LEGISLATIVE COUNCIL

Wednesday 23 October 1991

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

QUESTIONS

JUSTICES ROLL

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Attorney-General a question about the Justices Roll.

Leave granted.

The Hon. R.I. LUCAS: As members would be aware, there is currently a very bitter battle being waged for control of the Australian Workers Union between Mr Bannon's Centre Left faction and the Left faction of the Labor Party. On Wednesday 16 October the *Advertiser* ran a story on the front page under the headings 'Secret bid to shore up Bannon faction' and 'Tapes expose power play', which highlighted claims made by Mr Bob Mack. This story and subsequent publicity enraged members of the Centre Left faction of the Labor Party. On that same day, 16 October 1991, a Mr John Thomas, who is a Centre Left organiser for the AWU, wrote to the Attorney-General asking him to check the Roll of Justices, to establish whether there was a record of Mr Mack being appointed as a JP in South Australia. Within 24 hours, the following letter was sent to Mr Thomas, and I quote:

> Dear Mr Thomas,
>
> The Attorney-General has asked me to acknowledge and respond to your letter of 16 October 1991.
>
> The Roll of Justices has been checked in relation to the following names:
>
> Robert Mack
> Bob Mack
> Robert Bob-Mack
> Robert Maczkowiack
>
> There is no record of a Justice of the Peace by any of the abovementioned names having been appointed in South Australia.
>
> Yours sincerely (signed), A. Jalast, Acting Secretary to the Attorney-General.

For those members who have waited for up to 12 months for replies from the Attorney-General and his department to questions that have been asked, such unusual and mind-boggling speed leads one perhaps to a cynical view that someone was very interested in ensuring a quick response to this particular letter.

Then, two days later, the *Advertiser* carried a story under the heading of 'AWU factional fight uncovers fake JP claim'. However, evidently this letter from the Attorney-General was wrong. In fact, the *Advertiser* reported that an error had been made and that Mr Mack was appointed a Justice of the Peace in 1976 but was, to use the *Advertiser's* word, 'terminated' in 1983.

Members interjecting:

The Hon. R.I. LUCAS: That was the word used by the *Advertiser*. I suspect that there may well be some within the union who wish that that had indeed occurred. Concern is being expressed in the community at the moment at the role of the Attorney-General's Department on this issue, and some people want assurances that the resources of the department will not be used in this bitter union battle. I make no specific allegations at this stage about any illegal behaviour by the department. My questions to the Attorney-General are:

1. Was the advice provided by the Attorney-General to Mr Thomas wrong and, if so, can the Attorney explain the reasons for the error?
2. Will the Attorney give an assurance that the resources of his department will not be used to assist any faction in this battle?
3. What role, if any, did Mr Mike Duigan play in relation to this inquiry from Mr Thomas about Mr Mack?
4. Can all members and individuals corresponding with the Attorney now expect a 24 hour turn-around period for their correspondence?

The Hon. C.J. SUMNER: The Attorney-General's office attempts to answer correspondence as quickly as it possibly can. Obviously, whether or not a person is a JP is something that ought to be readily ascertainable from the records, although apparently, in this particular case, it was not necessarily accurate. As to the third question, I do not know the answer. The answer to the second question is 'Yes'. I will check whether the advice provided to Mr Thomas was wrong in the first instance; I have only relied on the newspaper reports to that effect.

The Hon. R.I. Lucas: You are saying it might be right.

The Hon. C.J. SUMNER: I don't know; I have had no involvement in this matter at all.

The Hon. R.I. Lucas: Did you ask this bloke to—

The Hon. C.J. SUMNER: No, I didn't, I didn't see the correspondence in the first place.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: Well, that is a formal response. I did not see the correspondence that came from Mr Thomas. I am sorry, but that is the fact of the matter. The honourable member can develop whatever conspiracy theory he likes about it, but he will be completely wrong. Mr Thomas wrote, and the Secretary obviously dealt with it and used a *pro forma* reply in the manner which the honourable member has outlined to the Council. Apparently, he subsequently provided further information which indicated that the first information may have been wrong. The honourable member has now quite properly asked whether or not the advice that was originally provided was correct, and I am happy to check whether or not it was and, if it was not, to find out why incorrect information was given and, further, to find out the true situation with respect to Mr Mack.

However, I can assure the honourable member that this matter was handled by the Acting Secretary, as one would expect it to be. It is not the sort of matter that would be referred to the Attorney-General as a matter of course. If someone writes to the Attorney-General's office and asks for information as to whether or not a person is a JP, the matter is dealt with in the department. If I had to respond and personally supervise every letter of that kind I would not have time to be in the Council responding to questions from the honourable member and dealing with the heavy legislative program and then amedments put on file by the Hon. Mr Griffin.

The Hon. R.I. LUCAS: I desire to ask a supplementary question. Can the Minister clarify whether he will bring back a response as to what role, if any, Mr Duigan played in respect of the process?

The Hon. C.J. SUMNER: I do not know what role, if any, Mr Duigan played, and I do not think it is a relevant factor in any event.

PRIVACY BILL

The Hon. K.T. GRIFFIN: My question is directed to the Attorney-General. In the light of the intense public debate

on the Government's Privacy Bill and the genuine concerns about the wide-ranging consequences of it, does the Government intend to push on with the Bill regardless of such concerns and problems?

The Hon. C.J. SUMNER: At the present time the Government is considering representations made to it about the Privacy Bill. A number of representations have been made to me and no doubt to large numbers of other members in the Council. I am considering those representations. Some of them have been straight out opposition, without very much argumentation, and some of them have been based on incorrect interpretations of the Bill. Others have been serious analyses of the Bill containing propositions that the Government can consider for possible amendment.

At all times during this debate I have said that the Government is prepared to examine submissions from the community, including the media, on the Bill to see whether any amendment might be necessary. As I have indicated, we have received submissions from the media, in particular a letter from the *Age*, and from the ABC. I met the Anti Secrecy Subcommittee of the Australian Journalists Association yesterday. We have received submissions from people concerned with public health research. The Government has received a number of submissions on a range of topics, and the Government is considering those matters and will decide whether to propose any amendments to the Bill before the matter is debated.

The Hon. K.T. GRIFFIN: I desire to ask a supplementary question. Does the Attorney-General's response mean that it will still be some time before the Bill proceeds?

The Hon. C.J. SUMNER: No, it does not mean that at all. Decisions about the timetable for the Bill in the House of Assembly have to be made by the Leader of that House after consultation with relevant Ministers. That process will be followed but, when it will be debated, I cannot say. It may be debated next week or it may not be.

ULTRAMAN

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister for the Arts and Cultural Heritage a question about *Ultraman.*

Leave granted.

The Hon. DIANA LAIDLAW: The Chairman's statement in the South Australian Film Corporation's annual report for the year ended 30 June 1990 noted in relation to the *Ultraman* series:

> Because of the clear economic benefits to South Australia of this first series we are initiating discussions to bring a second series to the State. These discussions will continue as will those in relation to responsibility for the greatly increased production and post production costs.

However, judging from a later statement by the Minister during the Arts Estimates Committee last month, the Chairman's hopes for a second series could best be described as 'false hope'. On 24 September the Minister said:

> ... at this stage we understand that Tsuburaya has decided against making a second series in Australia.

I ask the Minister:

1. Further to her advice to the Parliament on 24 September, can she confirm that Tsuburaya remains of the view that a second series will not be made in Australia, let alone by the South Australian Film Corporation in South Australia, or has Tsuburaya changed its mind over the past month?

2. If the corporation is continuing to woo Tsuburaya, is it doing so on purely commercial grounds, or with the Government's blessing is the corporation again offering Tsuburaya commercially favourable terms?

This question is important in the context of the terms negotiated for the first series. In particular, a letter from the Premier, Mr Bannon, to the Managing Director of Tsuburaya Productions, Mr Kooichi Takano, on 4 August 1989, stated:

> The SAFC, as a statutory authority, is in a position to be able to extend commercially favourable terms to secure this important initiative, and it is doing so with the full backup of the South Australian Government.

I would also point out that I have placed a series of questions on notice seeking the Minister's advice on what clear economic benefits arise for South Australia from this series, as suggested by the Chairman.

The Hon. ANNE LEVY: To answer the last question first, the cost of producing the *Ultraman* series in South Australia was close on $6 million, which was spent in South Australia and which brought considerable employment and spin-off effects. There is no doubt that it was to the benefit of the South Australian economy as a whole that the series was made here. If the honourable member wishes to be pedantic, I know that a small portion of that money was not spent in South Australia, but the bulk of it was spent in this State.

As to whether there will be a second series, I do not know. What I stated in the Estimates Committee was the information that I had received up to that time. I know that since then there has been one meeting between a person from the Film Corporation and someone from Tsuburaya—but I am not aware that the question of a possible second series has progressed very much. I understand that Tsuburaya at this stage is not indicating any interest in a further series in Australia. Tsuburaya has not yet released the first series, which was made here, for general distribution anywhere in the world, and, of course, it has control of the distribution everywhere other than Australia and New Zealand. I would not be in the least bit surprised if Tsuburaya undertook a strictly commercial approach and waited to see the reaction to the first series before making any decision as to whether it would wish to make a second one. I imagine that such an attitude would not be surprising, and it is one which I would expect most people would assume to be a normal way of proceeding, although I hasten to admit that this is surmise on my part. I have no information from Tsuburaya to indicate that this is the thinking that it is undertaking.

The Hon. Diana Laidlaw interjecting:

The Hon. ANNE LEVY: Mr President, the honourable member asks me questions and then will not listen to the answers.

The PRESIDENT: Yes. I ask the honourable member to come to order. The honourable Minister has the floor. Interjections while a question is being answered go on too continuously.

The Hon. ANNE LEVY: With regard to the honourable member's second question, I made very clear to the press and to anyone else that, while we would welcome another series being made in South Australia if Tsuburaya were interested in so doing, of course we would want a much firmer contract covering matters such as completion guarantees fully written into the contract and that any further contract would be commercially based with adequate protection for the South Australian Film Corporation in the event of overages occurring. However, I think this is speculation only at this stage; there is no firm evidence that Tsuburaya is interested in making a further series in Australia.

DOMESTIC VIOLENCE

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister representing the Minister of Family and Community Services a question about domestic violence.

Leave granted.

The Hon. CAROLYN PICKLES: Today's *Advertiser* carried an article which referred to a Federal Government committee that is considering the issue of the Family Court. I understand that during a committee hearing Mr Andrew Peacock—who is the Deputy Chairman of the committee—interjected during evidence given by Ms Wilde, who is from the Women's Emergency Shelter in North Adelaide. Ms Wilde was making a submission about domestic violence in South Australia. I understand that Mr Peacock made some interesting comments during that committee hearing. The article quotes Mr Peacock as follows:

> He said he believed women were better able to handle their emotions than men and placed 'extreme emotional pressure' on their partners . . . He said, 'I can't justify them doing it but they don't do it because they want to.' It [domestic violence] is not simply to give men some masculine feeling but results from their inability to cope with extreme emotional pressure in the home.

I understand that his comments so aggravated Ms Wilde that she made the following comment:

> What you said makes me want to get up and hit you.

I know that I am not permitted to make comments during my question, but I do not think that I really need to. Those who might have heard Mr Peacock would probably feel exactly the same way. Will the Minister advise what positive steps the State Government has taken to reduce the incidence of domestic violence in South Australia?

The Hon. BARBARA WIESE: I shall be happy to refer the honourable member's question to my colleague in another place and bring back a full report on what the Government has initiated in relation to domestic violence. The sort of attitude reported to have been expressed by Mr Peacock is one of the issues that the domestic violence campaign is attempting to overcome. I hope that some progress is being made within the community, if not within the Federal Parliament, on this question.

HERITAGE BUILDINGS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister for Environment and Planning a question about heritage buildings.

Leave granted.

The Hon. M.J. ELLIOTT: Over the past couple of months we have seen a couple of buildings demolished. This caused some concern in the community, particularly the demolition of the House of Chow, and more recently the Somerset Hotel has been knocked down. Recently in the Supreme Court a ruling was handed down that removed protection from Gawler Chambers, which the Minister had placed on the heritage register. There is concern in some circles that that now puts many more buildings at risk. This morning's *Advertiser* reports Sue Marsden, the State Historian, as saying that Justice Debelle's ruling earlier this month means that up to 90 per cent of the city's historic buildings are now under threat of demolition because they are not on the heritage register.

Many people had what they thought was an understanding of what the powers of the Minister were to be. It appears that that understanding was not the same as the ruling of our learned judge. This does cause great concern, because now, potentially, overnight the bulldozers could move on to a building like Gawler Chambers, and we do not know what other buildings might suffer the same fate. That not only has an impact on the built heritage but I think it will eventually affect tourism and many other aspects of life in South Australia. I indicate that the Democrats support any move by the Minister to increase her powers, at least for a limited time to allow a rewrite of the Heritage Act. If there was any move perhaps for slight amendments to the Act to give her powers for a limited period, we would support them. Based on that, I ask: is the Minister prepared to introduce legislation to remove the apparent anomaly created by the Supreme Court judge's ruling in relation to Gawler Chambers and will she do so quickly?

