LEGISLATIVE COUNCIL

Thursday 10 October 1991

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

PETITIONS: PROSTITUTION

Petitions signed by 394 residents of South Australia praying that the Council will uphold the present laws against the exploitation of women by prostitution, and not decriminalise the trade in any way, were presented by the Hons C.J. Sumner and K.T. Griffin.

Petitions received.

QUESTIONS

NATIONAL COMPANIES AND SECURITIES COMMISSION

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Attorney-General a question about the National Companies and Securities Commission.

Leave granted.

The Hon. K.T. GRIFFIN: Reports this week indicate that a payment of $1 million by Rothwells merchant bank was negotiated by the National Companies and Securities Commission in settlement of claims by the NCSC of alleged breaches of the Companies Code by the Rothwells group in relation to certain share transactions.

Today, there is a report of another demand by the NCSC, this time made of the Bond Corporation, that it pay $1 million to the Western Australian Government in relation to the purchase by Bond Corporation and the Western Australian Government of shares in Bell Group. It appears from the report that the $1 million was not finally paid because the Western Australian Government said it did not want the money. These reports do raise issues in relation to the NCSC, particularly those of potential conflict of interest where it is on the one hand a law enforcer and on the other a judge. My questions to the Attorney-General are:

1. As a member of the former Ministerial Council under the Companies Code, can the Attorney-General indicate whether these sorts of payments resulted from a policy decision of the Ministerial Council or from an independent decision of the NCSC?

2. If they did result from a policy decision, can he make available details of the policy?

3. Can he indicate on how many occasions in, say, the last four years of its operation what sums were paid in lieu of prosecution or other action at the direction of the NCSC?

The Hon. C.J. SUMNER: I am not sure whether there was a specific policy decision on this matter, but the Ministerial Council was aware that the NCSC used this procedure on occasions. I cannot obtain details of the decisions that were made in this respect and I really do not see that any good purpose would be served by doing so.

SMALL BUSINESS

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister of Small Business a question about small business.

Leave granted.

The Hon. R.I. LUCAS: I have received a letter from a constituent who is desperately attempting to keep a small computer training business afloat despite the apparent reticence of South Australians, and in particular the Bannon Government, to give him a fair hearing. His letter to my office says in part:

> I'm a very small operator and I'm so close to clearing my debts. It's been a tremendous struggle for the past four years, but with only a month until the end of all my leases, I can actually see the light at the end of the tunnel. Unfortunately I've had very little business during the past six months and we're falling further behind with not only my business debts but also my home mortgage. Four years ago I (voluntarily) lost everything; we cannot go through it again. All I need is one good month and I'm home and hosed. Please can someone help me?

The writer then goes on to detail some of the problems he has been having in interesting Government departments in considering his business for particular tenders, despite I might add the satisfaction that clients such as Australian National, Santos and Kelvinator have had with his services. In a letter sent out to Government departments this week, the constituent states:

> John Bannon still blows the trumpet for South Australian enterprise, yet you must forgive me for being cynical about such rhetoric. Even Barbara Wiese's own departments use interstate-based companies and Barbara's the Minister for Small Business! For example, the Department of Road Transport will not let me get past the telephone. 'I'm sorry, but we already have an arrangement with Drake.' 'But the money heads off to Sydney every week,' I said. The Police Department also uses an interstate-based company, as does the Highways Department, as does Environment and Planning, as does SACON, etc.
>
> If only I could tap into a small part of this training expenditure, I would survive and continue to employ South Australians. I am not a quitter, and I am not a whinger. But I am desperate, and unless I can pull a few bunnies from the hat real soon, my family will be in dire straits. I am not prepared to lose the lot.

This is an example of the pressure that many small businesses are under in South Australia today; but it is an indictment of some of the problems they are facing. On the one hand the Government spouts catchy phrases such as 'Give a mate a job' and on the other hand, apparently, it favours interstate service providers when clearly there are most cost effective local providers. To that effect, in that letter that went out to all Government departments this week, the company's director states:

> A core schedule is attached, but please note that all fees are negotiable: some money is better than none.

So, a price schedule is attached for all Government departments. However, the director indicates that the situation is so desperate for this small South Australian-based company that it is prepared to negotiate fees with any Government department that is prepared to listen. My questions are:

1. Is it true that the Minister's department uses interstate-based companies to provide computer training and, if so, has an assessment been made of South Australian-based firms that provide competitively priced services?

2. Will the Minister investigate claims that several Government departments favour interstate service providers to the exclusion of local firms that can provide identical services at equal or lower rates?

The Hon. BARBARA WIESE: Generally it is true that South Australian Government departments prefer to deal with South Australian-based companies, if the services and the standard of the product being offered are equal. Of course, a cost factor is involved in the decisions that are made by Government departments. Obviously, I am not in a position to make any judgments about decisions that may have been made concerning the company to which the honourable member refers. He has not given the name of the company and I am not aware of the particular repre-

sentations that this company may have made to Government departments. However, if the honourable member could provide that information to me, as he has offered, I will ensure that the matter is investigated, and I will attempt to discover the reasons for declining to use the services of this company where they have been offered to South Australian Government departments.

DRIVING INSTRUCTION AND TESTING

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister for the Arts and Cultural Heritage, representing the Minister of Transport, a question about driver instruction and testing.

Leave granted.

The Hon. DIANA LAIDLAW: Controversy is raging at present among driving instructors and examiners in South Australia over what appears to be an unstated, ill-defined Government policy to privatise driver testing practices in this State. I understand that this policy is being developed in response to the current unacceptably long waiting times to sit for a driving test—up to four months at some divisional offices. However, Government employed examiners, recently reclassified as driver development officers, claim the changes are being made simply to cut costs. Last week four experienced examiners resigned from the Motor Registration Division. Their resignations follow a series of changes to long-standing practices, and I name but three: the recent decision by the department to issue part-time contracts to driving instructors to test car drivers at a set fee per examination; the decision on 1 October last week to abolish mandatory testing for persons aged 75 years and over; and, the decision on 4 October to contract out the testing of semitrailer and coach drivers to the private sector company Skill Centre based at Woodville North.

Meanwhile, driving instructors are arguing amongst themselves about the wisdom of the Government's push that they take on the dual responsibility of instruction and testing. A large number of instructors—and I suspect the majority—support this policy recognising that it will generate more business. Others, however, are adamant that testing should remain the responsibility of Government employees in order to maintain standards and avoid the potential for conflict of interest and corruption. In fact, I understand that the department is seeking to address these concerns at this very moment, because officers at the Road Safety Centre at Oaklands Park are now developing what is called a 'corruption policy', which I trust is directed to the development of anti-corruption safeguards. My questions to the Minister are:

1. Is it correct that there is a 50 per cent to 55 per cent failure rate among people undertaking a driving test for any type of vehicle and, if so, why has the Minister not moved to cut the long waiting time for tests by providing in the public interest more information about the standards required to pass a driving test?

2. Will the Minister instruct the department to convene an urgent meeting of driving instructors and driving development officers (formerly licence examiners) to canvass all the vexed issues associated with privatising driver testing to ensure that potential loopholes are addressed and testing standards maintained?

3. What cost savings and employee reductions does the department anticipate this year from the move to private driver testing in this State?

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

BANKRUPTCY

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

Leave granted.

The Hon. L.H. DAVIS: I have recently perused the official bankruptcy statistics that are contained in the weekly Commonwealth business gazettes. It is clear that the previous record for bankruptcies in South Australia in a year has already been exceeded after only nine months of 1991, and the alarming thing is that the trend is worsening and not improving. In fact, July was the highest monthly figure ever recorded in South Australia's history; there were 210 bankruptcies, nearly 10 a day—the first time that we have ever had more than 200 bankruptcies in a month in the history of South Australia. It is quite clear that we are on target to go very close to having 2 000 bankruptcies in South Australia for 1991, and this will be hundreds more than we have ever had in the previous highest year of 1987.

The Commonwealth business gazettes list the addresses and occupations of each bankrupt. There are an enormous number of small businesses on those lists from the city and country areas, and these businesses have quite clearly collapsed in the face of the worst economic downturn since the great Depression. It would appear that about a third of all bankruptcies are small business failures. That catalogue of failure is in the building and transport industries and the retail sector, and it includes company directors, managers, manufacturers, hairdressers, taxi drivers—the list is seemingly endless.

My question is simple: what specific steps has the Minister of Small Business taken to address this economic crisis that is tearing the heart out of the small business sector in South Australia?

The Hon. BARBARA WIESE: This is one of the Hon. Mr Davis's repetitive fortnightly questions. These questions about bankruptcy seem to occur with great regularity. As has been acknowledged in this place previously, it is perhaps not surprising that in the current economic climate we are witnessing an increase in the failure of some enterprises in our State. This is lamentable: no-one wants to see that occur, least of all me as the Minister responsible for small business.

This matter has been of some concern to me since my appointment to this position. One of the actions that I have taken was initiated in the first few months following my appointment, and that was early last year to host jointly with the Premier a meeting of leaders of financial institutions in South Australia, to talk to the leaders of those financial institutions about the downturn that we could expect in our economy over what was then the—

The Hon. R.J. Ritson interjecting:

The Hon. BARBARA WIESE: I am talking about early last year. We indicated to the people who were invited to that meeting that we expected to see a downturn in the economy over the next 12 to 18 months, that it was likely that some small businesses would find it more and more difficult to stay afloat, and that it was very important that financial institutions view the financial difficulties of small businesses in a sympathetic way, understand these businesses and keep them afloat, if at all possible.

We indicated to these people that we thought that it would be helpful to set up a program—subsequently called the Business Bookkeepers Program—under which a group of skilled people with expertise in particular areas of business activity would be available to work with individual businesses to help them with cash flow planning and any other problem that they might have. We said that, if we could

have their cooperation in referring businesses that might be getting into trouble to these business bookkeepers and others with the appropriate training, we might find that in South Australia we would be able to ensure that a number of small businesses, which otherwise would face ruin, were saved during this period of economic downturn.

That idea was warmly received by the representatives of financial institutions, and the Business Bookkeepers Program was established, becoming effective in the middle of last year. A large number of small businesses have benefited from the work of business bookkeepers and from the additional training that has been provided to people in financial institutions and to accountants who are, very often, the first line to be approached by small businesses running into financial difficulty.

According to the feedback that we have had from some people who have participated in this program, it is clear that the additional advice and support that has been given to many of those businesses has been of assistance in helping them through this difficult economic time. I think that is an indication of some of the work that has been done through the Small Business Corporation and other agencies of Government to assist small business in this time of recession. We will continue with these programs whilst they are needed. I would encourage the Hon. Mr Davis and other members who know of small businesses that could benefit from programs like the Business Bookkeepers Program to encourage those people to contact the Small Business Corporation and avail themselves of the expertise that is available to assist them.

INTERNATIONAL DAY FOR THE ELDERLY

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage a question about the International Day for the Elderly.

Leave granted.

The Hon. T. CROTHERS: Members may be aware that Tuesday 1 October was United Nations International Day for the Elderly. South Australia's elderly population is proportionately the largest of any State. Because of this fact the Government was keen to mark this international day in a way which recognised the role and value of older people in our community. I understand that as part of the celebrations for that event the Government decided to offer all South Australians over 60 free access to a number of services. What special events were organised in the arts and cultural heritage areas and, for the erudition of the Council, will the Minister explain how successful or otherwise they were?

The Hon. ANNE LEVY: I am sure that many people were aware that 1 October was the International Day for the Elderly. The State Government as a whole indicated that it would provide services and facilities for the elderly either free or at a very much reduced rate during that day. Numerous areas were looked at, and the Department for the Arts and Cultural Heritage provided free entry for many facilities on 1 October.

For example, Carrick Hill, which normally does not open on a Tuesday, did open and made arrangements to provide special events, entertainment and tours on that day. In fact, over 360 people in the category of free entry took advantage of the offer and visited Carrick Hill that day.

The Adelaide Festival Centre Trust had previously organised to have one of its regular programs—Morning Melodies—on 1 October. People over 60 obtain concession rates to go to Morning Melodies in the normal course of events, but to mark that special day the Adelaide Festival Centre Trust organised free tours through the complex and arranged a special concession two-course lunch after the Morning Melodies concert at a considerably reduced price. I understand that over 70 people took advantage of this, and the Bistro at the Festival Centre was very crowded as a result.

On 1 October, the fees charged by the three History Trust Museums were also waived for people who were over the age of 60. On that day Old Parliament House received over 250 extra visitors. The Maritime Museum also received a similar number of extra visitors who took advantage of the occasion to visit the museum and even the Birdwood Mill National Motor Museum, which of course is further away from the metropolitan area, saw 150 extra people taking advantage of the concessions offered.

I think it can be seen that the Department for the Arts and Cultural Heritage contributed greatly to the success of the International Day for the Elderly functions which took place in Adelaide. Of course, it was not only the Department for the Arts and Cultural Heritage that provided these free facilities on that day. All national, recreation or conservation parks were free for people aged over 60, as was the Bicentennial Conservatory. However, I am afraid that I do not have any information about the number of visitors who attended at those locations on that day.

Apart from the provision of free services by the Government, the Local Government Association also appealed to all its member councils to ascertain what special arrangements they could make for the over 60s on the International Day for the Elderly, but I am afraid that I do not have any information as to what individual councils were able to provide or what use was made by senior citizens of any facilities provided in that area.

I am sure that all members of the Council would agree that the recognition of the International Day for the Elderly was a very worthwhile exercise which enabled many senior citizens to take advantage of opportunities which otherwise they may not have had and, certainly in the area of arts and cultural heritage, it very much increased the awareness and appreciation of the wonderful facilities in South Australia.

SCHOOL WORKSHOPS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage, representing the Minister of Education, a question about occupational health and safety in school workshops.

Leave granted.

The Hon. M.J. ELLIOTT: Over a period of about 18 months I have received correspondence from an Eyre Peninsula teacher who is concerned about standards of safety in workshops, particularly in relation to some materials used and, also, the lack of information provided to parents and staff in various school workshops. That teacher sent me an excerpt from a recent newsletter of the Cleve Area School which reads:

> Under the Occupational Health, Safety and Welfare Act, the Education Department is obliged to inform employees and students of any exposure to potentially hazardous substances. Because of this requirement, I am informing the Cleve Area School community that between 1986 and 1988 the routing of permapine was carried out in the school's technical studies workshop. This activity caused wood dust containing CCA to be airborne.
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> The Health Commission has investigated this matter and has found that the activity was not potentially hazardous. The following comment was made:

It is clear that the CCA compounds were highly unlikely to be of any level that would cause concern in relation to long-term health effects and that no medical surveillance is considered necessary.

This advice was forwarded to the school and, following consultation with senior officers located at the Western Area Education Office, it was agreed that no benefit was to be gained by releasing the Health Commission's report.

However, on the insistence of the technical studies teacher at the school, that information was included in the school newsletter. That same teacher provided some background information, but in the letter, which puts the situation more simply, he said:

I believe that some of the key points are as follows and an examination of the material that I have forwarded to you will verify these statements:this notice was finally issued after a delay of three years as Dr Fraser's report was received in January 1988. The South Australian Health Commission never collected any dust samples for testing to determine CCA levels in the classroom.

