LEGISLATIVE COUNCIL

Wednesday 7 October 1992

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

ASSENTS

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

Controlled Substances (Classification of Offences) Amendment,

Debits Tax (Rates) Amendment,

Gaming Machines,

Liquor Licensing (Fees) Amendment,

Local Government (Miscellaneous Provisions) Amendment,

Supply (No. 2)

Tobacco Products (Licensing) (Fees) Amendment.

QUESTIONS ON NOTICE

The PRESIDENT: I direct that the written answers to the following questions, as detailed in the schedule that I now table, be distributed and printed in *Hansard:* Nos 4 and 7:

TOURISM MINISTER

The Hon. DIANA LAIDLAW asked the Attorney-General:

1. How many applications were received last year for domestic violence intervention orders under section 91 of the Justices Act?
2. How many of the applications were lodged by police?
3. How many orders were granted by the courts and how many were withdrawn?

The Hon. C.J. SUMNER:

1. Orders to keep the peace, or restraint orders as they are commonly known, are made under section 99 of the Justices Act and came into operation in their present form on 3 June 1982. (The Justices Act was replaced by the Summary Procedure Act on 6 July 1992.)

The Office of Crime Statistics has maintained records of restraint orders as they are processed in the Courts of Summary Jurisdiction. These records show that 1 702 cases involving restraint orders were finalised during 1991. It should be noted, however, that is not possible to determine the reason for the application from these records and thus impossible to distinguish 'domestic violence' related applications from other applications.

2. 96.1 per cent of the cases were lodged by police.

3. 1 271 were granted by the Courts; 292 were withdrawn; the remaining 139 were rejected by the Courts.

TANDANYA

The Hon. J.F. STEFANI asked the Minister of Tourism—I repeat my question asked on 28 April—

1. Can the Minister advise if Tourism SA arranged for a planning consultant, Mr Doug Wallace, to travel to Kangaroo Island in order to attend a public meeting concerning the Supplementary Development Plan being prepared for the Kangaroo Island Council at the request and cost of the Tandanya Project Developer?

2. *(a)* Did Tourism SA pay for any of the costs associated with Mr Wallace's trip?

(b) If so, what were the costs?

3. Did the Minister approve the payments made by Tourism SA to Kangaroo Island Council for the preparation of the Supplementary Development Plan for the Tandanya Project?

4. If so:

(a) on what date did the Minister approve the payments?

(b) what were the amounts paid?

(c) what was the date of each payment?

(d) what was the basis of the decision to make such payments on behalf of a private developer?

5. Can the Minister advise if payments of a similar nature were ever made by the Department of Tourism or Tourism SA for the preparation of a Supplementary Development Plan for a private project?

6. If so, what were the projects?

The reply is as follows:

1. Tourism South Australia did arrange for Mr Doug Wallace, who is the Council's Consultant Planner, to travel to Kangaroo Island in order to attend a public meeting concerning the Tandanya Project Supplementary Development Plan.

There is no Kangaroo Island Council and the meeting was in fact convened by the District Council of Kingscote.

2. *(a)* Yes

(b) $540, of which $140 was for travel expenses and $400 for Mr Wallace's fee.

3. Tourism SA allocated $18 000 to the cost of preparing the Supplementary Development Plan. This allocation, and payments from it to the District Council of Kingscote, were approved under delegated authority by senior Tourism SA staff as is normal practice.

4. Not applicable.

5 and 6. One of Tourism SA's roles is as a facilitator of tourism development and, in that capacity, it provides a range of assistance to tourism developers with the primary objective of achieving appropriate tourism development in the State.

Assistance may include strategic planning, viability assessments or supporting infrastructure provision. Tourism SA frequently assists Councils to prepare supplementary development plans from completed tourism strategies and, in this case, has assisted the council with the preparation of a supplementary development plan for a specific project.

The State's Tourism Plan has identified the need for some strategic projects as critical to growth, particularly in the Flinders Ranges, Kangaroo Island, Barossa Valley and the Metropolitan Coast. The Government intends to play an increasing role in achieving these projects via a range of incentives which may include ensuring that zoning is appropriate for tourism development.

Another example of project-specific supplementary development plan preparation is the proposed Barossa Valley Country Club (Rowland Flat/Jacobs Creek). While no funds were contributed to the Barossa SDP, Tourism SA nevertheless provided considerable advice and support to both the developer and the council in establishing appropriate tourism zoning.

MEMBERS' INTERESTS

The PRESIDENT laid on the table the Statement of the Registrar of Members' Interests for 1992.

Ordered that report be printed.

JOINT PARLIAMENTARY SERVICE COMMITTEE

The PRESIDENT laid on the table the Joint Parliamentary Service Committee report for 1991-92.

OMBUDSMAN'S REPORT

The PRESIDENT laid on the table the Ombudsman's Report for 1991-92.

PAPERS TABLED

The following papers were laid on the table:

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

State Bank of South Australia—Annual Reports and Accounts 1991-92.

Reports, 1991-92—

Casino Supervisory Authority.
Government Management Board.
Parliamentary Superannuation Scheme.
S.A. Metropolitan Fire Service.
S.A. State Emergency Service.

State Bank of South Australia—Reports and Account 1991-92.

Occupational Health, Safety and Welfare Act 1986—Code of Practice for Manual Handling.

Workers Rehabilitation and Compensation Act 1986—Regulations—Claims and Registration.

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

Murray-Darling Basin Commission—Report, 1990-91.

Reports, 1991-92—

Art Gallery of South Australia.
Enfield General Cemetery Trust.
Department of Environment and Planning.
History Trust of South Australia.
Local Government Finance Authority of South Australia.
South Australian Museum Board.
Pipelines Authority of South Australia.
Totalisator Agency Board.

Summary Offences Act 1953—Regulations—Grafitti Implements.

Survey Act 1992—Regulations—General.

District Council By-laws—

Mount Barker—

No. 29—Licensing of Horse and Animal Drawn Vehicles.

Rocky River—

No. 1—Permits and Penalties.
No. 2—Streets and Public Places.
No. 3—Dogs.
No. 4—Bees.
No. 5—Animals and Birds.

By the Minister of Consumer Affairs (Hon. Anne Levy)—

Commercial and Private Agents Act 1986—Regulations—Grand Prix Security Guards—Exemption from Licensing

By the Minister of Transport Development (Hon. Barbara Wiese)—

Lyell McEwin Health Service Superannuation Fund—Report, 1990-91.

Reports, 1991-92—

Dental Board of South Australia.
Radiation Protection and Control Act 1982.
Woods and Forests.

Regulations under the following Acts—

Controlled Substances Act 1984—

Prohibited Substances—Simple Cannabis Offences—Revocation.
Expiation of Simple Cannabis Offences—Number of Plants.

Marine Act 1936—Qualifications, Crewing—Commercial Vessels—Amendment.

Medical Practitioners Act 1983—Registration Fees—Increase.

South Australian Health Commission Act 1976—South Australian Mental Health Service—Fees.

LEGISLATIVE REVIEW COMMITTEE

The Hon. M.S. FELEPPA brought up the seventeenth and eighteenth reports.

LOCUSTS

The Hon. BARBARA WIESE (Minister of Transport Development): I seek leave to make a ministerial statement.

Leave granted.

The Hon. BARBARA WIESE: In April this year adult Australian plague locusts moved into South Australia from Queensland, settling to lay eggs in the Riverland, the Flinders Ranges, on Eyre Peninsula and in scattered areas across the Far North of the State. The Minister of Primary Industries has announced that hatchings of these eggs have begun in the Flinders Ranges and that hoppers (juvenile locusts) are banding and on the move.

The Department of Agriculture has established an operations base at Hawker and has teams of officers in the region checking on locust numbers and locations to provide information for the spraying program. The Government has provided $2 million to fight the locust plague, a plague which has the potential to strip around $300 million worth of cereal crops and pastures in the regions under threat, namely, the Mid North, Upper Yorke Peninsula, Eyre Peninsula and the Murray-Mallee. The department is well prepared and experienced in fighting such plagues and successfully beat this natural predator in 1987. There are 10 departmental survey teams based in Eyre Peninsula, the Flinders Ranges and the Murraylands. There are also two spray aircraft, one spotter helicopter and chemical control for 150 000 hectares.

Strong links with local councils and farmers have ensured that locust plagues are fought and won by whole communities in rural areas. There are 24 district councils involved in the program, assisting the department and local farmers with information and equipment servicing. The most current information from Hawker base station is that bands of locusts have been spotted from Nilpena and Parachilna in the northern Flinders to the western side of the southern Flinders Ranges between Port Pirie and Port Augusta. Some spraying has already occurred and more will be carried out as weather conditions become appropriate. The Department of Agriculture will handle the plague in the Flinders Ranges and on Eyre Peninsula but, as part of its charter, the Australian Plague Locust Commission will look after outbreaks on the Murray-Mallee and scattered areas in the north. The campaign will run from now until December.

QUESTIONS

PUBLIC SECTOR REFORM

The Hon. R.I. LUCAS: I seek leave to make an explanation prior to asking the Minister of Public Sector Reform a question on the subject of public sector reform.

Leave granted.

The Hon. R.I. LUCAS: A report on the South Australian Public Service by Ernst and Young, the South Australian Centre for Economic Studies and Mark Coleman and Associates was recently released as part of the Arthur D. Little study into the South Australian economy. That report noted that South Australia spent 22.5 per cent of its gross State product on public services while the national figure for 1990-91 was just 18.1 per cent; that is, South Australia spent almost 25 per cent more of its gross State product on public services than the national average.

When the Attorney-General was appointed as Minister of Public Sector Reform, the Premier stated that there would be a reduction in Public Service numbers. He was quoted on the front page of the *Advertiser* as saying so. On the following day, the Premier indicated that he would make a major economic statement in the first quarter of 1993 and he warned that it might require a statement on reductions in employment levels in the public sector. My questions are:

1. Has the Minister read the consultant's report on the Public Service to which I referred?

2. Does the Minister believe that South Australia enjoys 25 per cent better or bigger public services than the national average and, if not, why are we spending 25 per cent more than the national average on public services?

3. Does the Minister agree with the Premier that there will be reductions in Public Service numbers and will the Minister outline any targets and timetables for such reductions that he is aiming towards?

The Hon. C.J. SUMNER: I have read the consultant's report to which the honourable member referred. It was that part of the A.D. Little report that prompted the Premier to allocate a ministry of public sector reform to me to examine that report and to work on the issues raised in it.

The honourable member has asked me whether I believe that South Australia gets 25 per cent better or more services (I think they were the words he used) than the other States. One of the things that I have said I intend to do is put the Ernst and Young consultancy under the microscope to ensure that the factual basis contained in it is accurate, so that any moves in this area are based on a proper assessment of the facts. Clearly, if policies are going to be developed in this area, we must ensure that those facts are accurate. So, I cannot answer the honourable member's second question, but I am sure that at some point in the future, once I have had that consultancy report further analysed, I will be in a position to do so.

The position of the Premier on the question of public sector numbers, as I understood it, was that the appointment of a Minister of Public Sector Reform was not made just to carry on a razor gang exercise or just to be another GARG. In fact, as I recollect what the Premier said, he did not say that there would necessarily be a reduction in public sector numbers; nor did he say that there would not be. That is the position that I have put in my very few public statements on the topic. There may or may not be a reduction in Public Service numbers; that is something that will need to be determined once I am fully involved in the issues surrounding this portfolio.

I have made the point that one cannot say that public sector numbers are set in concrete for all time at a particular level. To my way of thinking, that would not be good management. What will need to be looked at is whether public sector numbers are such as to provide the most effective and efficient service to the public of South Australia. Obviously, the question of public sector numbers is something that will be looked at, but what the result of that examination will be, I cannot say at this stage.

As I have said, I do not believe that the Premier made a commitment one way or another to any particular level of public sector employment and did not say whether there would be an increase or a decrease. At this stage, in light of what I have said, obviously, there are no targets. However, I should say that in this area I anticipate being able to make a more comprehensive statement of the issues involved in public sector reform at some time in the future. Once the unit to deal with it has been established, GARG will be abolished.

It was not envisaged by the Premier that the public sector reform process would just be a continuation of GARG. Obviously, some of the GARG initiatives that are still in train will be taken up and pursued, but it was a broader brief for public sector reform that was given to me as Minister and, at the appropriate time in the future, there will be a fuller statement, as the Premier has indicated, on what will be envisaged, what philosophy will be involved, which principles will be operated under and which targets, if any, will be set over the remaining life of this Government.

The Hon. R.I. LUCAS: As a supplementary question, is the Attorney-General arguing, therefore, that the front page story in the *Advertiser* of 1 October, which says that Mr Arnold warned that there would be rationalisations and reductions in Public Service numbers, is wrong? Secondly, which officers will the Attorney-General use to place the Ernst and Young report under the microscope as he indicated in his earlier response?

The Hon. C.J. SUMNER: The honourable member has quoted a statement from the *Advertiser*. I would have to check whether or not that is what the Premier said, but my recollection of what he said, in so far as I was involved, was that there was no specific statement being made about public sector numbers at this stage, which is not to say that targets might not be set at some point in time. All I am saying is that at this stage that is not a matter that has been specifically addressed. One would expect in some areas of public service reform that there would be rationalisations; presumably, there would be no point in doing it if there were not. As I said, whether that will involve a reduction in public sector numbers, I cannot say at this stage, but that will be the subject of a further statement from the Government at an appropriate time.

I repeat that I do not think we can have a situation where a certain level of public sector employment is set

in concrete for all time. Public sector reform may involve looking at public sector numbers. I suppose in some circumstances it could involve an increase in public sector numbers, although that is unlikely. All I can say at this stage is that they are matters that will be dealt with in the future as this process develops: taking on the GARG process, completing the work that has been done there and developing a broader policy of public sector reform, about which the Premier has indicated a further statement will be made at some time in the future. As to the examination of the Ernst and Young consultancy report, I have to convince myself that the material in that is valid.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I will do it in conjunction with officers and, obviously, if necessary, I will be talking to the people who did the review. I have asked for the background papers and material that led to the establishment of their conclusions. As has already been indicated, Ms Sue Vardon is to be Chief Executive Officer of the Government Management Board and has also been given the task of heading the unit which will make the recommendations and drive the public sector reform process and—

The Hon. R.I. Lucas: Do you have Public Sector Department staff under you?

The Hon. C.J. SUMNER: No, I have no staff at the moment; they are matters that are being dealt with this week. The change in the Chief Executive Officers is due to be effected tomorrow by the Governor in Executive Council. As from tomorrow, Ms Vardon will have her new task as Chief Executive Officer of the Government Management Board, and part of her responsibilities will be the public sector reform process. All that is in the process of happening, and the exact bureaucratic structure that will report to me on this is still being determined.

Whether the debate be in this Parliament, the community or with the unions concerned, I think it is important that the consultancy which was the catalyst for this particular initiative of the Premier is examined and that we can be assured that the factual statements in it are correct. That is a very important first step process which I have already indicated I intend to do; that will be done by the relevant officers. Obviously, Ms Vardon will be involved, but I would expect that she, and perhaps I as well, will have consultations with the authors of the report—those who are responsible for doing the background work on the report—and other agencies in Government. We would also want to discuss the conclusions of that report with the Public Service Assocation, so that if we are having a debate about public sector reform at least it is done on the basis of factual information which is agreed, if that is possible.

GOVERNMENT PROPOSALS

The Hon. K.T. GRIFFIN: As the Attorney-General reportedly was very much involved in negotiating the deal between the ALP and the two Independent Labor members, Mr Groom and Mr Evans, to bring them into the Cabinet and exclude two loyal members of the ALP, my questions to the Attorney-General are as follows:

1. What legislative or other initiatives in the Parliament, or proposed by the Government, will now not proceed or will be proceeded with in a different form?

2. What proposals of Mr Groom and Mr Evans will be picked up by the Government and initiated in the Parliament or outside Parliament?

3. Are there any matters upon which it is possible that Mr Groom and Mr Evans will vote against a Government proposal in the Parliament?

The Hon. C.J. SUMNER: The honourable member will have to wait and see on the answer to the first and second questions and, obviously, some matters will have to be the subject of discussion between the Government and the Independents because of positions that were taken by the Government and the Independents previously, which were different. Those matters must and will be resolved and, at the time they are resolved, statements will be made about them. As to the answer to the third question, the Independents have entered into a coalition with the Labor Government. Mr Evans has said publicly that both he and Mr Groom have indicated that they will be bound by the principles of Cabinet solidarity as part of the coalition, and I do not think there is very much more that I can say in answer to the third question.

The Hon. K.T. GRIFFIN: As a supplementary question, is the Attorney-General saying that the deals which were done and the commitments which were given between the Parties are not proposed to be released publicly and that the Government will maintain them in a state of secrecy?

The Hon. C.J. SUMNER: No; I have said in answer to the first two questions asked by the honourable member that they will be the subject of discussion and, where there is difference of opinion, it will be the subject of discussion between the Government and the Independents and at the appropriate time announcements will be made about those matters. As to the general issue, all one can say is that there is no formal document of coalition. That was not considered to be necessary. We have a coalition between the Labor members of Parliament and the Independents. It is a coalition Government, which means that all the members of the Cabinet are bound by Cabinet solidarity and the principles of Westminster Cabinet Government, which are quite well known to the honourable member, I assume.

I am sure that as a member of the Liberal Party he is cognisant of the situation that has operated at the Federal level when his Party has been in power for the best part of this century, where there has been a coalition of the conservative Parties—the Coalition of the Liberal and (now) National Parties. That situation now operates in New South Wales, where his Party is in Government. The situation now operates in Victoria as a result of the election on Saturday, where his party is again in Government. But his Party is in Government, believe it or not, in coalition with the National Party and I understand that, provided they can get their act together in Western Australia, it is possible that there will be coalition in Western Australia between the Liberal Party and the National Party. So, the concept of coalition is not something that is foreign to the honourable member; it is more foreign to the Labor Party. Nevertheless, we have arrived at an agreement for a coalition with the Independent Labor members in the House of Assembly;

as such, they are members of the Cabinet, just as the National Party and the Liberal Party are a coalition—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: No—as they are members of a coalition in New South Wales. There was no written coalition document; the only real understanding is that the normal principles of Cabinet Government will apply, just as they apply to the Coalition Governments in New South Wales and Victoria and where they have existed at the national level. So, the principles are well known to the community and to the honourable member, I am sure, and that is the basis upon which the Government will operate.

STATE TRANSPORT AUTHORITY

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Transport Development a question about the employment of casual workers by the STA.

Leave granted.

The Hon. DIANA LAIDLAW: Today, Adelaide's buses and trams stopped for over two hours while members of the Australian Tramways and Motor Omnibus Employees Association (ATMOEA) met to challenge a ruling by the Australian Industrial Relations Commission. The ruling allows the STA to employ up to 30 per cent of its work force of 1 300 bus drivers as casual workers over the next three years. This decision is to be challenged by the Federal Executive of the union.

On the latest available figures (1990-91) it cost taxpayers $1.50 for every passenger journey on STA buses and trains, but for rail every passenger journey cost taxpayers $7.94, which is $6.44 more. Therefore, it is rail, not bus and tram travel, that is costing taxpayers a fortune to operate in this State. Yet, the STA has picked on bus and tram drivers to save costs with the introduction of casual work conditions, while providing the Australian Federated Union of Locomotive Enginemen with a written commitment that the STA will not try to introduce casual conditions for the future employment of train drivers.

My questions are: Why is the Government condoning action by the STA which discriminates against members of the ATMOEA, compared with STA workers in other unions; why, if casual work is seen by the STA to be an important reform for bus and tram drivers, is the STA not seeking to enforce the same work condition upon train drivers and other rail workers, particularly when rail workers do not even have permanent part time work arrangements incorporated in their awards; and what action will the Minister take to ensure that the travelling public in Adelaide is not inconvenienced by further industrial disruption by ATMOEA members, prompted by the STA's ham-fisted approach to employee relations and industrial practices?

The Hon. BARBARA WIESE: As the honourable member is well aware (and she has probably been following events more closely than I have been in recent times), considerable restructuring has been taking place in the public transport system over quite a long period of time. This has required negotiation on many fronts under industrial awards, and arrangements and agreements have been reached over time to change the operations and arrangements by which people working in the public transport system, whether it be on buses or trains, should work so that our public transport system can be more efficient and so that we can provide a better public transport service to members of the public. As I understand it, the negotiations have taken place separately for bus and train employees on most occasions, although I believe in recent times there has been some suggestion that the unions affecting both buses and trains, at least for some purposes, have talked about negotiating together on some aspects relating to employment issues.

The Hon. Diana Laidlaw: The STA is not, though; it is picking on one and not the other.

The PRESIDENT: Order!

The Hon. BARBARA WIESE: The honourable member suggests that the STA is picking on one group and not the other, but that is not my understanding of the negotiations that have taken place over some time. I believe that different conditions and different issues have been the subject of negotiations with the work force in those two areas of the public transport system, and where different conditions and different issues apply one would expect that the negotiations taking place would vary because one is trying to solve a different set of problems in each case.

