. That, of course, has meant some difficulties in getting responses from bodies, such as the Law Society, whose membership essentially comprises volunteers, but they have now given detailed consideration to the Bills. They were not able to reach a final conclusion until the Bills were introduced because, as we all know, the drafting of many propositions is critical to an appreciation of the fine points of legislation and of change. However, having now received the Bills and relevant second reading speeches, they have provided a submission.

That submission was available on Friday of last week, although I had undertaken substantial research of my own and other consultation in the intervening period. I think it was also on Friday that the Government would have received its copy of the Law Society's submission. It was late on Thursday, 3 October, that the Attorney-General made available to me copies of submissions by the District Court and Supreme Court judges, with the concurrence of the judges, and some additional pages yesterday.

The Bills are particularly complex. Whilst they relate to substantial and radical restructuring, they have a significant impact in the criminal jurisdiction on the rights of accused persons. That impact is significantly related to the committal proceedings as well as to the change in the description of summary offences that will be dealt with summarily in the Magistrates Court, and a number of offences are removed from the area of trial by jury. I will address that matter in relation to the Justices Act Amendment Bill.

Presently, the District Criminal Court and the Local Court, which are full and limited jurisdictions, and the Small Claims Court are all dealt with under the Local and District Criminal Courts Act. For a number of years consideration has been given to establishing a District Court with its own Act of Parliament and with both civil and criminal jurisdiction and the Local Court with its own Act of Parliament as a court with both civil and criminal jurisdiction. The District Court Bill and the Magistrates Court Bill are the combination of a number of years of work by judges, magistrates and others.

The District Court Bill establishes the District Court. It will exercise civil and criminal jurisdiction as well as having an administrative appeals division and it will deal with criminal injuries claims. Its jurisdiction is substantially widened. Under the Bill, it will deal with all criminal cases, other than treason, murder, conspiracy or assault with intent to commit any of those offences. The Supreme Court will also deal with all criminal matters so that to a large extent the District Court's jurisdiction is concurrent with that of the Supreme Court, but in the scheme of things the Supreme Court is to become, at least in the criminal jurisdiction, more of an appellate court and a court dealing with serious criminal and complex trials as well as other difficult criminal cases.

The Bills do not give any indication as to which case should go to which trial court, but I understand that this has still to be worked out. I would have hoped that there would be at least some indication from the Attorney-General of the mechanism which is proposed to be used to identify, for magistrates in particular, the cases which will be dealt with in the District Court and the Supreme Court rather than some informal juggling acts by the judges in the Supreme Court and the District Court assessing each case on its merits on the face of the documents or in some other way. I ask the Attorney-General to give some consideration to identifying for us what procedures are likely to be put in place for resolving that issue.

In the civil jurisdiction the District Court is not to have any limit on its jurisdiction. At present its jurisdiction is $150 000 for personal injury claims arising out of a motor vehicle accident and $100 000 for all other claims. Its equitable jurisdiction, that is, jurisdiction to make orders such as injunctions or specific performance, is incidental to the jurisdiction to which I have just referred. It has no general equitable jurisdiction. Whilst in the second reading explanation the Attorney-General said that the difference between

the common law jurisdiction and the equitable jurisdiction is not so difficult to make now, the fact is that from a practitioner's viewpoint there does have to be experience developed in the way in which the equitable jurisdiction will operate and therefore one has to question whether all the judges of the District Court are suitably equipped to exercise that jurisdiction.

The Magistrates Court will also have jurisdiction to deal with personal injury claims up to $60 000, all other claims up to $30 000 and small claims up to $5 000. That should be contrasted with the present jurisdiction of the Small Claims Court, which is limited to $2 000, and all other jurisdictions limited to $20 000 across the board.

In relation to the District Court, when the jurisdictional limits were changed about four years ago and increased quite substantially, it resulted in a significant number of cases being fed down to the District Court by the Supreme Court and as a result there has been a significant backlog in cases waiting to be heard. The judges of the District Court tried to overcome that by distinguishing between pre 1990 and post 1990 cases. The latter would be dealt with more expeditiously than the former, but there is still a substantial backlog in the cases initiated prior to 1990 and special effort will be needed to address that backlog if real justice is to be given to those frustrated litigants who have been waiting for so long to have their cases heard.

As a result of this Bill it is likely that the workload of the District Court will be substantially increased and, whilst provision exists in the budget for two extra District Court judges, I suggest that it is unlikely to be of much help in overcoming the overall backlog of cases which have occurred and will occur when this legislation comes into operation if unamended. One must be somewhat nervous about giving to the District Court such a wide jurisdiction as is proposed in the Bill because of the lack of experience of a number of the judges in those more difficult cases.

In some other States of Australia the jurisdiction of the intermediate court, at least in civil cases, is virtually unlimited and, provided there is a full right of appeal to the Supreme Court, difficulties may be resolved, although one must question that. One of the major issues arising from the package of Bills will be the extent to which resources will be required both in the District and Magistrates Courts in dealing with additional workloads in order to ensure that justice is not delayed and that litigants have their cases, both in the civil and criminal jurisdictions, dealt with expeditiously and without an undue period of waiting for the matters to be heard in court.

Some specific issues need to be addressed and, in order to assist the Attorney-General, in our usual spirit of cooperation, I will identify some of those matters. They are by no means exhaustive of the issues that will need to be addressed in Committee. The first is the jurisdictional limit. The Law Society has indicated its opposition to the proposal for unlimited jurisdiction at the civil level: it would prefer no change. It bases its opposition to the removal of monetary ceilings on a number of arguments and it is important to identify them. It states that it has a genuine concern that, with the jurisdiction concurrent to that of the Supreme Court, complex litigation may be drawn out of the Supreme Court and into the District Court. It makes the point:

> Such litigation can include larger insurance claims, complex tort claims involving difficult questions in relation to damages and interest, large commercial matters and protracted contractual disputes. It would be true to say that many of the justices of the Supreme Court are exposed in practice to such matters. The District Court on the other hand was created historically to deal with other classes of action, in particular personal injury damages litigation and middle level crime. The proposed lifting of any jurisdictional restraint may therefore well mean that matters that should be more properly dealt with in the Supreme Court are dealt with in the District Court.

It goes on to talk about the workload of the District Court, suggesting that the removal of a monetary jurisdictional limit is likely to cause an influx of large, time-consuming cases into the District Court which, in itself, will be counterproductive of developments made by the District Court judges in case flow management. It also takes the view that consistently with its opposition to the removal of monetary ceilings, the conferring of full equitable jurisdiction on the District Court is not appropriate.

The point is made that the granting of injunctive and other uniquely equitable relief is something beyond the past experience of the District Court. Another consequence of removing the monetary limit on the jurisdiction of the District Court is that a trend exists already away from the Supreme Court in commercial matters. Even though it has a commercial list and commercial proceedings are facilitated, with the passing of the Australian Corporations law, which vests the current jurisdiction in the Federal Court as well as in State Supreme Courts, more and more cases involving commercial issues will be taken in the Federal Court.

In fact, several lawyers to whom I have spoken recently have said that, on instructions from their clients, they have specifically tried to find a peg upon which to hang an action in the Federal Court rather than taking the matter into the Supreme Court. I think that has a detrimental effect upon not only the Supreme Court but also the practice of the law, the opportunities for practitioners to appear before State Supreme Courts and to maintain the status of that court. By far and away one of the most important aspects of the change is that, if the District Court were to become the principal civil trial court as well as the principal criminal trial court, that would mean that litigants, particularly in the complex commercial cases, would be more likely to endeavour to have their matters brought on in the Federal Court than in the State Supreme Court. Overall, South Australian courts will diminish in both status and experience as a result of that.

The Liberal Party is in a position where, on the one hand, it wants to endeavour to recognise the necessity for some increase in civil jurisidiction but, on the other hand, is nervous about removing the ceiling completely. Therefore, we propose that the monetary ceilings be lifted in the District Court to $150 000 for all claims except personal injuries claims arising from motor vehicle accidents, and that that ceiling should be lifted from $150 000 to $200 000. That in itself will result in a substantial increase in work, along with the increase in the criminal jurisdiction.

Clause 7 of the Bill divides the court into four divisions. It is not clear from the drafting whether judges are able to serve in more than one division. They ought to be able to, and I suspect that that was the intention, but I propose that that be put beyond doubt. Clause 12 provides for a person who is eligible for appointment to judicial office or who has held but retired from judicial office, to be eligible to be appointed to act in an office, except that of Chief Judge, for a term not exceeding 12 months. That is akin to an acting or a temporary appointment. In the past, objection has been raised both by the profession and by the Supreme Court bench to long temporary or acting appointments where lawyers sit on the bench for some months, then return to the legal profession only to appear on the other side of the bar table before the same court. That is generally regarded within the profession and by members of the bench as being unsatisfactory.

The Liberal Party did support the concept of auxiliary judges, which I understand is working reasonably well. Aux-

iliary judges do take on responsibilities within the District Court as well as the Supreme Court. It is not active legal practitioners who are appointed but, generally speaking, retired judges. Therefore, it is proposed that that part of this clause, which allows the person eligible to be appointed as a judicial officer to be appointed as an acting judge or as an acting master, be deleted. Incidentally, that is also the view of the Law Society, although it takes its opposition much further and includes auxiliary judicial appointments. The society does make the point that such acting appointments do tend to compromise the concept of the independence of the judiciary.

Clause 12 (5) provides that the periods of legal practice within and outside the State will be taken into account in determining whether or not a legal practitioner has the standing necessary for the appointment to a judicial office, as either a judge or a master. As I recollect, that provision is similar to a provision in the auxiliary judges' legislation, but it does seem inappropriate for permanent appointments to judicial office unless it is qualified, I would suggest, to refer to legal practice in some common law jurisdiction. I propose that that concept be considered in the Committee stage.

Clause 16 provides that a judge or a master must retire from office upon reaching the age of 70 years, and that relates particularly to the District Court. As I understand it, it is similar to judges and masters of the Supreme Court. There are two aspects to this matter. First, I do not think a master of the District Court ought to be treated at a level higher than, say, a magistrate. As magistrates retire at the age of 65 years, so should District Court masters, leaving judges to retire at the age of 70 years. One of the proposals made to me by a member of the legal profession is that we ought to reconsider seriously the retirement age of 70 years for District Court judges because judges in that jurisdiction are appointed generally at a younger age than those in the Supreme Court and, after maybe 25 years on the bench, it is time for them to go.

Secondly, the whole clause raises the other interesting question of age limitation, which was raised during the equal opportunity debate on age discrimination when that legislation was enacted. At that stage, as I recollect it, the Government provided an assurance that it would be reviewing all legislation that contained a specific age requirement, whether it was for retirement or some other purpose, and that it would consider what should be done about that. It will be interesting to hear from the Attorney-General whether any progress has been made on that and whether there are any other criteria by which the retirement of judges and masters might be determined. The real problem is that, in an effort to ensure independence of the judiciary, there must be some point at which judges retire without the Executive arm of Government forcefully requiring them to retire. Over the years, age has been the point at which that automatic retirement has come into operation.

We did in South Australia, until I think the early 1970s, appoint judges to the Supreme Court for life, and then subsequently reduced that to age 70 years but allowed those who had been appointed for life to continue in office until they retired, resigned or died in office. That change was made because it was felt that by virtue of advancing years, some judges were no longer capable of exercising their full faculties in the administration of justice.

I can see that there is a difficulty in trying to have some assessment made of their continuing competence and ability, and that this would mean that the Executive arm of Government would be much more involved in the retirement process rather than by having a fixed statutory criterion, but I would be interested to hear from the Attorney-General whether that issue has been given any consideration and whether any changes ultimately can be expected. In respect of this provision in the Bill, whilst it does contain an age limit, and to ensure some compatability between jurisdictions, it seems to me that the master should not retire at the same age as the judge while we retain the age criterion.

Clause 20 identifies the structure of the court. It may be constituted of a judge or, if the matter lies in the criminal judisdiction of the court and is to be tried by a jury, a judge and jury, or, if it is a jurisdiction of the court conferred by statute or the rules, it may be exercised by a master. However, that jurisdiction is not exclusively that of the masters and may also be exercised by a judge. Then there is the provision for the court in its Administrative Appeals Division to sit with assessors.

One of the concerns that the Liberal Party has is that throughout this Bill there is the capacity to confer jurisdiction on masters, and to do that by rules of court. That means that the judges and not the Parliament make the decisions. That does occur to some extent in the Supreme Court, but there all rules must be made by all the judges concurring in the rules. But, even in that instance, I think one has to be particularly careful about allowing non-elected persons to change the rules by which jurisdiction is conferred by the Parliament initially on judges but may subsequently be passed down the line by the judges to the masters.

In the District Court rules are made by the Chief Judge and any two District Court judges, subject to review under the Subordinate Legislation Act. Whilst the procedures for review of rules of court are similar to those in relation to regulations, it is much more difficult, I would suggest, in practical terms to disallow court rules than it is to disallow Government regulations. The Liberal Party is concerned to ensure that if there are rules of court, as there will have to be for practice and procedural matters because so much of this Bill does not contain that information, they should be required to be made by the Senior Judge and the majority of the District Court judges.

In addition, in terms of the District Court, it is not appropriate for the judges to decide which matters masters may deal with, and that of course under the provision in this clause can extend to the hearing of very difficult cases. I think that ought to be a matter for statute; it ought to be the Parliament that determines jurisdiction and not the judges. The masters should deal with matters of practice and procedure and not substantive issues unless those substantive issues are conferred by the statute. I want to endeavour to develop an amendment that takes cognisance of that issue as well as the question of who actually makes the rules.

Clause 20 (2) provides for the establishment of the Administrative Appeals Division of the court. The court is to be, subject to exceptions prescribed in the rules, constituted of a judge sitting with assessors selected from certain panels. Again, I make the same point that I have just made in relation to subclause (1): the exception should not be prescribed in the rules but should be set out in the statute. That is the appropriate place to determine who may or may not hear particular issues. Whilst we now have a totally new structure, I think it is important to get those things into perspective.

The Law Society makes a point about assessors: that the status and qualification of assessors is not defined by the Bill. It is not clear whether they are non-judicial or administrative members of the court staff or whether they exercise

a quasi judicial role. The Law Society takes the view that the qualification and criteria for appointment of assessors should be set out in the legislation rather than in rules or regulations. That, of course, would be consistent with the specific pieces of legislation that establish tribunals to hear appeals from administrative-type decisions. But, that is an area that I think again needs to be addressed in a similar context to that to which I have just referred, and I would be interested to hear from the Attorney-General how that is to be related to more specific legislation establishing administrative tribunals.

Clause 20 (3) provides that, subject to any Act or rule to the contrary, the court's proceedings must be open to the public. I wonder if the issue of hearings in chambers has been considered. I would have thought that hearings in judges' chambers ought not to be open to the public, but otherwise proceedings should be open. Of course, there are exceptions under the Evidence Act in relation to suppression-type orders. I wonder whether it is necessary for rules to be made by the judges to determine what should or should not be open to the public, whether that is a matter for the statute, and whether we should provide generally for matters in chambers not necessarily to be held in public, although the rules may allow that to occur, and all other proceedings to be open to the public.

Clause 24, which deals with proceedings between the courts, provides that a judge of the Supreme Court may order that civil or criminal proceedings commenced in the District Court be transferred to the Supreme Court or that civil or criminal proceedings commenced in the Supreme Court be transferred to the District Court.

There is no corresponding provision which allows a judge of the District Court to transfer a matter to the Supreme Court, although I notice in the Law Society's submission on this point, at least in relation to the Magistrate's Court, that, in a sense, it is a two-way matter. I think there is some merit in two-way traffic at the instance of both the Supreme Court and District Court judges, and I propose that that occur. I think it is important in both areas of proceedings to have that option in place. Again, it raises the issue of how a determination is to be made, if it is made only by a judge of the Supreme Court; what rules or practice will be put in place to govern that decision; and the extent to which the parties and their counsel will be involved in that decision.

The Law Society suggests that the power contained in clause 25 (3) *(b)* is broad and open to abuse. It commented on a similar provision relating to subpoenas in the Magistrates Court Bill. The Law Society says that an arrested person should have a right of redress or damage in the event that such arrest was not in the end analysis justified. In relation to the Magistrates Court, the Law Society makes the following observation:

> It allows a person to be arrested and brought before the court on the suspicion that that person may not comply with a subpoena to attend to give evidence. This is a very broad power that is sought to be given and the society suggests that specific restrictions on its availability should be considered together with rights being provided to a person who has been inappropriately arrested to obtain suitable compensation or redress in respect of the inappropriate arrest.

I raise that issue and seek a response from the Attorney-General.