The Hon. ANNE LEVY: I will refer those questions to my colleague in another place and bring back a reply. I should perhaps attempt to slightly allay the fears of the honourable member. There is no question of the bulldozers moving in on Gawler Chambers overnight, as he suggests, unless illegal action were taken. As I understand it, the City Council never gives permission for demolition of a building until it has approved the plans of the building that is to replace it. As far as I know there are no plans before the Adelaide City Council yet for any building to replace Gawler Chambers. So, the honourable member can sleep easy in his bed tonight.

BANKRUPTCIES

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Small Business a question about bankruptcy figures.

Leave granted.

The Hon. L.H. DAVIS: The bankruptcy figures for the first three months of 1991-92, just released, reveal a massive 50 per cent jump in bankruptcies in South Australia—from 382 in the July-September period last year to 571 in the three months to 31 September 1991. This is a staggering statistic and shows a savage and dramatic deterioration in the South Australian economy. Also just published is the 1990-91 annual report by the Inspector-General in Bankruptcy—an agency of the Commonwealth Government. This report contains statistical information relating to bankruptcy and the causes of bankruptcy. The Minister of Small Business will remember that last month in answer to a question she advised the Legislative Council:

> The major reason for businesses failing has very little to do with the state of the economy and very little to do with Government actions. It has much more to do with problems that exist with small businesses.

As the Minister would now know this statement has passed into history and is being faxed from one disbelieving small business to another. Predictably, it has drawn an angry response from some small businesses which failed because of the Labor Government's economic policies. However, the Commonwealth Government's annual report on bankruptcy contradicts the Minister for Small Business in South Australia. It absolutely contradicts what the Minister for Small Business said.

The detailed statistics on pages 24 and 25 of that book reveal that economic conditions are easily the largest major cause of business bankruptcies in South Australia—at about 35 per cent, more than one-third. If excessive interest rates and inability to collect debts are included, economic factors were the major cause of the business bankruptcies in South Australia in 43 per cent of cases during 1990-91, as against only 25 per cent because of lack of business ability, failure

to keep books, gambling and so on. My questions to the Minister are:

1. In view of this irrefutable evidence, will the Minister admit that she misled the Council with her remarkable statement last month?

2. Will she apologise to the South Australian small business community for claiming that management, and not economic factors, was the major reason for business bankruptcies?

The Hon. BARBARA WIESE: First, concerning the quote from *Hansard* which the honourable member has included in his newsletter to various people and which has been picked up also by journalists who do not bother to refer to the source documents, I invite small business people, and anyone else who is interested in this matter, to go back to the source document and to read *Hansard*, to get some idea of what exactly I was saying. One cannot simply take one sentence out of *Hansard* and quote it out of context, which was a most disreputable thing for the Hon. Mr Davis to have done in the first place.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: So on that matter I refer people to *Hansard* and ask them to read the points that I was making there. All available evidence from other reports that have been written in previous months, including the report from the Federal Attorney-General's office, which emerged a very short time ago from the Federal Government, has indicated that other matters were the major cause for business bankruptcies—and I refer to such issues as personal and financial matters being recorded, as in previous studies, as the most significant issues relating to business bankruptcies.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: The matter of business failure is a very serious issue. It is lamentable that there are businesses in South Australia that, for whatever reason, are finding it difficult to survive. I have no doubt at all—and I have acknowledged this on many occasions in this place, and of course the honourable member should also state this in his explanations but chooses not to—that the state of the economy is a very serious factor in the effects that it is having upon the practice and survival of individual businesses in South Australia and across the nation. I have said these things consistently in the statements that I have made both in this place and by way of press release. The honourable member knows that full well, and if he says anything to the contrary, he is telling the Parliament untruths.

AUSTRALIAN NATIONAL

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister representing the Minister of Transport a question about Australian National.

Leave granted.

The Hon. R.R. ROBERTS: Yesterday, following a rally by the Australian National work force on the steps of Parliament House, the shadow Minister of Transport—who unfortunately has now left the Chamber—returned to Question Time here in the Legislative Council and asked a series of questions which I think are very important. As an ex-trade unionist myself I would like to know the answers to the questions that were asked. The first question referred to wanting to ensure that AN does not discriminate between members of the work force in developing terms for redundancy agreements, which matter I think is very important. In contemplating that, I might invite the shadow Minister of Transport to perhaps address herself to the question of exactly what her policy would be, because I am certain that workers at Australian National would very much welcome information on what the Liberals would do if they were going to institute redundancy packages and just how they would employ these techniques.

I am certain they would like to hear that there would be some preference to trade unionists and last on, first off principles, but she might take that up with her Federal colleagues and see whether they are prepared to do that. I invite her to take the answer to that question on notice.

The second question was also equally important. The honourable member called for clarification of the terms of any forced redundancies. If there are any forced redundancies, I think that is a fair question.

The third question related to what, if any, long-term employment generation strategies the Government has prepared for the area. The honourable member was talking specifically about country areas, and Port Augusta in particular. Again, that is a very important question.

That is what prompted me to ask these questions today, because it prompted me to do some investigation into just what the Liberal policy is in respect of Australian National Railways. In that quest for information and the honourable member's explanations to the Council, I found that in October 1989 the Liberal Party of Australia released its economic action plan for Australia.

Under the heading of Transport and Communications, the then Shadow Minister for Land Transport and Shipping, Mr John Sharp, M.P., made the following statement in relation to the Australian National Railways Commission:

> A reform process of the Australian National Railways was initiated by the last coalition Government and is well under way, having been implemented with considerable success by AN's management. The reform program to date has resulted in huge staff reductions and increased efficiencies, allowing a substantial reduction in overall subsidy already.

The shadow Minister went on, again as follows:

> This reform process will be intensified and AN's move into profitability accelerated by enabling it to operate on an even more commercially oriented basis, particularly with regard to freight services.

The Liberal Party's economic action plan then states that a Liberal Government's 'acceleration' of the pace of reform would be brought about by a $20 million cut in Government subsidy to the Australian National Railways Commission. This was in 1989. Following on from this, the Liberal Party's transport policy for the 1990 Federal election contained the following section in relation to Austalian National:

> AN since restructuring by a previous Liberal/National Government, has made commendable progress in improving operating efficiency and reducing its annual deficit. The drive to be even more commercially oriented will be encouraged by the next Liberal/National Government.

The document then goes on to make this frightening statement:

> The next Liberal/National Government will review the role of AN's Tasrail, South Australian and interstate freight and passenger services to establish more coordinated and efficient arrangements to achieve a financial break-even system.

It is quite obvious from this document that Australian National's operations in South Australia were on the Liberal Party's 'hit list' and that employment in South Australia would be decimated by a Liberal Government. The Liberal party's continued commitment to this slash and burn policy is confirmed by the report in today's *Advertiser* which states that the current Liberal shadow Minister of Land Transport, Mr Hawker, M.P., considers that Australia's railways were, 'a scandal needing urgent reform'. I therefore address my question to the Minister.

An honourable member interjecting:

The Hon. R.R. ROBERTS: You wouldn't want any more, surely. Old blood and guts Dunn! I therefore address my question to the Minister representing the Minister of Transport. In the light of the Liberal Party's past commitment to slash the subsidy to Australian National and in the light of the Liberal Party's continued commitment to financially 'break even', can the Minister indicate how many jobs in Australian National's operations in South Australia, particularly in country areas, would be lost as a result of a Liberal Party Government?

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

COUNTRY HOSPITALS

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health a question about country hospitals.

Leave granted.

The Hon. PETER DUNN: On Friday I attended a meeting in Port Lincoln at which an Executive Director of the Health Commission, Mr Ray Blight, outlined the Health Commission's policy on country hospitals and, like the previous question, this certainly relates to slash and burn. I quote from some of the extracts of today's *News*, in which Mr Blight is quoted as saying:

> Country hospitals will have to change with the times or face possible closure.

Mr Blight went on to say that, with possible further budget cuts over the next two years, country hospitals would not be able to cope without a major reduction in services. He also said that country people are very conservative and their initial reaction will be one of not changing. He then says:

> And I would say to them that an attitude of no change has very considerable disadvantages.

I suspect that that is a threat. The article goes on:

> Mr Blight said country communities needed to be convinced there was a better way of organising our health administration.
>
> He said hospitals might be able to provide care that was cheaper but only by becoming more innovative through the formation of area health boards. The only way he could see closure being avoided was if the Commonwealth Government found a way to give more money.

A lot of questions are raised by that quote, but my questions are: what country services is the Minister seeking to cut; is this 1988 revisited, with country hospitals to be closed by financially squeezing them out; what are the better and more innovative ways Mr Bright suggests country hospitals should adopt; and is the lack of financial accountability by the Bannon Government the cause of this instruction to close small, relatively defenceless country hospitals?

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

GRAFFITI

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister representing the Minister of Transport a question regarding the STA and graffiti.

Leave granted.

The Hon. I. GILFILLAN: Last month I was invited to the culmination of a program entitled 'Blitz Graffiti', an art project, at the Inbarendi College at Smithfield Plains, opened by the Minister for Youth Affairs, Mike Rann. The project involved six graffiti offenders, who are students of the school, and an artist from Gawler who collectively produced graffiti murals to be hung on the walls of the school.

Five of the six students involved are now going to help start similar programs in other schools in an attempt to re-educate the community about graffiti and provide a controlled outlet for those young people who use graffiti as an outlet for their artistic abilities, frustrations and, sometimes, anger. On Monday I attended a graffiti action conference, convened by Minister Rann's department, where we heard of the work of 'Spray Graphics' at Seaton.

I visited 'Spray Graphics' that evening and spoke with a number of those involved in this program, which is funded by the Crime Prevention Unit. The program provides outlets for legal graffiti and is actively encouraged.

Experiences in Western Australia (and we heard at this conference about the well known work of the local government area of Gosnells, where Mayor, Pat Morris, spoke to the conference) have shown that programs such as this, supported by the community, have led to a dramatic reduction in illegal graffiti throughout communities. The widespread defacing of property, both public and private, by illegal graffiti, is causing understandable alarm and excessive clean-up costs. Moves in this State to reduce the growing incidence of graffiti are receiving widespread public support, but unfortunately recent action taken by the State Transport Authority appears to be having the reverse effect.

The owner of a shed in the Unley area was approached by some skilled graffiti artists to legally use the shed for expressions of their art. The owner welcomed the approach and contacted the Unley council seeking its approval, which it duly gave, and the young graffiti artists covered the walls of the shed in their own designs, previously approved by the owner and the council. They used spray paint bought at their own expense, often in excess of $100, to create the set piece.

It was, in every respect, a legal piece of graffiti, and I remind the Minister of the *Oxford Dictionary* definition of graffiti, namely, 'drawing or writing, scratched or scribbled on walls', and in itself it is not illegal. However, the STA, in line with its campaign to wipe out all graffiti, went illegally onto private land and buffed or painted out the shed designs. Its action has embittered a number of young people involved and threatens the good work of programs such as Spray Graphics.

It is obvious to members that, with such treatment, people who are verging on being anti-social in their behaviour would be likely to move back into illegal and defacing activity. My questions to the Minister are:

1. Does he recognise that the constructive work done by Spray Graphics and Graffiti Blitz could be undermined through resentment at the destruction of legal graffiti pieces?

2. Does he condone the action taken by the STA to remove a legal piece of graffiti?

3. Will he consult with the STA to ensure that a constructive legal approach to cleaning up illegal graffiti is put in place?

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

CROYDON PARK COLLEGE COURSE

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing

the Minister of Employment and Further Education a question about a Croydon Park College course.

Leave granted.

The Hon. BERNICE PFITZNER: The TAFE hairdressing and cosmetic course at Croydon Park College is to cease and possibly be relocated at Adelaide or even Tea Tree Gully. The two hairdressing salons employing three or four apprentices each from Croydon Park College will not be keeping on their apprentices, who must attend the college on Thursday and Friday, which are the busiest days for hairdressing salons.

Further, the students themselves are disadvantaged by extra transport problems. With youth unemployment to hit nearly 11 per cent, this is a serious problem. Pensioners who have had special concessions at the college acting as models also will no longer have that benefit. The western suburbs are now further disadvantaged through the Queen Elizabeth Hospital Health Service's reduction of 36 surgical bed closures, rehabilitation ward closures of 23 beds, the Pain Clinic closure and the penalty of $1.5 million overspent. With the impending closure of the Croydon Park Primary School put forward as an amalgamation, my questions to the Minister are:

1. Does the Minister take into account that this area is disadvantaged and perhaps needs special consideration?

2. Where will the existing students from the Croydon Park hairdressing and cosmetology course go?

3. Will the Minister look into alternative training days for these students if they are to be relocated in Adelaide?

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

AGED AND INFIRM PERSONS' PROPERTY ACT AMENDMENT ACT

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Attorney-General a question about the Aged and Infirm Persons' Property Act Amendment Act.

Leave granted.

The Hon. J.C. BURDETT: The Aged and Infirm Persons' Property Act Amendment Act, No. 15 of 1990, was assented to on 12 April 1990 and has not yet been proclaimed. Members may recall that when the Bill for that Act was before the Council I moved an amendment to the effect that an administrator appointed under the Mental Health Act when the Guardianship Board had made an order need not be the Public Trustee, except in extraordinary circumstances, but may be another person such as a family member.

