LEGISLATIVE COUNCIL

Tuesday 26 November 1991

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

ASSENT TO BILLS

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

Dangerous Substances (Cost Recovery) Amendment,
Director of Public Prosecutions,
Fair Trading (Miscellaneous) Amendment,
Land Tax (Miscellaneous) Amendment,
Parliamentary Committees,
Statutes Amendment (Waterworks and Sewerage).

QUESTION ON NOTICE

The PRESIDENT: I direct that the written answer to the following question, as detailed in the schedule that I now table, be distributed and printed in *Hansard*: No. 15.

CRIMINAL INJURIES COMPENSATION

15. **The Hon. K.T. GRIFFIN** asked the Attorney-General: in the years 1988-89, 1989-90 and 1990-91:

1. How many persons received criminal injuries compensation arising out of injuries suffered whilst in prison?

2. For what crimes was the compensation paid and in how many cases was there no defendant identified?

The Hon. C.J. SUMNER: The exact number of persons who received criminal injuries compensation arising out of injuries suffered while in prison is difficult to determine. There are approximately 1 500 files which would need to be individually checked. It is estimated, however, that there would only be approximately five to 10 persons who would have received criminal injuries compensation while in prison within the past three financial years. The time required to determine the exact number is estimated to be between three and five full working days; this is not considered warranted.

PAPERS TABLED

The following papers were laid on the table:

By the Attorney-General (Hon. C.J. Sumner)—
Parole Board of South Australia—Report, 1990-91.

By the Minister of Tourism (Hon. Barbara Wiese)—
Controlled Substances Advisory Council—Report, 1990-91.
Institute of Medical and Veterinary Science—Report, 1990-91.
Riverland Development Corporation—Report, 1990-91.
Pharmacists Act 1991—Regulations.
Racing Act 1976—Regulations.

By the Minister for the Arts and Cultural Heritage (Hon. Anne Levy)—
Botanic Gardens and State Herbarium—Report 1990-91.

By the Minister for Local Government Relations (Hon. Anne Levy)—
Local Government Superannuation Scheme:
Actuarial Review,
Amendment of Rules.
Parks Community Centre Act 1981—By-laws.

QUESTIONS

APPOINTMENT OF QUEEN'S COUNSEL

The Hon. K.T. GRIFFIN: My questions are directed to the Attorney-General. In view of the rumours circulating around the legal profession that the Attorney-General is refusing to appoint new Queen's Counsel:

1. Will he confirm that he has received a recommendation from the Chief Justice for the appointment of Queen's Counsel and will he indicate when that recommendation was received?

2. Has the Attorney-General either declined to act upon the recommendation or deferred action upon it and, if so, for what reason?

3. Is any delay a consequence of the Attorney-General's critical statements about Queen's Counsel made at the Australian Legal Convention several months ago?

The Hon. C.J. SUMNER: The answers to the questions are as follows:

1. Yes.
2. No.
3. No.

TOURISM SOUTH AUSTRALIA

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister of Tourism a question about the closure of Tourism South Australia's office.

Leave granted.

The Hon. DIANA LAIDLAW: This morning I cancelled appointments and, for two hours, stood out the front of TSA's Travel Centre at 18 King William Street assisting visitors to Adelaide with their inquiries about Kangaroo Island, the Barossa Valley, the Flinders Ranges, Port Adelaide, public transport, accommodation options and the opening hours of arts institutions along North Terrace. I took this unusual step after learning that the Minister had made no arrangements for anyone to assist visitors with advice on how to get to the RAA or anywhere else following the closure of the building yesterday afternoon.

After half an hour, at about 10 a.m. a TSA officer approached me asking me if I needed more information to hand out. I gratefully accepted and was handed a bundle of maps, but what I needed was extra help because of the demand for assistance. The TSA officer did not offer to help me and nor did the Acting Managing Director, Mr Roger Phillips, who came to speak with me shortly thereafter. Fortunately, extra assistance arrived a little later in the form of a number of volunteers from the Citizens' Advice Bureau, from Keith Conlon, and from the manager of a Kangaroo Island travel company, who was anxious that Kangaroo Island operators did not lose sales because of the closure of the office yesterday.

Between us we must have helped about 80 visitors to Adelaide, from the USA, Switzerland, Germany, Holland, the United Kingdom, Malaysia, Japan and other Australian States. Without exception, they were all pleased that we were there to answer their questions—a service that the Minister had not seen as being important and had not sought to provide, even by arranging for her own staff members to do the job. I suspect that my presence, or that of the media, was an embarrassment to TSA, because at 12 noon, 20 hours after the centre had closed its doors, a trading table arrangement had finally been set up and TSA officers were assigned to relieve me and other volunteers. I ask the Minister:

1. Following the decision yesterday to close the Travel Centre, why were no arrangements made immediately to station officers outside the building to explain the closure to visitors, to answer questions, or to redirect them to the RAA for bookings?

2. Why did the Minister and the Acting Managing Director, Mr Phillips, reject an offer made yesterday by some TSA officers to keep the ground floor Travel Centre office open on a temporary basis with a skeleton staff? I was told today by one officer that they were prepared to do that by keeping the doors of the office open and, as it was a ground floor office, there would be no need to use the lift or necessarily the air-conditioning until this relocation had taken place.

3. When Cabinet agreed yesterday to move TSA operations to other premises, was it also agreed that the Travel Centre close immediately, or only after the relocation had been finalised? I ask that question because the notice outside the building indicates that the decision to close TSA was made by the Builders Labourers Federation.

The Hon. BARBARA WIESE: I would like to thank the honourable member for her assistance this morning in providing information to members of the public, but I suggest to the Council that the way in which the Hon. Ms Laidlaw and at least some members of the media have handled this situation, which in my opinion is a very serious one, is lamentable, because the Hon. Ms Laidlaw and other people have attempted to make cheap points about an issue—

Members interjecting:

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

The Hon. BARBARA WIESE: —which is primarily a matter of occupational health and safety. My concern—

Members interjecting:

The PRESIDENT: Order! There was a question asked. I would expect the same silence for the answer as was the case with the question.

The Hon. BARBARA WIESE: I am a Minister who is responsible for people working in the building which, it was discovered last week, is of some concern to us, because we received new information about the asbestos within the building. Unlike the Hon. Ms Laidlaw and others who wish to make cheap political points and short-term gain for whatever purposes—I presume their own—and who have chosen to ignore the main issue, which is an occupational health and safety one for people who work within the building, my prime concern has been to ensure that the staff in that building feel as happy as they can about their circumstances. Secondly, my concern has been to provide a service to the public as quickly as we are able to do so.

I think it is important that we hear a little of the history of this event so that members can make their own judgments about the speed with which management has addressed this issue. I would like to remind the honourable member that only last Wednesday (that is, less than one week ago) a plumber who was brought into the building to undertake some maintenance work discovered asbestos in an area of the building and reported that to his union, and this then led to a contact by the United Trades and Labor Council and a black ban immediately being placed on the Tourism South Australia building by the Trades and Labor Council to prevent any further maintenance work being undertaken there. At that time, management of Tourism South Australia immediately contacted the Department of Housing and Construction, which is responsible for both maintenance and issues related to asbestos monitoring and matters of that sort, to seek further information about the situation regarding asbestos in our building.

A new survey of the building commenced very recently. That survey has not yet been completed but when this issue was raised last week information was sought immediately as to the most recent results from the current survey that is taking place. The information that came to our attention once we sought clarification on those issues led us to believe that there was a problem which we were unaware of previously, and the decision was taken to close down the air-conditioning late last week. In that time enormous work has been done and numerous meetings have been undertaken with the relevant parties to determine what is the best course of action for Tourism South Australia.

Until yesterday we expected that it would be possible for us to remain in the building at 18 King William Street until such permanent new accommodation could be found for Tourism South Australia. Yesterday it became obvious that this would not be possible, because officers from the occupational health and safety area of the Department of Labour inspected the building and were briefed on the latest events. Whilst they did not consider it necessary to close down the building, they indicated to us yesterday afternoon that the air-conditioning system should not be turned back on, that the lifts should not operate and that maintenance workers should not work within the building.

The Hon. Diana Laidlaw: But they didn't recommend that the building be closed; that's what you said.

The Hon. BARBARA WIESE: That's what I said. As we know, this building is now quite old; it was constructed in 1972. On our maintenance record, we know that under those circumstances it is not likely that we would be able to keep the building open for more than a couple of weeks if maintenance people were not able to come into the area. Therefore, action had to be taken on this matter much more quickly than we had first hoped. The issue with which we have had to deal was that yesterday at 12 noon there was a staff walk-out from the Travel Centre. It is not a matter whether or not people will work: we had a staff walk-out from the Travel Centre at 12 noon yesterday, so another staff meeting was conducted yesterday afternoon to discuss what would happen from then on. This was one of a series of meetings that have been conducted over the past few days with our staff.

I would like members to take a responsible approach to this matter, as I believe the management and staff of Tourism South Australia have taken. People in our building, having had new information brought to their attention, are concerned about their own health position. It is fair and reasonable that their fears should be allayed to the extent that that is possible. Tourism South Australia management has done a remarkable job over the past few days in having open meetings with staff, for whatever duration was necessary to provide staff with the most up-to-date information as it has become available. This morning's meeting was one in a series of meetings.

The honourable member talks about inconvenience to the public, and I acknowledge that there has been inconvenience to the public, I regret that, but my prime concern is the well-being of my staff in my building. That is the number one issue for me, and we have taken the necessary steps to allay the fears and concerns of our staff. If they are not happy about re-entering the building, there will be no service to the public. It means—

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —that the Travel Centre was not open from midday yesterday until closing time at 5 o'clock and for—

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —about two hours this morning but, as a result, staff of Tourism SA have had the opportunity to meet with experts in this field and ask questions that are of concern to them about health issues and technical matters relating to the removal of asbestos. I consider that to be a reasonable investment in the future of our staff and tourism in South Australia in that we now have a group of people who are prepared to re-enter our building. They are prepared to do whatever they can to assist us in restoring a full service to the public as quickly as that can be achieved. Since yesterday numerous measures have already been put in place. The RAA has agreed to provide further information to members of the public, and people have been redirected to the RAA.

We now have staff located at the RAA who are able to assist with the increased workload. We have people answering the telephone so that a full telephone service will be available as usual. We are asking for suitable alternative accommodation to be found as quickly as possible so that we can re-establish our Travel Centre facility as quickly as possible. There may be the possibility for us to have partial public services available over the next few days and we are exploring those options.

Certainly, by early next week I would hope that we will have a substantial service back on stream, and in the meantime a coach shuttle service is available to take people from the travel centre to the RAA to enable them to receive information there.

People are now located at the front of the building to provide directions and information to people as required. We are dealing with this issue as quickly as is humanly possible. The job is being undertaken in a very responsible and rapid way. I absolutely deplore the attitude that has been taken by the Hon. Ms Laidlaw, who thinks that she can make some cheap, quick political mileage out of a very serious situation.

The Hon. DIANA LAIDLAW: As a supplementary question, in view of the Minister's confirmation that it was not on a recommendation of SACON or on occupational health grounds that the building be closed immediately, will she advise the Council why she rejected an offer by officers of Travel Centre staff to keep the ground floor Travel Centre open on a temporary basis with a skeleton staff until the relocation had been completed?

The Hon. BARBARA WIESE: I did not reject offers by members of the staff to keep the building open. I was unaware that offers had been made by members of the staff until somebody raised this issue on the radio this morning. The decision to close the Travel Centre office has been made by the Acting Managing Director of Tourism SA on the ground that it is safer for our work force to be relocated as quickly as possible. I reiterate that we had our staff walk out of the Travel Centre yesterday.

The Hon. Diana Laidlaw: These staff offered to stay.

The Hon. BARBARA WIESE: They walked out of the Travel Centre because they were concerned about their health.

Members interjecting:

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

The Hon. BARBARA WIESE: If the honourable member knows anything about this issue, she would know that no guarantees can be given with regard to asbestos. If we cannot have a full complement of staff, I suggest that it is better to make alternative arrangements. These alternative arrangements are being made. I suggest that the honourable member is making hay while the sun shines. I can understand that. That is fine; she has had her cheap kicks. We will get on with the real job of providing safe working accommodation for our work force.

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Tourism a question about the Tourism South Australia building.

Leave granted.

The Hon. L.H. DAVIS: At 2 p.m. today the Acting Managing Director of Tourism South Australia, Mr Roger Phillips, gave a news conference outside the Travel Centre in King William Street. The heading of his media release was, 'Tourism SA announces asbestos strategy'. The release went on to say:

> Tourism South Australia has adopted a strategy for dealing with the asbestos problem in its headquarters building at 18 King William Street. The strategy, which covers the relocation of staff and the provision of temporary and long-term arrangements for servicing travel customers, will be announced at a news conference today at 2 p.m.

There is nothing unusual about such a release, except perhaps that it is at 2 p.m. today rather than yesterday and, more particularly, that the release came from a public relations firm. Why does the Government or the Department of Tourism have to spend arguably hundreds of dollars employing a public relations firm for such a simple announcement of just eight lines? The Minister has a full-time ministerial assistant, press secretary and ministerial secretary, and Tourism South Australia presumably has people skilled in media releases and marketing, because that is their very lifeblood. Tourism South Australia presumably issues media releases regularly. My questions to the Minister are:

1. Will the Minister explain why Tourism South Australia found it necessary to employ a public relations firm to issue an eight-line statement advising that a news conference was being held today?

2. Does she agree that the taxpayers of South Australia have every right to question why a public relations firm has been used on this occasion, when ministerial or departmental officers should have had the necessary skill and experience to handle the matter?

The Hon. BARBARA WIESE: I do not suppose I can expect much better from people in this place on the other side but, really, I would have hoped that, from what I have just indicated to members, they would understand that we have had a serious problem in our building over a period of days.

The Hon. L.H. Davis: Haven't you got staff at hand?

The PRESIDENT: Order!

The Hon. BARBARA WIESE: We have had a situation where events have been emerging on a day-to-day basis, and issues are being handled by management in Tourism South Australia in order to determine what would be the most appropriate action to take, once the issues which we have discussed were brought to our attention. Numerous meetings and other matters have had to be attended to. Tourism South Australia employs a public relations company on a contract basis. That public relations company assists Tourism South Australia from time to time, as required, on publicity-related matters. There is also one public relations officer within Tourism South Australia who works on publicity matters.

All people in management positions within our organisation have been well and truly occupied during this past few days in determining what is the appropriate course of action for our staff and for the future of the services that Tourism South Australia provides. On this occasion management decided that it would be helpful to have some assistance from the public relations company that we employ

to assist us with publicity matters. I might add that my own press secretary—just for the honourable member's information, since he seems to be keenly interested in the minutia of administrative arrangements in my office and in that of Tourism South Australia—happens to be on holiday at the moment, so we are a little bit light on for such support just at this minute, and I do not think it is unreasonable that Tourism South Australia should have brought in the public relations company that it employs for these matters.

BUILDING INDUSTRY TRAINING SCHEME

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Employment and Further Education a question about the Building Industry Group Training Scheme.

Leave granted.

The Hon. I. GILFILLAN: South Australia's building industry is vital to the economic health of this State. Its well-being is one of the main indicators for our economy. It employs around 15 000 people a year and turns over hundreds of millions of dollars for the State's economy. It is part of the lifeblood of South Australia, but it is in crisis.

The current economic climate of South Australia has seen a slump in the industry, affecting all aspects of the building trade. One area hit by the building slump has been the training of apprentices, essential to the industry. I think it is ironic that Governments which are preaching that a high tech smart society is the way to really redeem and reform Australia at this time are neglecting to train people who are essential for the nuts and bolts, the actual construction and follow through, of construction and manufacturing in this country. So, the trainee apprentices are essential to the industry, especially when it recovers and is in need of skilled workers to take on the extra demand that is certain to follow.

The Building Industry Group Training Scheme has been operating in South Australia for the past five years, training apprentices in a wide range of skills essential to the future viability of the industry. Currently it trains 101 apprentices, a drop of 40 from the previous year, and did not take in any new apprentices this year, nor is it expected to take on any more apprentices next year. This will create at least a two year gap in training of apprentices that will have a direct impact on the building industry as it fights its way out of the current economic slump. There is a solution to this problem, one that has had widespread support from both builders and unions, but the State Government has so far ignored industry advice on the matter. The Master Builders Association, the Australian Construction Contractors, the Amalgamated Construction Mining and Energy Union and other building unions have called for the introduction of an industry-wide State training levy. The levy has also been recommended by the Construction Industry Training Council and written submissions on the matter have been sent to the Minister.

The recommendations are for all members of the building industry to contribute .02 per cent of total salary towards a levy, which could then be used during the lean years to ensure that apprentices continue to receive an adequate level of training. This recommendation has been accepted by all sections of the industry, except the HIA. A similar scheme has been running with exceptionally good results in Tasmania and Western Australia for the past year and the industry in those States believe it will be well prepared to deal with an expected industry recovery. Our industry in South Australia is no different; it needs good quality tradespeople and it needs to maintain the skills and training of these people. Unfortunately, the State Government has so far refused to deal with the matter. My questions to the Minister are:

1. Will the Minister as a matter of urgency convene a meeting with concerned industry parties to discuss a Statewide levy such as has been successfully applied in Western Australia and Tasmania?

2. Does the Minister agree that more funds are needed to maintain a proper level of training for building industry apprentices and, if so, where does he believe those funds will come from, if not from such a levy?

3. Does the Minister accept that without additional funding for apprentice training schemes South Australia's building industry faces a long-term shortage of skilled tradespeople?

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

STATE BANK ROYAL COMMISSION

The Hon. CAROLYN PICKLES: Can the Attorney-General confirm a report in the *Advertiser* of 23 November 1991 that last week he spoke with the State Bank Royal Commissioner, Mr Jacobs Q.C., and, if so, what were the circumstances of that contact?

The Hon. C.J. SUMNER: Yes, I can confirm that last week I had discussions with Mr Jacobs. These discussions arose because I was responding to a letter from the Royal Commissioner, in which he drew attention to the fact that the Auditor-General's Report had been delayed from its initial reporting date to 31 December this year. He raised the question of the effect that that would have on his own reporting date of 1 March 1992.

A number of matters were discussed. Obviously, the Government is concerned to ensure that the commission concludes its inquiry at the earliest practicable opportunity, consistent with a proper inquiry in accordance with the terms of reference. The commission agrees with this and I am sure that the Opposition in this Parliament and the South Australian community would also agree. However, it is clear that there will need to be an extension of the Royal Commissioner's reporting date because of the delays with the Auditor-General's Report. The length of any extension will be considered early next year and will be the subject of further discussions with the Royal Commissioner at that time.

Whilst on the subject of the Royal Commission, the question of the costs of the commission has received an airing in the media recently. When considering the question of the cost it is important to realise that, while there are substantial costs of legal representation to the parties before the Royal Commission and that, in fact, these constitute the major part of the costs, the Royal Commission itself—that is, the cost of the Royal Commissioner, his staff and counsel assisting—is on a budget, and I consider those costs to be reasonable.

TOURISM SOUTH AUSTRALIA

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister of Tourism a question about asbestos removal at the Tourism South Australia building.

Leave granted.

The Hon. J.F. STEFANI: Contrary to the Minister's statement that she was unaware of an asbestos problem in the Tourism South Australia building, I am advised that the Bannon Government was aware that high asbestos readings were registered in the building occupied by Tourism South Australia and that in 1987 the Department of Housing and Construction (SACON) was commissioned by the Department of Tourism to refurbish the Tourism South Australia headquarters in King William Street.

This refurbishment program included the inspection of the building for asbestos and the subsequent removal of any asbestos in accordance with occupational health and safety requirements. However, the Minister of Tourism, Hon. Ms Wiese, in the past 24 hours has stated that asbestos has been found in the building and also in the air-conditioning system. From this statement it would appear that SACON has failed to properly inspect and to remove asbestos as previously required. My questions to the Minister are:

1. Will she confirm that SACON has previously failed to remove all asbestos from the building?

2. Has she examined the SACON report on asbestos removal which occurred previously, and, if so, what did the report say?

3. What was the cost of asbestos removal by SACON in 1987?

4. What is the estimated cost of removing the asbestos which has been found in the building now?

5. How long will this take?

6. What is the estimated cost of relocating Tourism South Australia to enable the removal of asbestos?

7. Does the Minister have any idea why SACON failed to remove the asbestos as required previously?

The Hon. Anne Levy: Mr President, he asked seven questions!

The Hon. J.F. Stefani: I am allowed to ask those seven questions, because I do not ask—

Members interjecting:

The PRESIDENT: Order! The honourable Minister.

The Hon. BARBARA WIESE: The honourable member has suggested that I indicated that I was unaware of asbestos in the building. That is quite incorrect.

The Hon. J.F. Stefani: That's what you said a moment ago.

The Hon. BARBARA WIESE: No, it is not what I said a moment ago. What I said a moment ago is that new issues have emerged in the past week about which we were unaware. I am fully aware of the fact that the building at 18 King William Street has had asbestos in it. The building was constructed in 1972, during an era when almost all buildings contained asbestos in one area or another. We have known for many years that there was asbestos in the building and, as the honourable member indicates, an asbestos removal program was undertaken under the supervision of SACON in the mid 1980s. Some of that removal program took place prior to my appointment as Minister of Tourism. The most—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: What is so amusing about that? We are establishing a time frame here, Mr Davis, and I do not find that very amusing at all. What could possibly be funny about that? The latter part of the asbestos removal program took place in about 1987. That process involved the ground floor mezzanine area of the building and, at the same time, there was a complete refurbishment of that area in order to provide a better service to the public.

Following the asbestos removal program, SACON—which is the Government department responsible for this area of activity—assured us that, although there was still some asbestos left in the building, as is usually the case after removal programs in buildings of this vintage, the asbestos that was left was in inaccessible areas or where there was no risk to health.

Since then, from time to time the level of asbestos within the building has been monitored to detect whether or not there is airborne asbestos that could possibly pose any risk to the health of our work force. The Hon. Mr Stefani has alleged that, since that time, there have been high readings. My information is—

The Hon. J.F. Stefani: I did not say that.

The Hon. BARBARA WIESE: Yes, you did. I wrote it down. That is exactly what you said.

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: The honourable member indicated that there were high readings. I can inform him that, according to the people who are responsible for these matters, the readings that have been taken in that building since the asbestos removal program indicate that the levels are well below what have been the national accepted standards. The national accepted standards are about .1 part per—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.F. Stefani interjecting:

The PRESIDENT: Order! The Hon. Mr Stefani will come to order.

The Hon. BARBARA WIESE: Over a period, the readings in our building have been about one tenth of the accepted—

The Hon. Diana Laidlaw: Does that mean that it need not be a problem?

The Hon. BARBARA WIESE: Do you want answers to this, or is this just a game to you?

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: I can assure members that it is not a game for me. This is a serious matter.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! The Hon. Ms Laidlaw will come to order. The courtesy was given for the question to be asked in silence and I would expect the answer to be given in silence. If it is not, I would expect the Minister not to bother to answer the questions.

The Hon. BARBARA WIESE: I will have another go, Sir, but I do not intend to carry on with this performance, because I think this topic is much too important, but obviously members opposite are just here to have a bit of fun. I am much more concerned about the asbestos problem in our building and any threat that that might pose to our staff; but members opposite do not seem to care about that. As I was saying, the readings that have been taken over a period in our building have indicated that the levels have been about one tenth of what has been determined as the acceptable standards. It was not until the most recent survey (to which I referred earlier, which is not yet complete but on which we received an interim report last week) that we had any information to suggest that that may not be the case. However, I should stress that, since the problems emerged last week, there has been further extensive monitoring of the building on all floors and still the readings are well below the levels which are considered to be dangerous.

The Hon. L.H. Davis: In all respects—the air-conditioning and the building itself?

The PRESIDENT: Order! If the honourable member will contain himself he will get the answer. The honourable Minister.

The Hon. BARBARA WIESE: The issue we are dealing with here is that the new survey has discovered that there is asbestos in places in the air-conditioning system of which we were previously unaware.

The Hon. J.F. Stefani: Inside the ducts?

The Hon. BARBARA WIESE: Inside the ducts. The people who advise us on these matters have informed us that it would be inappropriate to turn the air-conditioning system back on. Therefore, in a building like 18 King William Street, one does not have to be a Rhodes scholar to conclude that the working conditions would be rather intolerable after a short space of time. It is a problem with which we are trying to deal.

As I indicated earlier, steps are being taken to find alternative accommodation. We were hoping that the situation within our building was such that we would be able to stay on the premises for a period until we could be relocated on a permanent basis. That would certainly be the most convenient option for all involved. Within the past 24 hours, we have been told that, because of the situation with occupational health and safety advice, that we should not turn on the air-conditioning system.

The Hon. R.J. Ritson: From medical officers or the union?

The Hon. BARBARA WIESE: Medical officers and the other people involved with the occupational health and safety area of the Department of Labour. We have been told that we should not turn on our air-conditioning, that we should not have our lifts operating and that no maintenance workers should do any work in this building. Under those circumstances, and in view of the maintenance record of our building, it will be inoperable within a couple of weeks: we must relocate. So, we are now relocating on a temporary basis whilst suitable accommodation is found for a permanent relocation and appropriate fit-outs. It is not a conspiracy, if that is what the honourable member is trying to suggest, and we are trying to deal with this problem in an orderly and reasonable manner.

The Hon. J.F. STEFANI: As a supplementary question, will the Minister specifically answer the questions that she cannot answer today and bring back a reply? Secondly, was the union fully informed of the procedures being taken by the Government on this issue? As I understand it, the unions are very irate, because they were not fully informed of the situation.

The Hon. BARBARA WIESE: I will seek replies to some of the information requested by the honourable member on costings and other things, but let me just indicate, because it seems that nobody listened the first time I made these comments, that the first approach we had on this issue came from the union movement. It was the United Trades and Labor Council representative who approached the management of Tourism South Australia on this matter after a plumber, who was undertaking maintenance in the building, approached officers of the United Trades and Labor Council. The representatives of the Public Service Association and the United Trades and Labor Council have been fully informed of all steps that have been taken over the past few days; they have been involved in all the meetings that have been held to provide information to staff; and they will continue to be involved and consulted on these matters as they should be.

ROCK MUSIC INDUSTRY

The Hon. T.G. ROBERTS: I seek leave to give a brief explanation before asking the Minister for the Arts and Cultural Heritage a question about the South Australian rock and contemporary music industry.

Leave granted.

The Hon. T.G. ROBERTS: The Hon. Diana Laidlaw asked a question about this matter on 30 October. The report to which the honourable member alluded has been finalised and the Minister has been looking at the report. I understand that last week the Minister for the Arts and Cultural Heritage announced plans to help this State's rock and contemporary music industry, including plans to appoint a rock coordinator. As all members in this place know, South Australia has a very good history of leading contemporary rock performers and I hope that we can further develop that area. Can the Minister explain how much money will be spent on this initiative and when the position of rock coordinator will be advertised?

The Hon. ANNE LEVY: As I announced last week, certainly, the Government has considered the report on the rock industry and has indicated that we will provide resources to the total of $60 000 to encourage and promote the rock industry in this State. South Australia has a history of a great deal of talent in the rock industry. I could mention many bands that originated in South Australia. Going back in history, there were the Twilights, The Masters Apprentices, Cold Chisel, the Angels, Red Gum, Lizard Train and, currently, Exploding White Mice which, apparently, achieves great recognition in Europe, and Seven Stories is the latest of these bands to achieve great prominence and significance.

The report on the rock industry in this State indicates that it contributes a great deal to our economy in South Australia. The rock consultant estimates that it is worth nearly $34 million a year to our economy and that, on average, 800 performances take place every week in South Australia, involving nearly 3 000 performers and crew, and having a turnover of close to $250 000. The estimated total payments to musicians, agents and road crew come to nearly $15 million a year. This not insignificant industry is a very vibrant rock and contemporary industry in this State. However, for far too long we have overlooked the value of rock and contemporary music in this State, and many musicians starting in South Australia have had to move elsewhere, usually to the Eastern States, before their talents could be recognised. Certainly, we hope to do something about this situation and, as I indicated, we are allocating $60 000 this year.

The Hon. Diana Laidlaw: You said that during the Estimates Committee.

The Hon. ANNE LEVY: Yes, but there was no indication at that time of how that money would be spent. I can now inform the Hon. Mr Roberts and other members of the Chamber that about half this sum will be spent on the salary of a coordinator who will work with the Rock Pool, the industry-based body that has formed in recent times. Some of the money will be for overheads for promotions and administrative support for the coordinator and the remaining sum will be for grants to rock musicians, particularly to assist with the production of demonstration tapes.

These will be project grants and will be administered through the Department for Arts and Cultural Heritage in the same way as all other project grants for different art forms are administered. A peer group advisory committee will be established to advise on applications for project grants, but the coordinator will work with the Rock Pool and have duties both to assist it and to help develop the

rock industry in this State in numerous ways. Such a coordinator will provide reports as to the success of his or her efforts and any changes to duties that he or she feels would be desirable.

We certainly hope to advertise the position before Christmas so that the person appointed to this position will be able to get started early in the new year, and I am sure this will be of considerable benefit to the whole rock and contemporary music industry in this State. I certainly congratulate the members of the Rock Pool on what they have achieved since they came together as an industry grouping and established their association late last year or early this year. I certainly trust that this coordinator will make their efforts even more successful.

TOURISM SOUTH AUSTRALIA

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Tourism a question on the subject of the Tourism South Australia building.

Leave granted.

The Hon. L.H. DAVIS: This afternoon the Minister indicated that recent asbestos readings in the Tourism South Australia building at 18 King William Street were within acceptable levels, and I take it that there had not been a reading that had exceeded the acceptable level within the building itself or in the air-conditioning system. That was how I understood the Minister's response. My questions are: who was previously taking the readings in the Tourism South Australia building; how often were these asbestos readings taken; what was the firm, presumably a specialist firm, that was brought in to take readings; will the Minister make that information available to the Council, together with the level of those readings; and, given that all the readings, as she indicated, were within acceptable levels, which Government offices or Government departments actually directed the evacuation of the building?

The Hon. BARBARA WIESE: Monitoring of air-borne asbestos takes place within the rooms or on the floor of the buildings where there may be some risk, and that is what has happened in 18 King William Street. Monitoring has taken place over a period of time at irregular intervals. I know that monitoring has taken place over the past two years, from time to time, sometimes monthly and sometimes fortnightly, depending on what the circumstances have been. Certainly, it has been the desire of management of Tourism South Australia, at times when considerable maintenance work has been undertaken in the building, to carry out monitoring at about that time in order to satisfy everyone that no danger is being caused to workers by any disturbance that may result from that work being undertaken. So, it has taken place from time to time at irregular intervals, and I understand that all levels have been below what is termed the acceptable standard. I do not have all the information about the readings with me but I can provide a summary of that information if that is of interest to the honourable member.

A firm of consultants is headed by Mr David Ellis—I am just trying to locate the name of the firm, which is something like David Ellis Consultants or David Ellis Consulting Service—specialises in this area and has done much work within South Australia.

As to the question of decisions taken on occupational health and safety grounds, the decisions about closing down the air-conditioning system or at least not turning it on again, closing down the lifts and allowing no maintenance to occur in the building was taken by Mr Harry Goatham, a senior inspector of the Mineral Fibres Branch of the Department of Labour. He is a person authorised under the Act to make such decisions and he has exercised that power.

PERSONAL EXPLANATION: TOURISM SOUTH AUSTRALIA

The Hon. DIANA LAIDLAW: I seek leave to make a personal explanation.

Leave granted.

The Hon. DIANA LAIDLAW: In her answer to a number of questions asked today by Liberal Party members, including myself, the Minister with some sense of hysteria accused me and my colleagues of being here to 'have fun', and of 'being engaged in a cheap politicial exercise'. Lastly, she accused me by saying something like, 'as if I did not seem to care'. I take exception to those comments, particularly with respect to the care aspect. In explanation, I point out that Tourism South Australia officers know that I care; otherwise, they would not have contacted my office today to explain to me that they were prepared in these very testing circumstances to keep the office open on a temporary basis so that they could continue to provide their service to the public. I reiterate: I do care. What I also care about is the fact that the Minister has not been able to reassure officers of TSA that the limits are one-tenth below—

The Hon. ANNE LEVY: Mr President, on a point of order—

The PRESIDENT: I uphold the point of order; I know what it is. A personal explanation relates to something said against you or about you, and the honourable member is digressing into the broader arena of what the question involves.

The Hon. DIANA LAIDLAW: Mr President—

The PRESIDENT: Order! The honourable member should concentrate on her own contribution.

The Hon. DIANA LAIDLAW: The Minister accused me of not caring. I suggest that that is far from the truth, as evidenced by TSA officers contacting my office. They would not have done so if they did not think I cared, and I reinforce to them today that my care is genuine. I also care about the fact that the Minister has not been able to reassure them that the levels of—

The Hon. Anne Levy: That is not a personal explanation.

The PRESIDENT: I uphold the point of order.

The Hon. DIANA LAIDLAW: It is, It is related to the—

Members interjecting:

The PRESIDENT: Order! The honourable member will concentrate on her explanation about herself and her own movements and not comment in respect of anyone else.

The Hon. DIANA LAIDLAW: I just say in this context that it is important that the staff are reassured that these levels are not dangerous as deemed by—

The PRESIDENT: Order! That is not a personal explanation. A personal explanation relates to a member's own activities or doings and should not relate to the broader subject.

The Hon. DIANA LAIDLAW: I have just been able to reassure TSA members who contacted my office today. They have volunteered further information about this matter, and they understand that no cheap political capital is being made by the Liberal Party in this exercise and that we do care.

The PRESIDENT: Order! The honourable member has digressed from a personal explanation.

STATUTES AMENDMENT AND REPEAL (PUBLIC OFFENCES) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Criminal Law Consolidation Act 1935, the Correctional Services Act 1982, the Juries Act 1927, the Local Government Act 1934, the Royal Commissions Act 1917 and the Summary Offences Act 1953; to repeal the Public Meetings Act 1912; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

(1) BACKGROUND

Part VII of the Criminal Law Consolidation Act is entitled 'Offences of a Public Nature' and contains a wide variety of offences and associated provisions in sections 237-266. A majority of these provisions derive in the first instance, almost unchanged, from 'An Act to Consolidate Indictable Offences of a Public Nature', No 2 of 1859. This Act was in fact a legislative consolidation of a variety of offences most of which had been inherited from English common law or statute or both. These English provisions in turn derive from the vast hinterland of English history, some to the fourteenth century or even earlier. The other major contributor to these provisions was the Conspiracy and Protection of Property Act 1878, which in its time was intended as a major liberalising reform to the draconian anti-union laws inherited or enacted in the earlier parts of the nineteenth century. It has now become, in its turn, a major anachronism.