Clause 32 deals with conciliation. The point has been made to me by the Law Society in particular that the provisions of this clause are limited. The Law Society suggests that, whilst it strongly supports conciliation and mediation as an effective way of endeavouring to resolve disputes between parties at the least possible cost to the system and to the parties, nevertheless it is important that the independence and impartiality of the judiciary be maintained and continue to be observed to be maintained. The Law Society says that it is wrong for a District Court judge in a part-heard trial to enter into a process of conciliation where it is necessary for that judge to express views and opinions in an effort to make that conciliation successful and then to continue to hear the matter in an independent and impartial sense after unsuccessful conciliation. The Law Society suggests that is simply a contradiction in terms and, therefore, opposes the provision.

It is important to note that the Conciliation Act of 1929 deals with some aspects of conciliation. It is interesting that, although that Act has been in operation for about 60 years, it has probably been used more extensively in the past few years than in earlier times. It is an attempt to provide a mechanism to try to resolve a case at an early stage. The Bill is inadequate in that it provides for conciliation only at the trial of an action whereas the Conciliation Act applies both before and at the trial.

There is also potentially a conflict between the Bill and the Conciliation Act. I certainly support conciliation and mediation, but I think that one or the other has to take precedence. I suggest that the Conciliation Act ought to apply broadly to all courts rather than just dealing specifically with Magistrates Court and District Court legislation.

The other point that needs to be made is that, as I understand it, the Conciliation Act allows a judge who has tried to conciliate to continue do so, although there may be some practice in the courts that will generally take a judge out of the hearing if he or she has attempted to conciliate before the proceedings start. So, I am not so fussed about that matter as is the Law Society, but I think that the conflict between the two provisions needs to be resolved.

Clause 33 deals with a trial of issues by an arbitrator who may be appointed either by the parties or by the court and, when appointed, becomes an officer of the court for the purposes of the reference. The court will adopt the award of the arbitrator unless there is good reason not to do so. The question raised by this clause is who should pay for the arbitrator. I suggest that if the arbitrator is an officer of the court and under the control of the court, as proposed in this clause, it is inappropriate that the costs be met by one or other or both parties, but they should be an expense of running the court. I think that point needs to be clarified and I propose it accordingly.

Clause 34 deals with experts' reports. In much the same way as an arbitrator may be appointed, so may an expert. In any investigation, the expert becomes an officer of the court. For that reason, I suggest that the question of costs ought to be part of the expenses of running the court and not necessarily a charge against one party or the other. Clause 39 deals with pre-judgment interest. The Law Society has raised the issue that the court rules should declare the rate at which the prejudgment interest is to be calculated and the process that is to be used rather than allowing an individual judge to set the rate from time to time with respect to different cases. The Law Society argues that that is inappropriate, and I tend to agree.

Clause 41 allows payment of any judgment to a child. It provides that a receipt given by the child is a valid discharge for the person to whom the receipt is given. Presently, with respect to a damages claim, the court makes the final decision as to how that money is to be held. Frequently, it is held in trust by the Public Trustee, or it may be paid to the guardian of the child on very strict terms as to investment and payment of amounts for the maintenance and benefit of the child.

I am concerned that clause 41 opens up the potential for abuse not by the court, but by ordering that the money be paid to the child. It is an easy way out of the establishment of a scheme which provides strict terms as to investment and payment of amounts for the maintenance and benefit of the child. I have not seen any justification for the clause. The *status quo* should be maintained, because it provides some protection for children who may be awarded damages, and it also removes the prospect of undue influence. I can recognise that sometimes it is of advantage to pay the money to a parent or guardian to use for the benefit of the child or to reimburse that parent or guardian for expenses previously incurred, but that is adequately handled in the procedures presently available to the courts.

Clause 42 deals with costs. The costs in any civil proceedings will be in the discretion of the court. If an action might have been brought in the Magistrates Court and the court is of the opinion that there was no reasonable prospect of the plaintiff recovering more than an amount fixed by the rules, then no order for costs will be made in favour of the plaintiff.

There are two aspects which create some concern. The first is the amount to be fixed by the rules. We have no idea what amount is in contemplation, and that is a form of substantive legislation in which we ought to have a say. The best way of dealing with it is to include a minimum amount in the Bill. I suggest an amount of $10 000 for all cases other than personal injuries claims and an amount of $20 000 for personal injuries claims would be appropriate. It may be that there is some other figure, but we ought to provide for something in the rules if this provision is to remain. The amounts are one-third of the respective jurisdictions which the Bill confers on the Magistrates Court in its civil jurisdiction. The Law Society argues that the provisions of clause 42 (2) should be opposed; that is, the principle that the court should exercise its discretion in relation to costs but generally that costs should follow the event. I am not necessarily opposed to that, but if the clause is to stay I want some greater level of specificity rather than leave it open to the rules.

The Law Society opposes clause 42 (3). This new subclause (it also appears in the Magistrates Court Bill) provides:

(3) If proceedings are delayed through the neglect or incompetence of a legal practitioner, the court may—

(a) disallow the whole or part of the costs as between the legal practitioner and his or her client (and, where appropriate, order the legal practitioner to repay costs already paid);

(b) order the legal practitioner to indemnify his or her client or any other party to the proceedings for costs resulting from the delay;

(c) order the legal practitioner to pay to the Registrar for the credit of the Consolidated Account an amount fixed by the court as compensation for wasting the court's time.

The clause brings in a new concept. It allows the court to take action in relation to costs incurred through the neglect or incompetence of a legal practitioner. Not only may the costs as between the legal practitioner and his or her client be disallowed in whole or in part, but the legal practitioner may also be ordered to indemnify the client or any other party for costs resulting from the delay, and there are other consequences.

It is interesting that there is to be a penalty on the legal practitioner for his or her delay, but there is no similar impost on the Government for the delay or incompetence of the court. If the provision is to stay in the Bill, the court ought to be able to order a partial indemnity as well as a full indemnity, but more particularly the order should be made only after the legal practitioner has been given a reasonable opportunity to put his or her case and allowed a right of appeal against a decision of the court. It is kangaroo court justice which ought to be modified to build in some protections.

The Law Society opposes the provision for a number of reasons. It says that there are no criteria or parameters and it is open to abuse and to use without a fair opportunity to appeal or without regard to natural justice. There is a potential for great injustice to litigants and legal practitioners. The Law Society says that the end effect will be that all instructions will need to be in writing during the trial and that is likely to increase costs and create delays. It also says that, if this issue is dealt with in the middle of a trial, the duty of a legal practitioner to his or her client may prevent the disclosure of information to the trial judge which may mitigate the delay. In that context also, if it is raised during the course of the trial, it may be information which is beneficial to the other side and disclosure of it may compromise the party in respect of whom it is disclosed. The Law Society also points out that the order could be made in the absence of the practitioner, and that is wrong in principle. Also, there are many occasions when parties are ready for trial but the court is unable to hear the matter because no court is available, with the parties having to incur costs by reason of the delay. The Law Society argues that there should be a *quid pro quo*.

If the clause is to stay in the Bill—although I feel there are so many problems with it that it should be deleted—in addition to the proposals to which I have already referred, there ought to be a proper hearing after the litigation has been resolved and the practitioner must be given a reasonable opportunity to be heard and allowed representation. If the parties are warned to be ready for trial and the court adjourns the matter through no fault of the parties, then the costs incurred by the parties should be a charge on the revenue. That would even the balance, so that what is good for one is good for the other.

In relation to that matter there is one other point. As regards the order for costs, it is mandatory under clause 42 (2) that no order for costs will be made in favour of the plaintiff. I do not see that that is a problem if the amendment which I propose is carried; that is, that we put in a minimum amount. However, if my amendment is not accepted, I suggest that there should be an amendment that the court may not make an order for costs in favour of the plaintiff which exceeds those costs which might have been awarded had the matter been commenced in the Magistrates Court. One way or the other, we should put some limit on the award of costs.

I turn now to clause 43, which deals with rights of appeal. Any party to an action may appeal against any judgment given in action, but that is subject to the rules of the appellate court. I feel very strongly about this issue. The Supreme Court can limit the right of appeal, but the basis of any limitation is not identified in the Bill. Although there are some issues of leave to appeal which are under the jurisdiction of the Supreme Court, it is wrong generally for a court to make a decision about what may or may not be appealed and I propose that the words 'subject to the rules of the appellate court' be removed.

In a case of a judgment of the Administrative Appeals Division of a court, an appeal lies as of right on a question of law to the Supreme Court and by leave of the Supreme Court on a question of fact. Consistently the Liberal Party has argued for the right of appeal to be unlimited, which means that the inferior court or tribunal is always fully accountable and has hanging over its head review by a superior court. There is also a limitation that the rules of

the Supreme Court may provide that an appeal lies to the Full Supreme Court only by leave and, again, whilst that is currently the position in many respects, I propose that that provision be removed.

[*Sitting suspended from 5.58 to 7.45 p.m.*]

The Hon. K.T. GRIFFIN: Just before the dinner adjournment I was dealing with the issue of clause 43 relating to rights of appeal and was about to move on to consideration of clause 47. Clause 47 deals with the matter of contempt and provides:

> A person who—
> *(a)* interrupts the proceedings of the court or misbehaves before the court;
> *(b)* insults a judge, master or officer of the court who is acting in the exercise of official functions or proceeding to or from a place at which the court is to sit or has been sitting;
> *(c)* refuses, in the face of the court, to obey a lawful direction of the court,
> is guilty of a contempt of the court.

The Law Society makes the point that it is concerned that the clause as drafted will impact adversely on legal practitioners representing clients and appearing before the court and that it is not appropriate for that provision to apply. I do not propose to deal with that in any detail, except to ask that when the Attorney-General responds he might reflect upon the Law Society's proposition. In part the Law Society states:

> This is in the public interest in ensuring that litigants are able to be properly represented and know that their counsel are able to act on their instructions and represent their cause without fear or favour. It is again a matter of upholding the rule of law.

It is referring to cases where a magistrate wishes to exercise authority over counsel and it indicates that in its view the existing procedures are adequate. Extending on that, if one looks at clause 47 *(a)* regarding the interruption of proceedings, in many cases counsel may interrupt proceedings in terms of wanting to make a point and may have an argument with the judge. It is in those circumstances that the Law Society fears that there will be a problem for counsel if they are intimidated from forcefully raising issues before the court under this clause. I would like the Attorney-General's response on that before making a final decision on the approach we will take on this clause.

Another matter is not touched upon by the Law Society, namely, clause 47 *(b)* which relates to 'insulting a judge, master or officer of the court who is acting in the exercise of official functions'. There is no difficulty with the contempt provision dealing with those sorts of insults, but the paragraph goes on to state 'or proceeding to or from a place at which the court is to sit or has been sitting'.

I am not sure what is envisaged by that, whether it is simply walking from chambers to the courtroom or whether there is something more than that is contemplated.

If taken literally—and I think that is how one has to read it—it could extend to an officer travelling from home to court. I would suggest that that is far-fetched. I do not see why there is a need to extend the contempt clause to deal with insults that might not necessarily be related to the judge, master or officer of the court exercising official functions. Just because of bad driving some insult might be hurled at the judge, the master or the officer of the court, but the person who hurled the insult would not even know that that person held judicial office or was an officer of the court. I am not sure that it does not extend to an officer of the court travelling from Adelaide to court at, say, Berri, or some other country location, who might get into a motor vehicle accident, for example, and who might be insulted by the other party, particularly if the officer were in the wrong. It would be an extraordinary situation if that other party, not knowing that the person driving the car was a judge, master or officer of the court, insulted that person and was liable to be brought before the court on a charge of contempt. There is a problem with the drafting of the Bill if it is intended that those sorts of cases are to be covered. In any event, if that is the case, it is improper and totally beyond reason that that should be the position. I should like that matter clarified.

Clause 51 deals with the rules of court. I have already referred to it, but I shall make some further comments because I want to deal with these matters in some sort of order. The clause allows rules to be made by the Senior Judge—and I think that should be the Chief Judge—and any two or more other judges of the District Court. Those rules will do a number of things. They will authorise masters to exercise any part of the jurisdiction of the court. That is a wide power to give to the judges—to determine what part of the jurisdiction will be exercised by the masters. That may include a trial of a very difficult action. If on the basis of the Government's Bill there is unlimited jurisdiction, it may even extend to injunctions. It is true that those rules can be disallowed, but I suspect they will come up in a substantial package of rules, and it will be difficult to disallow them, even if one can get the numbers to do that, if there is disagreement as to the extent of jurisdiction that should be conferred upon masters. Therefore, subclause (1) *(b)* ought to be deleted.

The rules of court may also modify the rules of evidence as they may apply to any class of proceedings and create evidentiary presumptions. It is dangerous for rules of court to modify the rules of evidence and to create evidentiary presumptions. That goes to the very heart of the law of evidence. So, the power is very broad and it is a very powerful instrument that can be wielded by the court in making rules. I would be more comfortable if this power were removed. In any event, the rules of evidence should be uniform throughout the courts and not be the subject of the whim of judges at any particular level. For that reason those rules are better created in a uniform package of legislation, rather than being left to the individual levels of the courts to make their own decisions.

In addition, I suggest that the creation of evidentiary presumptions should be a matter for the statute law because, after all, no limit is placed on the evidentiary presumptions that can be created by these rules of court. I suggest it is a matter not so much of subordinate legislation but of primary legislation that is being contemplated, because it will enable the court to originate rather than to react to statute law.

The other point, which I have already made, is that it is inadequate to allow just the Chief Judge and any two or more other judges to make the rules when all the judges of the Supreme Court have to concur in the making of rules. If the jurisdiction is to be widened, whether it is in accordance with what I propose or whether it is in accordance with the Bill as it has been introduced, we will have to provide for at least a majority of the judges of the District Court to concur with the rules before they can be made.

Some concern has been expressed to me by a number of members of the legal profession—and this was also referred to in a recent article by the President of the Law Society in the *Law Society Bulletin*—that the Supreme Court and the District Court have made rules without consultation with members of the legal profession who have to work with them. Such rules can be restrictive of the rights of a party. One of the proposals, which has been suggested to me—but

not by the Law Society on an official basis—is that there ought to be a consultative committee which might comprise nominees of the Law Society, Bar Council, Government and the Opposition (but not necessarily the latter two) with the requirement that the judges consult with this body about rules or proposed rules of court. That has a lot of merit at each level of the court structure. There is some advantage in having the consultative committee also report to the Joint Standing Committee on Subordinate Legislation, which would accompany the report of the judges.

During the Committee stage, I will propose by way of amendment the establishment of a committee. That committee will be consultative, comprising two nominees of the Law Society, two nominees of the Bar Council, a nominee of the Attorney-General and a nominee of the Leader of the Opposition—the last two mentioned shall not be members of Parliament—to be consulted by the judges on any proposed rules and to prepare and submit to the Joint Standing Committee on Subordinate Legislation a report on any rules subsequently promulgated by the judges. That will overcome a lot of the problems that have occurred in the past in relation to rules of court. That is not to say that on all occasions consultation has not occurred. Given the new structure that is contemplated by these Bills it seems to me that there ought to be a more formal structure for consultation on rules of court. It would also be important from the point of view of the Government of the day because rules not only have cost implications but they can have consequences for Governments and for the administration of justice. There ought to be some formal consultative mechanism which includes the Government in the development of the rules of court, even though the representatives of Government will not necessarily be members of Parliament.

They are the main issues I wish to raise in relation to this Bill. The only other issue, which is one that cuts across all the Bills, is the question of resources. There really is no indication in the second reading speeches as to what the implications are for the resources of Government and the courts in this restructuring. When the last major jurisdictional change was made to the District Court it did result in a substantial backlog of civil cases particularly, but also some criminal cases, and I note that in the budget there is provision for two extra District Court judges to help clear the backlog.

When the Attorney-General replies I wonder whether he can give some indication of what the resource implications of not only this Bill but also the Magistrates Court Bill might be if implemented as introduced by the Government, and what consultations have occurred with a view to overcoming the resource implications of these Bills. Subject to those matters, I indicate that we support the second reading of this Bill.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

MAGISTRATES COURT BILL

Adjourned debate on second reading.
(Continued from 14 August. Page 145.)

The Hon. K.T. GRIFFIN: As I have already indicated in relation to the District Court Bill, the Opposition is supporting the proposition that each of the two levels of the courts should be governed by its own piece of legislation, and that applies equally to the Magistrates Court. We support the proposition that that initial level of the courts system should exercise both a civil and a criminal jurisdiction which one would hope will make for a smoother management of case load, the interchange of magistrates and the more efficient exercise of the important jurisdiction of magistrates and local court.