The AMDEL test was part of a sample collected from the classroom four weeks after the death of the technical studies senior, Mr Dean Longbottom, and showed As and Cr at 377 ppm. Since the safety limit is set at 0.05 ppm it would appear that at the time the sample was taken the level may have been some 7 540 times in excess of current proposed safety limits.

The decision not to release the reports effectively conceals the date of Dr Fraser's recommendations and hides the obvious negligence of Education Department officials, and Mr Crafter, in failing to have the report implemented.

A deliberate decision not to notify those exposed was made by officials who did not have the appropriate medical or scientific qualifications to make such a decision.

Neither the school's Occupational Health, Safety and Welfare representatives nor the staff involved (exposed to the CCA) were consulted about the decision not to implement Dr Fraser's recommendations, a blatant breach of the Occupational Health, Safety and Welfare Act.

Failure to implement the report meant machining continued until December 1989, not 1988 as stated in the notice, and as a result instead of dozens of students being exposed the number of people exposed must now be counted in the hundreds.

Without tests of residual levels the SAHC and the DLI cannot substantiate the statement (that I have boxed), 'It is clear that the CCA compounds were highly unlikely to be of any level that would cause concern . . .' When pressed to prove this statement Dr Meagan (DLI) acknowledged that the risk to individuals could not be determined.

In seeking to have Dr Fraser's report implemented I was threatened with legal action by the Assistant Director. I was also verbally threatened with being 'surplus to requirements' by a former principal. Both acts contravenened section 56 of the Occupational Health, Safety and Welfare Act and fear of such retaliation has caused my wife such distress that I can only work on this issue when she is not at home.

He made a few other comments, but I will not continue with those at this stage. My questions to the Minister are:

1. Given the high level of contamination, will the Minister establish a CCA exposure register and widely publicise the facts so that persons exposed by direct contact, passive exposure or secondary exposure can register?

2. Will the Minister explain why senior officials of the Education Department failed to implement the recommendations of Dr Fraser, even though a teacher exposed to the CCA was pressing for the report to be implemented?

3. With responsibility for approximately 200 000 students, teachers and other personnel, the need for competent safety advisers is paramount and, therefore, will the Minister provide details of the medical or scientific qualifications of the personnel in the Education Department who hold the positions of Executive Director of the Occupational Health and Safety Unit and regional area safety officers?

4. Why did the Executive Director of the Occupational Health and Safety Unit, Mr John Wauchope, state in a letter published in the SAIT Journal on 31 July that 'there are a number of safety issues that need to be addressed . . . and the department does not have the resources to resolve all these problems overnight'? Is that an inference that students and teachers are being asked to tolerate unsafe conditions due to a lack of funds to deal with safety problems?

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

EYRE PENINSULA SERVICES COUNSELLOR

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Family and Community Services a question about the Eyre Peninsula services counsellor.

Leave granted.

The Hon. PETER DUNN: On 8 May 1991 a Mrs Geraldine Boylan, who had been acting as a social worker on Eastern and Central Eyre Peninsula, had her services withdrawn and to date she has not been able to ply her skills to families seeking her help in the area I have mentioned. Because of a Family and Community Services direction, Mrs Boylan has been stuck in an office in Port Lincoln writing a paper on service delivery by FACS for the Eyre Peninsula. Six weeks ago I received three letters asking why Mrs Boylan could not counsel families on Central Eyre Peninsula when requested. These letters came from the Country Women's Association, a school councillor from Lock and a private citizen. My response was to contact the Port Lincoln office of FACS where I was told there were insufficient funds for Mrs Boylan to travel into country areas but, as there was a reorganisation imminent within the department, funds would be provided.

To date nothing has happened. I have been contacted by a rural care worker from Wudinna asking why Geraldine Boylan has not been visiting her area. The answer was that she has not completed her personal report to the satisfaction of the Department of FACS (now under new management). Mrs Boylan had been withdrawn as a rural family care worker while under the wing of the Department of Agriculture and funded by FACS. Her original charter was to report quarterly and keep minimal personal records, which she did.

Mrs Boylan consulted in the community health centres but found more people talking to her and requesting help when she refuelled her car or attended the supermarket or deli, and in this fashion she became well recognised and noted for her compassion and understanding. Many farmers in this area have been told by their banks that no more finances will be available; at this point, the farmer, feeling extremely depressed, can walk outside, kick the cat and swear at the dog. But in many cases the wife receives these emotional outbursts and they look for Mrs Boylan to assist them.

Mrs Boylan is a generic social worker trained in marriage and social counselling, including finances. She is country-born with excellent communication skills and, more importantly, is being sought by the rural community to assist them. Will the Minister immediately reinstate Mrs Boylan to her former role as a field social worker/counsellor assisting farm families and, if not, why not?

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

LOCAL GOVERNMENT ADVISORY COMMISSION

The Hon. J.C. IRWIN: Will the Minister for Local Government Relations indicate whether an agreement is close

on the future of the Local Government Advisory Commission? Will it complete its task of reviewing all council ward boundaries, including the City of Adelaide, prior to June 1992? Does the Minister support the Adelaide City Council's being singled out for the ridiculous suggestion that the State Government should appoint non-elected members to the council? To my knowledge it has not been suggested that any other council should have non-elected members as part of its body.

The Hon. ANNE LEVY: I cannot say whether agreement is close in the negotiation process regarding the future of the Local Government Advisory Commission. This matter is being negotiated. I know that position papers have been developed and points of view expressed, but agreement has not been reached, and negotiations are proceeding. I cannot say any more than that; nor do I know when agreement will be reached.

I certainly hope that ward boundary reviews will be completed before June 1992; in fact, they should be completed before February 1992. Under the legislation all ward boundaries in the State need to be reviewed once every seven years. When the legislation was drawn up, a timetable for each council was prepared so that they would not all be undergoing the review process at the same time, but that it would be staggered over seven years. A small number of councils has not yet done its first periodic review since the legislation was changed. It is true that the Adelaide City Council is one of those. However, under the legislation, the Adelaide City Council, along with another group—I think it is of about 17 other councils—are expected to have their ward boundary proposals completed before February next year. I have not heard of any hold-up in this regard.

Last time I spoke to members of the advisory commission, I was advised that they expected to complete these reviews according to the timetable, which was established seven years ago. Of course, one small group of councils has been or is involved in boundary change proposals—either amalgamations or alteration of boundaries between councils. Of these, five or six councils have not yet completed their periodic ward boundary reviews.

Very sensibly the LGAC has suggested that any ward boundary reviews should wait until the issue of whether or not the council boundaries are to change is resolved. Obviously, if council boundaries are to change, this will affect the ward boundaries, which will have to be drawn up as a result. I will be happy to get for the honourable member the exact number of councils that still have to complete their periodic review of ward boundaries and the number that will be delayed because of amalgamation or boundary change proposals that are before the LGAC at this time.

I am not the least bit aware of what the honourable member is referring to regarding the Adelaide City Council. As I understand it, the Adelaide City Council is undertaking its periodic ward boundary review according to the timetable that was established seven years ago. I am not aware of any problems in relation to that. It is true that a number of years ago one council did not wish to undertake its ward boundary review and told the advisory commission that it would not do so. In those circumstances, the advisory commission had no option but to do the ward boundary review itself and determine the proper boundaries for review. That is the sanction that can be used against a council that does not undertake the statutory ward boundary review. I state that as a hypothetical example. Certainly, no-one has suggested to me that any of the councils whose ward boundary reviews should be completed by next February do not expect to have completed the review by then.

The Hon. J.C. IRWIN: As a supplementary question, is the Minister aware of an article in this morning's *Advertiser* that referred to the State Government's being asked to appoint members to the Adelaide City Council? That was the tenor of part of that article, which is slightly different from the Minister's reply.

The Hon. ANNE LEVY: If people wish to communicate and ask my advice on a particular matter they usually do so more formally than through the media. Simply because there is a report in the newspaper that someone may or will do something, I do not take that as an indication that I have been or will be asked. I will certainly consider such a matter if and when I receive an official request to do so.

COMPULSORY THIRD PARTY INSURANCE

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister of Local Government Relations, representing the Minister of Transport, a question about compulsory third party insurance and SGIC.

Leave granted.

The Hon. I. GILFILLAN: The State Government Insurance Commission has been the sole provider of compulsory third party insurance in this State since the early 1970s. It would be fair to say that compulsory third party insurance forms the core activity for the SGIC and is therefore its major source of funds. Under approved insurers provisions in the Motor Vehicles Act 1959 the Minister of Transport has the discretionary power to decide if other insurance companies will be allowed into the compulsory third party marketplace. Since the advent of the SGIC there has been no other CTP insurer, but we currently have before this Council a Bill that seeks to open up the possibility for private insurers to enter this part of the market.

The Hon. Anne Levy: The others pulled out.

The Hon. I. GILFILLAN: In response to that interjection—

Members interjecting:

The PRESIDENT: Order!

The Hon. I. GILFILLAN: I did not imply that there was anything untoward about the situation in the 1970s. I agree that the others did pull out. In those days they thought it was an unattractive business; therefore they do not have any sympathy from me in relation to red carpet access back into it again.

A private member's Bill from a Liberal frontbench MP (Hon. Diana Laidlaw) has been before this Council on a previous occasion and was defeated by the Government with the support of the Democrats. However, the Democrat position on this issue now is not as clear cut as it was some months ago. Given recent revelations about the financial problems experienced by the SGIC it has also become clear that the commission may have been taking advantage of its privileged position under statute by using funds collected for CTP to cross-subsidise other less than profitable property operations it is involved in. Sources within the insurance industry have touted figures as high as $50 million in cross-subsidies in the past 12 months. If cross-subsidy was taking place, then it was not in accordance with the intended purpose of funds collected through the SGIC's monopoly of the CTP market and throws in doubt the justification for the continued monopoly of the CTP market by SGIC. I believe that my questions are very significant as to the way in which Democrats will deal with the Bill that is before the House, and are as follows:

1. In view of legislation on this issue currently before the Council, will the Minister give a firm undertaking that no

money collected from CTP insurance will be used for any form of cross-subsidy?

2. What procedures will be put in place to ensure the money collected from CTP insurance is protected and isolated from other SGIC activities?

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

REPLIES TO QUESTIONS

The Hon. C.J. SUMNER: I seek leave to have the following replies to questions inserted in *Hansard.*

MYER-REMM DEVELOPMENT

In reply to **Hon. J.F. STEFANI** (21 August).

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

The Myer-Remm project was a large and complex one which would have involved a range of Government agencies in approvals for various measures (for example, planning, fire, health and safety). More specifically, the Premier and the Minister of Labour were involved (both jointly and individually) from time to time during the construction phase in informal discussions concerning industrial relations on the site. Officers of the Department of Labour and the Minister of Labour's office monitored industrial relations developments on the site, and in the latter stages of the project an officer of the Department of Personnel and Industrial Relations (formerly of the Minister of Labour's office) was assigned to keep a watching brief on the project. The project was also discussed during meetings the Premier had with State Bank officials. It is also understood the Minister of Tourism met with principals of the Remm group to discuss the tourism potential of the project.

TERTIARY STUDENT TRAVEL CONCESSION

In reply to **Hon. M.J. ELLIOTT** (11 September).

The Hon. C.J. SUMNER: The Minister of Employment and Further Education has provided the following response:

The Government does not deny that there are students in need who do not receive Austudy. The Government's decision on travel concessions is based on the conviction that those in greatest need should receive relief and that is at this stage the best available measure of those in greatest need. Having said that, the Government believes that income support arrangements for students need to be reviewed, as the Minister is on record saying, not only in relation to Austudy but more generally. The Government is therefore pleased that the general issue is being addressed at the national level in the context of proposals to reform Australia's training system, including those arising from the recent (Finn) Review of Post Compulsory Education and Training.

BALTIC STATES

In reply to **Hon. M.S. FELEPPA** (27 August).

The Hon. C.J. SUMNER: The Minister of Ethnic Affairs has provided the following response to the honourable member's question:

The Australian Government decided on 27 August 1991 to establish full diplomatic relations with the Baltic States of Estonia, Latvia and Lithuania and will accredit the Ambassador in Copenhagen to Lithuania and Latvia and the Ambassador in Stockholm to Estonia. There are several ramifications for South Australians whose origin was one of the former Soviet Union republics. The Minister of Ethnic Affairs has previously raised with the Federal Minister for Immigration, Local Government and Ethnic Affairs (Hon. Gerry Hand) the question of those citizens of Australia who lost out on their right of dual citizenship because they surrendered their citizenship of the previous country.

Australian laws of dual citizenship provide that a person in some circumstances may keep the citizenship of their country of origin when they become an Australian citizen, but they cannot reclaim citizenship which has been surrendered. The Federal Government is examining this situation with the aim of eliminating discrimination in this matter. This has an effect, for example, on the ability of Australian citizens to reclaim any property which may have been illegally taken from them, or participate as beneficiaries of deceased estates, or be eligible for a pension from their country of origin. This matter has implications for various other Eastern and Central European countries as well as the Baltic States and other former Soviet Union republics.

Another issue is the opportunity available to South Australians to visit their country of origin—an opportunity that was very much closed to them during the forceful occupation of those republics over the past 51 years. This should lead to a stimulation of cultural, educational and trade exchanges between South Australia and those countries. A rally organised by the Baltic Council of South Australia was held on the steps of Parliament House on Saturday 31 August 1991. This was addressed by the Minister of Ethnic Affairs and representatives from the Federal Government and the Lithuanian, Latvian, Estonian and Ukrainian communities. It was a time of great emotion as the community representatives expressed their joy at the freedom which had been achieved by their countries of origin and thanked the Australian Government for being among the first nations in the world to recognise the Baltic States. It is hoped that an extension of that decision will be taken with respect to the other republics, formerly part of the Soviet Union, that have declared their independence.

OPTICIANS ACT

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Health, a question about the Opticians Act.

Leave granted.

The Hon. J.C. BURDETT: This is another in the continuing saga of Acts that have been passed, assented to by the Governor and not proclaimed over a period of years. The Opticians Act Amendment Bill was introduced by the Hon. Dr Cornwall in 1988, and he was gracious enough to refer it to a select committee. As a result of the select committee's deliberations, the Opticians Act was substantially changed, passed and duly assented to more than three years ago.

There were some important provisions inserted in the Act for which optometrists had been arguing for a long time. One of the main ones was new section 21 which provided for the registration of optical dispensers, and this was a departure from what had existed previously. The other provision was new section 28 which concerned the administration of drugs and provided as follows:

(1) An optometrist must not administer, prescribe or supply any drug except as authorised under the Controlled Substances Act 1984—

and that is fair enough because nobody else can either—

(2) An optometrist must not treat a disorder of the eye with a drug or laser or by surgery.

The net result of that provision meant that optometrists did have access to drugs authorised under the Controlled Substances Act for diagnostic and not treatment purposes, and that was an important concesssion to the optometrists. Today I checked with Parliamentary Counsel and the Act has still not been proclaimed—and it is now more than three years down the track.

The Hon. R.J. Ritson: It is a bit of a waste of the work of the committee.