As far as the negotiations that have been taking place recently with the bus employees' representatives, I understand that a decision was taken today that an appeal would be lodged with the Industrial Commission against the decision that was taken last week relating to casual workers and we will have to see the outcome of that. Just before I entered the Parliament this afternoon I was advised that the negotiations that took place recently between the STA and the AFULE concerning two matters relating to employees on trains now have also been satisfactorily concluded; and the two areas that were being negotiated related to driver-only operation and an enterprise bargaining agreement. As I understand it, agreement has been reached in those areas and when the membership of the appropriate union is notified of the outcome of the negotiations no doubt announcements will be made about the nature of the agreement that has been reached.

The point I want to make is that because there are varying issues to be dealt with in various sectors of the public transport system, it is to be expected that from time to time the nature of the negotiations, which are designed to build a more flexible public transport system and are designed ultimately to provide a cost-effective and efficient public transport system for the South Australian community, will vary in their content and form depending on the needs of the time. I would need to be convinced that the honourable member's claim is correct, that one group of the work force is being discriminated against in favour of another.

I believe that the negotiations that have been taking place in recent times have been very constructive and that they have been in the interests of the South Australian public. I think that slowly but surely we are building a more effective and efficient public transport system and that very soon, as all those decisions flow into the system, the travelling public will recognise the benefits of the very considerable work that has been taking place

over a long period of time in the negotiations between employees and management.

The Hon. DIANA LAIDLAW: As a supplementary question, will the Minister explain why it is fair and reasonable for casual work to be an acceptable work condition for bus and tram drivers but not for train drivers?

The Hon. BARBARA WIESE: I am not aware whether or not there has already been any discussion between the STA and representatives of the train employees on this matter of casual work. I will make some inquiries about the background of these issues and determine why it is that in this particular instance a different approach is being taken. However, I would assume that it relates to the comments that I made earlier, that in different sectors of the public transport system different issues arise at various times and necessarily there will be a different emphasis and a different approach taken in each area depending on the issues of the day and the needs that have to be satisfied in order to deliver an efficient public transport system. I will seek further advice on that matter and bring back a reply.

DRIVERS' LICENCES

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister of Transport Development a question relating to licence changes.

Leave granted.

The Hon. I. GILFILLAN: In this morning's *Advertiser* there was an article describing changes which have been foreseen as coming into effect early next year, one assumes with the blessing of the Minister, to quite dramatically change the process of granting drivers' licences in South Australia. I am sure that everyone remembers that in the recent past one of the New South Wales ICAC investigations uncovered a racket regarding the corrupt sale of licences in the New South Wales system and it was recognised as an area where the pressures for corruption were high. I believe it is not just a question of corruption: members would agree that road safety and the competence of drivers must be the number one priority. This system is described in the article as being the log-book system 'where drivers will be assessed over a period of weeks by their instructors to qualify for their licences'. Further on the article comments that the actual cost of this will be approximately $500 and that it will be virtually a privatisation of the licence testing system.

The commercial pressure on this system is virtually an invitation for corruption with the inevitable result that incompetent, less-satisfactorily safe drivers will be moving on to the roads in South Australia. This concern was highlighted by the State President of the PSA, Ms Jan McMahon, and in the article she is quoted as saying that she was seeking urgent talks with the new Transport Development Minister, Ms Wiese. She is quoted as follows:

> We are opposed to privatisation in any form and we are worried that South Australia's excellent reputation for corruption-free driving testing could be compromised with this development.

I ask the Minister:

1. Has she, as a matter of urgency, had talks with the State President of the PSA regarding the changes to the licensing system?

2. What assurance can she give this Parliament and the people of South Australia that there will be safeguards in place to ensure that no corrupt practices evolve in the new licensing system, particularly the so-called log-book system?

3. What are those safeguards?

The Hon. BARBARA WIESE: I have not had any talks with the President of the Public Service Association. As I understand it, the President has not sought a meeting with me at this time. However, I have asked the Executive Director of the department to contact her because I believe that there may be some misunderstanding about the nature of this scheme and that perhaps she might not have had all the facts relating to the scheme presented to her. I am rather disappointed that the President of the PSA chose to speak to me through the newspapers rather than picking up the telephone if she had concerns about the scheme that was being introduced yesterday, particularly in view of the fact that representatives of the Public Service Association have been involved at the various stages in the development of this scheme.

As far as I am aware there has not been a major problem raised by the PSA relating to this scheme. The honourable member may not be aware of this, but the idea for a rationalisation of driver training testing and licensing was first set in train back in 1988 when a working party was established, and there were four representatives of the PSA on that working party. At various times during the intervening period, as the ideas for the development of this new scheme have been formulated, there has been consultation with Public Service Association representatives, and at various times PSA members have actually been part of the groups that have been looking at these matters. So I am concerned to learn that Ms McMahon of the Public Service Association is now expressing these concerns about the system, and in particular she has made reference to the fact that there has not been consultation. However, I am hoping to resolve these issues over the next day or so, with the contact that will be made with her.

As to the honourable member's second question about assurances that can be provided to the public about systems that can be put in place to avoid corruption with a scheme like this, and particularly with respect to the use of log books in the driver training course that will be available, I can advise that, through the Motor Registration Division, it is intended to have an extensive range of audit controls in place, which will be part of an on-line computer facility, and the idea is that there will be the opportunity, through the information that is on-line in the computer system, for driver development officers, who will be the Government officers involved in the overall supervision of this scheme, to randomly check through the computer the results that are coming through on the returns that are being sent in by the various instructors around the State who will be licensed to participate in this scheme.

In addition, the driver development officers may at any time elect to travel with driving instructors to ensure that they are following the appropriate procedures and to

observe the test vehicle, and if there are any problems that arise in relation to any of the tests then they will be immediately reported to the Motor Registration Division people for investigation. As I said, returns will be required by licensed driving instructors, and they will be sent to the Motor Registration Division on a monthly basis, and that will be the provision by which testing of results, etc. can be applied randomly. Provision has been made for licence applicants to change instructors. If for some reason they are not happy with a particular person they will be able to change.

The market will soon determine whether individual instructors are appropriate or not and market forces will apply there. If it is found that any of these people who are licensed or accredited as driving instructors and the people who are able to conduct tests are acting unscrupulously, action will be taken by the department. Disciplinary procedures will apply to driving instructors and they will be linked to the contractual arrangements for maintaining accreditation and authorisation. So the question of appropriate standards of behaviour, appropriate standards of skill, and also the ability to check on the results that are being produced by individual accredited instructors have been set in place, or will be set in place once that part of the system comes into effect—and I believe that those systems will be effective.

The final point I would like to make is that I find it rather peculiar that the honourable member, for some reason or other, seems to think that people in the private sector are going to be more prone to corrupt practices than are people in the public sector. I simply do not accept that. I do not believe that people in the private sector are more prone to corruption than people in the public sector, and I believe that people who have undergone the appropriate examination and testing in order to be accredited as instructors will be people whom the public can trust. However, as I said, there will be those audit programs in place to ferret out those people who for one reason or another prove to be unreliable or inappropriate. I do not expect there to be much of an incidence of that sort of activity.

FORESTRY

The Hon. J.C. BURDETT: I seek leave to make a brief explanation prior to asking the Minister of Consumer Affairs a question about the marketing of forestry schemes.

Leave granted.

The Hon. J.C. BURDETT: A constituent has brought to my notice a forestry management scheme which is currently being actively promoted in South Australia. I do not wish to use the constituent's name nor to identify the company at this stage, because I am not aware that any investigation has been conducted into it, but I am prepared to give a copy of the file to the Minister. The proposed scheme to be marketed on behalf of the forestry company was presented in the following form. Taxable income $31 000; tax payable $6 974; Medicare (1.25 per cent), $387; total (tax payable plus Medicare) $7 361. Taxable income $31 000; less . . . hectares $7 250; new taxable income $23 750; new tax payable $3 670; new Medicare $296; new total $3 966. This is as opposed to the $7 361 figure. The tax and Medicare saving is given as $3 395, less the cost of . . . 1 hectares of $2 750. Cash in hand is given as $645. It states:

> You own . . . 1 hectares *Pinus Radiata* . . . 1 600 trees. Expected returns $230 000. Finance arranged, no cash outlay. Tax variation 221D arranged to act forthwith. Balance after June . . .

It would appear that the cost of one hectare was $2 750, whereas the figure used higher up in the calculation was $7 250, which must have been for three hectares. If that is the case, the cash savings of $645 is wrong. The constituent was asked to sign the documents but she said that she wanted to consult a solicitor. That suggestion was not received kindly. In their present form, the documents do not have sufficient specifics to enable them to be signed, and that is a conservative statement.

For example, neither the establishment fee nor the management fee is specified, and those fees could have a specific bearing on the viability of the project from the client's point of view. In other parts of the document, details would need to be filled in before the papers were in a fit condition to be signed. I refer to the form in which the proposal was submitted: 'finance arranged, no cash outlay'. A loan application to a named officer of the State Bank at a particular branch is enclosed with the documents with a cross against the place for the applicant's signature.

Previously, I have named a number of similar schemes that have come to the notice of the Department of Public and Consumer Affairs, and some of them resulted in members of the public being parted from their money without receiving anything useful in return. As far as I am aware, no investigation has been conducted into the affairs of this company, and it may be as pure as the driven snow. My questions are as follows:

1. Is the Minister aware of this forestry venture?
2. If not, will she have her department investigate the matter (and I will give her a copy of the file)?
3. If warranted, will she ask her department to issue a warning to persons who may be considering investing in this way?

The Hon. ANNE LEVY: I have not heard of the scheme to which the honourable member referred, but I certainly recall similar sounding schemes having been brought to the attention of Parliament on numerous occasions by the honourable member and by me many years ago. It may be that this complaint has not been drawn to the attention of the Commissioner. I would be very grateful if the honourable member would provide me with the details in the file because I was not able to take them all down as he was speaking. I will ask the department to look into the matter and provide me with a report on it. If it is felt that a warning is justified, I should expect such to be provided.

INDEPENDENT COMMISSION AGAINST CRIME AND CORRUPTION BILL

Adjourned debate on second reading.

(Continued from 9 September. Page 310.)

The Hon. I. GILFILLAN: At the time I sought leave to conclude my remarks, I indicated that I hoped to have information from New South Wales as to the proposed amendments to the ICAC legislation which would be relevant to our debate on the matter. I have not received any information at this stage and I gather that it is still being considered. Therefore, it would be more appropriate for me to refer to it in my second reading reply or during Committee.

In concluding my second reading contribution, I should like to observe briefly that we have continued scope for effective work for ICAC in South Australia. Occasions arise frequently when it could do the investigative work, the preventive work and the educative work very efficiently and cost effectively. The legislation draws no boundaries as to those in this State who would be affected by its impact—from the top (the Governor or Supreme Court judges) to any person working in a public capacity in the Public Service—and its scope for identifying and conducting inquiries into organised crime. The definition of 'organised crime' is 'a course of criminal conduct or series of criminal offences that involve substantial planning and organisation and is carried out principally for the profit of persons other than those who commit the offences'. It would not duplicate the normal policing and investigative work of simple offences in the community.

I did not mention Supreme Court judges just as an aside. Another matter before the Council relates to judges' remuneration, which raises the question of whether judges are entitled to have a car for their private use. That matter went on appeal to the Supreme Court and it was put to the Chief Justice that, as he was involved, it was inappropriate for him to preside over that matter, particularly as an alternative judge (Justice Zelling) was available to hear the matter. He was not persuaded that that was the case. That is an example of where matters of ethical behaviour should always be open to public questioning, either in this place, which is often the appropriate forum, or before an independent commission. If there is to be a detailed analysis, an objective study of those matters, an independent commission as outlined in my Bill is the appropriate body to undertake such an investigation.

The Hon. C.J. Sumner: I do not understand it.

The Hon. I. GILFILLAN: The Attorney-General does not understand. The question is whether it was appropriate for the Chief Justice to hear a matter in which he arguably had a vested interest, that is, the allocation of cars for private use.

The Hon. C.J. Sumner: You are saying that ICAC should do it.

The Hon. I. GILFILLAN: No, the Attorney-General would know if he had listened more intently that I questioned the actual decision of the Chief Justice in determining that he would continue to hear the matter, whether that was a proper or improper decision. That is why I raise it. No-one in the State should be exempt from an independent and objective assessment of the effort.

The Hon. C.J. Sumner: What are you saying?

The Hon. I. GILFILLAN: There seems to be a question and answer series going on.

The Hon. C.J. Sumner: Because you don't want to answer it: that is the point.

The Hon. I. GILFILLAN: I am quite content to explain it again. I did not intend to take much time over this matter but, for the clarification of the Attorney—

The Hon. C.J. Sumner interjecting:

The Hon. I. GILFILLAN: That is correct. I believe that it is appropriate that, where a member of the public or people representing the public have concern about procedural behaviour or about a decision made by any person working in the public interest, whatever their rank, there must be an independent body that can appraise that situation thoroughly and independently from that body itself. If there were a complaint about the Chief Justice of the Supreme Court, to whom would an ordinary citizen take that complaint? It would be to the Supreme Court.

An honourable member interjecting:

The Hon. I. GILFILLAN: The *7.30 Report* may well be interested in it. As members are well aware, it is very thin ice in terms of matters being raised publicly and then finding oneself in the middle of a defamation action. Defamation actions serve a useful purpose, as members here know, but I do not believe that the proper and healthy questioning in this place of the actions of people serving the public should be deterred because of the threat of civil action for defamation. The point I am making, more repetitiously than I chose, is that there is no-one in this State, including the Attorney-General, the Leader of the Australian Democrats, the Chief Justice of the Supreme Court and the Governor, who should be exempt from investigation of complaints lodged with an ICAC.

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. I. GILFILLAN: Parliament has control of ICAC. There have been some ignorantly based interjections: ICAC is the servant of the Parliament of the State, and that is very clear from a closer study of my legislation. I am convinced that, sooner or later, the arguments will be irrefutable and we will have an ICAC in South Australia, as well as there being one in each State of Australia. Queensland has toyed with the CJC, and it is obvious that it had the same aim in mind, albeit under a different structure and different legislation, but there is no—

The Hon. C.J. Sumner: Are you saying that if the Chief Justice decides that he is not going to hear a case because of bias or apparent bias, that should be the subject of investigation by ICAC?

The Hon. I. GILFILLAN: No, I did not make that judgment.

The Hon. C.J. Sumner: That is what you are saying.

The Hon. I. GILFILLAN: The interjection was whether I personally believed that an allegation that the Chief Justice had behaved improperly should go to ICAC.

The Hon. C.J. Sumner: I did not say that.

The PRESIDENT: Order! There is too much exchange across the Chamber.

The Hon. I. GILFILLAN: I will break off the exchange across the Chamber: it does not seem to be getting anywhere. To clarify the matter for those who may have been misled by the interjection, I am making no judgment about the behaviour of anyone in this context. What I am saying quite clearly—because it is significant; it was a matter that was raised in the Supreme Court in the past few months—is that, if anyone

or any organisation representing the public is dissatisfied with the behaviour of a Supreme Court judge, an ICAC is the appropriate body to which those complaints can go.

The Hon. J.F. Stefani: A member of Parliament?

The Hon. I. GILFILLAN: A member of Parliament, yes. This concludes my second reading speech. I should like members, including the Attorney, to note that I have not sought to list a series of what may be colourful or sensational allegations to try to persuade him.

The Hon. C.J. Sumner: You did that last time.

The Hon. I. GILFILLAN: Last time, I did that under goading from the Attorney-General, who said that this was a beautiful, squeaky clean State, and that we did not need to worry about South Australia. The fact is that we did, and we always will, because no State will be exempt from the pressures of corruption, and the matter of the driving licences that was raised during Question Time is a good example. A person who is going to obtain $500 for teaching a person to drive and who then is the judge and arbiter of whether that person passes is enormously prone to the pressures of what I would regard as corruption, where a person wants to build a reputation for being a successful teacher of potential drivers.

These systems will continue to come up and need to be revised. I repeat, because it is a less exciting aspect of ICAC but it does apply very effectively in New South Wales, that it is a preventive and educative process. ICAC has been asked to go into public sectors in New South Wales to advise on procedures to minimise or to eliminate corruption, and it has done so in hospitals and, I think, in the Department of Transport. I hope that this Bill will receive serious attention from all members of this place, recognising the argument that I put last time and will not repeat, that it is a very cost effective way of having inquiries conducted impartially and properly in this State. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

PART 1
PRELIMINARY

Clause 1 is formal.

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

Clause 3 is an interpretation provision.

Subclause (1) defines 17 words and phrases used in the measure. In particular, 'public authority', 'public officer' and 'organised crime' are defined.

Organised crime is defined to mean a course of criminal conduct or series of criminal offences that involves substantial planning and organisation and is carried out principally for the profit of persons other than those who commit the offences.

Public authority is defined to mean—

- an agency or instrumentality of the Crown or any body (whether or not incorporated) that is established by or under an Act and—
  - (i) is comprised of persons or has a governing body comprised of persons, a majority of whom are appointed by the Governor, a Minister or an agency or instrumentality of the Crown;

  or
  - (ii) is subject to control or direction by a Minister;
- a statutory authority the accounts of which the Auditor-General is required by law to audit;
- a local government body (that is, a municipal or district council or controlling authority constituted under the Local Government Act 1934);
- the Police Force;

or

- an authority declared by regulation to be a public authority for the purposes of the measure.

The definition of public officer is almost identical to that in section 237 of the Criminal Law Consolidation Act 1935 (Part VII—Offences of a Public Nature) which was inserted recently by the Statutes Amendment and Repeal (Public Offences) Act 1992, namely—

- a person appointed to public office by the Governor;
- a judicial officer (which has the same definition as in section 237 of the Criminal Law Consolidation Act);
- a member of Parliament;
- a person employed in the Public Service of the State;
- a member of the Police Force;
- any other officer or employee of the Crown;
- a person who constitutes or is a member of the governing body of a public authority;
- an officer or employee of a public authority.

However, the definition in this measure is wider—

(a) because it also includes—

- the Governor;

and

- a person, or persons of a class, declared by regulation to be a public officer for the purposes of the measure;

and

(b) because the definition of 'public authority' is wider than the definition of 'State instrumentality' in section 237 of the Criminal Law Consolidation Act in that it also includes—

- any statutory authority the accounts of which the Auditor-General is required by law to audit;

and

- any authority declared by regulation to be a public authority for the purposes of the measure.

Subclause (2) defines corrupt conduct as—

- conduct of a person that adversely affects, or could adversely affect, directly or indirectly, the honest or impartial exercise of an official function by a public officer or public authority;
- conduct of a public officer that constitutes or involves the dishonest or partial exercise of his or her official functions;
- conduct of a public officer or former public officer that constitutes or involves a breach of public trust;

or

- conduct of a public officer or former public officer that involves the misuse of information acquired in the course of his or her official functions (whether or not for his or her benefit or for the benefit of any other person),

if that conduct constitutes or involves—

- a criminal offence;
- grounds for disciplinary action under any law;

or

- grounds under any law for removing a public officer from office,

whether or not proceedings for an offence, disciplinary action or removal from office can still be taken.

Subclause (3) provides that conspiring or attempting to engage in conduct referred to in subclause (2) also constitutes corrupt conduct.

Subclause (4) extends the application of the measure to conduct that occurs before the commencement of the measure, conduct that constitutes corrupt conduct only after the person engaging in it becomes a public official and conduct that occurs outside South Australia.

PART 2
THE INDEPENDENT COMMISSION AGAINST CRIME AND CORRUPTION

Division 1—The Commission

Clause 4 establishes the Independent Commission Against Crime and Corruption, provides that it is a body corporate and endows it with full legal capacity to exercise any powers that are by their nature capable of being exercised by a body corporate.

Clause 5 provides that the commission consists of—

- a Commissioner appointed by the Governor on the address of both Houses of Parliament;

and

- such Assistant Commissioners (if any) as the Governor may, with the concurrence of the Commissioner, appoint.

Clause 6 sets out the eligibility requirements for appointment as the Commissioner or an Assistant Commissioner. Namely—

(a) the person must be eligible for appointment as a Justice of the High Court or as a Judge of the Federal Court or the Supreme Court of a State or Territory or be a former judge of one of those courts;

and

(b) the person must not be a member of the judiciary or of the legislature of the Commonwealth or a State or Territory.

Clause 7 deals with the terms of appointment of the Commissioner or an Assistant Commissioner.

Subclause (1) provides for the term of appointment as the Commissioner or an Assistant Commissioner to be at the discretion of the Governor with a maximum term of five years.

Subclause (2) makes the Commissioner or an Assistant Commissioner eligible for reappointment on the expiry of a term of office but limits the periods for which a person can hold such office to terms totalling five years.

Subclause (3) empowers the Governor, on the address of both Houses of Parliament, to remove the Commissioner from office.

Subclause (4) empowers the Governor to remove an Assistant Commissioner from office for misconduct or for mental or physical incapacity, or failure, to carry out satisfactorily the duties of his or her office.

Subclause (5) provides for the office of the Commissioner or an Assistant Commissioner to become vacant if the holder dies, completes a term of office and is not reappointed, resigns, is appointed to judicial office, is nominated for election as a member of the legislature of the Commonwealth or a State or Territory, becomes bankrupt, is convicted of an offence punishable in South Australia by imprisonment for a term of at least 12 months or is removed from office by the Governor under this clause.

Subclause (6) requires a Commissioner to be appointed in the event of a vacancy in that office.

Subclause (7) allows an Assistant Commissioner to be appointed in the event of a vacancy in that office.