I think one has to acknowledge that this level of the courts system is the level at which most citizens who commit an offence will have the closest relationship either as a litigant, defendant, plaintiff, complainant in some cases, or witness. It is that court that deals with more the hurly-burly of daily life and is most likely to be the first point of contact for most citizens with the courts system, and maybe their only contact. For that reason it is important that it have appropriate resources and that it deal efficiently with matters that come before it. I think that this Bill will assist in improving the efficiency, and I would hope that in the longer time it will enhance the status of the magistrates, attract good quality legal practitioners to the magistracy and will provide effective justice to the thousands of people who have matters that come before those magistrates each year. Therefore, the concept is acceptable.

The jurisdictional limits obviously are a matter for some debate and are a matter of judgment. The small claims jurisdiction is presently $2 000, and that is a jurisdiction where legal representation is not permitted in most circumstances and where a significant level of informality is required: much more of a consultative and mediation role is taken by magistrates than in the other jurisdictions, and that is quite appropriate. Nevertheless, while that does provide an informal forum for deliberations, concerns have been expressed to me from time to time by persons who go into the small claims jurisdiction that they did feel intimidated, that they felt that the magistrates sometimes did not treat them with any sort of courtesy, and that they were just there to have the cases settled and moved out of the courts system. I think that that is unfortunate.

It may be an incorrect perception that has been created by the nature of the exercise of the jurisdiction but nevertheless I would hope that, in the exercise of the small claims jurisdiction in the future, to whatever amount the limit is extended, magistrates will exercise appropriate courtesy and respect for the litigants who come before them, acknowledge that those litigants know nothing about the legal system and do not have assistance ordinarily to try to present their case, that many are overwhelmed by the appearance in the courtroom and that they do need a great deal of coaxing and assistance if they are not only to receive justice but also to feel that they have received it.

The Bill provides that the jurisdiction of the small claims court is to increase to $5 000. That is a matter of judgment as to whether that is an appropriate level. The South Australian Council of Social Services has taken the view that the $5 000 limit is appropriate and brings South Australia into line with the rest of Australia, excluding Tasmania. The Legal Services Commission has written in similar terms. Because of the pressure of having to resolve positions in these Bills, I have not had an opportunity to examine the situation in other States, the Northern Territory and the Australian Capital Territory to determine what conditions apply to their small claims jurisdictions.

I do understand, from information that the Legal Services Commission has provided, that in the ACT the limit is $5 000, in New South Wales it is $6 000 with a $10 000 limit for building disputes, in the Northern Territory, Queensland and Victoria it is $5 000, in Western Australia it is $5 999 and in Tasmania it is $2 000.

However, it is not clear what the rights of litigants are in respect of small claims jurisdictions; for example, what representation or assistance is allowed to litigants, what procedures are applied and what rights of appeal or review are provided. I hold the very strong view—and I know the Attorney-General disagrees—that if there is a right of appeal to a superior court there is, at least, more of a prospect that magistrates involved in any jurisdiction, whether small claims or any other jurisdiction, are more likely to feel and be accountable for the decisions that they take. There are occasions when justice does occur as a result of the deliberation of a magistrate and, for that matter, other courts. If the Attorney-General has information about the issues that I have raised in relation to small claims jurisdictions in other States and Territories, I wonder whether he would make that information available to the Council so that it can be considered at the appropriate level.

Notwithstanding the support of SACOSS and the Legal Services Commission, I note that the Law Society suggests a lower limit, but the interesting aspect is that it appears that the second reading speech that was sent to the Law Society by the Attorney-General contained jurisdictional limits different from those contained in the Bill: the small claims jurisdiction was to be increased to $3 000 and the jurisdiction at other levels was to be $25 000 in all cases except those relating to personal injury claims arising from motor vehicle accidents, which were to be $50 000.

Those figures accord very much with my own views in respect of the limit of the jurisdiction of the Magistrates Court with respect to its small claims and other jurisdictions. So, I would like the Attorney-General to indicate how that discrepancy in the second reading speech occurred and whether there was a last minute change of heart. Subject to that matter, I tend to the view at this stage that the limits to which I have referred—$3 000 for small claims, $25 000 for claims generally and $50 000 for motor vehicle personal injury claims—provide appropriate increases in the jurisdiction of the Magistrates Court.

I want to refer to a number of matters, and I will again follow the procedure that I adopted in respect of the District Court Bill and the Director of Public Prosecutions Bill in the belief that that will assist the consideration of issues at the Committee stage. Clause 3 includes the definition of 'industrial magistrate'. This relates to the Justices Act Amendment Bill, which provides that certain industrial offences are to be dealt with by an industrial magistrate. The Justices Act already provides that the Governor may by proclamation declare certain offences to be industrial offences to be tried before an industrial magistrate.

That provision was introduced in about 1983 and, according to my recollection, the Liberal Party raised some concern about hiving off those sorts of offences to a magistrate who was, in a sense, apart from the ordinary jurisdiction of the courts and might adopt some rather narrow views about the jurisdiction which he or she exercised. So, I express some concern about the continuation of that provision, particularly as many offences have been created by industrial type legislation, such as occupational health, safety and welfare and WorkCover, where penalties are now getting to be extraordinarily burdensome—in some instances, amounting to hundreds of thousands of dollars.

One has to consider whether it is appropriate for those sorts of offences to be dealt with solely within the industrial jurisdiction or whether they ought to be dealt with in the ordinary courts system where there is broader experience of penalties for statutory and other offences and brought back into the so-called fold. I will address that issue further in the Committee stage of this Bill. However, one aspect of that matter needs some attention, because there is a right of appeal to the Industrial Court with respect to the jurisdiction exercised by an industrial magistrate.

Sections 92, 93 and 94 of the Industrial Relations Act relate to appeals. My interpretation is that when an appeal to the Industrial Court in relation to an industrial offence is dealt with summarily by an industrial magistrate there is no further right of appeal from the Industrial Court. This means that even a very serious case with unique characteristics could not be taken on further, either to the Supreme Court or, more particularly, to the High Court in the limited circumstances in which the High Court hears appeals on criminal matters. So, this issue needs to be addressed.

The other aspect is that these industrial offences are proclaimed rather than fixed by regulation. I know that proclamation is the mechanism provided in the present Act, but I think there is good reason to review that procedure. If the position of industrial magistrates hearing summary offences is to continue, one must consider whether the proclamation should be changed to regulation.

A small claim is defined as a monetary claim for $5 000 or less or a claim for injunctive or declaratory relief in the case of a neighbourhood dispute where such a dispute is between neighbours or the occupiers of properties in close proximity based on allegations of trespass or nuisance. Some minor civil actions in the small claims court are to be dealt with in an informal manner where, ordinarily, parties will not be represented by legal practitioners. In the context of that definition of a neighbourhood dispute, I suppose that no-one would really object to minor neighbourhood disputes, such as tree roots blocking drainpipes, being resolved in an informal manner before a small claims court, but some neighbourhood disputes could be very expensive for neighbours or occupiers of properties in close proximity.

One could instance the flooding of one's property from neighbouring properties or noise or smell from adjoining commercial premises. When one gets into that level of dispute, I do not believe that the issue is so minor that it can be dealt with satisfactorily in the informal small claims jurisdiction; it is too important to be dealt with in that informal manner, particularly as it is subject only to an appeal to a single judge of the District Court. Such a neighbourhood dispute can have a quite significant impact on the parties. Not to have the protections which are provided in relation to appeals in matters other than small claims and appropriate representation and evidence seems to me to be stretching the small claims concept too far. I propose that the definition of 'neighbourhood dispute' be amended by adding words to the effect that such a dispute is one where the cost of complying with the injunction or other order of the court is likely to exceed $5 000 or $3 000, whichever figure is ultimately achieved by the Council in the Committee stage.

Clause 8 deals with the civil jurisdiction. I have already indicated that I am inclined to the view that it should be $25 000 for claims generally and $50 000 for motor vehicle personal injuries claims. This, again, is the point at which the Law Society indicates that there is a conflict between the dollar amount in the Bill and the amount appearing in the report which accompanied the Bill when it was sent by the Government to the Law Society.

The Law Society makes a point about complexity. It states:

> The amount in dispute is not necessarily an indicator of the complexity of the case or the significance of the legal issues in dispute. The power to reserve questions of law is only a partial answer. It is more appropriate to lower the limit so that more cases that raise significant issues can be properly dealt with by the District or the Supreme Court at first instance where the procedures and judicial experience are more suited to dealing

with such issues; for example, commercial causes, building and construction cases, professional indemnity cases and cases involving large numbers of documents.

The Law Society also makes the point that the proposed limits in the Act would result in the transfer of a huge number of cases from the District Court to the Magistrates Court at a time when to some extent the District Court has brought its current civil listings under control, although a large number of matters issued before 1990 are still to be dealt with. The Law Society makes the point that the current number of magistrates would not have any prospect of dealing with the vastly increased work load within anything like the time frame presently enjoyed in the District Court.

The Law Society also refers to court resources and administrative support. There is some substance in this, too. Sizeable litigation imposes pressures on court administration for control of exhibits, transcripts, case books for legal argument, attendances on views, transcript and reading and preparing judgments. It says—and again I agree with this—that the Local or Magistrates Court does not have the resources of the District Court, which does not have the resources of the Supreme Court.

If the figures in the Bill are finally approved, obviously the civil jurisdiction in the Magistrates Court will be enlarged quite significantly, although until the Bill passes and comes into effect matters would clearly still be within the jurisdiction of the District Court. Some may even have been dealt with by the Supreme Court not so long ago. The Law Society says:

> If the jurisdictional limits are increased as proposed, it would seem clear that this will lead to a large backlog of cases and a general blockage to the system. This cannot be desirable in the public interest, the administration of justice or the maintenance of the rule of law.

That is why I want the Attorney-General in reply to indicate the resource implications for the courts as a result of the proposals in the Bill, what steps will be taken to bring the undoubted explosion in case load under control and within what period of time.

Clause 10 deals with the jurisdiction of the court and provides that the rules may assign a particular statutory jurisdiction to a certain division of the court. There is no indication as to what is proposed. It suggests that by the rules it may be possible for a statutory jurisdiction to be transferred or allocated to the small claims division of the court. If it is not in fact a small claim, one has to be concerned about that.

I would like some explanation of what is proposed. Personally, I do not think that it is appropriate. I believe that where there is a statutory jurisdiction the statute ought to confer the jurisdiction on a particular division rather than allow it to be done by rules of court. I make that point because rules of court, as I have said in other debates on these Bills, can be disallowed, but it is more difficult to do so because they would probably come up in a large package of rules which will make it difficult to disallow because of one part or other parts of those rules. If a statute does not assign a jurisdiction to a particular division of the Magistrates Court, I suggest that clause 10 should specifically allocate that jurisdiction to the civil general claims division.

Clause 15 allows the court to be 'constituted of a special justice or of two justices in any case of a class prescribed by the rules'. My preference is to provide for this in statute rather than to leave it to the rules. The Justices Act, in sections 5, 43 and 44, specifies the circumstances in which justices of the peace or a special justice can act. It provides that, when a magistrate is not available, two or more justices may hear a complaint, but a single justice or any two or more justices may hear and determine any matter of complaint if all the parties to the proceedings consent in writing.

If a special justice sitting alone has before him or her a defendant who pleads not guilty, and either the defendant or the complainant requests that the case be heard by a court of summary jurisdiction constituted by a magistrate or by two or more justices, then the special justice adjourns the matter. I am attracted to that sort of proposition being specifically included in the Bill rather than leaving it to rules of court. I repeat what I said earlier: I do not believe that Parliament ought to allow the judges and magistrates to decide on what level of judicial officer ought to hear particular cases. It is much more preferable for that to be specified in the statute. After all, the Parliament makes the law and believes that matters are to be handled by the particular level of officer, only to find that, if this sort of provision is allowed, the rules will modify the Parliament's decision.

Also, we have to recognise that the rules of court are made by the Chief Magistrate, Deputy Chief Magistrate and two other magistrates. Again that ought to be the Chief Magistrate, the Deputy Chief Magistrate and a majority of magistrates concurring in the rules. We would at least have a better prospect of ensuring that they are widely accepted and go through a filtering process, than if the decision is made by only four magistrates.

Clause 15 (4) provides:

> A registrar may exercise the jurisdiction of the court in any matter prescribed by the rules.

The registrar is not necessarily legally trained. It is appalling that a registrar not legally trained may exercise any of the jurisdiction of the court in any matter prescribed by the rules. It relates very much to the point I have been making, namely, that Parliament ought to determine what jurisdiction a registrar can hear, not the magistrates, who can confer particular and important jurisdictions on a non-legally trained person. It is a totally untenable position for a registrar to hear committal proceedings or to exercise a jurisdiction which involves sending someone to gaol or imposing hefty fines. That has to go or, alternatively, there has to be an identification of the role of the registrar.

Clause 18 provides:

> Except where an Act or the rules otherwise provide, the court's proceedings must be open to the public.

Those proceedings ought to be open to the public. I propose that the reference to the rules be deleted and that all court proceedings, other than when heard in chambers, should be open to the public. There may be some special circumstances where the court should be closed, but generally that ought to be a matter decided on by the Parliament and not by the magistrates. We decide the parameters in which suppression orders, for example, are made. We leave only the discretion to the magistrates and other judicial officers to make a decision whether or not facts fall within the principles that Parliament has established.

Clause 19 provides:

> (1) A judge of the District Court may order—
>
> *(a)* that civil proceedings commenced in the Magistrates Court be transferred to the District Court;
>
> or
>
> *(b)* that civil proceedings commenced in the District Court (but which lie within the jurisdiction of the Magistrates Court) be transferred to the Magistrates Court.

I propose that the clause be expanded to enable a magistrate to refer a matter to the District Court on his or her own initiative because it has to be two way. The magistrate will be looking at the cases on a day-to-day basis, whereas the District Court will not. I expect that the power of a judge of the District Court under clause 19 will be exercised only

when a matter might be drawn to the attention of the judge. I cannot believe that a judge will monitor all cases that occur within the Magistrates Court and pick them off one by one as being suitable for a magistrate or a District Court judge. There must be some power to enable magistrates to forward cases on rather than wait for someone to make an application to a judge of the District Court and for the judge of the District Court to make a decision whether or not the matter will be heard in a higher court.

Clause 20 relates to subpoenas and is similar to the provision in the District Court Bill relating to subpoenas, namely, clause 25 of that Bill. The point made by the Law Society is that the clause is too wide and open to abuse and I agree with that. As I indicated in the debate on the District Court Bill, a person may even be arrested and brought before the court on the mere suspicion that that person may not comply with the subpoena to attend and give evidence. That is a very broad power sought to be given and there ought to be some specific restrictions on its availability with rights provided to a person who has been inappropriately arrested to obtain suitable compensation or redress with respect to the inappropriate arrest.

Clause 25 deals with conciliation. Again, the points I made in relation to the District Court Bill are relevant here. In that Bill the relevant clause was clause 32. The point that I and the Law Society make is that this power of conciliation, which is supported and we have no difficulty with it, is a power to be exercised at the trial of an action and not before. All of the evidence is that the most valuable conciliation process occurs in the pretrial proceedings rather than at the hearing when all the costs have been incurred and there is very little to be saved by settling it on the doorstep of the court. In addition, it conflicts with the Conciliation Act, which allows conciliation before and at the trial of an action. The Law Society makes the point that, where a magistrate or other judicial officer takes part in an attempt to settle an action, that person should not continue to sit for the purpose of the hearing and determination of the action.

In principle that is acknowledged, but it would be a particularly difficult position to apply particularly because the Conciliation Act allows the judicial officer involved in conciliation to continue to sit. Some arrangements are in place in the Supreme Court in relation to the Conciliation Act, which provide that a judge involved in conciliation does not continue to sit in the matter. I am not sure of that; that is something about which the Council needs to be informed. If that is the practice in the Supreme Court, it should be reflected both in this Bill and in the District Court Bill.

Clause 31 involves payment to a child, and that equates to clause 41 of the District Court Bill. I repeat the points I made in relation to the District Court Bill. The payment to a child is fraught with danger. The procedures that are in place at the moment provide proper protections for the award of damages to a child and for the investment of money and the use of that money. Therefore, I have serious reservations about clause 31.

Clause 32 deals with the question of costs and provides that, subject to this Bill and the rules, costs in any civil proceedings will be at the discretion of the court. I wonder whether it is necessary for the rules to be referred to in the context of this new court structure. I would have thought that the discretion of the court ought to apply but that normally they should follow the event. However, there may be some special reason for wanting to include the reference to the rules.

Clause 32 (2) deals with the award of damages against a legal practitioner where proceedings are delayed through the neglect or incompetence of a legal practitioner. The points that I have already made in relation to the District Court apply equally here. The legislation is very open-ended. There is no indication of a right to be heard. Is it an issue which is to be postponed to the end of the proceedings? There is no right of appeal or provision that the court may be liable for some form of compensation where the parties have been told to be ready for trial, are ready, turn up at the court and find for some reason the court cannot hear their matter, for example, either through having too much business, through sickness of the magistrate, through the unavailability of a magistrate or some other reason. As I have indicated, the Law Society proposes that clause 32 (2) be opposed because neglect or incompetence of a legal practitioner is not defined and leaves wide open how it is to be defined and that the provision is generally unfair. I have much sympathy with that point of view because it may well compromise the ability of a legal practitioner to properly represent his or her client.