The Attorney said that he supported the merit of what I said but he did not want it in that Act; it was more appropriately in the Mental Health Act. The amendment was passed. It was disagreed to in the Assembly and, when it came back, the Council no longer insisted on the amendment. The Attorney wrote to the Minister of Health asking that the matter be addressed as part of what was then said to be the impending review of the Mental Health Act. That review has not yet transpired.

Looking through the Aged and Infirm Persons' Property Act of 1990, apart from one matter, I cannot see any reason why it should not have been proclaimed by now. It covers a disparate number of things that generally do not have to be addressed by regulation. In a moment I will ask the Attorney for what reason the Act has not been proclaimed, but I can see only one reason, that is, section 9 of the Act, which provides a new section 30 of the principal Act which deals with the relationship between this Act and the Mental Health Act 1977. It may be that the Government had been intending not to proclaim the Aged and Infirm Persons' Property Act Amendment Act until the Mental Health Act review had been completed and there was a new Mental Health Act. My questions are:

1. For what reason has the Aged and Infirm Persons' Act Amendment Act of 1990 not been proclaimed?

2. When is it expected to be proclaimed?

3. Is the reason that it is waiting on the Mental Health Act review and, if that is so, does the Attorney have any knowledge of the status and the present state of play in regard to that review?

The Hon. C.J. SUMNER: I will get an answer for the honourable member and bring back a reply.

GRAND PRIX POLICE PAYMENTS

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Minister representing the Premier and Treasurer a question about police payments for this year's Grand Prix.

Leave granted.

The Hon. J.C. IRWIN: The 1991-92 Estimates of Payments reveal that for the first time there will be a cost of $417 000 for the police presence at the 1991 Grand Prix. When a question was put to the Minister of Emergency Services during the Estimates Committee the Minister said it was a matter for the Premier to answer. The Minister went on to say that he knew of no such reimbursement and that there is no current policy for the Police Department to be recompensed for its presence anywhere. Therefore, my questions to the Attorney are:

1. How was the payment arrived at?

2. Did the Grand Prix board have any choice in the matter?

3. Is this a forerunner to other public events such as league football matches where payment will be made for police attendance?

4. Will the Treasurer advise his Minister of Emergency Services that the police, for which the Minister of Emergency Services has responsibility, will attract a payment for their service at this year's Grand Prix despite his assurance to the Estimates Committee that there is no current policy for police reimbursement?

The Hon. C.J. SUMNER: I will get a reply for the honourable member and bring it back.

CHILDREN'S COURT

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about the Children's Court.

Leave granted.

The Hon. K.T. GRIFFIN: Earlier this week Judge Newman of the Children's Court criticised bureaucratic delays which have kept young offenders locked up on remand for months longer than adults facing similar charges. He was referring particularly to the long period it takes to have the choice of venue decided, that is, Children's Court or adult court. The report says:

> . . . Judge Newman said it sometimes took months for this decision to be reached and he hoped 'the decision here is made quickly'. He said adult co-offenders could already have been dealt with by the courts in the months some young offenders spent in custody just waiting to find out which court would deal with

them. And once the decision was made, the young offenders would still be last on a list of pending cases. Judge Newman said he had first criticised such delays more than five years ago in a paper about serious violent juvenile offenders but nothing had been done to speed up the system.

Judge Newman also drew attention to one young offender's case in relation to whom it took 13 months to decide a venue and sentence. My questions are as follows:

1. Does the Attorney-General agree that this delay is unacceptable?

2. What steps will the Attorney-General take to overcome this delay?

The Hon. C.J. SUMNER: The first thing that needs to be said is that juveniles who are treated in this way have been charged with the most serious of offences and usually have quite a history of offending. Almost certainly any period spent in detention would be taken into account in the sentence that is imposed if the person was found guilty of the offence.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: I would imagine that some are, yes. I do not have any figures, but obviously they would not all be convicted.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: That is right, but that is a feature of our system. If the honourable member has any other way of dealing with it, I would be pleased for him to let me and the shadow Attorney-General know.

The Hon. R.J. Ritson: Some are just trying to avoid the long delay.

The Hon. C.J. SUMNER: Sure; I am not arguing about that. I am saying that some offenders are remanded in custody pending trial. I am sure that the honourable member would not want to change that. Only yesterday the Hon. Mr Griffin was raising a question that has been raised in the community about the bail that was granted to the person charged with the murder of Ms Nitschke.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: You raised the question. I am saying that the issue was raised and there has been concern in the community as to why that individual charged with that serious offence was granted bail. There will always be some individuals who are remanded in custody pending trial who are subsequently found not guilty. It is virtually impossible to get away from that situation. But I agree with the honourable member that particularly those remanded in custody pending trial should be able to expect to get a trial as quickly as possible. If that is not happening for some bureaucratic reason, as outlined by Judge Newman, that is a matter for concern. I will take up Judge Newman's comments to see what the problem is in determining the forum for the trial of these children.

SOLAR RESEARCH

The Hon. I. GILFILLAN: Has the Minister of Tourism a reply to the question that I asked on 13 August about solar research?

The Hon. BARBARA WIESE: I seek leave to have the answer incorporated in *Hansard* without my reading it.

Leave granted.

The Minister of Mines and Energy has provided the following comments in response to the honourable member's questions.

Professor David Faiman visited ETSA on 8 June last year to present his views on the use of solar energy for electricity generation. At that time no offers were made to ETSA or the Government by Professor Faiman in regard to the establishment of a joint solar research facility in South Australia.

It is understood that in June this year Ms Monica Oliphant, while being employed by ETSA, received correspondence from Professor Faiman in regard to the involvement of the State Government in joint solar research. She responded to him in her role as a member of SASOLAR independently of her ETSA position.

The Government, through the Office of Energy and Planning and ETSA, is continuing to monitor solar energy research and technological developments throughout Australia and overseas.

The Government would be interested in attracting opportunities to promote an expanding role of renewable energy for integration into the South Australian energy supply system where they are economically feasible.

In some special circumstances, such as some remote area applications (where other fuel costs are very high), some alternative energy technologies may be applicable and economic. For instance, the Government is promoting the use of wind power (and indirect use of solar energy) to supplement the electricity supply for Coober Pedy.

The Office of Energy Planning would be pleased to review any firm proposals put forward by Professor Faiman in regard to a solar research centre in South Australia.

TAXIS

The Hon. I. GILFILLAN: Has the Minister of Tourism a reply to the question that I asked on 28 August about taxis?

The Hon. BARBARA WIESE: I seek leave to have the answer incorporated in *Hansard* without my reading it.

Leave granted.

The Trade Practices Commission is responsible for the administration of the Trade Practices Act which contains provisions to deal with practices that lessen competition. I understand the commission is prepared to investigate any matters referred to it by taxi operators and where there is sufficient evidence to show anti-competitive arrangements appropriate action will be taken.

The Department of Public and Consumer Affairs, Office of Fair Trading, has not received any complaints concerning the practices of Cabcharge.

I have, however, asked the Commissioner for Consumer Affairs to liaise with the Trade Practices Commission to investigate the allegations made by the honourable member and ask that if he wishes to provide me with further details of the allegations I can pass them on to the Commissioner.

LOCAL GOVERNMENT ADVISORY COMMISSION

The Hon. J.C. IRWIN: Has the Minister for Local Government Relations a reply to the question that I asked on 10 October about the Local Government Advisory Commission?

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

Leave granted.

Further to the information provided to the honourable member on 10 October 1991, I advise that at this time a total of 10 councils have not submitted their initial periodical review of elector representation for assessment and recommendation by the Local Government Advisory Commission.

Of those councils, five sought permission to defer, pending the outcome of amalgamation proposals before the commission. These councils were Karoonda-East Murray, Ridley, Truro, Waikerie and Woodville. Karoonda-East Murray and Waikerie councils have recently commenced their periodical review following the Commissioner's completion of consideration of boundary proposals in the area which resulted in the formation of the new District Council of Ridley-Truro on 1 October 1991. The new Ridley-Truro council will also undertake a review as soon as possible.

The remaining six councils were requested to initiate their review process in March of this year. These councils are Adelaide, Campbelltown, Enfield, Gawler, Payneham and St Peters. I am advised by the Local Government Advisory Commission that those six periodical reviews are expected to be submitted on schedule, by February 1992.

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

Adjourned debate on motion of Hon. Carolyn Pickles:
That the committee's report be noted.

(Continued from 9 October. Page 961.)

The Hon. BERNICE PFITZNER: In commenting on the select committee's report on child protection policies, practices and procedures in South Australia, I should like to congratulate all members on compiling an excellent document in terms of its clarity, conciseness and comprehensiveness. It is wonderful to observe that, with the conflicting demands of the rights of the child and the privacy and presumption of innocence of the adult, the report has said that the interest of the child is paramount. In my previous profession as a community medical doctor working with children, mainly in disadvantaged areas of the western and northern suburbs, child abuse is no stranger. It is a difficult area, as one does not want to make a mistake and either under-report, thus trying to be cautious and sensitive to the adult's circumstance, or to over-report, as one is always terrified of missing a genuine case and possibly ending up with a dead child.

This actually happened to me whilst on a short visit to the country. I was asked to see a particular six month old child. The nurse filled me in with her concerns, but also implied that the adults were known to the community and that we ought to proceed quietly. We knocked at that particular door and, although we heard movements, nobody came to the door. It struck me that with our loud, insistent knocking the baby did not make a sound. That was most unusual. I finally saw the infant later that day dressed tidily. There were no outside signs of physical abuse, but the child was disinterested, lethargic and just too good. My recommendation was that the child be checked by her GP the next day and to notify him if there was no change. I returned to Adelaide that evening. About 10 days later I heard that the child was dead, presumably from pneumonia. I understand that the mother was not charged.

So, in all child abuse cases, I would prefer to err on the side of over-referral. It is a very complex and complicated issue, and I endorse the paragraph on page 9, section 2, relating to the closeness of the community in country areas and the difficulties for workers in close-knit rural areas.

The second issue is the type of legal system that we have inherited. It is an adversarial system for adults, and the report comments that an inquisitorial system might be more appropriate. I feel that the term 'inquisition' has a connotation of a Spanish Inquisition, in which the person engaged in brow-beating interrogation. I would prefer to refer to the system as an inquiring system, denoting a request for information.

Thirdly, the matter of resources is continually repeated in the report. We must have adequate resources for full allocation of all cases. We must have more resources for education and in-service, for skilful fostering, for monitoring, for rehabilitation, to prevent long delays in court, for preventive programs, for adequate police investigation, and so on. It has been put to me that to have a full allocation of all cases in FACS perhaps another 100 social workers might be needed. This was said to be a conservative estimate.

I should now like to look at the 28 recommendations and make some brief comments. Recommendation 1 refers to updating the list of mandated notifiers. I do not think that it is sufficient that we should update the list; we should also update their skills.

I believe that we must have in-service and education of all people who are noted to be mandated notifiers, and they are: legally qualified medical practitioners, dentists, psychologists, pharmaceutical chemists, the Police Force, probation officers, social workers, registered teachers, persons employed in a school as a teacher's aide, people employed in kindergartens, voluntary workers who provide health, welfare, education and childcare services, and a person of a class declared by regulation.

Even with medical practitioners, those of us who work mainly with geriatric patients, for example, may not be up to date with the latest research on this relatively new disease of child abuse.

The Hon. Diana Laidlaw: Why do you call it a disease?

The Hon. BERNICE PFITZNER: It is a disease because it is a symptom or sign of a diseased or ill at ease family environment and, therefore, it is categorised as a disease. Recommendation 2 covers only mandated notifiers in country areas. I believe that all areas should be covered. However, taking into account the limited resources and the difficulty in the country, as previously mentioned, that recommendation may be a compromise.

Recommendation 3 targets religious organisations. However, although they have not been mentioned specifically, they will be included in the mandatory notifiers as an agency that provides welfare, childcare and residential services for children.

Recommendations 4, 5 and 6 are excellent. Recommendation 7 relates to interviewing techniques. I suggest that the guidelines should have the principles as enunciated by a group of early childhood workers in Victoria. First, that the number of interviews experienced by young children who are suspected of being abused should be kept to an absolute minimum through joint interviews by agencies involved; young children should not experience multiple interviews by officers of child protection authorities, licensing authorities, medical and legal personnel, the police and the courts. Secondly, interviewing strategies should reflect an understanding of the child's language, cognitive and social development. Thirdly, the interviewers should have training and expertise in understanding young children's language and cognitive and social development.

Fourthly, the guidelines for interviewing young children should take into account the children's awareness of adult suggestions, the intent of the interviewer's questions and the influence of the child's level of development. Fifthly, video records should be made of all interviews, questions

and the child's responses. Sixthly, the legal system should deal as soon as possible with cases concerning the abuse of young children in order to prevent further distress from a child's reliving the abusive situation. Seventhly, the representation of children who have special needs, such as Aboriginal children, non English speaking children or children with disabilities, should be monitored. Child abuse in special needs groups may not be identified until reported, or special needs children may not have the access to early childhood services that other groups of children have.