Clause 8 provides for the Governor to determine the salary, allowances and other conditions of appointment of a member of the commission and appropriates the Consolidated Account for this purpose.

Clause 9 deals with the appointment of an Acting Commissioner and Acting Assistant Commissioners.

Subclause (1) empowers the Governor to appoint an Acting Commissioner or Acting Assistant Commissioner.

Subclause (2) confers on the Acting Commissioner all the powers, functions, privileges and immunities of the Commissioner.

Subclause (3) confers on an Acting Assistant Commissioner all the powers, functions, privileges and immunities of an Assistant Commissioner.

Subclause (4) provides for the Governor to determine the salary, allowances and other conditions of appointment of an acting member of the commission.

Subclause (5) appropriates the Consolidated Account for this purpose.

Clause 10 prohibits a member of the commission from engaging in any remunerative employment or undertaking outside official duties without the approval of the Minister.

Division 2—The Commission's Functions

Clause 11 prescribes the functions of the commission.

Subclause (1) sets out the commission's 14 principal functions. These include—

- the investigation of allegations and complaints of corrupt conduct and organised crime;
- the investigation of any matter referred to it by both Houses of Parliament;
- the making of findings and forming of opinions, on the basis of the results of investigations by the commission, in respect of any conduct, circumstances or events with which its investigations are concerned, including—
  - findings that particular persons have engaged, are engaged or about to engage, in corrupt conduct or organised crime;
  - opinions as to whether consideration should or should not be given to the prosecution or the taking of other action against particular persons;

  and
  - findings of fact;
- the formulation of recommendations for the taking of action that the commission considers should be taken in relation to its findings or opinions or the results of its investigations;
- various advisory and educative functions aimed at the end of revising and changing the methods of work and procedures of public authorities and public officers to reduce the likelihood of the occurrence of corrupt conduct and organised crime, at educating the community on strategies to combat corrupt conduct and organised crime and on the importance of maintaining the integrity of public administration and at enlisting and fostering the public's support in combating corrupt conduct and organised crime.

Subclause (2) requires the commission to conduct its investigations with a view to determining—

- whether any corrupt conduct, organised crime or conduct referred to in subclause (1) *(a)* or *(b)* has occurred, is occurring or is about to occur;
- whether any laws governing any public authority or public officer need to be changed for the purpose of reducing the likelihood of the occurrence of corrupt conduct or organised crime;
- whether any methods of work, practices or procedures of any public authority or public officer did or could allow, encourage or cause the occurrence of corrupt conduct or organised crime.

Subclause (3) prevents the commission from making a finding, forming an opinion or formulating a recommendation that clause 75 prevents the commission from including in a report.

Subclause (4) sets out the commission's other functions, which are—

- to assemble and furnish to the Attorney-General evidence that may be admissible in a prosecution for a criminal offence against the law of South Australia in connection with corrupt conduct or organised crime;

and

- to furnish to the Attorney-General other evidence obtained in the course of its investigations (being evidence that may be admissible in a prosecution for an offence against the law of the Commonwealth or another State or a Territory) and recommend what action should be taken.

Subclause (5) empowers the commission to furnish information relating to the exercise of a public authority's functions to the Minister responsible for the authority and to make to that Minister such recommendations as the commission considers appropriate.

Subclause (6) provides that if evidence or information is furnished to a person under this clause by the commission on the understanding that it is confidential, that person is subject to the secrecy provisions of clause 99 in relation to the information.

Subclause (7) requires the commission to treat the protection of the public interest and the prevention of breaches of public trust as of paramount importance in the exercise of its functions.

Clause 12 empowers the commission, for the purposes of its principal functions (see clause 11 (1), to do the following:

- arrange for the establishment of task forces in South Australia;
- seek the establishment of joint task forces with the authorities of the Commonwealth, the other States and the Territories;
- cooperate with State and Commonwealth task forces and joint and other task forces;
- coordinate or cooperate in coordinating such task forces.

Clause 13 deals with cooperation by the commission with other law enforcement bodies.

Subclause (1) provides that the commission should, unless of the opinion that it is not appropriate to do so, work in cooperation with such specified bodies as may be relevant in carrying out an investigation and in carrying out its other functions.

Subclause (2) provides that the commission should, unless of the opinion that it is not appropriate to do so, work in cooperation with such specified bodies as may be relevant in carrying out its other functions.

Subclause (3) empowers the commission to consult with, and disseminate intelligence and information to, certain specified bodies (such as the Federal Police and the NCA) and such other persons and bodies as the commission thinks appropriate.

Subclause (4) provides that if the commission disseminates information to a person or body under this provision on the understanding that the information is confidential, the person or body is subject to the provisions of clause 99 in relation to the information.

Clause 14 empowers the commission to do all things necessary to be done for or in connection with, or reasonably incidential to, the performance of its functions.

Clause 15 deals with staff of the commission.

Subclause (1) empowers the commission to employ such staff as it needs for the purposes of the measure.

Subclause (2) empowers the commission to engage any suitably qualified person to provide it with services, information or advice.

Subclause (3) empowers the commission, with the approval of the relevant Minister and on terms mutually arranged, to make use of a member of the Police Force or of the services of any of the staff of a department, office or authority.

Subclause (4) provides that a member of the staff of the commission is not a Public Service employee.

Subclause (5) empowers the Minister, by notice in the *Gazette*, to provide that specified provisions of the Government Management and Employment Act 1985 apply to members of staff of the commission.

Subclause (6) provides for the terms and conditions of employment of a member of the staff of the commission (including salary, wages and allowances) to be as determined by the Governor, to the extent that they are not determined by or under any other law.

Clause 16 empowers the Commissioner to appoint a legal practitioner to assist the commission either generally or in relation to a particular matter.

Clause 17 provides for the delegation of powers and functions of the commission, the Commissioner and Assistant Commissioners.

Subclause (1) empowers the commission, the Commissioner and Assistant Commissioners to delegate their powers and functions under the measure to any person.

Subclause (2) sets out the powers and functions that can be delegated to an Assistant Commissioner.

Subclause (3) permits certain powers and functions to be delegated only if the Commissioner is of the opinion that there may be a conflict of interest if the power or function is not delegated or that it is in the interests of justice to do so.

Subclause (4) is an evidentiary aid.

Subclause (5) provides for a delegation to be revoked at any time.

Subclause (6) provides for the exercise or performance of a power or function by a delegate not to affect the exercise or performance of the power or function by the commission or person who delegated it.

PART 3
INVESTIGATIONS AND HEARINGS
Division 1—Investigations

Clause 18 deals with the initiation of investigations.

Subclause (1) empowers the commission to make an investigation on receipt of a complaint, on the commission's own initiative or on a report or reference to the commission.

Subclause (2) empowers the commission to make an investigation even though no particular person has been implicated in a matter.

Clause 19 specifies who can make complaints that concern or may concern corrupt conduct or organised crime.

Subclause (1) allows a complaint to be made by any person or body of persons.

Subclause (2) requires the manager of a correctional institution who has been informed by a prisoner that the prisoner wishes to make a complaint under this clause to take such steps as are necessary to facilitate the making of a complaint.

Subclause (3) makes section 33 (7) of the Correctional Services Act 1982 apply in relation to a letter sent by a prisoner to the commission so that such a letter cannot be opened by an authorised officer.

Subclause (4) makes section 33 (8) of the Correctional Services Act 1982 apply in relation to a letter sent by the commission to a prisoner so that such a letter cannot be opened by an authorised officer.

Subclause (5) empowers the commission to investigate a complaint or decide that a complaint need not be investigated.

Subclause (6) empowers the commission to discontinue the investigation of complaint.

Subclause (7) provides that before the commission decides whether to investigate, or discontinue the investigation of, a complaint it should, unless of the opinion that the subject matter of the complaint is so sensitive that it would be inappropriate to do so, consult the Operations Review Committee in relation to the matter.

Subclause (8) prohibits the wilful making of a false statement in a complaint to, or in an attempt to, mislead the commission or an officer of the commission. The maximum penalty is a division 7 fine ($2 000) or division 7 imprisonment (six months).

Clause 20 empowers the commission to refuse to investigate a complaint or discontinue the investigation of a matter (other than a matter referred by Parliament) if in the commission's opinion—

- the matter raised in the complaint is trivial or the complaint is frivolous, vexatious or not made in good faith;

or

- the subject matter of the investigation is trivial or the investigation or continuance of the investigation is unnecessary or unjustifiable having regard to all the circumstances of the case.

Clause 21 deals with the obtaining of information.

Subclause (1) empowers the commission, for the purposes of an investigation, to serve a notice on a public authority or public officer requiring the authority or officer to produce a statement of information.

Subclause (2) sets out the matters that must be specified in the notice.

Subclause (3) prohibits a person from—

- without reasonable excuse, failing to comply with a notice served on the person;

or

- in purported compliance with a notice, knowingly furnishing information that is false or misleading.

The maximum penalty is a division 7 fine ($2 000) or division 7 imprisonment (six months).

Clause 22 deals with obtaining of documents.

Subclause (1) empowers the commission, for the purposes of an investigation, to serve a notice on a person requiring the person to attend before the Commissioner, an Assistant Commissioner or another officer of the commission and produce to that person a document or other thing specified in the notice.

Subclause (2) allows the requirements of a notice to be satisfied by a person acting on behalf of the person on whom it was served.

Subclause (3) prohibits a person, without reasonable excuse, from failing or refusing to comply with a notice. The maximum penalty is a division 7 fine ($2 000) or division 7 imprisonment (six months).

Clause 23 deals with the entry of public premises by the commission.

Subclause (1) empowers the Commissioner or a person authorised by the commission, for the purposes of an investigation, to at any time enter and inspect premises occupied or used by a public authority or public officer in that capacity, inspect any document or thing in the premises and take copies of any such document.

Subclause (2) provides that subclause (1) does not authorise the inspection or taking of copies of a document or other thing that concerns or relates to the relationship between the State Bank or SGIC and a client of the bank or SGIC.

Subclause (3) requires a public authority or public officer to make available such facilities as are necessary to enable the powers conferred by subclause (1) to be exercised.

Clause 24 deals with privilege as regards information and documents.

Subclause (1) requires the commission to withdraw a requirement under clause 21 or 22 if it appears to the commission that a person has a ground of privilege whereby, in court proceedings, the person might resist the requirement and that the person does not intend to comply with the requirement.

Subclause (2) provides that a person is not entitled to refuse to comply with such a requirement by reason of—

- a rule that, in court proceedings, might justify an objection to compliance on the grounds of public interest;
- a privilege of a public authority or public officer in that capacity that the authority or officer could have claimed in a court;

or

- a duty of secrecy or other restriction on disclosure applying to a public authority or public officer.

Clause 25 deals with privilege as regards the entry of public premises.

Subclause (1) prevents the powers conferred by clause 23 from being exercised if it appears to the Commissioner or a person authorised under that provision that—

- as person has a ground of privilege whereby, in court proceedings, the person might resist inspection of the premises or production of the document or other thing;

and

- the person does not consent to the inspection or production.

Subclause (2) allows the powers conferred by clause 23 to be exercised notwithstanding—

- a rule that, in court proceedings, might justify an objection to the inspection or production on the grounds of public interest;
- a privilege of a public authority or public officer in that capacity that the authority or officer could have claimed in a court;

or

- a duty of secrecy or other restriction on disclosure applying to a public authority or public officer.

Clause 26 makes a statement of information, document or other thing produced under clause 21 or 22 that tends to incriminate the person producing it inadmissible except in proceedings against the person for an offence against the measure but does not prevent its use for the purposes of an investigation under the measure.

Clause 27 deals with injunctions.

Subclause (1) empowers the Supreme Court, on application by the commission, to grant an injunction restraining a person from engaging in conduct that is the subject of, or affects the subject matter of, an investigation or proposed investigation by the commission, if the court is satisfied—

- that the conduct sought to be restrained is likely to impede the investigation or proposed investigation;

or

- that it is necessary in the public interest to do so.

Subclause (2) prevents the court from requiring the commission to give an undertaking as to damages as a condition of granting an injunction.

Clause 28 provides for the powers conferred by Division 1 to be exercisable in relation to an investigation whether or not the commission is holding a hearing for the purposes of the investigation.

Division 2—Hearings

Clause 29 deals with hearings.

Subclause (1) empowers the commission to hold hearings for the purposes of an investigation.

Subclause (2) authorises the Commissioner to determine whether a hearing will be conducted by himself or herself or by an Assistant Commissioner.

Subclause (3) requires the presiding member to announce at a hearing the scope and purpose of the hearing.

Subclause (4) entitles a person appearing before the commission at a hearing to be informed of its general scope and purpose.

Clause 30 deals with the nature of hearings.

Subclause (1) requires a hearing to be held in public unless the commission directs that the hearing or part of it is to be held in private.

Subclause (2) empowers the commission to give directions as to the persons who may be present during a private hearing or part of such a hearing.

Subclause (3) requires the commission, before giving such directions, to be satisfied that it is desirable to do so in the public interest for reasons connected with the subject matter of an investigation or the nature of the evidence to be given.

Subclause (4) makes a person who is present at a hearing in contravention of a direction given under the clause guilty of an offence. The maximum penalty is a division 6 fine ($4 000) or division 6 imprisonment (one year).

Clause 31 sets out who may appear or be represented at a hearing.

Subclause (1) empowers the commission, at a hearing—

- to authorise a person who, in the commission's opinion, is substantially and directly interested in any subject matter of the hearing, to appear, or be represented by a legal practitioner, at the hearing or a specified part of it;
- to authorise a person giving evidence at the hearing to be represented by a legal practitioner at the hearing or a specified part of it.

Subclause (2) requires the commission to allow a person giving evidence at a hearing a reasonable opportunity to be legally represented.

Subclause (3) allows a legal practitioner appointed by the commission to assist it to appear before the commission.

Clause 32 deals with examination and cross-examination.

Subclause (1) allows a legal practitioner assisting the commission or representing a person at a hearing, with leave of the commission, to examine or cross-examine a witness on a matter that the commission considers relevant.

Subclause (2) provides for a witness so examined or cross-examined to have the same protection, and be subject to the same liabilities, as if examined by a member of the commission.

Clause 33 deals with the summoning of witnesses and the taking of evidence.

Subclause (1) empowers the Commissioner to summon a person to appear before the commission to give evidence or produce documents or other things, or both.

Subclause (2) empowers the member of the commission presiding at a hearing to require a person appearing to produce a document or other thing.

Subclause (3) empowers the commission to take evidence on oath or affirmation at a hearing and for that purpose authorises the requiring of the taking, and the administration, of oaths and affirmations.

Subclause (4) prohibits a person, without reasonable excuse, from failing to attend as required by a summons or failing to attend from day to day unless excused or released from further attendance. The maximum penalty is a division 7 fine ($2 000) or division 7 imprisonment (six months).

Subclause (5) prohibits a witness appearing at a hearing from, without reasonable excuse, refusing or failing to take an oath or affirmation or to answer a question put by the presiding member of the commission or from refusing or failing to produce a document or other thing required by a summons or presiding member to be produced. The maximum penalty is a division 6 fine ($4 000) or division 6 imprisonment (one year).

Subclause (6) makes it a defence to a charge of refusing or failing to produce a document or other thing for the defendant to show that the document or other thing was not relevant to an investigation.

Subclause (7) provides that a person summoned to attend a hearing or appearing before the commission is not entitled to refuse to answer a question or produce a document or other thing on the ground of privilege but any such answer, document or other thing is not admissible—

- except in civil proceedings against the person or in proceedings against the person for an offence against the clause;

or

- unless the person does not object to giving the answer or producing the document or other thing.

Subclause (8) entitles a legal practitioner or other person to refuse to comply with a requirement to answer a question or produce a document or other thing at a hearing if the disclosure contains a privileged communication between a legal practitioner (in his or her capacity as such) and another person for the purpose of providing or receiving legal professional services in relation to the appearance or reasonably anticipated appearance of a person at a hearing before the commission.

Clause 34 empowers the Commissioner or presiding member to make a declaration that all or any classes of answers given or documents or other things produced by a witness will be regarded as having been given or produced on objection by the

witness. This avoids the need for witnesses to make individual objections.

Clause 35 empowers the Commissioner to order the production, by the manager of a correctional institution, of a prisoner required to attend at a hearing before the commission.

Clause 36 deals with the arrest of witnesses.

Subclause (1) empowers the Commissioner to apply to a justice for a warrant for the apprehension of a witness who fails to attend in answer to a summons.

Subclause (2) empowers the Commissioner, to apply to a justice for a warrant for the apprehension of a person if the Commissioner is satisfied that it is probable that the person's evidence is desired and necessary and relevant to an investigation and that the person will not attend before the commission without being compelled to do so, or is about to leave the State and that their evidence will not be obtained if they leave.

Subclause (3) authorises the Commissioner to administer an oath or affirmation for the purposes of subclause (2).

Subclause (4) allows a warrant under subclause (2) to be issued without or before the issue of a summons for the giving of evidence.

Subclause (5) allows a warrant under subclause (2) to be issued after the issue of such a summons even though the time specified in the summons for the person to attend has not yet passed.

Subclause (6) provides that a warrant under subclause (1) or (2) authorises the arrest of the witness and their bringing promptly before the commission and being detained in custody for that purpose until released by order of the Commissioner.

Subclause (7) allows a warrant under subclause (1) or (2) to be executed by a member of the Police Force or by any person to whom it is addressed and authorises the use by them of such force as is reasonably necessary in entering premises to execute the warrant.

Subclause (8) provides that the issue of a warrant does not relieve the witness from any liability incurred for non-compliance with a summons.

Division 3—Search Warrants

Clause 37 deals with search warrants.

Subclause (1) empowers a justice or the Commissioner to issue a search warrant on the application of an officer of the commission, if the officer has reasonable grounds for believing that there is on particular premises a document or other thing connected with a matter being investigated under the measure or that such a document or other thing may, within the next 72 hours, be brought onto the premises.

Subclause (2) provides that an application for a search warrant should be made to a justice.

Clause 38 specifies the action that search warrants authorise.

Subclause (1) provides that a search warrant authorises a member of the Police Force or the specified person to enter the premises, search for anything connected with a matter being investigated under the measure and seize anything so found and deliver it to the commission.

Subclause (2) empowers a member of the Police Force executing a search warrant to search a person on the premises whom he or she reasonably suspects of having a document or other thing specified in the warrant.

Clause 39 requires a person executing a search warrant to produce the warrant for inspection by an occupier of the premises if requested to do so by the occupier.

Clause 40 allows a person authorised to enter premises under a search warrant to use such force as is reasonably necessary to enter the premises and, if it is reasonably necessary to do so, to break open any receptacle on the premises for the purposes of the search.

Clause 41 allows a person executing a search warrant to be assisted by such persons as he or she considers necessary or desirable in the circumstances.

Clause 42 allows a search warrant to be executed by day (between 6 a.m. and 9 p.m. on any day) but not by night (between 9 p.m. on any day and 6 a.m. on the following day) unless the terms of warrant authorise its execution by night.

Clause 43 provides for a search warrant to cease to have effect one month after its issue, when it is withdrawn or when it is executed, whichever occurs first.

Clause 44 deals with the seizure of things found in the course of executing a search warrant.

Subclause (1) allows a person executing a search warrant to seize a document or other thing found in the course of the search if the person believes on reasonable grounds that it is admissible evidence in proceedings for an indictable offence against the law of the Commonwealth or a State or Territory and that it is necessary to seize the document or other thing to prevent its concealment, loss, mutilation or destruction or its use in committing such an offence.

Subclause (2) permits the commission to retain such a document or other thing for as long as reasonably necessary for the purposes of an investigation to which it is relevant. It also requires the commission, if the document or other thing is not, or ceases to be, reasonably necessary for those purposes, to cause it to be delivered to the person who appears to be entitled to its possession or to the Attorney-General with a recommendation as to the action that should be taken in relation to the document or other thing.

Division 4—Miscellaneous

Clause 45 provides that, if it appears to the Commissioner that because a person—

- is a witness or potential witness at a hearing before the commission;
- has produced, or proposes to produce, a document or other thing to the commission;

or

- has assisted, is assisting or is to assist the commission in some other way,

the safety of that person or any other person may be prejudiced or the person or some other person may be subjected to intimidation or harassment, the Commissioner may make such arrangements as are necessary to avoid prejudice to the person's safety or to protect the person from intimidation or harassment.

Clause 46 provides for a witness appearing before the commission to be paid, out of money provided by Parliament, in respect of attendance before the commission, an amount ascertained in accordance with the prescribed scale or if there is no such scale, such amount as the commission determines.

Clause 47 deals with legal aid.

Subclause (1) allows a witness or potential witness appearing before the commission to apply to the Attorney-General for assistance in respect of their appearance.

Subclause (2) empowers the Attorney-General to authorise, out of money provided by Parliament, the provision of such legal or financial assistance to a person referred to in subclause (1) as the Attorney-General determines if satisfied that the person would suffer substantial hardship if the application were refused or the circumstances of the case are of such a special nature that the application should be granted.

PART 4

REFERRAL OF MATTERS BY COMMISSION

Clause 48 defines 'relevant authority' for the purposes of Part 4 as the person or body to whom a matter is referred to the commission under that Part.

Clause 49 deals with the referral of matters.

Subclause (1) empowers the commission to refer a matter for investigation or other action to any person or body considered by the commission to be appropriate in the circumstances. It may do so before or after investigating a matter, whether or not the investigation is complete or whether or not the commission has made any findings.