The other point which I have not made and which needs to be made is that a legal practitioner is an officer of the court. As an officer of the court, the legal practitioner is liable to the jurisdiction of the court for not performing his or her duty to that court. I would have thought that, under the Legal Practitioners Act or as a result of some failure or neglect in doing his or her duty to the court, there is already adequate jurisdiction to deal with delay or incompetence. I suppose that that will be an intimidating provision for many legal practitioners, particularly young legal practitioners. Young legal practitioners may have researched an issue diligently and have appeared in court, but they might give the impression of incompetence for not having looked up a particular case or been familiar with a particular procedure, and that incompetence, which might be determined by the court, results in delay. It will certainly be soul destroying for the young practitioner, but more particularly it might be quite unfair because the young practitioner might be making the same mistake as many other young practitioners have made before in similar circumstances. It is all very well for the court to take a holier than thou attitude, but in a sense a measure of training occurs in the courts and should not be at the expense of the client and should not necessarily be at the expense of the court system; nevertheless it does occur.

I can remember many occasions early in my professional life when I appeared before a magistrate, George Ziesing who, when I was an articled clerk taking assessment of damages cases, would lead me through the procedure, and correct omissions. He generally took it upon himself to train young articled clerks or practitioners in some of the finer points that can be learnt only in the court system. In those circumstances, there was not a delay that was unreasonable. However, it might be said that there was some sort of incompetence because, as a young articled clerk, I did not know one or two of the finer points. That provision is fraught with difficulties, and the Law Society is justified in raising its concerns, which must be addressed fairly and squarely by the Attorney-General.

Clause 33 deals with minor civil actions, which are essentially small claims. Subclause (1) *(e)* provides that the court is not bound by the rules of evidence. I do not have any difficulty with that. However, it would be desirable to complete the usual formula that is used when the court is not bound by the rules of evidence and to provide that the court must act according to equity, good conscience and the substantial merits of the case without regard to the techni-

calities and legal forms. That standard needs to be included, otherwise the court will be absolutely a rule and law unto itself.

Clause 33 (3) deals with a situation after judgment has been given in a small claims action, and provides that the court is to give the judgment creditor advice and assistance as to the enforcement of the judgment and is also to examine the means of the judgment debtor with respect to the satisfaction of the judgment. Nowhere is there provision for the parties to be informed of their rights of review. I think that that ought to be included, and I will certainly be moving an amendment to that effect. Representation by a legal practitioner is not to be permitted unless another party to the action is a legal practitioner, all parties to the action agree or the court is of the opinion that the party would be unfairly disadvantaged if not represented by a legal practitioner.

If a body corporate is a party to the action, the party will be represented by an officer or employee who is not a legal practitioner even though the representative may be a specialist in debt collecting or some other area of endeavour. If a person is subrogated to the rights of a party, that person is permitted to appear in the proceedings. That is most likely to happen in an insurance case and the person subrogated to the rights of a party will be the insurance company.

When one talks about amounts of $5 000 being subject to a small claims action, for many people that is a lot of money and many people are intimidated by the court process, as I have already indicated. Provided the proceedings remain under the control of the magistrate, I see no reason why a party should not be accompanied by some other person, whether a solicitor, accountant or other person, although the person accompanying the party will not necessarily have rights of representation. It seems to me that that situation is not permitted, but I think it ought to be. If the Attorney-General believes that it is permitted, then I think it ought to be put beyond doubt.

Clause 33 (6) provides for a review of the proceedings in a small claims court by a District Court judge. That review obviously will be on questions of law and fact. The review is appropriate, but I think there should be a further right of appeal to the Supreme Court by leave of the Supreme Court.

Clause 35 deals with rights of appeal, and as I have already proposed I believe an amendment is appropriate. In addition, the right of appeal is 'subject to the rules of the Supreme Court', and I think that those words ought to be deleted as they relate to all other matters other than a minor civil action. I think it is for Parliament to determine what the rights of appeal are and not the rules of the Supreme Court, and if the Supreme Court believes that some appeal ought to be limited then let the elected representatives make that decision, not the judges.

I now turn to clause 34. In its submission the Law Society makes the point that this clause may need rewording, because under its present drafting it could be that the same parties could simply seek to re-dispute the same matter notwithstanding that it had been determined in an earlier minor civil action. I think there is some substance in that, although the Attorney-General may have something else in mind for that clause. If he does I would certainly like to hear about it.

Clause 37 deals with appeals from the criminal division of the Magistrates Court and provides for an appeal subject to 'the rules of the appellate court'. For the reasons I have already stated, I think that those words ought to be deleted. Again it is a matter for Parliament to determine what the rights of appeal might be and not for the appellate court. An appeal also is provided where an offence is categorised as an industrial offence to the Industrial Court. As I have already indicated, there is provision in existing section 43a of the Justices Act for an industrial magistrate to hear certain industrial offences. I believe that that ought to be reviewed, particularly in the light of what I see as significant constraints on appeal from a decision of the Industrial Court.

The Supreme Court judges have raised the point that I think is appropriate, that if there is to be an appeal from the Magistrates Court—and there certainly should be that—then there ought to be power for the appellate court to take evidence if the appellate court so determines. That is appropriate because there are occasions where, if questions of credibility have been determined by the magistrate, the question of law is unlikely to help the appellant and the appellant is likely to be seriously disadvantaged if the appeal court is not able, in effect, to review the whole matter, including the taking of evidence if the appeal court believes that that is appropriate. I think that, if the range of summary offences is widened and the opportunity to elect to be tried by a judge or jury is more limited, there ought to be that power in the appellate court to review and take further evidence if it so wishes.

Clause 40 deals with contempt and provides that a person who insults a magistrate, registrar or other officer of the court proceeding to or from a place at which the court is to sit or has been sitting shall be guilty of contempt. In relation to clause 47 of the District Court Bill, I raised this issue and proposed that it be deleted unless there is some hidden connotation to which I am not privy. The Law Society again has made the point in relation to this provision that it should not apply to a legal practitioner in recognition of the different rules that apply to practitioners when appearing before the court. I think that there is some merit in that, and I repeat my request to the Attorney-General to respond to that issue in relation to both the District Court and the Magistrates Court.

Clause 44 deals with rules of court. Again I repeat what I had to say in relation to the District Court Bill, that concern has been expressed by the legal profession that rules have been made by the Supreme Court and District Court without consultation with the legal profession who do have to work with the rules. They can be very restrictive of the rights of a party, and because of that I am proposing in this Bill also that there be a committee established as a consultative committee comprising two nominees of the Law Society, two nominees of the Bar Council, a nominee of the Attorney-General and a nominee of the Leader of the Opposition (the latter two not being members of Parliament) to be consulted by the magistrates on any proposed rules and to prepare and submit to the Joint Committee on Subordinate Legislation a report on any rules subsequently promulgated by the magistrates.

I propose also, as I have already said, that there ought to be a requirement that at least a majority of the magistrates should concur with those rules before they are made. There are issues relating to criminal jurisdiction that are important, and they will be dealt with under the provisions of the Justices Act. I support the second reading.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

SHERIFF'S AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 August. Page 149.)

The Hon. K.T. GRIFFIN: This Bill is consequential upon the amendments made in 1978 to the Sheriff's Act and follows upon the amendments being made in the package of courts restructuring Bills. The major emphasis of this Bill is to provide that the sheriff may be appointed only on the recommendation or with the concurrence of the Chief Justice of the Supreme Court and cannot be dismissed or reduced in status after appointment except on the recommendation or with the concurrence of the Chief Justice. That is an appropriate safeguard for an officer, who is an officer of the court but is employed under the provisions of the Government Management and Employment Act. Deputy sheriffs and sheriff's officers are employed under the Government Management and Employment Act. A sheriff may appoint deputy sheriffs or sheriff's officers who are not by virtue of their appointment Public Service employees.

The sheriff has the responsibility of carrying out the orders of the court and is, therefore, an important officer in the administration of justice. It may be appropriate to provide that deputy sheriffs and sheriff's officers, who are employed under the Government Management and Employment Act, be employed only with the concurrence of the sheriff. Subject to any technical reason for that not being so—the Attorney-General can address that matter in reply—I intend to propose such an amendment. Subject to that amendment, the Opposition supports the second reading.

In my copy of the Bill there is one typographical error. Clause 1 (1) provides that 'This Act may be cited as the Sheriff's Amendment Act 1991'. It may have been intended to leave out reference to the Sheriff's Act Amendment Act 1991, but I hope that matter will be addressed by the appropriate persons before the Bill is dealt with in Committee.

The Hon. T. CROTHERS secured the adjournment of the debate.

ENFORCEMENT OF JUDGMENTS BILL

Adjourned debate on second reading.

(Continued from 14 August. Page 151.)

The Hon. J.C. BURDETT: I support the second reading of this Bill, which is a rewrite of the Enforcement of Judgments Act 1978, as the Attorney said when he explained the Bill. That Act was part of a package of Acts, the principal one being the Debts Repayment Act. These Acts were never proclaimed. As far as Labor Governments have been concerned since that time, this was principally because the Debts Repayment Act was too expensive to administer.

The present Bill deals with the manner in which civil judgments may be enforced so that the judgment creditor is paid. There is a substantial departure from the present system. The Bill provides that a judgment debtor's financial position will be investigated by the court. There is no longer any power for the court to make an order of imprisonment for failing to attend the court or to pay a judgment debt as ordered but, where a court is satisfied that a judgment debtor has wilfully and without proper excuse failed to comply with an order of the court, the court may commit the judgment debtor to prison for up to 40 days.

For the first time, a garnishee order can be made in respect of salary and wages if the judgment debtor consents. The other methods of enforcing judgments are: sale of property; charging orders; appointment of receiver; warrant of possession; and proceedings in contempt. The second reading explanation acknowledged that the Bill is less prescriptive in itself than the 1978 Act, leaving the details to be regulated by rules of court. In general, reasonable details ought to be written into the Bill. Moreover, rules of the Supreme Court are not subject to as ready a means of parliamentary scrutiny as are regulations.

Several solicitors whom I have contacted have complained that rules of court are made without proper consultation with the legal profession or, indeed, anyone else who may be properly concerned about them. The President of the Law Society (Mr Brian Withers, QC) complained in a recent edition of the society's bulletin of particular rules of court, not in relation to the present matter, having been made without consultation. During the Committee stage I intend to move an amendment to return to the 1978 position so that the procedures are written into the Bill, particularly in regard to an application for an imprisonment order against a judgment debtor.

Consultation has been had with the Law Society, the Adelaide Central Mission, the Creditors' Protection Association, SACOSS, Mercantile Trade Protection and the Credit Reference Association. I wrote also to all solicitors who specialise in debt collection in the metropolitan area and to practitioners in country centres. I received from a country practitioner a letter that sets out the problems practitioners have and, therefore, those which the creditor ultimately has in respect of recovering judgments. The firm in question was not the firm with which I was formerly associated, but I do not think anything will be gained by naming the firm. Therefore, I have deleted all identifying material. However, I think the Government ought to be aware of the matters raised in this letter, which reads as follows:

> Thank you for your letter dated 15 August 1991 and the enclosed draft legislation.
>
> The following are personal views of the writer on these matters.
>
> This firm has for many years been involved in the collection of judgments (debt collecting). Like most country firms, it is a service provided to the community and certainly is not one which is offered on the basis of it being a lucrative activity.
>
> The reality is that the current system is an absolute disgrace. Increasing disrespect for the courts by debtors, coupled with the current Government's apparent rampant enthusiasm for regularly increasing court fees, coupled with the apparent absence of any available prison cells preventing 10 day orders from actually being carried out, has led to the increasing disrespect of the system and has made it unworkable.
>
> Currently, debtors have up to half a dozen opportunities to make a reasonable offer to pay an outstanding judgment. Plaintiffs' solicitors always write to debtors beforehand, and I would estimate that 80 per cent of our initial letters provoke no response. Summonses are then issued and served, and probably another 70 per cent do not respond, thus leading to the issue of unsatisfied judgment summons.
>
> If the defendant is smart and knows the system, he/she will attend court for an order to be made. This is done knowing that if they default a warrant cannot be issued, but the matter must proceed to a second unsatisfied judgment summons. For many smaller claims which we handle (for example, medical accounts), the costs have, by this time, doubled the claim. We often wonder why some of our clients bother chasing such small debts; however, the reality is that plaintiffs in the community (and particularly perhaps country plaintiffs) are not used to their bills simply being ignored and expect them to be paid. It is frustrating for us to have to explain that a process might take 12 months from initial letter to a warrant of commitment (assuming two UJSs) and a further 12 months for the bailiff to execute the warrant.
>
> Only after the defendant has defaulted on a second UJS order (or does not attend) can a warrant of commitment be issued. A major fault in the current system is when defendants move between jurisdictions of courts. Defendants these days are increasingly mobile—the Housing Trust, etc., appear to be able to provide unlimited rent relief at short notice for numerous debtors—the delay in obtaining a certificate of judgment and transferring the judgment not only adds to the costs, but may see the defendant out of reach forever.

It is also the case that the Courts Department (some courts in particular) are taking an increasing length of time to issue processes. We understand that some of this might be because of confusion created by the alleged new computer system (which has not yet graced the . . . Local Court!), but whatever the case a delay in excess of three months (which is not uncommon) is obviously unsatisfactory.

The current system is unworkable because, even in the event of a 10 day order being granted and the bailiff attending at the defendant's premises, there is certainly no guarantee of prompting the debtor to pay. Our files are littered with numerous examples where the bailiff is forced to take the defendant to gaol in Adelaide (with bailiff mileage, adding an additional . . . or so to the costs to be borne by the plaintiff) and where the defendant is simply 'booked in and out' of prison because of overcrowding, and where the defaulting debtor has subsequently arrived back in the . . . prior to the bailiff. In a situation where a defendant is happy to spend a couple of hours behind bars, then there is absolutely no incentive to pay outstanding judgments. The Government should be aware of how widespread this practice is, and how quickly defendants obtain knowledge that there is no incentive to pay debts.

The Government appears to have funds for employees of the Department for Family and Community Services to attend at UJS hearings and to subsequently make public statements in the press about how 'dreadful' it is that persons can be sent to prison for not being able to afford to pay their debts. The reality is that the 10 day orders are only granted for contempt of court (not necessarily because of a debtor defaulting, but in 99 per cent of cases because of the defendant simply refusing to attend) and the 10 day orders themselves are therefore an absolute joke.

Similarly, the warrants of execution are virtually unenforceable by the bailiffs. Once again our files are littered with examples of a bailiff having successfully secured entry into a defendant's home and is met by a fantastic array of electrical appliances, only to be advised that they are all on hire purchase and not owned by the defendant. It should be appreciated by the Government that, more often than not these days, defendants are not people who are unable to pay debts, but who simply attempt to evade their responsibilities, In the writer's view the warrant of execution should be given more teeth in the legislation, and the onus of proof regarding ownership of electrical and other items should be on the defendant. Furthermore there should not be a system of public auction for any items seized, but instead the plaintiff ought to be able to have certain items seized and valued by a public auctioneer. If the value of the items seized is a little short of the judgment debt, then the creditor ought to be able to keep the items concerned (less a small fee presumably to be paid to the auctioneer), or, if the item is greater than the judgment debt, then perhaps the plaintiff would pay the balance to the trust account of the auctioneer to be refunded to the defendant upon payment of the auctioneer's fee.

In relation to the current draft Bill, clause 5 (5) should be removed without question. The clause completely ignores the reality that in over 90 per cent of matters which proceed to the issue of a UJS no defendant in our experience bothers to contact our office or the plaintiff direct to make an offer. In the event that that did happen, how would the plaintiff know or be in a position to judge whether or not the offer is reasonable? The section also completely ignores the reality that a vast majority of debtors default on their repayments in any event. The notion that an order for costs could be made against a judgment creditor for apparently rejecting a reasonable offer when the debtor might not in any event make one payment after that offer is absolutely ridiculous.

Clause 5 (7) does depend on how it is to be applied. For example, if the plaintiff is required to make an interlocutory application to satisfy the court, then that clearly escalates costs and would be ludicrous. At least the current system is simple in that the plaintiff's solicitor simply endorses the back of the precipe that no payments have been received.