The Hon. J.C. BURDETT: Exactly. I have complained about the other Bills that have not been proclaimed, and now this one in particular. I did not always agree with the Hon. Dr Cornwall, but in relation to this Bill he was gracious enough to refer it to a select committee, he was cooperative with the select committee, the Bill was amended and duly passed. Why have a Bill that is subsequently passed with the amendments recommended by a select committee and not proclaim it for three years, particularly when it was the profession itself that wanted the provisions? Why has the Bill not been proclaimed, and when will it be proclaimed?

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

STATE SUPPLY POLICY

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister of State Services a question about State Supply policy.

Leave granted.

The Hon. R.R. ROBERTS: From time to time there have been contributions in this Council from Mr Davis and other members opposite about the purchasing policy of State Supply. The latest contribution yesterday was by the Leader of the Opposition in another place who, with some criticism, urged the Government to buy local products and talked about some of the purchases that have been made from time to time by State Supply. Can the Minister clear up the confusion that seems to be prevalent and indicate just what is purchasing policy in relation to local industries?

The Hon. ANNE LEVY: Yes, indeed, and I am delighted to do so. I wish that members of the Opposition in both the Council and the other place would get their facts straight before they leap into print.

Members interjecting:

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

The Hon. ANNE LEVY: It is amazing that members of the Opposition seem to think that questions from members on this side of the Council cannot deal with important matters. They are complaining because I am answering a question on an important matter.

Members interjecting:

The PRESIDENT: Order! The honourable Minister.

The Hon. ANNE LEVY: Much of the Government's purchasing in this State is done through the State Supply Board. Certainly, it is the State Supply Board which makes arrangements and sets policies. In this country, we have a so-called national preference agreement which includes all States of Australia and New Zealand, New Zealand having been brought into the national preference agreement several years ago when the closer economic relations agreement was signed by our two countries. As a result of these agreements, no financial preference is given in Government purchasing to any goods that are sourced within Australia or New Zealand. We do not have a State preference; in fact, no State in Australia has a State preference, all State preferences having been abolished a number of years ago. However, the abolition of a State preference has worked to the advantage of South Australia, because South Australian industry sells more to Governments of other States than the South Australian Government buys from industry in other States. In other words, we have benefited considerably from the abolition of a State preference.

However, there is currently in operation a monetary preference where imported goods are concerned. Different States have different levels of monetary preference, but South Australia currently operates a 20 per cent preference on imported goods. This means that if goods made in Australia are equivalent to an imported product the Australian goods are preferred, provided that they do not cost more than 20 per cent more than the imported item. If the price difference is more than 20 per cent, the cheaper goods will be chosen. The preference given to Australian and New Zealand items over goods imported from elsewhere is a 20 per cent preference, which operates not only with regard to goods that are sourced entirely from overseas but also where there is an imported component in otherwise Australian-made goods. The proportion of the total cost of the product that is imported will be subject to 20 per cent preference in the same way as a fully imported item.

This policy has resulted in most of the Government's goods being sourced in Australasia. It is not, however, true to say that this is the only preference given to Australian-made or South Australian-made articles. While no monetary preference is given to South Australian goods as opposed to goods made in other States or in New Zealand, there is a conscious policy by the State Supply Board to encourage South Australian industry to fulfil Government contracts. In fact, State Supply regularly holds seminars and discussions with local industry and provides a three-year forward plan of the items it is likely to require. State Supply works with South Australian industry to enable it to tender successfully for contracts with it.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: A great deal of support is given to local industry by the State Supply Board, as I am sure many businesses in South Australia could confirm. Representatives from industry are members of the State Supply Board, and there is a great deal of cooperation and interest between the State Supply Board and local industry. I hope that Opposition members inform themselves of just what steps the Government takes to encourage local industry in this way.

Members interjecting:

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

The Hon. ANNE LEVY: Indeed, if the Leader of the Opposition in another place had cared to speak to the member for Hayward before he asked his questions yesterday or if he had read the *Hansard* of the Estimates Committee he would have seen that the member for Hayward, after asking questions on these matters, complimented me and the Government on our policies with regard to this matter and said what a good job the State Government was doing.

Members interjecting:

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

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order, the Hon. Mr Davis! Call on the business of the day.

DIRECTOR OF PUBLIC PROSECUTIONS BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: This clause provides that the Act will come into operation on a day to be fixed by proclamation. Will the Attorney-General indicate when, if the Bill is passed, it is proposed that it will be proclaimed to come into operation?

The Hon. C.J. SUMNER: It is anticipated that it will be proclaimed as soon as possible. There will be some tidying up to be done because there are numerous references in other legislation to the Attorney-General, the Crown Prosecutor and the Crown Solicitor that will have to be changed. However, I do not see that that need hold up the proclamation of this legislation and the appointment of the Director. Those other matters in the interim can be dealt with by the officers under other Acts until such time as those amendments are put in place. I do not anticipate any difficulty with that. My intention is to proclaim this legislation as soon as possible.

The Hon. K.T. GRIFFIN: We can probably deal with some aspect of this on clause 7. If there is other legislation which needs amending, particularly because of the references not so much to the Attorney-General as to the Crown Prosecutor, would it not be appropriate to insert a provision in this Bill that, wherever reference in other legislation is made to the office of Crown Prosecutor, it shall be deemed to be a reference to the office of the Director of Public Prosecutions? That would seem to overcome that part of the delay. Reference to the Attorney-General seems largely to be dealt with in clause 7.

The Hon. C.J. SUMNER: It is not quite as simple as that. We have to go through each circumstance in which the Crown Prosecutor, Crown Solicitor or the Attorney-General is mentioned and determine whether or not the powers remain with those officers or are transferred to the Director of Public Prosecutions. There is a large number of them. I envisage that can be done fairly quickly.

The Hon. K.T. Griffin: You are abolishing the office of Crown Prosecutor.

The Hon. C.J. SUMNER: Yes; the office of Crown Prosecutor will be abolished, at least in so far as it is referred to in statutes. That process is going through. It may be possible that when this Bill is debated in the Lower House those consequential amendments will be made there so that will be fixed up. If not, I do not see any impediment to proclaiming this legislation, getting the Director appointed and getting on with it as soon as possible.

There are some areas where there is doubt as to whether a particular power should be transferred from the Attorney-General to the Director of Public Prosecutions. For instance, under section 33 of the Summary Offences Act, dealing with permission to prosecute cases of indecency and obscenity, my present inclination, because of the policy behind that piece of legislation, is that that power should remain with the Attorney-General; but most of the others, including the power to have a child tried as an adult, for example, would go to the DPP. All that will have to be done by statute.

The Hon. K.T. Griffin: Or by regulation under clause 7 (1) *(h)*, I think.

The Hon. C.J. SUMNER: We do not intend to do that. Where any Acts refer to the Crown Prosecutor, the Crown Solicitor or the Attorney-General and it is considered that some of those powers should now appropriately be exercised by the DPP, we will amend those Acts as soon as possible.

The Hon. K.T. GRIFFIN: I find it commendable that it will be done by statute rather than by regulation.

Clause passed.

Clause 3 passed.

Clause 4—'Director of Public Prosecutions.'

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

Page 1, line 22—Leave out 'five' and insert 'seven'.

Clause 4 deals with the office of Director of Public Prosecutions. Subclause (3) provides:

A person is not eligible for appointment as the Director unless he or she is a legal practitioner of at least five years standing.

My amendment is to change that to seven years because I think that a longer period of service or experience as a legal practitioner is important. Some may argue that there is not much difference between five and seven years, but I think the extra two years in any jurisdiction can be of value. Some very responsible decisions will have to be taken. Whatever Government is in office, I cannot envisage someone who might have only five or seven years experience being appointed as Director. Notwithstanding that, I think it is a safeguard to increase the level of experience by amending it in the way that I have indicated.

The Hon. I. GILFILLAN: I support the amendment. I believe that it is appropriate.

Amendment carried.

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

Page 1, lines 23 to 28—Leave out subclauses (4) and (5) and insert:

(4) The Director will be appointed for an initial term of 10 years and is eligible for reappointment but not so that the total term of office exceeds 20 years.

(5) Subject to this Act, the Director—

(a) will hold office on terms and conditions determined by the Governor;

and

(b) will be paid a salary and allowances determined by the Remuneration Tribunal (which must not be less than for a District Court judge).

(5a) The Judges' Pensions Act 1971 applies to and in relation to the Director as if—

(a) the Director were a judge as defined in that Act;

and

(b) his or her service as Director were judicial service as defined in that Act.

(5b) Unless the Governor otherwise directs, no pension is payable under the Judges' Pensions Act 1971 to or in relation to a Director who has been removed from office pursuant to this section.

(5c) Where a person who is or has been Director is appointed a judge as defined in the Judges' Pensions Act 1971 that Act applies to and in relation to that person as if—

(a) the service as Director of that person were judicial service as defined in that Act;

and

(b) section 5 of that Act had not been enacted.

(5d) Where a person referred to in subsection (5c) of this section was, immediately before his or her appopointment as a judge, in receipt of a pension under the Judges' Pensions Act 1971 that pension will on that appointment cease and determine.

I should like to deal with each of these individually. The first part of the amendment, new subclause (4), is separate from subclause (5). Subclauses (5a), (5b), (5c) and (5d) relate to the Judges' Pensions Act and they can probably be taken together. Subclause (4) provides that the Director will be appointed for a term of office, not exceeding seven years, specified in the instrument of appointment and on terms and conditions determined by the Governor. Subclause (5)

provides that at the expiration of a term of office, the Director will be eligible for reappointment.

My amendments are designed to do several things, the first of which is to provide a fixed term of tenure. I realise that it is a matter of judgment whether that term should be a fixed term of seven or 10 years, but it is my strongly held view that it ought to be a fixed rather than a flexible term and that there ought to be a right of reappointment but that that period of reappointment could be flexible after an initial minimum period in office.

One of my initial concerns was that, if a term of office is for a flexible period, it does not provide a measure of independence for the DPP. The same situation can apply to the various tribunals upon which there has been debate on many occasions about an appointment for a term not exceeding three, four or five years, or some other period. Essentially, the arguments have been the same and that is that, if the statutes do not provide fixed term, it is a matter of negotiation and that situation may tend to compromise the prospective incumbent. I suggest that it becomes even more of a difficulty if both the initial term and any term of reappointment are flexible and can be subject to negotiation not so much at the behest of the applicant or the incumbent but, rather, at the behest of the Government of the day.

A fixed term will provide more security, which I think is appropriate, so that the person who takes on the office will not be looking over their shoulder and wondering whether he or she is performing as the Government of the day wishes, and worrying about reappointment. The Director should be able to discharge his or her responsibilities without fear or favour.

During the second reading debate the position in other jurisdictions was canvassed and I do not intend to deal with that in any detail. It has been acknowledged on both sides of this Chamber that the Victorian provision gives the greatest level of security and independence to a DPP. On the other hand, the Commonwealth, and more particularly the UK, provisions give the least amount of security. However, in relation to those areas, traditions generally indicate that there is some measure of security of tenure in practice if not in principle. The first amendment relates to that security of tenure.

Subclause (5) provides for the Director to hold office on terms and conditions determined by the Governor but the salary and allowances are to be determined by the Remuneration Tribunal and those must be not less than those paid to a District Court judge. Two concepts are embraced in that subclause. One is that salary and allowances ought to be determined by the Remuneration Tribunal, and I believe that that is an important point. It will enhance the independence of the Director.

The second concept is that the salary ought to be at a level not less than that of a District Court judge. I know that in his reply the Attorney-General questioned the desirability of that concept. I believe it is desirable to set at least a minimum for the Office of Director of Public Prosecutions. However, my strongest position relates to the salary and allowances being determined by the Remuneration Tribunal. The salary and allowances of many statutory office holders are subject to the Remuneration Tribunal. I believe that the Commissioner of Police, the Electoral Commissioner, the Auditor-General, the Ombudsman, the Valuer-General and a whole range of statutory office holders—

The Hon. C.J. Sumner: A lot of them are not under the tribunal.

The Hon. K.T. GRIFFIN: I thought that they were. A significant number are still subject to the Remuneration Tribunal.

The Hon. C.J. Sumner: There are not many now.

The Hon. K.T. GRIFFIN: Perhaps in response the Attorney-General could indicate those offices that are still subject to the Remuneration Act. From my recent reading, I understood that not only judges and magistrates but also most statutory office holders were still subject to the Remuneration Tribunal in terms of salary and allowances. In any event, the Office of Director of Public Prosecutions is such an important one that I would have thought that that person could be equated with any one of the offices to which I have referred and ought, therefore, to have his or her salary fixed by the Remuneration Tribunal. If the Commissioner of Police has his salary fixed by the Remuneration Tribunal, what is to distinguish the Commissioner of Police from the Director of Public Prosecutions, because under this Bill the Director of Public Prosecutions can give directions to the Commissioner of Police.

I suggest that the Director of Public Prosecutions holds a very important position and ought not be treated any less importantly in terms of salary and allowances than the Commissioner of Police. If the minimum salary of a District Court judge is a sticking point, then I would like to be able to separate that out in some way, but I suppose that we will receive some indication of the Attorney-General's reaction to the whole proposition when he responds to what I have said.

Proposed subclauses (5a), (5b), (5c) and (5d) all relate to the application of the Judges' Pensions Act to the Office of Director of Public Prosecutions. Again, that is an important point, because the DPP is, I would suggest, probably more important in many respects than the Solicitor-General in relation to the sorts of tasks that the Director undertakes. For that reason, some pension and salary should at least be equated with a judicial office, because one might well expect that at some time in the future a Director of Public Prosecutions could be appointed to a level of the judiciary. Again, the provision of the pension in this way does remove the negotiation of benefits, which might attach to the Office of Director of Public Prosecutions, from the Government of the day and it ensures that the Director, in pursuing his or her functions, is not doing so for ultimate personal advancement through appointment to the bench, because he or she will have at least the salary, allowance and pension entitlements equivalent to the office of a District Court judge.

In addition, the District Court is to become the primary criminal trial court. It would be appropriate to provide the minimum level of salary equivalent to that of a judge sitting in that jurisdiction. I move my amendments, but I ask that subclause (4) be considered first and separately, that subclause (5) be taken separately and the balance taken together.

The Hon. I. GILFILLAN: I am attracted to part of the amendment. I believe there is supportable argument that the term should be fixed—at least from arguments put by the Hon. Trevor Griffin. However, I do not think that period needs to be 10 years: seven years, as spelt out in the Bill, would be adequate. In relation to subclause (5) I do not see any exceptions to paragraph *(a)*. However, in relation to paragraph *(b)*, I am attracted to the determination of the salary by the Remuneration Tribunal. However, I am not persuaded that it should be pegged at a District Court judge level. I find that both the opinions I have expressed, relating to the fixed term and the salary and allowances being determined by the tribunal, give an independence in a way that is valuable for the DPP to have

from any, even inferred, form of influence or pressure by the Government of the day.

By making an appointment for a fixed term, there would not be the risk of a disgruntled Government moving to terminate that appointment prematurely. With the salary and allowances being fixed by the Remuneration Tribunal, one can expect an objective and independent assessment of the proper salary and allowances for the job in which one does not have to curry favour with a Government to get a rise. I have no determined position on the remainder of the amendment; I am happy to accept whichever way the Government feels is appropriate. It is a lesser matter as far as the general issues before us are concerned than the ones I have addressed. I support a fixed term. I support seven years for that fixed term. I support salary and allowances to be determined by the Remuneration Tribunal, but I do not support that that should be pegged at District Court judge level or above.