With few exceptions, most of these provisions are anachronistic, inappropriate and/or ignored in practice. They have remained in the Criminal Law Consolidation Act through the forces of sheer inertia for well over a century and well beyond the time in which they had any utility. Those offences which retain contemporary significance require replacement with provisions which address appropriately the needs of law enforcement and the public interest in the late twentieth century.

In addition, many of the areas of law covered by the original consolidating offences are also addressed by Imperial enactments dating from as early as the sixteenth century, or common law offences as old or older, which have remained in force sometimes without being recognised as such for no other reason than inertia.

This is an unacceptable situation because it means that the content of the law is unclear (to say the least), and because it is not possible for a citizen to discover with relative ease the state and content of the law. In addition, it has meant that significant misconduct which should have been brought before the criminal courts has gone unpunished. This reform process draws upon the previous work of the Mitchell Committee, the more recent work of the committee appointed to review the Commonwealth criminal law chaired by Sir Harry Gibbs, the ongoing integrity in government project being conducted by Professor Finn of the Australian National University, and, where appropriate, the work of other law reform bodies.

A discussion paper containing recommendations for reform of this Part of the Act and associated areas of criminal law was widely circulated in September 1990. It received considerable favourable media publicity. Consultations were held with, among others, the Criminal Law Committee of the Law Society. With one exception, there have been no objections to any of the measures of reform generally proposed. That exception will be dealt with hereafter.

The Bill sweeps away centuries of anachronistic, inadequate and incoherent accumulated criminal law, including such common law offences as being a common scold, compounding, rescuing a murderer, embracery and champerty, and codifies a series of offences, appropriate to the needs of contemporary South Australian society, dealing with: offences in relation to the impeding of the investigation of offences and the apprehension of offenders and escapees; offences against the administration of justice including perjury, fabricating or concealing evidence, tampering with witnesses and jurors, and judicial officers; offences dealing with public corruption, including bribery, intimidation, extortion, and abuse of public office; and a miscellaneous group of offences including criminal defamation, offences in relation to industrial disputes, forcible entry on land, riot, and the conduct of public meetings.

Only one proposed measure has excited unfavourable public comment. The current series of offences includes two offences of interrupting religious worship and molesting preachers. The concern was expressed that the repeal of the relevant offences would leave religious services without effective protection. That concern has been addressed in the final form of the Bill, and is dealt with in more detail below.

(2) IMPEDING THE INVESTIGATION OF OFFENCES AND ASSISTING OFFENDERS

The Bill replaces a whole host of ancient common law and English statutory offences, which deal in a complex and haphazard way with this subject matter, with a single offence in plain terms. The creation of this offence enables repeal of the old offences of abuse of legal procedure, compounding and misprision. The new offence is in the form of being an accessory after the fact, and, unlike the old offences, covers assisting offenders to dispose of the proceeds of crime.

The abandonment of the old form of the compounding offence was quite deliberate. It is obvious that the original imperatives which dictated the perceived necessity for these offences no longer exist. The centralised system of public criminal justice is so well entrenched that, in the interests of costs and expediency, it might be thought to be in the public interest that agreement between the shopkeeper and the shoplifter be encouraged rather than repressed. Indeed, public policy now encourages neighbourhood mediation, alternative dispute resolution, and like initiatives so that scarce criminal justice resources may be brought to bear on those cases which are thought to justify them. In many cases, some 'composition' between the offender and the victim to expiate the commission of what might be considered, on the face of it, a quite serious offence is in the public interest.

The enforcement of the criminal law is now and will become a different thing from the days in which the predominant interest was in the vindication of a centralised public order system in a context in which that system relied upon private policing. The conservation of scarce public justice resources is an increasing influence, too; just as it is now recognised that, in a number of situations potentially involving the criminal law, the invocation of the full panoply of the criminal justice system will be counter-productive to a problem oriented resolution of the underlying causes of the behaviour involved.

It is clear that, on the one hand, there needs to be some way of making sure that any corrupt agreement between, say, a witness and an offender that the former will not testify against the latter for a price requires criminal sanctions. In some cases such an agreement savours of blackmail. On the other hand, the law should not punish

acceptable informal dispute resolution in appropriate cases. The conservation of scarce public justice resources and, often, the interests of the victim and society demand that appropriate alternative dispute resolution mechanisms be encouraged, not prohibited, by the criminal law. The new offence has been phrased in a way which should not criminalise these agreements.

The penalty is graded to match the gravity of the principal offence committed and, again unlike the old offences, the new offence provides for general defences of lawful authority or reasonable excuse. Again, these defences are intended to permit, for example, the flexibility of the settlement of minor offences by agreement between the offender and the victim by means of acceptable forms of alternative dispute resolution where any might be caught by the general offence. That was not possible under the old offences, which were designed to prevent just such events. This is just one illustration of the way in which the needs of contemporary South Australian society need to be accommodated in criminal offences which was just not possible under the old offences.

The Bill also codifies the offences dealing with escape or removal from legal custody and harbouring escapees, thus enabling the repeal of statutory offences such as that of rescuing a murderer, which dates from capital punishment enforcement and enhancement legislation of 1752.

Mr President, with the leave of the Council and the concurrence of the shadow Attorney-General, I seek leave to have the remaining voluminous explanation inserted in *Hansard* without my reading it.

Leave granted.

Remainder of Explanation

(3) OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE

The Bill codifies modern offences dealing with perjury and the subornation of perjury, fabricating, altering and concealing evidence, bribing witnesses or potential witnesses, bribing or trying to bribe jurors, and, correlatively, witnesses and jurors accepting or demanding bribes, and threatening or injuring a person in an attempt to influence the outcome of judicial proceedings.

(4) OFFENCES RELATING TO PUBLIC OFFICERS

The state of the criminal law in relation to corruption in public office in South Australia is in woeful state. It should be said at once that South Australia is not alone in this. In all Australian jurisdictions, too little attention has been paid hitherto to the criminal law in relation to corruption in public office. The statutory offences now in place in the Criminal Law Consolidation Act are confined to exacting fees from prisoners, dating from the first public prisons in 1815, and trafficking in public offices, dating from the first statutory recognition that public offices were not heritable property enacted in 1809, although the offence can be traced back to 1551. There is no general South Australian statutory offence of bribery of public officials at all. The Secret Commissions Act 1920 is seriously deficient in its application to these offences—and the variety of common law offences of bribery and corruption of public officials, and abuse of public office, established by judicial reasoning in the seventeenth and eighteenth centuries, are also seriously deficient and uncertain in scope and meaning—as might be expected.

The Bill contains offences which seek to draw together these disparate threads of criminality, modernise them and make them relevant in wording and scope, and accessible to those to whom they will apply. The offences are the bribery and corruption of public officers, the making of threats or reprisals against public officers, abuse of public office by public officers, extortion by public officers, and offences relating to the appointment to or removal from public office.

These offences regulate the conduct of and, on the other side of the coin, protect the integrity of, what the Bill calls 'public officers'. This term is widely defined in the Bill to include a person appointed to public office by the Governor, a judicial officer, members of Parliament, public servants, police officers, employees of the Crown, members, officers and employees of State instrumentalities, and members and employees of local government. The Bill seeks to balance rights and responsibilities; the rights to do the job demanded by public office free from intimidation, threats, bribery and reprisals, while imposing the responsibility to carry out that public trust with propriety and due regard for right conduct.

This balance is hard to achieve, especially in the regulation of the conduct of public officers. It is always difficult to tell when, for example, a minor gift to a public officer for a job well done turns into a bribe for favours received. The traditional way of setting the limits is to require that the conduct of the public officer is committed 'corruptly'. This word adds nothing to the clarity of the offences concerned and contributes to the mystification of the courts and those who are concerned to look to the statute in order to determine what is and what is not permissible behaviour. While it is not possible in a general criminal statute of this kind to detail the legality or otherwise of the wide variety of human ingenuity and behaviour, something more in the way of guidance for the users of the criminal law is required.

The Bill seeks to move some way toward achieving this by requiring that, for guilt, the behaviour must be committed 'improperly' and then defining 'improperly' to mean that the person 'knowingly or recklessly acts contrary to the standards of propriety generally and reasonably expected by ordinary decent members of the community to be observed by public officers of the relevant kind or by others in relation to public officers or public offices of the relevant kind'. This definition seeks to give some guidance to the courts, to the public and to public officers, of the standards expected of public officers and those who deal with them. It seeks to draw the boundaries—to set the right sort of questions to ask.

The model on which this provision is based is that proposed by the English Criminal Law Revision Committee in relation to its proposed reform of offences of dishonesty. The problem faced in achieving those reforms was very similar to the one posed in this area of law—the one of setting some definable limit capable of helping people understand what is expected, and yet flexible enough to respond to a wide variety of situations and customs. The concept employed in that legislation was that of 'dishonesty' similarly defined—there, as here, the object was to provide a non-technical standard expressed in ordinary language which would guide the users of the code in a helpful way.

In addition, the Bill provides for a defence of reasonable excuse, by which it is intended that it be possible, for example, for a person to show that he or she acted in accordance with a relevant code of conduct applicable to the situation in question. The development of such codes of conduct, which will address the specific circumstances of particular public office with the degree of specificity and particularity not possible in a general criminal offence, is well under way. Further, the Bill provides that a trivial instance of overstepping the mark which would cause no significant detriment to the public interest cannot be escalated into a serious criminal offence. In both respects, the

Bill is superior to existing common law and statutory offences.

(5) ATTEMPT TO PERVERT THE COURSE OF JUSTICE

The common law offence of attempting to pervert the course of justice is retained and codified in its traditional role as a 'catch-all' designed to criminalise behaviour which in the ingenuity of humankind, might fall outside the scope of the specific offences. It is, therefore, an included offence on any of the charges described above. However, a lesser penalty is provided for the commission of this offence as an inducement to the prosecution to charge the more specific offence where it is committed, in furtherance of the policy that the accused should know with as much particularity as possible the charge that he or she must answer and the legal content of the crime for which he or she is to be brought to account.

(6) OTHER OFFENCES

The Bill re-enacts the controversial criminal offence of defamation. While opinions can and will differ as to the question whether this controversial criminal offence should be retained, the position taken in the Bill is consistent with the majority recommendation of the Australian Law Reform Commission, and consistent with the general view of the Mitchell committee that some criminal offence in this area is warranted. Indeed, the formulation of the offence in the Bill follows closely the wording suggested by the Australian Law Reform Commission. Honourable members should also be aware that the Attorneys-General of New South Wales, Victoria and Queensland have agreed that criminal defamation should be retained in their joint discussion papers on reform of the law of defamation. The reason for retention is that there exists the possibility of such grossly unwarranted defamatory attacks that the intervention of the criminal law is warranted. However, again in common with the views of all those who maintain the modern necessity for the offence, a prosecution can only be brought with the specific authorisation of the Attorney-General.

The Bill repeals all but a small remnant of the old Conspiracy and Protection of Property Act 1878. Its provisions are anachronistic to say the least. It remains necessary and desirable for reasons to do with the general scope of the common law of conspiracy to retain a provision which states that conspiracy to do something can only be a criminal offence if what is sought to be done is also a criminal offence in relation to industrial disputes. It also seems wise to maintain a legislative abolition of any common law or received offence dealing with the obstruction of free trade.

In so far as the old Act sought to prohibit under penalty acts endangering life or serious bodily injury, the ground is covered by the generalised offence in section 29 of the Criminal Law Consolidation Act. This State does not have a generalised offence of endangering property rights. The Mitchell committee recommended the enactment of a general offence of recklessly endangering property. When, however, the area was dealt with, that recommendation was not taken up. The result is that the law in relation to preparatory offences dealing with damage to property is left to threats to cause harm to property and the law of attempted crime. The Bill therefore proposes the enactment of a general offence of endangering the property of another.

The Bill repeals the ancient offences of forcible entry and detainer, which date from 1381, and which were designed to regulate the warring behaviour of medieval English landed nobility and their private armies and strengthen the then tenuous power of the Crown. It replaces these offences with a modern offence in the Summary Offences Act designed to deal with the modern manifestations of forcible trespass against the peaceable enjoyment of land.

The Bill repeals the anachronistic provisions of the Riot Act 1714, which was enacted to ensure that those who were ill-disposed to the accession of the Hanoverians to the English Crown and to display that in riotous behaviour, were convicted of an offence less than treason. The old Riot Act, and associated common law offences of rout, affray and unlawful assembly (and challenges to fight) have been replaced with a flexible power to order dispersal in a police officer where he or she forms a reasonable belief that such a course is warranted. The dispersal order has been integrated into the cognate loitering provision in such a way that the police officer now has a choice of orders available on specified grounds without the necessity of the old rigmarole of the Riot Act proclamation and so on. The new law is at once more effective for police and more regarding of civil rights than the old law.

The Bill also repeals the old Public Meetings Act 1912, and brings its provisions into the Summary Offences Act, where they truly belong as measures about public order and where they become far more accessible to the citizen. The discussion paper argued that to do this would render unnecessary and irrelevant the ancient offences of interrupting religious worship and molesting preachers. These offences derive directly from legislation of 1547 imposing the Protestant religion upon the inhabitants of England, and were enacted to repress dissent from that measure.

This proposal drew the opposition of a number of religious groups. They remained incapable of assurance that the enhanced provisions in relation to public meetings would not provide better protection for the exercise of religion free from unwelcome disruption. Accordingly, the position taken by the Bill is to preserve these offences in a modern form in the Summary Offences Act where they truly belong. That does not involve any downgrading of these offences. They were placed in the Criminal Law Consolidation Act before there was any such thing as a Summary Offences Act, and when all offences were in the one Act, and have remained there, despite growing more anachronistic by the decade, simply by reason of inertia.

It is also worth drawing attention to the schedule relating to the abolition of common law and Imperial offences. This schedule was drawn up with the valuable assistance of the reports of the South Australian Law Reform Committee on inherited law. It shows the degree of useless legal baggage that the criminal law of this State, in just this one area, has been carrying around. Further, the effect of this legislation will be to repeal a number of existing statutory offences, such as riots in relation to shipping, nuisance by fireworks and common lewdness, of no further relevance. No-one knows what one of those offences (unlawfully administering oaths) was intended to do or what it means. The people of South Australia are entitled to expect that the criminal law, which is a central instrument in the relationship between citizen and the State, should be accessible, relevant, democratically made and amended, and appropriate to the needs and aspirations of future South Australians. This Bill is a measure which addresses a large chunk of those issues.

Clause 1 is formal.

Clause 2 provides that the measure will come into operation on a day to be fixed by proclamation.

Clause 3 is an interpretation provision.

Part II of the measure provides for amendments to the Criminal Law Consolidation Act.

Clause 4 deals with proof of lawful authority or lawful or reasonable excuse. The clause inserts a new section 5b providing that in proceedings for an offence in which it is

material to establish whether an act was done with or without lawful authority, lawful excuse or reasonable excuse the onus of proving the authority or excuse lies on the defendant.

Clause 5 inserts a new section 85a creating a new offence of recklessly endangering property. The new section provides that where a person, without lawful authority, does an act or makes an omission, knowing that the act or omission creates a substantial risk of serious damage to property of another, the person is guilty of an offence. A maximum penalty of imprisonment for 6 years is fixed for this offence. The new section provides that it is a defence to a charge of an offence against this provision for the accused to prove an honest belief that the act or omission constituting the charge was reasonable and necessary for the protection of life or property. This new offence provides a counterpart to section 29 of the Criminal Law Consolidation Act (acts endangering life or creating risk of bodily harm) and together with that offence deals in a general way with the matters dealt with by section 262 (breach of contract by servant involving probable injury to persons or property) which is to be repealed under the measure.

Clause 6 substitutes Part VII of the principal Act relating to offences of a public nature.

Division I (Preliminary) of the new Part provides definitions and other general provisions.

Proposed new section 237 sets out definitions used in this Part. 'Judicial body' is defined as a court or any tribunal, body or person invested by law with judicial or quasi-judicial powers, or with authority to make any inquiry or to receive evidence and 'judicial proceedings' are defined as proceedings of any judicial body. 'Public officer' is defined as including—

(a) a person appointed to public office by the Governor;

(b) a judicial officer;

(c) a member of Parliament;

(d) a person employed in the Public Service of the State;

(e) a member of the police force;

(f) any other officer or employee of the Crown;

(g) a member of a State instrumentality or of the governing body of a State instrumentality or an officer or employee of a State instrumentality;

or

(h) a member of a local government body or an officer or employee of a local government body.

Proposed new section 238 defines the expression 'acting improperly'. Under this definition, a public officer acts improperly, or a person acts improperly in relation to a public officer or public office, if the officer or person knowingly or recklessly acts contrary to the standards of propriety generally and reasonably expected by ordinary decent members of the community to be observed by public officers of the relevant kind, or by others in relation to public officers or public offices of the relevant kind. The determination of the standards is to be a question of law to be answered by judicial assessment of those standards and not by evidence of those standards. However, a person will not act improperly if there is lawful authority or a reasonable excuse for the act or the act is of a trivial character and would cause no significant detriment to the public interest.

Proposed new section 239 provides that a person may not be found guilty of an offence of attempting to commit an offence against this new Part, that is, a general attempt offence under section 270a of the Criminal Law Consolidation Act. Subsequent provisions creating offences include an element of attempt where appropriate.

Division II of the new Part relates to the impeding of investigations or assisting of offenders.

Proposed new section 240 provides that it is an offence if a person ('the accessory'), knowing or believing that another person ('the principal offender') has committed an offence, does an act with the intention of—

(a) impeding investigation of the offence;

or

(b) assisting the principal offender to escape apprehension or prosecution or to dispose of proceeds of the offence.

An accessory is not guilty of this offence—

(a) unless it is established that the principal offender committed—

(i) the offence that the accessory knew or believed the principal offender to have committed;

or

(ii) some other offence committed in the same, or partly in the same, circumstances;

or

(b) if there is lawful authority or a reasonable excuse for the accessory's action.

This new offence is in effect a statutory accessory after the fact offence and clause 7 makes a consequential amendment repealing section 268 of the Criminal Law Consolidation Act which fixes a penalty for being an accessory after the fact to the commission of a felony. The related common law offences of compounding and misprision of a felony are abolished (see the schedule) and the statutory compounding offences, section 238 of the Criminal Law Consolidation Act and section 66 of the Summary Offences Act are repealed (for the latter, see clause 21).

Subclauses (3) and (4) fix graded penalties according to the penalty for the offence committed, or thought by the accessory to have been committed, by the principal offender. Subclause (5) empowers a court to find a person charged as a principal offender guilty instead of the new offence as an accessory. Subclause (6) empowers a court to find an accessory guilty of an offence against the new provision wherever the offence is committed if the court has jurisdiction to deal with the principal offender.

Division III deals with offences relating to the administration of judicial proceedings.

Proposed new section 241 provides for the offences of perjury and subornation. The provision is in the same terms as the current provision, section 239, but includes a new definition of 'statement' to make it clear that the offences apply to false interpretations by an interpreter. The maximum penalty for these offences is increased from 4 years imprisonment to 7 years to bring the penalty into line with the penalties proposed for other offences relating to the administration of justice.

Proposed new section 242 deals with fabricating, altering or concealing evidence. Under the provision, it is an offence if a person—

(a) fabricates evidence or alters, conceals or destroys anything that may be required in evidence at judicial proceedings;

or

(b) uses any evidence or thing knowing it to have been fabricated or altered,

with the intention of—

(c) influencing a decision by a person whether or not to institute judicial proceedings;

or

(d) influencing the outcome of judicial proceedings (whether proceedings that are in progress or pro-

ceedings that are to be or may be instituted at a later time).

A maximum penalty of imprisonment for 7 years is fixed for this offence.

Proposed new section 243 deals with offences relating to witnesses. Subclause (1) provides that it is an offence if a person gives, offers or agrees to give a benefit to another person who is or may be required to be a witness in judicial proceedings (whether proceedings that are in progress or proceedings that are to be or may be instituted at a later time) or to a third person as a reward or inducement for the other person's—

(a) not attending as a witness at, giving evidence at or producing a thing in evidence at the proceedings;

or

(b) withholding evidence or giving false evidence at the proceedings.

A maximum penalty of imprisonment for 7 years is fixed for this offence. Subclause (2) creates a corresponding offence where a person, who is or may be required to be a witness at judicial proceedings seeks, accepts or agrees to accept such a benefit (whether for himself or herself or for a third person). Subclause (3) creates an offence of preventing or dissuading, or attempting to prevent or dissuade, another person from—

(a) attending as a witness at judicial proceedings (whether proceedings that are in progress or proceedings that are to be or may be instituted at a later time);

or

(b) giving evidence at, or producing a thing in evidence at, such proceedings.

Subclause (4) provides that a person is not guilty of the offence under subclause (3) unless the person knows that, or is recklessly indifferent as to whether, the other person is or may be required to be a witness or to produce a thing in evidence at the proceedings. Subclause (5) provides that it is an offence if a person does an act with the intention of deceiving another person in any way in order to affect the evidence of the other person at judicial proceedings (whether proceedings that are in progress or proceedings that are to be or may be instituted at a later time). A maximum penalty of imprisonment for 7 years is fixed for each of the offences against this proposed new section. Subclause (6) provides that a person is not guilty of any such offence if there is lawful authority or a reasonable excuse for his or her action.

Proposed new section 244 deals with offences relating to jurors. Subclause (1) provides that it is an offence if a person gives, offers or agrees to give a benefit to another person who is or is to be a juror or to a third person as a reward or inducement for the other person's—

(a) not attending as a juror;

or

(b) acting or not acting as a juror in a way that might influence the outcome of judicial proceedings.

Subclause (2) creates a corresponding offence for a person, who is or is to be a juror, who seeks, accepts or agrees to accept such a benefit (whether for himself or herself or for a third person). Subclause (3) provides that it is an offence if a person prevents or dissuades, or attempts to prevent or dissuade, another person from attending as a juror at judicial proceedings. A maximum penalty of imprisonment for 7 years is fixed for offences under subclauses (1), (2) and (3).

Subclause (4) provides that a person is not guilty of such an offence—

(a) unless the person knows that, or is recklessly indifferent as to whether, the other person is or may be required to attend as a juror at the proceedings;

or

(b) if there is lawful authority or a reasonable excuse for his or her action.

Subclause (5) provides that it is an offence if a person—

(a) takes an oath as a member of a jury in proceedings knowing that he or she has not been selected to be a member of the jury;

or

(b) takes the place of a member of a jury in proceedings knowing that he or she is not a member of the jury.

The maximum penalty for this offence is to be—

(a) if the person acted with the intention of influencing the outcome of the proceedings—imprisonment for 7 years;

(b) in any other case—imprisonment for 2 years.

Proposed new section 245 deals with threats or reprisals relating to duties or functions in judicial proceedings. Subclause (1) provides that it is an offence if a person causes or procures, or threatens or attempts to cause or procure, any injury or detriment with the intention of inducing a person who is or may be—

(a) a judicial officer or other officer at judicial proceedings (whether proceedings that are in progress or proceedings that are to be or may be instituted at a later time);

or

(b) involved in such proceedings as a witness, juror or legal practitioner,

to act or not to act in a way that might influence the outcome of the proceedings.

Subclause (2) provides that it is an offence if a person causes or procures, or threatens or attempts to cause or procure, any injury or detriment on account of anything said or done by a judicial officer, other officer, witness, juror or legal practitioner in good faith in the discharge or performance or purported discharge or performance of his or her duties or functions in or in relation to judicial proceedings is guilty of an offence.

A maximum penalty of imprisonment for 7 years is fixed for offences under this proposed new section.

Division V deals with offences relating to public officers.

Proposed new section 246 relates to bribery or corruption of public officers.

Subclause (1) provides that it is an offence if a person improperly gives, offers or agrees to give a benefit to a public officer or former public officer or to a third person as a reward or inducement—

(a) for an act done or to be done, or for an omission made or to be made, by the public officer or former public officer in his or her official capacity;

or

(b) for the exercise of power or influence that the public officer or former public officer has or had, or purports or purported to have, by virtue of his or her office.

Subclause (2) creates a corresponding offence for a public officer or former public officer who improperly seeks, accepts or agrees to accept such a benefit from another person (whether for himself or herself or for a third person).

A maximum penalty of imprisoranent for 7 years is fixed for offences under this proposed new section.

Proposed new section 247 deals with threats or reprisals against public officers. Under this provision it is to be an offence if a person causes or procures, or threatens or attempts to cause or procure, any injury to a person or property—

(a) with the intention of influencing the manner in which a public officer discharges or performs his or her official duties or functions;

or

(b) on account of anything said or done by a public officer in good faith in the discharge or performance or purported discharge or performance of his or her official duties or functions.

A maximum penalty of imprisonment for 7 years is fixed for an offence under this proposed new section.

Proposed new section 248 deals with abuse of public office. Under this provision it is to be an offence if a public officer improperly—

(a) exercises power or influence that the public officer has by virtue of his or her public office;

(b) refuses or fails to discharge or perform an official duty or function; or

(c) uses information that the public officer has gained by virtue of his or her public office,

with the intention of—

(d) securing a benefit for himself or herself or for another person; or

(e) causing injury or detriment to another person.

A maximum penalty of imprisonment for 7 years is fixed for an offence under this provision.

Proposed new section 249 deals with demanding or requiring a benefit on basis of public office. Under this provision it is to be an offence if a person—

(a) demands or requires from another person a benefit (whether for himself or herself or for a third person);

and

(b) in making the demand or requirement—

(i) suggests or implies that it should be complied with because the person holds a public office (whether or not the person in fact holds that office);

and

(ii) knows that there is no legal entitlement to the benefit.

A maximum penalty of imprisonment for 7 years is fixed for an offence under this proposed new section.

Proposed new section 250 deals with offences relating to appointment to or removal from public office.

Subclause (1) provides that it is to be an offence if a public officer improperly exercises power or influence that the public officer has by virtue of his or her office with the intention of—

(a) securing the appointment of a person to a public office;

or

(b) securing the transfer, retirement, resignation or dismissal of a person from a public office.

Subclause (2) provides that it is to be an offence if a person improperly—

(a) gives, offers or agrees to give a benefit to another in connection with the appointment or possible appointment of a person to a public office;

or

(b) seeks, accepts or agrees to accept a benefit (whether for himself or herself or for a third person) on account of an act done or to be done with regard to the appointment or possible appointment of a person to a public office.

A maximum penalty of imprisonment for 4 years is fixed for offences under this proposed new section.

The clause goes on to provide that for the purposes of subclause (2) 'benefit' does not include—

(a) salary or allowances payable in the ordinary course of business or employment;

or

(b) fees or other remuneration paid to a person for services provided to another person in the ordinary course of business or employment in consideration for assistance provided to the other person in qualifying for, preparing an application for or determining suitability for such an appointment.

Division VI deals with escape, rescue and harbouring of persons subject to detention.

Proposed new section 251 provides that it is to be an offence if a person subject to lawful detention—

(a) escapes, or attempts to escape, from custody;

or

(b) remains unlawfully at large,

Subclause (2) provides that a child is not guilty of such an offence in respect of an act or omission that constitutes an offence against section 61a of the Children's Protection and Young Offenders Act 1979 which fixes a lesser penalty (6 months detention in a training centre) for escapes by a child subject to lawful detention.

Subclause (3) provides that it is to be an offence if a person, knowing that, or being recklessly indifferent as to whether, another person is subject to lawful detention—

(a) assists in the escape or attempted escape of the other person from custody;

or

(b) without lawful authority, removes, or attempts to remove, the other person from custody.

Subclause (4) provides that it is to be an offence if a person having custody or authority in respect of another person subject to lawful detention and knowing that, or being recklessly indifferent as to whether, there is no legal authority to do so—

(a) releases or procures the release of, or attempts to release or procure the release of, the other person from custody;

or

(b) permits the other person to escape from custody.

A maximum penalty of imprisonment for 7 years is fixed for offences under this proposed new section.

Proposed new section 252 deals with harbouring or employing escapees, etc. Under this provision it is to be an offence if a person, knowing that, or being recklessly indifferent as to whether, another person has escaped from custody or is otherwise unlawfully at large—

(a) harbours or employs the other person;

or

(b) assists the other person to remain unlawfully at large.

A maximum penalty of imprisonment for 4 years is fixed for an offence under this proposed new section.

Division VI deals with attempts to obstruct or pervert the course of justice or the due administration of the law.

Proposed new section 253 provides that it is to be an offence if a person attempts to obstruct or pervert the course of justice or the due administration of the law in a manner not otherwise dealt with in the preceding provisions of the Part. A maximum penalty of imprisonment for 4 years is fixed for an offence under this proposed new section.

Subclause (2) provides that a person charged with an offence against any of the preceding provisions of the Part may instead be found guilty of an offence against subclause (1), if the maximum penalty prescribed for an offence against subclause (1) is the same as or less than the maximum penalty prescribed for the offence charged.

Division VII deals with criminal defamation.

Proposed new section 254 provides that it is to be an offence if a person, without lawful excuse, publishes defamatory matter concerning another living person—

(a) knowing the matter to be false or being recklessly indifferent as to whether the matter is true or false;

and

(b) intending to cause serious harm, or being recklessly indifferent as to whether the publication of the defamatory matter will cause serious harm, to a person (whether the person defamed or not).

A maximum penalty of imprisonment for 3 years is fixed for an offence under this proposed new section.

The usual defences to actions for damages for defamation are allowed as defences under the provision. Proceedings for an offence against this provision may not be commenced without the consent of the Attorney-General.

Division VIII limits certain offences in relation to industrial disputes and restraint of trade.

Proposed new section 255 provides that an agreement or combination by two or more persons to do, or procure to be done, an act in contemplation or furtherance of an industrial dispute as defined in the Industrial Relations Act (S.A.) 1972 is not punishable as a conspiracy unless the act, if committed by one person, would be punishable as an indictable offence.

Subclause (2) provides that no person is liable to any punishment for doing, or conspiring to do, an act on the ground that the act restrains, or tends to restrain, the free course of trade unless the act constitutes an offence against the Act.

Clause 7 provides for the repeal of section 268 of the Criminal Law Consolidation Act. Section 268 deals with accessories after the fact and its repeal is consequential on the new accessory offence in proposed new section 240.

Clause 8 amends section 270 of the Criminal Law Consolidation Act which sets the penalty for certain common law offences. The clause removes the reference to the common law offences of nuisance and keeping a common gaming house, the former being one of the offences proposed to be abolished (see the schedule) and the latter being fully dealt with in the Lottery and Gaming Act 1936. The clause also removes the reference to the common law offences of escape and rescue (now to be dealt with in proposed new section 251) and indecent exhibitions (dealt with fully in section 33 of the Summary Offences Act 1953 and to be abolished under the schedule).

Clause 9 inserts into the Criminal Law Consolidation Act a new schedule in the form set out in the schedule of this measure. The schedule provides for the abolition of certain common law offences and offences of the same kind enacted by Imperial law.

Part III of the measure makes consequential amendments to the Correctional Services Act 1982.

Clause 10 provides for substitution of the heading to Division IV of Part V of that Act.

Clause 11 amends section 50 of the Correctional Services Act which relates to the effect of a prisoner escaping or being at large. The clause removes the escape offence contained in subsection (1) in view of the general escape offence to be included in the Criminal Law Consolidation Act (see proposed new section 251) and makes a consequential amendment relating to the effect of a sentence for an offence of escape on existing terms of imprisonment.

Clause 12 makes a further consequential amendment to section 52 which relates to the power of arrest of officers of the Department of Correctional Services.

Clause 13 makes a similarly consequential amendment to the Correctional Services Act providing for the repeal of section 53 which provides for an offence of harbouring an escaped prisoner.

Part IV deals with consequential amendments to the Juries Act 1927.

Clause 14 makes an amendment to section 78 of the Juries Act removing the offence of impersonating a juror which is now to be provided for in the Criminal Law Consolidation Act (see proposed new section 244).

Clause 15 provides for the repeal of section 83 of the Juries Act which creates an offence of corruptly influencing a juror. This offence is now to be included in the Criminal Law Consolidation Act (see proposed new sections 244 and 245).

Part V provides for consequential amendments to the Local Government Act 1934.

Clause 16 provides for the repeal of sections 55, 56, 79 and 81 of that Act which create offences of bribing members or officers or employees of councils and misuse of confidential information by members, officers or employees. These matters are now to be covered by the Criminal Law Consolidation Act (see proposed new sections 246 and 248).

Part VI provides for consequential amendments to the Royal Commissions Act 1917.

Clause 17 provides for the repeal of sections 15 and 17 to 22 (inclusive) of that Act. These sections deal with perjury and interference with witnesses or evidence, matters now to be dealt with in the Criminal Law Consolidation Act.

Part VII deals with amendments to the Summary Offences Act 1953.

Clause 18 inserts a new section 7a into the Summary Offences Act relating to interruption or disturbance of religious worship. Under the proposed new section it is to be an offence if a person, by noise, disorderly or offensive behaviour or language or in any other way, intentionally—

(a) interrupts or disturbs the order and solemnity of a congregation or meeting of persons gathered for religious worship;

or

(b) interrupts or disturbs persons officiating at, participating in or proceeding to or from any such congregation or meeting.

A division 5 fine or division 5 imprisonment ($8 000 or two years) is fixed as the maximum penalty for this offence.

These offences are in very similar terms to the offences under sections 257 and 258 of the Criminal Law Consolidation Act (which are proposed to be repealed) although are slightly wider in scope by providing protection for persons proceeding to or from a religious gathering.

Clause 19 replaces section 18 of the Act (which creates the loitering offence) with three new sections. The first, proposed new section 17d, creates offences of forcible entry or retention of land or premises. It replaces section 243 of the Criminal Law Consolidation Act, the current forcible entry offence, which is an indictable offence punishable by imprisonment for a maximum term of three years. The new offence proposed is a summary offence with a maximum penalty of a division 6 fine or division 6 imprisonment ($4 000 or one year). Under subclause (1) it is to be an offence if a person—

(a) uses force, threats or intimidation to enter land or premises in order to expel a person who is in possession (whether lawfully or unlawfully) of the land or premises;

and

(b) does so otherwise than in pursuance of an order of a court or other lawful process.

The new section proposed also replaces the common law offence of forcible retention of land. Under subclause (2) it is to be an offence if a person—

(a) enters onto land or premises unlawfully;

and

(b) retains possession of the land or premises by force or in a manner that would render the use of force the only reasonably practicable means of recovering lawful possession of the land or premises.