Clause 6 also appears to be ridiculous and unworkable. The reality is that no judgment debtor will agree to consent to the making of an order to garnish his or her wages. We do not know whether the Government lacks the power to order that, for example, Commonwealth Social Security pensions be the subject of garnishee orders, but we would even go so far as to say that that should also be written into the Bill. Doubtless the suggestion will cause howls of protest in many circles; however, once again the reality is that most defendants are pensioners who add considerably to the costs borne by the plaintiff in the matter being continually brought back to court, and who very rarely (if ever) successfully complete payment of the debt. Even orders of a few dollars per cheque would be preferable than the defendant paying a few dollars and defaulting, and constantly taking out interlocutory applications (it is not unknown for two or three or more such applications) to stay the warrant of commitment, and then once again defaulting on the payments, and then miraculously finding sufficient funds to move into another jurisdiction! Such defendants ought to be required to pay a fee to the court, and/or to the plaintiff's solicitor (say, $50) upon the filing of any such application to stay a warrant because of default. Anything else would see the system continually abused as it is now.

Section 7 of the proposed Bill is also unacceptable. Currently, at least a creditor has a right to enforce the sale of real estate owned by a debtor after a warrant of execution has been returned marked 'Nil effects'. For Parliament to enact that such a procedure will not be allowed except in exceptional circumstances ignores the reality that it may be a creditor's last resort because of the failure of the warrant of commitment to be any deterrent, and the actuality that bankruptcy proceedings are often far too expensive. These days we could not recommend the issuing of bankruptcy proceedings where the judgment debt is for less than $5 000, simply because of the disbursements involved. The Commonwealth Government has seen fit to dramatically increase fees, etc.; the fee on filing a bankruptcy notice is now $300, as is the fee on filing the creditor's petition. At the moment (aside from the disbursements in issuing the ordinary summons, unsatisfied judgment summons, warrants, etc.) the greatest cost to the plaintiff (for a small claim) are auctioneers fees which must be deposited with the local court in the sum of $350. Even then the plaintiff is at some risk as to costs as the defendant may own the real estate in conjunction with another (for example, spouse) and of course any mortgagee will refuse to release particulars of the amount outstanding. The plaintiff creditor, in his ignorance of the extent of the secured creditors, runs the risk that there will be no equity in the property.

In summary, therefore, the enforcement provisions need to be tightened up dramatically, and we refer to the writer's comments on garnishee orders, 10 day orders, and warrants of execution. Furthermore there should be uniformity of process throughout the different jurisdictions. It should not be necessary to obtain a different certificate of judgment or to file an affidavit each time a matter is transferred between jurisdictions—the plaintiff's solicitor's precipe should be sufficient evidence. If the plaintiff's solicitor is incorrect about the amount alleged to be outstanding if a process is transferred, then an order for costs should be obtained against him at a resultant interlocutory hearing; however, the current system appears to be suspicious of all matters which are transferred from an apparently foreign jurisdiction (which actually might only be a few miles away).

We do not know whether the writer's opinions equate with many other submissions you have received, but certainly plaintiffs in this area are fed up with the current system. We would not be surprised if plaintiffs in other jurisdictions . . . simply do not bother to collect outstanding judgments. This is not fair to business people in today's economic climate, and in particular in an era when defendant's credit records are apparently sacrosanct as the result of privacy implications.

That is the end of the letter. Some of it matches up with other comments I have received. Some of it is unworkable; for example, with regard to garnisheeing Commonwealth Social Security payments, it is not possible for this Parliament to enact that. A lot of matter in the letter with regard to the present system in many respects is not improved by the Bill. I thought it was worth reading the letter, which has been carefully and comprehensively put together, so that it will show the Government the problems being experienced in the field.

I turn to the details of the Bill. Clause 3 defines a minor consumer debt as being a debt of $20 000 or less. If we go further into the Bill we find that it has considerable consequences as to whether or not a Bill is a minor consumer debt. The Law Society has commented that most members of the community today would not regard a debt of $20 000 or less as being minor and, because of the consequences further on, the amount should be reviewed. I ask the Attorney-General in replying to consider that; otherwise, I propose an amendment to specify an amount considerably less than $20 000.

One of the undesirable consequences of this present definition of a 'minor consumer debt' of $20 000 or less, is that more creditors would turn to bankruptcy procedures rather than to the local court. I suggest that that is an undesirable result. Clause 4 (2) provides for the issuing of

a summons, which may be served by post requiring not only the debtor but also any other person who may be able to assist with the investigation of the debtor's means to appear for examination. It involves not just the debtor as at present but any other person who may be able to assist with regard to the debtor's means appearing for examination. That person can be summoned and the summons can be served by post. If such person fails to appear, he or she may be arrested and brought before the court.

One solicitor pointed out that the other person could be the debtor's bank manager, husband, wife or employer and they may not have received their mail. Subject to what the Attorney-General may say in response, this provision ought to be deleted. I can see no warrant for requiring any other person to attend by summons, which may be served by post, and be subject to arrest for failure to attend.

Clause 4 (3) provides for service by post in an area where non-attendance can involve arrest of a debtor or any other person summoned. One solicitor enquires as to who will provide the resources for enforcement of the warrant—the judgment creditor or the taxpayer. I am informed that similar legislation in other States has failed. Generally speaking, where a person is subject to imprisonment, as at present, or, in this case, arrest, the summons ought to be personally served and postal service should not be adequate in those circumstances.

Clause 5 (5) provides that, where a debtor submits a proposal to the creditor a reasonable time before the application comes on for hearing and the creditor unreasonably fails to agree to it, the court will make an order for costs against the creditor. At this stage there has been no examination of the debtor, so how is the creditor to determine whether or not it is reasonable? That matter was raised in the letter that I read: that this Bill for the first time provides for costs against the creditor where the creditor does not accept what is determined to be a reasonable offer made by the debtor. There has been no examination of the debtor, so how would the creditor know whether or not it was reasonable? The other matter that has been put to me in this regard is that presently there is nothing to stop the debtor making an offer; it often happens and, when it does happen, if it is at all reasonable, it is usually accepted, anyway, without the procedure of penalising the creditor.

Clause 6 provides for a garnishee order against salary or wages where the debtor agrees. This is a matter of civil liberties and may lead to the employee being dismissed because, supposing the employee agrees to salary or wages being garnisheed (and he may well do so as there could be considerable pressure upon him to do so), and his employer finds out, he may be dismissed. There should be an amendment to provide for protection against wrongful dismissal in these circumstances. Mr Vin Glen from the Central Mission was responsible for this suggestion, as was SACOSS.

Clause 7 (2) suggests that seizure and sale of personal property that would not be available in bankruptcy proceedings will, in exceptional circumstances, be authorised. There is no guidance on what are exceptional circumstances and, as this would be a very substantial departure from normal debt recovery restraints, there needs to be a clear definition as to what will constitute exceptional circumstances. This provision may also conflict with Commonwealth legislation. There should be consistency between the two Acts, and I will address that point in Committee.

Clause 9 (1) provides for the appointment of a receiver. Some solicitors have pointed out that in this kind of situation the appointment of receivers has rarely been effective. The question should be asked: who pays the receiver's fees? Certainly it has been the case in the past that receivers often seem to be more concerned about getting their own fees than about seeing that the creditors are paid.

Clause 14 deals with the liabilities of directors and managers. The proposal within this clause would appear to conflict significantly with the general law—and the Law Society has pointed this out—particularly with the Commonwealth and Uniform Corporations Law relating to the liabilities of directors and/or officers of bodies corporate. Unless a similar provision is intended to be introduced in each jurisdiction, that is, each State, the Law Society has suggested it to be entirely inappropriate for it to be simply introduced in this State. It would appear to fly in the face of the concept of a uniform corporations law. It may well be in substantial conflict with Commonwealth law. I ask the Attorney to consider this when he responds.

Also, for example, if a spouse has been pushed into being a director and may not really know anything about it, she may be innocently involved. One organisation consulted referred to this kind of debt as being a 'sexually transmitted debt', a term which I found rather amusing and which is probably fairly descriptive. The present Local Court rules with regard to directors allow the examination of a director or officer of a body corporate, where the body corporate is not paid a judgment. I propose an amendment to delete the present clause 14 in the Bill and to limit it to the present situation in the Local Court rules, that the only liability attaching to a director is that he or she may be summoned to be examined as to why the company has not paid the judgment.

In relation to clause 16, rights of purchase of properties sold under a warrant of execution need to be modified. The provision does not have regard to the fact that many owners of property will make them available on lease or floor plan to motor vehicle dealers. Goods in the possession of a judgment debtor may be held on consignment. Accessories may not be part of a principal structure or a vehicle. There are other situations in which the judgment debtor will not have title and in which the interest is not registered. Clause 16 should recognise all those matters, and I propose to address this matter in the Committee stage of the Bill.

Clause 11 (2) allows the sheriff to eject any person from land that is the subject of a warrant of possession. However, this does not recognise legitimate interests of tenants, mortgagees in possession, share farmers and others. I propose to address this matter by way of amendment. The Credit Reference Association of Australia is one of the organisations to which I have referred which may have made represenations. It has raised an important matter that with regard to information relating to judgments, where a judgment has been made in the court as a result of a trial and the matter has been determined by the court, information about those judgments can be obtained from the courts. Of course, if information about judgments were not obtained from the courts, anyone representing creditors would be greatly restricted in being able to recover those judgments.

By far the greater majority of judgments in number are obtained not as a result of a trial but by default where the defendant has, for example, not entered an appearance to the summons and the plaintiff may have lodged a request to sign judgment and the judgment is signed in default. Of course, that is a perfectly proper procedure. The problem is that a technicality in the court rules currently prevents access to those. It allows access to information about judgments where the judgment has been obtained as a result of a process in the court, of a hearing or of a trial. However, where judgment has been signed it does not allow access. This issue was raised in the budget Estimates Committee and, subsequently, I understand that a meeting was held

between the Credit Reference Association of Australia and the Attorney. I ask the Attorney to give attention to this matter and to see that amendments are made in the appropriate Act to make sure that information about judgments, however obtained, whether as a result of a trial or whether as a result of judgment being signed in default, be made available to the judgment creditor, otherwise the judgment creditor cannot take the necessary steps to enforce his judgment.

At present, there is an absconding debtor's procedure under which warrants may be issued. If it can be established on affidavit that the debtor is about to abscond, something can be done about it. This present package of Bills appears to be exhaustive. It appears to repeal the existing procedures, and this absconding debtor's procedure is nowhere taken into account. This matter was raised by the Law Society, and I ask the Attorney to respond to this matter. I ask him to show me where this procedure is retained and, if he cannot, I ask him to provide for that in the appropriate Bill. Subject to my comments, I support the second reading of the Bill.

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

STATUTES REPEAL AND AMENDMENT (COURTS) BILL

Adjourned debate on second reading.

(Continued from 14 August. Page 147.)

The Hon. K.T. GRIFFIN: This Bill is one of the package of Bills dealing with the courts restructuring. It is largely consequential on the Bills relating to the restructuring of the courts system and the Enforcement of Judgments Bill, as well as making several changes of some substance. Given provisions in the Enforcement of Judgments Act, allowing imprisonment to be ordered where a debtor in contempt of court disobeys a court order, there is no difficulty with the provisions which amend the Debtors Act and the mercantile law. Clause 9 of the Bill amends the Criminal Law Consolidation Act to reduce the maximum penalty for common assault from three years imprisonment to two years imprisonment. That will have the effect of making the offence a summary offence and not a minor indictable offence for which the defendant may elect to be tried by a jury rather than to have the matter dealt with on a summary basis.

It brings the penalty for common assault in line with the offence under the Summary Offences Act of assaulting a police officer for which the maximum penalty is two years. However, it is an extraordinary move by the Government to seek to reduce a maximum penalty for common assault, an offence which is a serious one and does occur regularly, only for the purpose of trying to fit into a scheme for identifying summary offences.

Certainly the Liberal Party does not support reducing the maximum penalty for offences such as common assault, and we will be proposing that the present three year maximum penalty be retained. If the Attorney-General argues that there is an inconsistency, it may be that what we ought to do, instead of lowering the maximum penalty, is increase from two to three years the penalty under the Summary Offences Act for the offence of assaulting a police officer. I will not in any way support the reduction in the maximum penalty for common assault just to fit in to a scheme of change within the Magistrates Court.

There is also an amendment to the Criminal Law Consolidation Act which provides that where a person intentionally damages property the maximum penalty of life imprisonment is to apply where the damage exceeds $25 000 rather than the present $2 000 limit; where the damage does not exceed the proposed $25 000 limit then imprisonment for five years is the maximum penalty. The $2 000 contained in present section 85 of the Criminal Law Consolidation Act has not been varied for a number of years, so I do not propose any opposition to the increase to $25 000 as proposed.

The Bill also provides for amendments to the Controlled Substances Act, in particular to section 32, which was amended last year. It deals with the prohibition of the manufacture, production, sale or supply of drugs of dependence or prohibited substances. It was amended last year, assented to on 26 April 1990 and came into operation only on 26 September 1991. It has been the subject of a couple of press reports, the most recent of which was this morning, which indicated that the Government was going to get tough on drug dealers. It is rather surprising that it took the Government 18 months to bring this rather dramatic increase in penalties into operation after the matter was debated in the early part of 1990.

The amendments made last year increased the penalties substantially, and they are divided into two categories. Category A is for the sale, supply or administration, or taking part in the sale, supply or administration, of a drug of dependence or prohibited substance to a child, and being in possession within a school zone of a drug of dependence or a prohibited substance for the purpose of the sale, supply or administration of the drug or substance to another person. The penalties are a $1 million maximum fine and imprisonment for 30 years where cannabis or cannabis resin is involved and where that amount exceeds the amount of 100 cannabis plants, 10 kg of cannabis or 2.5 kg of cannabis resin.

In any other case involving cannabis or cannabis resin, the fine does not exceed $100 000 or imprisonment for a term not exceeding 15 years or both. Where it relates to some other substance such as heroin and the quantities involved exceed the amount prescribed, the penalty is $1 million and imprisonment for life. In any other case involving those other drugs the penalty is $400 000 or imprisonment for a term not exceeding 30 years or both.

For any other offence, that is, for sale, supply or administration, or for taking part in the sale, supply or administration, of a drug of dependence or prohibited substance to any other person other than a child, the penalties are set out in paragraph *(b)*. Where the substance the subject of the offence is cannabis or cannabis resin, if the quantity of the cannabis or cannabis resin involved in the commission of the offence equals or exceeds the amount prescribed in respect of cannabis or cannabis resin for the purpose of this subsection, there is a penalty of both a fine not exceeding $500 000 and imprisonment for a term not exceeding 25 years, and if the amount is less than the prescribed amount then a penalty not exceeding $50 000 or imprisonment for 10 years or both.

It is interesting that the amount prescribed under subsection (5) is 100 plants, 10 kg of cannabis or 2.5 kg of cannabis resin. So, if you have more than that amount it is a maximum fine of $500 000 and 25 years gaol; if you have less than that amount it is $50 000 or imprisonment for 10 years or both. In relation to other drugs, not being cannabis or cannabis resin, if the quantity of the substance involved in the commission of the offence equals or exceeds the amount prescribed in respect of that substance for the purposes of

this subsection, there is a penalty of both a fine not exceeding $500 000 and imprisonment for life, or such lesser term as the court thinks fit. In any other case it is a fine of $200 000 or imprisonment for 25 years or both.

The amounts are set out in the third schedule to the regulations made, as far as I can assess, on 9 May 1985, and are as follows: cannabinoids (except tetrahydrocannabinols) have a prescribed amount of 300 grams, cannabis oil 300 grams, coca leaf 80 kg, lysergamide 4 grams, lysergic acid 4 grams, lysergide (lysergic acid diethylamide or LSD) 40 mg, opium poppy 10 kg, papaver bracteatum 10 kg, and other amounts.

For possession of those amounts or more, the penalty is a fine not exceeding $500 000 or imprisonment for life. For possession of a lesser amount, the penalty is a fine of $200 000 or imprisonment for 25 years or both. So close to the proclamation of the April 1990 amendments, the Bill seeks to set another category of fines and imprisonment. In respect of any offence that does not relate to the sale, supply or administration of a drug of dependence or a prohibitive substance to a child or an offence in a school zone, for possession of less than the equivalent of 100 plants, 10 kilograms of cannabis or 2.5 kilograms of cannabis resin, the penalties are at two levels. For possession of half of that quantity or more, the penalty is a fine of $50 000 or imprisonment for 10 years or both, but for possession of less than half that amount the penalty is a fine of $2 000 or imprisonment for two years or both.

That is an extraordinary devaluation of the penalties passed 18 months ago and brought into effect just over two weeks ago. The Government is saying that if a person possesses just under 50 plants they will have to pay only a $2 000 fine or be imprisoned for two years. That penalty is designed to make it a summary offence and no longer a minor indictable offence. So, the Government is tailoring severe penalties to fit into its scheme of summary offences rather than looking at the substance of the offence.