Recommendations 8 and 9 are excellent. Recommendation 10 requests an alternative approach to the adversarial system and that is a good suggestion. I am drawn to the suggestion of Senior Judge Kingsley Newman. This system is on the lines of the French method, whereby a social worker and a magistrate work together with the offender continuously, even though the child moves to another suburb. There will then be continuity and coordination between disciplines.

Recommendation 11 implies an increase in the resources and this has been commented upon, as has recommendation 12, which also relates to resources.

Recommendation 13: The use of screens and video and audio equipment is available at present, but it is used infrequently. Imagine how difficult it is for adults to face each other on a rape case let alone a child who may be bewildered by the whole proceeding.

Recommendation 14: This recommendation on child abuse and protection should not only be in the core syllabus in law but also in medicine, dentistry and social work, that is, all suggested mandatory notifiers.

Recommendation 15 should include the other mandatory notifiers, not only legal officers. Recommendations 16 to 24 are excellent. Recommendation 25 refers to an ombudsman for children. This needs to be further discussed, as there are many implications in this recommendation. Recommendation 26 is excellent.

Recommendation 27 relates to the allocation of all cases. This is the ideal, but does the Government have the resources to achieve this? The same applies to recommendation 28. There is a resources problem.

Finally, I would like to read a draft policy statement that we, the workers in early childhood, wrote for the National Australian Early Childhood Association, as follows:

First, the support of part of the United Nations Convention on the Rights of the Child:

The Right—

- to parental care
- to specific protection and assistance from the State where children have been deprived of their family environment.
- to protection from neglect, exploitation or abuse
- to protection from torture, capital punishment and deprivation of liberty. This includes a provision that the arrest, detention or imprisonment of a child is to be a last resort only
- to rehabilitative care where children have been victims of neglect, exploitation or abuse.

The principles—

- interests of the child are paramont [as noted in the report]
- strong support for mandatory notification
- expectation that any concern re safety of a child be reported to the appropriate authority
- advocate for the acceptance and implementation of the UN Convention on the Rights of the Child
- promote the provision of training of staff in child protection issues and preventive programs which are sensitive to ethnicity, special needs and development levels
- support the individual making an abuse report.

The other query which we had to follow up and which I think we still need to address relates to checking individual liability in reporting of those who are not noted as mandatory notifiers. The principles also include the promotion of the awareness of cultural diversity in relation to children. In this situation I have some practical knowledge. A child was once referred to me at a referral clinic with many dark-looking bruises on its back. The child was of Asian origin and those dark spots are what we call mongoloid spots and not bruises at all. The principles also include support for a multi disciplinary approach to the problem of child abuse because it is a very complex problem. The principles conclude:

- Commitment to raising community awareness through publication and distribution of relevant pamphlets
- Provide information for parents regarding available relevant resources
- Recognise the importance of initiating primary prevention strategies at the early childhood level
- Advocate for the adoption of appropriate procedures and guidelines by employing authorities of early childhood workers.

The principles of some of the procedures that should be noted concern the processes to be adopted by early childhood services, which should be appropriate to each authority in each State and appropriate to each State's Act of Parliament. These procedures may relate to a child suspected of being abused or to allegations made about abuse of children by staff or methods of interviewing allegedly abused children. In general, there have been allegations that there has been too long a delay with legal officers and that they do not have the appropriate child development knowledge. On the other hand, officers in the Department for Family and Community Services have been criticised as being unskilled social workers and, at times, inflexible in their recommendations.

These difficulties are being addressed in the ongoing restructuring of the Department for Family and Community Services, and perhaps the imminent reforms in the juvenile criminal courts. We must recognise and register in our minds that child abuse is a very serious crime. Again, I congratulate the select committee and support the motion that the report be noted.

The Hon. R.J. RITSON secured the adjournment of the debate.

PROSTITUTION BILL

Adjourned debate on second reading.

(Continued from 16 October. Page 1128).

The Hon. BERNICE PFITZNER: This Bill involves a conscience vote, as we all know, and so we have to search our consciences, deeply and fully, to obtain a decision that will benefit our community as a whole. To put things into perspective, I go back through the history of prostitution, a very old occupation rather than a profession. Prostitution can be traced throughout recorded history. The history of prostitution includes street-walking harlots as well as courtesans, women whose sexual favours were available only to royalty.

In ancient societies, one of the earliest forms of prostitution was connected with religion. In very ancient societies, such as Egyptian and Babylonian, it was believed that sexual relations with a priestess would create a closer relationship with the gods. The Athenian orator, Demosthenes, noted of Greek society:

The Hetaerae (high class prostitute) we keep for the sake of pleasure; concubines are for the daily care of our persons; but wives to bear us legitimate children and to be faithful guardians of our households.

The Hon. Anne Levy: Who said that?

The Hon. BERNICE PFITZNER: An Athenian orator, of Greek origin. In Rome, prostitutes were regarded with indulgence, although they were required to wear distinctive clothes and they had to have their hair dyed red or blonde. In the Old Testament and in early Christianity times there was a firm stance against prostitution, which established a tradition that underlies current western attitudes. Early Christian writers regarded prostitution as a necessary evil. In modern history and the later history of prostitution in the Western world, the attitude has ranged between mild to vicious attempts to repress it. Prostitution continues to flourish today because it sells quickly, is emotionally uninvolved and involves different kinds of sexual experiences. Prostitutes also cater for persons who have difficulty obtaining sexual partners because of physical or emotional disabilities.

So, we note that this occupation has at times had a special status in ancient history. Indeed, during my recent trip to China I visited the hot springs of a place called Hua Hin, which was where the Ming emperor had his summer palace 500 years ago. There in double life size is the magnificent statue of his favourite courtesan, the name of whom escapes me at present. She was curvaceous in diaphanous garments, with hundreds of local people and tourists snapping pictures of her—a very special status indeed, and that in communist China.

However, there have been times in history when prostitution was severely repressed and severely punished. Prostitution is the provision of sexual services by a man or woman in return for payment. The 'sexual services' as in the present Bill include:

(a) penetration of the vagina or anus with a part of the body or an object for the purpose of sexual gratification:

(b) fellatio—that is, stimulation of the male genitals by the mouth—derived from Latin *fellare*—to suck;

(c) cunnilingus—that is, stimulation of the female genitals by the lips and tongue—Latin *cunnus vulva* and *lingere*—to lick;

(d) masturbation;

(e) any other act involving physical contact between two or more persons that provides or is intended to provide sexual gratification for one or more of these persons.

I fully describe what prostitution is not to be vulgar but rather so that all of us will be quite clear on the activities of prostitution.

What are the types of prostitution? There are four main types, namely, street soliciting, brothel work or 'massage parlours' open to the public, private premises work, and escort agencies that arrange the services.

What are the causes of prostitution? It would appear from various research that the cause mainly arises out of economic pressures. The person usually comes from a disturbed family background, has a poor education or had limited job skills. However, there are some who have skilled professions but are in the occupation for economic reasons of supporting the children, or there appears to be some lack of self-esteem and lack of job seeking skills.

In South Australia, as the information paper put forward by Goode states, everything that is not prohibited by law is permitted by law and that the principal weapon used by the criminal law in this State to control prostitution a series of legislative offences. These offences are categorised well in the paper from the Australian Institute of Criminology. There are three categories, that is, laws punishing the prostitute, laws punishing those who are involved in the management and organisation of prostitutes and, the most uncommon one, laws which punish those who purchase sex.

In Australia, it is not illegal to sell sex, but laws are passed that criminalise specific forms of prostitution. These laws in South Australia are encompassed in the Criminal Law Consolidation Act 1935 and the Summary Offences Act 1953. They seek to prevent such things as keeping or management of brothels, keeping of a common bawdy house, living off the earnings of prostitutes, soliciting in a public place (street prostitution), consorting, procuring and protection of minors. As we will note, the laws on the subject of prostitution are varied, open to different interpretations and difficult for the police to implement easily and efficiently. Therefore, we are now seeking to change the laws so that they are easy to interpret and easy to implement. We shall never fully eliminate prostitution; at best the aim would be to 'control and contain' the occupation.

I appreciate the time and effort and caring that my colleagues the Hon. Ian Gilfillan and the Hon. Carolyn Pickles have put in in the attempt to try to make our South Australian laws more workable, acceptable and just. So, at present, our South Australian law criminalises prostitution activities. The suggestion to us is to legalise and/or to decriminalise. There is a subtle difference between the two.

Legalisation relates to Government control through procedures of licensing, mandatory medical examination, restriction of areas, etc. Decriminalisation refers to the removal of the criminal penalties. What are we to do? This Bill before us is a mixture of legalisation and decriminalisation. To my mind, we have to take into account several factors linked to prostitution. They are the moral issue, the drugs and crime issue, the health issue, the community issue and, last but not least, the prostitutes themselves.

The moral issue looms large in some minds and is of little consequence to others. To my mind, being a Christian and in Australia, essentially a Christian nation, it is a concern if we should legalise and decriminalise prostitution activities, as, like it or not, we are sending a message to our next generation that prostitution is all right. Yet, none of us here, nor the vast majority of people with whom I have spoken, see prostitution as a desirable occupation. As Professor Marcia Neave says:

> It is perfectly logical to argue that prostitution is not desirable and should be minimised, but to oppose its criminalisation . . .

She further says that that argument is relatively sophisticated. I feel that that is a rather elitist comment.

I now refer to the issue of drugs and crime linked to prostitution. In reading the various reports by legal officers in this and other States, one sees that apparently drugs are a problem here, but not so with crime. I presume that some get hooked on drugs and therefore need economic support to feed their habit so they use prostitution and perhaps crime to obtain economic support. I do not feel that using legalised prostitution as a tool to decrease the drugs and crime problem is the way to go. There are other better tools, less complex, to try to achieve that aim.

The health issue is an important issue for me, as a medical practitioner. Indeed, my initial reaction when asked about my support for the legalisation of prostitution was that it should be legalised as this would improve the monitoring and treatment, if necessary, of sexually transmitted diseases, in particular, the untreatable types such as Hepatitis B and AIDS. But, on reflection, the checks cannot be mandatory. If mandatory, the results are confidential. Indeed, at present the prostitutes will show the managers that they have had such checks but the results are not shown on the slip. So what is the use of that? Further, it takes time—approximately three months—for the disease to show up in the

bloodstream, so checks will not always show the correct medical status of the person, in particular, with reference to AIDS.

Further, the latest article in a medical magazine showed that sex workers had the highest awareness of sexually transmitted diseases and that they were freer from those diseases than were their colleagues who had had numerous different partners on a social rather than a mercenary basis. However, this particular occupation is at high risk from sexually transmitted diseases and we can only recommend the use of condoms. Actually making sure that the condoms are used is difficult. To illustrate the fear of accidents, I understand that my colleagues, the obstetricians and gynaecologists in America, wear three pairs of rubber gloves when they operate. How about the single condom?

I refer to the community not in terms of morality but in terms of noise and people nuisance. Who amongst us would not mind a brothel next door to us with its attendant clients, noise and other activities? So, we put the brothels near factories and railway yards. Who will decide the location—the Brothel Licensing Board? Local government? What if they cannot agree?

The final consideration is the central group that we are considering—the prostitutes themselves; they should not be disadvantaged, as I believe they are already disadvantaged. Does the Bill help them? In Victoria it has not, as the large brothels have taken over, and we have not empowered the individual prostitutes themselves to collect all their earnings, to make their own decisions and choose their own destiny. In this Bill, there is some leeway for the individual prostitutes via the small brothels, which need not be licensed, and again, in that, there is another difficulty.

The often argued concept is that prostitution is an activity which is a victimless crime and that when two consenting adults come together, who are we to condemn or criticise? This is agreed if these statements are true. But there are victims, the women. They may not be scarred physically, although I have seen some physical scars as a result. It should be quite obvious to us that it is a high risk occupation, physically. Apart from contracting sexually transmitted diseases, we ought to be aware that every orifice in her body can be subjected to physical abuse, depending on the size and force of the various penetrations, whether they be consented to or not. It is not romance, it is not moonlight and roses! As for consenting adults, I would raise the concern that, when one consents because of other agendas of economic necessity, it is not consent; it is being taken advantage of.

This group of women may be consenting but it may be because there is no other way out. They are in a weakened position, and therefore, consenting is the only way to go. Are we going to help them to be exploited? Yes, most of all I would like to do what I can for the prostitutes—it is they about whom we should be concerned. But I do not think this Bill will help them. I do not think this Bill addresses their needs. The spirit of the Bill tries to be caring, but it does not achieve the aim of helping those most disadvantaged. Even police officers have concerns about getting a better situation regarding prostitution. They will now have to police the legal and the illegal activities.

The present law relating to prostitution is not good. The change should also be in prosecuting the clients, and the punishment ought not only be monetary but also a rehabilitation program—such programs as suggested by Professor Neave for Victoria, that is, a type of vocational training to enable women to turn away from prostitution and engage in other kinds of remunerative work. I refer, for example, to what she calls the Early Contact Program for disadvantaged young people who are working as prostitutes or on the fringes of prostitution. The purpose is to provide access to schemes for employment, training and further education. Another program is the Community Volunteer Support Scheme, to coordinate volunteers who are prepared to help adult prostitutes who wish to change their occupation.