The same maximum penalty of a division 6 fine or division 6 imprisonment is fixed for this offence.

Proposed new section 18 empowers police to order persons to move on or disperse. This provision incorporates the current loitering provision and extends it so that it also empowers police to order persons assembled in a group to disperse. This is intended to deal with the situations now dealt by the offence of riot (section 244 of the Criminal Law Consolidation Act, which is to be repealed) and the common law offences of rout, unlawful assembly and affray, which are to be abolished (see the schedule).

Subclause (1) provides that where a person is loitering in a public place or a group of persons is assembled in a public place and a member of the police force believes or apprehends on reasonable grounds—

(a) that an offence has been, or is about to be, committed by that person or by one or more of the persons in the group or by another in the vicinity;

(b) that a breach of the peace has occurred, is occurring, or is about to occur, in the vicinity of that person or group;

(c) that the movement of pedestrians or vehicular traffic is obstructed, or is about to be obstructed, by the presence of that person or group or of others in the vicinity;

or

(d) that the safety of a person in the vicinity is in danger,

the member of the Police Force may request that person to cease loitering, or request the persons in that group to disperse, as the case may require.

Subclause (2) provides that a person of whom such a request is made must leave the place and the area in the vicinity of the place in which he or she was loitering or assembled in the group and fixes a maximum penalty of a division 8 fine or division 8 imprisonment ($1 000 or three months) for failure to do so.

Proposed new section 18a regulates behaviour at or in the vicinity of public meetings. This provision is based on the provisions of the Public Meetings Act which is to be repealed (see clause 23) and is intended to deal with the situations dealt with by sections 257 and 258 of the Criminal Law Consolidation Act (interrupting religious worship and molesting preachers) which are to be repealed. Under subclause (1) it is to be an offence if a person in, at or near a place where a public meeting is being held—

(a) behaves in a disorderly, indecent, offensive, threatening or insulting manner;

(b) uses threatening, abusive or insulting words;

or

(c) in any way, except by lawful authority or on some other lawful ground, obstructs or interferes with—

(i) a person seeking to attend the meeting;

(ii) any of the proceedings at the meeting;

or

(iii) a person presiding at the meeting in the organisation or conduct of the meeting.

A maximum penalty of a division 8 fine or division 8 imprisonment is fixed for this offence. Subclause (2) provides that a person presiding at a meeting at which such behaviour occurs may request a member of the Police Force, or the police generally, to remove the offending person from the place or the area in the vicinity of the place. 'Public meeting' is defined as including any political, religious, social or other meeting, congregation or gathering that the public or a section of the public are permitted to attend, whether on payment or otherwise.

Clause 20 transfers to the Summary Offences Act, as a new section 40, the present section 259a of the Criminal Law Consolidation Act which makes it an offence to act as a spiritualist, medium, etc., with intent to defraud. As a result, the offence will become a summary offence rather than an indictable offence.

Clause 21 provides for the repeal of section 66 of the Summary Offences Act which creates a statutory compounding offence. This offence, its counterpart section 234 of the Criminal Law Consolidation Act and the common law compounding offence are to be abolished.

Clause 22 provides for the repeal of section 83 of the Summary Offences Act which creates an offence of escaping from police custody. This is now to be covered by the new general escape offence (see proposed new section 251).

Part VII (clause 23) provides for the repeal of the Public Meetings Act 1912.

The schedule sets out the schedule to be inserted into the Criminal Law Consolidation Act abolishing certain common law offences and equivalent offences enacted by imperial law.

The following offences are abolished under clause 1:

(1) compounding an offence—'Everyone commits a misdemeanour who, having brought, or under colour of bringing, an action against any person under any penal statute in order to obtain from him any penalty, compounds the said action without order or consent of the court (whether any offence has in fact been committed or not.' (*Stephen's Digest of the Criminal Law* 9th edition (1950), page 159);

(2) misprision of felony—'Everyone who knows that any other person has committed felony and conceals or procures the concealment thereof is guilty of misprision of felony . . .' (*Stephen's Digest of the Criminal Law* 9th edition (1950), page 158);

(3) maintenance, including champerty—

'maintenance . . . an officious intermeddling in an action that in no way belongs to one; by maintaining or assisting either party, with money or otherwise, to prosecute or defend it . . . This is an offence which keeps alive strife and contention, and perverts the remedial process of the law into an engine of oppression . . . A man may, however, with impunity, out of charity and compassion, maintain the suit of his near kinsman, servant, or poor neighbour; and he may also maintain any action or legal proceedings in which he has any pecuniary interest, actual or contingent . . .' (*Stephen's Commentaries on the Laws of England* 15th edition [1908], page 210);

'champerty is nowadays regarded as an aggravated form of maintenance being an arrangement by which the maintainer is promised a share of the subject matter or proceeds of the litigation.' (*One Hundred and First Report of the Law*

Reform Committee of South Australia to The Attorney-General [1987] 'Maintenance, Champerty, Embracery and Barratry, Malicious Prosecution and Abuse of Process', page 3);

(4) embracery—'Embracery is the attempted or actual corruption, influencing or instruction of a jury to favour one side by money, promises, letters, threats or persuasions or other means other than by evidence and arguments in open court. A juror who is so influenced or who accepts such bribes also commits embracery.' (*One Hundred and First Report of the Law Reform Committee of South Australia to The Attorney-General [1987] 'Maintenance, Champerty, Embracery and Barratry, Malicious Prosecution and Abuse of Process'*, page 4);

(5) interference with witnesses—'Everyone commits a misdemeanour who . . . in order to obstruct the due course of justice, dissuades, hinders, or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence, or endeavours to do so . . .' (*Stephen's Digest of the Criminal Law* 9th edition (1950), page 150);

(6) escape—

(a) 'Every person who aids or assists any prisoner to attempt to make his escape from the custody of any constable or other officer or person who then has the lawful charge of him in order to carry him to gaol . . . is guilty of felony . . .'

(b) 'Everyone commits felony . . . who aids any prisoner in escaping or attempting to escape from any prison, or who, with intent to facilitate the escape of any prisoner, conveys or causes to be conveyed into any prison, any mask, dress, or other disguise, or any letter, or any other article or thing.'

(c) 'Everyone commits a misdemeanour, . . . who, being lawfully in custody for any criminal offence, escapes from that custody.'

(d) 'Everyone commits felony who, being lawfully detained on a charge of, or under sentence for, treason or felony, breaks out of the place in which he is so detained, against the will of the person by whom he is detained.

If the offender is detained under a charge of misdemeanour the offence of breaking out of the place of confinement is a misdemeanour . . .' (*Stephen's Digest of the Criminal Law* 9th edition (1950), pages 155-156);

(7) rescue—'Everyone commits felony . . . who by force sets at liberty, rescues, or attempts to rescue, or sets at liberty any person out of prison, committed for or found guilty of murder, or rescues or attempts to rescue any person convicted of murder, going to execution or during execution.' (*Stephen's Digest of the Criminal Law* 9th edition (1950), page 154);

(8) bribery or corruption in relation to judges or judicial officers;

(9) bribery or corruption in relation to public officers;

(10) buying or selling of a public office—'Everyone commits a misdemeanour who does any of the following things in respect of any office, or any appointment to or resignation of any office, or any consent to any such appointment or resignation, that is to say, everyone who directly or indirectly—

1. sells the same, or receives any reward or profit from the sale thereof, or agrees to do so;

2. purchases, or gives any regard or profit for the purchase thereof, or agrees or promises to do so.' (*Stephen's Digest of the Criminal Law* 9th edition (1950), page 137);

(11) obstructing the exercise of powers conferred by statute;

(12) oppression by a public officer—'Every public officer commits a misdemeanour who, in the exercise or under colour of exercising the duties of his office, does any legal act, or abuses any discretionary power with which he is invested by law from an improper motive, the existence of which motive may be inferred either from the nature of the act, or from the circumstances of the case.

. . . If [the act] consists in inflicting upon any person any bodily harm, imprisonment or other injury, not being extortion, the offence is called "oppression".' (*Stephen's Digest of the Criminal Law* 9th edition (1950), page 112);

(13) breach of trust or fraud by a public officer;

(14) neglect of duty by a public officer—'Every public officer commits a misdemeanour who wilfully neglects to perform any duty which he is bound either by common law or by statute to perform provided that the discharge of such duty is not attended with greater danger than a man of ordinary firmness and activity may be expected to encounter.' (*Stephen's Digest of the Criminal Law* 9th edition (1950), page 114);

(15) refusal to serve in public office—'Everyone commits a misdemeanour who unlawfully refuses or omits to take upon himself and serve any public office which he is by law required to accept if duly appointed . . .' (*Stephen's Digest of the Criminal Law* 9th edition (1950), page 118);

(16) forcible entry and forcible detainer—'Everyone commits a misdemeanour called a forcible entry who, in order to take possession thereof, enters upon any lands or tenements in a violent manner . . .

Everyone commits the misdemeanour called a forcible detainer who, having wrongfully entered upon any lands or tenements, detains such lands and tenements in a manner which would render an entry upon them for the purpose of taking possession forcible.' (*Stephen's Digest of the Criminal Law* 9th edition (1950), page 81);

(17) riot—'A riot is an unlawful assembly which has actually begun to execute the purpose for which it assembled, by a breach of the peace, and to the terror of the public; a lawful assembly may become a riot if the persons assembled form and proceed to execute an unlawful purpose to the terror of the people, although they had not that purpose when they assembled.' (*Stephen's Digest of the Criminal Law* 9th edition (1950), page 76);

(18) rout—'A rout is an unlawful assembly which has made a motion towards the execution of the common purpose of the persons assembled.' (*Stephen's Digest of the Criminal Law* 9th edition (1950), page 76);

(19) unlawful assembly—'An unlawful assembly is an assembly of three or more persons—

(a) with intent to commit a crime by open force; or

(b) with intent to carry out any common purpose, lawful or unlawful in such a manner as to give firm and courageous persons in the neighbourhood of such assembly reasonable grounds to apprehend a breach of the peace in consequence of it.' (*Stephen's Digest of the Criminal Law* 9th edition (1950), page 75);

(20) affray—'An affray is the fighting of two or more persons in a public place to the terror of His Majesty's subjects.' (*Stephen's Digest of the Criminal Law* 9th edition (1950), page 74);

(21) challenges to fight—'Everyone commits a misdemeanour who—

(a) challenges any other person to fight a duel; or

(b) endeavours by words, or by writings, to provoke any other person to challenge the offender or to commit a breach of the peace.' (*Stephen's Digest of the Criminal Law* 9th edition (1950), page 74);

(22) public nuisance—'A public or common nuisance is an act not warranted by law or an omission to discharge a legal duty, which act or omission obstructs or causes inconvenience or damage to the public in the exercise of rights common to all His Majesty's subjects.' (*Stephen's Digest of the Criminal Law* 9th edition (1950), page 179);

(23) public mischief—no clear definition;

(24) eavesdropping—' "Eavesdroppers" are such as stand under wals or windowes, by night or by day, to heare news, and to carry them to others to make strife and debate amongst their neighbours' (*Termes de la Ley—Stroud's Judicial Dictionary* 4th edition, Volume 2, page 869);

(25) being a common barrator, a common scold or a common night walker—barrator—'. . . one who habitually moves, excites or maintains suits or quarrels, whether at law or otherwise; the punishment therefor was fine and imprisonment, and if the offender belonged to the legal profession, he was disabled thereby from further practice.' (*Jowitt's Dictionary of English Law* 2nd edition, page 192);

night walker—'A woman walking up and down the streets to pick up men' (per Lawrence J, *Lawrence v Hedger*, 3 Taunt. 15) (*Stroud's Judicial Dictionary* 4th edition, Volume 3, page 1771); but Dalton (Countrey Justice, 189) speaks of night-walkers as of either sex, and as being such 'that be suspected to bee pilferers or otherwise liketo disturbe the peace, or that be persons of evill behaviour, or be eavesdroppers by night, or as shall cast mens gates or carts &c, or shall commit other like misdemeanors or outrages in the night time.';

scold—'A troublesome and angry woman, who, by brawling and wrangling amongst her neighbours, broke the public peace, increased discord, and became a public nuisance to the neighbourhood.' (*Mozley & Whiteley's Law Dictionary* 10th edition);

(26) criminal libel, including obscene or seditious libel;

(27) publicly exposing one's person;

(28) indecent exhibitions—'Exhibitions of an obscene, indecent, or grossly offensive and disgusting character which do not fall within the definition of obscene libel are nevertheless regarded as indictable misdemeanors, such as the performance of an obscene or indecent play.' (*Russell on Crime*, v.II 9th edition);

and

(29) spreading infectious disease.

Clause 2 provides that an Act of the Imperial Parliament is to have no further force or effect in this State to the extent that it enacts an offence of a kind referred to in clause 1.

Clause 3 makes certain special provisions relating to maintenance and champerty. Under the clause, liability in tort for conduct constituting maintenance or champerty at common law is abolished. The clause goes on to provide that the abolition of criminal and civil liability for maintenance and champerty does not affect—

(a) any civil cause of action accrued before the abolition;

(b) any rule of law relating to the avoidance of a champertous contract as being contrary to public policy or otherwise illegal;

(c) any rule of law relating to misconduct on the part of a legal practitioner who is party to or concerned in a champertous contract or arrangement.

These provisions are in accordance with the recommendations relating to maintenance and champerty contained in the 101st Report of the Law Reform Committee of South Australia.

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

ACTS INTERPETATION (CROWN PREROGATIVE) AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Acts Interpretation Act 1915. Read a first time.

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

That this Bill be now read a second time.

This Bill sets out rules of construction to be applied in determining when an Act binds the Crown.

On 20 June 1990 the High Court delivered judgment in the matter *Bropho v. Western Australia* (1990) 171 CLR1.

Prior to this judgment the general rule was that the Crown is not bound by a statute unless the Crown is bound expressly or by necessary implication. The rule was that there was no 'necessary implication' that the Crown was bound unless the statute would otherwise be meaningless or in purpose wholly frustrated.

In Bropho the High Court held that the presumption that the general words of a statute do not bind the Crown could be displaced by the legislative intent appearing in the statute, and the court could have regard to the subject matter of the statute including its purpose and policy in ascertaining that intent. It seems, as a practical matter, that the test applied is that the Crown (or at least its employees) will be bound if the legislative scheme would not be effective if the Crown were not bound.

Although it is not altogether clear, it would seem that the High Court has also varied the principle that agents, servants and contractors of the Crown share the Crown's immunity, if the Crown's interests would be prejudiced if such persons were bound by a particular statute. It seems that the High Court has decided that it is a separate question of statutory construction whether agents, servants and contractors are bound.

The High Court did suggest that a stronger presumption (that is, the presumption that the Crown is not bound) should be applied to statutes enacted prior to 20 June 1990 in that those statutes would have been drafted in reliance on the previous presumption.

It should be noted that when a statute creates criminal offences there is a very strong presumption that the Crown is not subject to criminal liability. This very strong presumption has survived Bropho's case. The situation following Bropho is clearly unsatisfactory. It is difficult to guess what circumstances the courts may eventually decide are sufficient or insufficient to displace what remains of the presumption that the Crown is not bound by statute except by express words or necessary implication. It is essential that the Crown comply with the law. The uncertainty as to what statutes do or do not apply to the Crown is most undesirable. If left to judicial decision it is unlikely that the new rules will be clarified for some years.

In these circumstances, and following consultation with the Solicitor-General, Crown Solicitor and Parliamentary Counsel, it has been decided to clarify the matter by legislation.

It has been decided to legislate in the following manner:

— no general provision is made for statutes enacted prior to 20 June 1990. Whether these statutes bind the Crown will be determined on a case by case basis.

— provision is made that the Crown is bound by all statutes (apart from criminal offences) enacted after

20 June 1990 unless contrary intention appears, either expressly or by implication.

— provision is made for instrumentalities, officers and employees and contractors who carry out functions on behalf of the Crown, where they are carrying out obligations or functions required, to share the Crown's immunity.

It is considered these provisions will ensure certainty in the law and will be consistent with good administration and practice.

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

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides for the insertion of a section into the Acts Interpretation Act relating to the rules of construction that are to be applied in determining whether an Act binds the Crown. It is proposed that new Acts passed after 20 June 1990 (the date of publication of the judgment in *Bropho v. The State of Western Australia*) will, unless the contrary intention appears be taken, to bind the Crown, but not so as to impose any criminal liability on the Crown. Where an Act amends an Act passed before 20 June 1990, the question as to whether the amendment binds the Crown will be determined in accordance with the principles applicable to the interpretation of Acts passed before 20 June 1990. The section also makes provision in relation to persons who carry out functions on behalf of the Crown. It is proposed that it be expressly provided that the Crown's immunities extend to such persons where they are performing acts reasonably required for the carrying out of obligations or functions imposed on, or assigned to, them as agents of the Crown.

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

CROWN PROCEEDINGS BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to provide for suits by and against the Crown; to repeal the Crown Proceedings Act 1972; and for other purposes.

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

That this Bill be now read a second time.

This Bill replaces the Crown Proceedings Act 1972. The Bill is the South Australian version of a model Crown Proceedings Bill prepared by the Special Committee of Solicitors-General and approved by the Standing Committee of Attorneys-General. The need for the Bill arose out of proposals by the Commonwealth to amend section 64 of the Judiciary Act 1903 in the light of High Court decisions on the ambit of that section. Section 64 of the Judiciary Act provides:

> In any suit to which the Commonwealth or State is a party, the rights of the parties shall as nearly as possible be the same, and judgment may be given and costs awarded on either side, as in a suit between subject and subject.

The effect of the decision in *The Commonwealth v Evans Deakin Industries Ltd* (1986) 161 CLR 254 appears to be that the Commonwealth, and in some circumstances the States, could be exposed to liabilities even under legislation that is expressed not to bind the Crown in any right. These implications were unacceptable to the Commonwealth which indicated its intention to legislate to make clear the extent to which the Commonwealth is to be subject to State and Territory law.

The proposed changes to section 64 in its application to the Commonwealth have been the subject of correspondence between Attorneys-General. The original proposal by the Commonwealth would have left section 64 in its original form applicable to the States. The attitude of the State Solicitors-General was that this was unsatisfactory. Furthermore, it was considered that the Commonwealth should not determine when State statutes would bind a State in proceedings brought by or against the State in Federal jurisdiction and that this should be determined by State law. The Commonwealth power to determine when a State was bound was disputed by State Solicitors-General, but the view was taken that, whether the Commonwealth had power or not, as long as State laws relating to the applicability of statutes to the State were reasonable, the Commonwealth should leave it to State law to determine applicability.

The Solicitors-General proposed that the Commonwealth should amend section 64 so that it did not purport to make statutes apply to the State Crown. section 64 should leave it to State law to decide if the Crown or State was bound. The Solicitors-General agreed to recommend to their respective Attorneys-General that, if the Commonwealth agreed to implement this change, each State would review its Crown Proceedings Act and, in particular, would consider clarifying the applicability of its Crown Proceedings Act to interstate Crowns or States. The purpose of each State agreeing to review its local legislation was to produce, as far as possible, uniform, comprehensive and reasonable legislation on the topic.

The end result of the correspondence and deliberations over three years is that the Commonwealth has agreed to amend section 64 of the Judiciary Act in the manner in which the States have requested. The proposed amendments to section 64 of the Judiciary Act are expected to go before the Federal Parliament later this year. The Commonwealth has indicated that the amendment to section 64 will not come into operation until each State has provided, in its equivalent to the Crown Proceedings Act, for two basic measures. The first is that proceedings by or against the Crown are to be brought in the same way as proceedings between subjects, that is, by and large the same procedural rules are to apply. The second is that the immunity—if any—of the Crown in actions in contract and tort be terminated. Each State may decide to what extent it is to be made liable under statute or the common law. But there is not to be a complete immunity. Each of these provisions is to be made applicable to the Crown in right of the enacting State and to the Crown of another State. This will remove existing difficulties in suing, in State A, the Crown in right of State B.

The model Crown Proceedings Bill on which this Bill is based contains the provisions required by the Commonwealth. From the South Australian standpoint provisions relating to Crown Proceedings were already relatively modern following the enactment of legislation in 1972. The principal changes made by this Bill are the following:

- the Bill makes provision for proceedings against the local Crown and also the Crown in right of another State, the Commonwealth and a Territory. Present Crown Proceeding Acts in force in this and other States make no provision for the Crown to be sued outside its own State.
- the Bill makes it clear that the Crown is generally in the same position as the subject in legal proceedings. The Bill makes it clear that, subject to the terms of the Bill and any other Act, the same procedural and substantive law

will apply to proceedings by and against the Crown, as is the law in proceedings between subjects.
- the Bill gives the Crown, by the Attorney-General, liberal rights to intervene in proceedings.
- the Bill generally modernises a number of machinery and detail provisions.

The Bill does not deal with the rules relating to when the Crown is bound by statute, These rules will be dealt with in an amendment to the Acts Interpretation Act 1915, an amendment that I have just introduced. I seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides for commencement of the measure on a day to be fixed by proclamation.

Clause 3 repeals the Crown Proceedings Act 1972.

Clause 4 is an interpretation provision.

Subclause (1) defines terms used in the measure:
- 'corresponding law' is defined to mean a law of another State relating to proceedings against the Crown declared by the regulations to be a corresponding law to the measure;
- 'Crown' is defined to include a Minister, instrumentality or agency of the Crown and any body or person declared by the regulations to be an instrumentality or agency of the Crown for the purposes of the measure;
- 'judgment' is defined to mean any judgment or order of a court;
- 'proceedings' is defined to mean civil proceedings;
- 'State' is defined to include a Territory of the Commonwealth;
- 'State Crown' is defined to mean the Crown in right of this State.

Subclause (2) provides that the measure extends not only to the Crown in right of the State but also (as far as the legislative power of the State allows) to the Crown in any other capacity but does not extend to the Crown in right of the Commonwealth except where specific provision is made for its application to the Crown in right of the Commonwealth.

Clause 5 deals with proceedings by and against the Crown generally.

Subclause (1) provides that subject to the measure and any other Act of the State, the Judiciary Act 1903 of the Commonwealth and any relevant rules of court, proceedings may be brought and conducted by or against the Crown in the same way as proceedings between subjects and the same substantive law is to be applied in proceedings by or against the Crown as in the case of proceedings between subjects.

Subclause (2) provides that, subject to the regulations, proceedings by or against the Crown may be brought—
- in the case of proceedings against the State Crown—under the name 'The State of South Australia';
- in any other case—under the name in which the Crown could sue or be sued in the courts of its own jurisdiction.

Clause 6 provides that the measure does not affect any immunity from, or limitation on, liability that the Crown enjoys by statute.

Clause 7 allows injunctive relief (other than a mandatory injunction) to be granted against the Crown.

Clause 8 provides that the measure does not affect any rule of law under which the Crown or an officer or employee of the Crown may refuse to discover or produce documents, or to answer an interrogatory or other question, on the ground that to do so would be prejudicial to the public interest.

Clause 9 deals with the right of the Attorney-General to appear in proceedings. Subclause (1) empowers the Attorney-General to represent the Crown in any civil or criminal action, proceeding or matter in which the Crown is a party.

Subclause (2) empowers the Attorney-General to intervene on behalf of the Crown in any proceedings—
- in which the interpretation or validity of a law of the State or the Commonwealth is in question;
- in which the legislative or executive powers of the State or Commonwealth, or of an instrumentality or agency of the State or Commonwealth are in question;
- in which judicial powers of a court or tribunal established under the law of the State or Commonwealth are in question;

or
- in which the Court grants leave to intervene on the ground that the proceedings raise issues of public importance,

for the purpose of submitting argument on issues of public importance.

Subclause (3) gives the Attorney-General the same right of appeal in proceedings in which he or she intervenes under subclause (2) as a party to those proceedings.

Subclause (4) provides that where the Attorney-General intervenes in proceedings under the clause, and there are in the opinion of the court special reasons for making an order under this subclause, the court may make an order for costs against the Crown to reimburse the parties to the proceedings for costs occasioned by the intervention.

Subclause (5) provides that references in the clause to the Attorney-General extend not only to the Attorney-General for this State but also to the Attorney-General for any other State or the Commonwealth and that references to the Crown have a correspondingly extended meaning.

Clause 10 deals with the enforcement of judgments against the Crown.

Subclause (1) prohibits the issue out of any court of a writ, warrant or similar process to enforce a judgment against the Crown.

Subclause (2) requires a court that gives a final judgment against the Crown in right of this State or any other State to transmit a copy of the order to the Governor of the relevant State.

Subclause (3) requires the Governor of this State, where he or she receives a copy of such a judgment, to give directions as to the manner in which the judgment is to be satisfied.

Subclause (4) authorises and requires a Minister, agency or instrumentality of the Crown to which such a direction is given to carry out the direction.

Subclause (5) provides that a direction under the clause is sufficient authority for the appropriation of money from the General Revenue of the State or from funds of any agency or instrumentality of the Crown.

Subclause (6) defines 'Governor' as including—
- in relation to the Australian Capital Territory—the Chief Minister;
- in relation to the Northern Territory—the Administrator.

Clause 11 provides, subject to the measure and any relevant rules of court, for a judgment recovered by the Crown to be enforced in the same manner as a judgment in proceedings between subjects, and not in any other way.

Clause 12 provides that the State Crown is, in relation to its activities in another State, bound by a corresponding law of that other State to the same extent as the Crown in right of that other State.

Clause 13 deals with the service of process and other documents in proceedings by or against the Crown.

Subclause (1) requires a statement that contains the prescribed information to be endorsed on, or annexed to, the process by which any proceedings brought against the State Crown are commenced.

Subclause (2) provides that a failure to comply with subclause (1) does not render the proceedings void unless the court is of the opinion that the State Crown has been prejudiced by that failure.

Subclause (3) requires service on the State Crown of any process or document relating to proceedings to be effected by service on the Crown Solicitor except—

- if special provision relevant to service of the process or document is made by or under the measure, in which case service must be effected in accordance with that special provision;
- if the party by or on whose behalf the process or document is to be served has notice that some solicitor other than the Crown Solicitor is acting for the Crown in relation to the proceedings, in which case service must be effected on that other solicitor.

Clause 14 deals with the service of subpoenas and other process on Ministers. Subclause (1) prohibits, without the leave of the court, tribunal or other authority, the issuing by the court, tribunal or other authority of a subpoena or other process requiring a Minister to appear in his or her official capacity to give evidence or produce documents.

Subclause (2) provides that leave pursuant to subclause (1) may only be granted only after the Crown Solicitor has been given reasonable notice in writing of the application for the subpoena or other process and a reasonable opportunity to be heard on the application.

Subclause (3) requires a court, tribunal or other authority that grants leave pursuant to subclause (1) to give, at the same time, directions as to the manner in which service on the Minister is to be effected.

Clause 15 deals with costs.

Subclause (1) exempts the State Crown from the obligation to pay any fee or charge for commencing, or taking any step in, proceedings or for obtaining a transcript of any proceedings or evidence in any proceedings to which it is a party.

Subclause (2) provides that any costs to which the State Crown is entitled will be calculated as if the State Crown were liable to pay, and had in fact paid, fees and charges from which it is exempt under subclause (1).

Clause 16 deals with judicial notice of the Attorney-General's appointment.

Subclause (1) provides that in any legal proceedings, a document apparently signed by the Attorney-General will be presumed, in the absence of evidence to the contrary, to have been duly signed by the Attorney-General.

Subclause (2) requires the Attorney-General's commission of appointment as Attorney-General to be noted in the records of the Supreme Court on production to the Court.

Subclause (3) provides that no action, proceeding or matter (whether civil or criminal) by or against the Attorney-General is suspended, terminated or affected by any change of office holder.

Clause 17 deals with cases where the right of the Crown to legal representation is restricted.

Subclause (1) permits, where an Act removes or restricts the right of a party to be represented in proceedings by a legal practitioner, the State Crown or the Attorney-General, if a party to the proceedings, to be represented by an officer or servant of the Crown (not being a legal practitioner, an articled law clerk or person who holds legal qualifications under the law of this State or of any other place) authorised to conduct the proceedings on behalf of the Crown or the Attorney-General.

Subclause (2) provides that in such proceedings, a document apparently signed by a Minister of the State Crown or the Chief Executive Officer of an agency, instrumentality, department or administrative unit of the State Crown that appears to be an authorization of the kind contemplated by subclause (1) will, in the absence of proof to the contrary, be accepted as such an authorization.

Clause 18 deals with the Crown Solicitor.

Subclause (1) provides that the Crown Solicitor is a corporation sole which may act through the instrumentality of the person for the time being holding the office of Crown Solicitor or any other person to whom that person delegates his or her functions.

Subclause (2) requires the Crown Solicitor to act as such either under the name of the office holder for the time being or under the name 'The Crown Solicitor for the State of South Australia'.

Clause 19 provides that the measure does not affect—

- any proceedings for the recovery or enforcement of a fine, penalty or forfeiture (including the estreatment of a recognizance) imposed in criminal proceedings;
- any law, custom or procedure under which the Attorney-General is entitled to sue, or be sued, or to intervene in proceedings, on behalf of the Crown, on the relation of, or on behalf of, any other person or persons or in any other capacity or for any other purposes.

Clause 20 empowers the Governor to make regulations.

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

WRONGS (PARENTS' LIABILITY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 November. Page 2187.)

The Hon. K.T. GRIFFIN: I make clear from the outset that the Opposition is supporting the second reading of this Bill and that, during the Committee stage, we will propose a number of amendments. In its present form, the Bill is against the interests of parents and families generally. It poses a serious threat to parents, whether they be good or bad parents, however that may be judged.

The Bill is a reaction to the calls of a vocal minority for the State to compel parents to be responsible for their children and not only to accept responsibility but also to be financially liable for the acts of their children when they are irresponsible. The Bill takes no cognisance of the thousands of different circumstances facing parents whose children commit an offence and a tort.

Only last night I was talking to a mother whose children are now adults, and she told me that, in relation to her own children, when the lights were put out at night, in the dark of night one of the children slipped out of the window of the bedroom and met a number of other kids beside a nearby creek. Fortunately, they did not get into any trouble or create any damage, but it is a mere step from that to causing damage. In that instance the parents were responsible but, short of putting bars on the bedroom windows and locking the doors, the escape was not something that could have been prevented. That mother pleaded that this legislation not be enacted because of the pressure it would put on many thousands of ordinary citizens—good par-

ents—who must deal with children who might be somewhat strong-willed or who err on one occasion only and subsequently turn out to be perfectly good citizens. Of course, there are many other examples, and I will certainly refer to some of them as we consider this Bill. The Liberal Party, as I have indicated, will be seeking during the Committee stage of the consideration of the Bill to amend it in order to make it fairer.

The detail of the Bill is something which I think it is important to address at the early stage of my second reading contribution. The Bill is the most far reaching of any in Australia, the United Kingdom or the United States that I have been able to ascertain and imposes a very significant and unlimited liability on parents in the circumstances contemplated by the Bill. Many people ask how a Party such as the Australian Labor Party could have been persuaded to introduce this Bill when it holds itself out as a Party of principle and justice and as one supporting the disadvantaged. This Bill should disabuse people of that view of the Australian Labor Party, because it does quite the contrary to what many people believe the Labor Party stands for. Perceived political expediency in relation to this issue has won and principle has lost.

This Bill needs careful consideration. It deals only with children between the ages of 10 years and 14 years. It applies to all children under the age of 15, but up to the age of 10 a child is not capable of forming a criminal intent. The Bill applies where a child under the age of 15 years commits a tort and the child is also guilty of an offence arising out of the same circumstances. A tort really is a civil wrong where a liability for damage or loss is incurred. Of course, it is quite common for torts and offences to arise out of the same set of circumstances. In those circumstances where a child has been convicted or found guilty of an offence, or, where not found guilty, the court is satisfied beyond reasonable doubt of the child's guilt, then a parent will have a liability.

Under the Bill, a parent of a child is in those circumstances jointly and severally liable with the child for injury, loss or damage resulting from the tort if the parent was not at the time of the commission of the tort exercising 'an appropriate level of supervision and control over the child's activities'. It is interesting, first, to note that it is a joint and several liability. That means that if the child commits a tort and the damage is $5 000 then the child is civilly liable in any event for that $5 000 damage, but under this Bill, right from the outset, each parent of the child is liable for the $5 000 and a person is entitled to sue any one or more of the parties who are jointly and severally liable—that is, the child and either one or other or both of the parents of that child.

Of course, in making the claim, the plaintiff will have to show that the parent was not at the time of the commission of the tort exercising 'an appropriate level of supervision and control over the child's activities'. It is an interesting question as to what is an appropriate level of supervision and control. Supervision is different from control. Control suggests some positive constraint or restraint, while supervision is, in a sense, surveillance or observance or general oversight. However, it is, of course, to be judged in each circumstance what would have been an appropriate level of supervision and control at the time.

The other interesting point to note is that the supervision and control is not over the child but over the child's activities. Presumably, those activities are not limited only to those activities which result in the commission of a tort or the commission of an offence. Presumably, the reference to the child's activities is to be taken more broadly and to relate to the day-to-day activities of the child, such as attending school, wearing clean clothes and behaving oneself—and to a whole range of activities over which the parent will have to be shown not to have been exercising an appropriate level of supervision and control.

The parents are given a defence. It is important to recognise that, where there is a defence, it has the effect of what we sometimes describe as a reverse onus of proof provision. That means that the parent is liable, for example, and when the parent is brought to court all that the plaintiff will have to show is that there was damage, that the child committed the damage, was found guilty of an offence beyond reasonable doubt and that the parent sued is the parent of that child. That then is, in a sense, a *prima facie* evidence of liability. The parent will have to go into the witness box and prove, at least on the balance of probabilities, that he or she generally exercised, to the extent reasonably practicable in the circumstances, an appropriate level of supervision and control over the child's activities.

The parents' involvement with the child and with any other children in the family, the parents' work habits, recreational habits and a whole range of activities will be the subject of cross-examination. Of course, this will be in the public arena without the benefit of any suppression order so that the parents will be under public scrutiny as to the circumstances out of which the liability arose. The parents will have to establish on their evidence and, possibly by calling supporting witnesses, that they were good parents, that they exercised, generally, to the extent reasonably practicable in the circumstances, an appropriate level of supervision and control over the child's activities.