The Hon. C.J. SUMNER: The Government opposes the whole amendment, but it hopes that, with some discussion with the Hon. Mr Gilfillan, it can achieve some resolution of the matter. The fact is that in 1990 we took out virtually all the statutory office holders from the jurisdiction of the Remuneration Tribunal. That included the Agent-General, the Electoral Commissioner, Chief Executive Officers, the Police Commissioner, the Ombudsman, the Auditor-General, the Solicitor-General and the Chairman of the Health Commission. None of those is now subject to the Remuneration Tribunal, because they have all been taken out. That was done for a very specific reason, namely, that in this modern day and age it is critical that you have the flexibility to negotiate with the people whom you wish to appoint under appropriate salary, given their expertise, and experience and, of course, the market. It may well be that in certain market conditions you can get a better salary than in others.

The notion of having salaries fixed in an Act of Parliament is totally misguided in this modern day and age. I do not believe that it should be fixed, as has been said, at a District Court judge's level. It may be that, when you are negotiating, you have to pay that salary in order to get a person of the appropriate qualifications and expertise. It might be that, if the salary was fixed at a District Court judge's level, you could get anyone to do the job because that is not enough. It might also be that, if a salary is fixed by the Remuneration Tribunal, you might end up having it fixed too low, and that has happened. So, the people will not accept it, and you would not be able to get them to do the job.

It may be that the salary is fixed too high, in which case, as I said yesterday, the relativity of everyone in the service of the Crown as lawyers gets blown out of the water and, instead of the institution of the DPP costing us $150 000, it will cost an enormous amount more. So, as I said, the Remuneration Tribunal does not now cover all these offices that I have mentioned. It would be anomalous now to put in the DPP as the only officer who would come in under the Remuneration Tribunal.

The Hon. I. Gilfillan: What are the others? Run through them again.

The Hon. C.J. SUMNER: Virtually all of them. The Agent-General, the Electoral Commissioner, the Deputy Electoral Commissioner, the Chairman of the Health Commission, the Commissioner of Highways, the Chairman of the Industrial and Commercial Training Committee, the Chairman of the Metropolitan Milk Board, the Ombudsman, the Commissioner of Police, the Deputy Commissioner of Police, the Commissioner of Public Employement, and the Solicitor-General. So, the Ombudsman and the Auditor-General, who are both officers with a greater affinity to Parliament than the DPP, are now not covered by the Remuneration Tribunal, but they may be.

This is why there is a fail safe left in the Remuneration Tribunal Act because, if a dispute does arise, it is possible to ask the Remuneration Tribunal, by proclamation, to determine a salary in relation to any of these officers. That was the whole philosophy behind the amendments to the Remuneration Tribunal Act that went through in 1990, namely, that you need to have the flexibility in government to negotiate with individuals based on their expertise, their seniority, their qualifications and taking into account market considerations at any time. That may mean that the salary might be higher than on some occasions, or you might be able to negotiate a lower salary on others. It is important that the Government's flexibility be maintained in that respect, with the fail safe, again, that it can be determined by the tribunal if need be. I ask the Hon. Mr Gilfillan to reconsider on that score. The only one that would be under that Remuneration Tribunal specifically would be the DPP, and to me that would be quite anomalous.

The Hon. I. Gilfillan: If you take a set term, there is a valid argument that—

The Hon. C.J. SUMNER: I do not have a strong objection to the set term. As I said yesterday the only problem with a set term, certainly the case of 10 years, is that in this day and age if you wanted to get a lawyer from the private bar to be your DPP they might say, 'I am prepared to come out of the bar and do the job for three or four years but I don't want to have a contract with the Government for seven years, so I am not interested if you are insisting that I have to stay there seven years.' Again, it is just a matter of flexibility. If members feel that it has to be a fixed term of seven years, I will not object to it.

However, I do not think it is necessary as I think it can cause problems with the people with whom you are negotiating. I suppose the answer to that is you appoint them for seven years and they tell you, 'I am not going to do it for seven years. You will have to understand that I am going to resign after five years.' It is not a very satisfactory way of doing it because everyone thinks when he is appointed that he will stay for seven years. When he resigns under the seven years people start asking questions about why he has resigned, but I guess—

The Hon. K.T. Griffin: At least that does give some security of tenure without having—

The Hon. C.J. SUMNER: The point is that he has security of tenure at the time the appointment is made. If he comes along and says, 'I want seven years', we give him seven years. If he comes along and says, 'I only want five years because I want to go back to the bar or travel around the world', then you give him five years. If the Committee thinks that the term being fixed is better I can accept that, although as I say I think it does reduce the flexibility of appointments which are necessary today because of the negotiations you have to go through with people to get them to do jobs. I will not object to seven years, but I do object to the rest of it.

The Hon. I. GILFILLAN: I move:

Leave out subclause (4) and insert:
(4) The Director will be appointed—
(a) for a term of office of seven years;
and
(b) on terms and conditions determined by the Governor.

I am inclined to be influenced by the Attorney's observations about the Remuneration Tribunal. It seems to me, on what he has explained, that there is the ability to resort to the Remuneration Tribunal, although I am not sure whether

the Director of Public Prosecutions could, on his or her own initiative, have the matter referred to that tribunal. That may be something the Attorney might like to explain. If we are successful in getting the fixed term, then I feel more at ease that the incumbent will have accepted the remuneration and, therefore, it is reasonable to allow that to be a process of mutual agreement before the position is accepted. If that is the case I would be content with subclause (5a) as outlined in the Hon. Trevor Griffin's amendment, and not support the balance of it.

The Hon. Mr Griffin's amendment to subclause (4) negatived; the Hon. Mr Gilfillan's amendment to subclause (4) carried.

The Hon. K.T. GRIFFIN: My proposed subclause (5) has been overtaken, because it provides that, subject to this Act, the Director will hold office on terms and conditions to be determined by the Governor and will be paid a salary and allowance to be determined by the Remuneration Tribunal. As I understand it, new subclause (4) will provide that the Director will be appointed for a term of office of seven years on certain terms and conditions.

I understand the position put by the Attorney-General, but I would like to have some sort of mechanism included which, in the event of any disagreement between the Government of the day and an incumbent seeking a renewal, would resolve the salary question. The Remuneration Tribunal could well do that. It may be that a contract is now likely to be proposed, so that, at the end of a seven year term, if a Director has performed satisfactorily and desires to be reappointed, the hassles over salary and allowances will not be used as a basis for deterring the reappointment of the incumbent. It may be that the appropriate solution would be to refer such a disagreement to the Remuneration Tribunal. I seek leave to withdraw proposed subclauses (5) and (5a) to (5d).

Leave granted.

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

Page 2, lines 1 to 3—Leave out subclause (6) and insert:

(6) The Director must inform the Attorney-General in writing of—

(a) any direct or indirect pecuniary interest that the Director has or acquires in any business, or in any body corporate carrying on a business, in Australia or elsewhere;

and

(b) any other direct or indirect interest that the Director has or acquires that conflicts, or may conflict, with the Director's duties.

Subclause (6) relates to the declaration of pecuniary interests. This is such a sensitive position that the Director ought to be required to disclose not only pecuniary interests but other interests that might bring the Director into a situation of conflict in relation to any of the matters with which he or she must deal.

The Hon. I. GILFILLAN: The Democrats support this amendment.

The Hon. C.J. SUMNER: The Government will not oppose the amendment at this stage. I am not sure whether there are any problems with it—there probably are not—but I suspect that in any event lawyers would have to disclose those matters under their own code of ethics.

Amendment carried.

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

Page 2, line 9—Leave out 'terminate the Director's appointment' and insert 'suspend the Director from office'.

This amendment relates to the mechanism for the termination of the Director's appointment. I propose, as a safeguard for the Director of Public Prosecutions, that the termination should be made only by both Houses of Parliament with provision for the Governor to suspend. I think that would provide proper security for the position because, under subclause (8), the grounds under which the Governor may at present terminate the Director's appointment are if the Director is guilty of misbehaviour; becomes physically or mentally incapable of carrying out official duties; becomes bankrupt (that is quite clear), or takes the benefit of the law for the relief of bankrupt or insolvent debtors (that is clear); is absent without leave of the Attorney-General for 14 consecutive days or for 28 days in any period of 12 months; or contravenes or fails to comply with subsections (6) or (7). There is potential for controversy with respect to misbehaviour. I think there ought to be some protection for whoever is in office at the time against a Director being arbitrarily dismissed.

The Hon. C.J. Sumner: He could not be arbitrarily dismissed.

The Hon. K.T. GRIFFIN: I agree; that is an incorrect description. The Director could be dismissed on grounds that might arguably be described as misbehaviour or not misbehaviour, as the case may be.

The Hon. C.J. Sumner: He could have recourse to the court.

The Hon. K.T. GRIFFIN: Obviously, recourse to the court is just as controversial as dismissal by the Parliament or suspension. On balance, I think the Parliament ought to be involved. It provides some protection for the incumbent if the mechanism that I have specified is applied. It does apply to other statutory office holders, in any event, and in those circumstances I think the precaution is appropriate.

The Hon. C.J. SUMNER: The Government opposes this amendment. Apart from Victoria, Western Australia, New South Wales and the Commonwealth provide for removal by the Governor for similar reasons. Obviously, the Director could not be arbitrarily dismissed. The prosecution of offences is very much an executive function in the broadest sense of that word, and I think there are adequate safeguards in the current law to cover the situation if the Governor dismissed the Director contrary to legislation.

The Hon. I. GILFILLAN: I oppose the amendment. I do not believe the risk is serious enough or that it is not covered by the normal processes.

The Hon. K.T. GRIFFIN: I indicate that, if I lose the matter on the voices I will not divide, but that should not diminish the strength of my view on this subject.

Amendment negatived.

The Hon. K.T. GRIFFIN: I should like to raise with the Attorney-General a question about subclause (8) *(d)*, which provides as follows:

The Governor may terminate the Director's appointment if the Director is absent, without leave of the Attorney-General for 14 consecutive days, or for 28 days in any period of 12 months.

Will the Attorney-General indicate why that is there? If the salaries, allowances, terms and conditions of appointment are to be made by the Governor, why would we end up having something here which puts the Director of Public Prosecutions firmly under the control of the Attorney-General? It seems to me that, even if the Government and the Director negotiated a position as part of any contract of appointment which was different from this, the Director would still have to go cap in hand to the Attorney-General to seek leave. Why do we need it? Would it not be better out of the subclause and left, as the Attorney-General is proposing, to general negotiation for salaries and allowances?

The Hon. C.J. SUMNER: No matter what deal was made with the potential DPP, there need to be some prescriptions on how much they work. What we have picked up here is, I understand, the same as is in the Commonwealth Director of Public Prosecutions Act. It is not dissimilar to a provision

in the Public Finance and Audit Act relating to the Auditor-General. The Auditor-General's office becomes vacant, so there is no discretion at all. However, there is discretion in this Bill. The Auditor-General's office becomes vacant if a number of things happen, including his being absent from official duties for more than 30 days in any financial year without the leave of the Governor. It is not an uncommon clause. I think it should read 'is absent, without leave of the Attorney-General, for 14 consecutive days, or for 28 days in any period of 12 months'.

The Hon. K.T. Griffin: Should it not be the Governor?

The Hon. C.J. SUMNER: It is not necessary. The DPP is responsible to the Attorney-General. It would be excessively bureaucratic to have the Governor involved. I think there should be a comma after 'Attorney-General'.

Clause as amended passed.

Clause 5—'Acting Director.'

The Hon. K.T. GRIFFIN: Subclause (2) provides:

A person is not eligible to act in the Director's position unless he or she is a legal practitioner of at least five years standing.

That period was consistent with clause 4 (3). As we have now changed that from five to seven years, it would seem appropriate that we should also change this. Although I do not have an amendment on file, I move:

Page 2, line 25—Delete 'five' and insert 'seven'.

The Hon. I. GILFILLAN: I support the amendment.

Amendment carried; clause as amended passed.

Clause 6 passed.

Clause 7—'Powers of the Director.'

The Hon. K.T. GRIFFIN: I have several questions on this clause. As I recollect, there is a power for the Attorney-General—at least there is in the United Kingdom, but I am not sure about the position here—to take over private prosecutions. If that power exists in South Australia, is it intended that that might also be transferred to the Director of Public Prosecutions?

The Hon. C.J. SUMNER: Yes; that would become a power that the DPP would exercise.

The Hon. K.T. GRIFFIN: Subclause (2) provides:

The Attorney-General may, by notice in the *Gazette*, transfer to the Director any powers or functions of the kind referred to above . . .

Does that relate to other powers and functions in other legislation and, if so, is there any indication of which powers and functions might be transferred, or is that still the subject of examination?

The Hon. C.J. SUMNER: This clause is really a transitional one. As I said before, it is intended that most of the statutory responsibilities of the Attorney-General, the Crown Prosecutor and the Crown Solicitor will be dealt with in separate legislation. However, I wanted to get the Act functioning and the appointment made as soon as possible and this clause would enable that to occur during the transitional period.

On the other hand, from what I have been told, we may be able to resolve quickly the question of transferring the functions to the DPP by statute, in which case I doubt whether this provision would need to be used. However, it is there as a fail-safe measure in case something is overlooked in the long run.

The Hon. K.T. GRIFFIN: Does clause 7 mean that the Attorney-General retains a concurrent power, or is it intended that the Director solely will have these powers? Secondly, is it envisaged that any of these powers, particularly those under subclause (2), might be returned to the Attorney-General or, once transferred, is the transfer final?

The Hon. C.J. SUMNER: No, under the wording, once the transfer is made, that would be the end of the matter; it is not a delegation that can be withdrawn. It is not intended that the Attorney-General would have concurrent powers in these areas, although in every Act in Australia at least some concurrent power is retained. Even in Victoria the power of *nolle prosequi* is retained as a concurrent power of the Attorney-General. However, the scheme of this Act is that there would be no concurrent powers as such, but the Attorney-General would have to exercise his or her directions of the DPP through the DPP, and those would be made public in accordance with the Act.

Clause passed.

Clause 8 passed.

Clause 9—'Independence of Director.'

The Hon. K.T. GRIFFIN: Two points are involved in my proposed amendments. The first point relates to the Attorney-General giving directions and furnishing guidelines to the Director. My first amendment provides that the directions and guidelines will be of a general nature and not specific. That is the first point, and I think a measure of independence is created if the Attorney-General is not able to give specific directions. It is important that that not only be the case but also that it be seen to be the case that there is independence.

My second amendment provides that the directions or guidelines should be published in the *Gazette* and within six sitting days they must be laid before each House of Parliament. They must also be published in the Director's annual report. I think that, particularly in relation to specific directions (but also in relation to general directions and guidelines), it is important that they be notified publicly sooner rather than later. Of course, the annual report can be published some 15 or more months after the event and the impact and significance of the events may well be lost. I move:

Page 3, line 29—Insert '(of a general nature)' after 'guidelines'.