Subclause (2) allows the commission, when referring a matter, to recommend the action that should be taken by the relevant authority and the time within which it should be taken.

Subclause (3) allows the commission to communicate to the relevant authority any information obtained by the commission during its investigation of the matter.

Subclause (4) prevents the commission referring a matter to a person or body unless there has been appropriate consultation with the person or body and it has taken into consideration the views of the person or body.

Subclause (5) provides for a person or body to be subject to the provisions of clause 99 in relation to information communicated by the commission on the understanding that the information is confidential.

Clause 50 deals with reports to the commission on matters referred by it.

Subclause (1) empowers the commission, when referring a matter, to require the relevant authority to submit to it a report on the action taken by the authority in relation to the matter.

Subclause (2) requires a report to be of such a nature as the commission directs and to be submitted to the commission within such time as the commission directs.

Clause 51 deals with further action by the commission in relation to a referred matter.

Subclause (1) empowers the commission, if it is not satisfied that a public authority has duly and properly taken action under Part 4, to inform the authority of the grounds of the commission's dissatisfaction and give the authority an opportunity to comment.

Subclause (2) provides that if the commission is still dissatisfied after considering the public authority's comments, it can submit a report to the Minister responsible for the authority setting out any recommendation to the authority as to the action that should be taken and the grounds for the commission's dissatisfaction, together with any comments of the authority and the commission.

Subclause (3) provides that if the commission is still dissatisfied after considering the relevant Minister's comments, the commission can make a report as referred to in clause 78 if it is still of the opinion that its recommendation should be adopted.

Clause 52 imposes a duty on a relevant authority to comply with any requirement or direction of the commission under Part 4.

Clause 53 empowers the commission to revoke a referral, to revoke or vary a recommendation, requirement or direction, under Part 4 or to vary the time within which a requirement under that part is to be complied with.

PART 5
THE OPERATIONS REVIEW COMMITTEE

Clause 54 defines certain terms for the purposes of Part 5.

Clause 55 establishes the Operations Review Committee.

Clause 56 provides for the committee to consist of the following seven members:

- the Commissioner;
- an Assistant Commissioner nominated by the commission;

and

- five persons appointed by the Governor on the recommendation of the Attorney-General with the concurrence of the Commissioner, of whom four will be appointed to represent community views.

Clause 57 empowers the Governor to appoint an acting member if there is a vacancy in the office of an appointed member and provides for such a person, while acting as an appointed member, to have all the powers and functions of the member.

Clause 58 makes a Minister of the Crown ineligible for appointment as a committee member.

Clause 59 deals with the terms of appointment of committee members.

Subclause (1) provides for a maximum term of appointment of two years.

Subclause (2) makes an appointed member eligible for reappointment on the expiration of their term of office.

Subclause (3) empowers the Governor, on the recommendation of the Attorney-General with the concurrence of the Commissioner, to remove an appointed member from office at any time.

Subclause (4) provides for the office of an appointed member to become vacant if the member dies, completes a term of office and is not reappointed, resigns, becomes a Minister of the Crown, is absent without leave from four consecutive meetings of the committee, becomes bankrupt, becomes a patient within the meaning of the Mental Health Act 1977, is convicted of an offence punishable in South Australia by imprisonment for a term of at least 12 months or is removed from office by the Governor under the clause.

Subclause (5) provides that if the office of an appointed member becomes vacant, a person must be appointed in accordance with the measure to fill the vacancy.

Clause 60 provides for the salary and allowances of an appointed member to be as determined by the Governor.

Clause 61 deals with the effect of other Acts.

Subclause (1) provides that if another Act requires a person who is the holder of a specified office to devote the whole of their time to the duties of that office or prohibits the person from engaging in employment outside the duties of that office, that provision does not disqualify the person from holding both that office and the office of an appointed member or from accepting and keeping any remuneration payable to the person under this measure as an appointed member.

Subclause (2) provides that the office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

Clause 62 deals with the functions of the committee.

Subclause (1) provides that the functions of the committee are—

- at the request of the commission, to advise the commission on whether it should investigate or discontinue an investigation of a complaint;

and

- to advise the commission on such other matters as the commission may from time to time refer to the committee.

Subclause (2) requires the Commissioner to consult with the committee on a regular basis at least once every three months.

Clause 63 deals with the procedure at meetings of the committee.

Subclause (1) requires the Commissioner to call the first meeting of the committee.

Subclause (2) provides for a meeting of the committee to be chaired by the Commissioner or, in his or her absence, by an Assistant Commissioner.

Subclause (3) provides for five members of the committee (of whom one must be the Commissioner or an Assistant Commissioner) to constitute a quorum and prohibits any business being transacted without a quorum being present.

Subclause (4) entitles each member of the committee present at a meeting to one deliberative vote and gives the presiding member a casting vote, as well as a deliberative vote, in the event of an equality of votes.

Subclause (5) provides for a decision carried by a majority of votes of members present and voting at a meeting to constitute a decision of the committee.

Subclause (6) provides for the procedure for the calling of meetings of the committee and the conduct of business at meetings to be as determined by the committee.

Clause 64 deals with conflict of interest.

Subclause (1) requires a member of the committee who has an interest in a matter before the committee to disclose the existence of that interest to the committee. The maximum penalty for non-compliance is a division 6 fine ($4 000) or division 6 imprisonment (one year).

Subclause (2) sets out in what circumstances a member of the committee has an interest in a matter before the committee.

Subclause (3) sets out in what circumstances a person is closely associated with a member of the committee.

Subclause (4) requires a disclosure under subclause (1) to be recorded in the minutes of the committee.

Subclause (5) requires a member of the committee who has an interest in a matter before the committee to not, except on the committee's request, take part in any discussion by the committee relating to that matter, to not vote in relation to the matter and, unless the committee permits otherwise, to be absent from the meeting room when any such discussion is taking place. The maximum penalty for non-compliance is a division 6 fine ($4 000) or division 6 imprisonment (one year).

Subclause (6) provides that it is a defence to a charge of an offence against the clause if the defendant proves that at the time of the alleged offence the defendant was unaware of his or her interest in the matter.

Subclause (7) empowers the Supreme Court, where it appears that a failure by a member of the committee to comply with the clause has had a decisive influence on the passing of a resolution or making of a decision, to annul the resolution or decision and make such ancillary orders as it thinks fit. The fact that a member has failed to comply with the clause in relation to a matter does not of itself invalidate a resolution or decision on that matter.

PART 6
THE PARLIAMENTARY JOINT COMMITTEE

Clause 65 requires a joint committee of members of Parliament, to be known as the committee on the Independent Commission Against Crime and Corruption, to be appointed as

soon as practicable after the commencement of Part 6 and the commencement of the first session of each Parliament.

Clause 66 deals with the membership of the joint committee.

Subclause (1) provides for the joint committee to consist of nine members, of whom three are to be members of, and nominated by, the Legislative Council, and nine are to be members of, and nominated by, the House of Assembly.

Subclause (2) requires the appointment of members of the joint committee to, as far as practicable, be in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses.

Subclause (3) makes a Minister of the Crown ineligible for appointment as a member of the joint committee.

Clause 67 deals with the presiding officer.

Subclause (1) provides for there to be a presiding officer and assistant presiding officer of the joint committee to be elected by members of the committee from amongst their own number.

Subclause (2) provides for a member of the joint committee to cease to hold office as the presiding officer or assistant presiding officer of the committee if he or she ceases to be a member of the committee, resigns from the office or is discharged from office by the committee.

Subclause (3) empowers the assistant presiding officer to exercise the powers of the presiding officer when the latter is absent from the State, is unable for any other reason to perform the duties of presiding officer or there is a vacancy in that office.

Clause 68 provides for the office of a member of the joint committee to become vacant when the House of Assembly is dissolved or expires, if the member becomes a Minister of the Crown, if the member ceases to be a member of either House, if the member resigns or if the member is discharged from office by the House of Parliament to which the member belongs. Either House can appoint one of its members to fill a vacancy among the member of the joint committee appointed by that House.

Clause 69 provides that the functions of the joint committee are—

- to monitor and review the exercise by the commission of its functions;
- to report, with such comments as it thinks fit, to both Houses of Parliament on any matter relating to the commission or connected with the exercise of its functions;
- to examine reports of the commission and report to both Houses on any matter appearing in or arising out of any such reports;
- to examine trends and changes in corrupt conduct and organised crime and practices and methods relating to corrupt conduct or organised crime and report to both Houses on any change the committee thinks should be made to the functions, structure or procedures of the commission;

and

- to inquire into any question in connection with the commission's functions referred to the committee by one of the Houses and report to that House on that question.

Subclause (2) provides that nothing in Part 6 authorises the committee to investigate a matter relating to particular conduct, to reconsider a decision whether or not to investigate or discontinue the investigation of a particular complaint or to reconsider the findings, recommendations, determinations or other decisions of the commission in relation to a particular investigation or complaint.

Clause 70 deals with the procedure at meetings of the joint committee.

Subclause (1) requires the Clerk of the House of Assembly to call the first meeting of the committee in each Parliament.

Subclause (2) provides for a meeting of the committee to be chaired by the presiding officer, in his or her absence by the assistant presiding officer, or in the absence of both of them, by a member of the committee chosen by those present.

Subclause (3) allows the committee, subject to a quorum being present and the committee meeting as a joint committee, to act despite vacancies in its membership.

Subclause (4) provides for five members to constitute a quorum and prevents any business being transacted at a meeting of the committee unless a quorum is present.

Subclause (5) requires the committee to meet as a joint committee at all times.

Subclause (6) entitles each member present at a meeting to one deliberative vote and the person presiding a casting vote as well as a deliberative vote, in the event of an equality of votes.

Subclause (7) provides for a decision carried by a majority of the members present and voting at a meeting to constitute a decision of the committee.

Subclause (8) allows the committee to sit and transact business despite any prorogation of Parliament or an adjournment of either House.

Subclause (9) prohibits the committee from sitting and transacting business while either House is sitting.

Subclause (10) provides for the procedure for the calling of meetings of the committee and for the conduct of business at meetings to be as determined by the committee.

Clause 71 deals with evidence.

Subclause (1) empowers the joint committee to send for persons, papers and records.

Subclause (2) requires the committee, subject to this clause, to take all evidence in public.

Subclause (3) allows the committee to report on a matter in relation to which a differently constituted joint committee which has ceased to exist has previously taken evidence.

Subclause (4) provides for the production of documents to the committee to be in accordance with the practice of the House of Assembly with respect to the production of documents to select committees of the House.

Clause 72 deals with confidentiality.

Subclause (1) provides that where any evidence given or proposed to be given before, or a document or part of a document produced or proposed to be produced before, the joint committee relates to a secret or confidential matter, the committee may, and at the request of the witness or person producing the document, the committee must, take the evidence in private or direct that the document or part of it be treated as confidential.

Subclause (2) provides for the contents of a document or part of a document in relation to which a direction under subclause (1) is given to be taken to be evidence given by the person producing the document and taken by the committee in private.

Subclause (3) prohibits the disclosure or publication of any part of any evidence taken in private by the committee on the request of a witness except with the written consent of the witness and authorisation by the committee under subclause (5). The clause also prohibits the disclosure or publication of such evidence by the committee without the witness's written consent. The maximum penalty is a division 7 fine ($2 000) or division 7 imprisonment (six months).

Subclause (4) prohibits the disclosure or publication (including by a member of the committee) of evidence taken in private by the committee other than at the request of a witness unless the committee has authorised the disclosure or publication under subclause (5). The maximum penalty is a division 7 fine ($2 000) or division 7 imprisonment (six months).

Subclause (5) empowers the committee to disclose or publish, or authorise a member of the committee to authorise the disclosure or publication of, evidence taken in private before the committee.

Subclause (6) provides that nothing in the clause prohibits the disclosure or publication of evidence already lawfully published or the disclosure or publication by a person of a matter of which the person has become aware other than by reason of the giving of evidence before the committee.

Subclause (7) provides that where evidence taken by the committee in private is disclosed or published in accordance with the clause—

- in the case of defamation proceedings brought in respect of the publication of a report of evidence given to the committee in private—it is a defence to those proceedings if the report is a fair report;
- in the case of any other proceedings, whether civil or criminal, brought in respect of the disclosure or publication of a report of such evidence—it is a defence if it is proved that the disclosure or publication was authorised by the clause.

PART 7

REFERENCES BY AND REPORTS TO PARLIAMENT

Clause 73 defines 'appropriate officer' for the purposes of Part 7 to mean the presiding officer of each House of Parliament or if their office is vacant, the Clerk of each House.

Clause 74 deals with references by Parliament.

Subclause (1) empowers each House, by resolution, to refer to the commission any matter as referred to in clause 11 (1) and to amend or revoke any such reference.

Subclause (2) imposes a duty on the commission to fully investigate a matter referred for its investigation by a House of Parliament and to comply as fully as possible with any directions contained in the reference.

Clause 75 deals with reports on referred matters.

Subclause (1) empowers the commission to prepare reports in relation to any matter that has been or is the subject of investigation.

Subclause (2) requires the commission to prepare reports in relation to a matter referred to it by a House of Parliament, as directed by that House.

Subclause (3) requires the commission to prepare reports in relation to matters as to which it has conducted public hearings, unless a House of Parliament has given different directions under subclause (2).

Subclause (4) requires the commission to furnish reports prepared under the clause to the appropriate officer of the House of Parliament by which matters have been referred.

Subclause (5) requires a report to be furnished as soon as practicable after the commission has concluded its involvement in the matter.

Subclause (6) allows the commission to defer making a report if satisfied that it is desirable to do so in the public interest, except in relation to a matter referred to it by a House of Parliament.

Subclause (7) requires a report to include, in respect of each affected person, a statement as to whether or not in all the circumstances the commission is of the opinion that consideration should be given to—

- the prosecution of the person for a specified criminal offence;
- the taking of disciplinary action under any law against the person;

and

- the taking of action against the person as a public officer on specified grounds, with a view to terminating the services of the public officer.

A report must not include—

- a finding or opinion that a specified person is guilty of, or has committed, is committing or is about to commit, a criminal offence or has engaged in, is engaging in or is about to engage in, conduct constituting or involving grounds for disciplinary action under any law against the person;

or

- a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for a criminal offence or that disciplinary action under any law should be taken against the person.

A report may include statements as to, and the reasons for, any of the commission's findings, opinions and recommendations.

Subclause (8) provides that a reference in subclause (7) to an affected person is a reference to a person described as such in a reference by both Houses of Parliament or against whom, in the commission's opinion, substantial allegations have been made in the course of or in connection with the investigation concerned.

Subclause (9) provides that, for the purposes of subclause (7), a finding or opinion that a person has engaged, is engaging or is about to engage, in corrupt conduct or specified conduct that constitutes or involves, or could constitute or involve, corrupt conduct is not a finding or opinion that a person is guilty or has committed, is committing or is about to commit, a criminal offence, or has engaged, is engaging or is about to engage, in conduct constituting or involving grounds for disciplinary action under any law against the person.

Clause 76 empowers the commission to make, at any time, a special report to the appropriate officer of each House of Parliament on any administrative or general policy matter relating to the functions of the commission.

Clause 77 deals with the commission's annual report.

Subclause (1) requires the commission to prepare, within four months after each 30 June, a report of its operations during the year ended on that 30 June and to furnish the report to the appropriate officer of each House of Parliament.

Subclause (2) specifies the particulars which must be included in such a report.

Clause 78 deals with reports relating to public authorities.

Subclause (1) empowers the commission to furnish to the appropriate officer of each House of Parliament a report setting out a recommendation referred to in clause 51 (that is, with respect to a public authority) that the commission is of the opinion should be adopted and the reasons for its opinion.

Subclause (2) prohibits such a report being furnished until after the 21 day period referred to in clause 51 (3) has passed.

Clause 79 deals with reports made under Part 7.

Subclause (1) requires a report furnished to the appropriate officer of a House of Parliament to be laid before that House within 12 sitting days of the House after it is received by the officer.

Subclause (2) allows the commission to include in a report a recommendation that the report be made public forthwith.

Subclause (3) provides that if a report includes such a recommendation, an appropriate officer may make it public whether or not the House is in session and whether or not the report has been laid before that House.

Subclause (4) provides that a report made public by an appropriate officer before it has been laid before the House attracts the same privileges and immunities as if it had been laid before the House.

Subclause (5) provides that an appropriate officer does not need to inquire whether all or any conditions precedent have been satisfied in relation to a report purporting to have been made and furnished in accordance with the measure.

PART 8
OFFENCES

Clause 80 makes it an offence for a person, at a hearing before the commission, to give evidence that is to their knowledge false or misleading in a material particular. The maximum penalty is a division 6 fine ($4 000) or division 6 imprisonment (one year).

Clause 81 creates a number of offences relating to documents and other things.

Subclause (1) makes it an offence for a person, knowing that a document or other thing is or may be required in connection with an investigation, to wilfully destroy the document or other thing or to render such a document incapable of identification or illegible, indecipherable or unusable, with intent to prevent it from being used in connection with the investigation. The maximum penalty is a division 5 fine ($8 000) or division 5 imprisonment (two years).

Subclause (2) makes it an offence for a person, with intent to delay or obstruct the carrying out by the commission of an investigation, to destroy or alter a document or other thing relating to the subject of the investigation or send or attempt to send, or conspire with another person to send, out of the State any such document or other thing, or any property belonging to, in the disposition of, or under the control of, any person whose affairs are the subject matter of the investigation. The maximum penalty is a division 4 fine ($15 000) or division 4 imprisonment (four years).

Subclause (3) makes it an offence for a person, with intent to mislead the commission or delay or obstruct the carrying out by the commission of an investigation, to fabricate a document or other thing, if the document or other thing is produced in evidence to the commission or is produced in purported compliance with a requirement under clause 21 or 22. The maximum penalty is a division 4 fine ($15 000) or division 4 imprisonment (four years).

Subclause (4) is an evidentiary aid.

Clause 82 makes it an offence for a person, with intent to affect the testimony of a witness before the commission, to practise any fraud or deceit on, or knowingly make or exhibit any false statement, representation or writing to, the witness or, with intent to affect a person's compliance with a notice under clause 21 or 22, to practise any fraud on, or to knowingly make or exhibit any false statement, representation or writing to, the person. The maximum penalty is a division 4 fine ($15 000) or division 4 imprisonment (four years).

Clause 83 makes it an offence for a person—

- to wilfully prevent or endeavour to prevent a person summoned to attend as a witness before the commission from attending as a witness or from producing anything in evidence pursuant to a summons to attend;

or

- to wilfully prevent or endeavour to prevent a person from complying with a requirement under clause 21 or 22.

In each case the maximum penalty is a division 4 fine ($15 000) or division 4 imprisonment (four years).

Clause 84 makes in an offence for a person to use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage to another on account of the other person having appeared before the commission as a witness, having given particular evidence before the commission or having complied with a requirement under clause 21 or 22. The maximum penalty is a division 4 fine ($15 000) or division 4 imprisonment (four years).

Clause 85 makes it an offence for an employer to dismiss an employee from their employment or prejudice them in their employment on account of the employee having appeared before the commission as a witness, having given particular evidence before the commission or having complied with a requirement under clause 21 or 22. The maximum penalty is a division 4 fine ($15 000) or division 4 imprisonment (four years).

Clause 86 makes it an offence for a person to directly or indirectly represent that he or she is an officer of the commission, or is of a particular class of officer, unless the person is such an officer or of that class. The maximum penalty is a division 6 fine ($4 000) or division 6 imprisonment (one year).

Clause 87 makes it an offence for a person to procure, or cause or attempt to procure or cause, the giving of false testimony at a hearing before the commission or, in purported compliance with a notice served on the person under clause 21, to furnish information that is, to the knowledge of the person so served, false or misleading in a material particular. The maximum penalty is a division 4 fine ($15 000) or division 4 imprisonment (four years).

Clause 88 makes it an offence for a person to—

- give, confer or procure, or promise to give or confer or to procure or attempt to procure, any property or benefit of any kind to, on or for any person, on an agreement or understanding that a witness before the commission will give false testimony or withhold true testimony;
- to attempt by any means to induce a witness before the commission to give false testimony or withhold true testimony;

or

- to ask, receive or obtain, or agree or attempt to receive or obtain, any property or benefit of any kind for themselves or for any other person, on an agreement or understanding that a witness before the commission will give false testimony or withhold true testimony.

The maximum penalty is a division 4 fine ($15 000) or division 4 imprisonment (one year).

Clause 89 makes it an offence—

- for an officer of the commission to corruptly ask for, receive or obtain, or agree to receive or obtain, any money, property or benefit of any kind for themselves or for another person—
  - to forego or neglect their duty, or influence them, in the exercise of their functions as an officer of the commission;
  - on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by the officer in the exercise of those functions;

  or
  - to use, or take advantage of, their position as an officer of the commission to improperly gain a benefit or advantage for, or facilitate the commission of an offence by, another person;

or

- for any person to corruptly give to, confer on, procure for, promise or offer to give to, confer on, or procure for or attempt to procure for, an officer of the commission or any other person, any money, property or benefit of any kind—
  - for that, or any other, officer of the commission to forgo or neglect their duty, or to influence them in the exercise of their functions as such an officer;
  - on account of anything already done, or omitted to be done, by the officer in the exercise of such functions;

  or
  - for the officer to use or take advantage of their position to improperly gain a benefit or advantage for, or facilitate the commission of an offence by, the person.