However, the important issue is that it will be in the public arena that the parents will be required to go into the witness box and will be the subject of cross-examination about their family life and will have brought under the microscope, if they defend the claim, all the activities of the family, the relationship with the child and, to that extent, the activities of the child. I think that that presents a very serious threat to any family that might be placed in that position. It also means that all sorts of consequences can arise both for the parents and for the child in their own relationships with each other—parent to parent, parents to child as well as parents to the rest of the community, particularly if some publicity is given to the claim. Of course, one could expect publicity, under the Government's Bill, where there is an unlimited liability. So, if a school burns down and there is an action against the parents, one could imagine that there would be very significant publicity given to the claim against the parents in the civil court and all the details of their relationship with the child and the way they treated the child would be out in the public arena.

That is a threat to the family and it is a threat to the child as well as to the parents. Ultimately, it will come down to a question of the parents being able to satisfy the court, against perhaps some pre-conceived notions of the court, that they were good parents and should not, therefore, have to carry the liability. What they will have to carry will be the costs of defending their reputation as parents in the face of a claim against the family resulting from what might be an isolated act of their child, even though the parents believed that, in all the circumstances, they behaved properly. It will not be their judgment as to what was good parenting; it will be the judgment of the court. The court will make that conclusion after substantial cross-examination and investigation of the capacity of the parents.

I think that a lot of parents have had the experience of growing children who do try to flex their muscles from time to time and who try to break loose from the family con-

straints which hold them. Mostly, families cope with that but, even though the parents might be good, loyal and caring parents, periodically something goes wrong. It is in those circumstances that the Opposition has the most concern about the impact of this Bill.

There was some debate in the House of Assembly about the consequence of an order being made against a parent. In that debate the Liberal members referred to the fact that, if there is a judgment against a parent, that could effectively result in the bankruptcy of the parent, with the consequent deterioration in the family environment and, obviously, the breakdown of the family unit. It would be very difficult for a parent, even a good parent, not to blame the child for the predicament in which the family finds itself as a result of the court action and ultimate bankruptcy. In the House of Assembly the Minister of Education said, 'Well, it will not result in bankruptcy,' but I suggest that that ignores the reality. Although there is provision for any judgment debt to be paid by instalment, there is also a provision in the Bill that, if default is made in the payment of an instalment, the whole amount of a judgment debt becomes due and payable. Even if the judgment creditor might in some way be constrained not to proceed to petition for bankruptcy in the early period if there is default and the whole amount becomes due and payable, then that is another matter.

Members must remember it may not necessarily be an individual in his or her own right—it may be an individual as the nominal plaintiff for an insurance company, which might be subrogated to the rights of the insured plaintiff. It is in those circumstances that it is not so much the immediate victim who pursues the action—it might actually be contrary to the wishes of the immediate victim—but the insurance company or some other body which has co-existing rights might decide it was appropriate to pursue the parents of the child and in those circumstances bankruptcy may well be the result. As I say, it is in those circumstances that there will be a very serious consequence for the family. It may be that there are other children in the family and they, too, will suffer as a result of this action.

The other area which does create concern and which my amendments will seek to address, although I will deal with those a little later, is the situation of divorced or separated parents. In the circumstances where parents are divorced, frequently there is an order for custody for one and the other parent will only have access. That may be access on a week by week basis, for a day on a weekend, or it may be for school holidays for one or two weeks, but one of the parents will be the custodial parent and the other will be the non-custodial parent. In some circumstances the Family Court, for example, has said that the non-custodial parent is not permitted to have access to the child for one reason or another. In those circumstances, notwithstanding that order, this Bill provides that that parent is jointly and severally liable for the liability of the child, but it may also be that the non-custodial parent—

The Hon. Carolyn Pickles: They are liable in law to support the child.

The Hon. K.T. GRIFFIN: That is correct, but this Bill is not dealing with the question of support; it is dealing with the question of civil liability.

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: The problem is that, if the Family Court has ordered that you, the non-custodial parent, shall not have access to the child, it is very difficult in those circumstances for that non-custodial parent to be able to exercise any control or exert any discipline over the child to ensure that the child does not go out and commit an offence and create damage. In those circumstances, that parent may still end up with a liability.

The other point I make is this: even if the Family Court did not make that judgment and if one parent has custody and the other has access, it is in those circumstances that I think there is equally a problem. If mother has the children during the week and father has them on the weekend, for a start different disciplinary regimes may be applied. Mother may be more strict during the week and father, seeking to create a good impression, may relax the discipline. In those circumstances, there are different standards. When the child goes back home to the tougher discipline of the mother during the week, there may well be some element of rebellion.

In those circumstances where the child might, maybe on the weekend, commit an offence under the more lenient discipline of the father, under this Bill the mother has a joint and several liability. It may be that the mother can say, 'During the week I have exercised an appropriate level of supervision and control but, in the circumstances, with the child away with the father, I could not do much about it.' It may be that that is the case, but the problem is that this Bill exposes the mother to litigation. On the other hand, the father, having the children for only the weekend, will equally be at risk if the child commits an offence and creates damage during the week.

Whilst both of them should have responsibility as such for the nurture and upbringing of the child, in real life the fact is that it does not happen in that way where parents are separated and the child lives with one parent during the week and goes to the other parent on the weekend. If the child commits an offence and creates damage during the week whilst with the mother (the position can be reversed; it does not matter very much, but that is generally the position with younger children where custody is involved), the situation arises where the father will then be jointly and severally liable and at least exposed to the risk of litigation. It is all very well to say that someone who is claiming damages will not try that on. The fact is that there is no guarantee that the person will not try it on because, if father has some assets, and mother has the home, scraping by, raising the kids on a week-to-week basis—

The Hon. Carolyn Pickles: Which is usually the case.

The Hon. K.T. GRIFFIN: That is what I said earlier; I am not decrying that. It can be the reverse, but I am saying that that is generally the case. In those circumstances, the plaintiff—the person who may have suffered the loss, and it may be an insurance company, ultimately—will be at liberty to sue both, and it is the exposure to the litigation which is the concern.

Another point about it is that undoubtedly legal costs will be involved and, even if the mother or father, or both in those or other circumstances, is successful in defending an action against them in relation to the damage caused by their children, the fact is that they will never recover the full amount of their legal costs, even if they are successful in the court.

We also have the situation where parents might leave children with friends for a weekend, believing that the friends will discipline the child adequately. It may be that they leave the children for a night with a babysitter whom they believe to be responsible. In both those circumstances, parents may believe that they have done the right thing but in fact the friends are not such strict disciplinarians and the child, in company with the child or children of the friends, gets out or is allowed to get out in the middle of the night and causes some damage.

Alternatively, a babysitter might not be able to exercise the same degree of discipline as could the parent. If in both those circumstances damage should be caused by the child's slipping out in the middle of the night, appropriate discipline not being exercised, or the child's being permitted to go down to Jetty Road, Glenelg, or to some other place where groups of young people gather and the child gets into some sort of difficulty as a result of peer group pressure, the parents are still exposed to a liability. We can argue for ever and a day about whether or not they will ultimately be found liable by the courts. The fact is that they are exposed to the liability and in those circumstances it may result in those parents not only exercising a higher level of responsibility but also imposing unrealistic constraints upon the child.

One can envisage many circumstances in which a child who is faced or confronted with extra tough discipline so that there will be no activities outside the house or outside the school might rebel, particularly if they are 12, 13 or even 14 years old and want—irrationally, it might be to an adult but nevertheless for good reason to that child—to reject the discipline of the parents and either undertake a vindictive spree of damage or, in a fit of pique, commit some offence which results in the parents having some liability. In those circumstances, there is a problem.

I want to address briefly the amendments which the Liberal Party will be proposing. First, we think that the liability ought to be limited to $10 000. Legislation was passed in the Northern Territory this year which placed a limit of $5 000 on parents, and that related only to property damage. This Bill deals with both property and personal injury claims, but it is unlimited. We think that a limit of $10 000 would be appropriate.

We also believe that, rather than a defence being available to parents, the onus should be placed upon the plaintiff, as is the normal provision of the civil law, to establish the various elements of the cause of action so that the plaintiff will be required to show that the parents did not generally exercise to the extent reasonably practicable an appropriate level of supervision and control over the child's activities. We will want also to place a liability upon the Minister of Family and Community Services. That was greeted wtih some concern by Government members in the other place. They were correct in saying that the amendments moved in the Lower House sought to impose a strict liability.

To some extent, the argument was correct, and I think it was reasonably sound, but only to the extent of the aspect of strict liability. We believe that if standards are to be expected of parents then equally they must be expected of the Minister of Family and Community Services and the Minister's own officers, where a child comes under the care and control of the Minister. So, we will be moving an amendment in a somewhat different form from that which was moved in the other place to recognise that strict liability of the Minister is not appropriate in the light of the arguments but that some liability is, so the Minister will be jointly and severally liable with the child.

The reaction in another place was that it was unreasonable to expect the Minister to carry any liability because, after all, these children who are under the care and control of the Minister are effectively uncontrollable. If they are uncontrollable children, the parents still face the possibility of being exposed to liability, even if they have handed over the responsibility to the Minister. It is in those circumstances that there is an injustice in the provisions of the Bill. More particularly, however, it provides a good reason why the Minister of Family and Community Services should attract a liability if proper care and supervision have not been exercised by the Minister or by those with whom the Minister has placed the child for the purposes of care and control.

Having dealt briefly with the question of amendments, I want to address some aspects of the law as it presently stands, both here and in other jurisdictions, because that needs to be put into a perspective.

The law at the moment does not allow a person suffering loss or damage automatically to obtain from the parent recompense simply because of the relationship of parent and child. The victim or claimant is required to sue the parent and prove that the parent is responsible for the child's tort because of the actions or omissions of the parents.

There are some circumstances in which parents may be liable civilly for torts committed by their children. They are limited in some respects, but they include the following: in the circumstances that the parent has directed, authorised or ratified the act of the child; where there is a relationship of master and servant between parent and child; where the parent is negligent in affording his or her child an opportunity of injuring another by leaving dangerous things within easy access of the child; in circumstances where injury to the child or another is foreseeable; where a parent who knows or ought to know of a particular dangerous propensity of his or her child fails to protect others against injury likely to result from it; or where the parent fails to control the child adequately so that an unreasonable danger to others or to the child results.

Generally speaking, in the circumstances to which I have just referred, the liability of the parent will be greater with younger children and less as the child grows older and requires more freedom and less supervision, although there is no precise age at which parents cease to be responsible for injuries caused by their children. That is still an area of some uncertainty.

The area of criminal liability obviously has been significantly addressed by the courts, and I think it is probably obvious that a parent who participates in a child's crimes can be prosecuted criminally and, if convicted, may be the subject of a compensation order. The criminal participation can include inciting a child to commit an offence, counselling or procuring or aiding and abetting the commission of a criminal offence.

In some jurisdictions there is already a liability. I have mentioned the Northern Territory, where there is already a liability for parents for the civil acts of their children. I refer particularly to the Northern Territory, where there is a limit of $5 000 on compensation that may be ordered to be paid by a parent for property damage where a child is not in full-time employment and resides with the parent.

In that legislation the age at which parents may be liable goes up to 17 years, as I recollect. It was interesting that before the election in the Northern Territory this Bill was proposed but the then ALP Opposition indicated that it would oppose any law that made parents pay for the crimes of their children. Mr Neil Bell, the legal spokesman for the ALP Opposition, is reported as saying:

> We hold to the principle that the individual should be responsible for him or herself.

That was dropped in the lead-up to the election but revived after the election and then passed, as I understand it, without that opposition being expressed. In New South Wales there was a Child Welfare Act, but that has since been repealed. However, it did place a liability on parents up to the sum of about $1 000, as I recollect.

The United Kingdom has the Children and Young Persons Act which provides for parents to have some liability.

It is interesting that there is a small minority of cases involving juveniles where parents ultimately are held by the courts to be liable. It is not clear why orders are not made, but in the United Kingdom it is presumed that some of this relates to the difficulty of the family situation in which the parent finds himself or herself.

In the United Kingdom there has been a white paper. It may be that that has been proposed in legislation; it is not something that I have been able to ascertain in the past few months. Certainly, they were proposing that parents should have some liability for the acts of their children, but more particularly that parents should be required to attend in court when children between the ages of 10 and 15 years were before those courts.

The other interesting proposal in the United Kingdom concerns local authorities which had the responsibility for children (much as the Minister of Family and Community Services has a responsibility for children in need of care). The UK Government was proposing to introduce legislation to enable courts to require the local authority to pay any compensation and fines when a juvenile in the care of the local authority was convicted of an offence and the court was satisfied that the offence followed a failure by the local authority to carry out its duties.

New Zealand has a different approach, and the central part of its juvenile justice system is the family group conference, which brings together the offender, the offender's family group, youth aid, police and the victim, where the victim is willing to participate, to discuss resolution of the issue with the young offender.

In that instance the conference is focused on the best outcome for society, the victim and the offender, and almost invariably the solution involves reparation in the form of compensation for the victim, work for the victim, or community work agreed to by all parties. One of the areas of emphasis in New Zealand is to enable families to face their contribution to the offence and to provide support to both the family and the young person to prevent offending in the future. So, there is that family group conference concept in New Zealand which is a less confrontationist and legal environment than is proposed in this Bill.

Tasmania has a similar provision to that which was in place in the New South Wales Child Welfare Act. I understand that the opportunity in Tasmania to make parents liable is rarely, if ever, used. The Tasmanian Department of Community Services has adopted the view generally that the child is responsible for his or her actions. In Victoria there is no law relating to the liability of parents for the acts of their children. In fact, the proposal there was scrapped early in 1990.

I want now to relate some of the submissions that have been received by the Liberal Party in relation to this Bill. There has been little support for the concept by various organisations. To be fair, one should say that the South Australian Association of State School Organisations indicated its support for this legislation. It certainly did that when I first sent the Bill to it in 1989, and it has repeated that support for the general concept only recently following the present Bill being forwarded to it.

On the other hand, the South Australian Council of Social Service has expressed opposition to the Bill. It is important to read what SACOSS has submitted:

> To put our concern simply, this Bill does not right the Wrongs Act. We support the notion that children should become more responsible for their own bad behaviour and are uncertain that this Act is a step in the right direction as it places more responsibility on parents. We also believe negligent parents should be more accountable. However, we do not see this Act as having positive influence on such parents. Further, we do not believe this Act is successful in a social justice sense redressing the wrongs caused by children. We actually believe that the Act will compound hardship as opposed to alleviating it. Some families will no doubt be forced to sell their homes and possibly go further into debt to meet the costs of their children's behaviour. In cost benefit terms the State will have to deal with another family in hardship.
>
> The Act is very broad and there is some confusion as to its interpretation. What is the situation when a child is in truant school and commits an offence? Under the Act there is some argument as to whether the parent is responsible; by implication the school may also be liable. What of cases where children are in guardianship and it is the Minister who is responsible? What is the situation for non-custodial parents? No distinction is made in this latter case within the Act. What is the situation when a child sneaks out their bedroom window and commits an offence, a not uncommon occurrence? The continual problem of street children is also seemingly not addressed within the Act. Are their parents to be made more accountable? In all the above there would be many instances when the parent has done all they could and will experience real hardship as this has to be established in court. I would contend that the State is inadvertently coaching irresponsible behaviour by children as it seeks to prove the parents' innocence rather than the child's guilt.

Later it goes on to say:

> It is our belief the Bill would compound hardship, be costly to exercise in relation to court costs etc., and would probably only relate to a very small number of cases.
>
> The Bill does not seem to provide any real benefit nor take positive action to minimise the increase in juvenile crime. The limited resources in this area would, we believe, be better allocated in more preventive rather than these punitive measures. The cost to the State of this Act seems fairly high and out of proportion with any benefit that it might bring. SACOSS does not support the introduction of this amendment.

That was a letter written in relation to the last occasion on which the Bill was before us. I understand that nothing has changed the view of SACOSS.

In earlier debates on a similar Bill I have referred to the Law Society's view. Again, that view was that the Bill was unworkable and undesirable. I do not need to do more than quote from the letter from the Law Society on that occasion:

> It is the society's view that the proposed legislation is both unworkable and undesirable.

In relation to the unworkable aspect of the Bill, it says:

> The liability of the parent or parents is predicated upon what really amounts to establishing negligence in supervising the offending child. There has been a marked and deliberate reluctance in the courts to impose that sort of liability on parents. Certainly the reluctance is demonstrated in the area of personal injury claims but, nonetheless, it is relevant here.

Later, it states:

> Central to the working of this proposed legislation is the legal interpretation of what constitutes 'an appropriate level of supervision and control over the child's activities'. No doubt in the appropriate case a court will be forced to attempt a definition of that wide ranging phrase but, bearing in mind the comments of the Full Court—

in cases to which it refers—

> we would suggest that a wide and generous conclusion will be reached in favour of the parent. For the same reason that our Supreme Court declines to embark upon an examination of the relationship between parent and child in the personal injury area, the courts will be similarly reluctant in this area. In our view, as a matter of principle, such open ended legislation should be avoided.

In relation to the undesirable aspect of the Bill, it says:

> If perchance some intelligible interpretation of this legislation is possible and therefore it becomes workable, we nonetheless think it is undesirable from a social point of view because it probably exposes the parents of wayward children to a liability which they cannot insure against.

That is the view of the Law Society. Other views have been expressed by individuals who have telephoned me more recently rather than earlier indicating that for a variety of reasons the legislation is undesirable.

As I said earlier, there are a number of arguments against the legislation, and I want to touch upon several of them. A view has been expressed that there is a danger that

requiring parents to compensate the victim does nothing to bring home to the child, who might be the young offender, that he or she should be responsible for his or her actions. The view has been expressed that under this legislation children will not be encouraged to take responsibility for their own actions if their parents are continually bailing them out of trouble. The proposal may give the wrong impression to children about the responsibility for their own behaviour. If the Bill in its present form were to pass, they would be taught that they can act wrongly and that someone else will pay. If compensation were ordered to be paid by the parent, effectively no sanction would be imposed upon the child. The view has also been expressed that it is contrary to natural justice that someone should be made liable for the criminal acts of another when they are not themselves guilty of a criminal act. Whilst the argument might be that this is a civil claim, ultimately it depends upon the commission not only of a tort, but of a criminal act; that is, an offence.

It has also been put to me that many children who commit offences are unhappy at home and may have an antagonistic attitude towards their parents, and that this legislation might encourage some to be vindictive towards their parents; it may encourage the children to act antisocially in order to strike at their parents.

In fact, it may be counterproductive of good family relationships. A parent who is found to be liable for the act of a child is, effectively, being told that he or she has failed as a parent, and that the parent could have done something to prevent the child from offending, but that this was not done. Of course, in that same context, the proposal may lead to a stigmatisation of perfectly normal parents.

Although I am not sure how realistic it is, it is important, nevertheless, to put on the record that some people believe the legislation may lead parents of difficult children to give up attempts to control them and encourage those children to leave home. Of course, if the parent attends court with the child, the child will hear the parent being described as an unsatisfactory parent and, similarly, the parent may be required to describe the child as a hopeless case or beyond control. In those two situations, the parent/child relationship will be severely damaged. As I said earlier, the other general issue in the whole process is the threat of a liability which is designed to impose some control but, from a practical point of view, it is questionable whether that threat will have the desired effect or some undesirable and perhaps unintended consequences in relation to the way in which parents and young offenders relate.

In the event that what I have been saying suggests that there is no alternative, I want to put on the record a few initiatives that could, in fact, be taken to deal with the issue of young offenders. Ultimately, the community's desire is that young offending be reduced, and we have already seen a petition presented to the House of Assembly suggesting that all 16 year olds and over who commit offences should be tried in an adult court. I do not go so far as to say that all young offenders should be so dealt with but, rather, where young offenders repeatedly commit serious offences such as rape, assault and breaking and entering, if they are 16 years of age or over, there is a very strong argument that they should be dealt with strongly as adults. In respect to repeat young offenders who make a habit of stealing motor vehicles or committing other similar offences, there must be a much stronger desire to ensure that secure detention is a realistic option.

We already have in the House of Assembly a select committee to deal with young offenders and the Children's Court. One would hope that it would be looking at the issues of accountability of staff of the Department for Family and Community Services to the Children's Court, the court's operation, having cases dealt with quickly and having the penalty fit the offence. A range of things can be done in the area of education, particularly in establishing standards for children in the education system. This would involve in the teaching process not only young people but also law enforcement officers. Quite obviously, economic development is an issue because, with unemployment being high—particularly youth unemployment—if 14 and 15 year olds who want to obtain jobs in the year or two ahead they see no prospect of that, there is not much incentive to conform to society's standards. Therefore, quite obviously, the focus by Governments on encouraging economic development and improving the employment situation, particularly among young people, must be given a very high priority. In my view, there must be a diligence to ensure that young offenders make some compensation, even if it takes a number of years before they obtain sufficient income to enable them to contribute towards compensating the victim. The more we can place a responsibility and liability upon young offenders rather than upon their parents, the better is the prospect that, ultimately, youth offending will diminish rather than increase.

In conclusion, I repeat that the Opposition will support the second reading of this Bill. We believe that some helpful amendments can be considered by the Committee. They will make the Bill fairer and ensure that the concerns of many in the community about crime, and young offenders in particular, will not adversely affect the developing relationships between parents and their families, and that the pressures that are likely to be posed by this Bill will be avoided. It is in that context that I indicate our support for the second reading.

The Hon. J.C. BURDETT: I support the principle. Where the cause of damage committed against somebody else, either against property or a person, is lack of reasonable parental control, the parents should be liable, but only in that circumstance, and this Bill goes much beyond that. Of course, it must always be a grey area whether the damage to another party caused by a child is due to a lack of reasonable control by the parent and, as the Hon. Trevor Griffin has pointed out, one of the problems with this Bill is that, in many circumstances, the parent will be exposed to an expensive action in circumstances where he or she ought not be so exposed.

It is probably worth mentioning that until recently this kind of question was not much addressed, certainly in this Parliament, and the Hon. Trevor Griffin has referred to what has been done in other jurisdictions. I think it is a phenomenon of our age that children cause such severe damage from time to time such as burning down a school and causing $3 million or more worth of damage. That kind of thing did not happen so much in the past, and I think that has brought up this issue, and it is proper to deal with it. As the Hon. Trevor Griffin said, I think this Bill goes too far in its method of dealing with the issue. Clause 3 is the substantial clause of the Bill and provides for a new section 27d which in turn provides that, where:

> *(a)* a child under the age of 15 years commits a tort; and
>
> *(b)* the child is also guilty of an offence arising out of the same circumstances,
>
> a parent of the child is jointly and severally liable with the child for injury, loss or damage resulting from the tort if the parent was not, at the time of the commission of the tort, exercising an appropriate level of supervision and control over the child's activities.

I point out that in most cases making the parent jointly and severally liable with the child is a nonsense. It really means that it is the parent who will have to pay because, except in rare circumstances, the child under 15 years will not be able to pay. Only in cases of substantial damage would these actions be able to be brought, and rarely would the child be able to pay any of the damages awarded by a court. So, the joint and several liability is really the liability of the parent: the liability is imposed on the parent. There is a defence under new section 27d (3), which provides:

> It is a defence to a claim against a parent under this section to prove that the parent generally exercised, to the extent reasonably practicable in the circumstances, an appropriate level of supervision and control over the child's activities.

This is a reverse onus of proof. The new section makes the parent liable and there is a defence. This is not the general situation in civil law. In criminal law, there are some cases of reverse onus of proof, but, generally speaking, in the civil law the plaintiff must prove on the balance of probabilities every element of the circumstances which give rise to his claim. That would mean in this situation, if we adopted that principle, that the plaintiff ought to have to prove that there was a failure on the part of the parent in exercising, to the extent reasonably practicable in the circumstances, an appropriate level of supervision and control over the child's activities, instead of the parent's having to establish that as a defence.

It is my view that the reverse onus of proof certainly ought to be removed. I do not have a special personal interest in this Bill to the extent that, whilst my wife and I were blessed with eight children, they are all over the age of 15, so it will not apply to me. In the period when our children were younger, I suppose that we were lucky that there was only one occasion on which anything that might have come close to giving rise to the liability mentioned in the Bill did arise. I do not think that that child is likely to read *Hansard*, so I do not think he will read what I have said.

However, I think it is worth mentioning the example because it shows the dubious sorts of interpretations that could be placed on liability imposed by this Bill. At the time I referred to we lived at Mannum. Our house was built on the top of a cliff overlooking the punt. The block was large, some one and a half to two acres, although the useful part was on top of the cliff where the house was built and was about the size of a normal housing block; the rest of the area was cliff and gully. One fine summer's day one of my children was playing with a friend in the gully below the house. They were playing with matches and guess what happened? The whole of the gully and the cliff-front went up in smoke. The fire did not involve only our house—that would not have mattered, of course—but it went right along the front of the cliff for a considerable distance and burned a lot of grass—there was a lot of smoke and flame. Fortunately, the fire did not cause any great damage—except to me as a result of the large donation I felt obliged to give to the EFS, as I think it was at that stage, prior to the CFS.

The Hon. I. Gilfillan interjecting:

The Hon. J.C. BURDETT: Well, the Hon. Mr Gilfillan could not have known the stage when this occurred; so, we will excuse him for that. If the fire had caused any damage—which it easily could have; it could have burned three, four or five houses including ours—what would have happened to us if this Bill had been in force? Generally speaking, the child involved was well-behaved. He obeyed the orders that were given to him by his parents. On this occasion he played with matches—which I guess a lot of children do. Would we have been liable under new section 27d? Could we have availed ourselves of the defence and should we have been liable in that kind of situation?

I think that these practical examples being presented for the Council's consideration highlight the way in which we should consider this issue, because there can be situations where it can be very dubious as to whether there is any real neglect on the part of parents and in determining whether or not the parents ought to be held liable. I repeat: the ordinary situation in civil law is that the plaintiff has to establish, on the balance of probabilities—not beyond reasonable doubt—every element of the claim that he makes, and this Bill departs from that. There is a situation under new section 27d, of course, that the child has also to be guilty of an offence. Undoubtedly, our child would have been guilty of an offence in that situation. In fact, the police came and gave him a very serious talking to, for which I was very grateful.

Another aspect of the Bill that I find difficult is that the liability is unlimited, as mentioned by the Hon. Trevor Griffin, and he proposes a cap of $10 000. He referred to the fact that there is a $5 000 limit in the Northern Territory. I think that with some of the damage that can occur these days, particularly with fires—I have mentioned schools and we should remember the Ash Wednesday type situation—the liability could be horrendous. It seems to me that it is only proper to propose a cap, to limit the liability of the parent or parents.

The issue of the non-custodial parent was very properly raised by the Hon. Trevor Griffin. Members should remember that the age limit is 15 years. The non-custodial parent may not have had custody or may not even have had access to the child for 10 years or more. Is it just that that parent ought to be held responsible for the acts of the child when he or she has had no means of exercising any kind of control? Admittedly, that can be raised by way of defence under subsection (3). However, surely that should not be the situation. Surely the liability should only attach to a custodial parent and, I suggest, a parent with whom the child is residing. This relates particularly to wards of the State. If a child is a ward of the State, how can it possibly be just, as, on the face of it this Bill provides, that the parent could be liable?

The Hon. Trevor Griffin raised a question in relation to the baby-sitter. A parent or parents may be going out for the night, or perhaps a longer period, and they may justifiably engage a baby-sitter. I think those of us who are parents have in those circumstances almost always done that. We would always take care to ensure that the baby-sitter is a person whom we regard as being responsible, because we have regard for our children and we would not engage anybody else. The baby-sitter might be a younger person. As the Hon. Trevor Griffin said, it may be possible for the child to escape from the baby-sitter's control by climbing through a bedroom window.

What particularly struck me about the reference to the baby-sitter is the situation of grandparents in those circumstances. My wife and I (and we are very pleased about this) have seven grandchildren whom we frequently baby-sit. As far as I am concerned, we do a good job but, if we did not, why should the parent be responsible if the child got outside our control and committed some act of damage? Surely, the parents could do nothing more reasonable than to leave the children in the control of their grandparents. Why should the parents be held responsible if some damage occurs during the period that the grandparents or other baby-sitters are looking after the children?

So, it is for these reasons that, while I support the principle that where the damage is caused through lack of

control by the parent they should be held liable, I believe that the Bill is defective. At this stage I support the second reading but I will be supporting the amendments foreshadowed by the Hon. Trevor Griffin.

The Hon. R.J. RITSON: I support the second reading for reasons of Party discipline, which I will explain in due course. However, at the outset I want to say that this Government is guilty of pursuing a reprehensible political gain. It has sacrificed all the principles of justice and compassion for a political image. This Bill was introduced on the eve of the previous State election and it produced a popular public response, because the public sees very clearly at first instance the superficial aspects of it, that is, the principle of which my colleague John Burdett spoke that, where a parent could have prevented a child causing damage but did not, then it is reasonable according to that principle that that parent should be held liable.

Those members of the public who became aware of the legislation saw that much in the Bill. They did not see the actual Bill and they did not see the enormous problems associated with it. So, the Government was partially successful in its attempted highjack of our image as a Party concerned with law and order, so that it could cloak itself with a few more votes before the last State election. In the year since that time, it is quite obvious that the community is somewhat divided on this matter. Again, I refer to those members of the community who know about it.

I still think that a large section of the community is not really aware of what is going on in here today. However, differences of opinion did arise and, of course, some of those differences were evident amongst members of the Liberal Party who lobbied us in various directions.

The second aspect—and the disgraceful aspect—of the Government's abuse of this Bill is that I believe it reintroduced it to try somehow to embarrass the Liberal Party. It could not have reintroduced it on the basis of its political beliefs and in the interests of justice and compassion, because it cuts across everything the Labor Party says it believes in.

It will fall hardest on the poorest section of the community; it will fall hardest on women; it will fall very hard on those families who, through no fault of their own, perhaps have grown up against a background of poor literacy; of very marginal or near intellectual disability; people who have suffered the crushing pain of a marriage breakup; and people who are clinging to their mere existence in the face of poverty. These are the people upon whom this Bill will fall hardest.

The aspects of the Bill that will cause that to happen have been extremely well analysed by my colleagues, who are both lawyers, the Hon. Mr Griffin and the Hon. Mr Burdett. The Bill is littered with problems. The obvious ones, of course, are the effects it will have on non-custodial parents and the effects it will have in relation to street kids and runaway children who commit offences, but whose parents may not even know where they live. However, as Mr Griffin said, the parent would have to go into court and try to detail all these circumstances to the satisfaction of the judge.

There is a special difficulty with the presumption of guilt until proven innocent. There are very dubious grounds to believe that this Bill will have any effect on the incidence of juvenile crime. I do not know what studies have been done. I ask now: what studies have the ALP or the Labor Government undertaken to demonstrate any sort of significant effect that legislation such as this would have on the incidence of juvenile crime? At least when seat belt, crash helmet or random breath test legislation is introduced, that is based on hard data which provides a high degree of statistical verification and, in instances of that sort of legislation, we have seen the predicted effect. However, here there is nothing—just Bannon's political gain, just an attempt to highjack a mantle of righteousness before the last election.

I will not detail all over again the other difficulties of the Bill that have been mentioned by my colleagues. If I based my actions on my personal opinion, I would probably not support the second reading of this Bill, but it was the clear desire of the majority of my Party that the second reading be supported. For us, Party discipline is not exerted by sanctions—it is a self-imposed discipline and I take that discipline upon myself, because I believe more in stability and predictability of politics than I do in the infallibility of Bob Ritson.

So, in almost every instance where the majority of my colleagues disagree with me, I think carefully about it, and I think that I should preserve the stability of Party politics over and above any belief in my own fallibility. For that reason I, too, will support the second reading, and it may be that some of these potentials for injustice can be ironed out at the Committee stage. However, I notice from some of the quotes and correspondence from Mr Griffin on this issue that we are now getting past the first impression of, 'Oh, it seems to be a good idea,' and getting some thoughtful analyses from community groups. I am not sure whether the churches, for example, have yet considered the implications for justice and social justice in this Bill.

I must say that, over many years as a general practitioner, I have sat at the consulting desk in the real world. I have seen, understood, listened to and tried to help people with all sorts of difficulties—people suffering from bereavement, poverty, and chronic illness and people with educational and intellectual difficulties. I know that real world. I know where this Bill will fall. So, it is with a great deal of misgiving but, in the end, a willing submission to my colleagues and members of my Party for the reasons I have stated, that I support the second reading.

The Hon. I. GILFILLAN: The Democrats oppose the second reading. We are vehemently opposed to the principle that is promoted in this Bill and we believe that, were it to be carried in any form that appears possible to us, its effects will be destructive and punitive in ways which will not help the crime factor, the family stability factor, juvenile delinquency or justice in any way. It was with some interest (and customary interest, I might say) that I listened to the contribution of the Hon. Dr Bob Ritson, and I hope that in due course he will note that I am indicating my support to a large extent on many of the concerns and misgivings that he expressed in his contribution. I believe that there are very real possibilities of the measure in this Bill backfiring, particularly in the draconian form in which it has been introduced by the Government.

The children to whom we are referring and who will be affected by this legislation, by the very virtue of the activities on which they are required to have been charged and found guilty before this legislation comes into effect, are not those whom one will find stemming from well adjusted, well resourced and stable family structures. In the main, they will not be children who have a warm and trusting relationship with their parents on an enduring basis. Many of them will have family lives that are so disruptive and antagonistic that, once this proposal has been put into effect and they see that they can cause their parent or parents incredible embarrassment or extreme financial damage, they may well involve themselves in activities with that as a

major motive. I think the reverse end of this same spectrum must be taken into account, and that is the reaction of parents who are so concerned at this risk that they actually introduce oppresive disciplinary structures and family regimes so that unacceptable corporal punishment, restraint and family stress result because of the fear by parents of the consequences of this Bill.

The Hon. R.J. Ritson: You are caught between child abuse and being sued, aren't you? There's not much room between them.

The Hon. I. GILFILLAN: Indeed. There's not much room, as the Hon. Dr Ritson interjects. He was otherwise engaged or he would have noted that I commended him on his contribution to the debate. Another option is where the parent who really does not have strong parental ties with his or her offspring cuts their losses and kicks out the child. There are many chilren whose hold on their domestic protection—the actual residential capacity in the home—is fragile enough, anyway, without the extra pressure and risk of this legislation.

At this stage, probably very few South Australians are aware of this legislation. I believe that more and more people are becoming aware of it. That is a different matter in its own right, but many people will become aware of it once it is invoked, by way of the publicity that surrounds it or even the publicity surrounding its actual passage, and this will impact on people, many of whom are in areas of the city which are suffering from low socio-economic resources and are vulnerable to the pressures that I have outlined and may actually snap the tenuous hold that, in certain families, keep parent and child together.