And on a wider area there should be provision of additional youth refuges in inner urban areas, provision of long-term accommodation for young people who cannot live with their families and provision of education programs in schools providing information on sexuality and emphasising the importance of non-exploitative relationships. Therefore, in closing, although I have supported the concept of the Bill initially, I find on deeper reflection that I am unable to support the second reading.

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

STRATA TITLES (RESOLUTION OF DISPUTES) AMENDMENT BILL

In Committee.

(Continued from 22 October. Page 1291.)

Clause 5—'Binding character of the articles.'

The Hon. K.T. GRIFFIN: When we last considered this Bill I indicated that I opposed clause 5, which essentially deals with the binding character of the articles. It seeks to remove subsection (3), which provides that the court—and in that instance it is the Supreme Court—may do certain things, including making an order enforcing the performance or restraining a breach of the articles and making any incidental or ancillary orders.

That was the point at which there was some debate about the appropriateness of that position. In my second reading contribution, I indicated that, although there is a procedure for resolution of disputes, it seemed appropriate nevertheless to leave a power in the Supreme Court to deal with the matters which are the subject of this clause. It did not seem to me that there was any difficulty in some overlapping jurisdiction.

I acknowledge that in clause 11 there is an extensive provision relating to the resolution of disputes. I have some amendments in relation to that, because, as I said in the second reading debate, it is not appropriate to limit the jurisdiction to the small claims jurisdiction or even to provide a right for a person, by leave of the District Court, to bring an application in the District Court. That is much too bland and simple a provision, which does not address some of the important issues that need to be addressed.

At the stage when we were debating this, the Attorney-General responded, saying that it is mainly the small domestic strata corporation disputes that seem to be causing difficulty. I do not disagree with that, but there are still some major areas of potential dispute with larger residential strata corporations and the non-residential corporations, such as parking strata corporations and large office strata corporations. It seems to me that there needs to be that flexibility. If my later amendments to clause 11 are passed, the significance of this clause will be considerably diminished. For the moment, I persist with the opposition to clause 5 on the basis that leaving it in provides another option for resolution of disputes and is not something which overrides the later provisions in clause 11.

The Hon. C.J. SUMNER: The Government opposes this amendment. In our view, it would undermine the rationale

for getting a simple and accessible means of resolving disputes over strata titles. The amendment would mean that, if there was a dispute, a person who wanted that dispute resolved would still have the option to go to the Supreme Court with all the attendant costs that would incur not just for the plaintiff but for the poor defendant who found himself in the Supreme Court arguing whether cars were being correctly parked or whether a cat was being kept in accordance with the required resolutions of the strata corporation. The Bill sets in train a mechanism to allow important matters to get to the Supreme Court or to the District Court, but I think that the basic structure of providing readily accessible and cheap access to justice for unit holders should be maintained. It will be maintained by defeating this amendment.

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

Clause passed.

Clauses 6 and 7 passed.

Clause 8—'Alterations and additions.'

The Hon. K.T. GRIFFIN: During the course of the second reading debate I expressed a tentative view that this clause ought to be opposed. It imposes a penal sanction for failure to comply with a requirement of section 29 (2). That section deals with alterations and additions and the procedure by which they may be taken. I have rethought the matter in the light of the Attorney-General's reply and given further consideration to the issue. In those circumstances, I do not desire to persist with my opposition to the clause.

Clause passed.

Clauses 9 and 10 passed.

Clause 11—'Resolution of disputes, etc.'

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

Page 2, lines 35 to 41, and page 3, lines 1 to 14—Leave out subsections (2) to (6) (inclusive) and substitute the following subsection:

(2) Subject to this section, an application may be brought in any court competent to hear and determine actions in contract subject to the following qualifications:

(a) an application involving a monetary claim must be commenced in a court competent to hear actions for the amount of the claim founded in contract;

(b) the court in which an application is commenced may, on its own initiative or on the application of a party to the proceedings, order that the proceedings be transferred to another court;

(c) the District Court may, on the application of a party to proceedings under this section that are before a local court, order that the proceedings be transferred to the District Court;

and

(d) the Supreme Court may, on the application of a party to proceedings under this section that are before a local court or the District Court, order that the proceedings be transferred to the Supreme Court.

This is a significant amendment. Clause 11 seeks to set out a structure for the resolution of disputes. I do not think anyone quarrels with the point that a number of disputes within strata corporations occur which some members believe cannot be resolved inexpensively. There have been many suggestions for the way in which those disputes can be resolved, ranging from a special tribunal to a commissioner for strata corporations, neither of which I believe is particularly satisfactory.

The scheme of clause 11 is to provide that disputes within a strata corporation may be resolved by an application to a local court and be dealt with in the small claims jurisdiction as though the application was a small claim. A person, by leave of the District Court, may bring an application to have the matter dealt with in the District Court, and the court may transfer the application to the Supreme Court or state a question of law for the opinion of the Supreme Court.

I suggest that is a limited structure and that it ought to be opened up. First, if there is a monetary claim, it ought to be dealt with in the jurisdiction which in ordinary claims is entitled to deal with such a monetary claim. For example, if it is over the limit fixed by the legislation for a small claims court, it ought not to be heard in the small claims court; it ought to be dealt with in the appropriate jurisdiction, which may be a local court or the Supreme Court.

The second point is that, if there is no monetary claim, there has to be some greater flexibility for the initiation and consideration of the jurisdiction in which an application may be made. It is difficult to identify in a statute those areas which are more appropriate for decision in the District Court or the Supreme Court, but some mechanism ought to be included to address that if at all possible.

I made the point during the course of the second reading debate that there are, of course, relatively minor domestic strata corporation disputes which could comfortably be dealt with in the small claims jurisdiction. On the other hand, there are frequently much larger issues, maybe some major structural alterations, that will not only affect the interests of the particular strata title holder who wishes to make the alterations but also neighbouring strata title holders as well as other members of the strata corporation. The jurisdiction of the small claims court is inappropriate to deal with that sort of issue.

There may also be a dispute arising in a major commercial strata corporation, whether it is a parking strata corporation or office accommodation. There are many office premises around Adelaide that are strata titled and in some of those cases each strata title may have a value in excess of $1 million. It would be quite inappropriate for some of the major disputes that could arise in relation to those sorts of strata corporations to be dealt with in the small claims court or, for that matter, even in the District Court. There are also the very large high-rise strata titled residential units, where the same sorts of considerations should apply.

So, I am proposing a more flexible environment in which that can be undertaken. If members look at my amendment, they will see that it allows an application to be brought in any court competent to hear and determine actions in contract and it is subject to a number of qualifications. One is that an application involving a monetary claim must be commenced in a court competent to hear actions for the amount of the claim founded in contract. Whether it is a strata corporation dispute or any other dispute that is an appropriate principle to apply. It is the principle that is being applied in the Bills for the District Court and the Magistrates Court that we have yet to consider.

Another qualification states that the court in which the application is commenced may, on its own initiative or on the application of a party to the proceedings, order that the proceedings be transferred to another court. That is consistent with the Government's Bills at the present time in relation to the District Court and the Magistrates Court where there is that opportunity for actions to be passed from one court to another, and the courts themselves will decide about the degree of complexity and the comparative experience of the court which is hearing the application or to which it ought to be transferred.

Then there is provision for the District Court to order that proceedings be transferred to the District Court where they are proceedings before a local court or, overriding everything, for the Supreme Court to order that proceedings be transferred to the Supreme Court. So, there is that flexibility that is already contained in the Bills that the Attor-

ney-General introduced to deal with the District Court and the Magistrates Court. I would have thought that it was appropriate to include those sorts of provisions in this Bill. There are other matters dealing with clause 11 that relate to questions of jurisdiction, but we can safely deal with this matter separately from the rest.

The Hon. C.J. SUMNER: The Government opposes the amendment. This proposed amendment alters altogether the dispute resolution scheme proposed in the Bill. The Bill envisages that most strata disputes will be determined as small claims, with appropriate flexibility provided for more complex and significant matters to be heard in the District Court. The Hon. Mr Griffin's amendment will allow proceedings to be commenced in any court. This amendment is opposed as the whole rationale of the Government's Bill is to promote an accessible, cheap forum for resolution of strata disputes. Utilising the small claims court means that parties will not have to pay expensive legal bills in order to get their disputes heard and determined.

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

Amendment negatived.

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

Page 3, lines 17 and 18—Leave out all words in these lines after 'legal forms' in line 17.

I have a concern that, because of the nature of the claims—whether small or large—we should remove the reference to the court not being bound by the rules of evidence. If we leave only the provision that it should act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms, that satisfies the obligation to resolve the matter justly. The difficulty I see, particularly in a District Court—now that my earlier amendment has been defeated—is that subsection (7) will apply equally to the District Court as well as to the Supreme Court. In those jurisdictions, that is inappropriate.

The Hon. C.J. SUMNER: The Government opposes this amendment. The Government considers that these matters can be left to the discretion of the court in relation to higher courts. The notion that the rules of evidence should apply in the small claims court will again undermine the rationale of this procedure. I point out that the rules of evidence do not currently apply to small claims matters. This is appropriate when it is remembered that small claims do not have complex pleadings or other procedures which serve to define the issue in more complex matters. Parties are representing themselves and broad powers enable the court to reach its decision as required. The proposal in the Bill is consistent with that approach in small claims courts. In courts other than the small claims court the court may apply the rules of evidence in more complex procedures if they feel that the case is such as to require those rules of evidence to be strictly applied.

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

Amendment negatived.

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

Page 3, after line 20—Insert new subsection as follows:

(8a) At or before the hearing of an application under this section, the court should explore any possible avenue of achieving a negotiated settlement of the matters in dispute.

I think that this is an appropriate procedure to include in the Bill, because it conforms with the general thrust of the Bill that, if disputes can be resolved quickly and amicably, that is desirable. This is even more desirable in a strata corporation situation where, generally, people are living next to each other, and, if a dispute can be resolved without a lot of animosity and by negotiation rather than by order, that is a desirable course to follow.

The Hon. C.J. SUMNER: The Government does not disagree with the notion of trying to resolve disputes by negotiations before a hearing, but we believe that, certainly in the Supreme Court and in the District Court, there are already quite elaborate procedures established for pre-trial conferences, to attempt to ensure a negotiated settlement. In any event, the hearings in the Small Claims Court are informal, and therefore a specific provision talking about achieving a negotiated settlement is not necessary. In fact, it may well lengthen Small Claims Court hearings beyond what would otherwise occur. If we have to have an attempted negotiated settlement and then a Small Claims Court hearing, in effect, we would have to have two hearings, when one might do. So I do not disagree with the notion of trying to get settlements, but I believe that these are already catered for in existing procedures within the courts. I therefore do not see the need for the honourable member's amendment.

The Hon. K.T. GRIFFIN: I draw the Attorney-General's attention to subsection (9) *(a)*, which provides:

A court may, in respect of an application under this section . . . attempt to achieve settlement of the proceedings by agreement between the parties . . .

So, the injunction to attempt to achieve settlement is already there. I was seeking to clarify that and also to put a greater emphasis on it than is presently given to the concept in subsection (9) *(a)*.

The Hon. C.J. SUMNER: I understand that to be the honourable member's reasoning, but I again say that I do not believe it is necessary to, in effect, formally provide for two procedures, particularly when in the Small Claims Court only one may be necessary because the very nature of those hearings is that they are informal.

The Hon. I. GILFILLAN: As best I can understand it, there does not seem to be any dispute over the intention, but does the amendment add to the implementation of the aim or is it a block or an extender of that activity in the Small Claims Court? I am moved to ask: does the reference to court in subsection (9) embrace the Small Claims Court?

The Hon. C.J. SUMNER: Yes.

The Hon. I. GILFILLAN: It seems to me, then, that the Attorney's argument against the Hon. Mr Griffin's amendment could equally apply to that provision.

The Hon. C.J. SUMNER: It says that the court 'may'; probably what happens in the Small Claims Court is that they tend to get mixed up together, because of the very informal nature of the hearings. What I am concerned about is that the Hon. Mr Griffin's amendment actually tells the court that they must have an attempt to negotiate the settlement before they go on to the small claims hearing, and it may be that in the Small Claims Court we would be imposing two hearings on the litigants. That might be all right in the District Court and in the Supreme Court because they already have rules in place for pre-trial conferences, at which attempts are made by masters to hear the cases, negotiate settlements conciliate and resolve them. If that cannot be done the matter goes to the court for full hearing.

So, as a natural part of pre-trial conferences in the higher courts, what Mr Griffin says could occur, according to the rules of court, in fact does occur already. My argument is that, in the higher courts it is not necessary to have a specific procedure because it would already be there, but in the Small Claims Court it may well add another procedure.

The Hon. I. Gilfillan: Looking at the actual wording of the amendment, it says 'at or before', so in other words it could be running together.

The Hon. C.J. SUMNER: But in the small claims court one might have the problem that one should explore any

possible avenues of achieving a negotiated settlement. Even though it is a Small Claims Court I do not know what attitude the magistrates might take. However, they might say that, if they have attempted to negotiate settlement, then they cannot hear the case. That is a worry. Because of the nature of the Small Claims Court they might not adopt that approach, but if they did what we would end up with would be two hearings instead of one. We are trying to simplify the procedure.