In each case the maximum penalty is a division 4 fine ($15 000) or division 4 imprisonment (four years).

Clause 90 makes it an offence for a person—

- without reasonable excuse, to wilfully obstruct, hinder, resist or threaten the commission or an officer of the commission in the exercise of powers or functions under the measure;
- without reasonable excuse, to refuse or wilfully fail to comply with a lawful requirement of the commission or an officer of the commission;
- to wilfully make any false statement or to mislead or attempt to mislead the commission or an officer of the commission in the exercise of powers or functions under the measure;

or

- to disrupt a hearing before the commission.

The maximum penalty is a division 6 fine ($4 000) or division 6 imprisonment (one year).

PART 9
CONTEMPT OF COMMISSION

Clause 91 defines 'offender' for the purposes of Part 9 as a person guilty or alleged to be guilty of contempt of the commission.

Clause 92 sets out what acts constitute contempt of the commission.

Clause 93 provides for the punishment of contempt.

Subclause (1) provides for a contempt of the commission to be punished in accordance with the clause.

Subclause (2) empowers the Commissioner to certify the contempt in writing to the Supreme Court.

Subclause (3) requires the Supreme Court, if the Commissioner certifies the contempt of a person, to inquire into the alleged contempt and, if satisfied that the person is guilty of the contempt, after hearing any witnesses for the defence and any statement offered in defence, to punish the person or take steps for their punishment in the same manner and to the same extent as if the person had committed a contempt of the Supreme Court.

Subclause (4) is an evidentiary aid.

Subclause (5) provides that neither liability to be punished for a contempt of having failed to attend before the commission as a witness in answer to a summons nor punishment for such a contempt excuses the offender from having to obey the summons and the Commissioner may enforce attendance by warrant issued by a justice.

Clause 94 makes general provision regarding contempt.

Subclause (1) empowers the Commissioner to summon a person alleged to have committed contempt of the commission to appear before the commission and show cause why they should not be dealt with under clause 93 for the contempt.

Subclause (2) empowers the Commissioner to force the attendance of an alleged offender before the commission to show cause by warrant issued by a justice for the apprehension of the offender and their bringing before the commission.

Subclause (3) provides that a summons need not be served for a contempt in face of, or at a hearing before, the commission and the offender may be taken into custody there and then by a member of the Police Force and be called on to show cause.

Subclause (4) empowers the Commissioner to apply to a justice for a warrant to apprehend a person while they are before the commission and to bring the offender forthwith before the Supreme Court.

Subclause (5) provides that a warrant under the clause is sufficient authority to detain the offender in a prison or elsewhere, pending their bringing before the court.

Subclause (6) requires a warrant to be accompanied by certain documents.

Subclause (7) empowers a justice, on the application of the Commissioner, to revoke the warrant at any time before the offender is brought before the court.

Subclause (8) empowers the court, when the offender is brought before it and pending determination of the matter, to direct the offender to be kept in custody or to be released.

Clause 95 provides that an act or omission that constitutes both an offence and a contempt of the commission can be

punished either as an offence or as a contempt but an offender cannot be punished for both.

PART 10
MISCELLANEOUS

Clause 96 deals with evidence and procedure.

Subclause (1) provides that the commission is not bound by the rules of evidence and may inform itself on any matter in such manner as it considers appropriate.

Subclause (2) requires the commission to exercise its functions with as little formality and technicality as possible and, in particular, to accept written submissions as far as possible and to conduct hearings with as little emphasis on an adversarial approach as is possible.

Clause 97 deals with court proceedings.

Subclause (1) empowers the commission, despite any proceedings in or before a court, tribunal, royal commission, warden, etc., to commence, continue, discontinue or complete an investigation, furnish reports in connection with an investigation and do all such acts and things as are necessary or expedient for those purposes.

Subclause (2) requires the commission, if it does any of the things mentioned in subclause (1)—

- as far as practicable, to ensure that any hearing or other action relating to an investigation, so far as it relates to the subject matter of other proceedings, is conducted in private during the currency of the proceedings;
- as far as practicable, to give such directions under clause 101, during the currency of the other proceedings, as will avoid prejudice to any person affected by the proceedings;

and

- to defer making report to Parliament in relation to the investigation during the currency of the proceedings.

Subclause (3) provides that the clause has effect whether or not the other proceedings commenced before or after the commencement of the relevant investigation and whether or not the commission or one of its officers is a party to the other proceedings.

Clause 98 deals with immunity from liability.

Subclause (1) gives a member of the commission, a person acting under the direction of the commission or the Commissioner and any other person engaged in the administration of the measure, immunity from personal liability for an honest act or omission in the exercise or purported exercise of a power or function under the measure.

Subclause (2) provides that a liability that would, but for this provision, lie against such a person lies instead against the Crown.

Subclause (3) gives a legal practitioner assisting the commission or representing a person before the commission the same protection and immunity as a legal practitioner appearing for a party in proceedings in the Supreme Court.

Clause 99 deals with secrecy.

Subclause (1) prohibits a person to whom the clause applies from making a record of, or divulging or communicating to any person, information acquired by the person by reason of or in the course of the exercise of the person's powers or functions under the measure except for the purposes of the measure or otherwise in connection with the exercise of such powers of functions. The maximum penalty is a division 6 fine ($4 000) or division 6 imprisonment (one year).

Subclause (2) prevents a person to whom the clause applies from being required—

- to produce in a court a document or other thing that has come into the person's possession, custody or control by reason of or in the course of the exercise of the person's powers or functions under the measure;

or

- to divulge or communicate to a court any matter or thing that has come to the person's notice in the exercise of such powers or functions,

except for the purposes of a prosecution instituted as a result of an investigation conducted by the commission in the exercise of its powers or functions.

Subclause (3) provides that nothing in the clause prevents a person to whom it applies from divulging any such information—

- for the purposes of and in accordance with the measure;
- for the purposes of a prosecution instituted as a result of an investigation conducted by the commission in the exercise of its powers or functions;
- in accordance with a direction of the Commissioner, if the Commissioner certifies that it is necessary to do so in the public interest;

or

- to any prescribed authority or person.

Subclause (4) makes a prescribed authority or person to whom information is divulged under subclause (3), and any employee or person under the control of the authority or person, subject to the same rights, privileges, obligations and liabilities under subclauses (2) and (3) as if he or she were a person to whom the section applies and had acquired the information in the exercise of functions under the measure.

Subclause (5) defines 'court' and 'produce' for the purposes of the section.

Subclause (6) provides that the clause applies to—

- an officer or former officer of the commission;
- a person who is or was a legal practitioner appointed to assist the commission or a person assisting or acting on behalf of such a person;
- a member or former member of the Operations Review Committee;

and

- the Attorney-General and any other person involved in prosecutions for offences.

Clause 100 deals with the publication of evidence.

Subclause (1) empowers the commission, where it considers it desirable in the interests of the administration of justice to do so, to regulate by direction the publication of evidence given before it, a document or a description of a thing produced to the commission or seized by search warrant under the measure, information that might identify a witness before the commission or the fact that a person has given or is about to give evidence at a hearing.

Subclause (2) prohibits a person from making a publication in contravention of a direction given by the commission under subclause (1). The maximum penalty is a division 6 fine ($4 000) or division 6 imprisonment (one year).

Clause 101 deals with evidence in criminal proceedings.

Subclause (1) empowers a court before which a person is charged with an offence, if satisfied that it is in the interests of justice to do so, to give the commission a direction that particular evidence in relation to which the commission has given a direction under clause 100 be made available to the defendant, his or her legal representative or the prosecutor.

Subclause (2) authorises the Commissioner to appear before a court for the purpose of making representations concerning the giving of a direction under subclause (1).

Subclause (3) requires the commission, where a direction under subclause (1) is given, to make the evidence or information available on request.

Subclause (4) empowers the court to make the evidence or information available to the defendant, his or her legal representative or the prosecutor if the court has examined the evidence or information and is satisfied that the interests of justice so require.

Subclause (5) provides that nothing in clause 99 prevents a person to whom it applies from producing a document or other thing, or divulging or communicating any matter or thing, to the extent necessary to give effect to this clause.

Subclause (6) provides that nothing in clause 100 prevents the evidence or information being made available under clause 101.

Clause 102 deals with disclosures that prejudice investigations.

Subclause (1) prohibits a person required by notice under clause 21 or 22 to produce a statement of information or document or other thing, or required by summons to give evidence or to produce a document or other thing, from disclosing any information about the notice or summons that is likely to prejudice the investigation to which it relates. The maximum penalty is a division 6 fine ($4 000) or division 6 imprisonment (one year).

Subclause (2) provides that subclause (1) does not apply to a notice or summons unless it specifies the information that must not be disclosed.

Subclause (3) provides that a person does not contravene subclause (1) if—

- the disclosure is made to an employee, agent or other person to obtain information to comply with the notice or summons and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter;
- the disclosure is made to obtain legal advice or representation in relation to the notice or summons;

or

- the disclosure is made for the purposes of or in the course of legal proceedings.

Subclause (4) is an interpretative aid.

Clause 103 deals with the duty of certain persons to report corrupt conduct and organised crime.

Subclause (1) imposes, notwithstanding any duty of secrecy or other restriction on disclosure, a duty on a person to whom the clause applies to report to the commission any matter the person suspects on reasonable grounds concerns or may concern corrupt conduct or organised crime.

Subclause (2) empowers the commission to issue guidelines on what matters need or need not be reported.

Subclause (3) provides that the clause applies to the Ombudsman, the Commissioner of Police, a principal officer of a public authority and a person who constitutes a public authority.

Subclause (4) defines 'principal officer' of a public authority as the head of the authority, its most senior officer or the person normally entitled to preside at meetings of the authority.

Clause 104 empowers the commission to recommend to the Attorney-General that a person be granted immunity from prosecution or that a person be given an undertaking that certain evidence before the commission will not be used in evidence against the person.

Clause 105 provides that nothing in the measure affects the rights and privileges of Parliament in relation to the freedom of speech, and debates and proceedings, in Parliament.

Clause 106 sets out the ways in which service of a document may be effected for the purposes of the measure.

Clause 107 makes the maximum penalty applicable to a body corporate convicted of an offence against the measure double the fine otherwise applying to the offence.

Clause 108 deals with regulations.

Subclause (1) empowers the Governor to make regulations.

Subclause (2) specifies matters with respect to which regulations may be made.

Subclause (3) requires certain regulations to be made only on the recommendation of the Commissioner.

With those remarks, I commend the Bill to the Chamber.

The Hon. CAROLYN PICKLES secured the adjournment of the debate.

OIL SPILL

Adjourned debate on motion of Hon. Diana Laidlaw:

1. That as a matter of urgency a select committee be appointed to inquire into and report on the cause of, and response to, the spill of ship's bunker fuel on Sunday 30 August at Port Bonython (which resulted in the largest oil slick in the State's history) with particular reference to:

(a) berthing procedures for various weather conditions;

(b) oil spill contingency plans and facilities;

(c) adequacy and effectiveness of response measures;

(d) resources and costs involved in clean-up operations; and

(e) any other related matters.

2. That Standing Order 389 be so far suspended as to enable the Chairperson of the committee to have a deliberative vote only.

3. That this Council permits the select committee to authorise the disclosure or publication, as it thinks fit, of any evidence presented to the committee prior to such evidence being reported to the Council.

(Continued from 9 September. Page 310.)

The Hon. M.J. ELLIOTT: I will move to amend this motion. I am concerned about the number of select committees already operating in this place and have expressed that concern previously. A number of those committees have almost stalled because of the workload falling on members at this stage. The last thing that we need is another select committee locking up the time of members. However, the matters that the Hon. Ms Laidlaw has introduced are important, and I have asked questions in this Chamber in relation to this spill at Port Bonython. People have made direct contact with me raising allegations about what happened and why it happened, and apportioning blame. There is a great danger that the wrong information may already be circulating publicly.

There has been talk of independent inquiries operating to look at what happened at Port Bonython but, to the best of my knowledge, most of the studies done so far have been challenged by some people in terms of their independence.

The Standing Committee in its work has shown that it is capable of taking a non-political viewpoint, that it will ensure that matters that come before it are properly examined and that it will make the appropriate recommendations. I do not intend to speculate about what happened at Port Bonython because I believe I will have the numbers to ensure that the motion is carried, although I hope in amended form, namely if the matter goes to the Environment, Resources and Development Committee.

Whilst it is worthwhile looking at what happened on that day at Port Bonython, why decisions were made to allow the berthing to occur, whether or not the contingency plans were adequate and whether the response measures, etc., were adequate, I think it is important to look at the potential for such a spill occurring again. If we are going to take the time to look at those matters in relation to Port Bonython, it would be most foolhardy of us to not also look at it elsewhere in this State. This year there have been at least three recorded spills at Port Stanvac. On 15 April there was a spill of 200 litres; on 20 August a spill of 400 litres of diesel; and on 25 September there was a spill of what was admitted to be 100 litres of crude oil, although it has been reported to me that it may have been as much as 1 000 litres. In any case, once again there is no speculation that there have been those three admitted spills. There may be argument about the size of those spills and about whether or not there have been some others; I know of at least one other reported case which is at present contested.

Two of the spills at Port Stanvac occurred while a tanker was unloading at a refinery, and one is alleged to have come from a breached or damaged pipe carrying diesel back out to a waiting tanker. If we are going to take the time to look at Port Bonython and not just to look at the events of that day (we must more importantly look at general procedures), I think the committee at the same time should also look at Port Stanvac, which has exactly the same potential for difficulties. Both of these are important loading points. They load quite large quantities both in and out; and both are within the enclosed waters of gulfs, both are important fisheries; and the impact on fisheries from major spills in either of those can be quite dramatic. If we are going to take the time to put special emphasis on those, we should also look at the potential for oil spills more generally in South Australian waters. If there are risks, for instance, because

certain lights are no longer operating in Spencer Gulf or, if there is increased risk of boats running aground (an allegation which has been made to me), those matters are also worthy of investigation. I therefore move the following amendment:

To delete all words after 'that' and insert 'the Environment Resources and Development Committee be requested to inquire into and report on:

1. The cause of and response to the spill of ships bunker fuel on Sunday 30 August 1992 at Port Bonython which resulted in the largest oil slick in the State's history with particular reference to:

(a) berthing procedures for various weather conditions;
(b) oil spill contingency plans and facilities;
(c) adequacy and effectiveness of response measures;
(d) resources and costs involved in clean-up operations, and
(e) any other related matters.

2. The potential for future oil spills at Port Bonython, Port Stanvac and generally in South Australian waters.

I commend the motion as amended to the Council.

The Hon. I. GILFILLAN: I rise to speak in support of the amendment. I wanted to indicate some of the information I discovered when I visited the site on 15 September 1992. I was taken by motor boat from Port Pirie for a tour of the mangrove forests damaged by what was estimated as 20 tonnes of crude oil, and as honourable members will know the oil spilled into the gulf two weeks earlier to that date after the 140 000 tonne tanker *Era* was holed in an accident while docking at the Santos, Port Bonython facility 32 kilometres south-east of Whyalla.

The accident spilled approximately 300 tonnes of bunker crude engine oil into the gulf, an incident quickly labelled by the media and environmental groups as Australia's worst in-shore oil spill.

The clean-up operation was undertaken jointly by the Department of Marine and Harbors, which operated the tug involved in the accident and the Department of Fisheries, responsible for fishing industry activities in the gulf.

My boat trip to the oil affected mangroves was the first by any State politician and it gave me a first hand impression of the extent of the disaster. The boat tour had been arranged through the local representative of the South Australian Fishing Industry Council (SAFIC), Mr Keith Aichinson who seconded a boat from one of the professional fishermen in the area nicknamed 'Mingy'. Mr Aichinson and Kym Dewhirst and I went to the mangroves at the top of tide and saw clear evidence of widespread oil damage. The sea near the mangroves was heavy with oil, moving with a slow viscous swell, despite the fact that the weather was a mixture of howling wind, rainy squalls and choppy seas.

According to the fishermen the oil affected areas of mangroves covered an eight to 10 kilometres stretch along the coast, running one to two kilometres into the mangroves, giving an area of approximately 20 square kilometres directly affected by the waxy sludge of bunker crude. Fisheries Department officers had at the time claimed to have contained the oil with a series of booms and said most of the oil had dispersed, and the remaining oil would flush from the mangroves within weeks. This was clearly not the case. As the boat drifted slowly into Fourth Creek, we spotted the fisheries boom lying smashed on either side of the creek; it was rendered useless by the dual force of the water moving in and out of the mangroves. Obviously the placement of those booms did not work. A dead bird was observed coated with oil in the water. It was quite apparent that that area was devoid of any bird life in stark contrast with the area of non-oil affected mangrove.

The fishermen who had been fishing that area told me that no fish were caught in the upper level of water in the area affected by the oil and the dispersant put on the oil. They believed that the dispersant had affected the top three metres of the water which had kept out mullet, snapper and garfish as they feed within those top three metres. Whiting and sand crab were still available in that area.

Up to two dozen professional fishermen spent the best part of two weeks following the spill searching their traditional fishing grounds without success; they blame it on the oil and the chemicals used to disperse it. I asked the boat owner to bring his boat alongside a mangrove and I broke off a branch of the tree, finding it covered with a thick layer of heavy, black waxy crude. It certainly did not appear as if this oil could be washed away in a hurry.

The fishermen said that officials had told them the oil would be all gone, evaporated or broken down biologically within weeks, but later in the tour an unofficial view was given by a senior Santos officer that it could be at least three years before the oil disappeared. With the tide falling and the boat lying in less than a metre of water I returned to Port Pirie where I met with local fishermen, who raised a number of issues, as follows: Marine and Harbours officers said no oil was left in Third Creek, yet the following day a home video by one of the fishermen showed extensive oil deposits. Officials said that no dispersant was used in water depths of less than 10 metres, but at least three fishermen are prepared to swear that a plane sprayed along the mangrove banks, one caught a mouthful of it and spent the day vomiting. Fishermen claimed that between 139 and 149 tonnes of dispersant was sprayed over a two day period. According to the fishermen, the Mayor of Port Pirie, Denis Crisp, claimed a powder dispersant was used in Fifth Creek but Fisheries officers have denied this.

The fishermen claim Marine and Harbors personnel spent two days in calm weather sitting in the middle of the gulf before the oil reached the mangroves and did not attempt to contain it. They claim that it was three days after the oil hit the mangroves that the Harbors Board laid booms in the area.

They detailed everything they knew about the circumstances surrounding the spill but it was not until the next day and a visit to the Santos facility at Port Bonython that much of the fine detail of the accident came into focus. However, anecdotal material from the fishermen included a senior Fisheries Department official who allegedly said that there would be no problems with a major tanker disaster because it would probably explode and burn off the oil, while Santos is alleged to have said the spill was a 'pin-prick' and nothing to worry about.

To the best of everyone's knowledge the State Disaster Committee was not involved at all in the clean-up operation and the area's Chairman, Kingsley Oakley, had not been out to the affected area.

Obviously, the fishermen there were concerned about their legal rights if they caught fish and the fish were found to be contaminated and whether consumption had caused any ill effects. They are desperate to get the so-called all clear from whichever Government department is appropriate so that they can resume catching fish from that area free from any legal liability that could affect their economic situation. They are also concerned that they do not seem to be able to get the exact details on what toxins were used in the dispersant or how dangerous they are to the fish and those who consume the fish. They denied having made any claim for compensation and said it was a media beat-up that led to claims of $1 million being attributed to them, but they did acknowledge that the affected area turns out approximately $1 million worth of fish a year.

The following day, when I visited the Santos facility at Port Bonython, I was informed that on the day of the accident the weather was rough but, according to Santos's opinion, not unduly so, with winds gusting 20 to 30 knots. However, the *Era* is a big ship of 140 000 tonnes and is designed to plough through mountainous seas, so in their opinion the day posed no particular danger for berthing the *Era*. On the other hand, it was tough weather to dock and load, and the tugs *Turmoil* and *Taminga* needed to be well handled. The *Era* was operated by R.W. Millar, the agent, chartered by BP Australia and owned by Howard Smith shipping.

We were informed that all ships berthing at Santos have a pilot on board and the harbormaster is the one who makes all final decisions on ship berthing procedures. The *Era* was being nudged in towards the jetty. A line boat had already taken up a line, with both tugs pushing the ship towards the jetty with the aid of a strong onshore wind. It was believed that a large, anchor-type chain with massive links was hanging unattended over the side of the *Turmoil*, near a fairing that also had an exposed piece of sharp metal sticking up, when the tug dropped into a wave trough, taking it under the overhang of the ship's hull, and suddenly thrust upwards, slamming the chain or fairing into the fuel tank area of the *Era*, approximately one metre above the water line. Instantly, the *Era* was holed and the bunker crude began to pour out.