I also find totally obnoxious the concept that a court will judge parenting. I dare say I cannot speak for all honourable members but, certainly, on my behalf I would say that I certainly was not consistently a good parent, and I would find it very difficult to judge my parenting objectively. I have a very clear recollection that all my children rebelled vigorously at various times against parental discipline and, in certain circumstances, I believe they actually performed some destructive activities—certainly, activities that moved against the social wishes of our family. Under certain circumstances I can see that I could very easily have been a parent who had to defend the quality of my parenting before a court to avoid being sued for damages for certain actions that my children might have taken between the ages of 10 and 14. So, I hardly find any justification to look for a bright side to this measure. It appears to me that it has been introduced as a knee jerk reaction to comply with some public image aimed at making the Government appear as if it is doing something constructive and serious about the problem.

The Hon. R.J. Ritson: Hijack the law and order case.

The Hon. I. GILFILLAN: I think that, in fairness to the Government, my criticism of those who are gung-ho for law and order has applied from time to time to public statements made by the Opposition but, when this matter came before us previously, I believe that the Democrats and the Liberal Opposition were of one mind, namely, that it should be defeated and given no truck.

The Hon. C.J. Sumner: Why do you think they changed their mind?

The Hon. I. GILFILLAN: Don't ask me. It is appropriate to the remarks I have just made about interpreting the motives behind this issue to quote a most informative document 'First Interim Report to the Attorney-General of South Australia on Reform of the Criminal Law in South Australia, Consistency in Criminal Law Reform at a National Level, and Progress toward a Model Penal Code for Australia, November 1991', by Matthew Goode, LLB (Hons), LLM., Senior Lecturer in Law, University of Adelaide, Consultant to the Attorney-General.

On page 21 of that document he quotes Mr Remington, an American academic—quoting from *The Future of the Substantive Criminal Law Codification Movement—Theoretical and Practical Concerns, 1988*—as follows:

> My experience with Legislatures is that clarity and precision of statement are a low priority if a concern at all. More important to legislators is their desire to persuade the public that the Legislature is responding to problems of current public concern. If that can be done in ways that are consistent with a carefully drafted criminal code, fine; if not, the sacrifice of clarity and consistency is a price legislators are willing to pay. If the statute adopted is an effective response to the behaviour that is of public concern, that also is fine. But the chief legislative interest is to maintain the perception of being appropriately tough on crime, whatever the affront may be to the symmetry of the criminal code and whatever the effectiveness of the action taken. Using what is believed to be a realistic and practical approach, the Legislature assumes that the ambiguity and uncertainty which may result cost little if anything.

I accuse the Government of introducing this measure as the quote says 'to maintain the perception of being appropriately tough on crime'. Unfortunately, it is one of the tendencies of the media to leap on this band wagon and pick up the sense of righteous indignation that some sections of the public feel, and look like really cracking down on parents who are in default of their parental obligation; they therefore say, 'Hit them hard and we will cure the problem and hit the guilty.' It is absolute nonsense.

I would much rather turn for what I hope are more constructive observations to other material from the select committee that was quoted by the Minister in the second reading explanation. That committee, which was established on 11 December 1990 to look at these matters, made several recommendations that were outlined in the explanation, as follows:

> 5. that it be mandatory that parents attend at children's aid panel sittings and at court hearings in which their children are involved. It is recommended that penalties attach to non-attendance without proper cause;

Good point. It continues:

> 6. that the current powers available to members of children's aid panels be better utilised so that offenders appearing before the panels be dealt with in a manner which is relevant to the seriousness or nature of the offence;

Good point. The recommendations continue:

> 7. that the family group conference, at present operating in New Zealand be implemented in the South Australian context as an alternative way in which the victim and the offender can resolve the matter of compensation without seeking redress through the legal system;

It then goes on, but, again, good point. The recommendations continue:

> 8. that the current sentencing option under section 51 (i) *(ab)* of the Children's Protection and Young Offenders Act be used by the courts to ensure that perpetrators of 'graffiti art' and vandalism be required to compensate for the damage done. This should lead to offenders being required to assist in the cleaning up of the damage caused to property;

Good point. As there are constructive measures contained in the second reading explanation, I feel somewhat disappointed that the Bill is totally without constructive justification, and is totally threatening to the fabric of families and those families most particularly in need of support, rather than the pressures that I have outlined.

Several members of the public have been thoughtful in their assessment of this matter in the little publicity it has recently had, and they have unanimously criticised it. They point out the difficulties of an uncontrollable child in certain family circumstances, although recognising that the parent does have the capacity through the Bill to try to

prove that they are in fact exercising proper supervision and control.

The sensible people who have been in touch with me realise not only how difficult that will be to establish but also how demeaning, humiliating and unnecessary it will be. So, it is fair to interpret this measure, as one of my callers said, as an attempt to make an innocent person responsible and pay for the offences of the offender. I cannot accept, and I totally reject, that there is this umbilical connection between parent and child in these age groups so that the parent should be liable to a tort for damages.

The New Zealand experience referred to in the second reading explanation is an area that we should be developing in South Australia. The options of punishment in the age groups about which we are talking require some imagination and flexibility but the involvement of community service orders, repairing the damage, where that is appropriate, family discussion and coming to an agreement for some financial compensation to be made are all reasonable options to be looked at, and I believe they are the way we should be going if legislation was to be introduced to deal with this matter at this time.

Finally, I would like to comment briefly on the Liberal amendments. The first significant impact is the reversal of the onus of proof so that the prosecution would need to establish that the fault lay with the parent. That is but a marginal improvement on the Bill. I also believe that the inclusion of the Minister of Family and Community Services being responsible on a similar basis to parents is logical.

The setting of a cap, if there are to be damages, is reflective, and I believe that the Opposition recognises it, if not overtly then at least tacitly, that the parents who will be affected by this measure will mainly be the most impecunious and those who are affected by poverty in our community. This emphasises again the inappropriateness of this Bill and how much it will target those least capable sections of our community.

Having said that, I indicate that the Democrats' opposition to the Bill is so profound that it is our intention to oppose any attempt to alter it by amendment and to vote against it at the second reading stage and, if it gets to the third reading, to oppose it again. We oppose the Bill and we would oppose amendments or the Bill in any amended form that we could conceive.

The Hon. BERNICE PFITZNER secured the adjournment of the debate.

STATUTES AMENDMENT (CRIMES CONFISCATION AND RESTITUTION) BILL

Adjourned debate on second reading.

(Continued from 13 November. Page 1823.)

The Hon. K.T. GRIFFIN: The Opposition supports this Bill, but there are a number of questions that I want to raise for consideration by the Attorney-General. The Bill seeks to amend the Crimes (Confiscation of Profits) Act, which has been in operation since 1986, and the Criminal Law Consolidation Act in several respects.

The Bill follows agreements reached by the Standing Committee of Attorneys-General. I understand that those agreements may result in additional money being made available to be paid into the Criminal Injuries Compensation Fund from the profits of criminal acts which might be forfeited or moneys which might be obtained from the realisation of assets forfeited under the State Act. I understand that money or property forfeited under a registered interstate order for the confiscation of assets is to be retained in the jurisdiction in which the forfeiture occurs and not be repatriated to the jurisdiction in which the forfeiture order was made. In addition, money will be received from the Commonwealth Government under the Mutual Assistance in Criminal Matters Act (Commonwealth) when assets are repatriated from overseas. I understand that money will be paid into and out of the Criminal Injuries Compensation Fund as part of an equitable sharing program. The Bill seeks to clarify the jurisdiction of a court in South Australia to make a restraining order before a person is convicted of a criminal offence in order that assets may not be dissipated prior to conviction.

The Bill also creates the new offence of money laundering. That description has been commonly used in relation to the activities of organised crime, but now it has been enshrined in statute as a specific offence. It is created in order for South Australian law to comply with the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances prior to Australian ratification of that convention. Australia is a signatory to that convention. The pleasing thing about this is that the Commonwealth Government has decided against using its external affairs power to seek to impose a requirement on the States, but has gained the cooperation of the States in legislating separately to bring domestic laws into line with the requirements of the United Nations convention. That is a good example of Federal/State cooperation, and one would hope that that will continue, although there is no guarantee of that looking at it from the perspective of a Commonwealth Government.

In creating the offence of money laundering, there will be a maximum fine of $200 000 or 20 years imprisonment where an individual is involved. The fine for a body corporate is $600 000 maximum. I understand that the offence has already been created in Queensland and New South Wales by legislation which has now passed in conformity with the agreement between the States and the Commonwealth. I know that there is legislation in the Parliament in Victoria, but there are continuing discussions between the Government and the Opposition about some aspects of that Bill.

I want to raise a number of matters in relation to the Bill. The Attorney-General, in his second reading explanation, said:

> This is a program agreed to by the Standing Committee of Attorneys-General whereby money recovered under State, Territory or Commonwealth confiscation legislation will be shared with another State or Territory if there has been a contribution made by an agency of that other State or Territory to the investigation or prosecution of the criminal matter or the related confiscation proceedings.

It is important for us to understand that agreement. If there has been some formal agreement, I would certainly appreciate a copy being made available. If there is not a formal agreement, I hope that the Attorney-General, in his reply, might be able to give us details of the agreement, which is particularly relevant in relation to the way in which moneys will be treated when confiscated in various jurisdictions. There is the so-called equitable sharing program, and I would like details of what that program might be.

It is also important to try to gain some estimate of the net benefit to South Australia. Is the Criminal Injuries Compensation Fund likely to be a winner or a loser in relation to this matter? It may be impossible to estimate that on the basis that we do not know when assets will be confiscated and what their value will be. However, I should like to ascertain whether any assessment of that issue has

been made by the Government. It would also be helpful to know what arrangements are in place for the sharing of funds received by the Commonwealth under the Mutual Assistance in Criminal Matters Act, and again what sort of moneys South Australia might be looking at.

Victoria does not have anything similar to the Criminal Injuries Compensation Fund, and the legislation I have seen in that State enables moneys to be held by a State trust. I believe that the Criminal Injuries Compensation Fund is a better proposition for dealing with this sort of program. One of my concerns with regard to the use of the Criminal Injuries Compensation Fund is that there is no formal report about the operation of the fund. Some material is presented in the budget, but generally only in relation to the amount of money which is to be appropriated from consolidated revenue for the purposes of the fund.

The Auditor-General's Report makes some reference to accounts and the auditing of those accounts, but there is very little detail. It would be helpful, in relation to the Criminal Injuries Compensation Fund, particularly as its involvement is to be broadened in relation to confiscation, to have more detail provided in the Auditor-General's annual report to identify the source of income and the amounts of expenditure so that we can see what the flow in and flow out might be in each of the categories of receipts and expenditure. Although that is not part of the provisions in the Bill, I would hope that could be agreed on an administrative basis. If not, it may be necessary at some stage in future to provide for that by statute. I would not have thought that it was necessary to go that far, but we have a right to know how the funds are being expended and from what sources they are being received, with the added information with regard to the sources of receipts and the variety and destination of funds. Those matters should be separately identified.

At the same time as the Attorney-General is addressing those issues in reply, I would ask whether he could identify the progress of the legislation in States such as Western Australia, Tasmania and Victoria. As I said earlier, there is a Bill in Victoria but it has not been passed.

In relation to clause 4 *(a)* of the Bill, there is a definition of 'equitable sharing program'. In providing details of the arrangement reached between the States and the Commonwealth, could the Attorney-General indicate who decides what share goes to which State, and what happens if there cannot be agreement? In relation to clause 6 *(b)*, there is provision for a new subsection (3) which deals with the expenditure of amounts from the Criminal Injuries Compensation Fund. It includes:

(a) the financial support, to an extent determined by the Attorney-General, of programs directed at the treatment and rehabilitation of persons who are dependent on drugs.

It would be interesting if the Attorney-General could supply information on the nature of the programs that have been approved so far, the value of those programs and what programs might be contemplated.

The only other matter I raise relates to clause 10, which provides for the right of appeal against ancillary orders following a decision of the Supreme Court that there is not an appeal provided against certain orders for forfeiture, restraining orders and similar orders. There is a right of appeal, but subject to rules of court; the appeal may be made to the Full Court. In the various Courts Bills that we have considered recently I have expressed a concern about the rules of court qualifying the right of appeal. My recollection is that in those Bills we changed the words 'subject to rules of court' to something like 'in accordance with rules of court'. I draw that to the attention of the Attorney-General, because I think that is what is really intended here. I would not like to have the rules of court actually limit the right of appeal to such an extent that they could in fact deny the appeal, and that is arguable under the drafting. Subject to those matters, we support the Bill.

Bill read a second time.

CORPORATIONS (SOUTH AUSTRALIA) (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 November. Page 1912.)

The Hon. K.T. GRIFFIN: The Opposition indicates its support for the second reading of this Bill. The Bill is what I suppose one might call a 'rats and mice Bill'. The amendments are essentially technical and of a drafting nature, but there are one or two areas of substance that I need to address. The Bill provides that regulations under the various Commonwealth administrative laws are also incorporated as the law of South Australia for the purposes of the corporations law. The Bill seeks to restore the Family Court of Australia and the Family Court of Western Australia to the range of courts which can exercise jurisdiction under the corporations law. In respect of these two courts, jurisdiction is to be conferred only to the extent that it is ancillary to the exercise of the respective court's jurisdiction and, as I understand it, it is there intended that, if a matter in the Family Court is likely to involve questions under the corporations law, the Family Court can deal with those matters, although there is an area of doubt about that which I will raise in a moment.

The Bill also seeks to give the Commonwealth Director of Public Prosecutions the same enforcement powers in relation to the old cooperative companies and securities scheme as the Commonwealth Director of Public Prosecutions has in relation to the new corporations law.

The Bill also abolishes the National Companies and Securities Commission Act and repeals the State legislation, but it provides for audited accounts to be laid before both State Houses of Parliament within 12 sitting days after the State Attorney-General has received copies of them. I have had a number of people look at the Bill, and I have also looked at it myself. Generally, there is no difficulty with any of the provisions, because it is merely a tidying up of certain matters which we dealt with last year and about which there was a great deal more controversy.

I would like to raise a couple of issues. I notice in the Victorian legislation that the accounts of the National Companies and Securities Commission are to be lodged within 15 sitting days. This Bill provides for 12 sitting days. I tend to the view that a shorter period of time might be more appropriate, because I would have thought that, if the Attorney-General receives the accounts, there should not be any delay to the tabling of those accounts in both Houses. I wonder whether in his reply (whether in the Committee stage or at the end of this part of the debate), the Attorney-General could indicate what would be an objection, if any, to reducing the 12 sitting days to something like six days which, effectively, means two to three weeks if the House is sitting, on the basis that only administrative action is required and not a substantive review of the accounts he might receive.

In relation to the Family Court, one of the persons to whom I sent the Bill raised the question of whether the drafting leaves it open to an interpretation that the Family Court could entertain quite substantial and significant commercial proceedings. I would have thought that that was

not the intention, nor do I think it is desirable, but the argument is in relation to clause 9 of the Bill, which provides:

Jurisdiction is conferred on the Family Court with respect to civil matters arising under the corporations law of South Australia.

The powers of the Family Court are attempting to be read down by the transfer of proceedings provision in clause 12, but they are predicated on another proceeding pending in the Federal Court or the Supreme Court of the State, or the Capital Territory. It is on that basis that one could conclude that significant commercial proceedings could be permitted in the Family Court. As I said, I do not think that is desirable. However, the Attorney-General might look at the way in which the jurisdiction of the Family Court is addressed and confirm, or otherwise, the view that has been expressed to me. I think there might be some substance in what has been put to me.

Generally, there are several issues that I want to raise. I would like some indication, in relation to this Bill, of the nature of the consultation, if any, that occurred between the Commonwealth and the States on the Bill, whether the amendments to the Corporations Law at the Federal level proceeded unilaterally, whether the legislation we now have before us is really the tail following the dog, by necessity, rather than by arrangement, and of what input there was by the States into the Federal legislation.

The last time we debated the corporations legislation, the Attorney indicated that it was based on an agreement reached at a meeting of Ministers at Alice Springs on 29 July 1990. At the end of last year, the agreement had not been signed. I recollect that during the year the question was asked, either formally or informally, whether the agreement had yet been signed. So, again, during the reply I would like to know from the Attorney-General whether the agreement between the Ministers and, then, the Governments, has been concluded and, if it has, whether a copy could be made available publicly. If it has not been concluded, what issues are holding up the conclusion of the agreement?

The only other area I wish to address concerns paragraph 11 of the Attorney-General's second reading explanation. It raises the question whether there are still investigations or other proceedings under the old national companies and securities legislation. Will the Attorney-General give an indication of what progress is being made in relation to winding those up and whether there is any difficulty in the continuation of those proceedings once the State national companies and securities legislation has been repealed—or has that already been adequately dealt with in the package we addressed at the end of last year? Subject to those matters. I indicate that the Liberal Party is prepared to support the second reading.

Bill read a second time.

[*Sitting suspended from 5.50 to 7.45 p.m.*]

PRIVACY BILL

Adjourned debate on second reading.

(Continued from 21 November. Page 2193.)

The Hon. C.J. SUMNER (Attorney-General): In concluding my remarks and the debate on the second reading, I wish to respond to a number of matters that were raised by people who made submissions on this Bill and, also, to members of the Council who have raised objections to some aspects of it.

First, I would like to make the general point that this Bill does raise significant issues for the community which do need to be debated and decided. During the community debate on the issue, there have been some attempts to trivialise the matter and to suggest that the Parliament should not be dealing with it but, rather, the Parliament should be dealing with more important issues, such as the state of the economy, unemployment, State finances and the like. No-one can deny that they are important issues in themselves. However, that argument should not be used to trivialise the importance of privacy as an issue in the community.

Regrettably, this community debate which we have had has been fuelled by a number of misapprehensions and distortions about the effect of the Bill, at least some of which I will deal with in my reply. It does need to be noted that I reject the attempts to trivialise the issue by suggesting that Parliament should not be debating it. The fact of the matter is that privacy is an issue that will remain with us. To defeat this Bill tonight will not mean that the issue will go away; it will remain. It will remain on the agenda of concerns in this State and in Australia, because issues of privacy are assuming more importance due to the more complex nature of modern society and because, as has been pointed out, of the intrusions which can occur to people's privacy through modern technology—both surveillance technology and, also, technology which facilitates the storage and cross-matching of data held by the public and private sectors.

If people think that, by defeating this Bill, the issue of privacy will go away and if the media thinks that by suggesting there are other more important things to deal with the issue will go away, they are mistaken. The Australian Law Reform Commission has dealt with the issue of privacy in very comprehensive reports on at least two occasions in the past 10 or 15 years.

A Privacy Committee has been in operation in New South Wales, again, I believe for over a decade. South Australia has a Privacy Committee operating within Government to deal with the privacy guidelines established by the South Australian Government. Most other States are giving some attention to privacy issues. Only last week a meeting of officers responsible for privacy was held in Adelaide, and that included representatives from most States. Of course, the Commonwealth has also established a Privacy Commissioner, Mr Kevin O'Connor, who works within the Australian Human Rights Commission.

Internationally, the New Zealand Conservative Government recently introduced a very comprehensive Bill on privacy and the media reaction in that country was similar to the media reaction in this State, but the fact of the matter is that it was introduced in New Zealand not by a Labor Government but by a Conservative Government, which again indicates that the issue of privacy is not one that is the preserve of political Parties of any particular ideology. It is an issue with which the community is concerned and upon which it demands action.

Internationally, the Organisation of Economic Cooperation and Development (OECD) guidelines have been in the public arena now for at least a decade. That organisation established privacy guidelines which are generally considered to be basic benchmarks for the protection of individual privacy.

In the House of Assembly, the member for Hartley, Mr Groom, provided details, in the form of a table, of jurisdictions around the world, including States in the United States of America, that had introduced laws relating to privacy. Continental Europe already has in its laws (for

instance, in France and Germany) concepts which protect privacy based on the notion of an individual's right to personality. For instance, Article 165 of the French Civil Code provides remedies to citizens in that country against any unlawful infringement of personality.

Furthermore, the question of data protection is receiving attention in Europe. The European Commission has issued a proposal for a directive to be adopted by the Council of European Communities. The draft directive concerns individual protection in relation to the processing of personal data. The directive provides for a prohibition on transported data to States which cannot guarantee an appropriate level of data protection.

The issue of privacy is before all those countries. Privacy rights have either existed to a much greater extent in their legal systems than in those such as ours based on the English common law or, alternatively, they have legislated, such as in most States of the United States of America or, within the United States of America, the Supreme Court has developed a right of privacy from the United States Bill of Rights.

It is also true that the United States First Amendment provides protection on freedom of press and freedom of speech and, where privacy and free speech conflict, great weight is given to the freedom of the press. Nevertheless, I repeat that, in the laws of all those democratic countries, privacy provisions exist in some form or another.

The notion then that the introduction of this Bill is a threat to democracy is, of course, a nonsense. It was something that was run by the media in order to push their own case against the Bill in an attempt to destroy it. I repeat that most democratic countries in the world have been able to accommodate rights to privacy in their existing law or in new statutes. Doing so in this State would not be to the detriment of democracy but would enhance the essential civil rights of our citizens in this democracy and would be in accordance with a number of international instruments, including the Declaration of Human Rights and the International Covenant on Civil and Political Rights.

I will now deal with some of the objections that have been raised. First, the most vociferous objections came from the media. However, their objections seem to ignore the very clear statement made by the select committee of the House of Assembly in the following terms:

> The committee wants to make it quite plain that in respect of the media no impediment or restriction should be placed on the proper investigation of the affairs of such bodies as Beneficial Finance, State Bank, SGIC or any other legitimate target.

Further, in recommendation 7 the committee stated:

> That privacy standards similar to the Australian Journalists Association's code of ethics be incorporated into regulations to assist in determining whether a breach of privacy has occurred in matters involving both the electronic and print media.

So, the basic policy provision right from the day that this Bill emerged from the select committee and was debated in the House of Assembly was that, in the exercise of their legitimate functions, the media should not be interfered with. However, that was not good enough for the media and they continued to distort that policy position in the public debate.

To respond to that, the Government made clear that, while covered by this legislation, the media really had nothing to fear from it, because we incorporated in the Bill provisions dealing with free speech. We incorporated the requirement that, in taking the action against the person for invasion of privacy, the plaintiff had to prove that something was contrary to the public interest and, thirdly, we made quite clear what the select committee intended, namely that, if the media and journalists were acting in accordance with accepted codes of ethics—the Australian Press Council code or the Australian Journalists Association code—they would not be caught up by the tort of invasion of privacy.

The one question that has not yet been answered to my satisfaction by members opposite, by the media or by anyone in this debate is why the media will not commit themselves to abiding by their own code of ethics in this area. That is all the select committee requested of them; it is all the Bill ever requested of them; and they steadfastly refuse, in the public arena or anywhere else, to be bound by their code of ethics by law, as would be required by this privacy Bill in so far as those codes of ethics relate to privacy issues.

The media have pointed out and argued that other bodies have been exempted from the coverage of this Bill, but it is important in the case of police to note that police must be acting in the course of their duties. In the case of insurers or other commercial organisations in relation to the detection of fraud, the Bill specifically provides that those organisations are protected in anything that is reasonably done by them. Again, commercial organisations checking credit worthiness are excluded from the coverage of the Bill in carrying out reasonable inquiries, so there was not a total exclusion. Effectively, all we were asking of the media was that they behave reasonably in their dealings with the individual citizen. If they behave reasonably, that is, in accordance with their codes of ethics—those of the Australian Journalists Association or the Australian Press Council—they will have nothing to fear from this Bill.

I repeat that I have still not had a satisfactory answer from anyone in this Chamber as to why they feel that the media ought not to be bound to act in accordance with their own codes of ethics. It is a simple proposition put forward by this select committee, and it is astonishing that this has generated such vociferous opposition from the media. One has to ask why, and I suspect that the reason is very simple: it is because in their daily activities the media very rarely abide by their codes of ethics. Because they do not abide by them, they do not want any legislative requirement that they should do so.

The Bill was not in fact about the media as such, although it certainly appeared to the public mind that it was. Contrary to some statements made in the public arena, including by honourable members, the Bill covered Government databases and private sector databases; it was a general right of privacy. The impression in the public mind that it was about the media was no doubt caused by the media themselves and by their reaction to it, and there is little doubt that it was the effect of this Bill on the media—a very limited effect, as I have just explained—which caused them to occupy most of the time in the public debate.

It is interesting to go back to the select committee's report and see what was the genesis for not excluding the media completely from the ambit of this legislation. Members have dismissed the concerns of victims of crime and the effect that the media have had on certain victims of crime during this debate. I regret that. I believe that, if we are to have a right to privacy, it ought to be a right which is effective against the media if the media abuse their own standards and codes of ethics. Without referring to specific examples of those victims of crime who appeared before the select committee—and they are well known to members and their experiences are well documented in the evidence—I would like to refer to the summing up statement by the member for Mount Gambier, Mr Allison, on page 163 of the evidence, which statement I found very striking. He said:

> On behalf of everyone, I would like to congratulate you and Mr Kelvin on the fortitude shown in the face of this continuing abuse.

By 'continuing abuse' he is referring to the abuse by the media of these people who found themselves victims of

criminal behaviour—in this case, the parents of a murder victim. They are the words, 'continuing abuse'. Mr Allison continues:

> I am amazed at the extent to which you, the Langleys and the Barnes families have been abused. I did not realise there were so many ways that people could take advantage of families.

That was the reaction of a Liberal member of the House of Assembly select committee to the evidence that that select committee heard about the abuse by the media against a certain category of citizen in this State; a category of citizens who have already suffered extraordinary trauma because of the personal tragedy that they have undergone, in particular, the loss of their sons. They are then subjected to the secondary victimisation imposed on them by media attention. Apparently, that is of no moment to members in this Council, at least on the other side, although it is fair to say that, had a division been called, a number of Liberals in the Lower House would have voted for the Government's measure, and I think they were motivated by the sorts of statements that Mr Allison made at the conclusion of evidence given by those people, Mrs Barnes and Mrs Kelvin.

It is interesting to note that a good bit of the Assembly debate was occupied with issues surrounding the media and, although the Liberal Party formally opposed it, a number of its members in the House of Assembly made speeches critical of the media, and in this place the Leader of the Opposition also addressed issues relating to the media.

Although the Bill was not designed as such to pick out the media, there is no doubt that it has provoked a reaction in the community indicating that there is a major grievance about the behaviour of the media in the community generally and in this Parliament. That is there for anyone to see who has studied the debates.

In this context I should congratulate the *News* for its initiatives since it changed its format and its public commitment to abide by the Australian Press Council's standards, and its even greater manifestation of that public commitment by the establishment of a monitoring body of South Australian citizens to whom citizens can complain. I am pleased to see that the *News* has taken that step, and it should be congratulated for it and supported in it.

The Australian Journalists Association (AJA) says that it has taken steps to improve its method of self regulation. Whether or not that is a result of the Bill, I do not know; I assume it is a result of this Bill and other comments made about the AJA system of self regulation. The AJA apparently now has agreed at last to include two lay people on its judiciary committee for the purpose of determining complaints against journalists.

But it is quite astonishing, to my way of thinking, that that is all it is prepared to do. It is astonishing to me that, despite the AJA's continual talk about the need for openness and the public's right to know, when complaints against journalists are made, they are dealt with in camera, in secret hearings. Until now there has never been any lay (public) input into the determinations made by the AJA and its judiciary committee. It has secret hearings, no-one knows what the charges are, and often no-one knows what the rulings are. One matter, which I will not go into in any great detail, involved an allegation of an extraordinary breach of privacy by a journalist who continues to practise his profession in this State. The complaint was made to the AJA here in July 1990, but that matter has still not been finally determined by the AJA. It is still before the association 18 months later, and still no final determination has been made about a complaint that could not be more serious in terms of a breach of the ethics of journalism. It involved an extraordinarily serious breach of privacy.

Yet the AJA hears it in secret, adjudicates in secret, has no lay input into the decision making and, after 18 months, the complainant still has had no response to the complaint. So, the AJA has made some faltering steps to improve its self-regulatory mechanism. In my view it is still totally inadequate. It could overcome its problems by some sort of statutory mechanism, but the AJA does not want to do that.

The other allegations made in the media were that this Bill constituted a threat to democracy. Assertions by David Hellaby and Malcolm Newell in the *Advertiser* were in large part simply nonsense. *Advertiser* editorials that railed about threats to democracy again were basically nonsense. As I said before, why can virtually every other democratic nation in the world cope with some rights of privacy but in South Australia we apparently cannot?

One of the other important questions that arises—perhaps the most important in the debate—is the power of the media and how they can set an agenda, distort a debate and effectively destroy a Bill introduced by a democratically elected Government, if not destroy the Government itself. In the long run that may well be one of the most important issues that arises out of this debate, that is, how the media can cower politicians into submission by the approach they take to a particular issue. Although in this case it was an issue which affected them, they could do the same in relation to any other issue or any Government.

It is interesting to note that in the debate about media ownership that is now going on at the Federal level the only politicians who are prepared to speak out against the media in this country are former politicians. Any politician in power will not speak out against the media. Of course, politicians who are currently in Parliaments are very wary about taking a stance against the media. We have seen exactly that phenomenon again in this debate: the power of the media has been paramount and, if we are talking about threats to democracy, I believe one of the greatest threats to democracy that exists in this country is the power of the media, the monopolisation of the media, and the capacity it has to set an agenda, distort debates and ultimately to destroy Governments. One of these days this issue will be confronted by democratically elected representatives. They will assert their rights, as they should, against the media, but regrettably they have not done it in relation to this matter.

I refer now to some of the other objections that have been raised. The Retail Traders Association has raised objections, and the Hon. Mr Griffin dealt with those. The association also appeared before the committee and the submission put forward by the RTA was fully considered.

The committee was of the unanimous view that legitimate business practices were not adversely affected by the Bill. By entering the premises of a retailer a person undertakes as a condition of entry to accept surveillance. The Bill further provides that permission will be presumed where it is reasonable to do so from the circumstances. For the Bill to apply an element of privacy must be involved. It would not be a breach of privacy to keep a person in a public place doing public things under surveillance.

As to the submission from the Law Society, it claims that there are already safeguards for protections of interest. This is true, but many of these areas are very specific in their application and leave some individuals without grounds to bring an action. In creating a statutory right of action, this Bill covers the gaps that presently exist in this area.

The claims of the Engineering Employers Association have also been specifically considered. As I previously stated, there must be an element of privacy involved to found an

action under this Bill. If one is kept under surveillance while undertaking ordinary duties of employment pursuant to a contract of employment, this would not constitute an invasion of privacy. Further, an employee could be taken to have impliedly consented to ordinary visual management practices while at work. They are simple and obvious answers to the concerns raised by those groups.

The Australian Conservation Foundation raised worries about certain aspects of the Bill and requested that 'privacy' be defined in the Bill. Even the Hon. Mr Griffin has acknowledged that to define 'privacy' beyond that definition which already appears in the Bill is probably impossible and the only way that it can be dealt with is as in the Bill. The Australian Conservation Foundation is also concerned that groups, such as it, should be protected from injunctive procedures. The Hon. Mr Elliott in his contribution dealt with public interest groups, and I will deal with those in later remarks.

Issues have also been raised by the Australian Genealogy and Heraldry Society, the Association of Professional Historians and the Australian Library and Information Association, but I think that generally their concerns are met by the terms of the Bill and would be more specifically met by any guidelines that were laid down for the use of personal data that might be obtained by any of those organisations. However, I should like to examine further the concerns of those groups when, as I assume, the Committee stage of the Bill is dealt with in February.

A number of other objections have been raised during the debates in the House of Assembly and in the select committee, but I believe that most of them have been answered, obviously not to the satisfaction of the Opposition, but nevertheless to the satisfaction of the Government. Issues of genuine worry have been responded to by the Government with amendments.

To sum up, the Government does not believe that this Bill should fail. The Australian Democrats have put forward certain propositions. The Hon. Mr Elliott did this in his second reading contribution, and perhaps I should refer to what he said:

> However, there are three fundamentals that must be observed before we support the legislation further: that is, the tort in relation to privacy should not apply to the media or public interest groups; business interests should not be a matter of privacy within this legislation; and there should be entrenched within this law an independent body to oversee data protection. With those matters properly addressed, the Democrats will support it.

That has been the consistent position of the Democrats on this Bill since it was introduced. They have been critical of it, but have indicated that if satisfactory amendments could be made to the Bill they would not stand in the way of its passage. I believe, in contradistinction to the attitude of members opposite, that is a constructive approach to an issue that I think I have demonstrated will not go away.

The Government, to enable this debate to proceed, is prepared to accept the propositions put forward by the Hon. Mr Elliott as a basis for negotiation. As I said, the Government welcomes this constructive approach. The Government would be prepared to accept the entrenchment in law of an independent body to oversee data protection. The Government accepts that the media and public interest groups should be exempted from the tort action for breach of privacy. We accept that business interests should be excluded from the scope of the legislation and that it should be confined to issues of personal privacy interest only.

Having said that, I think it is fair to say that they are general principles which the Hon. Mr Elliott has outlined and which the Government has accepted as a basis for further discussion, and there will undoubtedly need to be a period of further consultation.

We accept the need for a body to be given a statutory basis to oversee data protection. However, we would like to feel that the nature of that statutory body is the subject of negotiation. I suspect that the Hon. Mr Elliott would not want so-called privacy police, as they have been referred to, introduced; nor would anyone want an extensive or overbearing bureaucracy to give effect to that proposition. I believe that, whether it is a commission or a committee, there is a role for an independent body to oversee data protection. We may also have to look within the public sector at the possible role of the Ombudsman in this area. The Ombudsman currently has the power of investigation of complaints against the privacy principles which have been promulgated by Cabinet and which operate in the South Australian public sector. There is already in operation a South Australian Privacy Committee covering the public sector, which, over the past two years, has done some very good work.

Another area of possible oversight of these privacy principles could come through giving jurisdiction to one of the newly established parliamentary committees. I think that also could be considered as part of the discussions. I make clear that the Government is prepared to negotiate. The details of the Hon. Mr Elliott's proposition are, I understand, open to discussion, but we accept his framework and the basic propositions which he outlined in his speech and which I have repeated as a basis for negotiation. I believe that with good will and a constructive approach over the next few weeks, we ought to be able to arrive at a Bill which is at least satisfactory to the Parliament as a whole, although there will remain elements of it with which the Government would not be totally happy. As I have said, the Government would not welcome the areas which seek to exclude the media totally from the tort of privacy, but we accept it as the reality of the democratic process and that a Bill that does not contain that element will be defeated.