The Hon. I. GILFILLAN: I do not think the Hon. Trevor Griffin will be offended when I indicate that I am opposing his amendment, on the basis that it appears to me that subsection (9) *(a)* as proposed virtually does achieve the same result, but with perhaps a softer option. There is not the pressure of compulsion. I am persuaded that it is quite satisfactory wording.

The Hon. K.T. GRIFFIN: I am always offended and hurt when the Hon. Mr Gilfillan does not support a good amendment. However, I note his view. I wanted to toughen up the option, because I think that in these sorts of disputes it is particularly important that, if the formal adjudication and order can be avoided by a negotiated settlement, that is in the best interests of the strata title holders. Certainly, the provision in the Bill is a softer option. It does not preclude negotiation but it is not such a forceful requirement placed upon judicial officers to embark upon that course and to use reasonable efforts to achieve a negotiated settlement.

Amendment negatived.

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

Page 3, lines 31 to 34—Leave out paragraph *(e)* and substitute—

(e) in the case of the District Court or the Supreme Court—by order, alter the articles of the corporation;

(ea) by order, vary or reverse any other decision of the corporation, or any decision of the management committee of the corporation;.

I feel very strongly that a court such as the small claims court should not have the power to order the alteration of the articles of a corporation. If there is any resolution of a dispute which requires the alteration of the articles, it ought to be a matter which is heard in another court. I make this point because, when a strata corporation is established, articles are adopted as the articles of a strata corporation. They are set out in schedule 3 to the Strata Titles Act and govern the relationship between the unit holders.

We must remember that these people are not tenants; they are owners of a piece of freehold land. They should have good title to that land and the relationships between various title holders within that strata corporation ought to be established by the articles of the corporation.

When strata corporations are established, if the promoters do not wish to adopt the provisions in the schedule to the Strata Titles Act, they will normally have their own set of more comprehensive articles of association, which set out clearly what the rights and obligations of strata title holders will be, both in relation to the procedures which will be adopted for dealing with issues arising within the strata corporation and also in relation to the rules which govern occupation.

It seems to me quite untenable to give to a small claims jurisdiction which is not bound by the rules of evidence and which is presided over by a magistrate, generally with little experience in the commercial or corporate area, the power to affect not only the interests of the strata corporation and of the strata title holder who is before the court with the obligation, but also those of all the other members of the strata corporation. That may be okay, I suppose, for a strata corporation that might comprise two, four or six persons, depending on the number of units. However, when we take this up to very large residential strata corporation developments or to a commercial strata corporation, we are talking about the potential for a fundamental change to the relationship between the members of the strata title corporation and a fundamental rearrangement of their rights, duties and obligations and, potentially, a significant change in the way in which they may deal with their piece of freehold land *vis-a-vis* the other strata corporation owners.

I do not believe that as a matter of principle that power ought to be given to a small claims court from which the appeal is limited quite dramatically and where the decision may have very wide-ranging ramifications for other persons in relation to their title interests. We do not give to the small claims court power to order the alteration to the articles of association of a company, which can be put in the same category as this. In some respects it is probably not so significant, because that has to operate in a different environment.

A strata corporation governs the terms and conditions, rights and obligations of a person in relation to a piece of real property which he or she owns and which might also be subject to a mortgage. The mortgage to finance the purchase of such a unit will normally take into consideration the articles of the corporation and, if there is power to order significant alterations as there is by the provisions in the Bill, that may well affect the security documents.

There is no limit to the alteration which may be made or, for that matter, in relation to even the decisions of the corporation. So, my proposal is to recognise the special position of articles of a corporation and to provide that only the District Court or the Supreme Court can order the articles of the corporation to be amended, but the court may order, vary or reverse any other decision of the management committee or of the corporation. So, I commend the amendment upon which I place considerable importance.

The Hon. C.J. SUMNER: The Government opposes this amendment. We believe it would undermine the cheap, accessible dispute resolution system which is the rationale for this Bill. I think the honourable member is elevating the articles of a strata corporation to heights which perhaps they do not deserve, because they deal with, for instance (as provided in schedule 3), the standard articles, which provide that a person bound by these articles must not park a motor vehicle in a parking space allocated for others, and a person must not without consent of the strata title damage or interfere with lawn, garden, tree or shrub. It deals with a person being bound by these articles having to keep a receptacle for garbage adequately covered.

I do not really think that they are the sorts of matters that necessarily require the District Court or the Supreme Court to adjudicate upon, and I think that to provide that only the Supreme Court or the District Court can order an alteration of the articles will, as I said, undermine to some extent the rationale for the amendments. If the small claims court is to have adequate jurisdiction in these disputes, it is appropriate that it have the power to alter the articles dealing, as the articles do, with the sorts of things that I have mentioned.

I point out that the structure of the Bill is such that it provides power to get to the District Court or to the Supreme Court in certain circumstances, and I have little doubt that, in an issue of major importance and major legal or factual complexity, that is where it would end up in relation to articles. However, if it is dealing just with cats, receptacles and motor vehicles, it seems appropriate that the small claims court have that power as part of its dispute settling procedures, which are provided for.

The Hon. K.T. GRIFFIN: I am amazed at that because, even though the articles say that a person bound by these articles must not obstruct the lawful use of the common property by any person, I hope the Attorney is not suggesting that a court may order that someone may obstruct someone's right to park. In most strata corporations the parking area is part of the strata entitlement, so that it goes with the strata title.

To suggest that the small claims court may vary a person's right to uninterrupted use of his or her car park suggests a very significant intrusion into the rights of that person in relation to property. A person bound by the articles must not use the common property in a manner that unreasonably interferes with the use and enjoyment of the common property. All these are property rights and, if the Attorney is suggesting it can be done with a car park, it can equally be done with someone's occupation of the residential part of the strata corporation. I find that an untennable position. You cannot give to a court from which there is a limited right of appeal and where the rights of parties may be abrogated by the very form of the proceedings—

The Hon. C.J. Sumner: What about a tree cracking a unit?

The Hon. K.T. GRIFFIN: If a tree is cracking a unit, the answer is not to amend the articles.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: You don't amend the articles to get rid of a tree.

The Hon. C.J. Sumner: You are not only amending the articles but you are also reversing any decisions of the corporation.

The Hon. K.T. GRIFFIN: No. Look at what I am drafting. Pargaraph *(e)* provides:

> in the case of the District Court or the Supreme Court—by order, alter the articles of the corporation.

Paragraph *(ea)* provides:

> by order, vary or reverse any other decision of the corporation . . .

That is not the Supreme Court. The Bill provides that 'A court may' and, if the Attorney looks at the way it is set out, he will see that there are paragraphs *(a)* to *(e)*, and pargraph *(e)* provides:

> by order—
> (i) alter the articles of the corporation.

Paragraph *(ea)* is the next paragraph, and it provides that any court may by order vary or reverse any other decision of the corporation. If there is a tree, generally it would be on common property and that can be dealt with anyhow, without altering the articles of association. To suggest that the relationship between the strata title holders (maybe their voting power) could be amended by the small claims court is unrealistic.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: But the articles always contain a provision for the making of decisions. If they have not made a decision, it is not a matter that requires the alteration of the articles. That would come under paragraph *(ea)*, which provides:

> by order, vary or reverse any other decision of the corporation . . .

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: The provision in the Bill is equally defective, because it states:

> by order—
> . . .
> (ii) vary or reverse any decision of the corporation, or of the management committee . . .

Members interjecting:

The Hon. K.T. GRIFFIN: I am focusing on the very fundamental issue of the alteration of the document which governs the relationship between the parties and which is there when a strata title holder acquires a strata unit and becomes a member of the strata corporation. I have a very strong view that it is totally inappropriate to give that power to a court like the small claims court.

The Hon. J.C. BURDETT: I support the amendment moved by the Hon. Trevor Griffin.

The Hon. C.J. Sumner: That's a surprise.

The Hon. J.C. BURDETT: All right. The Attorney referred to some very trivial matters that appear in the standard form of articles of association set out in the schedule to the principal Act but, of course, the articles may have been amended in accordance with the Act, and there is provision for the articles to be amended. They may be a full set of quite complex articles. In this case, if that is so, the arguments used by the Hon. Mr Griffin in support of the fact that the small claims court should not have jurisdiction in that matter are perfectly valid arguments.

The Hon. I. GILFILLAN: It is appropriate to ask what is the availability of appeal in the court that is affected by the Bill and to reflect on what subclause (16) provides, as follows:

> Any right of appeal from an order or decision of a court under this section lies only by leave of the court to which an appeal may be made.

I invite the Attorney to spell out what is the avenue for appeal in this situation where there has been an alteration of the articles of a corporation by a small claims court.

The Hon. C.J. SUMNER: The appeals from the small claims court go to the District Court.

The Hon. K.T. Griffin: A single judge.

The Hon. C.J. SUMNER: Yes, a single judge of the District Court. This provides that an appeal can only go to that judge if the judge of the District Court gives leave for the appeal to proceed. That is the provision, which is added to by the clause which has just been referred to. In addition, there are provisions in the Bill to which I have already referred to enable matters of complexity to be referred to either the District Court or the Supreme Court.

The Hon. I. GILFILLAN: I have supported the overall thrust of the Bill because it is an attempt to minimise the amount of litigation. Certainly, I am uneasy if there is any restriction on the right of appeal in this matter. I do not have any problem with the small claims court or a lower court making an order to alter the articles because often it may be a minor matter and should not take up the time of a superior court.

My reaction to the amendment hinges on whether I believe there is reasonable access to an appeal if a party feels aggrieved. I am bearing that in mind in viewing some of the other amendments that have been placed on file by the shadow Attorney-General but, as it is presented at the moment, I oppose the amendment.

The Hon. K.T. GRIFFIN: I am surprised that the Hon. Mr Gilfillan takes that view, because this provision will apply not only to small disputes but also to major disputes. But even in a small dispute, it seems to be quite wrong in relation to the small claims court, where there is no legal representation, unless it has been agreed, and where the full ramifications of an order to—

Members interjecting:

The Hon. K.T. GRIFFIN: It is not protection: you still have the problem of limited appeal.

The Hon. C.J. Sumner: I'm going to support the next one.

The Hon. K.T. GRIFFIN: And the one to remove the leave?

The Hon. C.J. Sumner: No.

The Hon. K.T. GRIFFIN: See, you are trying to have a bob each way.

The Hon. C.J. Sumner: I mean that I will support the next lot of amendments on this Bill.

The Hon. K.T. GRIFFIN: I am delighted to hear that, but I do not believe it goes far enough. I do not believe that the small claims court, where there is limited representation, no focus upon the real rules of evidence and a limited right of appeal, is appropriate.

The Hon. I. Gilfillan: In what way is it limited?

The Hon. K.T. GRIFFIN: It is limited, because one can have an appeal from the small claims court to a judge of the District Court only if the District Court judge grants leave.

The Hon. I. Gilfillan interjecting:

The Hon. K.T. GRIFFIN: I certainly want to cut that out, and I shall be looking for the Hon. Mr Gilfillan's support on that. The fundamental question is that altering the articles of the corporation gives the small claims court significant power to alter the property rights of an individual. It does not matter what the dispute is: that is inappropriate. We do not do it in relation to a freehold title in the suburbs where there is a neighbourhood dispute and somebody can have a piece of his property taken away or a neighbour can be given a right by a small claims court to park in one's driveway. Therefore, why should we do it with strata titles? It is an untenable proposition.

The Committee divided on the amendment:

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

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

Majority of 1 for the Noes.

Amendment thus negatived.

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

Page 3, after line 37—Insert new subsection as follows:

(9a) A court should not make an order to alter the articles of a corporation unless—

(a) the corporation is a party to the proceedings or the court is satisfied that the corporation has been given a reasonable opportunity to become a party to the proceedings;

(b) if it appears to the court that the alteration could adversely affect a member of the corporation who is not a party to the proceedings, the court is satisfied that the member has been notified of the possibility that such an order could be made and given a reasonable opportunity to make submissions to the court in relation to the matter;

and

(c) in any event, the court is satisfied that the order is essential to achieving a fair and equitable resolution of the matters in dispute.

Essentially, this provides that, if an order is to be made altering the articles, parties likely to be affected have a right to be informed and to appear.

Amendment carried.

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

Page 4, lines 16 and 17—Leave out subsection (16).

This amendment deals with the removal of the limitation on the right of appeal.

Amendment carried; clause as amended passed.

Clause 12 and title passed.

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

That this Bill be now read a third time.

The Hon. K.T. GRIFFIN: Whilst I do not intend to oppose the third reading, I need to say that, although the amendments accepted by the Committee improve the Bill, I still have some grave reservations about the likely effect of the Bill on property rights and in relation to major disputes. It is important for me to put that on the record for review at some time in the future.

Bill read a third time and passed.

SHERIFF'S ACT AMENDMENT BILL

In Committee.

Clause 1—'Short title.'

The Hon. C.J. SUMNER: There is a typographical error. The Act should be cited as the Sheriff's Act Amendment Act.