The Hon. C.J. SUMNER: The Government opposes this amendment. The philosophy behind it has been adequately canvassed during the second reading debate and on other occasions, and I do not want to reiterate that. However, I have an alternative amendment which is currently being prepared and should be available to be tabled shortly. Perhaps it would be preferable to hear from the Hon. Mr Gilfillan first.

The Hon. I. GILFILLAN: I believe that as things have progressed this matter has distilled out as the most significant issue of dispute in this debate. Members will recall that during the second reading debate I indicated our preference for a complete separation between the prosecutorial powers of the DPP and any direct instruction or control by the Attorney-General. I do not intend to outline in detail the reasons for our views, but, just to summarise the situation, it is our conviction that for a DPP to fulfil its proper role as a totally objective entity able to enter into prosecutions, or in fact take part in any of the duties and powers that are spelt out in this Bill, it is important that the office be seen to be free from any inference of political direction or influence.

In making that observation, I do not intend in any way to reflect on the integrity of the current Attorney-General, who I know holds very strong views about the nature and uniqueness of the position of Attorney-General *vis-a-vis* that of other Ministers in the Government and I acknowledge that that is a firmly held and sincere view. I also indicate that it is my understanding that the Attorney-General is not prepared to go ahead with the establishment of a DPP if in fact this amendment is carried. The Attorney-General interprets that as a restriction of direction by the Attorney to the DPP of a general nature only, so no specific direction

would be open to the Attorney-General on a particular matter.

I am not prepared to support amendments which will kill the DPP in the water, because I think that on balance there are significant advantages in having the office established. It is my view that the amendment is worthy of support and perhaps in the fullness of time other regimes or Administrations may move to have such a provision included.

I have had further discussions with the Attorney about a potential amendment and he has agreed he will move to clause 12. This will mean that, if the DPP objected to any direction the Attorney may have given him, he or she could quickly and publicly disclose such direction to the Parliament and, therefore, to the public through the Parliament. I am thus prepared to oppose this amendment. I recognise that the foreshadowed amendment will, although not removing the capacity of the Attorney-General to direct, make it a public event reasonably rapidly, so it would be contemporary with the circumstances. That is a reasonable compromise. Because I do not wish to be responsible for stalling or stopping the setting up of a Director of Public Proseuctions, I intend to oppose this amendment on the understanding of an amendment which the Attorney-General has outlined. If that is successful, we have a workable office, not perfect, but acceptable.

The Hon. C.J. SUMNER: The amendment is not yet finalised. As I understand the policy now, which has been agreed to by the Hon. Mr Gilfillan, he will not oppose the retention of both general guidelines and also directions in relation to individual matters on the understanding that the amendments of the Hon. Mr Griffin relating to publication in the *Gazette* are passed. Of course, there would then need to be consequential amendments to the Hon. Mr Griffin's amendment because his amendment in relation to prejudice to investigations or prosecutions does not currently apply to the Attorney-General's directions to the DPP, and that needs to be corrected as a drafting matter. However, subject to that, that is the policy that has been agreed to. In addition to that, I will move an amendment to clause 12 to the effect that new subclause (3) will provide:

The Director may at any time report to Parliament on any matter affecting the proper carrying out of the functions of the office. The report must be given to the Speaker of the House of Assembly and the President of the Legislative Council, and they must lay copies of the report before the respective Houses as soon as practicable after its receipt.

Not only do any directions that are given have to be laid before the Parliament but also the Director does not have to wait until his annual report, if he is dissatisfied with what is going on, to report to Parliament: he can do that at any time, on any matter. I believe that is a reasonable compromise. It maintains what I think is important, that is, accountability to an elected official. However, it also gives the Director the knowledge that at any time he has a statutory right to report to Parliament, access directly to the President, to the Speaker and to members of Parliament on any matter at any time outside his annual report. That being the case, I hope that what I have outlined is the policy agreed to.

The Hon. K.T. GRIFFIN: Like the Hon. Mr Gilfillan, I expressed a view that the DPP ought not be the subject of specific directions. That is the object of my amendment, which I will still proceed with. However, I can see that, in the light of the Hon. Mr Gilfillan's intimation, I will not win if there should be a division. But, nevertheless, this is still an important issue. I note what the Attorney-General has said about an amendment to clause 12, and I acknowledge that that will give to the Director of Public Prosecutions an avenue of public disclosure of disagreement with any of the directions or guidelines, whether specific or general, by the Attorney-General to the DPP. That does represent a significant step towards the security and independence of the Director that I have been seeking to achieve, plus the fact that, if the Attorney-General is required to publish directions or guidelines in the *Gazette* and lay them before the Parliament, that will be an added safeguard. I acknowledge that, where there are specific directions, there needs to be the safeguard that that would not be the subject of publication if it were likely to compromise a particular investigation or prosecution.

The Hon. I. GILFILLAN: The outline given by the Attorney does match my understanding of the events and likely events, so we are in agreement.

Amendment negatived.

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

Page 3, line 30—Leave out subclause (3) and insert:

(3) Directions or guidelines under this section—

(*a*) must, as soon as practicable after they have been given, be published in the *Gazette*;

(*b*) must, within six sitting days after they have been given, be laid before each House of Parliament;

and

(*c*) must be published in the Director's annual report.

Progress reported; Committee to sit again.

The Hon. K.T. GRIFFIN: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

APPROPRIATION BILL

Second reading.

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

That this Bill be now read a second time.

This is the annual Appropriation Bill to give effect to the budget that was introduced in the House of Assembly some weeks ago. The budget papers, including the Treasurer's statement on the budget, have been tabled in this Chamber. I commend the Bill to members.

The form of the Appropriation Bill this year is similar to last year.

Clause 1 is formal.

Clause 2 provides for the Bill to operate retrospectively to 1 July 1991. Until the Bill is passed expenditure is financed from appropriation authority provided by Supply Acts.

Clause 3 provides a definition of Supply Act.

Clause 4 provides for the issue and application of the sums shown in the first schedule to the Bill; subsection (2) makes it clear that appropriation authority provided by Supply Act is superseded by this Bill.

Clause 5 provides authority for the Treasurer to issue and apply money from the hospitals fund for the provision of facilities in public hospitals.

Clause 6 makes it clear that appropriation authority provided by this Bill is additional to authority provided in other Acts of Parliament (except, of course, in Supply Acts).

Clause 7 sets a limit of $50 million on the amount which the Government may borrow by way of overdraft in 1991-92.

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

PAY-ROLL TAX (MISCELLANEOUS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

In light of the fact that this matter has been dealt with in another place, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

Payroll tax was transferred by the Commonwealth to the States on 1 September 1971. Prior to the transfer the rate of tax was 2.5 per cent. The Premiers agreed at that time to raise the rate to 3.5 per cent to help provide the revenues necessary for the significant expansion in the range and quality of public services which was taking place two decades ago. On 1 September 1973 they agreed to raise the rate to 4.5 per cent and on 1 September 1974 they raised it again to 5 per cent. In South Australia the rate remained at 5 per cent until last year when the State budget could no longer sustain the continuing reductions in the real level of Commonwealth assistance and the rate of payroll tax was increased to 6.25 per cent as part of a major revenue raising package.

Since the budget was presented last year the employment situation has deteriorated. In this climate the Government considers it vital that measures be taken to remove obstacles in the way of people looking for jobs and to provide industry with the maximum possible incentive to offer employment. Payroll tax has been criticised because it acts as a penalty on those who wish to offer jobs. For that reason it is the first and most obvious target for a Government intent on taking measures to counteract unemployment. Notwithstanding the difficult budget task facing the Government we are resolved to reduce the burden of payroll tax.

We propose to make a start by reducting the rate of tax from 6.25 per cent to 6.1 per cent in respect of wages paid on or after 1 December 1991. This will be the first time since the tax was transferred to the States in 1971 that the rate of tax in South Australia has been reduced. In addition, we propose to continue the practice of raising the exemption level on a regular basis. The level was raised to $432 000 on 1 July 1991 and under this Bill will become $444 000 on 1 January 1992 and $456 000 on 1 July 1992. These measures will benefit employers by about $13.5 million in a full year.

The Government will also move against two practices which have become more prevalent as devices for avoiding liability and which have distorted the incidence of payment of tax. The first of these involves arrangements which have the effect of removing the conventional employer/employee relationship upon which payroll tax is levied. In broad terms, liability is to be imposed where a contractor works primarily or exclusively for another person under what is defined as a 'service contract' and provides labour or services to that other person. The Bill also provides appropriate exemptions. The second involves an arrangement whereby the employer makes payments to a third party for the services of an employee. The amendment imposes liability on such payments.

It is necessary to deal with these two practices to restore equity between taxpayers. Similar measures have been taken in a number of interstate jurisdictions. The Bill also separately clarifies the payroll tax liability of payments made to persons working under arrangements involving employment agents. Wages paid to persons provided by an employment agency to an organisation which in its own right is exempt from payroll tax will continue to be exempt. The amendments also include a general anti-avoidance provision. The Government announced its intention to legislate in these areas during 1990, and since that time extensive consultation has occurred with relevant industry bodies and several submissions have been received. The Government is very appreciative of the contribution of these bodies.

Clause 1 is formal.

Clause 2 provides for the commencement of the measure. The alteration to the rate of tax, and other amendments relating to the prescribed amount of deductions and annual adjustments, are to come into operation on 1 December 1991.

Clause 3 provides for a new definition of 'wages'. The new definition is required as a result of other amendments proposed to the Act. In particular, 'wages' will include any amount determined by or under another provision of the Act to be wages. Furthermore, certain payments made to third parties on behalf of employees are now to be included within the concept of 'wages' (although payments to superannuation funds in respect of which the employer can claim a deduction under section 82 AAC of the Income Tax Assessment Act 1936 of the Commonwealth will not be included).

Clause 4 provides for four new positions relating to the imposition of payroll under the Act. Section 4 addresses the issue of service contracts. It is proposed that payments under certain service contracts (that do not strictly fall within the concept of an employment contract but are closely related) will be taken to be wages paid by an employer to an employee. However, where the supplier of the service in turn employs or engages a person to carry out some or all of the work under the contract, payroll tax will not be payable in respect of payments by the supplier to that person. Section 4a provides for the creation of an employer-employee relationship in respect of employment agents and their contract workers in defined circumstances. Section 4b (1) provides that payments to a person other than an employee will be taken to be wages paid by the employer if the amount paid would, if it were paid to the employee, constitute wages. Section 4b (2) makes a similar provision in respect of payments to employees by third parties. Section 4c empowers the Commissioner to act in cases where the Commissioner has reason to believe that a person has entered into an agreement or arrangement for the performance of services under which payments are to be made to a third party with the view to reduce or avoid a liability to payroll tax.

Clause 5 provides for a reduction in the rate of tax from 6.25 per cent to 6.1 per cent in respect of wages paid or payable on or after 1 December 1991.

Clause 6 adjusts the amounts of deductions allowable in relation to a return period. From 1 January 1992 the amount of $37 000 will be deductible per month, and from 1 July 1992 the amount of $38 000 will be deductible.

Clause 7 provides for amendments to section 13a of the Act that are consequential on the change of rate of payroll tax. These amendments are related to the operation of sections 13b and 13c of the Act. Section 13b of the Act allows an adjustment to be made to the liability of an employer under the Act when it appears that an incorrect amount of tax has been collected over a whole financial year. Section 13c allows an adjustment when an employer ceases to pay wages during a particular financial year. The formulae set out in the amendments relate to the imposition

of the tax over the relevant period. Two notional 'financial years' are required for 1991-92 due to the change in the rate of tax.

Clause 8 makes a technical amendment to section 13b of the Act to allow the Commissioner to spread the benefit of any unused deductions over a full financial year. Some taxpayers have been disadvantaged in previous years when two or more periods have been prescribed in relation to a full financial year.

Clause 9 lifts the level (expressed according to the rate of wages paid per week) at which an employer must register under the Act. The increase is connected to the increase to the prescribed amount under section 11a.

Clause 10 amends section 18k of the Act in a manner similar to the amendments proposed under clause 7, except that these amendments relate to the grouping provisions.

Clause 11 'mirrors' the amendment in clause 8 for the grouping provisions.

Clause 12 ensures that the new amendments effected by sections 3 and 4 will apply to existing arrangements, but not so as to apply payroll tax retrospectively.

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

PARLIAMENTARY COMMITTEES BILL

Adjourned debate on second reading.

(Continued from 8 October. Page 896.)

The Hon. R.I. LUCAS (Leader of the Opposition): I wish to cover two general matters: first, the subject of costs and, secondly, some of the specific matters of concern in the Bill before us. I do this so as to assist members in their thinking on the Bill and so that we might be able to shorten the proceedings in the Committee stage. As I indicated when last I spoke on this Bill, the Liberal Party will be moving for a rearrangement and an extension of the committee system from four to five committees. The argument being used against that is that Treasury and the Government have insisted that this measure be revenue (cost) neutral and that the Liberal Party is seeking to spend additional sums of money. I want to address that matter briefly.

The Liberal Party believes it is possible for such a proposal, at least in the short term, anyway, to be cost neutral. In the medium to longer term, as I argued two days ago, if these committees are to be effective we will have to see an expansion of the staffing and financial arrangements made available to the committees for the hiring of consultants and so on. However, I accept that that is something for further down the track for better economic circumstances—potentially, for another Government after 1993. It would be my wish that a future Liberal Government would see its way clear to head down that path of expanding the staffing and financial arrangements made available to the standing committees of the Parliament.

In the short term in relation to resolving the question of an extra committee, the Liberal Party would suggest a couple of options to the Government for its consideration. The first matter is that currently we have four standing committees of the Parliament but only two chairpersons of those committees have access to Government cars. The chairpersons of the Joint Committee on Subordinate Legislation and the Industries Development Committee do not have access to a car, but the chairpersons of the Public Accounts Committee and the Public Works Standing Committee have access to Government cars.

If this Bill were to pass with the Liberal Party's amendments, or even in its current form, the four or five committees would be, in my judgment, of equal status. No one or two committees could be labelled as more or less important than the other committees. So, it would appear that this Government or future Governments have two options: they could either give all the chairs of the committees white Government cars, which would mean an extra three Government cars or, with regard to the question of social justice, equity, equal opportunity and all those sorts of phrases that are near and dear to this Government, they could provide Government cars to none of the chairpersons of the committees.

It is the Liberal Party's contention that that ought to be the case, that the chairs of the five committees ought not to have access to Government cars. Without knowing the exact detail of how much money that might save, it certainly would save some up-front monetary costs in relation to purchasing the cars. At the very least we would have thought that the recurrent costs might be of the order of $100 000 a year, perhaps. If one looks at the salary of two drivers and the running costs of those two cars it might well be considerably more than that; I do not know. Certainly, it is not an insignificant sum of money.

The Hon. C.J. Sumner: No extra car.

The Hon. R.I. LUCAS: We are not saying that there should not be an extra car; we are saying that if we removed two cars we would save money. I am sure that the Attorney-General can see some eminent sense in that proposal.

The Hon. C.J. Sumner: You can remove them all.

The Hon. R.I. LUCAS: If the Attorney wants to give up his car and set the lead for his colleagues, I am sure that the rest would follow. This is a serious suggestion being made by the Liberal Party where potentially the sum of $100 000 or more could be saved. That money could be used to help finance a more powerful parliamentary committee system.