I think that for all those who are interested in privacy this Bill should not fail. It should be used as a basis to work on over the next few weeks so that we can deal with the Committee stage in February. If we use that period constructively, as I think we can, we will be able to have a Bill that is acceptable to the Parliament and the community. I welcome the general propositions put forward by the Australian Democrats and look forward to further discussions with them and, of course, further discussions in the Committee on the Bill when the matter is resumed in February.

The Council divided on the second reading:

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

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

Pair—Aye—The Hon. Barbara Wiese. No—The Hon. L.H. Davis.

Majority of 1 for the Ayes.

Second reading thus carried.

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

That the Committee stage be made an Order of the Day for Tuesday 11 February 1992.

The Hon. M.J. ELLIOTT: In supporting the motion, I think that the delay that is now proposed is important. While some major issues now appear to be resolved, there are a host of other issues that will need to be determined,

many raised by the Opposition. While the major issues are now being picked up, there are many more issues that need to be addressed, and when one considers that my amendments will probably be two or three times as long as the Bill itself, I think that to try to do it in the next couple of days—

The PRESIDENT: The Hon. Mr Elliott: on a point of order, the motion is that the Committee stage be adjourned until 11 February.

The Hon. C.J. Sumner: He's saying why he is supporting it.

The PRESIDENT: A brief explanation, but it cannot go into too much detail.

The Hon. M.J. ELLIOTT: I have not discussed any of the detail within the Bill in any way. I am simply saying that there are a large number of matters that still need to be addressed, and we cannot adequately do it in the days left this side of Christmas.

Motion carried.

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Duty to insure against liability.'

The Hon. ANNE LEVY: I move:

Page 1, after line 24—Insert new subsection as follows:

(3) Membership of the Local Government Association Mutual Liability Scheme constitutes insurance for the purposes of this section.

This whole clause is proposed because of a national agreement that all Governments will enact legislation to ensure that all councils have sufficient or adequate public liability cover. Of course, this arises from discussions that have taken place throughout the nation, not only as a result of the Stirling Council situation but also another council in Victoria found itself in a similar situation with insufficient public liability cover to meet its responsibilities as determined by the courts.

The clause as inserted here is to ensure that all councils have adequate civil liability insurance to the extent prescribed by regulations. Subclause (2) indicates that any regulation must be made in consultation with the Local Government Association, to ensure that a reasonable figure is being imposed on councils. In South Australia, of the 119 councils that exist, 118 have their public liability insurance through membership of the LGA Mutual Liability Scheme and only one council currently takes out private insurance. So, the regulations, when made, will apply to only that council.

The LGA raised the concern that membership of the LGA Mutual Liability Scheme might not be classed as sufficient under the legislation. Legal advice is that it would be classed as being covered as it is unlimited insurance. So, it would not matter what figure was fixed by regulation. However, to make it quite clear that membership of the LGA Mutual Liability Scheme does constitute meeting the requirements of the Act, I am quite happy to move the amendment to make quite sure that membership of that scheme does constitute sufficient insurance, on the basis that it may save legal argument as to whether or not the scheme is covered by subclauses (1) and (2). While legal advice is that subclauses (1) and (2) do cover the situation, there may be people who feel that perhaps they do not. So, in an excess of caution I have thus moved the amendment.

The Hon. J.C. IRWIN: The Opposition supports both clause 4 and the amendment. In my second reading contribution I said that the Liberal Party always has some problem with compulsion, even though the Minister mentioned that 118 councils are now covered by the LGA Mutual Liability Scheme, with one council choosing to go outside the scheme. So, there is not a compulsion in the sense that councils must join the scheme, but there is a compulsion in that they must have insurance covering civil liability to the extent prescribed by the regulations. Even though the LGA will have a great say in the writing of those regulations, as we know, to extend the argument to the nth degree, it could say, 'We do not like those people going outside the scheme; we will write regulations that will be fairly draconian.' In other words, it could punish those councils that find better insurance cover outside the scheme.

I need an assurance from the Minister that the regulations will cover the prescribed areas to be covered by insurance but not the premiums. The premium will still be in a competitive market. I would like an assurance from the Minister that whoever is in control of the regulations will be fair about the way in which they write those regulations and that they will not make it too tough on those councils that choose to go outside the LGA Mutual Liability Scheme.

The Hon. ANNE LEVY: I can assure the honourable member that there certainly will be consultation with the LGA. However, if it proposed that the figure should be a public liability insurance for a sum of something like $1 billion, I do not think that the Government would agree to that as a regulation and would not put up any such figure. The sort of figures being discussed are in the region of $20 million, or, perhaps, $30 million or, in some situations, $50 million. If a scheme involving those figures had been in place when the Stirling Council found itself in difficulties, we would have avoided that situation.

Amendment carried; clause as amended passed.

Clause 5 passed.

Progress reported; Committee to sit again.

PARLIAMENT (JOINT SERVICES—PROHIBITION ON SMOKING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 November. Page 2100.)

The Hon. J.C. BURDETT: I oppose the second reading of this Bill. I hasten to say that, as far as the Opposition is concerned, it is an individual conscience vote and I understand that some of my colleagues have a different view. I further understand that the Government is treating this matter as a Caucus vote and I do not know about the Democrats. However, it is a very individual matter upon which we on this side of the Council have different views. I do not think that I need declare an interest, because I am virtually a non-smoker. I have indicated before in this place that I do, very occasionally, smoke a cigar, such as at Christmas and on birthdays and Father's Day, but that is about it. However, I do not smoke regularly.

This Bill was introduced in the other place by the member for Elizabeth, Mr Martyn Evans, who these days seems to want to run the Parliament. He has introduced a number of Bills dealing with parliamentary matters such as committees, subordinate legislation, and so on. One of my first concerns about this Bill related to the question of privilege. I do not mean that the Bill is technically a breach of parliamentary privilege, because it is not. The Parliament can make its own laws and establish its own privilege, I suppose, but one of my concerns is what happens if, in breach of this Bill, somebody does smoke? What does one

do? Do we go to the parliamentary policeman or policewoman? They cannot touch us in Parliament House, anyway. Do we go to the President or the Speaker? I suppose that would be what happens. We do not have a Privileges Committee. Are they dragged before the Bar of the Council?

Quite apart from the question of smoking or not smoking, I am concerned about passing these sorts of Bills. The Joint Parliamentary Services Committee introduced a rule forbidding smoking and this Bill does not go beyond that—in fact, I do not think it even goes quite as far as that. The rule already exists and I would have thought that anything that the Bill does could be done anyway. Also, a private member's resolution was passed about smoking.

What does the Bill really do? I looked at Erskine May and the question of privilege. The House of Lords is a court of record, so of course something could be done about people who broke the rules or the privileges of the House of Lords. In the House of Commons there is a power to fine, but the last occasion on which the House of Commons imposed a fine was 1666. There is a power of expulsion or reprimand. As I said before, we do not have a committee on privilege. Of course, in the United Kingdom a privilege committee has been established. What do we do? Do we set up a committee?

One of my forebears, who was a member of the House of Commons in the United Kingdom, was imprisoned for an alleged breach of privilege of the House of Commons. His offence was that he published a speech made by a member of the House of Commons before *Hansard* had been set up and at that time it was a breach of privilege to publish a speech made by a member of the House of Commons.

What worries me about this Bill is the question of smokers being made criminals (which I believe they almost are). In this matter, as in so many others, we have come a long way through education. A lot fewer people smoke and, in my experience, those who do smoke are usually considerate. There are always the few who are not and that applies to almost anything. However, a situation occurred in my home which quite amazed me. On one occasion recently one of our daughters, who lives interstate, came home for the Grand Prix and excused herself to go out into the garden and have a smoke. That is a very considerate thing to do. I think that most members of the Council will recall occasions like that. It is quite common these days for people who smoke and who go into somebody else's house to ask either whether they may smoke or whether they may be excused to go outside and smoke. Education has achieved a great deal, and in the future it will achieve a great deal more.

During our recent cold and wet winter I had occasion to move around the city quite a bit, particularly when I went to the boundaries commission while it was sitting, and I really was quite upset to see public servants in particular coming out of their places of work and huddling around in the rain outside to have a smoke. I do not like seeing smokers treated as criminals. Although what they are doing may cause problems for their health and that of other people, it is perfectly legal.

I have not really accepted the evidence on passive smoking; I suppose that is a question as to whether or not that has really been established. I do know that some of my colleagues are very offended by people smoking in their presence and they get physically quite upset. I accept that, but most smokers recognise that and act accordingly. I notice that a considerable petition was taken up by staff in the Blue Room objecting to this Bill, and there were a considerable number of signatories to that petition. Because it is pinned up outside the Blue Room, I have read your response to that, Mr President, which I appreciate and which I accept from your point of view.

As I recall (they would not let me take it away and photocopy it), you, Sir, made the point that they had not first gone to the Joint Parliamentary Service Committee, and that is what they should have done instead of taking up this petition. The point you took was perfectly properly taken, and I do not object to that at all. However, it does seem to me to be amazing that, when we consider the privileges that are attached to Parliament, in Parliament House we cannot be arrested or served with a summons but we cannot exercise a perfectly legal right that we have to smoke. That does seem rather amazing to me. Parliament House policemen or women cannot do anything to us. It is a question of applying to the President and the Speaker seeking to have the person brought before the bar of the House.

The Hon. C.J. Sumner: Who will enforce this?

The Hon. J.C. BURDETT: I don't know who will report it; that is my whole problem. The Bill merely provides that a person must not smoke in any part of Parliament House under the control and management of the committee (because it relates to the Parliamentary Joint Services Act and that committee) except in a part of the House set aside by the committee for that purpose.

The Hon. C.J. Sumner: Is there a penalty?

The Hon. J.C. BURDETT: There is no penalty and, as I have said, there is already the rule of the committee which goes slightly beyond this and the private member's resolution that has been moved in this place. So, what does this Bill achieve? I believe that it achieves nothing—absolutely nothing—and that the committee has gone as far with this matter as possible and that the Bill is superfluous, adds nothing and does not do anything to change the present situation.

The Hon. T.G. Roberts: You're not impressed with it, John?

The Hon. J.C. BURDETT: I am not impressed with it, and I do not believe in passing Acts of Parliament which cannot be enforced and which do not carry the matter any further than the law or rules that already exist. So, why pass it? I oppose it.

The Hon. R.I. LUCAS (Leader of the Opposition): I had my ideas as to how I would vote on this matter until that very persuasive speech from my colleague, the Hon. Mr Burdett, and I am starting to wobble; I am almost becoming a Democrat, changing my mind on this issue. As my colleague, the Hon. Mr Burdett has indicated, in the Parliament and certainly in our Party there are a variety of views in relation to this vexed issue of smoking within the bounds of Parliament House. I agree with my colleague that it is a shame that we have reached the stage of actually having to consider and vote upon a Bill of one clause—one sentence—in relation to this issue. A number of my colleagues and I said similar things in March of this year when the time of the Parliament was taken up in relation to debating the private member's resolution.

Certainly, it would be the view of the majority of members in this place that these sorts of matters could be sorted out as they have been in the past with the normal decision-making processes of the Parliament, but that is not to be. A member in another Chamber (and I do not wish to cast an injurious reflection upon that person—others might but I certainly will not) has seen fit to introduce the legislation into the Parliament, and as members we must now vote one way or another on this Bill. I think it is a shame and

a waste of the Parliament's time, although I guess, as it has turned out, we have this hiatus between Bills arriving from another place and the work load that we have on our timetable at the moment, so that we have a vacant spot in our proceedings this evening.

The motion that this Council debated back in March addressed this issue and, for the benefit of members, I want to refresh not only their memories but also mine as to that motion and what I said on that issue. That motion was moved by the Hon. Mr Elliott as follows:

That this Council:

1. Endorses the decision of the Joint Parliamentary Service Committee to prohibit smoking in certain areas under its jurisdiction and calls on all members to abide by the terms and spirit of the decision;

2. Declares its support for the long-term introduction of a smoke-free environment throughout Parliament House; and

3. Prohibits smoking in and about the lobbies, corridors and other common areas of Parliament House under its jurisdiction.

That was the original motion to which I moved to delete the original paragraph 3 and insert the following new paragraph:

Urges the President to prohibit smoking in and about the corridors and lobbies of Parliament House under the President's jurisdiction.

Mr President, you will recall that we amended that in deference to the powers and jurisdiction of the President with his control over the corridors and lobbies in relation to the Legislative Council section of Parliament House. In the end, although I do not think there was unanimous support, there was no division on it and there was a strong majority in the Legislative Council that ended up supporting that amended motion in relation to smoking.

As the Hon. Mr Burdett has indicated, this Bill really does no more from my point of view than virtually restate that position. As the Hon. Mr Burdett again eloquently pointed out, there is no provision for penalty and, on reading the *Hansard* debates in another place, I find that the mover of the Bill made great play of the fact that there was to be no penalty and that he felt that all members would observe the law of the State as and when it was passed by both Houses of Parliament. I do not know whether or not that is a forlorn hope; there has certainly been some disobedience—civil or parliamentary disobedience—in relation to the current rules of the Parliamentary Joint Service Committee in relation to smoking in Parliament House.

Indeed, there has been talk of boycotts or civil or parliamentary disobedience concerning the internal rules of the Parliament. As the Hon. Mr Burdett pointed out in relation to the question of what penalties if any a Parliament or a House of Parliament might want to inflict on a member, there is not much of an option, other than perhaps the suggestion of dragging someone before the bar of the Legislative Council (not before the other bar, which I think has been part of the problem).

The Hon. T.G. Roberts: That would be a terrible punishment for some.

The Hon. R.I. LUCAS: For some members it would not be a terrible punishment at all. I cannot see that this Council or another place would take a matter to that extent and drag a member before the bar of a House of Parliament where a member has smoked within Parliament House.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: That was an unintended pun, if it came out that way. My position is the same as it was in March. We should not be spending too much time debating this motion. I support the general notion that we should provide for a generally smoke-free environment for staff and other members who wish it within Parliament. As I said in March, there ought to be smoking rooms (for want of a better term)—

The Hon. Carolyn Pickles: Chimneys!

The Hon. R.I. LUCAS: 'Chimneys' has been suggested by another honourable member. I will not recount the wonderful story that another member recounted to me previously. There should be smoking rooms or areas in Parliament where those members who wish to smoke can do so, but how that can be done in relation to the vexed question of air-conditioning and the like I am not sure. I guess that that is up to the occupational health and safety experts. I am sure that it is not beyond the wit and wisdom of the Parliament, the Presiding Officers and the Joint Service Committee to devise some sort of a system whereby those members who wish to smoke can do so somewhere in Parliament House where it does not affect the health of other members and staff.

Certainly, that is my preferred position. Again, as the Hon. Mr Burdett indicated, a number of members, and particularly staff, have strong views about smoking in Parliament House, and they rightly feel that they should not be left in the position of having to work in a smoky environment if they do not wish to do so. That is certainly the norm in all other places of public employment and private employment in South Australia. We need to bear in mind the wishes of the important staff members in Parliament House.

That is my general view. As I said, I started off with the general position of certainly not opposing the Bill. Whether it is as strong as supporting the view would be too great a point to put on it. I guess that if there was to be a division on this Bill, I would end up voting with the 'Ayes', but it would be a marginal thing and, as I said, my colleague the Hon. Mr Burdett almost forced me to do a Democrat and wobble on the issue and switch my potential vote.

The Hon. DIANA LAIDLAW: I wish to make a brief contribution and indicate that I do not support the second reading. I believe it is unnecessary and certainly unenforceable. Representatives of the Council and members of another place have made clear their views on this matter through the work of the Joint Parliamentary Service Committee, and a motion of this place has reinforced that judgment: that areas under the control and management of that committee should be smoke-free.

I am a smoker of cigarettes: it is something that I enjoy a great deal. However, I am conscious that there are fewer and fewer places in which to smoke, and I am considerate, as are most smokers today, of the views of non-smokers and I will not smoke where I am not welcome as a smoker. I recall when I entered this place nine years ago that we were allowed to smoke in the Joint Parliamentary Party Room. I was not a member of shadow Cabinet then, but one could smoke then and also smoke in our Legislative Council Party Room.

The Hon. Mr Griffin was one who found that most uncomfortable with five or six members smoking, and over time, as in most things he does, he got his way, and we now do not smoke. It is something that we all accept most readily. As I said earlier, smokers seek to accommodate the views of members in this place. In my view a Bill such as this is totally unnecessary, especially considering the other moves that have been made over the past year through the Joint Parliamentary Service Committee and motions that have been moved in this place.

I refer to the Hon. Mr Elliott's second reading speech. He goes on it great length how he is a civil libertarian, self-

righteous about this and that, how wonderful he is, and then he said:

However, I do not accept that a person has a right to do to somebody else something of which that other person does not approve.

I agree with that. I do not approve of many things that happen in this place. I do not approve of the way in which some people speak to me or the way in which some people behave towards me; I do not approve of those who pinch and touch and do ghastly things, but what is going to happen next? Will we also have another amendment to the Parliament (Joint Services) Act suggesting that all these other practices that I and others may not personally approve should be banned? This is simply getting out of control. The proposition I am putting is ludicrous and so is this measure, which I do not support.

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

SOUTH AUSTRALIA'S BIRTHPLACE

Adjourned debate on motion of Hon. I. Gilfillan:

1. That this Council officially recognises—
   (a) Kangaroo Island as the birthplace of South Australia; and
   (b) Glenelg as the site for the inauguration of Government.
2. That the Government officially recognises the above in all official documentatation,

which the Hon. Anne Levy had moved to amend by leaving out all words after 'That this Council officially recognises' and inserting:

(a) human occupation of South Australia for many thousands of years;
(b) European habitation in South Australia from early in the nineteenth century;
(c) a settlement of individuals from the South Australian Company on Kangaroo Island from July 1836; and
(d) a proclamation which established a Government of South Australia at Glenelg on 28 December 1836.

and which the Hon. J.C. Irwin had moved to amend by leaving out paragraphs *(c)* and *(d)* and inserting:

(c) the first South Australian Company settlement on Kangaroo Island from 27 July 1836;
(d) the Inauguration of Government at Glenelg on 28 December 1836.

(Continued from 20 November. Page 2095.)

The Hon. M.J. ELLIOTT: I wish to amend the amendment moved by the Minister for the Arts and Cultural Heritage, and I move:

Leave out paragraphs *(c)* and *(d)* and insert the following new paragraphs:

(c) Kangaroo Island as the first South Australian Company settlement in the Province of South Australia on 27 July 1836;
(d) the Inauguration of Government at Glenelg proclaimed on 28 December 1836.

It appears that there is a coming together of views. I am not sure that the views were that far apart to begin with, but there is a possibility that this amendment will attract the support of all members. I think that it meets the intention of the original mover of the motion, and I hope indeed that all parties in this place find such an amendment suitable.

The Hon. I. GILFILLAN: I hope I am not cutting off any aspiring contributor to the debate. Thank you, Mr President, for your indulgence in getting some of the preliminary discussion under way on a somewhat informal basis. I would also like to thank my colleague, Mike Elliott, for stepping in very quickly in an emergency. I thank the Hons. Anne Levy and Jamie Irwin for their contributions.

The Hon. M.S. Feleppa: What about mine?

The Hon. I. GILFILLAN: Yours is one of the more significant, but I am sorry that you were not more influential in persuading these two. The matter has been one of concern to Kangaroo Islanders for many years, and I do not intend to canvass the actual issues at it relates to Kangaroo Island directly, but I would like to refer to the contributions that were made specifically by the Hons. Anne Levy and Jamie Irwin in relation to their opposition to the original wording. My earlier motion was:

(1) That this Council officially recognises—
   (a) Kangaroo Island as the birthplace of South Australia;
   (b) Glenelg as the site for the inauguration of Government.
(2) That the Government officially recognises the above in all official documentation.

In moving an amendment to this motion, the Hon. Anne Levy sought to replace the wording with the following:

That this Council officially recognises:
   (a) human occupation of South Australia for many thousands of years;
   (b) European habitation in South Australia from early in the nineteenth century;
   (c) a settlement of individuals from the South Australia Company on Kangaroo Island from July 1836;
   and
   (d) a proclamation which established a Government of South Australia at Glenelg on 28 December 1836.

In a speech supporting her amendment, the Hon. Anne Levy brought to light some very informative history and folklore, but there were also some statements made that need to be clarified or corrected, and this is what I seek to do. First, the Minister made repeated mention of the need to avoid an emotive issue concerning the word 'birthplace'. I point out that the word 'birthplace' has publicly been incorrectly used by Glenelg for 155 years. It is prominently printed on Glenelg council's letterhead; it is publicly advertised in the print.

The Hon. Anne Levy interjecting:

The Hon. I. GILFILLAN: The Minister interjects to say that it does not need to be perpetuated but she will need, I hope, in that case to intervene and prevent Glenelg from using the word again.

The Hon. Anne Levy: You can't stop them from using it.

The Hon. I. GILFILLAN: Well, if she has such a vehement opposition to the word 'birthplace', I would suggest that she actively intervenes with the Glenelg council, which continues to use the word. It is publically advertised in the print and electronic media prior to each Proclamation Day ceremony. It is seen on signs at Glenelg streets and at other historic sites in Glenelg. The *Buffalo* is promoted as the ship that brought South Australia's first settlers. There is printed on the State Transport Authority's Glenelg tram timetable 'Come to South Australia's birthplace'.

Why is it that, for 155 years, the Government has condoned the use of the word 'birthplace' by Glenelg but, now that Kangaroo Island has been rightfully proven to be the birthplace, the word should no longer be used? Yet Portland is the birthplace of Victoria, and Fremantle is the birthplace of Western Australia. Why is it now that Kangaroo Island, a place so rich in history and folklore, should not be given official credit for this historical fact?

The Minister mentioned that emotion should be kept out of this debate. I am advised that there have been the most cordial relations over this matter between the Glenelg and Kingscote Mayors, between the Kangaroo Island Pioneers Association and the Glenelg council, which has publicly conceded that Kangaroo Island is the State's first settlement, and thus its birthplace, and that some minor changes might now be necessary. This is not an emotive issue: it is pure,

proven, historical fact. I do not need to labour the point further, because all historians, both councils and the History Trust of South Australia have readily confirmed that Kangaroo Island was settled five months before Glenelg.

What I want to make clear is that the Kangaroo Island Pioneers Association and the Kingscote District Council are not seeking to upstage Glenelg, or to alter its annual Proclamation Day Ceremony or its Public Holiday each 28 December, because those events are an important part of the South Australian calendar. What is being simply sought, after 155 years, is for the Government to ask Her Excellency, the Governor of South Australia, to officially declare Kangaroo Island as the State's birthplace, the place where official settlement first began and the colony breathed life—where it was born. There is every good reason for Glenelg to continue, each 28 December, to hold its Proclamation Day Ceremony to acknowledge the arrival of the first Governor who read a proclamation about law and order and treatment of Aborigines and announced a council to administer the colony, although he made no mention of proclaiming the colony, because that had already been done five months before by Samuel Stephens at Kangaroo Island when he raised the British ensign and proclaimed the province of South Australia in the name of King William IV. Governor Hindmarsh did make a proclamation and established an administration.

There would be no point in the 28 December Proclamation Day beinng held at Kangaroo Island for simple reasons of logistics and transport. That is no doubt why decades ago it began to be celebrated at Glenelg. At this point I must point out that the Proclamation on 28 December 1836 was not read under the Glenelg gum tree; it was read in Colonial Secretary Gouger's tent to the men present. The women and children were not admitted. Thus there is no emotive issue. Let Glenelg celebrate 28 December, and let Kangaroo Island continue its annual Settlement Day ceremony each 27 July. But the title 'birthplace' should at long last be accredited to Kangaroo Island. That is all that is asked and is little to expect. This Council must recognise the historical fact and put it right for our present and future generations.

Are we to ignore the advice of one of our State's most respected bodies, the Royal Geographical Society of South Australia, which, prior to the 1936 Centenary of South Australia, researched here and in England to prepare a thesis on the naming of the annual 28 December ceremony at Glenelg. In a thesis, which I have in my possession, the society pointed out that it should not be called Proclamation Day, because the State was not proclaimed on that day. It recommended that, in order that future generations not be misled, the Glenelg ceremony should be called Inauguration Day, because a small council was proclaimed to administer the Province.

Why does the Minister choose to ignore this worthy advice of 1936? Today the subject has been well researched by the Kangaroo Island Pioneers Association, whose historians include Mrs Jean Nunn, who in her Master of Arts Degree chose the history of Kangaroo Island as her thesis, now published. Also, Mr Dene Cordes, who has an Honours Degree in Australian History, has supported these historical facts. So, too, has the State Historian at the South Australian History Trust, who acknowledges in writing that Kangaroo Island is South Australia's birthplace. I am at a loss as to why the Minister seeks to ignore this wealth of historical fact under the umbrella of the term 'emotive'. It is pure fact. The Minister implies that Kangaroo Island was settled by individuals from a private company and that, at a later date, worthy colonists landed at Glenelg.

She also gave the impression that Kingscote was only a temporary settlement and was later abandoned. This is so wrong. Let me clarify those points. On 19 February 1836, when letters patent established the new colony, they were approved by King William IV in London, and the first colonists were despatched in nine ships bound for Kangaroo Island, which was to be the first settlement—the birthplace. This occurred and the colony, despite its severities, continued to this day. Many descendants of those first ships still live on the island or elsewhere in the State. Indeed, further ships such as the *Solway* from Germany took more settlers there over a year later. They did not abandon the settlement. Many stayed. They were not individuals: they were official colonists.

The South Australia Company most certainly was a private one, but had been empowered by British legislation to raise funds and officially found the colony. When the *Buffalo*, the last of the nine ships, was near to landing at Kingscote, it was intercepted and guided to Glenelg where better water and soil was available. None of this corrected information denies Glenelg its importance—where our first Governor landed—but neither does it alter the fact that Kingscote was the official birthplace, and it survived.

The Minister spoke of the need to recognise the Aboriginal occupation of Australia long before European settlement. I have no issue against that or against its inclusion in the amendment. But in this instance we are talking of the birth of an officially declared province of South Australia in 1836. Kangaroo Island is where the colony was started. The whole landform of Australia was, of course, inhabited by human beings long before but, rather ironically, at that time Kangaroo Island had no indigenous Aboriginals, as they had died out some thousands of years before.

The Hon. Anne Levy: They had been there.

The Hon. I. GILFILLAN: Indeed, and their stone artefacts are scattered over my farm on Kangaroo Island. As I say, the whole land form was, of course, inhabited by human beings long before, but they did not call it 'South Australia'. Kingscote is where an official colony began. The Minister intimated in her data, which was sourced as from chapter 6 of a document entitled *South Australian Heritage*, that Aboriginal women who lived with permanent sealers on Kangaroo Island 20 years before official settlement had only English Christian names, such as Sal, Bess, Emma, Puss and Polecat. I can inform the Minister that, since that research, Mrs Jean Nunn's book *This Southern Land* supersedes these and many other slightly misleading historical facts. The Aboriginal names of those women are known and recorded. Some of those women led stable family lives and have descendants today who are proved to be such. In fact, one of them lived in the farm house in which I still stay when I go to the farm on the island.

I have at my disposal a list of historical errors in the book quoted by the honourable Minister, and these subsequently have been corrected by more in-depth research and in a published book. However, they are minor matters in this debate. I understand that Glenelg council, realising the historical accuracy of the facts mentioned by me earlier, does not contest that Kangaroo Island is the birthplace. I am sure that the two councils can liaise to continue their respective heritage and history celebrations each year. But the Legislative Council must now give its official recognition of Kangaroo Island as the State's birthplace.

I give full credit to the Minister for her wish to acknowledge human occupation and to discourage emotive issues and to the fact that she recognises that Kangaroo Island was the State's first settlement. Now it is time for historical

fact to replace what has been misleadingly taught to schools and to all South Australians with the factual history. It would be improper to deny this to future generations. Neither should we continue to ignore the recommendations in 1936 of the Royal Geographical Society of South Australia. Can we ignore the fact that, in a recent radio station (5AA) survey, 92 per cent of callers stated that Kangaroo Island should be recognised as the State's true birthplace?

I refer now to the comments made by the Hon. Jamie Irwin. I respect the research and effort that he has put in and I also acknowledge the recognition of Aboriginal occupation of South Australia, the unofficial settlers in the new colony, prior to 1836. I have no debate with those sentiments. The debate is quite simply about South Australia's birthplace; whatever words one uses for it, 'birthplace' is the common way of referring to it. Any birth is the start of life. Whilst planning for the new province took place in England, the first settlers founded our new colony on Kangaroo Island on 27 July 1836, where they first landed and lived.

The Hon. Mr Irwin referred at length to South Australia's birthday. That is not what we are questioning; it is not a birthday but a birthplace—Kingscote. The birthplace has to be where the colony named 'South Australia' was first settled and no-one has disputed that Kangaroo Island was the first settlement—both unofficially and officially. Most certainly, the Aborigines occupied the southern continent long before the Europeans, as I have mentioned before. I share Mr Irwin's interest in our history and his enthusiasm to learn more about it, but, in this instance, the Legislative Council cannot dispute the evidence of our State's own History Trust, the Royal Geographical Society of South Australia or the published research of historians such as Mrs Jean Nunn and Mr Dean Cordes, who all agree that Kingscote was the first settlement in South Australia, that the colony was never proclaimed at Glenelg by Govr Hindmarsh and that by referring to Glenelg as the State's birthplace for so many years we are misleading present and future generations.

There is absolutely no evidence in South Australian or Australian archives of any other settlement elsewhere in South Australia prior to Kangaroo Island. Again, I point out that we are talking about the birthplace of the colony of South Australia, not of an unnamed land mass or any unofficial residence. It appears that for many decades Glenelg has claimed to be the birthplace without question. Yet, when historical fact has proved that Kingscote should bear such title, members are reluctant to acknowledge the fact. The Hon. Mr Irwin does so in his speech, but not in his amendment.

After consultation with the Kangaroo Island Pioneers Association and recognising the objections that the Minister has to the word 'birthplace', if it is replaced by the words 'first settlement', as outlined in the amendment moved by my colleague, I will support it. I urge the Council to support the motion in its amended form. There have been contributions from a wide range of sources. I feel that when the dust settles and this is looked at objectively it will, for the first time, recognise Kangaroo Island as the first South Australian Company settlement in the province of South Australia, on 27 July 1836, and that there was an inauguration of government, proclaimed at Glenelg on 28 December 1836.

They will be the clear facts. They will enable this generation and succeeding generations to afford whichever area—Kangaroo Island or Glenelg—the titles and the honour as they see pertaining to those places and reflecting the facts. It may appear to the Council that this has been a minor matter, but as I said in my original speech, it is important that the truth is revealed in our history and that ambiguity and error is not perpetuated. I formally acknowledge the remarks and the contribution made by the Kangaroo Island Pioneers Association, particularly those of Mr Bruce Williams and Mr Dean Cordes. I trust that, with the passage of this motion in its amended form, we can look forward to proper recognition of Kangaroo Island as the first settlement—commonly called 'birthplace'—of South Australia and of Glenelg as the location of the very important inauguration of government of South Australia.

The Hon. J.C. Irwin's amendment negatived.

The Hon. M.J. Elliott's amendment carried; the Hon. Anne Levy's amendment as amended carried.

Motion as amended carried.

PERSONAL EXPLANATION: SOUTH AUSTRALIA'S BIRTHPLACE

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I seek leave to make a personal explanation.

Leave granted.

The Hon. ANNE LEVY: In his concluding remarks, the Hon. Mr Gilfillan intimated that in my contribution I had stated that Kingscote was only a temporary site for the first settlers. I am sure that if people peruse *Hansard* they will see that I made no such statement. I recorded the historic facts, that Kangaroo Island was the first settlement, that the population increased, and at a later time the population of Kingscote decreased so that it fell far below the level it had reached in the 1830s. It was not until this century that the population of Kingscote again grew. I have never said it was a temporary site. I would like this on the record. If people check my speech in *Hansard*, they will see that I certainly did not say that it was a temporary site that was later abandoned.

BOATING ACT REGULATIONS

The Hon. R.J. RITSON: I move:

That the regulations made under the Boating Act 1974, concerning hire and drive, made on 26 September 1991, and laid on the table of this Council on 8 October 1991, be disallowed.

When the principal Act under which these regulations are made was last amended, it was amended to bring the bareboat charter yachts, keel boats and other hire and drive boats under the control of anticipated regulations, which would be tighter and more detailed than was currently provided for pleasure craft generally by the Boating Act.

At that time, I said that I supported this move and that there was a large range of very substantial craft which were minimally controlled and, indeed, not controlled at all as far as the technical aspects of their construction, strength and stability were concerned. I supported the Government's being given powers to regulate and at the time I said that I hoped that the regulations would be sensible and appropriate for each type of craft. Since then, the Government has brought in regulations that are not appropriate, that are unnecessarily onerous and that will make the charter boat operation promoted by the Hon. Ms Wiese's Department of Tourism economically unviable.

The Hon. Barbara Wiese: Tourism South Australia is its name.

The Hon. R.J. RITSON: Was its name; it is the RAA now. A number of safety codes already in existence cover this class of vessel, namely, the keel boat yacht, but the Government has chosen to draft the regulations in terms of

the uniform shipping laws code, which is appropriate to large commercial power vessels such as oil tankers, freighters, etc. A number of aspects of the regulations are just impractical and do not substantially contribute to the operation of the vessels under question, that is, the bareboat charters operating in South Australia.

In spite of requests, pleas and begging letters from the operators of these boats, the Government has intransigently refused to sit down with the operators and work out a suitable code. The suitable code is, of course, the Australian Yachting Federation regulations, which have wide acceptance both in Australia and in other countries.

They do not have the force of law, but they are applied by most clubs. Indeed, clubs have safety committees which inspect vessels from time to time as to their compliance to the AYF standards and, as far as racing is concerned, boats are not permitted to start in a race unless their compliance with the safety code, as relevant to the type of race, is ensured.

There is a deadlock. The Subordinate Legislation Committee has tabled a lot of technical evidence and, in due course, I will deal with that in the Council, but at the moment there is an attempt to get the parties together for negotiation. I hope that that will occur over the Christmas break and, in the hope that negotiations do take place instead of the Government's just turning a deaf ear and refusing to discuss the matter at all, I will leave the matter at that for now and I seek leave to conclude my remarks at a later date.