One also needs to note that if, for example, a person possesses 4.5 kilograms of cannabis, the maximum penalty is a fine of $2 000 or imprisonment for two years. For possession of 1 kilogram of cannabis resin the same maximum penalty applies. For possession of a bit less than 150 grams of heroin, the penalty will be a fine of $25 000 or imprisonment for five years or both. I do not believe that is an appropriate reduction in light of the seriousness of the offences and I propose to knock out that particular amendment. If one possesses less than one-fifth of the amount prescribed, one might be able to justify the reduction in penalties to fit in with the scheme of the legislation, but certainly nothing as belittling as the Government's proposal. The remaining amendments seem to be appropriate in all the circumstances; so, subject to the two matters upon which the Liberal Party has a very strong view, we support the second reading of this Bill.

The Hon. T. CROTHERS secured the adjournment of the debate.

JUSTICES AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 August. Page 155.)

The Hon. K.T. GRIFFIN: This Bill is part of the package of Bills relating to the courts restructuring. The Justices Act presently deals with the procedure in courts of summary jurisdiction as well as the structure of such courts. When this package of Bills is passed, the Justices Act is to be known as the Summary Procedure Act, which will deal only with procedures in the Magistrates Court in so far as they relate to criminal matters.

The Bill deals with a number of matters, many of which are not controversial but some of which are. Matters included in the Bill are as follows. First, preliminary hearings or committal proceedings are to be retained, but some streamlining will occur. Where there is to be a preliminary hearing, the prosecutor must, at least 14 days prior to the date appointed for the hearing, file in the court and give to the accused copies of all the evidence upon which the prosecutor will rely at the preliminary hearing. At the hearing, a witness for the prosecution will only be called if the court gives leave to do so or if the defendant calls for that witness and the court is of the view that cross-examination of that witness is necessary for the purpose of the committal. At present, a person is committed for trial only after the committal proceedings if the magistrate is of the view that there is a *prima facie* case. Now, the question for the magistrate will be whether there is sufficient evidence to support a conviction.

Secondly, an accused person charged with a minor indictable offence will be required to elect not less than three days before the date appointed for his or her appearance to have the trial in a superior court; otherwise the charge will be dealt with in the same way as a charge for a summary offence. Notwithstanding this, the court will allow a defendant charged with a minor indictable offence to elect for trial by a superior court if the magistrate finds that there is a case to answer. At present, a person charged with a minor indictable offence may elect to be tried by a superior court at any time during the course of proceedings up to and including the completion of the case for the prosecution.

The third aspect is that the categorisation of offences is substantially revised. The new categorisation is more clearly defined than the old, which was generally a bit vague. Basically, the categorisation is three levels. A summary offence is an offence that is not punishable by imprisonment; an offence for which a maximum penalty of or including imprisonment for two years or less is prescribed; an offence against section 39 of the Criminal Law Consolidation Act 1934 (common assault)—that depends upon the penalty being reduced in accordance with the Bill that we have just debated—or an offence of dishonesty, not involving the use of force or any threat of the use of force against another, where the amount the offender stands to gain through the commission of the offence is $2 000 or less.

All offences apart from summary offences are indictable. Minor indictable offences are those for which the maximum term of imprisonment does not exceed five years and those for which the maximum term of imprisonment exceeds five years and which fall into one of the following categories: namely, an offence of dishonesty, not involving the use of force or any threat of the use of force against another where the amount the offender stands to gain through the commission of the offence is $25 000 or less; an offence involving interference with, damage to or destruction of property where the loss resulting from commission of the offence does not exceed $25 000; malicious wounding or assault occasioning actual bodily harm; indecent assault; breaking and entering and related offences, but not if the offender is alleged to have been armed with an offensive weapon or in company with another who was so armed; or an offence against the Controlled Substances Act that is punishable by imprisonment for a maximum of less than five years. All other indictable offences are major indictable offences.

The present categorisation is based upon a position that simple offences will be dealt with in the Magistrates Court. Offences which are by statute referred to and described as summary offences will be dealt with in the Magistrates Court, but others basically will be indictable offences.

The fourth aspect of the Bill concerns the new provisions relating to the joinder of charges in the one trial or the separation of those charges to be dealt with in separate hearings.

The fifth aspect is that the Magistrates Court is given wider power to review and set aside a conviction in the Magistrates Court. That is designed to try to limit the number of appeals, particularly where an error has been made and it is pointed out to the magistrate. That can be reviewed expeditiously and inexpensively.

The sixth proposal for change relates to many of the procedural requirements relating to the swearing of the complaint and proof of service. They have been dispensed with, but without prejudicing a complainant or a defendant.

The seventh change relates to complaints which are now less complicated. They must include particulars necessary to give a reasonable amount of information with respect to the nature of the charge.

The eighth area of change relates to the general time for laying a complaint. That has been six months for many years, although some specific legislation has extended that period from time to time. This Bill extends the time generally to 12 months.

The ninth area relates to section 99 of the Justices Act which deals with restraint orders. They are amended to allow an order to be made on the basis of affidavit evidence.

The Law Society has made a number of proposals for change. Most of those accord with the views which I generally hold, particularly in relation to committal proceedings. I want to identify a number of concerns about the Bill. I do not believe that it is in the interests of the defendant charged with a minor indictable offence to be required to elect for trial in a superior court three days before the appointed time for the commencement of the committal proceedings, whatever that description of the time may mean. The Attorney-General, in his second reading speech, said that this is designed to alert the court to the intention of the accused so that a running transcript of the proceedings will not have to be kept. This ignores the fact that there may be an appeal to a superior court in any event, even if the issue is resolved in the Magistrates Court, so there will still need to be a running transcript of the proceedings. I am of the view that it is an unreasonable imposition upon an accused person to require that person to make an election before he or she has heard the Crown's case. I think that the *status quo* is appropriate in that case.

The present provisions require a defendant committed for trial to be informed of his or her obligation to give notice of any evidence of alibi, but this has not been maintained in the Bill. I am not sure what the reason is. I think it is important that it be a specific provision, if only to remind magistrates of their obligation. Therefore, I propose that this be included in the Bill.

In addition, I think it is important that there be a statutory obligation upon a magistrate to inform an accused person charged with a minor indictable offence what the consequences of not electing for trial in a superior court with a jury may mean, particularly in relation to that person's job or reputation. This is even more important in view of the significant changes in the description of what may be summary offences. It is particularly important if the right to jury trial is removed in a number of cases for which it is presently available, even though many people will not presently elect to be dealt with in that fashion.

I am concerned that the category of summary offences is widened significantly. Offences of so-called petty dishonesty which do not involve the use of force or threats of force are to be summary. Common assault is to become a summary offence. If a person is convicted of dishonesty, it will undoubtedly affect his or her job or reputation. It may be described as petty by some people, but it is not petty for those who are so charged. There are occasions when a person feels so strongly about the slur which might be attached to him or to her if the matter is dealt with summarily and so strongly professes innocence that they ought to be allowed to take the matter to a jury, particularly because of the consequences to job or reputation. I think that any removal of the general right to trial by jury should be treated with considerable caution.

I am concerned that both common assault and dishonesty become summary offences, and during the Committee stage I shall propose that they be retained as minor indictable offences. I shall certainly be looking at other offences which become summary but which have similar consequences and therefore ought to remain as minor indictable offences.

There is one other area of summary offences which is of concern but which I have not had an opportunity to fully research. Hopefully, however, by the time we reach the Committee stage I will have had time to do so. As I recollect, more and more legislation, particularly of an important environmental nature, imposes maximum penalties involving substantial amounts of money. I recollect that in the last session one of those Bills enacted penalties of up to $1 million and provided for directors and managers of bodies corporate to be liable similarly with companies if companies are convicted.

My recollection is that there is provision in that sort of legislation for the offences to be resolved summarily. Again, my recollection is that at the Commonwealth level and in some States there is a right to trial by jury if monetary penalties over and above a certain sum as well as the risk of imprisonment are likely to be imposed. I would certainly be considering that in those sorts of cases it could be appropriate for us to consider that, where individuals are liable for fines in excess of a significant sum—maybe $100 000—they should not be summary offences but should be minor indictable offences.

This would at least give citizens charged with these sort of offences the opportunity to be dealt with by more senior and experienced judicial officers in the District or Supreme Courts. I will certainly give more attention to that matter. It is an issue on which I would appreciate some response from the Attorney-General, as I would on the other issues that I am raising.

I have already raised in the context of the debate on another Bill the question of the Governor by proclamation declaring certain summary offences to be industrial offences, which has the consequence of requiring such offences to be dealt with by an industrial magistrate, from whose decision there is an appeal to the Industrial Court. I did acknowledge that the legislation presently provides for such proclamation but, in view of the much more serious offences now being enacted by Parliament, with very much higher penalties, it is time at least to review whether those sorts of offences ought to be capable of declaration by proclamation or by regulation if they are to remain in and be dealt with by the industrial jurisdiction.

Subject to further consideration of the matter, it is an area where there is value in having these matters dealt with in the ordinary courts system so that some relativity can be

maintained with the way in which other statutory offences might be dealt with.

Section 99 of the Justices Act deals with restraint orders which apply not only in domestic violence cases but also in neighbourhood type disputes. A provision exists in the Bill for a magistrate's court to make an order under section 99 (4) on the basis of evidence given in the form of affidavit. Subsection (4) identifies the procedure to be followed where an order may be made *ex parte*, but it cannot be enforced until the defendant against whom the restraining order is issued has had an opportunity to appear before the court. The consequence of the breaking of a restraint order is six months imprisonment. It is not clear from the Bill how the concept of affidavit evidence is to be invoked. If it relates only to the *ex parte* application, that ought to be made clear, but, if it relates to the confirmation of an *ex parte* order where the person who is the complainant or on whose behalf a complaint is made gives evidence only in the form of an affidavit without that person being available for cross-examination if there is a dispute, that creates a very significant problem for the party against whom the restraining order is made and has the potential for very serious infringement of that person's rights, particularly because that person's liberty is at threat if there is a breach.

So, that issue is subject to some clarification by the Attorney-General. If it applies only on *ex parte* applications for the initial order, there can be no difficulty with that, but if it applies equally to the confirmatory stage, it will have to be opposed. That can be finally resolved in Committee.

The Bill provides that, where a video tape or audio tape record of an interview of a witness is used in committal proceedings, the requirements of the present Act are to be varied. The present Act provides for a copy of the tape and the transcript to be made available to the defendant or for a copy of the transcript, together with a statement regarding the time and place at which the tape and facilities to play it back, will be made available to be supplied to his or her legal representatives. The Bill only provides that a copy of the tape will be made available, or notification will be given to the defendant of a time and place at which the prosecutor is prepared to have the tape played to the defendant or his or her legal representative.

The elimination of a transcript may be a matter of cost, but nevertheless it is important for the defendant to have access to that transcript, even though he or she may have a copy of the tape or be given an opportunity to view it. It is very important that, if the defendant is to have a proper opportunity to consider the material on the audio tape or video tape, a copy of the tape is made available, as well as the transcript, but if a copy of the tape is not available the transcript or a viewing or hearing should be made available. There should be a specific provision in this clause requiring the tape and transcript to be provided a reasonable period before the hearing and, if there is to be a viewing, that it be at a time and place convenient to the accused and his or her counsel.

In preliminary proceedings the present Act provides that the alleged victim of a sexual offence will not be called or summoned to appear unless the magistrate is satisfied that there are special reasons for the oral examination of the alleged victim. It is my information that special reasons have been considered in a number of cases and, as a result, few applications are granted. The Bill provides that, if the witness is the alleged victim of a sexual offence, or a child is under the age of 12 years, leave will not be granted to call such a witness except in the most exceptional circumstances.

In most cases this means that that will not occur, even if there is some reasonable basis for the request. The term 'most exceptional circumstances' has not been defined, but obviously it is designed to make the opportunity for cross-examination that much more difficult. In relation to ordinary witnesses, the *status quo* should be maintained, namely, that the defence is not required to justify seeking to cross-examine other witnesses, but that the special reasons provision continues to apply in relation to children and victims of sexual assault.

Proposed section 110 (2) provides that the Supreme Court may remove the case from the District Court to the Supreme Court. It seems reasonable that the District Court, of its own volition, should be able to refer a matter on to the Supreme Court, and I would propose that accordingly. The rules of the Magistrates Court may provide that certain sections of the Criminal Law Consolidation Act apply with necessary adaptations and modifications. It is unwise to allow rules to apply provisions of the Criminal Law Consolidation Act. I think they should be specifically included in this Bill. I would like the Attorney-General to indicate in his reply those sorts of modifications which it is envisaged might occur by virtue of the operation of rules and to consider whether they should and can be included in this Bill rather than being left to the rules of court.

Section 188 of the Justices Act relates to *habeas corpus*, and subsequent provisions deal with *mandamus* directed to a magistrate to compel the magistrate to do certain things, and also with actions against a magistrate for acting in excess of jurisdiction. I do not know why those provisions have been deleted from this Bill, and I ask for clarification of that matter. They seem to me to be important provisions, which ought to remain. If there is good reason for their being deleted, all well and good; if not, they ought to be inserted back into the Bill.

Proposed section 201 deals with costs and allows the court to award costs for or against the prosecutor or the defendant in proceedings commenced on information or complaint, but does not allow the court to award costs in relation to a preliminary examination of an indictable offence unless the court is satisfied that the party against whom the costs are awarded has unreasonably obstructed the proceedings. This does raise the issue whether a defendant, in relation to whom a decision has been made that there is no case to answer, should or should not receive costs.

It may well be that this is extraordinarily expensive. Does the Attorney-General have any idea of what might be the costs if that were provided? It has always been an issue of contention. I acknowledge that proposed section 201 is certainly much wider than the present law in relation to the awarding of costs for or against the prosecutor or the defendant. However, this other issue at least ought to be considered.

The Law Society makes the point in its submission that costs should not be awarded against defendants, except in special circumstances, because the prospect of costs being awarded against a defendant in ordinary circumstances may be a significant deterrent from exercising rights reasonably. That can be a legitimate cause for concern. I would like to explore that area further in the Committee stage of the Bill.

The Bill proposes an extension of time generally (that is, from six months to 12 months) within which complaints must be issued. That is an extension which the Opposition is not prepared to accept. It does nothing for encouraging complainants to get on with the job and to lay complaints at the earliest opportunity. It really encourages tardiness on the part of the prosecution when, as I interpret it, the whole thrust of this Bill is to try to speed up the procedures. I

know that in some cases specifically statutes have extended the time limits in specific circumstances. However, I do not think there is any justification for a general extension from six months to 12 months of the time within which complaints may be issued.

A number of other issues relating to the new committal procedures cause me concern; for example, legally objectionable and highly prejudicial material may be included in prosecution statements required to be filed 14 days before the hearing. However, there is no provision for any objections to that and, if they are admitted at the committal proceeding without an opportunity to object, they may be highly damaging because they are inadmissible and legally objectionable. The Law Society proposes some mechanism such as the right to object not less than seven days before the hearing, and I think that is worthy of consideration.

The provisions require the prosecution to file only the statements upon which it relies, but it may have statements that are relevant to the conduct of the defence. All relevant material should be produced by the prosecution—both that which may be supportive of its case and that which may not but which nevertheless is relevant. Currently, that is the position. It is a proper position of the Crown that its duty is to the court and to provide all material relevant to the prosecution, not just that which supports its case.

The defendant is required by the Bill to plead to a charge at the end of a committal proceeding, but that is not the case at the moment. I do not think there is any need for imposing an obligation for pleading to a charge. The Law Society has pointed out that the proposed change in the test that the magistrate is required to apply to determine whether or not the defendant ought to be committed for trial in the superior court is not a significant alteration from what exists at the present time in that consideration ought to be given to the New South Wales test, which is whether or not the jury is likely to convict the defendant if committed for trial as a result of the evidence presented at the committal proceedings. It seems to me that that does toughen the test somewhat. I understand that it has not worked to the disadvantage of the prosecution or the defendants in New South Wales and, again, I think that that matter ought to be considered.

The whole area of committal proceedings is difficult. I have talked not only to the Law Society, which has proposed a number of amendments—some of which I have touched upon—but also to lawyers who practice in the criminal law field and they tell me that there is no support for the assertion that the present committal proceedings are time consuming and ought to be constricted. That involves the Crown level, as well as the defence counsel level and also the Commonwealth Director of Public Prosecutions.

They all agree that some new procedures have been implemented and that committals are not the problem that they are reputed to be, that they do provide a useful means of weeding out weak cases and that if some of the constraints that are proposed to be imposed by this Bill are actually imposed then there is a greater prospect of longer jury trials, of trials before a jury being aborted as a result of evidence, of prosecution witnesses not being tested by defence at the committal stages, and that there is likely to be extended cross-examination because the opportunity to cross-examine at the committal stage has not been allowed under the new provisions.