For some reason unknown to me we have a differential payment system for our committees: two committees are paid at one level and the other two at a lower level. Under the new arrangements, we believe that the proposed four or five committees should be of equal status and, therefore, paid at the same level. There are those who argue that a committee should not be paid, as they are not paid in the Senate. However, leaving that argument aside, we will move amendments so that the chair or head of the committees will be paid a salary supplement of 14 per cent rather than 17 per cent, which has been recommended by the Government for the Economic and Finance Committee and the Environment and Resources Committee, and ordinary members will be paid a supplement of 10 per cent rather than 12 per cent as recommended in the Bill by the Government and Mr Evans. In that way, there would be a saving to the Government and to the Treasury.

We do not suggest that that saving should go into the Treasury's coffers, but there would be more than enough money to finance the operation of a fifth committee—the Statutory Authority Review Committee. In that way we would not broach the doctrine of cost neutrality, which is so important to the Treasury and the Government.

The Liberal Party will move amendments to clause 2 so that, rather than a day being fixed by proclamation for this Act to come into operation, it will take effect at the beginning of the next parliamentary session. In that way, as my colleague the Hon. John Burdett has pointed out, we will not have a situation where Acts that pass Parliament fail to come into operation because of a decision by Executive Government not to proclaim them. We will also propose

minor amendments to the interpretation clause that are self-evident.

I have had an interesting discussion with Parliamentary Counsel about the use of the term 'presiding officer' to replace the term 'chair' of the committee. I am advised by Parliamentary Counsel that we no longer use the term 'chairman', and I understand the reason for that. When I suggested that we use the term 'chairperson' I was told that that was a no-no in parliamentary legalese; that that term has never been used. When I suggested that we should be a world leader and a trail-blazer, I got a frosty reply. So, the suggestion of Parliamentary Counsel is to use the phrase 'presiding member of the committee'. For want of a better phrase, I have included that in my amendments.

I am comfortable with the term 'chairperson' but know that some of my colleagues are not comfortable with it, for different reasons. However, Parliamentary Counsel believes it is inappropriate, hence the suggestion that we use the term 'presiding member' if we want to distinguish from what we have always known in the parliamentary arena as the Presiding Officers, the two head honchos (the Speaker and the President), not to be confused with mortals of lesser being and status, such as heads of parliamentary committees.

I am still contemplating two matters by way of amendment that I have not included in the body of amendments that I have tabled. One relates to the definition of 'statutory authority'. I have some grave concerns about that definition as it is included in the Bill, because I feel that it is so wide that it could take into account many other organisations and companies that this Parliament has never contemplated as statutory authorities and would potentially give a parliamentary committee power to provide oversight over those bodies. I refer in particular to paragraph *(c)* which provides:

> A statutory authority is a body corporate that is established by or under an Act and is financed wholly or partly out of public funds.

Many companies that are established as bodies corporate under the companies legislation receive small grants from public funds from the Commonwealth and the State Government. Under this definition, on the advice I have been given, those companies could be defined as statutory authorities. If the Commonwealth Government or the State Government gave an export incentive grant to Adelaide-Brighton Cement or to Santos, those companies potentially would come under the purview of the Statutory Authority Review Committee or the Economic and Finance Committee in the way that the Government has drafted this Bill. I do not know whether that was the Government's intention. It is certainly not my understanding of what the role of a Statutory Authority Review Committee ought to be.

Equally, many bodies incorporated under the Associations Incorporation Act receive very small grants from the Department of Recreation and Sport and the Department for Family and Community Services. For example, if the Department of Recreation and Sport gives a $500 grant to the Glenelg Football Club or West Adelaide Football Club or if the Department for Family and Community Services gives a grant to Red Cross, St John or a smaller community group, under this definition the potential exists to bring those bodies under the oversight of the Parliamentary Committees Bill and, in particular, a Statutory Authority Review Committee.

I have some concerns about that, but I have not been able to draft an amendment to my satisfaction. There are a number of options, but there are some major problems. One possibility is to have an exclusion clause by way of regulation, but I am uncomfortable with that idea because that means, in effect, that the Government could pass regulations to exclude from the oversight of a Statutory Authority Review Committee a whole range of bodies with which I and the Parliament might not agree. The other way, which is extraordinarily cumbersome, would be to include those bodies that we want the Statutory Authority Review Committee to have oversight of. Again, that is too cumbersome for us to contemplate.

Another option that I am considering is whether that paragraph which says, 'is financed wholly or partly out of public funds', can in some way be amended so that a minor contribution from the Government to an organisation would not count; the public funding would have to be a significant part of the income of that group. For example, if we were to provide a grant of $5 000 to Santos to assist with exports, clearly it could not be interpreted as a statutory authority, because it would be an insignificant part of its total income. That is a third option that we might consider. That is one of the areas about which I am still having discussions with my colleagues, Parliamentary Counsel and others to try to resolve those sorts of dilemmas.

The last question in relation to that is on the current definition of 'statutory authority' as it relates to advisory committees and advisory councils. There are many hundreds of those in Government which would not come under the definition of 'statutory authority'. I also wonder whether they come under the definition of 'State instrumentality'. It is a question whether they escape the oversight in some way by eluding one of the definitions in the definition clause. If so, I shall be seeking to try to accommodate that by way of amendment as well.

I do not need to talk in too much detail about the arguments for and against the Statutory Authority Review Committee. My colleague the Hon. Trevor Griffin and I, and other members, have talked about the need for such a committee on other occasions. I will not waste time this afternoon outlining that argument again. The only point that I would note in relation to the amendments that I have circulated is that we have recommended that it be a committee of five in the Legislative Council. The other committee that we are recommending in the Legislative Council, the Legislative Review Committee, should be a committee of six.

The Liberal Party does not have its thinking and feet locked in concrete in relation to the numbers on the standing committees in the Legislative Council. We are prepared to have constructive discussions with other interested parties, but that is the current thinking and position of the Liberal Party with respect to numbers. As regards all the committees, we shall be amending the clauses to ensure that there is at least a certain number of persons from the Government and Opposition included in their membership. As regards the Statutory Authority Review Committee, we suggest two members shall be nominated by the Leader of the Opposition and two by the Leader of the Government in the Legislative Council. There should be similar clauses for all the other committees, although perhaps with different numbers.

The other change, which is consistent with the four committees that the Government has outlined and also for our new committee, is that the Liberal Party is recommending that, rather than allowing the functions of the committee to be amended by resolution of both Houses, consistent with our principle of Legislative Council committees being answerable to the Legislative Council, it ought to be a decision or resolution of the Legislative Council that changes the functions, if at all, of a Legislative Council committee. After the passage of this Bill, it is not really a matter for the House of Assembly to bother itself too much with that.

Equally, it will be for the House of Assembly to decide whether it wants to alter the function of a House of Assembly committee. If there is to be an amendment to the function of the Statutory Authority Review Committee or the Legislative Review Committee, it ought to be a decision taken by the Legislative Council, not by both Houses.

There is an amendment to the Economic and Finance Committee which flows on from or is consequential to our introduction of the Statutory Authority Review Committee so that the Economic and Finance Committee will not have responsibility for statutory authority oversight. Technically, under its definition, it possibly can, because clause 6 *(a)* (ii) provides that it can look at any matter of public sector operations. Basically, that takes in everything in the public sector. Our amendment is by way of an indication that, to all intents and purposes, if we have a Statutory Authority Review Committee in the Legislative Council, it ought to be doing the major work in this area. The Economic and Finance Committee will have more than enough to do, being the old PAC and IDC, together with significant additional functions that have been included in the Bill.

The Liberal Party will seek to amend clause 17, which seeks to stipulate specifically the priority order of a committee's work. Subclause (3) provides:

A committee must in carrying out its functions—
(a) give priority—
(i) first, to the matters referred to it under any other Act;
(ii) secondly, to the matters referred to it by its appointing House or Houses;
(iii) thirdly, to the matters referred to it by the Governor . . .

We shall be seeking to amend that as far as is practicable to leave the decision to each committee. We shall seek to delete the provision relating to matters referred to it by the Governor so that a committee should seek to give priority to a matter referred to it under any other Act, to a matter referred to it by its appointing House or Houses, and then it must make up its mind as a committee as to the priority order for something that might have been referred to it by the Governor or something that it has decided of its own motion that it should consider.

The Liberal Party will seek to amend clause 32 to indicate, as far as practicable, that the Presiding Officers of both Houses should give effect to any recommendations of the presiding member of a committee as to the staffing of that committee. We hope that these parliamentary committees will have control over the appointment process of their staff to as great a degree as possible. They would recommend somebody, but the final appointment would be made by the Presiding Officer.

We shall be seeking to remove clause 32 (3) which, from our viewpoint, is quite offensive. That provides that the presiding officer of any committee may, for the purposes of this section, disclose to the Presiding Officers of the Houses any evidence, proceedings or reports of the committee even before they have reported to their individual House. I would object to the Chair of a Legislative Council committee revealing evidence and proceedings to the Speaker of another place prior to that committee reporting to this Chamber on whatever has caused a problem within that committee. I find that sort of provision offensive to the independence and autonomy of the Legislative Council. We hope that members will agree with our contention on that and remove the clause.

The second major area not presently covered by the amendments that I have circulated will be covered by amendments that I shall circulate next week in relation to the powers of the committee in clause 28, subclause (1) of which provides:

A committee has the same powers to summon and compel the attendance of witnesses or the production of documents as a Royal Commission has under the Royal Commissions Act 1917 and sections 10, 11, 12, 15, 16, 16 b (1) and (2) and 17 to 22 (inclusive) of that Act apply and have effect (with necessary adaptations) in relation to the committee and its proceedings.

I believe that that clause contains an error in that the subsection referred to in the Royal Commissions Act should be section 16 b (2) and (3) rather than subsections (1) and (2). However, perhaps the Government can respond to that suggestion when the Attorney-General responds during the second reading debate.

I believe that this legislation should outline all the powers of the committee. We should not just indicate that certain powers of the Royal Commissions Act will be transposed holus-bolus from the Royal Commissions Act into the Parliamentary Committees Act without our understanding them and setting them out clearly and explicitly in this legislation.

I have a number of significant concerns about those powers of the royal commission *vis-a-vis* this legislation. I am having further discussion with my colleagues, with Parliamentary Counsel and with others in order to try to resolve some of those concerns. However, at the outset I acknowledge that the Public Accounts Committee does adopt this procedure, although only sections 10, 11, 12 and 15 of the Royal Commissions Act are applied to the powers of that committee.

During my research in relation to the Public Works Standing Committee I noted a couple of interesting facts. First, mention is made in the Public Works Standing Committee Act to the Deputy President of the Legislative Council. I am advised that no such position exists, so I am intrigued that this error has slipped through the drafting stage and debate in both Houses. Nevertheless, section 6 refers to the Deputy President of the Legislative Council.

This Bill has picked up a small part of the Royal Commissions Act relating to the powers of the committee in respect of witnesses. Section 21 of the Public Works Act provides that, if any person does a number of things, certain things will happen. I want to refer particularly to two matters. If any person misbehaves himself before the committee or interrupts the proceedings of the committee, the Chairman may commit such person to gaol for any time not exceeding one month. With all due respect to Mr Hemmings, who is the Chair of the Public Works Committee, and indeed to any other person who is the Chair of the Public Works Committee, I have grave concerns about the Chair of a committee having such power of authority to be able to commit a person to gaol for any time not exceeding one month for interrupting the proceedings in the Public Works Committee or for misbehaving during the proceeding of a committee.

The Hon. J.C. Burdett: The President and the Speaker do not have that power.

The Hon. R.I. LUCAS: As my colleague, the Hon. Mr Burdett, points out, that power is even greater than those of the President and the Speaker. They do not have that power, because it is for the Legislative Council and the House of Assembly, if they so choose, to decide on such a course of action. However, admittedly under current legislation, here the Hon. Mr Hemmings is granted that power to commit such a person to gaol for any time not exceeding one month.

The Government seeks to grant the same power in this legislation. The Government seeks to transpose the powers of the Royal Commissions Act to the Parliamentary Committees Act. It also seeks to provide that the Chairs of our four or five parliamentary committees each ought to have the power to commit persons to gaol for interrupting the

proceedings of the Parliamentary committees. Again, with no offence intended to Mr Hemmings, Mr Hamilton, or to any of the current Chairs of these committees, I believe that that sort of provision is offensive where we allow the Chairs of the committees such power where, for the offence of interrupting the proceedings of a committee or misbehaving before that committee, they could commit someone to gaol for a period of one month or so. I believe that is just one of a number of problems with clause 28 and with the transposition of all those powers from the Royal Commissions Act into the parliamentary committees arena.

That difficulty raises the question of what are the options. I suppose one option is that, rather than the Chair of the committee, having the power, the committee itself could decide to send someone to gaol for offences against the committee. Another option is that, rather than the committee making that decision, the matter be referred back to the Legislative Council or to the House of Assembly where the decision could be made as to whether or not that person should be sent to gaol for an offence that had been committed against a committee or a committee member.

The other option (and this relates to sections 15 and 17 to 22 of the Royal Commissions Act) is that one could create an offence which would mean that the courts of the land would decide whether or not someone had committed an offence and, if they had, the appropriate penalty.

That option then raises a whole series of further problems. If that course of action is followed in relation to section 11 and we continue with what the Government recommends in relation to sections 15 and 17 to 22, section 17 provides that anyone who does not tell the truth to a committee commits the act of perjury and that, of course, would have to be determined in a court. I have undertaken some research on this topic and, in particular, I have read Odgers, the reference manual for procedures in the Senate. Page 820 of the 1991 edition, under the heading 'Machinery to Compel Attendance, Administer Oaths, Etc', states:

> Between 1901 and 1914 the Parliament considered a succession of Bills to make statutory provision for the exercise by each House and by its committees of powers of summoning and compelling the attendance of witnesses and taking evidence on oath or affirmation, for the protection of witnesses summoned or giving evidence before either House or a committee thereof, and for the punishment by ordinary process of law, of persons offending against the provisions so made.

Odgers continues:

> None of such Bills, however, was ever passed into law. What principally worried the Parliament was concern that the proposed legislation, by involving the courts, in some measure deprived the Parliament of the hard-won right to regulate its own internal affairs.
>
> In 1972, in a paper, 'Parliamentary Committees: Powers over and protection afforded to witnesses', the then Attorney-General (Senator the Hon. I.J. Greenwood, Q.C.) and the then Solicitor-General (Mr R.J. Ellicott, Q.C.) considered that there were some matters relating to witnesses which might be appropriate for legislation whilst others might be more appropriate to standing orders, committee rules or guidelines for committees.

There then follows some discussion as to what those matters might have been. Finally, after considering both sides of the argument, Mr Odgers recommends at page 821:

> It is recommended that, rather than legislation and the involvement of the courts—which may involve over formalising committee proceedings and hamper an expeditious inquiry—the wiser course is for the Senate to continue to regulate the proceedings of its committees by its own autonomous determinations.