The hole appeared to be only 15 centimetres in length and about five centimetres in width, but it flowed for three hours, virtually unstopped, letting out 300 tonnes of oil—the worst inshore oil spill in Australia's history. On querying Santos, I was informed that it does indeed have emergency crews, specially trained to deal with this type of disaster, but that they are not rostered on over the weekends. So, the emergency crew were at home or wherever else they were in Whyalla at the time of this incident. As an optimistic estimate, it takes at least an hour for the emergency crew to get to the location. By that time, Marine and Harbors and Santos had a joint command; it took three hours before anyone made a decision as to what to do. Apparently, no-one wanted to take command. Meanwhile, the oil sprayed into the sea and eventually, after three hours, Marine and Harbors gave permission to Santos to start spraying dispersant and the ship's captain began pumping oil so the vessel would list to take the pressure off the punctured hull. It is quite conceivable that rapid and appropriate action at the time would have limited the spill to a minor incident. I have been advised that at least one of the dispersants used was Corexit, a product of EXXON, containing ethylene glycol mono butal ether, but that is the only information that I have at this stage on the actual nature of the dispersants used.

Last week I went to Port Lincoln and had a meeting with members of the Prawn Fishing Association there; they have expressed grave concern about the effects of the oil spill on their industry. They are concerned that the prawns that will be harvested from quite a large area could be contaminated. They have also sought assurances from Government departments, and they do seem to get shunted about from Marine and Harbors to Fisheries for an assurance that the harvested prawns would be safe for human consumption. Last Friday, they had not had such an assurance. They have therefore closed off the northern part of Spencer Gulf from Point Jarrold for all prawn fishing until the situation is shown to be safe. They have serious concerns that an inquiry must be implemented that looks at the wide total background, to how and why the accident occurred, what should or could be done to prevent it in future and, equally important, what could and should be the proper process of dealing with spilt oil and the assessment of what after-effects there are.

One of the pieces of information that I got from discussions with fishermen in Port Lincoln is that a total flush-out of the northern Spencer Gulf area takes approximately 17 years and that, if there is any lingering aftermath, it is a very difficult water area in which to be assured that contamination has been removed, and it is certainly not removed quickly. So, I strongly support the amendment. However, I am indicating support for the motive of the original motion; I do not believe a select committee is the appropriate body, certainly now that we have satisfactory standing committee structures.

I believe the terms of reference will allow for a thorough investigation of the details of this spill, with the committee having the power to insist on evidence and written material and the second amended term of reference, regarding the potential for future oil spills in Port Bonython, Port Stanvac and other South Australian waters, will enable an assessment of previous spills. I have been advised that the situation at Port Stanvac has been far from satisfactory. A lot of the spill activity has been detailed and publicity of it has been kept under wraps so we do not have an accurate reflection of the incidence of spills at Port Stanvac and that must be extracted through the inquiries of this committee. So, I support the amendment moved by my colleague Mr Elliott to the original motion of the Hon. Diana Laidlaw.

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

CLASSIFICATION OF PUBLICATIONS (DISPLAY OF INDECENT MATTER) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 August. Page 52.)

The Hon. C.J. SUMNER (Attorney-General): The Government opposes this Bill at this stage. I do not think

it would be prudent for the Council to pass this Bill at this time. One of the criteria that I have attempted to operate under in this area of the administration of the law over the past decade has been generally attempting to achieve uniformity at least with the major States in Australia. This Bill would introduce significant changes which would not be uniform with the system that currently exists generally around Australia although not in every State.

I believe that substantial uniformity is important because publications which are subject to classification are generally published nationally; they are not confined to one State. I think it is reasonable, given the communications which occur around Australia, seeing that Australia is one information unit if you like, for there to be a substantially uniform set of rules which govern the distribution of information, that is, the distribution of publications around Australia.

Furthermore, I will indicate shortly that there are some developments occurring at the national level that I think should lead the Council to oppose this Bill at this stage. The Bill deals with category 1 publications—we are not dealing with category 2 publications which is the category of publication that can only be sold in a restricted area, that is, effectively in sex shops—which can be sold in a non-restricted area but which have the following conditions attached to them: first, that the publication not be sold or delivered to a minor except by a parent or guardian; and, secondly, that the publication not be publicly displayed unless in a sealed package, and a sealed package under the current restrictions not being an opaque package but as is the common situation, a sealed, clear package.

The Bill makes the following additions to those two conditions which apply to category 1 publications: first, that the publication not be publicly displayed unless in a sealed package and placed in a rack or contained in an opaque package; and, secondly, that the publication not be advertised if it depicts certain prescribed matters except in a restricted area in another category 1 or 2 publication or in written material delivered at the request of a person.

What is being proposed is that for category 1 publications to be sold they would have to be in an opaque package—presumably a brown paper bag or something—which would mean that the customers would obviously not be able to see the magazine or publication before it was purchased or, alternatively, if in a sealed but clear package the magazines would have to be placed behind a rack, and this is the debate about blinder racks, that is, racks which ensure that the magazine or publication is concealed except possibly for the top of it where the title appears.

The point needs to be made that this would constitute a significant change in the way that these category 1 publications are dealt with in South Australia. I do not know that the small businesses concerned with selling these magazines have been consulted about this change, and I suspect that they have not been, but it would require those small businesses to construct racks to enable the magazines to be sold or, alternatively, the publishers would have to sell them in an opaque package. First, there is that practical problem—that I do not believe that small business has been consulted about it—and obviously there would also be some capital cost to the small business retailers in having to construct the racks if this system were to operate.

I said that my principal objection was because of developments that are occurring interstate and nationally, with the importance I believe in this area of trying to get a reasonable degree of uniformity. At the last meeting of censorship Ministers, which I was unable to attend but at which I was represented, the question of blinder racks—that is the proposal contained in this Bill—was raised with Ministers. I am advised that there was little enthusiasm for discussing this issue and in fact it was proposed that it should be deferred until the next meeting to see how the amended guidelines worked; it was agreed that the matter would not be dealt with at that meeting but would be considered at a later date once the amended guidelines were operating.

That brings me to the guidelines that were amended at the last meeting of censorship Ministers which was held in Perth on 2 July this year. The catalyst for changing the guidelines was the same catalyst that I think prompted the Hon. Dr Pfitzner to introduce this legislation, namely, the concern about the magazines *Picture* and *People* which are readily available throughout Australia and which are at present in the unrestricted category but which were placed in category 2 by the South Australian Classification of Publications Board after public disquiet about some of the publications, in particular the publication which had on the front page the photograph of a woman with a dog collar in a four-legged pose. That caused considerable disquiet in the community. It was regarded as offensive by many people and in particular was regarded as demeaning by many women.

Following the concern about that, as I said, the South Australian Classification of Publications Board placed these publications in category 2, because it felt that the publishers were not taking adequate action to modify the publications. Since then they have been removed from category 2 again. In other words, the determination made by the South Australian Classification of Publications Board in May 1992 to place these magazines in category 2 has now been revoked so that they are back in the unrestricted category again. The Classification of Publications Board did this following the meeting of censorship Ministers in Perth on 2 July 1992. That meeting of Ministers agreed that the classifications principles should be altered by including the following phrase:

> . . . additionally, material which condones or incites violence or is demeaning may be restricted or refused.

I think the reference to condoning or inciting violence was there previously, but what was added was that, in considering an appropriate classification for magazines, for publications, the Commonwealth censor could consider whether or not the material was demeaning. As South Australia generally picks up the classifications imposed nationally it now means that the national censor can take into account whether publications are demeaning, and in particular demeaning to women, in determining what classification should be imposed. So the national censor now has that power, and that would normally be followed in South Australia.

As a result of that change, the South Australian Classification of Publications Board lifted its

determination to place these magazines in category 2 and, as I said, they are now available unrestricted. However, as a result of that change to the classification criteria I believe that the publishers have toned down the nature of the material that was previously in *Picture* and *People*, and the importance of the change to the classification criteria is that if they do not continue to tone down that material then the Commonwealth censor can step in and if he considers that the material is demeaning to women he can then recommend a category 1 or category 2 classification. So, the amended guidelines provide the means whereby the national Commonwealth censor can act in this area, if the material is considered to be over the top and, in particular, considered to be demeaning, a criterion that was not available to the Commonwealth censor previously, and with the possibility that material demeaning to women can be classified now it appears that the publishers have modified the material that is in those two magazines in particular.

In summary, at this stage it would seem that Commonwealth State Ministers are not interested in the proposal for blinder racks but, importantly, the criteria have now been changed which will enable images demeaning to women to be classified by the Commonwealth Film Censor, and that has had the effect, I believe, of modifying the magazines that were considered to be offensive. In the light of that, I do not believe that the Parliament should approve of this Bill at this stage. The other factor I should mention is that Commonwealth and State Ministers are currently giving consideration to a compulsory classification system for publications. As honourable members would know, there is currently a compulsory classification system operating for videos. Before Commonwealth State censorship Ministers there is now a proposal for a uniform compulsory classification scheme, and draft legislation is being prepared to provide for the compulsory classification of all category 1, category 2 and refused publications, and that should be prepared for consideration at the next meeting.

I should say that, although Commonwealth State Ministers have agreed to the preparation of this draft legislation, it is not something that I am yet convinced is necessary. I believe that the current system works reasonably well and that there is not a case being made out for a compulsory classification system. The argument in favour of it I understand is basically one of enforcement, but as far as I am concerned if material is sold that is not classified the current legislation does provide adequate means for enforcement of the law. However, I merely add that to the debate to indicate to the Council that at the national level there are a number of matters that are happening, in particular the proposal for compulsory classification, which will be examined over the next few months.

The criteria have been changed, tightened up, to provide that material that is demeaning can be classified now, and that flows through to the State decisions. Thirdly, there appears not to be an interest at this stage nationally in the proposal contained in this Bill, to have so-called blinder racks installed, and apart from the principle of it, which can be debated, it seems to me that there is also a practical problem that this issue has not been dealt with by the proposer of the Bill in a consultative way with anyone concerned with the sale or distribution of magazines and, accordingly, I think for that practical reason at this stage the Bill should be opposed.

It may be a matter that will come back on the agenda, depending on those national discussions that I have outlined to the Council. One further point that I should add is that the censorship Ministers meeting also considered the Australian Law Reform Commission Report, which was looking to implement a uniform scheme throughout Australia. That report will be available publicly to honourable members if they are interested in it. I should say that Tasmania and Queensland indicated that they did not want to be part of the national scheme. New South Wales indicated that it was still considering it. However, other jurisdictions were generally in favour of the Australian Law Reform Commission report being implemented. But obviously that will be the subject of further debate. So, Mr President, they are the issues being dealt with nationally, or some of the issues, at least. They do impact on this Bill, and for the time being I think the best course of action is to oppose the Bill and to see how those issues develop nationally and, in particular, to see how the change in criteria for classifications operates to affect the magazines that have caused the offence in the past.

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

REMUNERATION (ECONOMIC CLIMATE) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 19 August. Page 134.)

The Hon. C.J. SUMNER (Attorney-General): I oppose the Bill. It deals with two issues. First, it provides that the Remuneration Tribunal has no power to deal with non-monetary remuneration. This proposal involves a basic misunderstanding of how current arrangements for remuneration operate in practice. To take cars as an example, District Court and Supreme Court judges in every mainland State are permitted the private use of vehicles or are paid an allowance in lieu. I understand that in Queensland they get both.

The Hon. I. Gilfillan: How do they get an allowance in lieu of something they already have?

The Hon. C.J. SUMNER: The honourable member will have to ask the Queensland Government because I do not know. If this amendment had been made before the last determination, its effect would simply have been that the judges would have got the allowance rather than the cars. This would have been more expensive for the Government, particularly as the vehicles would not be available for governmental use and it is doubtful whether the vehicles could be purchased without sales tax. As the amendment does not apply to rights already granted, it would not apply to motor vehicles. So, the Bill introduced by the honourable member could not operate to deprive judges and magistrates of the determination that has granted them motor vehicles to the present. However, it might apply to other things such as libraries.

In New South Wales and Victoria, judges are expected to provide their own libraries. In Victoria, they are paid an annual allowance to maintain their libraries. In South Australia, judges are provided with access to the courts' libraries. If there were a dispute as to the appropriateness of the courts' libraries, in principle, that dispute could be determined by the tribunal's deciding that the Government should provide certain library facilities. If the amendment were passed, the tribunal could deal with such an issue only by determining that the Government should pay an allowance to judges to buy their own library books. This would be more expensive and would result in the courts' libraries being reduced. In short, the apparent distinction between monetary and non-monetary remuneration is pointless. If it has any effect, it is likely to increase the cost to Government rather than reduce it.

The second issue is that the Bill seeks to provide that the tribunal should have regard to economic and social conditions in determining judicial salaries. The difficulty is in deciding what that means. To the extent that it may be taken to suggest that this was not done in respect of the last determination, it shows a misunderstanding of the background to that determination. In particular, judicial salaries have increased significantly in recent times by reason of leapfrogging between various jurisdictions around Australia and at the federal level. The leapfrogging was caused in some measure by disputes as to the relative salary levels between the Federal Court and some Supreme Court judges. The leapfrogging has now stopped. This is due in some part to the submissions put to this State's tribunal by the Government in 1991, as a result of which the tribunal did not pass on the full interstate increases. Since that time there has been more restraint in respect of judicial salaries.

Further, there is now a discernible national standard for the salaries of Supreme Court judges. The last determination, which caused the controversy, involves an acceptance that that standard should apply to puisne judges of the Supreme Court. Relativities have been established for other levels of the Judiciary which reflect the changes effected by the courts package. One of the arguments put forward by the Judiciary to the independent tribunal was that there had been a change in the work value. That applied particularly to District Court judges and magistrates. In other words, they argued that they had additional work of a more complex and serious kind to deal with. One of the arguments put was that, because the value of their work increased, that should be reflected in their salaries. That is a very normal industrial principle upon which industrial tribunals in this country operate.

The Hon. I. Gilfillan: Do you agree with that argument?

The Hon. C.J. SUMNER: We agreed with the overall final position that was reached. We certainly did not agree with the initial bid that was put up by the judges. As I indicated at the time and as I have indicated since, that was opposed strongly. The final package was an agreed package. That cannot be altered unless the honourable member wants to legislate that the normal principles of industrial arbitration should not apply to the Remuneration Tribunal and that work value matters should be excluded from its consideration. If the honourable member wants to do that, he should consider amending his Bill to that effect, to say that work value considerations are not to be taken into account by the tribunal. However, that would make a farce of the situation. All I am saying is that one of the arguments put forward by the judges was that there had been an increase in the work that they were required to do as a result of the courts package.

Although the Government's view is that the overall national standard to which I referred is too high, having regard to community expectations, the fact is that that standard exists, and as such it is one that should be taken into account by industrial tribunals here, in this case by the Remuneration Tribunal in determining what is an appropriate salary for South Australian judges and magistrates. The judges and magistrates argue that they do work that is similar to the work performed by judges and magistrates in other States and at the Federal level and that, on the basis of wage justice, they should get paid similar amounts to judges and magistrates doing similar work in other courts interstate or at the Commonwealth level. It may be that the Hon. Mr Gilfillan does not agree with that, but that is one of the principles on which the Remuneration Tribunal operates and it is obviously a factor that is put up in other industrial tribunals. If a standard can be determined, the argument is that South Australian employees, in this case judges and magistrates, should get that standard.

From the Government's point of view, the important thing is that now that the standard has been set we believe and hope that there will not be another round of leapfrogging. One of the problems that other Attorneys-General and I have had over recent years is trying to stop the leapfrogging. An increase is given in one State and that is used to get an increase in another State and it has a snowballing effect until everyone gets the increase. What we have attempted to do through this process is say that there is a national standard for puisne judges of the Supreme Court, for District Court judges and magistrates and that their salaries should be set in relation to that standard. District Court judges get a salary that is a certain percentage of Supreme Court judges and magistrates get a salary that is a certain percentage of the District Court judges salary.

As I said, it is not particularly satisfactory in the middle of a recession to see increases of this kind. However, the Government did not agree with the initial proposals put forward by the Judiciary. In fact, it strongly opposed the position put by the District Court as to what it said was an appropriate relativity for its judges compared with the Supreme Court. I made clear that the Government did not believe that South Australian judicial salaries should be pace setters for Australia and I have argued that very strongly and I will continue to do so. They should not be out of the ruck. The only justification for any increase is if it is more or less on a par with what is applied around Australia.

The Government was satisfied that the current arrangements were the best that could be achieved, having had advice on the matter from officers within Government. The Government notes that the recently-released independent report to the Victorian Government recommended salaries that are higher for each level of the judiciary than those payable under the determination in this State.

The Hon. I. Gilfillan: Perhaps they've got more money.

The Hon. C.J. SUMNER: I don't know about that. The Government further notes that the changes in jurisdiction in South Australia were, in fact, more significant than any that had occurred in Victoria and, despite that, the independent report prepared for the Victorian Government recommended that salaries for judicial officers should be higher.

They are the principles under which the Government has operated: there was an increase in jurisdiction as a result of the courts package; there has been the development of a national standard for salaries of puisne judges of the Supreme Court; and we now have established some relativity for the lower courts to that national standard. Further, the South Australian judiciary should not be pacesetters for judicial salaries, and no level of the judiciary in South Australia should be the highest paid in Australia. Any increase in remuneration of the judiciary should be consistent with the need for restraint in public spending.

The Government put the claims of the judiciary under the microscope and decided that it could not support the initial claims. We therefore have a set of principles in place, and the increases announced by the Remuneration Tribunal were consistent with those principles. I should add that the Remuneration Tribunal, although not specifically mandated to, does operate in accordance with the ordinary industrial principles that apply in other industrial tribunals, so that, if national wage fixing principles are applicable generally to the work force, the tribunal is expected to take those principles into account.

Furthermore, under section 10 (4) of the Remuneration Act, the Minister may intervene in a matter to introduce evidence or make submissions on any question relevant to the public interest, which could well pick up the matters the honourable member suggests should be inserted in the legislation, namely, taking into account economic and social conditions. I believe that, to some extent, that has occurred as a result of the current determination, but the reality is that, for judicial salaries, and indeed for other salaries in the public sector, it is important not only that economic conditions be taken into account but also that one has salary levels which are fair but which are also such as to be able to attract people to the judiciary.

In South Australia, whilst there have been some problems in the Supreme Court generally, we have not had many refusals for appointment to the Supreme Court. The District Court has been a problem, and it has not always been possible to attract Queen's Counsel, for instance, to the District Court. Until recently, it was also extremely difficult to attract people to the Magistrates Court at the salaries that were offered. That was certainly the case three or four years ago but, to update members, I should say that, as far as the magistracy is now concerned, probably because of pressure in the private profession, there has been a significant increase in the number of applications for the magistracy, and the quality of the applicants has improved significantly in recent times.

However, I repeat that two or three years ago it was extremely difficult to get experienced practitioners to take jobs in the magistracy. They are the factors that must be taken into account when determining whether or not a determination by the Remuneration Tribunal is reasonable. I do not think that anything would be achieved on the first point by the Bill introduced by the honourable member. It is probable that it would cost the taxpayer more money, that is, making the distinction between monetary and non-monetary remuneration. One could not stop the judiciary getting the extra benefits if the tribunal determined that they were appropriate, whether they were in the form of a car or of an allowance in lieu of a car. As I said, the end result of that is that the taxpayer would probably be paying more, not less.

Secondly, as to the economic and social conditions, I have indicated the sorts of factors that were taken into account in arriving at the most recent decision and, had the matter been fully fought out before the tribunal, there is little doubt that at least what has been agreed to would have been awarded. It is possible that even higher salaries would have been awarded by the tribunal. I suggest that that would have occurred whether or not the honourable member's amendment about having regard to economic and social conditions had been in the legislation, leaving aside, of course, the question of exactly what that term means.

In this area we have established an independent tribunal, something for which the judges have been pressing for a long time, because they see it as consistent with judicial independence to have matters of salaries relating to the independent judiciary determined by an independent tribunal and not to be in the hands of Government. That is considered to be wrong because, if the salaries of judges are in the hands of the Government, the argument is that the Government, by the use of the salary mechanism, can influence decision making. Even if that does not actually occur, the appearance of it may be there and, therefore, judges have argued strongly for an independent tribunal.

We now have that independent tribunal—an independent umpire sitting there to consider the various arguments, and it is a system with which we should continue. Members were probably sent a letter from Judge Olsson, Chairman of the Judicial Remuneration Coordinating Committee, who wrote to the Hon. Mr Gilfillan on 24 August 1992, and I assume that the Hon. Mr Griffin was also given a copy. I do not want to run through his arguments, but I refer to that letter in case members would like a copy of it.

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

ACTS INTERPRETATION (AUSTRALIA ACTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 8 September. Page 267.)

The Hon. C.J. SUMNER (Attorney-General): I have received the following advice from the Solicitor-General on this matter which answers the questions raised by the Hon. Mr Griffin on this Bill. I think the best way to

handle it is just to read that advice from Mr John Doyle, QC, Solicitor-General, into *Hansard*.

The Bill arose because of concerns expressed by the Solicitor-General that legislation which was passed before the Australia Acts might be held invalid, even though the same legislation would be held valid if passed after the Australia Acts. It seemed to the Solicitors-General that it would be undesirable should legislation be struck down purely on the basis that when enacted it was beyond power.

The issue is not an academic one, nor are the Solicitors-General the only ones who have raised it. The Australian Law Reform Commission Report on Criminal Admiralty Jurisdiction and Prize (1990) raised doubts about the validity of State laws dealing with offences at sea on the very ground of repugnancy to English law and a lack of extra territorial legislative competence. The Solicitors-General did not agree with the ALRC view, but took the view that possible doubts should be laid to rest.