Leave granted; debate adjourned.

FISHERIES (MISCELLANEOUS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

In view of its size, and the lateness of the hour, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

It provides for a number of amendments to the Fisheries Act 1982, to enable both the Government and the Department of Fisheries to more effectively meet the objectives of the Act as set out in section 20. Specifically, the amendments recognise the dynamic nature of fisheries management and the need to provide measures for the proper management and conservation of South Australia's aquatic resources.

Details of the various amendments are as follows:

1. Definition of 'take'

The Fisheries Act 1982 provides a mechanism for the management of South Australia's fisheries resources. Fishing activities are regulated through various restrictions or limitations aimed at ensuring the resources are not endangered or overexploited.

The definitions outlined in the Act do not differentiate between the taking of live fish or dead fish. In particular, the definitions of 'fishing activity' and 'take' give no indication of whether or not it is an offence to take dead fish. The Department of Fisheries has always administered the Act on the basis that it applies to all fish, regardless or whether the fish is dead or alive when it is taken. The rationale for this is because some fishing activities will kill fish in the process—that is gill netting. In order to ensure the legislation is upheld, fishers removing dead fish from the water should observe management controls such as size limits and bag limits and return to the water all fish (including dead fish) which exceed the prescribed limits. By not including dead fish within the scope of the Act, the Department of Fisheries will not be able to apply effective management controls to the fisheries.

The Crown Solicitor's Office has advised that whilst there are provisions in the Act which are clearly intended to relate to dead fish or parts of fish, a dead fish is not taken in the sense in which the Act defines the word 'take'. The definition presupposes that the fish are alive and in the water to start with. In a recent case, the Department initiated prosecution against a person who took a considerable quantity of undersize fish. The defendant claimed that the fish were returned to the water by another person who observed the legal minimum length requirements of the Act. During the hearing, argument was put forward that it is not an offence to pick up dead fish. The Stipendiary Magistrate upheld the argument, ruling that the provisions of the Fisheries Act and regulations must refer to live fish only. As such, there was no case for the defendant to answer. Such a defence could be mounted in all similar cases where a person is found in possession of undersize or over the bag limit fish but where the prosecution cannot prove that the fish were alive when taken.

It is proposed to amend the interpretation provisions of section 5 of the Act so that the definition of 'take' involves the taking of fish, irrespective of whether it is alive or dead.

2. Sale of fish taken from inland waters surrounded by land

The intent of the Fisheries Act 1982 is to provide for the conservation, enhancement and management of marine and freshwater fisheries resources. However, section 5 (5) states that where inland waters are surrounded by land in the ownership, possession or control of the same person, the Act does not apply except where those waters are used for fish farming activities.

In some situations, this definition limits the ability of the Department to discharge its statutory obligations to properly manage the State's fishery resources. For example, during periods of high water flow in the River Murray, fish are carried into many backwaters and lagoons. When the river level drops, stocks of fish are left in these lagoons etc, many of which become surrounded by private property. Advice from the Crown Solicitor indicates that such a situation is not considered to be a fish farming activity on the part of the land owner and therefore the land owner may take and sell those fish without a licence because of the exclusion provision in section 5 (5). Size and bag limit controls also would not apply.

Similar situations occur elsewhere such as in the Cooper Creek system and to some degree the Leigh Creek retention dam. The Electricity Trust of South Australia has requested the Department of Fisheries to police the retention dam which was cleared of carp and restocked with native fish at public expense. However, such matters are outside the scope of the Fisheries Act 1982 as it stands.

There is a means of avoiding the current legislation which would enable a person to sell fish taken illegally and claim that they were taken from 'private' waters. This matter is becoming more widely known. The Fisheries Act makes a clear distinction between commercial and recreational fishing whereby it is unlawful for a person to sell fish not taken pursuant to a licence. The distinction between commercial

and recreational fishing cannot be maintained if unlicensed persons sell fish taken from private waters or are able to claim that they did.

To allow such situations to occur would provide for increased fishing effort as well as conflict between licensed and unlicensed persons. Enforcement officers who receive complaints relating to such activities are powerless to act and public confidence in the integrity of the Act is eroded.

The purpose of the amendment would not be to prevent persons from taking fish from private waters (that is waters surrounded by private land) for their own use. However, persons taking fish from private waters for the purpose of business or trade would have to do so under either approved licensing arrangements or as registered fish farmers.

It is proposed that section 5 (5) be amended such that fish cannot be taken for the purpose of trade or business from inland bodies of water surrounded by land in the ownership, possession or control of the same person, unless the fish are taken pursuant to an authority.

3. Waters surrounded by Crown land and private land

Section 5 (5) of the Act excludes application of the Act in waters surrounded by land in the control of one person—that is 'private' waters except where they are used for fish farming. However, there is a need for the Act to apply in situations where 'private' waters are surrounded by Crown land and in relation to the introduction of exotic fish and fish diseases in 'private' waters.

The first instance arises primarily in the case of waters surrounded by land under the jurisdiction of the National Parks and Wildlife Service—that is a conservation park. Similar instances could apply to dams or reservoirs under the jurisdiction of the Engineering and Water Supply Department. In these instances, the Department of Fisheries is not able to prevent illegal fishing activities such as netting in inland waters, taking undersize fish, exceeding bag limits or using non-permitted gear. Under the existing legislative arrangements it would appear that recreational and commercial fishers can take fish from 'private' waters and sell those fish without regard to the Fisheries Act. Such activities would compromise established fisheries management arrangements. It is evident that more people are becoming aware of this means of avoiding the legislation.

With regard to the placement of exotic fish in 'private' waters, the existing legislative provisions cover situations where the fish are introduced for fish farming purposes. Commercial and non-commercial fish farmers are required to observe certain standards aimed at preventing and controlling disease outbreaks and, importantly, possible translocation of diseased or exotic fish to areas that do not have such a problem. The placement of exotic fish in 'private' waters is not covered by the Act if the individual does not engage in fish farming—that is, simply introduces exotic fish (without regard to disease control) and takes no action to nurture or cultivate those fish. As such, the Department is currently unable to address its management responsibilities relating to exotic fish and fish disease matters.

Without adequate control over the release of introduced (exotic) fish species, many of which have adverse environmental and disease characteristics further damaging changes to the local ecosystem will occur. A particular example is the damage caused by the introduction of European carp into the fresh water system. Exotic fish species of this nature inflict the same kinds of damage on the aquatic systems of South Australia as the rabbit and other introduced pests have done to the land.

It is believed that when section 5 (5) of the Act was originally proposed and implemented, it was not intended to remove jurisdiction over important inland fisheries nor to create means of avoiding the legislation now becoming more widely known. The amendments as proposed still maintain the spirit of allowing private individuals to keep fish for personal use on their property (in farm dams etc.) providing they do not introduce exotic fish or fish diseases.

In short, section 5 (5) of the Fisheries Act should be amended to ensure that the Fisheries Act would apply to waters surrounded by Crown land, and that people would not be permitted to introduce exotic fish into private waters without a permit from the Director of Fisheries. The proposed amendments would not change the status of 'private' waters such as farm dams, or other impoundments surrounded by land owned by a single private person, other than to control the use of exotic fish (and possible introduction of fish diseases) into such waters.

It is proposed that section 5 (5) be amended so that the Act applies:

- in waters surrounded by Crown land;
- in waters surrounded by land in the ownership, possession or control of the same person, in respect of the introduction of exotic fish and fish diseases into those waters.

4. State/Commonwealth arrangements

The Fisheries Act provides for arrangements to be made with the Commonwealth whereby the management of a fishery can be implemented in accordance with State legislation or Commonwealth legislation or both.

In June 1987, arrangements were implemented for the marine scalefish, abalone, rock lobster and west coast prawn fisheries to be managed according to South Australian fisheries legislation. In addition, arrangements were implemented for the tuna fishery to be managed according to Commonwealth fisheries legislation.

Since these arrangements were promulgated, the Crown Solicitor has advised that there is some uncertainty as to the Commonwealth's authority to manage fisheries in waters within the limits of South Australia. The Commonwealth Fisheries Act provides for arrangements in respect of fisheries in waters adjacent to a State being a fishery wholly or partly in waters on the seaward side of the coastal waters of the State. Coastal waters are defined in terms which exclude waters which are within the limits of a State.

It is generally accepted that waters within the limits of South Australia (coastal waters) are waters within three nautical miles of:

- low water mark of the mainland coast;
- low water mark of any island adjacent to the coast;
- baselines proclaimed under section 7 (1) of the Seas and Submerged Lands Act 1973 and published in Commonwealth of Australia Special Gazette No. S29, 9/2/83 and No. S57, 31/3/87.

Waters within the limits of the State are waters within baselines and include bays, estuaries, river mouths etc.

Baselines include the waters of Fowlers Bay, Denial Bay, Streaky Bay, Anxious Bay, Spencer Gulf, Gulf St Vincent, Investigator Strait, Encounter Bay, Lacepede Bay and Rivoli Bay.

It is also accepted that the limits of the State apply from low water mark to the closing lines of Sceale Bay, Coffin Bay, Avoid Bay, Vivonne Bay and Guichen Bay, or three nautical miles of low water mark (whichever is the greater). In these instances the limits do not extend for a further three nautical miles from each closing line.

With regard to the tuna fishery, licensees often operate in waters within the limits of South Australia, usually to take bait for subsequent tuna fishing activities in Commonwealth waters. However, all operations are conducted pursuant to a Commonwealth licence, subject to the management

arrangement between South Australia and the Commonwealth.

An amendment to the Act would clarify the existing arrangement which applies to the tuna fishery, and simplify any future considerations for State managed fisheries to be managed by the Commonwealth.

It is proposed that Part II of the South Australian Fisheries Act be amended to provide that where an arrangement is in force whereby a fishery is to be managed in accordance with the laws of the Commonwealth, then in waters within the limits of the State, Commonwealth law is to apply as State law.

5. Appointment of fisheries officers

The Department of Fisheries has established a system of cooperation and information exchange with its counterparts in other States. Such action enhances the enforcement capabilities of the respective agencies.

At present, fifteen South Australian fisheries officers are authorised as fisheries officers in Victoria, and eight in New South Wales. It is proposed that South Australia reciprocate and appoint Victorian and New South Wales fisheries officers as fisheries officers in this State. Officers from other states would be considered for appointment as South Australian fisheries officers if and when the need arises.

Such appointments would effectively increase the number of officers who could assist with surveillance and enforcement operations. For example, South Australian officers would be able to call upon their interstate counterparts to assist with investigations into illegal fishing operations where fish taken from one State are sent to another State for sale.

South Australian fisheries officers' operational capabilities would be enhanced by having additional expertise readily available as well as knowledge of local fish catching areas and methods, particularly around the South Australia/Victoria border area.

A cooperative approach such as this would assist in the successful apprehension and prosecution of offenders. However, any enforcement activities the interstate officers may conduct in South Australia would be in conjunction with and under the instruction of South Australian officers.

Section 25 of the Fisheries Act 1982, empowers the Governor to appoint an officer of the South Australian Public Service as a fisheries (enforcement) officer. However, this provision cannot be used to appoint an officer of an interstate public service to the position of a South Australian fisheries officer.

It is proposed that this provision be amended so that fisheries officers from other States or Territories may be appointed as South Australian fisheries officers.

It is also proposed that this provision be amended so that an appointment be made by the Minister of Fisheries instead of the Governor. This would be consistent with section 68 of the Constitution Act 1934 which provides for a minor appointment to a public office to be vested, by statute, in 'Heads of Departments, or other officers or persons within the State'. Such a provision would facilitate the appointment process and eliminate the need to submit each proposal to Executive Council.

The appointment of interstate fisheries officers would be subject to the following conditions (which were formulated on the advice of the Crown Solicitor):

- they would not receive or be entitled to receive any remuneration from the South Australian Government in respect of their office;
- they would hold the office only whilst accredited as a fisheries officer in their respective State;
- they would be subject to the directions of the Director of Fisheries with regard to their exercise of power pursuant to the Fisheries Act 1982;
- they would not be entitled to the rights and privileges of employees granted by the Government Management and Employment Act 1985.

It is proposed that section 25 be amended to empower the Minister of Fisheries to appoint South Australian public servants as well as fisheries officers from other States or Territories of the Commonwealth as fisheries officers in South Australia.

6. Assistance to enforcement officers

Section 28 enables fisheries officers to exercise various powers in their role of fisheries enforcement. Provision is made for a fisheries officer, while exercising his/her powers, to request voluntary assistance from any person and to request the person in charge of any boat to voluntarily make the boat available for his/her use. Where a boat is used by a fisheries officer in such circumstances, compensation may be paid to the person who had charge of the boat at the time.

Enforcement operations are also conducted on land, requiring the use of four wheel drive as well as two wheel drive vehicles. In the majority of situations, fisheries officers have an appropriate vehicle available with back-up facilities. However, some enforcement operations may require the use of additional vehicles when and if the situation arises. Calling for departmental support vehicles to attend may not be a viable consideration when immediate action is required. Provisions which enable a fisheries officer to request voluntary assistance from a person in charge of any vehicle would enhance the department's operational capabilities. It should be noted that a request does not translate to commandeer in these circumstances, the boat (and vehicle) owner has the right to refuse.

It is proposed that section 28 be expanded to allow a fisheries officer to request—and pay compensation for—the use of any vehicle voluntarily offered to assist with enforcement operations.

7. Licence conditions

Section 37 enables the Director to impose conditions on licences. Conditions must be directed towards conserving, enhancing or managing fishery resources, or related to matters prescribed in the scheme of management regulations for the fishery.

In order to reduce total fishing effort on some species, conditions may need to be imposed on some licences that would effectively stop a licensee or class of licensees from having access to that species of fish. Also, a species of fish may be selectively targeted by using one type of fishing device. Reductions in fishing effort may require a limitation on where the device could be used (area exclusion) or a limitation on the dimensions of the device. It could be argued that such action, by effectively denying the licensee from taking a species of fish that is permitted to be taken pursuant to the licence, be construed as derogation of the grant of a licence and therefore not legally tenable. The Crown Solicitor has advised that in order to overcome such a situation, it is necessary to amend the legislation.

It is proposed that section 37 be amended to empower the Director to impose a condition on a licence notwithstanding that the condition would prevent a licensee from taking one or more species of fish or from using devices that could otherwise lawfully be used pursuant to the licence, providing that condition is directed towards conserving, enhancing or managing the living resources so that they are not endangered or overexploited.

8. Fisheries licences as security for loans

The South Australian fishing industry and financial lending institutions have expressed interest in having procedures established for commercial fishery licences and endorsements to be used as collateral for loans.

In response to this interest, the Department of Fisheries, with Cabinet approval, issued two green papers on the topic. The first paper was released in May 1988, followed by a supplementary paper in July 1989. Both papers attracted wide ranging comments from the fishing industry and lending institutions. A number of responses suggested schemes which would involve considerable departmental involvement and possible compromises to effective management of the various fisheries.

The Government proposes to implement an arrangement which recognises that licences and endorsements can be used as security for loans, but at the same time maintaining management prerogative to vary legislative, policy, administrative or procedural matters to meet the responsibilities of properly managing the fisheries resources of South Australia. This could be achieved as follows:

- the licence holder to advise the Director of Fisheries that a lender has a financial interest in a licence;
- the Director of Fisheries be required to withhold his consent for the transfer of a licence/endorsement/quota without the written consent of the lender who has put the director on notice;
- the maintenance of a public register which identifies licences subject to a financial arrangement;
- the collection of a fee for providing such a service.

Also, the Director of Fisheries would undertake to provide the lender with information relating to prosecution action initiated against the licence holder under the Fisheries Act bearing in mind that such prosecutions may affect the status of the licence. Such an obligation could be incorporated into the proposed legislation.

The Department of Fisheries will implement procedures to minimise administrative errors, but the fact remains that persons wishing to utilise the scheme would do so at their own risk. Unforeseen circumstances or events over which the Department of Fisheries has no control may occur. In this regard it is proposed that no liability lie against the Crown.

It is proposed that sections 30, 38, 61 and 65 of the Fisheries Act be amended to: require the Director of Fisheries to withhold his consent for the transfer of a licence, endorsement or quota without the written consent of a lender who has previously informed the Director that a licence is subject to a financial arrangement; and require the Director to advise a lender of any legal action undertaken against the holder of a licence in which the lender has an interest; provide that no liability lie against the Crown for any loss arising in the event of the Director of Fisheries not meeting his obligations; require the Director to maintain a public register identifying licences subject to a financial arrangement; and provide for the collection of a fee for such a service.

9. Fishery closure notices

Section 43 empowers the Minister of Fisheries, by notice in the *Government Gazette*, to impose a temporary prohibition on certain fishing activities. In the majority of cases, these prohibitions are applied in response to an agreed need to vary harvesting strategies in the prawn fisheries, or in response to chemical/toxic spills or outbreaks of algal blooms.

The requirement to gazette such notices severely limits the Minister's obligation to properly administer the requirements of the Fisheries Act. In the case of the prawn fisheries, a strict harvesting regime is imposed on licensees so that the prawn stocks are not endangered or overexploited. In practice, management decisions are made on a daily basis, requiring immediate action to prohibit fishing in certain waters. In the case of chemical/toxic spills and algal blooms, the government has an overriding responsibility to safeguard public health. This also requires immediate action to prohibit the taking of fish from contaminated waters.

The obligation to urgently respond in these situations is limited by the requirement to publish notices in the *Government Gazette*. It is extremely difficult to arrange gazettal at short notice, particularly at night, during weekends or public holidays.

In the interest of proper management of the State's prawn fisheries and in view of the urgency associated with safeguarding public health, it is proposed that the Act be amended such that a section 43 notice, issued by the Minister (or his delegate) in respect of the commercial prawn fishery or in response to chemical/toxic spills and algal blooms, take effect immediately. An appropriate media release would be issued where public health/safety could be at risk. The Department of Fisheries would advise prawn fishery licensees of the issue of a closure notice. Gazettal of these notices would still be made at the earliest opportunity. Other temporary prohibitions on fishing activities would continue to be gazetted, and appropriate information disseminated to those affected by such notices.

It is proposed that section 43 be amended so that a fishery closure notice issued in respect of protecting the living resources of the State, or in the interest of safeguarding public health, take effect immediately.

10. Possession of Protected Fish

Under existing provisions of the Act, it is an offence for a person to take protected fish. Examples of protected fish include seals, dolphins, whales and leafy sea dragons.

Under the evidentiary provisions of the Act, if it is proved that a protected fish was in the possession or control of a person in proximity to waters, it shall be presumed, in the absence of proof to the contrary, that the fish was taken by that person. The evidentiary provisions do not assist in situations where a person is not in proximity to any waters. In such circumstances, the department's ability to successfully prosecute offenders could be compromised by not having a specific provision which makes it an offence to be in possession of protected fish. Given the serious nature of taking protected fish, the legislation should make it quite clear that not only is the taking of protected fish an offence, but also being in possession of such fish would be an offence.

It is recognised that in some instances, persons would be in possession of fish that were not taken unlawfully at the time that is a leafy sea dragon taken prior to such fish being declared as a protected species. Defence provisions have been included to cover such situations.

It is proposed that section 44 be varied to make the possession of declared protected fish an offence.

11. Possession of Undersize Fish

Section 44 has provisions which make it an offence to be in possession of undersize fish where those fish were taken from waters within the limits of the State.

Fisheries officers actively monitor size limits on fish whilst conducting their enforcement operations. This involves checking fish at the point of landing and at wholesale and retail premises. Being in possession of undersize fish at a point of landing or where those fish were obtained from a registered fish farm is not a contentious issue as it usually can be established where the fish were taken.

The main problem arises where undersize fish in a person's possession in South Australia may be claimed to have originated interstate or where the Department cannot prove

that they were taken in contravention of the Act. The Department has had experience in more recent years where prosecution has been jeopardised or unsuccessful because of the onus of proof which the department must comply with to satisfy the court that undersize fish in possession were taken illegally in waters under the jurisdiction of the Fisheries Act 1982. Such proof may be difficult to provide where undersize fish are located in trading premises away from the water.

The existing provisions which prohibit the possession of undersize fish are limited because of the scope of the Act. In order to overcome this problem without undue interference upon established marketing arrangements, it is proposed that the Act be amended to prohibit the sale, purchase or possession of undersize fish irrespective of the origins of the fish. This would not deny fish wholesalers or retailers the right to purchase fish from whatever source they choose provided those fish comply with the legal minimum length in South Australia. Such variations to the legislation would ensure that fisheries management arrangements are not undermined.

The enabling legislation would require the making of regulations to give effect to the proposal. It is intended that initially, such regulations apply to commercial operators only, that is, licence holders and fish processors.

It should be noted that section 47 of the repealed Fisheries Act 1971 prohibited the sale of any undersize fish. Advice from the Crown Solicitor in 1983 confirmed that any importation of undersize fish for sale would be an offence under that provision of the Act. Unfortunately that provision was not carried over from the 1971 Act to the current Act.

Such a prohibition can be sustained by virtue of the High Court decision in *Cole v Whitfield (1988)* which enables a State to impose a legal minimum length on fish irrespective of where the fish was taken. Other States already have implemented such controls in their fisheries management arrangements.

It is proposed that section 44 be amended to prohibit the sale, purchase or possession of undersize fish.

12. Marine parks

The Fisheries Act places an obligation on the Minister and Director of Fisheries to ensure proper conservation measures are applied to the living aquatic resources of South Australia—that is, protect the aquatic habitat.

To date, fourteen aquatic reserves have been proclaimed pursuant to the Act. The reasons for their establishment encompass factors such as:

- conservation/protection/preservation;
- fisheries management;
- scientific research/education;
- recreation.

As well as managing renewable resources, the Department must also ensure that endangered species and unique habitats are afforded adequate protection.

The existing fisheries legislative mechanism allows a flexible approach towards the management of aquatic reserves. Once proclaimed, activities may be permitted within the reserve by making regulations or by a permit issued by the Director of Fisheries.

Since the current legislation was formulated, it has become apparent that there is a need to have a legislative framework within the Fisheries Act which is compatible with the requirements of other government managers of (terrestrial) parks and wildlife. This is particularly so where an area of water has considerable conservation and preservation significance, both within the Australian context and internationally (that is, world heritage listing) such as the proposed Great Australian Bight marine park. Other areas may also be identified for such recognition. It is a basic tenet of conservation management that conservation reserves have a legislative framework which provides security of tenure. In the case of a conservation reserve, the government is the manager of the public land and water and is therefore publicly accountable. Security of tenure and public accountability may both be maintained such that proclamation and revocation of reserve status can be achieved only through the parliamentary process as is provided for under the National Parks and Wildlife Act 1972. Under the Fisheries Act, an aquatic reserve may be proclaimed by the Governor and regulations made (or a Director's permit issued) to manage activities within the reserve.

Ongoing management of an area such as the Great Australian Bight marine park would need to be subject to an approved management plan, identifying matters such as:

- objectives of management;
- provision for recreational and commercial use;
- management of visitor activities;
- provision for research;
- policing/protecting the reserve.

Legislation which addresses such matters exists in the National Parks and Wildlife Act 1972. Whilst this legislation was formulated mainly to manage terrestrial reserves, the amendments proposed for the Fisheries Act would be similar to the National Parks and Wildlife Act, but aimed at managing, protecting, conserving and preserving the aquatic flora and fauna resources of South Australia.

In order to afford a higher degree of security of tenure (than at present) to significant aquatic reserves (marine parks), an amendment to section 48 of the Fisheries Act would be required. Such an amendment should be additional to the provisions that are already in place, so that a marine park could be proclaimed and be managed by regulations if additional status such as world heritage listing is required.

Under existing provisions contained in the Fisheries Act, otherwise prohibited fishing activities or activities which interfere with the aquatic habitat within an aquatic reserve can be approved by regulation or by a permit issued by the Director of Fisheries. Section 48 (3) enables the Director to:

'. . . issue a permit to any person authorising that person to engage in any activity, or do any act, specified in the permit during such period and subject to such conditions as may be specified . . .'.

In the case of a marine park which the government recognises as having significance such as world heritage listing, such powers should be vested only in the Minister of Fisheries. This would reflect the provisions of the National Parks and Wildlife Act when implementing a management regime to a reserve such as that proposed for the Great Australian Bight.

With regard to joint management, where a constituted marine park is adjacent to a reserve constituted under the National Parks and Wildlife Act, 1972, it is envisaged that management of the marine park be undertaken by the Minister of Fisheries in consultation with the Minister of Environment and Planning. Similarly, where a marine park is adjacent to a marine park administered the Commonwealth, it is envisaged that management of the South Australian marine park be undertaken by the Minister of Fisheries in consultation with the relevant Commonwealth Minister.

In addition, it is proposed that the objectives of the Fisheries Act as set out in section 20 require an amendment to reflect the concept of 'preservation' of the living aquatic resources of South Australia. This would be consistent with the intent of the Act.

It is proposed that section 20 be amended to incorporate reference to 'preservation' in the administration of the Act; and section 48 be amended so that a marine park can be proclaimed and be managed by regulation.

13. Fish farming regulations

Section 51 empowers the making of regulations relating to exotic fish, fish farming and disease in fish. Such regulations have been made, but there are limitations as to how fish farming can be regulated because section 51 is not as comprehensive as section 46 (which includes general management regulation making powers). Also, the exotic fish, fish farming and fish diseases regulations are complex because the provisions contain a large amount of information on fish species permitted to be introduced into South Australia and subsequently farmed, as well as detailed information on disease identification and control; and disposal of diseased fish and contaminated water.

In order to simplify the combined exotic fish, fish farming and fish disease regulations, it is proposed that section 51 be amended to provide for the making of fish farm regulations which would provide a specific legislative category for the regulation and monitoring of fish farming activities; including a provision clarifying licensing requirements for conducting fish farming operations. Such action would enhance public understanding of the regulations.

Existing provisions enable the Director of Fisheries to grant registration of a fish farm. However, registration cannot be refused if inspection shows a site to be inadequate in respect of matters such as water quality or good farming practice. In addition, a registration cannot be revoked if the operator fails to observe required standards relating to exotic fish, fish diseases or the proper disposal of water used for fish farming.

Also, there is no provision for the Department of Fisheries to charge a fee for the registration of a fish farm. As the Department provides an administrative, enforcement and research function associated with aquaculture/fish farming, the Government may wish to recover some of the cost of providing the service. This would be in line with the principle of collecting fees from commercial licensees.

It is proposed that section 51 be amended to make it an offence to conduct a fish farming operation without an appropriate authority and to empower the making of regulations:

- that regulate fish farming;
- prescribe matters of which the Director must be satisfied before granting a licence;
- prescribe matters that may be the subject of conditions on a licence;
- prescribe the term of licences and provide for renewal of such licences;
- prescribe matters of which the Director must be satisfied before renewing a licence;
- authorise the transfer of licences;
- prescribe matters of which the Director must be satisfied before consenting to the transfer of a licence;
- prescribe fees for the granting, renewal or transfer of a licence;
- provide for the payment, refund and recovery of fees or parts of fees payable;
- restrict or regulate the treatment, handling, storage, movement or dealing in farmed fish;
- require licensees to furnish the Director with returns (in a form fixed by the Director) outlining production and value details.

14. Fish processors/shark certification

Most of the shark taken by South Australian licensees is processed and sent in fillet form to the Victorian market.

The Victorian Government has implemented controls which limit the species of shark that may be brought into the State.

Following extensive negotiations, it was agreed South Australia would implement controls which would satisfy the Victorian requirements. Since then, Victoria has decided not to continue with its most restrictive measure (prohibition on shark fillets entering Victoria), subject to South Australian shark processors voluntarily complying with a code of practice such that:

- only approved species of shark may enter Victoria;
- packages of shark to be accompanied with certification that the shark is an approved species;
- fillets to be consigned in sealed containers.

Notwithstanding Victoria's decision not to activate its controls at the present time, it is proposed to proceed with enabling legislation in the South Australian Fisheries Act in the event Victoria reintroduces more restrictive measures or there is a problem with the voluntary arrangements. A change to the South Australian Act would enable this State to implement regulations, at short notice, to satisfy Victorian requirements.

In order to provide the means of addressing Victorian requirements (when and if necessary), a number of regulatory provisions for certifying processed shark have been identified. However, such regulations are not within the scope of the Fisheries Act provisions which deal with fish processing. The introduction of a formal South Australian based shark certification program would require legislative provisions as follows:

- a registered processor would not be permitted to process shark unless he was the holder of an appropriate endorsement issued by the Director of Fisheries;
- the endorsement may, upon application to the Director of Fisheries be issued subject to conditions which limit the species of shark that may be processed;
- the Director of Fisheries may refuse to issue such an endorsement if the processor has been convicted in South Australia or elsewhere in Australia of a fisheries-related offence within the preceding three years;
- the Minister of Fisheries may suspend or cancel a shark endorsement if the processor has been convicted in South Australia or elsewhere in Australia of a fisheries-related offence;
- such an endorsement be subject to an annual fee;
- shark processed pursuant to the endorsement only to be consigned in a sealed container/package appropriately identified;
- the container/package to have attached to it a seal or other mark identifying it as having been issued by the Department of Fisheries;
- the issue of sealed or marked packages be subject to a fee;
- officers of the Department of Fisheries may take and retain shark product for the purpose of sampling and analysis (without compensation).

The fish processor regulations have provisions which outline the documentation that must be completed by a registered fish processor. The proposed amendments, together with the existing provisions, would assist industry in processing and selling fillets of shark taken from approved species by ensuring their continued access to traditional markets.

It is proposed that sections 54 and 55 be amended to provide for a shark processing and certification program as outlined above.

15. Suspension of Licence

Section 56 of the Act provides for a court, following a conviction for an offence, to suspend the offender's licence for a specified period. In addition, section 56 provides for the mandatory suspension of a licence for a period of not less than three months where a person is convicted of a prescribed offence within a three year period.

In the managed fisheries such as the rock lobster and prawn fisheries, there are seasonal limitations on fishing operations. In particular, the rock lobster seasons are fixed at seven months in the northern and southern zones whilst the prawn seasons vary according to management strategies. It is not uncommon for prawn fishing to be limited to 3-4 nights of trawling followed by an extended period (that is, from 10 days to 3 months) of no permitted activity.

Following a recent prosecution of a prawn fishery licence holder, the court imposed a ten day licence suspension. The Department of Fisheries sought to split the suspension into two periods which were within predetermined fishing days because the next fishing period was expected to be no more than eight days. However, the magistrate was of the view that section 56 does not authorise a non-consecutive suspension period because the word 'period' as used in section 56 means a time that runs continuously. As a result, the full ten day suspension of the offender's licence could not be realised because the last two days of the suspension period were not predetermined fishing days.

In order to restore the intent of the provision to serve as a deterrent to those persons who contemplate fishing incontravention of the Act an appropriate amendment should be made to the legislation.

It is proposed that section 56 be varied to provide for a licence to be suspended for a period or periods of time over non-consecutive days.

16. Additional penalty-undersize fish

Section 66 states that where a person is convicted of an offence against the Act involving the taking of fish, the court shall, in addition to imposing any other penalty, impose an additional penalty equal to:

'*(a)* Five times the amount determined by the convicting court to be the wholesale value of the fish at the time of which they were taken;

or

(b) $30 000,

whichever is the lesser amount'.

During prosecution action initiated by the Department against fishery offenders, argument has arisen as to whether undersize fish have a value. It has been intimated that because it is illegal to take undersize fish (except where taken from a jetty, pier, wharf or breakwater abutting land), there can be no market for them and consequently they have no value. This argument would erode the deterrent and actual effect of section 66 because if undersize fish had no value, no additional penalty could be applied.

In one recent instance (*Crown v Ferraro*), the Department attempted to secure an additional penalty against the defendant, who was able to argue that as undersize fish did not have a value, the additional penalty should not be applied. Although this judgment was upheld by the court at the time, the department successfully appealed the judgment in this particular case. The Crown Solicitor has advised that the relevant section be amended to avoid any misunderstanding in this regard.

It is proposed that section 66 be amended to remove any uncertainty in this matter to recognise the fact that undersize fish have a monetary value.

17. Catch and effort data

An essential component of fisheries management is the collection of data from licensees. This information is submitted on a monthly basis, and includes details such as:

- species of fish caught;
- total weight of catch for each species;
- type of fishing gear/method used;
- number of days fished;
- areas fished.

Once this information is assembled, collated and analysed, research staff (biologists) use it to monitor the state of the fisheries resources. This is supplemented with information obtained first hand from sampling conducted in the field.

The results of research activities indicate trends in fish mortality and fishing effort, which are two of the important factors which must be addressed by fisheries managers. It is of paramount importance that overexploitation of any fish species not occur, and management decisions must be based on reliable and accurate data.

Individual licensees, and the fishing industry in general, have been adamant that the catch and effort information they provide monthly be treated confidentially by the Department of Fisheries. As business persons operating in a highly competitive commercial arena, individuals do not want their personal business details made public. Such action would obviously be to the detriment of their established fishing practices. The department of Fisheries has always recognised the need to maintain confidentiality, and always resisted attempts from courts, government departments, businesses or individuals to make personal details available for whatever reason. The department has on numerous occasions given an undertaking to the fishing industry that it would uphold the confidentiality of licensees' catch and effort details. Statistical details are only ever released when the information is of a general or aggregate nature or an average for a particular fishery, without identifying individual licensees. By maintaining this approach, licensees have confidence in the department and are more likely to submit reliable data. However, if personal details were made public, then licensees would tend to under-report their catches in an effort to conceal their true levels of fishing activity. Such action would undermine the integrity of research data and erode the ability of the department to make sound management decisions.

On a number of occasions, the department has been requested to supply personal details to the Taxation Commissioner and to courts as a result of actions between the department and licensees or licensees and third parties. All requests have been strenuously resisted, notwithstanding that the Taxation Commissioner has wide ranging powers.

Whilst an amendment to the Act to maintain confidentiality would not overrule the Commonwealth taxation legislation, it would enable the Director of Fisheries to refuse requests for access to catch and effort data from others claiming an interest.

It is proposed that the Fisheries Act contain a provision such that the Minister or Director of Fisheries not be required by subpoena or otherwise to produce catch and effort information which identifies an individual licensee to any court, or to any other person; unless that information is made available with the prior consent in writing of the person to whose activities the information relates.

In providing the above explanation of proposed amendments to the Fisheries Act 1982, I would inform the Council that the South Australian Fishing Industry Council ('SAFIC'), representing the interests of commercial fishers, and the South Australian Recreational Fishing Advisory Council, representing the interests of amateur fishers, have been

consulted and generally support the proposed amendments to the Act. SAFIC has indicated it has concerns with the proposed amendment to Section 37.