Clause passed.

Clauses 2 to 4 passed.

Clause 5—'Substitution of ss.5 and 6.'

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

Page 2, after line 2—Insert—

(1a) The sheriff will be an officer of the Supreme Court.

This amendment provides that the sheriff will be an officer of the Supreme Court. While new section 5 (3) provides that the sheriff cannot be dismissed or reduced in status after appointment, except on the recommendation, or with the concurrence, of the Chief Justice of the Supreme Court, this amendment goes further and makes the sheriff an officer of the Supreme Court, albeit carrying out his statutory duties to other courts.

The proposition advanced by the Chief Justice is that the sheriff must always be, and be seen to be, part of the judicial branch of government. He is the instrument by which the judicial branch of government exercises its proper authority. As he or she—the sheriff—will now be constituted under a separate Act of Parliament, it needs to be made clear that he or she does not become part of the executive arm of government.

The Hon. K.T. GRIFFIN: I am comfortable with the amendment. However, I would like to ask the Attorney about the relationship between the sheriff as an officer of the Supreme Court and the sheriff's employment under the Government Management and Employment Act 1985. Is it to be presumed that the provisions of the GME Act are, to the extent that they might conflict with the appointment of the sheriff as an officer of the Supreme Court, to be in some way abrogated or varied?

The Hon. C.J. SUMNER: I do not think there is a problem. The issue raised by the honourable member is, in fact, a much broader one to the extent to which the persons employed in the Court Services Department should be subject to the direction of the courts. In fact, one argument is that they should not even be public servants in the traditional sense, but I do not want to get into that at present.

The status of the sheriff under this Bill, as amended by my amendment, will be the same, at least in the employment sense, as that which applies now to, I think, the registrars of the Supreme Court and the other courts, who are employees under the GME Act. There have not been any difficulties in the past as far as that is concerned. The conventions relating to the relationship between the executive and the judicial arm of government have been adhered to. So while they are public servants and are therefore available to be employed in any other area covered by the GME Act, while the sheriff and the registrar and so on are in the courts they are officers of the court.

Amendment carried.

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

Page 2, after line 11—Insert new subsection as follows:

(1a) A person cannot be appointed as a deputy sheriff or sheriff's officer under subsection (1), nor can a person so appointed be dismissed or reduced in status after appointment, except on the recommendation, or with the concurrence, of the sheriff.

If the sheriff is to be an officer of the court and is to be appointed as sheriff on the recommendation of or with the concurrence of the Chief Justice, and cannot be dismissed or reduced in status after appointment, except on the recommendation, or with the concurrence, of the Chief Justice of the Supreme Court, there ought to be some protection for certainly the officers appointed as deputy sheriff as well as a sheriff's officer; otherwise, under the GME Act, they are totally subject to the direction and supervision of the Chief Executive Officer of the department. That tends to compromise, at least conceptually, their position. I recognise what the Attorney-General says about the difficult area of the relationship of the courts to the Public Service, and I certainly do not want to explore that in depth now. It has worked reasonably comfortably in the past 10 years since the Court Services Department was established.

The Hon. C.J. Sumner: That was your idea.

The Hon. K.T. GRIFFIN: I know; I did not want to be too boastful about it. However, it has worked reasonably successfully. So, the proposition that I make is that to endeavour still to give the sheriff the appropriate level of authority, and without an undue level of interference from the GME board under that Act, I move this amendment.

The Hon. C.J. SUMNER: I do not suppose that this is a matter of great moment. The sheriff currently appoints all deputy sheriffs and sheriff's officers of the court. Under the Bill, the sheriff will be employed under the GME Act, and is now. If all sheriff's officers are to become full-time employees under the GME Act, as they may do in the future, although at the moment they are all casuals, the amendment could create problems in the sense that the sheriff would be able to refuse to take employees who, for example, had been made redundant or had been placed on the transfer list, etc.

In that sense, the sheriff would be in a privileged position, *vis-a-vis* anyone else who was responsible for the employment of persons under the Government Management and Employment Act. But I suppose in the long run commonsense might prevail. I shall leave it to the Hon. Mr Gilfillan to make up his mind.

The Hon. I. GILFILLAN: It is obviously not a matter of great moment. It would appear to me that in this Bill the sheriff has considerable power as to the appointment and general disposing of deputies and that, if one person has been dismissed or reduced in status by some other authority, he or she, it appears from the Bill, has the power to restore the position. Perhaps it is an issue of semantics, but as far as I am concerned if the Attorney believes that it is a reasonable power for the sheriff to have and that it is not going to be too cumbersome I will express acquiescence to the amendment.

Amendment carried; clause as amended passed.

Remaining clauses (6 to 8) and title passed.

Bill read a third time and passed.

ENFORCEMENT OF JUDGMENTS BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. J.C. BURDETT: I raise with the Attorney a general matter which does not pertain to any particular clause of the Bill. When speaking to the second reading I referred to the fact that the Credit Reference Association of South Australia had raised with me, after I had consulted it about the Bill, the question that it is not possible, because of a technicality, to get information about default judgments. It is about judgments where there has been a trial but not about default judgments. They informed me that this issue was raised during the budget Estimates Committees. They told me that since then there had been a meeting between the association and the Attorney. In my second reading speech I asked the Attorney to give some attention to this matter and, if necessary, amend the appropriate Bill. It may not necessarily be this Bill. Going through the other Bills in the package I could not see this provision there. So, what is the Attorney proposing to do about this matter?

The Hon. C.J. SUMNER: I propose in relation to the other Bills to move an amendment to the effect that anything on the public record, on the court files, can be made available to the public. I have just been advised by my officer that it was not going to include default judgments because in fact they are not on the public record, as nothing in relation to them happens in public. However, logically, if we are going to say that transcripts that are on a court file, taken in open court, and judgments given after a hearing are public because they have been given in open court, then we ought to apply the same rule to default judgments, and that is what I intend to do. That issue will come up during debate on the other Bills.

Clause passed.

Clause 3—'Interpretation.'

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

Page 2, lines 1 and 2—Leave out definition of 'minor consumer debt'.

I notice that the Attorney has placed a similar amendment on file—and that applies to a number of other amendments, those to which I referred in my second reading speech. He has not picked up some of them, but most have been picked up. My reason for moving the amendment is that minor consumer debt was placed at $20 000, which a lot of people do not consider to be minor. One of the problems with the concept of minor consumer debt is that the procedure might lead to more bankruptcies, which is undesirable.

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

Amendment carried; clause as amended passed.

Clause 4—'Investigation of judgment debtor's financial position.'

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

Page 2, line 16—Leave out 'may be served by post' and insert 'must be served personally'.

I canvassed all these matters in detail in my second reading speech. My objection to the service by post provision is that there is the penalty for non-attendance, but it may be impossible to prove that a summons has been served by post, or it may have been overlooked. Such service by post provisions where they carry an arrest penalty have not proved to be satisfactory interstate.

The Hon. C.J. SUMNER: We accept the amendment.

Amendment carried; clause as amended passed.

Clause 5—'Order for payment of instalments, etc.'

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

Page 2, after line 36—Insert 'and where satisfactory evidence is placed before the court on those subjects the court should frame its order so as to ensure that it does not impose unreasonable obligations on the judgment debtor'.

This amendment will require a court, before making an order for the payment of a judgment debt, to frame its order so as to ensure that the order does not impose unreasonable

obligations on the judgment debtor. Concern has been expressed that orders may be made which the judgment debtor cannot realistically meet. It has been suggested that there should be a minimum income below which no order could be made. That approach has attractions, but I still prefer the more flexible approach taken in this amendment.

The Hon. J.C. BURDETT: I do not oppose the amendment. I would have thought that the provisions already in clause 5 (3) dealing with orders against a natural person and the court having due regard to evidence placed before it as to the judgment debtor's means of satisfying the judgment, the necessary living expenses and other liabilities of the judgment debtor would have covered this situation, but I cannot oppose this amendment.

Amendment carried.

The Hon. J.C. BURDETT: My amendment on file is to leave out subclause (5), but the Attorney-General's amendment is to leave out subclauses (4) and (5). I would like the Attorney-General to explain why.

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

Page 2, lines 37 to 41—Leave out subclauses (4) and (5).

My amendment removes subclauses (4) and (5) from clause 5. Subclause (4) provides at present that, where the judgment debtor and creditor are agreed on the proposal for paying the judgment debt, the court may make an order in the terms of the agreed proposal.

Concern has been expressed that a judgment debtor may agree to a proposal which he or she cannot meet and that no proposal should be accepted by the court unless the court has examined the debtor's means. I accept these concerns and if there is to be an examination of the debtor's means this provision becomes superfluous.

Subclause (5) provides that where a judgment debtor submits a proposal for payment to the judgment creditor a reasonable time before the hearing, and the judgment creditor unreasonably rejects it, the court will make an order for costs against the judgment creditor. This provision has been criticised for unfairly penalising the judgment creditor, who may well have no way of determining whether the debtor's offer is reasonable. This may only be able to be determined after the judgment debtor has been examined as to his or her means.

The Hon. J.C. BURDETT: I expect that this is along the same lines as leaving out subclause (5), which was one of my amendments. As the judgment debtor will be examined by the court, these matters can be raised there, and I expect that in practice it will not make any difference to leave out subclause (4) because, if the judgment debtor is examined and if he says he does agree with such-and-such an order, the order will be made, anyway. So, I support the amendment.

Amendment carried.

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

Page 3, after line 2—Insert subclauses as follows:

(6a) If a judgment debtor (being a natural person) fails to comply with an order under subsection (1), the court will, on application by the judgment creditor, issue a summons (which must be served personally) to require the judgment debtor to appear for examination before the Court.

(6b) If a judgment debtor fails to appear as required by the summons, the court may issue a warrant to have the judgment debtor arrested and brought before the court for examination.

This amendment makes it clear that a court cannot imprison a judgment debtor unless the court has examined the debtor to establish whether there is proper excuse for the failure to comply with the order of the court. Concern has been expressed that a warrant could issue for the imprisonment of the judgment debtor without the court having heard the judgment debtor. This was never the intention, but these amendments spell out the procedure to be followed. The judgment debtor is to be summonsed to appear for examination and, if he or she fails to appear, a warrant will be issued to have the debtor arrested and brought before the court for examination.

The Hon. J.C. BURDETT: I support the amendment.

Amendment carried; clause as amended passed.

Clause 6—'Garnishee orders.'

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

Page 4, after line 5—Insert new subclause as follows:

(7) If, because a garnishee order has been made in relation to an employee, the employer—

(a) dismisses the employee;

(b) injures the employee in employment;

or

(c) alters the employee's position to the employee's prejudice, the employer is guilty of an offence.

Penalty: Division 5 fine.

The Attorney-General has a similar amendment. This is in regard to the provision in the Bill that a garnishee order against wages may be made if the defendant agrees. It has been pointed out that this would involve the employer knowing about the garnishee order against the wages, and he might therefore dismiss the employee, which would be quite unjust. The purpose of this amendment is to impose a penalty on the employer if he dismisses the employee on that account.

The Hon. C.J. SUMNER: The Government accepts the amendment.

Amendment carried; clause as amended passed.

Clause 7—'Sale of property.'

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

Page 4, line 11—Leave out 'will only be authorised in exceptional circumstnces' and insert 'cannot be authorised'.

The Attorney-General has a similar amendment. This amendment is largely procedural to make the provision absolute.

The Hon. C.J. SUMNER: The Government accepts the amendment.

Amendment carried.

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

Page 4, lines 12 to 19—Leave out subclause (3).

This amendment is consequential

Amendment carried.

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

Page 4, after line 28—Insert—

(4a) The Sheriff may, in appropriate cases, leave a judgment debtor in possession of property until it is sold in pursuance of the warrant.

This amendment inserts a new subclause (4a), which will allow the Sheriff to leave a judgment debtor in possession of property until it is sold in pursuance of the warrant. It is not always appropriate or convient to immediately seize the property under the warrant. Sometimes it may be more satisfactory for the debtor to be left in possession of property until it can be sold.

The Hon. J.C. BURDETT: I support the amendment.

Amendment carried; clause as amended passed.

Clause 8—'Charging orders.'

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

Page 4, line 41—After 'court may' insert ', on application by a judgment creditor,'.

Presently, this clause is silent as to how a charging order is to be obtained. This amendment spells out that the court may make such an order on two applications of the judgment creditor.

The Hon. J.C. BURDETT: I support the amendment.

Amendment carried; clause as amended passed.

Clause 9—'Appointment of receiver.'

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

Page 5, line 7—After 'court may' insert ', on application by a judgment creditor,'.

This amendment is similar to the previous one. The clause is silent as to how the appointment of a receiver is to be initiated. This amendment provides that the court may make such an order on the application of the judgment creditor.

The Hon. J.C. BURDETT: I support the amendment.

Amendment carried; clause as amended passed.

Clause 10 passed.

Clause 11—'Authority to take possession of property.'

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

Page 5, line 37—Leave out 'eject any person from the land' and insert 'eject from the land any person who is not lawfully entitled to be on the land'.

This clause provides for the authority to take possession of property. As part of that, subclause (2) *(a)* provides:

> . . . if the warrant relates to land—eject any person from that land;.