It is relevant to remember that the Australia Acts dealt with two restrictions on State legislative power. One was a limitation on extra territorial power, although the general view is that in that respect the Australia Acts were merely confirmatory of the law as expressed by the High Court. The other limitation was that of invalidity for repugnancy to Imperial legislation, and in that respect the Australia Acts have changed the law.

The problem is that there may be a statute in the statute book which is generally thought to be valid and is being enforced, but one may find quite unexpectedly that the legislation is invalid because of repugnancy to some piece of little known Imperial legislation or (but less likely) on the basis of limited extra territorial competence at the time of enactment.

It is very difficult to identify these problems in advance, particularly the problem of repugnancy, because *ex hypothesi* we are probably dealing with an Imperial law the application of which has been overlooked.

The purpose of the proposed legislation is, in effect, to re-enact existing State laws with effect from 1986. The object in doing so is to draw on the powers now available to the State Parliament.

There is an element of retrospectivity in this, but not of the usual type. What we are dealing with are laws which are now on the statute books, and have been there since before 1986, and which are currently generally regarded as valid. What we are saying is that they cannot be invalidated on the basis that there was a lack of legislative power when they were enacted.

It is not the usual type of retrospectivity, because we are not enacting a new law and applying it to events which occurred prior to its enactment. We are, as already mentioned, dealing with laws already on the statute books as to which a doubt may be raised in the future.

The whole object of the legislation is to settle doubts about the validity of such laws. Because the laws are already on the statute book, and are being enforced, it makes sense to treat them as always having been valid.

I suppose that one could call this retrospective validation, rather than retrospective legislation. It is worth noting also that other States either have passed the legislation or are in the process of doing so. Whether similar objections will be raised elsewhere remains to be seen.

The Hon. Mr Griffin has raised the issue of saving rights which accrued prior to 1986. I do not think that this is necessary. Although I do not understand the examples to which he refers, it seems to me that the issue would arise only if someone were relying upon a right derived from Imperial law which Imperial law was relied upon because it was understood to be repugnant to a local law and therefore to override it. I am not aware of any such instances, although I am not in a position to assert that there are none.

If the concern is with local legislation which came into force after the right was acquired, then the present legislation does not give that legislation any earlier operation. For example, imagine a right granted in 1925, in reliance upon Imperial law, and then local legislation in 1935 which would appear to remove the ability to grant such rights in future. Until the passing of the Australia Acts the local legislation, if repugnant to Imperial law, would have been ineffective. We are now saying that it is to be given the same effect as it would have had if the Australia Acts were in force in 1935. But it still would not reach back to affect an event which occurred prior to the enactment of the local law. There could be a problem if the right were granted after 1935, relying on the invalidity (for repugnancy) of the local law, because we are now declaring the local law to have been valid. But it seems to me that it is most unlikely that this has occurred. I think that the possibility can be ignored.

Another concern raised by the Hon. Mr Griffin is that of the test to be used hereafter to decide the applicability of Imperial laws, inherited or otherwise. My own view is that that issue does not arise. The test for the applicability of Imperial laws is unaltered. All we are saying is that if Imperial law is found to be applicable, and if there is local legislation which is repugnant to it, then the local legislation is to be valid notwithstanding that repugnancy.

Mr Griffin suggests that if there are problems with particular items of legislation, those problems should be identified and addressed specifically. In principle I agree. The problem is that *ex hypothesi* we are dealing with instances of invalidity which are unlikely to be identified in advance, and it is invalidity on what now seems to be a rather arid ground—inconsistency with Imperial law.

That is the view of the Solicitor-General. I think it deals with all the issues raised by the honourable member. I would ask the Council to agree to the Bill.

Bill read a second time.

COURTS ADMINISTRATION BILL

Adjourned debate on second reading.

(Continued from 27 August. Page 229.)

The Hon. K.T. GRIFFIN: The Opposition is proposing to allow the second reading to be carried but it is of the view, because of the nature of the proposition contained in the Bill, that the issues which it raises can more effectively be examined by the Legislative Review Committee, and it will be proposing to refer it to that committee for some further consideration. However, I do not propose to dwell upon that which will be the subject

of a separate motion when the second reading has been dealt with.

The Bill raises some important issues of principle. It is a radical proposition, probably more radical than other areas of judicial administration throughout Australia. I recognise that there has been some comparison made between the various models of judicial administration currently in existence in Australia, ranging from the High Court to the Federal Court and Family Court, through the South Australian partnership between Government and the courts in the administration of the courts in South Australia, to the Victorian system, where the administration of the courts is in the hands of a division of the Attorney-General's Department.

The Bill seeks to establish a judicial council—another statutory authority, but a statutory authority with a difference. It comprises the three principal judicial officers: the Chief Justice of the Supreme Court, the Chief Judge of the District Court and the Chief Magistrate of the Magistrates Court. That judicial council will have responsibility for the management of the courts and their administration. As a body corporate it can enter into any form of contract or arrangement, acquire and deal with real and personal property, provide services and employ staff.

The judicial council will not be permitted to incur contractual liabilities exceeding a limit fixed by regulation or acquire or dispose of an interest in real property without the Governor's consent. The judicial council is required to report to Parliament through the Attorney-General on an annual basis. It must prepare and submit to the Attorney-General a budget showing estimates of receipts and expenditure and the Attorney-General may approve a budget with or without modification. The council may not expend money unless provision for expenditure is made in the budget approved by the Attorney-General. The Attorney-General may subsequently vary or allow the variation of such a budget. The money which is required for the purposes of the courts administration legislation is specifically provided to be paid out of money appropriated by Parliament for those purposes.

The object of the Bill, which is referred to in clause 3, is to establish a judicial council independent of control by executive Government and to confer on the judicial council power to provide courts with the administrative facilities and services necessary for the proper administration of justice. It therefore focuses upon the concept of independence of the courts from any control by executive Government, yet I would suggest that this Bill does not achieve that objective, because it does put the Attorney-General in control of the budget process.

The concept of independence of the judiciary is a difficult issue to resolve. As I understand it, there are really two concepts. One relates to judicial independence in the sense that, in making their judgments, judges and magistrates may not be interfered with by the Executive arm of Government.

On the other hand, there is the concept of judicial independence in terms of administration, the argument being that, if the executive arm of Government controls administration, the judges and magistrates are not truly independent and can be the subject of executive influence through the control which the executive has over not only the funds but also the department of Government, which has the responsibility for administering the courts. That is an argument that is very vigorously put by the Chief Justice of South Australia and it is a view which is propounded by other judges in other jurisdictions, but it focuses on administration. It does not focus on any threat or perceived threat to the other area of judicial independence on which I place a greater reliance, that is, their independence to make judgments without fear or favour and without interference by the executive arm of Government.

An analysis was made of three models of courts administration in Australia by the Australian Institute of Judicial Administration, which published a report in 1991 entitled 'Governing Australia's Courts'. Whilst I do not want to use extensive slabs of the report in this contribution on this Bill, it is important to refer to some aspects of their findings and also some of their views on questions of independence. They distinguish between judicial independence in the sense of courts being able to make their judgments free of executive interference on the one hand and administrative independence from the executive arm of Government on the other, and they suggest that the debate about who should run the courts focuses specifically on issues of judicial independence but also governmental accountability. It is that latter area to which later I will address some observations in respect of the Bill which is before us.

In the report by the Australian Institute of Judicial Administration, there is reference to judicial independence being imprecise—perhaps, as they say, an over-used term. According to Sir Ninian Stephen, former Chief Justice of the High Court:

> [It] . . . must always include . . . a state of affairs in which judges are free to do justice in their communities, protected from the power and influence of the State and also made as immune as humanly possible from all other influences that may affect their impartiality.

In conjunction with that, the issue of salaries and conditions always raises its head, the argument being that we must pay judicial officers sufficient to attract good quality judges but, more particularly, to put them beyond temptation and ensure that they do not have to depend either upon the executive arm of Government or upon other favours for their comfort, support and wellbeing. That is, we put them beyond corruptibility by adequate remuneration packages.

In the report prepared by Professor Peter Sallman and Mr Thomas Church from the United States of America, they make the following observation:

> The concept is centrally concerned with judicial decision-making and with ensuring that judicial officers deal with the cases before them solely on the relevant facts and law, free from improper extraneous influences. Several commentators have drawn a distinction between this notion of judicial independence, adjudicatory independence, and what they term the administrative independence of the courts. In his 1989 AIJA Oration, Sir Ninian Stephen was speaking about the adjudicator aspect; people concerned with the autonomy of the judiciary in managing the courts are generally more concerned about administrative independence. A crucial issue is the level and amount of administrative independence required to support a satisfactory level of adjudicatory independence.

The report makes an observation that it might seem odd that threats to judicial independence are so much in the minds of influential Australian judges because, as they

indicate, there does not appear to have been any threat to that independence. They say in the report:

The substance and timing of these contributions are interesting because, unlike the situation in various other parts of the world, the fundamental prerequisites of an independent judiciary do not appear to be under serious or imminent attack in this country. Certainly, none of the people currently writing on the subject have suggested that Australian judicial officers are being pressured to perform their judicial functions according to a politically defined orthodoxy or that individual judges or magistrates have been subjected to outside influences in deciding cases.

On the administrative dimension however Australian courts, like their cousins in England and Canada, are not independent. On the contrary, in most courts the situation is one of almost complete dependence on the executive branch rather than being concerned with adjudicatry independence most of the recent judicial independent statements by Australian judges reflect their growing interest in court administration and intentions with the executive branch of Government over that administration.

It is correct to say that the Fitzgerald inquiry in Queensland concluded that the independence of the judiciary is of paramount importance and must not be compromised, and saw one of the threats to judicial independence in the over-dependence upon administrative and financial resources from a Government department or being subject to administrative regulations in matters associated with the performance of the judicial role.

It is fair to say that in all the discussions the concern that has been raised by judges in particular is largely of a theoretical nature. In South Australia 10 years ago we established what was then the Courts Department but which is now the Courts Services Department which operates in a quite rational and reasonable way in cooperation with the judges having dual responsibility, first, to the judges in respect of matters relating to the administration of the courts themselves and, secondly, in its responsibility to the executive arm of Government for the expenditure of money and those issues which are more of a governmental responsibility than judicial responsibility.

This report gives a glowing commendation to the way in which the system operates in South Australia. It believes that the system works effectively as a partnership, and it is my assessment also that that is what really occurs. I suggest that one of the problems with judicial officers becoming more involved in administration is that they become much more administrators than they do judges. I recognise that there is a delicate balance to be achieved on the one hand between administrative responsibility and the impact upon the capacity of the courts to properly deal with cases before them, and on the other hand the undue focus upon administrative issues.

In respect of this Bill, quite obviously the judges and magistrates will become much more administrators than they are at the present time and that brings its own problems. Before proceeding to analyse aspects of the Bill, it is important to note that the South Australian Bar Association accepts as a matter of principle measures which will strengthen or entrench the independence of the judiciary. It goes on to say in its letter to me:

Although the association is not aware of any particular problems that have arisen under the present regime it does support the enactment of the Courts Administration Bill on the ground that the legislation will reinforce the principle of independence. We have not undertaken a detailed examination of the administrative and financial provisions of the Bill; however we do not see any particular practical objections to them.

It does not seek to deal with the important philosophical issues which are raised by the Bill and the relationship between the statutory authority and the executive arm of Government and the Parliament.

The Law Society is in support of the principle of the Bill, as I understand it, although it has not written to me about that and has not expressed any view on the detail of the legislation. The Australian Institute of Judicial Administration looked at the concept of a system-wide council or commission suggesting that it was a good one, but it makes no comments on the model because it believes that the South Australian proposal is one which has to be judged on its own merits in accordance with circumstances as they exist in South Australia.

There are important issues of accountability and I want to deal with some of those. As a statutory authority this council is to be subject to the jurisdiction of the Ombudsman in so far as it makes administrative decisions, unless of course there is any proposal by the Government to exclude this authority from the jurisdiction of the Ombudsman and in that event we ought to know about it. One presumes that as a statutory authority it will be subject to the jurisdiction and investigation by the various parliamentary committees which might have an interest in the operation of the Judicial Council. That immediately raises an issue of who might appear before the committee from the Judicial Council.

Quite properly a committee may expect the members of the statutory authority—the Chief Justice, the Chief Judge and the Chief Magistrate—to appear, but I know that there is some doubt at least among the judges as to whether they should appear before parliamentary committees, whether they be standing committees or select committees. I suggest that there would even be some doubt as to whether they ought to appear before the budget Estimates Committees. It is not clear from this Bill and the second reading explanation as to how that is to be managed by the Parliament.

I would have thought that the Estimates Committees could quite properly expect the Chief Justice, the Chief Judge or the Chief Magistrate, or all three, to appear before the Estimates Committees to account for their expenditure of public moneys and their administration of the statutory authority. I understand informally that the Chief Justice seems to have no objection to that course, but I think that other judicial officers do. Before the Estimates Committee when the Attorney-General was asked about this issue he did say that he would expect that he would appear and answer questions for the Judicial Council. I would suggest that that is quite unsatisfactory.

Whilst the Attorney-General as Minister ultimately has an accountability to the Parliament for matters under his responsibility it is all too common for Ministers of this Government to express the view that they have a responsibility but no culpability. Where there is a Judicial Council, a statutory authority such as this, and there is the issue of judicial independence particularly in administration, there is an issue which arises as to the extent to which the Parliament might compel members of the Judicial Council to appear before the Estimates Committees and have its budget and its stewardship of

the previous year examined in some detail. They are important issues relating to accountability.

There is a problem I suggest with the membership of the council. It is limited to three judicial officers. I would suggest that if it is going to be established there ought to be at least two from each jurisdiction: the Chief Justice and one judge chosen by the other judges; the Chief Judge of the District Court and one other judge chosen by the judges; the Chief Magistrate and one other magistrate chosen by the magistrates. I suggest also it is appropriate to include the Industrial Court in this model. There is no reason given by the Government for the exclusion of the Industrial Court. I know that it may be argued that there is a distinction between the Industrial Commission on the one hand and its industrially orientated decisions on awards and conditions of employment, but the Industrial Court does have jurisdiction to deal with important civil rights issues and civil, as well as criminal, liability issues; for example, prosecutions under the Occupational Health and Safety Act are dealt with by that court, issues of workers compensation are dealt with by that court and issues of damages for wrongful dismissal are dealt with by that court. So it undertakes a number of functions which are in the same category of functions as the mainstream courts.

I would see no reason at all why the Industrial Court should be not be part of this and, in fact, if the council is to become an effective statutory body then it must include the Industrial Court. Even the name of the judicial council must raise some questions. It is not a judicial council, it is a courts administration authority. It is responsible only for administration. It is not responsible for making decisions judicially. If it is to be established—and all the observations I make are on the basis of it being a recommendation ultimately of the Legislative Review Committee that it be established—it ought to have a name that is more akin to its responsibility. When the Courts Department was first established there was an objection to the name Courts Department because that communicated in the view of some a perception that the department was running the courts, and subsequently under the current Government the name was changed to Courts Services Department, to be more reflective of the functions of that department. Similarly, I suggest that judicial council does not reflect adequately the functions of that statutory authority and ought to be amended to something like courts administration authority.

In the conduct of the affairs of the judicial council a decision of the Chief Justice and one other member is a decision of the judicial council. So, either the Chief Judge or the Chief Magistrate may be outvoted in relation to his or her court's administration, and I would suggest that that is undesirable. Let me give an example. It may be that the Chief Justice and the Chief Judge agree on some matter of administration affecting the Magistrates Court but the Chief Magistrate feels that it is unreasonable or even unworkable. In that situation the two senior judicial officers will make the decision against the advice and judgment of the Chief Magistrate.

Similarly, a decision by the Chief Justice and the Chief Magistrate can affect the District Court without the concurrence of the Chief Judge. It may be all very well to say that that in real life is not going to occur. It may not occur with the present incumbents of those offices, but if such a statutory authority is to be established, it will be established for a long time into the future and changing personalities may create other problems, and I think that is undesirable. It may be that it is more appropriate for a decision of the judicial council affecting a particular jurisdiction to be agreed to by the chief judicial officer of that particular court.

The council is to have control and management of court properties, but I would suggest that that can create several problems, particularly it can impinge upon the capacity of the Government of the day to determine what it shall do with certain buildings. Maybe with the existing Supreme Court precinct and the Sir Samuel Way Building, which is solely dedicated to the courts, that may not be such a bad thing, but where there may be temporary facilities, say, in the old tram barn in Victoria Square, if the judicial council is to have the care, control and management of those facilities, what happens when the Government wants to move the courts out of those temporary facilities and the judicial council says, 'No, we have the care, control and management of them, we need those facilities for our own purposes'? At that stage the new Magistrates Court facilities might have been developed but by that time the judicial council might say, 'No, you can't have them back.' How is that impasse resolved?

There are instances, say, of courts sitting in Education Department property, and in relation to these courts if the judicial council is to have care, control and management does that mean that they can never be moved by the Government to other premises? Does it mean that a redevelopment of the whole building, if it ever became desirable, or even the sale of the building, might be prevented by the judicial council having the care, control and management of those facilities? What about the facilities in country towns which might be shared with police facilities? Many of the magistrates courts are still in facilities that are shared by police. Maybe the sharing is undesirable, but it occurs as a fact of life. In those circumstances if the judicial council has a point of view about the use of those premises, can that override a Government decision? I think that is undesirable.

There may also be a proposition where the Government believes that, in order to serve a particular community, it should build court facilities. Who is to say whether those facilities should be built and occupied by the courts? I would suggest that it is a Government decision and not a decision of the judicial council. If the judicial council made those sorts of decisions as to where it will or will not sit it means that whole communities may be ignored or their needs neglected.

The council is given authority to enter into contracts, but in real life where there are contracts there is always potential for litigation over a breach of contract, which might be for damages or which might be for specific performance. It may even be for an injunction to restrain a potential breach or to require a person to undertake certain action. In those circumstances, the judicial council will be a party to the litigation, whether as plaintiff or as defendant. That means that, as a statutory authority, it will be a party before the courts which it administers and the judicial officers who are members of the judicial

council may in fact even be called as witnesses before the courts in respect of which they have authority.

If one gets a judicial council such as this involved in administration and in entering into contracts with the public, there is always potential for conflict of interest and for a potentially embarrassing situation. Who would hear the case in such a situation? The action would have to be heard in one of the courts, and that creates a potential for conflict. What would happen in the event of a strike? If some of the staff employed by the judicial council went on strike, would the judicial council issue proceedings in the State or Federal Industrial Court to deal with that industrial disputation? The judges and magistrates themselves get involved in that sort of decision and in the prosecution of the case. What would happen in relation to a breach of the Occupational Health and Safety Act in premises controlled by the judicial council and if the employer, that is, the judicial council, were sued or prosecuted for an offence? It raises important principles that have not been addressed adequately.

In relation to the lease of property there would be a problem if there were a breach. There is a problem with workers compensation. All the administrative issues facing employers and property owners raise questions of potential conflict of interest and bring the judicial officers into potentially controversial areas unrelated to their primary function of judging. It might be all very well for judges, magistrates and the Attorney-General to say that the issue will be dealt with sensitively in the course of the administration. The fact is that however sensitively they deal with these issues, they will be perceived to have a conflict of interest and to be judging matters in which they themselves are interested or involved. Those sort of matters must be addressed.

A number of other issues in the Bill require some clarification. The question of delegation is a difficult one because the functions of the judicial council might be delegated to administration officers and to persons outside the council. It seems to me that that is undesirable. Members of the judicial council are not required to disclose any potential conflict of interest or pecuniary interest; yet that obligation is placed on the administrator in the State courts. With any statutory authority, this issue must be addressed with whoever comprises the membership. The administrator is the council's chief executive officer and is subject to control and direction by the council. In relation to the appointment of that person and other prescribed staff persons, there can be no appeal against appointment. No disciplinary action can be taken against a member of the senior staff of the council except with the consent of the council. One expects that, if the senior staff, for example, registrars, remain under the Government Management and Employment Act, that is not an unrealistic proposition. However, there is no definition as to who will comprise the senior staff. Part 3 of the Government Management and Employment Act applies to persons appointed under division 2 of part 4.

The council effectively becomes the employer. One presumes that it also becomes liable for superannuation and other benefits that are payable to staff. The judicial council can revoke or vary a determination or instruction of the Commissioner for Public Employment so far as it affects staff of the council. It is important that some indication be given as to what might be proposed for that process.

As I said, a number of issues give rise to matters of principle. They come back to questions of accountability, propriety and conflict of interest. As I said at the beginning of my contribution, the establishment of this judicial council would be quite a radical move. I am not necessarily opposed to such a move but there are important issues that have yet to be examined and I think that they are best examined by the Legislative Review Committee to enable the development of a proper balance between the rights of the Executive, the rights of Parliament and the powers of the judicial council and its relationship to the three levels of the Judiciary, in particular, and I hope also the Industrial Court.

I repeat that the Liberal Party is prepared to allow the second reading to pass but will then move to have the issue referred to a select committee, at which time I will address other issues of principle. I have received a number of other comments from members of the legal profession about aspects of the Bill. They are important issues and can be raised before the select committee. There is the question of delegation, the statutory obligation upon members of the judicial council similar to those of other statutory bodies to act honestly and diligently and without any conflict of interest. There is the issue of an indemnity to members of the judicial council in respect of the way in which they operate. It is with those matters before us that I indicate no opposition to the second reading.