As I said, the information and the instances that have been provided to me show that in practice the agreements between the Crown and the defence counsel generally result in reasonably speedy cases—

The Hon. C.J. Sumner: You'd believe anything lawyers told you.

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: —and that the system is conducive to a proper consideration of the case against an accused. Although there are some long committals—

The Hon. C.J. Sumner: And long speeches!

The Hon. K.T. GRIFFIN: —nevertheless they do work to an advantage and one only has to remember the Von Einem case, when on two counts after a very long committal the Crown entered a *nolle prosequi*. Of course, it is cheaper to do it at that stage than it would be to have a long jury trial which might be aborted as a result of either insufficient evidence or some other problem that has not been identified as a result of the longer committal proceedings.

The Attorney-General has made some offensive remarks about long speeches. The fact is that he has had these Bills under consideration for at least the past year.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Well, he has other people to do the work for him and he has not done much of it himself. He has had so many research officers running around talking to people and putting this package together. The Opposition does not have those resources, so we have to rely on advice being given by a variety of people with experience in the field and we have to refer to papers and articles by both prosecution and defence lawyers. It is all very well for the Attorney-General to bleat about long speeches, but the fact is that I have tried to identify some of the issues—

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: —so that they can be examined. Obviously, the Attorney-General wants to stifle debate; he does not want to have the opportunity of at least having on the record those issues that are likely to be contentious so that there can be some forewarning of them and consideration given to them by him and by other members of the Council.

If he wants a proper consideration of the Bill, and it does not appear that he does, then it has to involve the elaboration of various points. If the Attorney goes on like this, I will read to him a long article about committal proceedings by the Commonwealth Director of Public Prosecutions. It is supportive not just of committal proceedings but of the procedures which are followed—

The Hon. C.J. Sumner: I can go to the library and read it—I don't have to hear you talk about it.

The Hon. K.T. GRIFFIN: You will, if you keep going on like that, in your stupid, idiotic way of intervention.

The Hon. C.J. Sumner: I'm not being stupid.

The Hon. K.T. GRIFFIN: You are.

The Hon. C.J. Sumner: You've spent hours and hours—

The Hon. K.T. GRIFFIN: Of course I have; they are complicated Bills that seek to make radical changes to the law.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: That is up to you to make your own judgment, but do not waste time. You are prolonging the debate and provoking it by interjections.

The PRESIDENT: Order!

The Hon. Barbara Wiese: You don't have to respond.

The Hon. K.T. GRIFFIN: Of course, I don't.

The PRESIDENT: Order! The Council will come to order. The Hon. Mr Griffin will address the Chair.

The Hon. K.T. GRIFFIN: The Attorney-General has been out of the Council most of the evening while we have been putting down a point of view. He comes in here at the last minute and bleats about long speeches. Of course they are

long speeches, because they are complicated Bills that propose some radical changes to the structure of the courts and to the rights of citizens who appear before those courts.

We are entitled to put down a point of view about those. The fact is that the debate in the Committee stage will be just as long, if not longer, and what I have been endeavouring to do is to try to give those members who are interested—it may not be the Attorney-General, but other members are interested—some indication of the Opposition's position on these Bills.

There will be lengthy debate at other stages of the consideration of the Bill, and the Attorney will just have to grin and bear it because, on those occasions, he will have to sit through it and he will not be out of the Council enjoying himself doing other things.

The Hon. T. CROTHERS secured the adjournment of the debate.

JUSTICES OF THE PEACE BILL

Adjourned debate on second reading.
(Continued from 14 August. Page 156.)

The Hon. K.T. GRIFFIN: Mr President—

Members interjecting:

The Hon. K.T. GRIFFIN: I will take whatever time I like to speak to this Bill.

The Hon. C.J. Sumner: We need some Standing Orders to—

The Hon. K.T. GRIFFIN: You do not need Standing Orders. Just allow proper debate on difficult Bills.

Members interjecting:

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

The Hon. C.J. Sumner interjecting:

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

The Hon. K.T. GRIFFIN: Again, this Bill is consequential on the courts restructuring package, and particularly the amendment of the Justices Act to the Summary Procedure Act. The appointment of justices of the peace is presently in the Justices Act. This Bill seeks to deal separately with the appointment of justices of the peace. The scheme of the Bill is similar to the scheme of those parts of the Justices Act that deal with the appointment of justices of the peace, in that the Governor will appoint the justices.

The Governor may, on the recommendation of the Attorney-General, appoint a justice to be a special justice who is a person who will sit in the courts. A roll of justices is to be kept. A justice may be removed from office by the Governor if he is incapacitated mentally or physically, if he is convicted of an offence which shows the convicted person to be unfit to hold office as a justice of the peace, or if he becomes bankrupt.

While a roll of justices is to include the names of all persons currently holding office as justices, I raise for consideration the question whether or not it is necessary to include a provision to ensure that there is no doubt that a justice appointed prior to the commencement of the Bill is a justice under the Bill and subject to its provisions. There is no specific provision in the Bill that the roll of justices may be open to public scrutiny. As that is desirable and ought to be specifically provided, I will move an amendment accordingly.

The Bill also provides that the letters 'JP' after a signature will signify that the signatory to any document is a justice of the peace, but again there is no provision that a person who is not entitled to use that description is guilty of an offence. That safeguard ought to be included in the Bill. Subject to those matters, I indicate that we will support the second reading of the Bill.

The Hon. T. CROTHERS secured the adjournment of the debate.

PARLIAMENTARY COMMITTEES BILL

Adjourned debate on second reading.
(Continued from 29 August. Page 602.)

The Hon. R.I. LUCAS (Leader of the Opposition): At this early hour of the evening I am pleased to be debating this very important Bill, a Bill that will, I am sure, result in much debate by members in this Chamber both this evening and through the coming days. I suppose that it is especially opportune that we consider this Bill at a time when, in South Australia for many years, Governments have had increasing levels of power. There have been increasing examples of the abuse of Government/Executive power, and increasing examples of problems caused by the abuse of that power. One only has to look at the examples that in recent times have afflicted South Australia's financial institutions as a result of the interplay of Government/Executive members and those financial institutions to realise the problems that exist in South Australia, and I guess in the other States of Australia as well.

Most commentators will agree that over the years Parliament, as an institution, has had a lessened ability to provide proper scrutiny and oversight for the actions and operations of Governments, and again I indicate that there is a good example of that in South Australia as well. This evening I do not intend going over the whole debate about the shifting balance of power between the Parliament and the Executive. I have spoken on this issue before, as indeed have other members in this Chamber and political commentators. Without going through the detail, it is reasonable to summarise the general view of all those commentators and some members of Parliament that the Parliament's power *viz-a-viz* the Executive has weakened, and the Executive's power in relation to that of the Parliament has strengthened, and that is not in the best interests of the community and the democratic oversight of Government in South Australia.

When one looks at the weakening of the institution of Parliament one only has to consider the problems that are inflicted upon Opposition Parties—and in South Australia for most of the past 20 years they have been of Liberal Party persuasion—in relation to the resources that are provided to them compared to the resources that are provided to the Government and the bureaucracy that supports it.

That is another reason for the problems that Parliaments and Oppositions have had in the provision of proper scrutiny and oversight of the excesses and abuses of power that have been inflicted upon the community of South Australia. The role of State Parliaments has, in recent years in particular, been under increasing threat from some political commentators. Even some of what might perhaps have been seen in the past as more conservative sections of the South Australian media are talking increasingly about whether we really need State Parliaments. Equally, there is a number, but nowhere near a majority, of individuals and commentators who have commented on the present and future role of the Legislative Council. Some are even supportive of the Labor Party's policy position for the abolition of the Legislative Council which, I understand, is the long-term policy

position of the Labor Party—something that we do not see coming about at least in the short to medium term.

Given that contextual background, the problems in relation to providing proper scrutiny and oversight of government, perhaps the weakened nature of the Parliament, certainly the weakened nature of political Oppositions, the continuing debate about whether there is to be a continuing role for State Parliaments and whether there should be a role for the Legislative Council, it is an important time for this Chamber to discuss what, as I indicated earlier, is a very important Bill.

Those who want to defend State Parliaments—in particular, those members in this Chamber who want to defend a proper role for the Upper House in State Parliaments—ought to, and I am sure will, take a very close interest in the debate and the ultimate passage of the Parliamentary Committees Bill in some form. Those who want to defend State Parliaments and the Upper House could consider many other matters, but this evening I do not intend to canvass many of those options which, on other occasions, members of this Chamber might like to consider. Those options would cover resources, powers and procedures of the Upper House of State Parliaments and a range of other areas. Tonight, all I want to consider, having outlined briefly the background to the present debate, is the role of the Legislative Council. The ultimate passage of this Bill in some form will, I hope, provide a strong committee House. Of course, that will depend in the end on the majority view in this place and perhaps further debate in another place.

Along with other members, I have been a strong supporter of the Upper House committee system. I see a very important role for committees in the proper and efficient operation of the Legislative Council in respect of the provision of oversight and scrutiny of Government operations. These committees, whether they be select or standing, can not only provide that scrutiny and oversight of particular Government actions but can also play a policy or educative role. For instance, one has only to look at the work that has been done by the committee on child abuse, which reported today after many months of long and arduous work.

Whilst I have not had the opportunity to read all of that report, I have certainly considered the recommendations and that committee and its members ought to be congratulated. From my reading of the report, the members of that committee have worked long and hard on a particular issue—

The Hon. C.J. Sumner: They worked long.

The Hon. R.I. LUCAS: The Attorney continues to interject; but it has been a long time since he sat on a committee and got his hands dirty with some real, hard work. They did work long and they did work hard, and it ill behoves the Attorney to make that sort of snide interjection. I am here tonight congratulating the members of that committee—Labor, Liberal and Democrat, and to cite that committee as an example of a committee which, in a non-Party political way, worked on an important community and social issue, an important policy matter as well.

I heard on the radio tonight a talk about an educative program that that committee is recommending and the need for changing community attitudes in relation to this important social issue. I think this is a good example of how the parliamentary committee system can and should work. As I said earlier, the other role for committees, whether they be select committees or standing committees, can be to provide oversight and scrutiny—because in South Australia we have a Government steeped in secrecy, a Government that has been born and bred on secrecy for the past nine or 10 years.

The Hon. C.J. Sumner: What garbage.

The Hon. R.I. LUCAS: With some difficult and controversial issues, on some occasions the only way that the Parliament, on behalf of the community, can get to the bottom of what is really going on in Government is to appoint a select committee, or consider putting the matter before a standing committee of the Parliament.

The Hon. C.J. Sumner: Or have a royal commission.

The Hon. R.I. LUCAS: Well, we can have royal commissions as well. But there are two roles for the committees. In my view, we cannot just have committees of a policy and educative nature. I know that we have had some debate, of a friendly nature, in this Chamber. There will always be a mixture of committees. Some committees will be appointed by this Parliament on controversial matters, on matters that the Government does not want to see committee investigation, with the Government trying to denigrate such committees, as being political committees and not worthy of the committee system of any Parliament. Of course I reject that notion.

There must always be a role for Parliament to provide scrutiny of matters that Governments and Ministers do not want to see the light of day. The more one hears Ministers bleat, squeal or squeak about the fact that we should not appoint a particular committee, that it is only political, the more one feels comforted by the fact that, clearly, they have something to conceal. As I have said, this sort of thing coming from a Government that has been steeped in secrecy for the past nine or 10 years is perhaps not altogether surprising. So, there are those two possible roles for committees, and each is important in its own right. The committee that has reported today was a committee with one particular role and purpose and, at least on the surface, it has done an excellent job and has applied itself assiduously to the task.

The Hon. C.J. Sumner: You just said that a few minutes ago. Why say it again?

The Hon. R.I. LUCAS: If you are irritated, go outside and have a cup of tea, so that we can get on with the debate.

The PRESIDENT: Order! The honourable member will address the Chair and the Attorney-General will stop his interjecting.

The Hon. R.I. LUCAS: Mr President, if you had the power to send him to the sin bin we would all be better off this evening. I know that he is a disgruntled Weagles supporter, but I think we would all get on much more happily in this Chamber if the Attorney was not here.

As I said, for the fourth time being interjected upon by the Attorney-General and therefore have to repeat, there are important roles for committees. I reject the notion that we cannot have committees on controversial matters over which they can provide scrutiny and oversight. We have other select committees and I would instance two in particular: the select committee on drugs and the select committee on the penal system. They are two examples of committees on important policy and social issues. Members of all persuasions on those committees are working long and hard in applying themselves to finding solutions to the difficult problems that exist. I reject the notion that in some way this Chamber in recent years has headed down the path of political committees. At least three or four of the committees that we now have could in no way be described as controversial in their scrutiny or oversight of Government action which might be of embarrassment to the Government.

These committees also have an important role for all members in this Chamber, particularly backbench members, whether of the Government or Opposition Parties. Ministers in their own way are very much tied up in their work,

shadow Ministers to a large degree are similarly tied up in their work and the President is tied up in his work as well; but there are half a dozen members on the Government backbenches, another half a dozen or so on the Opposition backbenches and two Democrats, and maybe even some shadow Ministers, who would like to apply themselves to and be part of an efficient and effective standing committee system in the Legislative Council.

Another positive in relation to committees in the Legislative Council, which has been instanced in many other Parliaments throughout the world and I understand has recently been taken up by the Chairperson of one of the House of Assembly committees, is the huge potential for community involvement through public sessions and hearings and the taking of evidence in public by the proposed standing committees of the Parliament. There is an opportunity for greater community involvement and awareness of the parliamentary system. An efficient and effective standing committee system of the Legislative Council can serve that good purpose.

During my nine years in Parliament I have spoken on a number of occasions about the role of committees in the Legislative Council. The simple fact is that the passage of any Bill and any attitude we express will be the result of a series of compromises coming down to an agreed final position. Members will be aware that in the past I have argued strenuously for two standing committees of the Legislative Council. I have argued that they ought to be modelled on the Senate standing committees on legal and constitutional affairs and on Government and financial operations. In an ideal situation, I would be attracted to that notion and to the notion of completely separate Upper and Lower House committees. As a separate Chamber we should control our own destiny and committees. In relation to standing committees, we would have solely Legislative Council committees and the other place would have its own committees as well.

In the course of my research for this speech tonight, I had cause to look at the committee systems in the Parliaments in the other States and in the Commonwealth. I want to refer to the Commonwealth Upper House and two other States to give an indication of the way that they operate their committee systems, how they staff them and some of the other features of those systems.

Currently there are eight legislative and general purpose standing committees of the Senate, with two select committees and two joint statutory committees—one on the National Crime Authority and one on Corporations and Securities—and six Estimates Committees. In general terms, the membership of those committees varies between six and 10. Interestingly, the staff, including the secretary for each committee, numbers approximately four to five full-time members. For example, the staff assisting the standing committee would include a committee secretary on a salary between $45 000 and $52 000, a principal research officer on a salary between $41 000 and $44 000, a senior research officer on a salary between $34 000 and $39 000, and an executive assistant on a salary between $22 000 and $25 000—roughly to the nearest thousand dollars.

Those standing committees in the Senate are very well staffed, and I will return to that matter on a number of occasions in my second reading contribution and even perhaps during the Committee stage. A continuing feature of all discussions of any notion of an efficient standing committee system or any committee system at all is that it must be properly resourced and staffed. If the Government of the day, whether it be Labor or Liberal, were to starve the committees of the Parliament of the appropriate level of resources and staff, some would argue that perhaps the position was not much better than if those committees were not appointed in the first place. I am not that much of a pessimist, but certainly that is a view that is put by many others.

I will refer to the Legal and Constitutional Affairs Committee chaired by Senator Cooney. To give an indication of the sorts of inquiries that standing committees of Upper Houses can involve themselves in, currently it is undertaking inquiries into the continuing oversight of the Commonwealth Ombudsman's Special Reports; the shield of the Crown doctrine; the very important inquiry into the cost of legal services and litigation; mechanisms available to parties to satisfy the determinations made by the Human Rights and Equal Opportunity Commission and Privacy Commissioner; adequacy of the existing legislative controls in the Trade Practices Act over mergers and acquisitions; and the Copyright Amendment Bill 1991, which has just recently been referred to that committee. Those six or seven inquiries are being conducted currently by that committee.

In speaking with both present and past members of the Legal and Constitutional Affairs Committee, they make it quite clear that the only way they can efficiently operate with that workload is to have an appropriate level of staffing and resources. As I indicated earlier, each of those committees has up to four full-time members servicing them. I have another list of about 12 to 15 recent reports into a whole variety of areas that have been presented by that committee to indicate again the breadth and importance of the work of just one standing committee in the Senate.

I now turn to the Western Australian Legislative Council, which has what appears to be four standing committees and one joint standing committee of the Parliament. The Upper House standing committees include a constitutional affairs and statute revision committee, an estimates and financial operations committee, a Government agencies committee, and a legislation committee.