Odgers is recommending that, as Parliaments, we do go down the path that the Government is recommending in clause 28 of the Bill by seeking to pick up sections of the Royal Commissions Act. At page 997, Odgers states:

> It is respectfully submitted that Parliament should never delegate to the courts its right to handle the punishment of breach of privilege. Parliament is often referred to as the highest court in the land (the Federal Parliament is not really a court but the description probably flows from the doctrine of the sovereignty of Parliament) and Parliament probably could, if it wanted to, legislate to reverse the decision of a court (excluding, of course, matters affecting the Parliament's constitutional powers). It is proper, then, and consistent with its dignity as the highest authority in the land, that Parliament should handle the punishment of contempt or breach of privilege in its own right.

Further academic and legal argument is contained in Odgers, to which members can refer if they wish to further consider this most important matter in relation to what powers we will give to the parliamentary committees. I understand the wishes of the Government in this area, because clearly there is a concern that we do not want people presenting evidence to parliamentary committees being relatively free not to tell the truth, and to have a situation where in the end the only recourse, perhaps, is the Parliament.

As we have seen in recent times, there may well be some in the community who doubt, given the political balance of the state of the Houses, that any judgment in relation to alleged perjury, fraud or such matters might perhaps be made not on legal grounds but on political grounds or other considerations. Certainly, that would be a concern. There are certainly arguments on both sides, and for that reason I do not have an appropriate amendment drafted in relation to clause 28 for consideration by the Committee. Next week, we will produce an amendment in relation to clause 28 to try to cater for some of our concerns in relation to those powers of the committees. I have covered all the specific matters that are of major concern to me in relation to the Bill. I indicate my and my Party's support for the second reading of the Bill, and I look forward to the debate in Committee.

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

DIRECTOR OF PUBLIC PROSECUTIONS BILL

Adjourned debate in Committee (resumed on motion).
(Continued from page 988.)

Clause 9—'Independence of Director.'

The Hon. K.T. GRIFFIN: I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

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

> Page 3, line 30—Leave out subclause (3) and insert:
> (3) Directions or guidelines under this section—
> *(a)* must, as soon as practicable after they have been given, be published in the *Gazette*;
> and
> *(b)* must, within six sitting days after they have been given, be laid before each House of Parliament.
>
> (4) Subsection (3) need not be complied with in relation to directions or guidelines under this section relating to individual matters if, in the opinion of the Attorney-General, disclosure may be prejudicial to an investigation or prosecution, but, in that case, the directions or guidelines must be published in the *Gazette*, and laid before each House of Parliament, as soon as practicable after the matter is determined or otherwise completed.
>
> (5) If the Attorney-General is satisfied that disclosure under this section would place human life or safety at risk or cause some other form of severe prejudice to any person, the Attorney-General may withhold material from disclosure so far as necessary to avoid that consequence.

My amendment gives effect to the policy position I outlined before we reported progress.

The Hon. I. GILFILLAN: I support the amendment.

The Hon. K.T. GRIFFIN: I lost the earlier point about the Attorney-General not being able to give specific directions to the Director of Public Prosecutions. The amendments which the Attorney-General is proposing are consistent with the view which I have taken that, if he does give directions or guidelines, they should be published in the *Gazette* and laid before each House of Parliament. If there is a directional guideline prejudicial to an investigation or prosecution, publication of it can be deferred. If any severe prejudice is likely to be created by disclosure or human life or safety is at risk as a result of that disclosure, there is a discretion on the part of the Attorney-General to withhold information from disclosure.

In the normal course, I suppose one would be reluctant to allow the withholding of information, but I can see that there is value in giving that discretion, because I do not think the fact of disclosure ought to be able to prejudice individuals or to put life or safety at risk. I notice the only change from my amendment to subclause (3) is that the direction or guideline is no longer also to be published in the annual report. The fact that it has already been made public through the *Gazette* and tabling in the Parliament will probably be sufficient for the purposes of disclosure. For those who look only at the report of the DPP, it would be useful to have the disclosure also in the annual report. However, if the Attorney-General is not prepared to do that, I will not make an issue of it.

The Hon. C.J. SUMNER: There may be some merit in that, but I think the Director would do that in any event. I appreciate the amendment that was foreshadowed by the Hon. Mr Griffin in relation to the possible risk to human life. I acknowledge that that was his proposal that we have picked up, and I think it was a reasonable one. I make one comment on the question of the Attorney-General's giving directions to the DPP. I do not envisage that that would be a regular occurrence; in fact, I believe it would be extremely rare. As I said I think yesterday in the debate, it would not be a power that I or, I suggest, future Attorneys-General would seek to use on anything like a regular basis; it would be in only the most exceptional circumstances that I would envisage such directions needing to be given.

Amendment carried; clause as amended passed.

Clause 10 passed.

Clause 11—'Directions and guidelines by Director.'

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

Page 3, after line 40—Insert the following subsection:

(3) If the Director is satisfied that publication of material under this section would place human life or safety at risk or cause some other form of severe prejudice to any person, the Director may withhold the material from publication so far as necessary to avoid that consequence.

This amendment picks up the suggestion of the Hon. Mr Griffin about the protection of human life or safety being at risk when directions are published, and this relates to directions from the DPP to the Police Commissioner. The same principles apply as to directions from the Attorney-General to the DPP, at least in this respect.

The Hon. K.T. GRIFFIN: In my proposed amendment I did seek to provide that the directions or guidelines by the DPP to the Police Commissioner or any other persons involved with prosecuting or investigating should be published in the same manner as the directions and guidelines given by the Attorney-General to the Director of Public Prosecutions, and of course that latter one is by far the most important. I can see that there may be some burden on the DPP if the DPP had to publish immediately directions and guidelines. I would expect that if there was anything controversial about them in any event some information would get out publicly and questions would be raised with the Attorney-General in the Parliament or otherwise in the public arena to obtain some indication as to what direction or guidelines had been given that prompted the controversy.

This is something I am prepared to wear. We will keep it under review and, if after the office has been operating for a year or so it appears appropriate to provide for more immediate publication of information about directions or guidelines, we ought then to reconsider the position.

Amendment carried; clause as amended passed.

Clause 12—'Annual report.'

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

Page 4, after line 6—Insert subsections as follow:

(3) The Director may at any time report to Parliament on any matter affecting the proper carrying out of the functions of the office.

(4) The report must be given to the Speaker of the House of Assembly and the President of the Legislative Council and they must lay copies of the report before their respective Houses as soon as practicable after its receipt.

This amendment deals with the matter outlined previously about the Director of Public Prosecutions being able to report to Parliament at any time on the operations of his office.

The Hon. I. GILFILLAN: I indicate my support for the amendment. I believe it is a significant opportunity for a Director who may from time to time feel under unacceptable pressure to have an open and public outlet directly to the ultimate body in this State, the Parliament. I think it is a satisfactory amendment under the circumstances that prevail today in the way the Bill is presented. I believe that the office of Director of Public Prosecutions, under the Bill as amended, will be substantially improved in respect of the public areas of prosecution and its administration in this State.

The Hon. K.T. GRIFFIN: I indicated earlier that I saw value in the amendment because it allows the Director an avenue for publicising any matter. It does not have to be a matter of disagreement; it can equally be a matter of some other importance in relation to prosecutions. It may relate to the way in which the prosecution service is coordinated, remembering that it is not only the Police Force that is involved in investigations, although it undertakes the majority of investigations, but also bodies such as fisheries, woods and forests, consumer affairs and so on. In fact, a range of other agencies are involved in the investigation of offences under various Acts committed to the Minister responsible for the various departments. It is a useful addition to the Bill, and I indicate my support for it.

Amendment carried; clause as amended passed.

Clause 13 and title passed.

Bill read a third time and passed.

PARLIAMENTARY COMMITTEES BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1060.)

The Hon. K.T. GRIFFIN: I join with my colleague the Hon. Rob Lucas in indicating my support for the second reading of the Bill. Mr Lucas has given an extensive review of the Bill and, for that reason, I do not intend to deal with it in any great detail. However, there are a few issues that I want to touch upon that may reinforce what the Hon. Mr Lucas has said or add to some of the observations on this Bill.

I share the view that an effective committee system is important for the operation of the Parliament and to assist in not only investigating issues but also as one of the means

by which the Executive can be held accountable. Public servants appear before some of the committees which have been established, whether they are standing committees or select committees, and they provide useful information, although there is a constant tension, in the legal and constitutional sense, between committees of Parliament and the Executive to the extent that the question is asked, 'How can public servants and Ministers be required to provide information and answer questions?' That tension has not developed into anything more than that in recent years, but it always underlies any investigation by a committee relating to Government action or inaction.

I would suggest that the committee system proposed by the Bill is not likely to be as effective as I think it should be for several reasons. First, where there are joint House committees, there is a problem sometimes in keeping the committees moving. There is also sometimes the problem of one House seeking to take a more prominent position than the other. In the Legislative Council there is always the problem, with joint select committees or standing committees, that the House of Assembly, being the place where Governments are formed and broken and because of its larger numerical size, tends to try to play a more prominent role.

Generally, there has been a reasonable relationship within committees that are of a joint nature. The concern I have about the joint committees as proposed in this Bill is that, if they are established they will tend to raise the question as to the need for two Houses of Parliament, and the separate identity, both in fact and constitutionally, of the Legislative Council from the House of Assembly will become somewhat blurred and may well give credence to those who question the need for a bicameral system. I do not intend to debate that issue today, because I think all members would know my views—and I think those views are shared by most, if not all, members of this Council, that the independence of the two Houses is important, even though in the eyes of some who come outside the parliamentary system there might seem to be inefficiencies or a lack of cooperation. There are appropriate checks and balances against abuse of power within the bicameral system.

So, the concerns that I have about this Bill relate to the structure of the committees in particular. In passing, it is curious to note that, so far as the three joint committees are concerned, the authors of the Bill have proposed an inequality in membership in two of the committees. For example, the Environment and Resources Committee will have three members from the House of Assembly and two members from the Legislative Council, the Legislative Review Committee will have three members from the House of Assembly and three members from the Legislative Council, and the Social Development Committee will have three members from the House of Assembly and two members from the Legislative Council. There is no reason for the difference in the membership between the two Houses in those three committees. Nor is there any reason given for the larger membership on the part of the House of Assembly compared with the Legislative Council membership. The two Houses have equal power, except, of course, in relation to money Bills.

My support for the Bill is based on the establishment of at least two standing committees in the Legislative Council, two in the House of Assembly and one joint standing committee. My colleague the Hon. Mr Lucas has drawn attention to the fact that the Liberal Party has had a policy of establishing a statutory authorities review committee in this House for quite some time, believing that we do have a role in assessing the structure of Government, and that role is not just in relation to money matters but also in relation to the usefulness of operations, efficiencies and functions. So, a statutory authorities review committee, as one of the committees that we propose, comprising members of the Legislative Council only, is appropriate.

As the Hon. Mr Lucas has canvassed the details of the other committees, I will just touch on some specific provisions in the Bill. The first matter relates to the definition of 'statutory authority'. In the Bill 'statutory authority' is defined as:

a body corporate that is established by or under an Act and—
(a) has a governing body comprised of or including persons or a person appointed by the Governor, a Minister or an agency or instrumentality of the Crown;
(b) is subject to control or direction by a Minister;
or
(c) is financed wholly or partly out of public funds.

Some corporate bodies comprise a range of people, one or two or more of whom may be appointed by the Governor or, a Minister or an agency or instrumentality of the Crown and, notwithstanding that, may not be a Government body. It may be that those persons are in a minority. It would be unwise to have such a broad definition of 'statutory authority'. It may be that the appropriate formula would be to have a majority of persons on the governing body comprised of appointees of the Governor or a Minister or an agency or instrumentality of the Crown.

The other aspect of that definition relates to a body that is financed wholly or partly out of public funds, such as an association that is a body corporate, a company or some other structure. There is no limit, either large or small, on the amount of public funds that go to finance such a statutory authority. It is not clear what the word 'financed' actually means: whether it means a contribution towards capital or operating expenses or whether it means a grant.

Many organisations that are bodies corporate receive very small grants to assist them with particular projects, whether they be sporting associations or charitable or even religious organisations. It is quite conceivable that a body such as the Catholic Church Endowment Society, which I understand is an association incorporated under the Associations Incorporation Act, would receive some contribution from a government, yet it would be regarded as a statutory authority.

The Independent Schools Board, the Catholic Schools Commission, the Lutheran Schools Organisation or even the Lutheran Church itself might receive State or Federal capital and recurrent funding for the education system in their particular schools and would be caught by this provision. The Central Mission (formerly the Central Methodist Mission) and other charitable organisations that receive some State or Federal Government funding would, of course, be caught by this provision.

The question is whether bodies that receive funding from local government might be similarly caught by this definition of 'statutory authority' because 'public funds' is not defined and could well extend to include the funds of local government bodies. So, there is a concern about the definition of 'statutory authorities' in the context of this Bill.

The other area which has constantly been a source of concern is that of the universities. The universities receive State and Federal public funds. Undoubtedly they will be statutory authorities and will be caught by this legislation. Several members of their council are in fact appointed by the Parliament, so they do not come within paragraph *(a)*, but they certainly do come within paragraph *(c)* of the definition of 'statutory authority'. Whilst they do receive public funds, they should largely be independent of any form of direction by or subordination to a Government,

Parliament or parliamentary committee. That is an area of concern.

In respect of the operation of the committees, clause 16 allows references by resolution of a committee's appointing House or Houses by the Governor, by notice published in the *Gazette* or of the committee's own motion. I have no particular difficulty with that, because that is just a referral mechanism. The difficulty occurs in clause 17 which sets out a list of priorities for work by the committee, and would provide a statutory obligation upon a committee of, say, the Legislative Council or the House of Assembly for that matter, to look at matters referred to it under any other Act of Parliament as a first priority. The second is to matters referred to it by the appointing House or Houses and, thirdly, to the matters referred to it by the Government. Then it can deal with any other matters which might come before the committee. There is potentially an opportunity for the Executive arm of Government to influence, through Executive act, the operation of the committee.

I turn to clause 23, which deals with presiding officers. I suppose 'presiding officer' is a common enough description, particularly when it relates to tribunals or the Houses of Parliament, but I wonder whether it is not more appropriate to refer to the presiding officer of a committee as 'Chairperson' which would then distinguish the chairperson of a committee from the Presiding Officer of each House. The appointment of the presiding officer of a committee is made by the committee. I raise for consideration whether that is appropriate or whether the particular House which appoints the committee should also appoint the chairperson. Of course, it is more difficult with a joint committee where it may well have to be left to the members of the committee, but even then there ought to be some provision for alternating the presiding officer's position between the two Houses, much as I recollect there is with the Joint Parliamentary Service Committee under its Act of Parliament.

The powers of the committee under clause 28 have been referred to by my colleague the Hon. Mr Lucas, and they are issues that do need to be addressed with some care to ensure that the committees are subject to their respective Houses or to the Parliament as the case may be, but not subject to outside influence or interference, and that the Parliament or its committees do not submit themselves to the jurisdiction of the courts. There is a reference in clause 28 (2) to the powers granted by subclause (1) being in addition to and not derogating from the powers, privileges and immunities that a committee has as a committee of Parliament.

It may be that that description 'committee of Parliament' is appropriate. On the other hand, technically they will comprise members of only one House, so they are not committees of the Parliament but committees of the House of Parliament which appoints them. I draw attention to that matter for consideration in Committee. Clause 29 needs some attention, because it provides:

> A member of a committee must not take part in any proceedings of the committee relating to a matter in which the member has a direct pecuniary interest that is not shared in common with the rest of the subjects of the Crown.