But the person may have a lawful right to be on the land. He may be a tenant or a mortgagee in possession, and I suggest it would be unjust to enable the ejection of a person who is lawfully entitled to be on the land.

The Hon. C.J. SUMNER: This amendment is opposed as it would allow any tenant, for example, to stay on the premises.

The Hon. K.T. Griffin: If the tenant has a lawful right to be there, what is the problem?

The Hon. C.J. SUMNER: It is not a lawful right if they are selling the property.

The Hon. K.T. Griffin: Maybe he has a registered lease on it and has a lawful right to be there.

The Hon. J.C. Burdett: Or be a mortgagee in possession.

The Hon. C.J. SUMNER: The main problem is the effect it will have on the sale of the property and whether one can sell it, because the Sheriff is supposed to give vacant possession. If there is a tenant who insists on staying, it is likely that the price of the property will be depressed because the Sheriff who has to deliver vacant possession cannot get rid of the tenant.

The Hon. J.C. BURDETT: I cannot accept that. It may or may not be a registered lease, but if he is a lawful tenant he still has a right to be there. But he may be there pursuant to a long-term registered lease and it would be unjust, unlawful and contrary to any sort of precedent that I can think of to enable that person to be ejected. It may be a mortgagee in possession who has acted correctly pursuant to his mortgage.

The Hon. C.J. Sumner: It is no different from the current law.

The Hon. J.C. BURDETT: Yes, but why enable the person to be ejected? It refers to 'any person'. I have mentioned the extreme cases, but there could be other reasons, and there is no excuse whatever to eject a person who is lawfully entitled to be on the land.

The Hon. C.J. Sumner: Does that mean you cannot sell the property until the end of the lease?

The Hon. J.C. BURDETT: The Attorney's excuse in my view is quite unacceptable.

The Hon. C.J. Sumner: Not for the first time, John.

The Hon. J.C. BURDETT: All right. The Attorney claims his reason for opposing the amendment is that it would depress the price, because the Sheriff has to be able to give vacant possession. But the rights of creditors, as important as they are, cannot militate against a person who is lawfully entitled to be on the land, such as a tenant, and particularly one under a registered lease.

The Hon. C.J. Sumner: The creditor is lawfully entitled to have his debt paid, too.

The Hon. J.C. BURDETT: I know that there are conflicting interests, but surely the primary interest has to be on the side of the person who has obtained a lawful interest in the land, such as a tenant or a mortgagee in possession.

The Hon. I. GILFILLAN: I support the amendment. I do not believe there is any justification to open up the capacity for someone to be forcibly ejected from land on which they are lawfully entitled to be.

The Hon. C.J. Sumner: It is a moot point as to whether they are lawfully entitled to be there because the court has ordered that the property be sold.

The Hon. J.C. BURDETT: The amendment says 'lawfully entitled to be there'; the court can determine that.

Amendment carried; clause as amended passed.

Clauses 12 and 13 passed.

Clause 14—'Judgment against bodies corporate.'

The Hon. J.C. BURDETT: I oppose this clause. The Attorney has a similar note on his list of amendments. I explained this matter in my second reading explanation. The reason is that the clause is inconsistent with corporate law.

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

Clause negatived.

New clause 14—'Absconding debtors.'

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

Insert new clause as follows:

14. (1) If—

(a) a plaintiff has brought an action in a court for recovery of a monetary sum;

and

(b) there are grounds for believing—

(i) that the defendant is about to leave the State; and

(ii) that the defendant's absence from the State would seriously prejudice the plaintiff's prospects of enforcing a judgment that has been, or may be, given in that plaintiff's favour,

the court may issue a summons requiring the defendant to appear for examination before the court, or issue a warrant to have the defendant arrested and brought before the court for examination.

(2) If, after examination of the defendant, the court is satisfied that there is good reason for doing so, it may require the defendant to give security for the satisfaction of any judgment that has been or may be given in the plaintiff's favour.

(3) If a defendant fails without proper excuse to comply with a requirement under subsection (2), the defendant commits a contempt of the court by which the requirement was imposed.

This clause is in place of the one we have just deleted. The new clause deals with absconding debtors. The provisions relating to absconding debtors are contained in the Local and District Criminal Courts Act 1926. These provisions will be repealed when the new District Court and Magistrates Courts Act comes into operation. My advice is that these provisions are useful and are used. Accordingly, provision to the effect of the Local and District Criminal Courts Act provisions are included here by way of this amendment.

The Hon. J.C. BURDETT: I raised this matter in my second reading speech. I support the new clause.

New clause inserted.

Remaining clauses (15 to 19) and title passed.

Bill read a third time and passed.

JUSTICES OF THE PEACE BILL

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Appointment of justices.'

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

Page 1, after line 20—Insert:

(3) The oaths must be taken—

(a) in open court or in chambers before a Judge of the Supreme Court or the District Court or a Magistrate; or

(b) before a commissioner for taking affidavits in the Supreme Court.

(4) The oath must be signed by the person taking it and attested by the person before whom it is taken.

This amendment provides for the manner in which a justice of the peace is to take his or her oath on taking up office. Section 7 (4) of the Oaths Act 1936 provides that the oaths to be taken under the section by a justice of the peace shall be taken in the manner prescribed by the Justices Act 1921. Section 10 of the Justices Act sets out how the oath is to be taken. This section will be repealed in the Justices Act amendments, so it is necessary to include it in this legislation.

Amendment carried; clause as amended passed.

Clause 5 passed.

Clause 6—'Removal of justices from office.'

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

Page 2—

Line 6—Leave out 'or'.

After line 8—Insert:

or

(d) should, in the Governor's opinion, be removed from office for any other reason;.

This amendment removes 'or' so that another ground for removing a justice can be added, and I will explain that ground now. The further ground for the removal of a justice of the peace which is to be added, namely, if the Governor is of the opinion that the justice should be removed from office, reflects the existing provisions for removing a justice of the peace.

Section 18 (2) of the Justices Act 1921 provides that nothing in the section, which sets out the grounds for removing a justice of the peace, shall affect any other power of the Governor to remove a justice from his or her office. That is, the appointment of a justice was at the Governor's pleasure.

It has on a few occasions been necessary to remove a justice of the peace from office, even though the justice has not become mentally or physically incapable of carrying out official functions, been convicted of an offence or become bankrupt. For example, where a person has been acquitted of an offence on a technicality or has behaved in a manner inappropriate for a justice, there needs to be power to remove from office. This is not a power to be used readily, but the office for justice should be respected by members of the community. I seek support for the amendments, to maintain the *status quo* in this respect.

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

Amendments carried; clause as amended passed.

Clause 7—'Roll of justices.'

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

Page 2, after line 14—Insert new subclause as follows:

(4) The roll must be kept at the office of the Attorney-General and be available for inspection by members of the public during normal business hours.

It seems to me that if there is to be an official roll of justices, one of the consequences is that it ought to be accessible.

The Hon. C.J. SUMNER: The Government opposes this amendment. It has a number of practical difficulties, to say the least, and I will now seek to outline them. The Justices of the Peace Roll is now computerised. Members of the public could not access the JP terminal, first, because it is in almost constant use and, secondly, because the information may be tampered with. A new ROM terminal would be needed. However, that does not solve other problems. The information on the roll includes name, address, phone number, occupation, employer, birth date and place and languages spoken.

Further information is whether the person's name, address and phone number is suppressed, whether the person is admitted to the quorum, has been appointed as a coroner or special justice or is a member of the Royal Association of Justices. There is also information on the date of appointment and the date sworn in and whether the appointment is a departmental or *ex officio* one. Just how much of this information needs to be publicly available is moot. Some of it patently should not be, namely, where a person's name, address and telephone number is suppressed. Some JPs may well think that their age or their birth place or their employer are of no concern to anybody. A person's name, address and telephone number can be suppressed for very good reasons. If one accepts this, then it follows that the roll cannot be open for public inspection. A doctored version could be put on the aforesaid ROM terminal. That, of course, has resource implications in acquiring the terminal and for the doctoring and for updating the information.

The information, to reflect accurately the information on the roll, would need to be updated about two or three times a week as changes of address are notified. It is possible to obtain a print-out from the computer of a list of JPs names and addresses. This list also shows whether names and addresses have been suppressed. One such print-out was done in February 1991 and another one will be done in a month or so. If this list was to be made available for public inspection somebody would have to go through the list inking out the suppressions. Also, as with the computer option, the list would need to be updated two or three times a week as changes of address are notified. There is no apparent reason for expending the sort of resources required for this exercise. At the second reading stage I detailed how people who wanted JP information could obtain it. Certainly, if refinements are needed to improve the service I am only too happy to look at them. However, I think that this is a totally unnecessary proposal and, obviously, creates some practical difficulties, and also has some significant resource implications which the Government is not in a position to cope with at present.

There was a proposal at one stage that justices of the peace should be charged to assist in maintaining a roll, but that was opposed—I think by the honourable member opposite—although I think there is some merit in it. The other alternative is that JPs be charged up front before they become justices of the peace to enable these rolls, and the like, to be kept.

However, if the honourable member is not happy to agree to some proposition like this, I certainly have no problem with trying to improve the service, if that is what is needed. However, I do not know what would be achieved by having a roll that is a list of all the JPs, including their name, address and birth place, and the like. The Royal Association of Justices is available to provide information to people about which JPs are available in a particular area as, indeed, is the Attorney-General's office. So, if people have a need for a JP and do not know where one is, they have only to ring up and the information is provided to them.

The Hon. I. Gilfillan: Can a member of the public ring up the Attorney-General's office and ask for a certain name of a JP?

The Hon. C.J. SUMNER: Yes, that is right. Mistakes can be made, as we know. In fact, a lot of mistakes will be made if we are obliged to keep this roll up to date.

The Hon. I. GILFILLAN: I am not convinced that it is significantly any more work to have a roll that is available to the public than it is to have the public ringing the office.

The Hon. C.J. Sumner: You have to be joking!

The Hon. I. GILFILLAN: If the roll is there—

The Hon. C.J. Sumner: It is not; it's all on computer.

The Hon. I. GILFILLAN: Under the circumstances, I cannot support the amendment, although I have sympathy with its intention.

The Hon. K.T. GRIFFIN: I appreciate the response that the Attorney-General has given. It was information that had not previously been on the public record. I can recognise the concern about making all that personal information available, so I am prepared to accept the judgment of the majority of the Committee.

The Hon. C.J. SUMNER: I should say that I understand the concerns expressed and will undertake to see how the service can be improved without the necessity of being legislatively bound by what the honourable member proposes.

Amendment negatived; clause passed.

Clause 8 passed.

New clause 9—'Holding out, etc.'

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

New clause, page 2, after line 17—Insert new clause as follows:

9. (1) A person who is not a Justice must not—

(a) hold himself or herself out as a Justice;

(b) permit another person to do so

or

(c) use the letters 'J.P.' after his or her signature.

Penalty: Division 5 fine.

(2) A person must not hold out another as a Justice unless that other person is a Justice.

Penalty: Division 5 fine.

Whilst some suggestion might be made that this amendment relates to the question raised during Question Time today, I assure members that it was not; the amendment has been on file for a few days. However, it is desirable, in my view, that someone should not be able to hold themselves out as being a justice of the peace when they are not so enrolled. Therefore, I am seeking to create an offence and to impose penalties for persons who falsely hold themselves out as being justices.

The Hon. C.J. SUMNER: I appreciate the honourable member's intimation that this amendment is not related to a question asked in the Parliament today or to earlier press publicity about that matter. On that basis, and on his undertaking that neither he nor his Leader, or anyone else in the Liberal Party, will accuse me of supporting this amendment to fuel factional disputes within the Labor Party, I am prepared to support it.

New clause inserted.

Title passed.

Bill read a third time and passed.

DRIED FRUITS (EXTENSION OF TERM OF OFFICE) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The object of this short Bill is to extend by one year the terms of office of the representative (elected) members of the Dried Fruits Board, which would otherwise expire on 31 December 1991. As members will be aware, the Government carried out a review of dried fruits marketing regulations in South Australia and, in the process, sought public comments on the matter. Such comments, which continued to arrive after the notional closing date of last 30 June, are currently being analysed. It is the Government's hope that, after due consideration of all the facts, appropriate legislation will be passed in the first parliamentary sittings in 1992.

In the meantime, there remains the question of the expiry of the terms of the three representative board members at the end of this year. In the circumstances, it is the Government's view that it is eminently sensible for those representative members of the Dried Fruits Board to continue in office during the transitional period without the need to conduct a costly and time consuming election under the present Act.

Clause 1 is formal.

Clause 2 inserts a new section 39 after section 38 of the principal Act, which provides that notwithstanding any other provision of this Act, the terms of office of those members of the board holding office as representative members immediately prior to the commencement of this section are extended by one year from the day on which they would otherwise expire.

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

CRIMINAL LAW CONSOLIDATION (ABOLITION OF YEAR-AND-A-DAY RULE) AMENDMENT BILL

Returned from the House of Assembly without amendment.

ADJOURNMENT

At 6.2 p.m. the Council adjourned until Thursday 24 October at 2.15 p.m.