Interestingly, in the Western Australian Legislative Council on one of the standing committees and a number of select committees only three members serve. Some of the others vary between five and six members, but the Standing Committee on Constitutional Affairs and Statutes Revision has only three members as do many of the select committees. In regard to smaller Chambers such as the Legislative Councils of Western Australia and South Australia, one of the great arguments against a comprehensive committee system is that there are only 22 members. It is difficult, I concede, to have a comprehensive committee system with small numbers. That is another small Chamber's way of trying to get around that and perhaps something I had not considered: I had always thought that there was some sort of Westminster tradition requiring five members on every standing or select committee, but clearly the Western Australian Parliament operates with three-member committees. I can see problems with that, but in a small Parliament there are potential advantages.

With regard to salaries and basis employment, all committee clerk positions are classified at salary levels of between $26 000 and $33 000. All advisory and research positions range between $30 000 and $42 000 a year. Again, the staff are relatively well paid. It would appear that each standing committee has two full-time staff persons: a full-time committee clerk and a full-time adviser or research person acting for the committee.

Finally, the New South Wales Legislative Council has a relatively recent innovation involving two standing committees, one being on social issues and involving nine or 10 members. It has three or four staff including a director

on between $48 000 and $52 000 per annum, a senior project officer on $42 000 to $43 000, and a secretary to the chairman on $30 000 as a permanent appointment; in addition, it has two staff currently serving on a temporary basis to assist in current inquiries into medically acquired HIV infection and into juvenile justice. A number of temporary project officers also work on that.

That committee also contracted the services of a consultant—a lecturer in social work from the Victorian University of Wellington—to assist in the adoption inquiry. The powers and possibilities in the future of standing or select committees hiring staff with specialist expertise has been a matter of some discussion in the Subordinate Legislation Committee and in some other select committees. The New South Wales Parliament hired a consultant for the adoption inquiry because that lecturer had specialist expertise in that area. The Government and the Parliament, or a combination of both, in New South Wales were prepared to assist in the effective operation of that committee not only by allowing permanent staff to be appointed to the committee but also by providing the financial resources so that specialist expertise could be contracted by that committee to access such expertise.

The second standing committee in the Legislative Council relates to State development. There were previously nine members, and there will be seven members on that committee in the current Parliament, for however long that Parliament goes. The committee officers are a director, a senior project officer and a secretary to the Chairman, all at salary levels I indicated previously. Again, three full-time staff will work for the committee. That committee on State development has engaged various consultants, including an engineer from the Public Works Department, to assist in the tendering and contracting of coastal development inquiries, and senior officers from the National Parks and Wildlife Service for coastal development inquiries. In addition, that committee was able to commission a special paper through the Director of the School of Environmental Studies at MacQuarie University, and a temporary research assistant was appointed to summarise submissions and assist in data processing. The former director of the committee was also retained as a consultant to assist in the tendering and contracting inquiry. There are various other examples where they have been able to employ extra administrative support and make changes in the classifications of various officers.

I cite those examples of just three of the other Upper Houses in Australia; I could have given other examples as well. They are the most interesting from my point of view and from the point of view that we might want strong committees in the Legislative Council. I think the role models of the Senate and the New South Wales and Western Australian Upper Houses are interesting and we ought to consider them. Whilst I can see that, given the current financial strictures of this Government, we are unlikely to be treated as well in relation to resources and to staffing, nevertheless I believe that if and when future Governments can solve the current financial dilemmas in South Australia, and if we are serious about a strong and effective Parliament and a strong effective Legislative Council, we must provide appropriate resourcing and staffing for those committees.

I had intended to refer later in my contribution to some comments just to indicate that this is all very bipartisan, but I will do so now. I refer to comments of some members of the Labor Party Caucus in relation to the question of staffing and resources. The Hon. Terry Hemmings, who is currently the Chair of the Public Works Committee, is on the record as saying:

> Again, with the best will in the world, our parliamentary officers and resources available to them are already stretched to the limit when Parliament sits.

Mr Don Ferguson, who served on a number of parliamentary committees, stated:

> The only reservation I have is that not enough resources will be committed to these committees. In turn, that will not provide for the sort of staffing necessary to make these committees run properly . . . I see a danger as far as the provision of adequate staff and resources is concerned.

The member for Albert Park, Mr Hamilton, in relation to staffing and resources, said quite bluntly to the Government and the Opposition—to Parliament:

> The new committees will need additional funding. The new committees will also require research staff with expertise in particular areas to research particular subjects and information that is required by members of the committee. Without that specialist staff, I do not believe that the new committees will be able to function as efficiently and effectively as they should. The question of funding is critical, as is the issue of staffing. I am aware of political reality; I believe that members of this foreshadowed committee may well need to put pressure on the Government to provide those additional resources.

That indicates the bipartisan nature of my comments in relation to staffing and resources, and the critical nature of that question. In Mr Hamilton, Mr Hemmings and Mr Ferguson we have three senior members of the Government caucus, three very senior members of the respective committees of the Parliament, all of whom have indicated to varying degrees their concerns about the level of staffing and resources. As Mr Hamilton bluntly put it, the pressure will have to be applied to Government to ensure that extra resources are provided.

I now refer to specific elements of the Martyn Evans and Bannon Government proposal reflected in this Bill. I will consider the Cabinet submission that the Attorney-General took to Cabinet earlier this year. In that Cabinet submission, of 13 March this year for urgent discussion at Cabinet on 18 March, the Attorney made a number of statements which I think I ought to provide for the information of members. In this paper, the Attorney says:

> Cabinet has considered a variety of proposals within the last six months—

I guess that means late last year and early this year—

> to restructure the existing committees of the South Australian Parliament, and this submission represents the outcome of discussions on those submissions.

In relation to this proposal and its potential relationship to the Estimates Committees of the Parliament the Attorney says:

> The Estimates could continue as they are. However, there is a reasonable argument that can be mounted for the Estimates function being undertaken by one of the four proposed new committees. The argument is based on two premises:
>
> 1. that committees can develop a level of expertise within a particular field and provide a much more professional and rigorous examination of a fixed set of accounts.
> 2. that it provides the opportunity for members of both Houses to participate more fully in the scrutiny of the budget, the exception being the Economic and Finance Committee.
>
> The proposal to revamp parliamentry committees can stand alone and provide on its own. However, it may be considered as phase one of a two phase operation.

That is the point of which we ought to be aware, that is, the potential long-term thinking of the Government. I am saying not that the Govenment is locked into that position but that it is part of the submission that the Attorney took to the Cabinet earlier this year. We need to be aware of the proposal before us this evening, that is, the Evans proposal, and potentially where we see the Evans proposal heading in phase two of this operation, if this Government chose so to do.

In relation to the first and second phases of the Estimates Committee option, the recommendations state:

That one of the following options be agreed to:

591. Retain the Estimates Committees in their current form.

592. Transfer the Estimates Committee structure to the proposed new committee structure—

which I presume means the abolition of the Estimates Committees. If one opens one's ears in the corridors of Parliament House, one will hear whispers that this Estimates Committee is the last that this Parliament will see. Perhaps it is those people who have read this Cabinet submission who are aware of phase two of the grand plan that we transfer the Estimates Committee structure to the proposed new committee structure. The recommendations continue:

593. To review the current Estimates Committee system and consider a variety of ways of improving its operation, including a transfer to the proposed new committee.

That appears to be a combination of recommendations 592 and 593.

The other area where a number of options are listed relates to the IDC. It would appear that the Government has already made a decision in relation to that. The options listed were to abolish the committee and have the function become an executive function, to incorporate the IDC functions in the terms of reference of one of the proposed committees or to retain the committee as it is constituted with the added option of having membership honourary. It would appear that the Government took the second option, with the IDC being incorporated as at least part of the Economic and Finance Committee of this Evans Bill.

The other aspect on page 3 in which members might be interested relates to costs. The Attorney says that the proposal has not been costed by Treasury. However, Cabinet has previously indicated that membership of committees should be contained. This proposal increases the number of positions only by one and does not call for any additional staff resources. Nonetheless, a full costing will need to be undertaken following the discussion that will flow from exposing the draft Bill for comment.

One of the questions that I will be interested in pursuing with the Attorney during the Committee stage is whether that recommendation to Cabinet for a full costing to be undertaken has been completed and, if so, what that full costing has shown. I seek leave to have incorporated in *Hansard* a purely statistical table, which is part of that Cabinet submission and which is headed 'Proposed New Committee System for the South Australian Parliament'. The table gives a breakdown of how many Democrats, Independents Liberal and Labor members will, in the Government's view, serve in this new committee system. Obviously, this breakdown is not included in the Bill.

Leave granted.

PROPOSED NEW COMMITTEE SYSTEM FOR SOUTH AUSTRALIAN PARLIAMENT

	Economic Finance		Physical Resources and the Environment		Legislative Review		Social Development		S/Total	Current
	Assembly		Joint		Joint		Joint			
	Ass.	Council	Ass.	Council	Ass.	Council	Ass.	Council		
Labour	3	—	2	1	2	2	2	1	9 13 4	8 12 4
Liberal	3	—	1	1	1	1	1	1	6 9 3	6 9 3
Independent	1	—	—	—	—	—	—	—	1	1
Democrat	—	—	—	—	—	—	—	—	0	0
Subtotal	7	0	3	2	3	3	3	2	23	22
Total	7		5		6		5		23	22

The Hon. R.I. LUCAS: This table is illuminating in that it lists the four recommended committees and labels the members of Parliament—by their political affiliation—who will serve on the committees. In the Government's view, there would be 13 Labor members, nine Liberal members and one Independent on the committees. That Independent member would be on the Economic and Finance Committee, and I guess that he is probably Mr Martyn Evans; there is some suggestion that he might be the Chair of that committee. I am sad to say that no Democrat is listed to serve in this committee system. The table gives a total of 23 members in the new committee system for the South Australian Parliament. For those members who may be interested, there are some other illuminating matters in the Cabinet submission from the Attorney, and I would be pleased to share that submission with other members.

The Liberal Party strongly opposes the Bill in its present form. We reject the notion that the restructuring of the committee system of Parliament ought to be done along the lines that, in effect, mean there would be no separate and independent standing committees of the Legislative Council. We reject the notion that we ought to accept a restructuring which provides committees only for the House of Assembly and joint standing committees of the Parliament. For the reasons that I indicated earlier, I believe that those of us who want to defend and want to see a strong Legislative Council need to ensure that, as a result of this Parliamentary Committees Bill or the passage of any parliamentary committee Bill, we see the Legislative Council strengthened with its own standing committees which are answerable to the Legislative Council and which comprise members of the Legislative Council alone.

In the details that I will outline later this evening and tomorrow, the options that the Liberal Party are offering this Council and this Parliament are much more sensible for anyone who professes to want to see a strong and effective Legislative Council, and wants to see a strong and effective committee system in the Parliament. So, the notion in the Evans Bill to have three joint committees of the Parliament, with a majority in two of those committees of House of Assembly members dominating those committees and a minority of Legislative Council members on those committees is unacceptable to the Liberal Party. As I said, the notion of having no committees at all in the Legislative Council is unacceptable.

I now want to quote someone in support of that argument, perhaps someone surprising, someone with whom perhaps on some occasions I have not always agreed but with whom on others I have. I want to quote to members a submission

made to the Joint Select Committee on the Law, Practice and Procedures of the Parliament by Mr Geof Mitchell, Clerk of the House of Assembly. In his submission to the Joint Select Committee, Mr Mitchell said:

> Possible options for a committee structure range from a wide range series of 'subject areas' committees as in the Canadian model which would incorporate all of the present committees. I have not attempted to define the subject areas but one possibility would be to allot the 30-odd ministerial portfolios (including statutory authorities) to, say, six committees of about five to seven members. At the other end of the spectrum, the present structure could be retained with coordination and the addition of a statutory authority review committee.

Obviously, that is something that members of the Liberal Party would strongly endorse. Mr Mitchell goes on to state:

> There are a number of factors which should be taken into consideration in determining a suitable option:

The first factor that he says should be taken into consideration is separateness of the two Houses. He states:

> Joint select committees such as this one or the Joint Select Committee into the Administration of Parliament are useful where the issues involve the Parliament as a whole. But, at issue in any major joint committee system is the concept of the autonomy of the two Houses. Taking my nominal six committees, one possibility is to appoint four in the House of Assembly and two in the Legislative Council.

Mr Mitchell goes on to make some other points, some with which I agree and perhaps some with which I do not agree, but I wanted to instance the first factor that Mr Mitchell believes should be taken into consideration in determining the suitable options, that is, the question of the separateness—the independence—of the two Houses. That is an important factor and an important matter for members of the Liberal Party in this Chamber.

As I indicated earlier, I will seek leave to conclude my remarks later this evening but my specific detailed concern about some aspects of the Bill and some possible solutions I will lay on the table tomorrow in relation to amendments and I will speak to them when I conclude my remarks tomorrow.

However, I want to summarise briefly tonight the major aspects of the Liberal Party's proposals that we will be advancing by way of amendment and forceful debate and discussion. We will be proposing that, instead of having one House of Assembly committee and three joint House committees, we have two Lower House committees—two House of Assembly committees—that there be two separate and independent Upper House standing committees—and one joint standing committee of the Parliament. The joint standing committee would have equal numbers between the two Houses, again recognising the separateness, the independence and the equal power and authority of the two Chambers in the South Australian Parliament.

The proposition of the Liberal Party is that the Lower House have an economic and finance committee, which is in effect the committee that will take over from the Public Accounts Committee and the Industries Development Committee; and an environment and resource committee, which is in effect in a very small way the committee that will take over from the Public Works Standing Committee; and that the joint standing committee will be the social development committee.

The Liberal Party also proposes that the Legislative Council will have two separate and important committees: first, the statutory authorities review committee, which has long been a policy of the Liberal Party, as I said earlier (and I will discuss that in more detail when I move the amendments); and, secondly, the legislative review committee, which takes over from the Joint Committee on Subordinate Legislation. It will be able to look at any matter concerned with legal, constitutional or parliamentary reform, the administration of justice and any matter regarding intergovernmental relations, as well as having other powers and responsibilities. All members in the Chamber this evening would recognise the extraordinary breadth, and therefore the potential power, of that committee.

With that very wide brief it potentially has the power to be as efficient, effective and useful as the very powerful Senate Legal and Constitution Affairs Committee to which I referred earlier and which under the current chairmanship of Senator Barney Cooney and of eminent Senators in the past two decades has done much good work. I believe that the legislative review committee of the Legislative Council can follow that role model. In 1983 the Attorney-General in this place moved for the establishment of a Joint Select Committee on the Law, Practice and Procedures of the Parliament. This year he said that that committee had a specific reference to undertake the following:

> A review and expansion of the committee system including in particular—
>
> (i) the establishment of a standing committee of the Legislative Council on law reform;
>
> (ii) the desirability of a separate committee to review the functions of statutory authorities; and
>
> (iii) the method of dealing with budget estimates including the desirability of a permanent Estimates Committee.
>
> With regard to paragraphs (ii) and (iii), the committee should consider the role and relationship of the Public Accounts Committee in the context of these proposals.

Without wishing to put words in the Attorney-General's mouth, I think that his statement was an indication that he would appear to be seriously considering the support of a standing committee of the Legislative Council on law reform and the desirability of a separate committee to review the functions of statutory authorities. As I said, I am not wishing to do any more than quote exactly the words of the Attorney-General. He may put a different construction on it than that, but, at the very least, I thought that one could argue that he was seriously considering it, and some might even argue that at the time it was the Attorney-General's view that we should have a Legislative Council committee on law reform and perhaps even a separate committee to review the functions of statutory authorities.

Indeed, that is what the Liberal Party will be putting by way of amendment to this Bill; that, in effect, we would endorse the view that there be a legislative review committee of the Legislative Council and a seperate committee to deal with statutory authorities, and that it not be part of the function of a committee like the economic and finance committee which, as I have said, is already taking over the role of the Public Accounts Committee and the Industries Development Committee. To ask that committee to do the work of the PAC and the IDC, and then say that it should oversee all statutory authorities in South Australia will obviously create some significant administrative and logistic problems for that committee.

The major matters that I want to debate tomorrow relate to our specific concerns about some aspects of the Bill and I will outline in broad detail some of the amendments that we will seek to move to give the Attorney and other members of this Chamber at least some indication of the direction in which we would like to head once the second reading is carried. I will also outline tomorrow some ways in which we believe money can be saved in the operation of the current committee system to make our proposals, at least in the short term, cost neutral, because we understand that that is the major argument being used by the Government against the establishment of a fifth committee. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

ADJOURNMENT

At 11.37 p.m. the Council adjourned until Wednesday 9 October at 2.15 p.m.