In addition, other interest groups have been consulted and their responses indicate agreement in principle to the proposals.

In preparing the draft bill, the Parliamentary Counsel has taken the opportunity to incorporate statute law revision amendments.

I commend the measures to the Council.

The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 provides for commencement of the measure on a day to be fixed by proclamation.

Clause 3 amends section 5 of the principal Act.

The amendment—

(a) inserts definitions of "fish farming licence" and "marine park" (two new terms used in provisions inserted into the principal Act by this Bill);

(b) amends the definition of "take" to include the taking of dead fish;

and

(c) substitutes a new subsection (5) which sets out in which cases the principal Act does not apply.

The effect of new subsection (5) is to extend the application of the Act—

(a) to the taking of fish for the purpose of trade or business and to the introduction of exotic fish or fish disease in inland waters that are surrounded by land that is in the ownership, possession or control of the same person;

and

(b) to activities engaged in in relation to inland waters that are surrounded by land in the ownership, possession or control of the Crown or an instrumentality of the Crown.

Clause 4 inserts new section 14a into the principal Act. The section provides that where there is in force an arrangement that provides that a particular fishery is to be managed in accordance with the law of the Commonwealth, that law applies within the limits of the State as a law of the State.

Clause 5 amends section 20 of the principal Act which sets out the principal objectives that the Director and the Minister must have regard to in the administration of the Act to include a requirement that the objective of ensuring that the living resources of the waters to which the Act applies are not endangered or overexploited is achieved through proper "conservation, preservation and fisheries" management measures rather than through proper "conservation and management" measures.

Clause 6 repeals section 25 of the principal Act and substitutes a new provision. At present the Governor is empowered to appoint officers of the State Public Service to be fisheries officers for the purposes of the Act.

New subsection (1) empowers the Minister to appoint any of the following persons to be fisheries officers for the purposes of the Act: Public Service employees, officers under the Commonwealth Fisheries Act and interstate and territory fisheries officers.

New subsection (2) provides that the Director and each member of the police force are fisheries officers for the purposes of the Act.

New subsection (3) provides than an appointment under subsection (1) may be made subject to conditions limiting the area within which, or the purposes for which, the appointee may exercise the powers of a fisheries officer.

New subsection (4) empowers the Minister, by notice in writing served on a fisheries officer, to vary or revoke conditions imposed under subsection (3) or to revoke the appointment.

Clause 7 amends section 26 of the principal Act to require an identity card that is issued to a fisheries officer whose appointment has been made subject to conditions under section 25 (3) limiting the officer's powers to contain a statement of those limitations.

Clause 8 amends section 28 of the principal Act to empower a fisheries officer to request a person in charge of a vehicle to make the vehicle available for the officer's use for the purpose of enforcing the Act and to empower the Minister, where a fisheries officer makes use of such a vehicle, to compensate the person who would otherwise have been entitled to the use of the vehicle at that time for any loss incurred as a result of the vehicle being made available for use by the fisheries officer.

Clause 9 repeals section 30 of the principal Act and substitutes a new provision.

New subsection (1) provides that a person engaged in the administration of the Act incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under the Act.

New subsection (2) provides that subject to subsection (3), a liability that would, but for subsection (1) lie against the person lies instead against the Crown.

New subsection (3) provides that no liability lies against the Crown for any loss arising from—

(a) the granting of consent by the Director to the transfer of a fishery licence without the consent of a person nominated as having an interest in the licence (where that interest is recorded on the register pursuant to section 65);

(b) the acceptance by the Director of the surrender of a fishery licence without the consent of that person having been obtained;

or

(c) a failure on the part of the Director to record an interest in a licence pursuant to section 65, to notify the person recorded on the register as having an interest in a fishery licence of any proceedings for an offence against the holder of the licence or to remove a notation of an interest from the register.

Clause 10 amends section 34 of the principal Act to make it clear that only a natural person may be registered as the master of a boat.

Clause 11 amends section 36 of the principal Act to prevent a person other than the person nominated as the proposed master of a boat from being registered as the master.

Clause 12 amends section 37 of the principal Act to make it clear that the Director has power to impose a condition of a fishery licence even though the effect of the condition is to prevent (for a specified period)—

(a) the taking of one or more species of fish that could otherwise be lawfully taken pursuant to the licence;

or

(b) the use of any device or equipment that could otherwise be lawfully used to take fish pursuant to the licence.

The Director's decision to impose a condition that has the effect described above, or to vary a condition so that it has such an effect, must be approved by the Minister and the Minister must, before giving his or her approval—

- give the holder of the licence and the South Australian Fishing Industry Council (or if the Council ceases

to exist, the prescribed fishing industry body) notice in writing of the proposed action, setting out the condition to be imposed or the manner in which a condition is to be varied, as the case may be, and the reasons for the proposed action;

and

- not later than 14 days after giving notice, consult or use his or her best endeavours to consult with the holder of the licence and the Council in relation to the matter.

Clause 13 amends section 38 of the principal Act to provide that the Director cannot consent to the transfer of a fishery licence which is subject to an interest recorded in the register of authorities pursuant to section 65 unless the person specified in the register as having that interest has consented to the transfer.

Clause 14 amends section 43 of the principal Act by inserting several new provisions.

New subsection (2) empowers the Minister or a fisheries officer authorized by the Minister to direct any person or any persons of a specified class to not engage in a fishing activity of a specified class during a specified period where, in the opinion of the Minister, it is necessary to take urgent action to safeguard public health or protect living resources of the waters to which the Act applies.

New subsection (3) requires such a direction or authorization to be given in written form unless the Minister or the fisheries officer considers that impracticable by reason of the urgency of the situation, in which case it may be given orally.

New subsection (4) provides that where an authorization is given orally, written notice must be given as soon as practicable.

New subsection (5) provides that where a direction is given under subsection (2), notice of it must be published in the *Gazette* as soon as practicable.

New subsection (6) (which incorporates the existing subsection (3)) provides that a person must not engage in a fishing activity in contravention of a declaration or direction under the section. The maximum penalty is, for a first offence—a division 7 fine ($2 000), for a second offence—a division 6 fine ($4 000) and for a subsequent offence—a division 5 fine ($8 000).

Clause 15 amends section 44 of the principal Act to—

(a) make it an offence to sell, purchase or have possession or control of fish of a class declared to be protected for the purposes of section 42;

(b) to ensure that regulations made for the purposes of subsection (2)*(b)*,(i.e. to prescribe classes of fish) may prescribe a class of fish comprised of or including fish taken elsewhere than in waters to which the Act applies (this will make it possible to make it an offence to sell, have possession of etc. undersize fish taken anywhere);

and

(c) to provide an additional defence to a charge of an offence against the section if the defendant proves—

(i) that he or she did not take the fish in contravention of the Act;

and

(ii) that he or she did not know, and had no reason to believe, that the fish were, as the case may be, fish taken in waters to which the Act applies but not pursuant to a licence, fish taken in contravention of the Act, fish of a class declared protected for the purposes of section 42 or fish of a prescribed class.

Clause 16 amends section 46 of the principal Act to extend the regulation-making power—

(a) in respect of fisheries subject to a scheme of management—to the making of regulations that provide that no further licences may be granted in respect of the fishery, and, in respect of a miscellaneous fishery—to provide for licences of different kinds by empowering the Director to impose licence conditions limiting the class of fishing activities that may be engaged in pursuant to the licence, limiting the term for which a licence may remain in force or imposing any other limitation or restriction;

and

(b) to the making of regulations that provide for returns to be furnished to the Director by licensees to contain such information as the Director may, with the approval of the Minister, require (rather than information prescribed by regulation).

Clause 17 repeals section 48 of the principal Act and substitutes new sections dealing with marine parks and the protection of the aquatic habitat.

New section 48 deals with the constitution of marine parks.

Subsection (1) empowers the Governor, by proclamation, to constitute as a marine park any waters, or land and waters, specified in the proclamation, that the Governor considers to be of national significance by reason of the aquatic flora or fauna of those waters or the aquatic habitat and to assign a name to a marine park so constituted.

Subsection (2) empowers the Governor, by subsequent proclamation, to abolish, alter the boundaries or alter the name of, a marine park.

Subsection (3) requires the Minister to submit any proposal to constitute, or alter the boundaries of, a marine park to the Minister who has jurisdiction over any land that is to be included in a marine park for that Minister's approval and to submit any such proposal to the Minister of Mines and Energy and consider the views of that Minister in relation to the proposal.

Subsection (4) provides that a proclamation constituting, abolishing or altering the boundaries of, a marine park must not be made without the approval or approvals required by the section.

Subsection (5) provides that a proclamation abolishing, or altering the boundaries of, a marine park must not be made except in pursuance of a resolution passed by both Houses of Parliament.

Subsection (6) requires notice of a motion for such a resolution to be given at least 14 sitting days before the motion is passed.

Section 48a deals with the control and administration of marine parks.

Subsection (1) places marine parks under the control and administration of the Minister.

Subsection (2) empowers the Minister to grant on appropriate terms and conditions a lease or licence entitling a person to rights of entry, use or occupation in respect of a marine park.

Subsection (3) provides that any lease or licence granted in respect of waters or land and waters constituted as a marine park under the Act and in force immediately before the constitution of the marine park continues, subject to its terms and conditions, in force for the remainder of the term for which it was granted as if it had been granted by the Minister under this section.

Section 48b deals with plans of management for marine parks.

Subsection (1) requires the Minister to propose a plan of management for a marine park within two years after constitution of the park.

Subsection (2) empowers the Minister to prepare, at any time, an amendment to a plan of management or a plan to be substituted for a previous plan.

Subsection (3) requires the Minister—

(a) to invite (by public advertisement) members of the public to make representations as to matters that should be addressed by the plan of management; and

(b) in the case of a marine park that is adjacent to, or contigous with, a reserve constituted under the *National Parks and Wildlife Act 1972* or land that the Minister administering the Act has informed the Minister is proposed to be constituted as a reserve under that Act, consult with the Minister as to the matters that should be addressed by the plan of management;

and to consider all representations made by members of the public and the views of the Minister administering the *National Parks and Wildlife Act 1972* when preparing the plan of management.

Subsection (4) requires a plan of management to set out the proposals of the Minister in relation to the marine park and any other proposals by which the Minister proposes to accomplish the objectives of the Act in relation to the marine park.

Subsection (5) requires the Minister to incorporate in the plan of management for a marine park such measures as the Minister considers necessary or appropriate for—

(a) the protection, conservation and preservation of the flora and fauna of the waters included in the marine park and their habitat;

(b) regulation of fishing, mining and research activities in, public access to, and other use of, the marine park to prevent or minimize adverse effect on the flora and fauna and their habitat;

(c) co-ordination of the management of the marine park with the management of any adjacent reserve, park or conservation zone or area established under the law of this or any other State or of the Commonwealth;

(d) the promotion of public understanding of the purposes and significance of the marine park.

Subsection (6) requires the Minister to give notice by public advertisement of the fact that a plan of management has been prepared.

Subsection (7) provides that such notice must specify an address at which copies of the plan of management may be inspected and an address to which representations in connection with the plan may be forwarded.

Subsection (8) permits a person to make representations to the Minister in connection with a plan of management.

Subsection (9) requires the Minister to make copies of all representations made by members of the public under the section available for public inspection and purchase (other than those made in confidence) and to give notice of the place where those copies are available.

Subsection (10) empowers the Minister to adopt a plan of management either without alteration or with such alterations as the Minister thinks reasonable in view of the representations made by members of the public.

Subsection (11) requires the Minister to give public notice of the fact that he or she has adopted a plan of management.

Subsection (12) requires the Director to furnish a person who applies for a copy of a plan of management adopted under the section and pays the prescribed fee with a copy of the plan.

Subsection (13) defines certain terms used in the section.

Section 48c provides that the Planning Act 1982 does not apply to development undertaken in, or in relation to, a marine park pursuant to a plan of management adopted by the Minister in relation to that marine park.

Section 48d deals with the implementation of plans of management.

Subsection (1) provides that subject to subsection (2), where the Minister adopts a plan of management, the provisions of the plan must be carried out in relation to the marine park and activities must not be undertaken in relation to the marine park unless those activities are in accordance with the plan of management.

Subsection (2) provides that where a mining tenement has been granted in relation to land that forms part of, or has, since the tenement was granted, become part of, a marine park, the management of the marine park is subject to the exercise by the holder of the tenement of rights under the tenement.

Section 48e deals with agreements as to conditions.

Subsection (1) provides that the Minister and the Minister of Mines and Energy may enter into an agreement with the holder of a mining tenement in relation to land that forms part of a marine park imposing conditions limiting or restricting the exercise of rights under the tenement by the holder and his or her successors in title.

Subsection (2) requires the Minister of Mines and Energy, at the request of the Minister, to serve notice on the holder of a mining tenement in respect of which conditions imposed by agreement under subsection (1) have been contravened or not complied with, requiring the holder to rectify the contravention or failure in the manner and period set out in the notice.

Subsection (3) empowers the Minister of Mines and Energy to cancel a mining tenement held by a person who fails to comply with a notice under subsection (2).

Section 48f deals with rights of prospecting and mining in marine parks.

Subsection (1) provides that subject to subsection (2), rights of entry, prospecting, exploration or mining cannot be acquired or exercised pursuant to the Mining Act 1971, the Petroleum Act 1940 or the Petroleum (Submerged Lands) Act 1982 in respect of land forming part of a marine park.

Subsection (2) empowers the Governor, by proclamation, to declare that, subject to any conditions specified in the proclamation, rights of entry, prospecting, exploration or mining may be acquired and exercised in respect of land forming part of a marine park.

Subsection (3) provides that a person must not contravene or fail to comply with a condition of a proclamation under subsection (2). The maximum penalty is a division 5 fine ($8 000).

Subsection (4) provides that a proclamation under subsection (2) has effect according to its terms.

Subsection (5) empowers the Governor, by proclamation, to vary or revoke a proclamation under subsection (2).

Subsection (6) provides that rights of entry, prospecting, exploration or mining acquired by virtue of a proclamation under subsection (2) must be exercised subject to the plan of management for the marine park except where those rights were vested in the person seeking to exercise them before the commencement of the section or where those rights are exercised pursuant to an agreement with the Minister (or with the Minister and the Minister of Mines and

Energy), in which case implementation of the plan is subject to the agreement.

Section 48g deals with the protection of the aquatic habitat.

Subsection (1) provides that except as provided by the regulations or pursuant to a permit under the section, a person must not enter or remain in an aquatic reserve or marine park or engage in any fishing activity in an aquatic reserve or marine park.

Subsection (2) provides that except as provided by the regulations or pursuant to a permit under the section, a person must not engage in an operation involving or resulting in disturbance of the bed of any waters or removal of or interference with aquatic or benthic flora or fauna of any waters.

The maximum penalty for contravention of subsection (1) or (2) is, for a first offence—a division 7 fine ($2 000), for a second offence—a division 6 fine ($4 000) and for a subsequent offence—a division 5 fine ($8 000).

Subsection (3) empowers the Director—

(a) to issue a permit to any person authorizing that person to engage in activity, or do any act specified in the permit, in an aquatic reserve, during such period and subject to such conditions as may be specified in the permit;

and

(b) to vary or revoke a condition of such a permit or impose a further condition.

Subsection (4) empowers the Director to revoke a permit under subsection (3) if a condition of the permit is contravened or not complied with.

Subsection (5) empowers the Minister, if satisfied that the carrying out of a particular activity or the doing of a particular act in a marine park is in accordance with the plan of management for the park, issue a permit to any person authorizing the person to engage in that activity or do that act in the marine park during such period and subject to such conditions as may be specified in the permit.

Subsection (6) empowers the Minister to vary or revoke a condition of a permit under subsection (5) or impose a further condition.

Subsection (7) empowers the Minister to revoke a permit under subsection (5) if a condition of the permit has been contravened or not complied with.

Subsection (8) provides that a holder of a permit under the section must not contravene or fail to comply with a condition of the permit. The maximum penalty is, for a first offence—a division 7 fine ($2 000), for a second offence—a division 6 fine ($4 000) and for a subsequent offence—a division 5 fine ($8 000).

Subsection (9) defines "aquatic or benthic flora or fauna".

Section 48h empowers the Governor to make regulations prescribing and providing for the recovery of fees and charges payable for entry to a marine park or for the use of facilities provided in a marine park.

Clause 18 repeals section 51 of the principal Act and substitutes new provisions.

Section 51 provides that a person must not engage in fish farming unless the person holds a licence issued by the Director in accordance with the regulations or the person is acting as an agent of a person holding such a licence. The maximum penalty is a division 6 fine ($4 000).

Section 51a sets out the regulation-making powers with respect to the regulation of fish farming and the control of exotic fish and disease in fish.

Clause 19 amends section 54 of the principal Act which deals with the registration of fish processors by inserting several new provisions.

New subsection (7) provides that, subject to the regulations, a registered fish processor must not process fish of a prescribed class unless authorized to do so by the Director.

New subsection (8) requires such an authorization to be endorsed on the certificate of registration.

New subsection (9) provides that an authorization remains in force for such period as may be specified in the certificate of registration.

New subsection (10) empowers the Director to limit the species of fish that may be processed pursuant to an authorization and to vary or revoke any such limitation.

New subsection (11) empowers the Director to refuse to grant an authorization unless satisfied as to the matters prescribed in the regulations.

New subsection (12) provides that if the Minister is satisfied that the holder of an authorization has been convicted of an offence against the Act or against any other Act relating to fishing (whether it be an Act of the Commonwealth or of another State or a Territory of the Commonwealth), the Minister may by notice in writing to the holder revoke the authorization and require the holder to return the certificate of registration at a place and within a period specified in the notice.

Subsection (13) provides that a person must not fail to comply with a requirement imposed by notice under subsection (12). The maximum penalty is a division 8 fine ($1 000).

Clause 20 amends section 55 of the principal Act which sets out the regulation-making powers with respect to fish processing to extend those powers and to require fish processors to furnish to the Director returns containing such information as the Director may, with the approval of the Minister, require (rather than information prescribed by regulation).

Clause 21 amends section 56 of the principal Act to make it clear that a court has power to suspend fishery licences and other authorities for non-consecutive periods.

Clause 22 amends section 58 of the principal Act to give a person aggrieved by a decision of the Minister to revoke an authorization under section 54 the right to a review by the District Court of the decision.

Clause 23 repeals section 61 of the principal Act which deals with the surrender of authorities and substitutes a new provision.

New subsection (1) provides that the holder of an authority may, subject to subsection (2), at any time surrender the authority to the Director.

New subsection (2) provides that where the register of fishery licences includes a notation made pursuant to section 65 that a specified person has an interest in the licence, the licence cannot be surrendered without the consent of the person specified in that notation.

New subsection (3) provides that where an authority is surrendered to the Director the authority ceases to have any force or effect.

Clause 24 amends section 65 of the principal Act by inserting several new provisions.

New subsection (3) requires the Director, on application by the holder of a fishery licence and payment of the prescribed fee, to make a notation on the register of authorities kept under the section that a specified person nominated by the holder of the licence has an interest in the licence.

New subsection (4) provides that where the register includes a notation made pursuant to subsection (3) and proceedings for an offence against the Act have been commenced against the holder of the licence, the Director must give or cause to be given to the person specified in the

notation written notice of the particulars of the alleged offence.

New subsection (5) provides that where the register includes a notation made pursuant to subsection (3) that a specified person has an interest in a fishery licence, the Director must, on application by that person, remove that notation from the register.

Clause 25 amends section 66 of the principal Act to provide that a fish taken in contravention of the Act is to be taken to have a wholesale value equivalent to a fish of the same species taken not in contravention of the Act.

Clause 26 inserts new section 66a into the principal Act.

Subsection (1) provides that a person must not divulge information obtained (whether by that person or some other person) in the administration of the Act except as authorized by or under the Act, with the consent of the person from whom the information was obtained or to whom the information relates, in connection with the administration of the Act or for the purposes of any legal proceedings arising out of the administration of the Act. The maximum penalty is a division 6 fine ($4 000).

Subsection (2) provides that notwithstanding any other law to the contrary, the Minister or Director cannot be required by subpoena or otherwise to produce to a court any information contained in a return furnished by a licensee to the Director under the Act.

The schedule further amends the principal Act to bring it into conformity with modern standards of drafting (to substitute old "legalese" language with modern expressions and to substitute "shall" with the now preferred plain English words "must", "is" and "will", as appropriate), to remove obsolete and spent provisions (such as commencement provisions and references to repealed Acts) and to convert all provisions into gender neutral language.

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

SUPERANNUATION (MISCELLANEOUS) AMENDMENT BILL

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

WINE GRAPES INDUSTRY BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

Wine grape prices legislation has existed in South Australia since 1966, under sections 22a to 22e of the Prices Act 1948. Minimum prices were set continuously in South Australia from 1966 to 1985. Terms of payment have been determined each vintage since 1977.

The system of setting prices had been modified over that period. Until the latter years of the period, the recommended prices were usually determined by an Industry and Departmental Committee which took into account both the cost of production and market forces. The prices were set under the Prices Act and as such were legally enforceable with fines being imposed for soliciting or offering wine grapes at less than the gazetted prices.

For some time prior to the 1985 vintage there had been dissatisfaction by growers and wine makers at the effectiveness of the minimum prices legislation both within this State and in relation to the trading of wine grapes between South Australia, Victoria and New South Wales.

The Ministers of Agriculture from New South Wales, Victoria and South Australia, established a Working Party in 1984 to examine minimum wine grape prices. The working party's report was presented to the respective Ministers of Agriculture at the end of March 1985. The major recommendation of the report was for a base price to be set to operate on a national basis. The Ministers subsequently released the report for comment but no joint action was taken on it.

For the 1986 vintage, the South Australian Government decided that two base prices would be set in this State. The wine grape prices were gazetted on 19 December 1985, and for the first time one price ($175 per tonne) was listed for all grapes grown in Area 1 (the area irrigated from the Murray River) and another price ($190 per tonne) listed for all grapes grown in Area 2 (all grape growing areas of the State not included in Area 1). A price of $12 per baume per tonne was set for unsound grapes in the 1986 vintage.

After the completion of the 1986 vintage a review of the operation of the base price system was carried out by the South Australian Department of Agriculture. The review recommended that the base price system should continue for the 1987 vintage and the wine and grape industry situation be monitored prior to the 1988 vintage, with a view to removing all price control.

A single base price of $175 per tonne was set for Area 1 for the 1987 vintage but no price, at the request of the United Farmers and Stockowners (UF&S), was set for Area 2. No prices were set for either Area 1 or Area 2 for the 1988 vintage, although the legislation still remained in place.

At the 1988 Spring Session of State Parliament, it was determined that the Wine Grape Prices section of the Prices Act would continue to operate for the 1989 vintage. Lists of indicative wine grape prices were released by the various regional wine grape grower organisations to help guide growers as to the prices they should seek from wineries, but no legislated prices were set. The terms of payment that applied for the 1988 vintage applied for the 1989 vintage.

Indicative prices were determined for wine grapes in some areas for the 1990 vintage. Whilst few wine grapes were left unsold in South Australia, the prices actually received, particularly in the Riverland, were below the indicative prices. This was as a result of the relatively large tonnage of wine grapes harvested in the 1990 vintage and, at the same time, a continuation of the almost static demand for wine experienced on the domestic market in 1989. Legislated terms of payment were set for the 1990 vintage.

Representatives of the national wine making and grape growing industry bodies, the Departments of Agriculture and Fisheries (NSW), Agriculture and Rural Affairs (Vic) and Agriculture (SA) attended a meeting in Renmark on 19 October 1990 to finalise the development of an indicative pricing system. Two previous meetings to discuss this issue had been held by representatives from the above mentioned group during 1990.

The 19 October meeting agreed unanimously that the following three broad principles should apply for wine grape pricing in the Murrumbidgee Irrigation Area (MIA), the

Sunraysia areas of Victoria and NSW and the Riverland area of SA for the 1991 season and beyond:

- The industry should set up price negotiating machinery between growers and wine makers for the MIA, Sunraysia and Riverland, with a view to establishing indicative prices for all relevant varieties of wine grapes;
- Negotiations be held jointly between representatives of the three areas to arrive at indicative prices;
- The purpose of the indicative prices be to assist in the negotiations between buyers and sellers.

Following the Renmark meeting, an application was made by the Wine Grape Growers' Council of Australia Incorporated to the Trade Practices Commission (TPC) for interim authorisation until May 1991 and also for substantive authorisation. This would have allowed interstate and State committees comprising wine makers and grape growers to meet to discuss the formation of indicative prices. The TPC would not grant interim authorisation but has recently released its draft determination in relation to the setting of indicative prices. If the determination is upheld substantive authorisation will be granted for the above process until April 1994.

The Victorian and NSW Sunraysia areas met and agreed on indicative prices for the 1991 vintage based on the Renmark agreement. These States were protected in this process by existing legislation in both States. In SA, indicative prices were determined in irrigated and non-irrigated areas by the UF&S Wine Grape section. However, these were set unilaterally by grape grower representatives with no wine maker involvement. This process was undertaken following the TPC's refusal to grant interim authorisation to determine indicative prices and with the realisation that no new legislation relating to indicative prices could be finalised for the 1991 vintage. The Murrumbidgee Irrigation Area (MIA) set its prices under the legislation that operates in the MIA. This is separate to that which applies to the Sunraysia area of NSW. Legislated terms of payment for the 1991 vintage were set on 21 February 1991.

The UF&S and the Wine and Brandy Producers' Association of South Australia would like to have new legislation relating to indicative prices and terms of payment in place by the 1992 vintage. With this legislation and the TPC authorisation the three States would be able to meet jointly to discuss and determine the respective indicative prices to apply to the irrigated areas of NSW, Victoria and SA.

The reason for proposing this legislation is the industries' (grape growing and wine making) agreement that the current legislation, under the Prices Act, 1948 is ineffective. As a result of a series of 3-State (SA, Victoria and NSW) wine grape pricing meetings held in 1990, this State's grape growing and wine making industries sought similar wine grape legislation to that introduced into Victoria in 1990. This Bill, although not similar to the Victorian legislation, empowers the Minister of Agriculture, on advice, to publish indicative prices for grapes grown in Area 1 of South Australia and terms of payment for all wine grapes grown in South Australia (Area 1 is that area in South Australia comprising the district councils of Barmera, Loxton, Berri, Paringa, Morgan, Waikerie, Mannum, Mobilong, the hundred of Katarapko, the hundreds of Fisher, Forster, Nildottie, Ridley and Bowhill in the district council of Ridley, the hundred of Skurray in the district council of Truro, the municipalities of Murray Bridge and Renmark and the counties of Young and Hamley).

A committee will be established in South Australia by the wine making and wine grape growing industries to advise the Minister of Agriculture on the indicative prices and the terms and conditions of payment to apply for the ensuing vintage.

Membership of the Committee:

- the Committee shall consist of 7 members, including the Chairperson.
- the Chairperson will be appointed by the Minister of Agriculture.
- 3 members will be persons involved in producing wine grapes or in the wine grape producing industry organisation, selected by the United Farmers and Stockowners of South Australia.
- 3 members will be persons involved in the purchasing of grapes for processing into wine or in the wine and brandy producers' organisation, selected by the Wine and Brandy Producers' Association of South Australia.

The provisions of the Bill are as follows:

Clauses 1 and 2 are formal.

Clause 3 is an interpretation provision. A definition of 'production area' is included for the purposes of limiting the application of recommended prices to wine grapes grown in the Riverland area.

Clause 4 exempts sales of wine grapes by a member of a registered co-operative to the co-operative from the operation of the measure.

Clause 5 provides for the Minister to recommend a price for each variety of wine grapes grown in the production area.

Clause 6 enables the Minister to fix terms and conditions relating to the time within which payment for wine grapes must be made by processors and payments to be made by processors in default of payment within that time. The terms and conditions must not differentiate between purchasers.

Clause 7 requires the Minister to consult representatives of both producers and processors before recommending prices or fixing terms and conditions. The clause expressly contemplates parties discussing and negotiating prices.

Clause 8 includes administrative provisions relating to the making of orders under clauses 5 or 6.

Clause 9 provides that a processor must not accept delivery of grapes if he or she has not paid in full for any grapes received in a previous season. It allows the Minister to grant exemptions.

Clause 10 provides that offences against the Act are summary offences and that prosecutions must be commenced within 12 months and must be authorised by the Minister.

The schedule contains consequential amendments to the Prices Act 1948. The provisions relating to the fixing of prices, and terms and conditions of payment, with respect to wine grapes are removed.

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

SOUTH AUSTRALIAN HEALTH COMMISSION (PRIVATE HOSPITAL BEDS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The purpose of this short Bill is to clarify the South Australian Health Commission's powers in relation to private hospital licensing.

Honourable members will recall that amendments which were passed in 1984 sought to introduce for the first time the concept of licensing private hospitals on the basis of need. Prior to that, licensing had been carried out by local government largely on the basis of physical facilities, with system-wide issues such as geographical distribution, service mix and co-ordination of services being outside the scope of the legislation.

Reports and inquiries at State and Federal level had supported the need for State Government controls over the establishment of new services in both the public and private sectors, to provide for accountable management of public moneys and responsible oversight and distribution of hospital services. Indeed, the distinguished Dr Sidney Sax, who chaired the Inquiry into Hospital Services in South Australia in 1983 recommended that legislation be introduced in South Australia 'to ensure that the establishment of additional private hospital facilities complies with State and sector strategic planning guidelines and does not prejudice the economic and efficient delivery of health care services in South Australia.'

The legislation which followed in 1984 and came into force in 1985 provided for the Health Commission to license private hospitals. The Commission was empowered to take a number of factors into account in determining whether a licence should be granted, for example:

- the scope and quality of the service to be provided in pursuance of the licence;
- the location of premises and their proximity to other facilities for the provision of health services;
- the adequacy of existing facilities for the provision of health services to people in the locality;
- the requirements of economy and efficiency in the provision of health services within the State.

The Commission was also empowered to impose conditions on a licence, including a condition limiting the number of patients to whom health services may be provided on a live-in basis at any one time.

South Australia has one of the highest ratios of hospital beds: 1 000 population in Australia (5.56 beds: 1 000 population). The relationship between high ratios of hospital bed supply, utilisation and costs is well documented. The Health Commission has adopted planning targets of 5.07 beds:1 000 population in the metropolitan area and 3.31 beds: 1 000 population in the non-metropolitan area, with a Statewide target of 4.5 beds:1 000 population by June 1993. Consequently, the Commission has not approved any net increase in the number of private hospital beds in metropolitan Adelaide for some time. It has sought to exercise its statutory responsibility to have regard to economy and efficiency by requiring new hospitals, or extensions to existing ones, to ensure the closure of an equivalent number of beds at other hospitals. This has led to some rationalisation in the private hospital industry—and at the same time, has created a market for 'beds'.

The Commission's ability to impose such requirements has recently been subject to judicial review. In an appeal to the Supreme Court [*Gawler Private Community Hospital Inc. v. South Australian Health Commission*] the Honourable Justice Millhouse found 'economy and efficiency in the provision of health services in the State' to be too broad and general a consideration to support a specific condition requiring a private hospital to ensure the closure of an equivalent number of existing private hospital bed numbers within the metropolitan area, thereby ruling the condition ultra vires.

The need to contain health care costs has probably never been greater than it is today. Economy and efficiency were major features of the 1980s—they are absolute imperatives for the 1990s and beyond. The private hospital and private health insurance industries themselves have, to their credit, recognised the need for regulated, planned development in the private hospital sector. In response to the Health Commission's review of private hospital licensing arrangements during 1990/91, the industry supported the maintenance of controls over private hospital bed numbers. It is essential, therefore, that the Health Commission's powers in relation to private hospital licensing be clear and unambiguous.

The Bill seeks to formalise the current practice of the Commission when considering applications for new or expanded private hospitals. It enables Regulations to be made, setting a limit on the number of hospital beds in the State or in a particular region. Section 57d sets out the various factors to which the Commission must have regard in determining whether or not to grant a licence. A new provision specifically enables the Commission to take into account whether the prescribed limit of hospital beds for the State, or for the particular region in which the premises or proposed premises are or will be situated, has already been reached or exceeded. If that limit has been reached or exceeded, the Commission may refuse to grant a licence or refuse to grant it unless there is a corresponding reduction in the bed entitlement of an existing licensee.

The conditions which the Commission may impose on licences are similarly made more specific in amendments to section 57e. A transitional provision is included to ensure that applications made on or after the date of introduction of the Bill (14 November 1991) are dealt with in accordance with the new provisions, and that limitations on bed numbers on existing licences continue to have effect. I commend the Bill to the House.

Clause 1 is formal.

Clause 2 amends the definitions section, section 6. A new definition is inserted. 'Hospital bed' is defined as the bed and associated facilities provided by a hospital for the provision of health services to a patient on a live-in basis.

Clause 3 amends section 57c by requiring the application for a private hospital licence to state the maximum number of hospital beds sought to be provided pursuant to the licence.

Clause 4 amends section 57d which sets out various factors to which the Commission must have regard in determining whether or not to grant a private hospital licence. The amendment requires the Commission to have regard to those factors also for the purpose of determining what conditions should be imposed on a licence. The Bill provides in clause 6 for the making of regulations setting a limit on the number of hospital beds in the State or in a particular region. This amendment provides that if that limit has been reached or exceeded, the Commission may refuse to grant a licence or refuse to grant it unless there is a corresponding reduction in the bed entitlement of an existing licensee.

Clause 5 amends section 57e which provides for the imposition of conditions on a private hospital licence. The amendment alters the wording of the condition relating to limiting the number of patients to whom services may be provided on a live-in basis at any one time to include a reference to the defined term 'hospital bed'. The amendment also enables a new condition to take effect earlier than 30 days after it is imposed if the licensee consents. The

amendment provides that if the limit set in regulations as to the optimum number of hospital beds in the State or a particular region has been reached or exceeded, the Commission may refuse to increase the bed entitlement of a hospital without a corresponding reduction in the bed entitlement of some other hospital.

Clause 6 amends section 66 by including the regulation making power referred to above.

Clause 7 is a transitional provision that ensures that applications made on or after 14 November 1991 are dealt with in accordance with the Act as amended. It also ensures that existing conditions of licence limiting the number of patients to whom health services may be provided on a live-in basis at any one time continue to have effect as a limit on the bed entitlement of the hospital.

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

ADJOURNMENT

At 9.59 p.m. the Council adjourned until Wednesday 27 November at 2.15 p.m.