As I recollect, that does not follow precisely the terminology of the Constitution Act relating to conflicts and offices of profit under the Crown. It would seem to me to be quite rare that a pecuniary interest held by a member of the committee should be shared in common with the rest of the subjects of the Crown. The rest of the subjects of the Crown suggests the whole community. I think it is more appropriate to refer to that as in common with other subjects of the Crown or some other description which does not require the interest to be held in common with all the subjects of the Crown as suggested in that drafting.

Clause 32 causes concern, because it allows the Presiding Officers of both Houses to have responsibility for avoiding duplication by one committee of the work of another committee. I should have thought that was more the responsibility of the Houses and of the committees than of the Presiding Officers.

The question of staffing is, of course, of concern, as is the ensuring of the efficient functioning of the committees. I do not believe that the committees ought to be subject to the direction of the Presiding Officer, although I acknowledge that the Presiding Officer of the House has some responsibility in respect of budgeting.

The Presiding Officers of both Houses are required to consult with the presiding officers of the committees. That is probably not a matter of difficulty, but what comes next is, namely, that confidential information may be given to a committee and subclause (3) allows that to be disclosed to the Presiding Officer. I do not believe that is appropriate.

In relation to clause 33, there is a need to try to work out how the facilities and resources may be applied in commissioning any person to investigate and report to the committee on any aspect of any matter referred to the committee. I do not think that is finally a matter for the Presiding Officer: it is more a matter for the respective Houses.

Finally, I draw attention to the schedule and the amendment to the Subordinate Legislation Act, new section 10a. That mirrors the Joint Standing Orders relating to joint committees. Whilst it is in almost identical terms, I am not convinced that we need to take that out of the Joint Standing Orders and enact it so specifically. When I first saw it I thought that perhaps there was an attempt to restrict the time within which the Legislative Review Committee might review a regulation but, upon reflection, I think that was not an appropriate response to the drafting. I wonder about the need for that proposed amendment in light of the fact that it is in the Joint Standing Orders. That is an issue that we can talk about in Committee. I support the second reading.

The Hon. J.C. BURDETT: I support the second reading. This is a most important Bill, because some of the most important, useful and constructive work done by backbench members of the Parliament in particular is done in committee. Members who argue with each other in Parliament are usually able to come to an agreement in committee. It is a most constructive aspect of parliamentary work. As set up in the Bill, the structure of the committee system is unbalanced and unreasonable. It does not give proper scope to the Legislative Council and it is abundantly clear that the author was a member of the House of Assembly. If in the Committee stage some semblance of balance cannot be obtained, I will be voting against the third reading.

The present committee system is admittedly *ad hoc.* I acknowledge that there are presently no standing committees of the Legislative Council other than the Standing Orders and Printing Committees. However, if we are proposing a complete program of committees, as this Bill does, each with wide-ranging terms of reference, and all of them covering almost every conceivable sphere of parliamentary activity, we must create a balance over the whole Parliament. The Bill proposes four committees, one of the House of Assembly and three joint committees, two of which have a House of Assembly majority.

Generally throughout the Westminster system, Upper Houses have been especially good at committee work. The

committees of the Senate are an outstanding example. The resources of the Council in terms of its members ought to be called upon. Legislative Councillors are not burdened with the very heavy electorate duties that apply to members of the House of Assembly and are ideally suited to committee work. Also, there is not as much temptation for Legislative Councillors to be influenced by local electorate considerations. However, I do not suggest that members of the House of Assembly are likely to be so influenced, but members of the Council are elected on a franchise to represent the whole State and, therefore, they think globally—in terms of the whole State—and not in terms of their own electorate, which, of necessity, members of the House of Assembly must. The letter and spirit of the Constitution Act is clearly that of equality between the Houses, except in the matter of money Bills and money clauses. The amendments that have been placed on file by the Hon. Mr Lucas do provide a proper balance.

I have been a member of the Joint Committee on Subordinate Legislation for a very considerable time and I think I should say something on the basis of my experience on that committee. In my view, this committee has functioned very well under its present Chairman, the Hon. Mr Feleppa, and its previous Chairman, you, Mr President. At present, a great deal of the committee's time is taken up with considering supplementary development plans. This is really an unwanted and unwarranted excrescence on the role and functions of the committee. It is not the function that was contemplated in the Constitution Act or the Subordinate Legislation Act, and it has really taken over in many respects. I understand that the intention of this Bill is that that role should be removed and transferred to the Environment and Resources Committee. I welcome this; it is quite appropriate.

At the present time the Joint Committee on Subordinate Legislation has no specialist consultants, although if it can command the resources it does have the power to engage them on an *ad hoc* basis. On rare occasions it has exercised its power, but not during my time on the committee. This Bill considerably expands the role of the committee. Clause 12 states:

The functions of the Legislative Review Committee are—
(a) to inquire into, consider and report on such of the following matters as are referred to it under this Act:
(i) any matter concerned with legal, constitutional or parliamentary reform or with the administration of justice but excluding any matter concerned with joint standing orders of Parliament or the standing orders or rules of practice of either House;
(ii) any Act or subordinate legislation . . .
(iii) any matter concerned with inter-governmental relations.

In other jursidictions, most committees similar to what is contemplated here or to our present Subordinate Legislation Committee have ongoing specialist advisers, not just *ad hoc* advisers for particular purposes. In view of the extension of the matters within the purview of the committee. I suggest that it is essential that this committee have adequate advice and resources.

Like the two previous speakers, I am concerned about clause 28, which relates to the powers of the committee. A committee established under this Bill has the same powers to summon and compel the attendance of witnesses or the production of documents as a royal commission has, and a large number of sections of the Royal Commissions Act are applied to committees established under the Bill. The Hon. Mr Lucas has dealt with that in some detail and I do not propose to duplicate his comments. Certainly, the power of imprisonment—which neither the President of the Legislative Council nor the Speaker of the House of Assembly has—is rather alarming. I also find that sections 16 b (1) and 16 b (2) of the Royal Commissions Act 1917 apply to the committees established under this Bill. I find that somewhat alarming too. Section 16b provides:

(1) A commissioner has, in relation to the exercise of his functions as commissioner, the same protection and immunity as a judge of the Supreme Court.
(2) Subject to this Act, a witness before the commission has the same protection and immunities as a witness in proceedings before the Supreme Court.

I would have thought that our existing Acts and Standing Orders establish the necessary immunities. It seems that there have been no problems. When there has been a suggestion of the privilege of the House having been offended against, on rare occasions people have been brought before the bar of the House and there does not seem to me to have been any problem in the past in dealing with that. My suggestion is that, where there is any misbehaviour and so on in a committee meeting, the proper way to deal with that is for it to be reported back to the House, or Houses as the case may be, and that it be dealt with there. So, I have concern about that.

Finally, I wish to address the relationship between this Bill and select committees. Of course, the Bill does not seek to say that there shall not be any select committees. As I said it sets up a very comprehensive system, whereby almost every topic that one could conceive could come within the purview of the Parliament is covered by one of the committees. No doubt, if this Bill passes in some form—and I believe it should pass but not in its present form—there will be fewer select committees and on many occasions when the Houses of Parliament would otherwise have appointed a select committee they will now refer the matter to one of the standing committees.

Nonetheless, there will obviously be proper occasions where there ought to be a specific select committee on a specific subject and it is worth mentioning that because, either under the Bill or under the amendments proposed by the Hon. Mr Lucas, the total number of backbenchers involved will be considerable, and there will certainly be additional pressure if a select committee is to be appointed on top of that structure. That is a matter worth raising and, subject to those comments, I support the second reading.

The Hon. PETER DUNN: As a member of the Public Works Standing Committee, I am a little perplexed about the anonymity of the Bill before us. The Public Works Standing Committee Act under which I have been used to working is specific as to what we may or may not do, but this Bill is far-reaching and, from the outset, I can say that it looks as if it has been designed by a socialist or someone with that background who does not have a handle on what Parliament is about, that is, the good running, first and foremost, of the State's finances and, secondly, the social fabric of this State.

This Bill certainly puts great emphasis on the social fabric of the State and makes little reference to its finances. In fact, financial matters do not rate a mention. As the Public Works Standing Committee is now constituted, it determines whether we are getting good value for the money which is spent and which has been put up by Cabinet and the Government of the day. The committee determines whether that money will reap a good reward for South Australia, whether the expenditure will be effective in the long term or whether the recurrent expenditure will be high, low or could be changed.

This Bill is important in that it is a designer Bill: it deals with the design of how we work the Council, the two Houses

and the Parliament in South Australia. I suppose that the public is not terribly interested in it, although members are interested because the Bill will determine how we will work. The Bill could change entirely the running of this Chamber and another place. If increasing the number of committees—the Hon. Mr Lucas's amendments do that—broadens what Parliament and particularly the Legislative Council can look at, then that is a correct move.

However, I would not like this Bill to stop the use of future select committees, nor would I like to see a clogging up of the Parliament with this committee system to the extent that we cannot use select committees. When we establish a select committee to investigate a specific project we usually choose members with an interest in the matter and members who can apply reasonable judgment in bringing the matter to finality. However, in the case of the committees we are proposing under this Bill, there may be times when people will not be terribly interested because the proposed powers of these comittees are fairly wide-ranging.

It is proposed that the Environment and Resources Committee will replace the Public Works Standing Committee. One of the functions of the committee is to:

> Inquire into, consider and report on such of the following matters as are referred to it under this Act, including any matter concerned with the environment or how the quality of the environment might be protected or improved.

One cannot get much wider than that. That means the committee will look at virtually anything that affects the environment. I could take it to the extreme and say that we could look at the population growth in this State, if we really wanted to be pedantic. The Bill also provides as a function of the committee:

> Any matter concerned with the resources of the State or how they might be better conserved or utilised.

That is a very proper matter to be looked into by a committee such as this. The Bill also provides as a function of the committee:

> Any matter concerned with planning, land use or transportation.

That provision is also necessary because the transport system in this country is under an enormous amount of review at the moment. Another function of the committee is to:

> Perform such other functions as are imposed on the committees under this or any other Act or by resolution of both Houses.

In other words, the committee covers nearly everything, except finances. There does not appear to be a review of the use of taxpayers' moneys in this Bill. I am informed that that is done in the Estimates Committees. However, what would happen if, half way through the year, there was a disaster and we had to look at spending a lot of money. For example, if there were an earthquake or something like that, major buildings—even this one—may need large sums of money spent on them or, in fact, we may even need to build a new building. Under this Bill, it is not reviewed as to whether we would be getting good value or whether a broad section of this Parliament would look at just that. Certainly, the Environment and Resources Committee would not look at it under the terms of reference as they are explained in the Bill.

I have a concern in relation to clause 16 under which the Governor, by notice published in the *Gazette*, can refer a matter to one of the committees. That really is giving the Government a strong hand. What if the Government thought that the committee was not doing the job it wanted or that it was coming down with a proposed recommendation? The Bill allows for that under clause 32. I do not think that is very clever. Clause 32 provides for an interim report to be made to the Presiding Officer of either Chamber. Under clause 16, the Government could put so much work into that committee that it would clog it up and it would end up not being as effective as it wished.

I know the committee is able to determine its own matters, but I suggest that, if the Government had the numbers on that committee, that latter clause would mean nothing. The clause relating to the Governor need not be there. I would have thought that, if it were referred to by the Houses, the rest of the recommendations or the priorities given under this Act that the committee must look at and perform are reasonable. However, I am not sure that I can agree with clauses 16 and 17, which are put in as priorities; I think one of those should come out. Clause 32 (3) provides:

> The Presiding Officer of any committee may, for the purposes of this section, disclose to the Presiding Officers of the Houses any evidence, proceedings or reports of the committee notwithstanding that the matters to which evidence, proceedings or reports relate have not been reported to the committee's appointing House or Houses.

It sounds a mouthful, but in other words an interim report may be submitted, and I do not think that that is appropriate in this Bill. If something requires a reasonable amount of detail I cannot see why a committee should have to submit an interim report. I do not know how that would be triggered off—whether it could be demanded by the President. If the Government has the numbers on a committee that committee could quite reasonably submit a report when a matter gets to the stage where it favours them.

The Bill provides that the money required for the purposes of this Act is to be paid out of money appropriated by the Parliament for the purpose. The existing committees operate under their own Acts, and I would have thought that that was a fairly reasonable way of financing the proposed new committees. However, we are cobbling them together in one Act and giving them less direction. It is interesting to note what is provided by way of direction in the Acts that cover the existing committees. The Public Works Standing Committee Act provides:

> In considering and reporting on any such work, the committee shall have regard—
> *(a)* to the stated purpose thereof;
> *(b)* to the necessity or advisability of constructing it—

and this is after considering a building or structure exceeding $2.5 million—

> *(c)* where the work purports to be of a reproductive or revenue-producing character, to the amount of revenue which such work may reasonably be expected to produce . . .

This Act does contain a reference to the end result—how much will be spent on it, how much revenue it will bring in and how much the recurrent costs will be. It continues:

> *(d)* to the present and prospective public value of the work; and generally the committee shall, in all cases, take such measures and procure such information as may enable them to inform or satisfy the House of Assembly or Legislative Council . . . as to the expediency of constructing the public work in question.

So, the Act under which the PWSC operates really does determine whether a project should go ahead, whereas this Bill is wide open. I think members will find that these committees will lose their direction every now and again and head off anywhere in all directions. I would be surprised if that did not happen initially until they settle down.

The Bill provides a requirement for a review of legislation within this Chamber particularly, and I think rightly so. A committee that is to be set up to review statutory authorities is, I think, quite a good idea. I do not disagree with it. We have so many statutory authorities in this State that I think they need to be reviewed now and again.

I single out and keep returning to the Public Works Standing Committee because I am familiar with it. One will find that every Parliament in the world has such a committee. However, the English system is a little different; it uses its public works committee for projects that are significant, although a monetary figure is not specified. Recently the English public works committee looked at the design and construction of submarines for England, and that was a very big project. Such committees really do have a role to play in looking at those projects.

One of the other roles is that it keeps public servants on their toes. I see nothing in this new Bill that may provide for that specifically. Certainly, bringing public servants before a committee and asking them to justify their actions, in undertaking their duties, is a very good way of making them have a second look at themselves, when determining how projects should go ahead and how the money involved is to be spent. The Public Works Committee is really a retrospective committee. A project is put up by Government, the committee looks at that and determines whether the undertaking is necessary. Membership is a mixture of members from both Houses and I think that has its advantages. The Lower House members tend to be a little parochial. If a project happens to be in their own patch, they tend to be very strongly in favour of it. At least Legislative Councillors have an overview sometimes of what those projects involve. I think the Bill will probably finish up in conference. I will be interested to see how that is negotiated. I shall conclude by saying that I hope the committees, however they are made up, are staffed correctly. That will be the most expensive part of the additions that are made to the Bill. However, it is very important that we have good staff on those committees. *Ad hoc* staff pulled in from other areas often do not have their heart and soul in it. I would like to see the committees staffed correctly.

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

ADJOURNMENT

At 6.27 p.m. the Council adjourned until Wednesday 16 October at 2.15 p.m.