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

PRIVACY BILL

Adjourned debate on second reading.

(Continued from 27 August. Page 235.)

The Hon. K.T. GRIFFIN: The Government faces a real dilemma over this Bill. On the one hand, it compromised with the Australian Democrats, and now we have a hotchpot of a Bill significantly weakened from what the Attorney-General originally proposed in conjunction with the Hon. Mr Groom and, having satisfied the Australian Democrats, the Government is now likely not to satisfy the two Independent Labor members who are now members of the Coalition Cabinet and who have publicly expressed other views about privacy. They are differing points of view: the Hon Mr Groom, on the one hand, wants a tort of privacy; and the Hon. Mr Evans does not want a bureaucracy, which is established by this Bill.

The Hon. Mr Groom called it 'a meaningless bureaucracy that will go nowhere and do nothing'; the Hon. Mr Evans indicated only two weeks ago that he would vote against the Government Bill and then said that he could not support the Bill in its present form but would negotiate with the Government. All of that, obviously, has changed, and I suggest that this Bill will prove to be a significant embarrassment to the Government if it proposes to proceed with it.

There was some suggestion in a newspaper report yesterday that the Government might be shelving the Bill in light of the concerns expressed by the two new members of the Cabinet. Nothing, of course, would be more destabilising for the Government than to have the Hon. Mr Groom and the Hon. Mr Evans, as Ministers, voting against this Bill in the House of Assembly, if it should pass the Legislative Council. It does present a significant dilemma for the Attorney-General and for the Government in the way in which it will be dealt with.

However, I want to address some remarks to the Bill. I do not want to repeat all my observations made on several occasions previously about the issue of privacy generally, but I will merely focus on this Bill. It now seeks to establish by statute the South Australian Privacy Committee, a committee that was established by proclamation administratively in 1989. Essentially, the functions of the existing Privacy Committee have been related to the administration of information privacy principles, which have been promulgated administratively and which apply only to Government agencies.

The Bill no longer seeks to establish the tort of privacy or to define privacy: it is an amalgam of ideas of the Government and the Australian Democrats and makes significant changes to the original proposition first introduced in the House of Assembly by the Hon. Mr Groom. Notwithstanding the fact that the tort of privacy is no longer in the Bill, it does have some potentially dangerous provisions. The Bill provides for the South Australian Privacy Committee to gain the status of a statutory authority, although it does not have corporate status. The committee—

The Hon. M.J. Elliott: The Liberal Party set up one in New South Wales.

The Hon. K.T. GRIFFIN: So what? We are not New South Wales: we are South Australia. If the Hon. Mr Elliott wants to establish one here, that is his business. The Bill does establish a statutory authority which, however, does not have corporate status. It consists of five members appointed by the Governor, of whom not more than two may be Public Service employees. The Chairperson is appointed by the Governor and has not only a deliberative vote but also a casting vote; and three members constitute a quorum. It is, therefore, conceivable that a majority of public servants can make the decisions that a privacy committee is empowered to make under this Bill.

The functions of the committee include dealing with alleged breaches of the information privacy principles set out in the schedule to the Bill but more importantly, it has a function to receive and investigate any other complaints concerning alleged violations of the privacy of natural persons. The Privacy Committee may also make reports to complainants, conduct research and collate information in respect of any matter relating to the privacy of natural persons, and make reports and recommendations to the Minister in relation to any matter that concerns the need for or the desirability of legislative, administrative or other action in the interest of the privacy of natural persons.

Under clause 17 of the Bill the committee is given power to investigate any action alleged to violate the privacy of a natural person. The committee may investigate the complaint, although it does not have the power to compel persons to give evidence. Investigations in relation to breaches of the information privacy principles must be handled either by the Ombudsman or by the Police Complaints Authority. Where the Privacy Committee investigates action that is alleged to violate the privacy of a natural person, it may report to the Minister and to the Legislative Review Committee as well as to the person or body in respect of whom the complaint is made, and the committee may require that person or body to report to the committee within the time allowed by the committee on what steps have been taken to give effect to the recommendation of the committee and, if no such steps have been taken, the reasons for the inaction.

The committee may also publish its report if it believes the matter to be a matter of public interest. In that context, while the committee does not have power to compel the answers to questions, the production of documents or the appearance before the committee of any person, the powers of persuasion are strong, because someone other than a person in the Government sector (that is, a private sector body or private individual) against whom the complaint is made could feel obliged to respond, for to do otherwise could be the subject of an adverse reflection on that body or person which ultimately may be made public.

The powers of the committee include a power to make recommendations, which the Attorney-General acknowledges may lead to recommendations for legislation relating to a general right of privacy. It is the wide power of the committee to investigate alleged violations of the privacy of natural persons that has really offended a number of bodies to whom I have referred the Bill for comment. In that context, one should note that 'privacy' has not been defined, so it is very much left up to the committee to determine which matters might fall within its jurisdiction.

The various bodies that have raised criticism of the wide power of the committee to investigate alleged violations of privacy of natural persons include bodies that have already made submissions on earlier Bills: the Employers Federation; the Engineering Employers Association; the Chamber of Commerce and Industry; various branches of the media, including the former Australian Journalists Association, now called the Media, Entertainment and Arts Alliance; the *Advertiser*; the Country Press Association; and other media organisations. Their view is that the whole Bill ought to be defeated.

While the publicity recently has been about the disclosure of names and addresses of individuals on Government data systems or the systems of Government agencies, as well as on information provided by banks on their customers, this Bill will address that issue only in relation to an agency defined under the Freedom of Information Act. I think it is important to note that bodies such as the State Bank of South Australia and SGIC are not within the definition of 'agency' and therefore will not be affected directly by the information privacy principles included in the Bill.

The Bill does not attempt to deal with the private sector disclosure of data information, except in respect of the committee's power to investigate allegations of violation of privacy of natural persons, a power to which

I have already referred. There is not, I would suggest, an established need for another statutory body.

The Hon. M.J. Elliott: Have you read the ICAC report from New South Wales?

The Hon. K.T. GRIFFIN: We are not talking about ICAC, we are talking about this statutory authority.

The Hon. M.J. Elliott: What they found out about data information is an invasion.

The Hon. K.T. GRIFFIN: That is not a justification for a statutory body, is it? The Hon. Mr Elliott has an obsession with data privacy, and he ought to address his remarks to the Bill. I am addressing my remarks to the Privacy Committee and I have said that the issues—and he obviously was not listening—of data protection in relation to bodies outside the Government agencies, excluding SGIC and the State Bank, are not addressed by this Bill, except in relation to the very wide power to investigate complaints about alleged breaches of privacy, a power which I believe in these circumstances is wide and potentially dangerous when a committee such as the Privacy Committee, a statutory body with *quasi* judicial powers, is required to act as both investigator and adjudicator without there being any right of review or appeal.

I was leading on to say before I was interrupted by the Hon. Mr Elliott, that I can really see no reason for the establishment of the Privacy Committee by statute, and there is a certain uneasiness about that. However, if the Bill is limited only to the establishment of the Privacy Committee presently established by proclamation to be established by statute, we will not oppose that part of the Bill. However, we will oppose that part of the Bill which seeks to give the Privacy Committee wide powers to investigate allegations of violations of personal privacy, whether by virtue of complaints having been made or on its own motion our amendments are not successful, we will oppose the third reading of the Bill. So, it can pass to the second reading. We will debate amendments and, if our amendments are not successful, we will go the full way and oppose the third reading.

There are several other matters relating to the operation of the Bill to which I want to draw attention. Concerns have been expressed by the Association of Professional Historians about some aspects of the information privacy principles and the Bill in so far as it relates to the Government sector. They express concern that it will limit their capacity to research historical information and that the Bill does allow some destruction of material which ought to be retained for posterity. As I say, they express concern about the constraints that this will place upon their genuine and necessary research for historical purposes.

If one looks at the information privacy principles, and if one is to take principle 7, for example, which provides that 'a recordkeeper must take such steps as are in the circumstances reasonable to ensure that the record is accurate'; one sees that it has no limitation in time. I suppose what it does, and what is construed by some to mean—and I think there is some basis for this—is require the recordkeeper, even if that recordkeeper might not be the one who originally compiled the record but who is now keeping the record, even if made 20 or 30 years ago, to ensure that it is accurate but, if it is inaccurate, some liability is incurred by the recordkeeper.

The information privacy principles 9, 10 and 11 are interesting in their construction because they do allow the disclosure of information where it is necessary to enforce any law which imposes a pecuniary penalty. So, it protects the revenue in that respect and gives priority to Government without necessarily recognising legitimate private sector requirements to gain information in order to protect their revenue.

The protection of the public revenue or the interest of the Government, or a statutory authority or holder of an office established under a statute, as an employer, may gain access to information under those principles but not private sector employers seeking to gain access to Government information. Whilst one can recognise that there is some necessity for providing some protection for Government or statutory authorities as employers, one must raise a question as to why those agencies gain the high level of protection in these principles 9, 10 and 11 but similar protection is not available for private sector employers. In principle No. 11, there is an interesting provision as follows:

> Information relating to ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual life must not be used or disclosed by a recordkeeper without the express written consent, freely given, of the individual concerned unless the use or disclosure of the information without that consent is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty [again, protection of the revenue] or the protection of the public revenue, or the interests of the Government or a statutory authority or holder of an office established under statute as an employer.

Again, some priority is given to Government and its agencies in the disclosure of information which is also not provided to the private sector. For example, in a private sector medical practice there may be a desire, and in fact a need, to know about some health matters which relate directly to issues of employment but which are not permitted to be disclosed, at least by the Government sector to the private sector under the provisions of these information privacy principles.

Then, there appears to be what might be a backdoor way of ensuring that a criminal history is not disclosed, in principle No. 11, subprinciple No. 2. I draw attention to that because, if that is what is proposed, then I do express concern as I previously expressed concern about legislation before us, I think in the last session, about the restriction on access and use of information about a person's previous criminal record.

So, in summary, we will not oppose the second reading, even though we have serious misgivings about the powers proposed to be given to the statutory privacy committee and, even though we have some uneasiness about the privacy committee being established by statute, we are not proposing to oppose it. What we are proposing to do is to move amendments to deal with the wide power of the privacy committee. If they are not successful we will oppose the third reading.

The Hon. M.J. ELLIOTT: I rise to support the Bill. I welcome the Government's decision to abandon the Privacy Bill mark one and tackle privacy protection in a different way. For most South Australians, how personal information is handled by Government agencies and individuals working within those agencies is the greatest threat to their privacy. I have maintained for a long time

that a statutory body with a back-up of comprehensive privacy principles is the most effective way of ensuring that the data held by Government are correct, used only for the purposes for which they were collated and treated with respect. The private member's Bill I introduced in October 1988 was to set up such a body—a privacy commission—to undertake those very tasks of protection and prevention. The Government is now proposing that that be done by the privacy committee.

The Privacy Bill mark one, which was debated in this place last year, was a result of a House of Assembly select committee—a committee which I might note sat on very few occasions and took very little evidence before giving a report. It proposed the creation of a general right of privacy, the infringement of which would be a tort actionable by the person whose right was infringed. I opposed that move, as it would have done nothing to prevent breaches of privacy; it would merely have provided an avenue of redress for people powerful and wealthy enough to fund a court case. There would have been no promotion of improved data protection measures in either the public or private sector, nor would a forum for the review of privacy issues in South Australia have been provided. The creation of a tort would have placed the media and private interest groups under constant threat of litigation if their investigations or inquiries got too close to the core of something a public figure was trying to hide. I believe that to be a severe hobble of the debate necessary in a vigorous and progressive participatory democracy.

I indicated that I would move substantial amendments to the Bill and that certain elements of it were totally unacceptable. The Government has now decided to reject the committee's approach of privacy litigation and move towards privacy protection. As I indicated previously, this Privacy Bill mark two has my support, as it is, as the Attorney has already stated, an amalgam of his and my amendments to the Privacy Bill mark one. Let me say at this point that I fail totally to understand the reasons behind the Independent Labor members' opposition to this Bill. I can only assume that the comments of Terry Groom, that it 'sets up a meaningless bureaucracy that will go nowhere and do nothing', are born of pique that his committee's ideas have been superseded.

In his second reading address, the Attorney outlined why a tort is now unnecessary. The Magistrates Court now can deal with neighbourhood disputes where privacy is at issue, and moves in the Eastern States towards uniform defamation laws would have left South Australia's privacy protection under the Privacy Bill mark one severely lacking. Another reason for the desirability of tackling privacy issues via data protection is the intention of the European Community in 1993 to permit data transfers outside its borders only where an adequate level of data protection can be ensured. All European nations are moving along the lines this Bill is proposing; in fact, most of them have already done so. The lack of protection in South Australia beyond that time could have adverse economic consequences for business and government.

This Bill will establish a privacy committee which will oversee the handling of information held by Government departments based on information privacy principles. There are many potential threats to an individual's privacy when personal information is held by Government. This is particularly so when that information is stored on computer databases, accessible from a wide variety of locations. A manual filing system can exert its own controls through inherent physical limitations. When information is kept in locked filing cabinets in one looked room, regulating access to that information and the use to which it is put is easier. Now computers have essentially decentralised information so there is a need for broad principles and procedures governing access to information.

Information held on computer databases can be put easily to uses for which it was not collated through search and matching functions. These allow the user to easily and quickly sort through a large bulk of information to distil particular categories or cross-match various items contained in individual files. Performing this type of function in a manual filing system was a time and labour consuming exercise, in fact, in many cases, physically impossible. Legitimate data processing and sorting activities need to be subject to the scrutiny of a body with the protection of privacy as its primary function to prevent abuses.

A recent report by the New South Wales Independent Commission Against Corruption on Unauthorised Release of Government Information highlighted just how great that need is. Although that report was quoted extensively by my colleague Ian Gilfillan on 9 September when he introduced a Bill to establish the Independent Commission Against Crime and Corruption in South Australia, I will highlight several aspects of abuses of Government-held data it uncovered. On page 112 of the report, its author, Assistant Commissioner Adrian Roden states:

> This one investigation has revealed a widespread practice of corrupt conduct, based largely on bribery of public officials, and involving hundreds of people, millions of dollars, and massive invasion of privacy.

The report says the commission was selective in its pursuit of allegations of unauthorised release of Government information but comes to the conclusion that it has been standard practice for information to be bought and sold for the purposes of locating debtors, preparing litigation and other more sinister purposes.

One private inquiry agent, questioned by ICAC in the course of its investigation, had been advertising for sale information from a variety of States, that is, New South Wales and Commonwealth sources. In printed brochures, this agent advertised his ability to deal in information from the Department of Motor Transport, Social Security, Medicare, immigration, telephone, post office box and criminal history checks. His 'No. 2 check' was described as:

> A search of social security record. This search will ascertain if the debtor is receiving a pension or unemployment benefits. It will give the latest address on record and the date of last payment. This search can be carried out in all States.

Such a search would involve a gross invasion of privacy and, although this example involves a Commonwealth body, other categories of information available through this agent are held by State Governments.

Most of the transactions uncovered by ICAC involved the purchase of information from a Government employee, including police, by a private agent or investigator and then its sale to customers, which were

usually large finance or insurance companies and banks. Access to the information was through bribery, via cash payments, and personal favours for old colleagues and friends. One of many examples in the report is that on page 22 as follows:

> . . . Kevin Rindfleish, who operated an unlicensed private inquiry and commercial agency, and who sold Department of Motor Transport/Road Transport Authority and Social Security information on a very large scale . . . He had been unknown to the Australian Taxation Office while conducting a thriving business in the sale of information to clients including the ANZ Bank, Australian Guarantee Corporation, NRMA Insurance, the Government Insurance Office and Chase AMP Bank . . . His sources were named . . . They included . . . a former Senior Field Officer with the Department of Social Security . . . a Computer Systems Administrator . . . an RTA officer with 30 years service.

It goes on to detail that Mr Rindfleish's records suggested that he had paid slightly more than $730 000 to his sources of confidential information between 1985 and February 1991, and that during a similar period he had received more than $1.4 million from the ANZ Bank alone. On page 5, Assistant Commissioner Roden states:

> An appreciation of the volume of requests handled can be gained from the admission of one police officer, who said that at times he spent as much as an hour and a half sitting at a police computer terminal, extracting information for his private investigator clients. He could earn as much as $560 from a single sitting. In one three-day period, he was responsible for more than 300 unauthorised computer accesses.

The lack of monitoring of the reasons for accessing information meant the practice could continue for a long time. The inquiry highlighted security measures as a major factor in protecting privacy. There are two aspects to security: preventing access by unauthorised persons; and registering and recording accesses. The ICAC report highlighted that the use of codes or passwords cannot be taken to be an adequate security measure. It was discovered that many codes were common knowledge among colleagues or so obviously simple as to be no protection whatsoever.

The New South Wales police computer system is used to illustrate the inadequacies. I quote from page 9 of the report:

> . . . many officers have known and used the codes of others. A commission investigator conducted a simple experiment. It took only two attempts to guess the access code of a fellow investigator, who, like many police officers, used a well known nickname. It took only one attempt to get into the system in the name of an Assistant Commissioner of Police.

Major customers for the illicitly gained information identified by ICAC were lawyers, national and international insurance and finance companies, banks and Telecom, all of which maintain a presence in South Australia. The report talks about senior executives of these companies exercising 'wilful blindness' as to how information was obtained by more lowly employees.

It would be naive to think that those companies would not employ or condone the same avenues of obtaining information in other States as they did in New South Wales, just as it would be naive to think that no-one in the South Australian Public Service had tried or been tempted to make a buck on the side by selling information within their reach. In its Schedule of Recommendations, ICAC called for information held by Government to be determined either publicly available or protected.

In relation to protected information it called for constant monitoring of all information storage and retrieval systems and improvements where necessary. It recommended that access to protected information be strictly limited, and an efficient system maintained to enable the persons responsible for all accesses to be identified. As some of the illegal trade in Government held information was in fact in data which were publicly available, it was recognised that although legitimate avenues for gaining information existed, illegal ones were favoured because of speed and, in some cases, cost. Roden says:

> To minimise unauthorised and corrupt dealings in publicly available information, ease of access is essential. If cost and delay are kept to a minimum, there will be little scope for the quicker or cheaper service the corrupt supplier needs to provide.

As a means of preventing unauthorised access to information or allowing a culture of illegal access to flourish as in New South Wales, this issue may be one requiring attention in South Australia.

To sum up, the New South Wales ICAC report should serve as a warning and a guide to the proposed South Australian statutory privacy committee. It should indicate the extent to which the privacy of South Australians is or could be abused through unauthorised access and use of Government held information and the ease with which it can occur. The recommendations of the report should indicate what is necessary to minimise those abuses.

South Australia has not been free lately of privacy related scandals. Recently, the State Bank of South Australia was reported in the media to have sold credit card holders' personal information for $50 000 a year to a telemarketing firm. While that action perhaps does not contravene the State Bank Act it raises issues of trust as well as privacy.

Many customers have been outraged that a large financial institution which they trusted with their quite personal information for a specific purpose has chosen to sell those details for profit. To my way of thinking that is an abuse of privacy and I am pleased to see in *Hansard* that the Treasurer has also expressed concern and the matter is now with the Crown Solicitor who will determine the legality of the transaction. Legal or illegal, the sale of information will have left many bank customers with a sick feeling in the pit of their stomachs because their personal details have been used in a manner for which they were not given. That invasion of privacy must also be addressed.

The feeling is summed up by a letter to the Editor of the *Advertiser* published on 17 September where B.C. De Laine of Brighton writes:

> Whether or not the bank acted within the law in this matter is of academic interest, but the main point is that most customers feel betrayal by this display of a sharp practice.

It is my understanding that incidents of this nature involving the State Bank, which is an exempt 'agency' under the Freedom of Information Act 1991, would not be covered by the brief of the privacy committee in relation to the information privacy principles, although of course the committee could investigate a complaint of breach of privacy. The committee will then be able to make recommendations as to changes in practice, procedure or even legislation to prevent similar situations arising again.

On previous occasions I have raised a number of examples of abuses, and I make the point that one does not have to have done anything wrong to have one's privacy invaded. I have heard reactions from some individuals that if one has nothing to hide one has nothing to fear. Some time ago in this place I gave an example by way of a question of an individual who had a record as having been in prison. This person had never been in prison and had never been to court. An error had been made, and the way that error was made was rather complicated: this person found out quite by accident when his wife was refused social security because it was alleged that he was in prison, which indeed he was not. He then asked me other questions and said, 'I applied for a job with the courts and did not get it. Did I not get it because I was not good enough or because I had a record as having been in prison?' He will never know.

That is an illustration of the fact that one thing that one has to fear is that records contain mistakes. Whilst FOI gives one access to many records one first has to know that a record exists, seek it out and then find out that it is wrong. This person found out that this record existed quite by accident. One does not go looking for a criminal record when one has never had one; one does not ask for the prison records when one has not been in prison.

If a woman is separated from a violent partner she does not want her address to be easily accessed. However, I can guarantee that a private investigator can get the information very quickly. What ICAC has shown us in New South Wales demonstrates that, and we have to believe that that is true in South Australia. There we had a person who has nothing to hide but has something to fear. A woman's address should not be something that is easily accessed, but quite plainly it is. As I said, on previous occasions I have given a number of examples of abuses where an innocent party is in a position to suffer greatly.

To return to the provisions of the Privacy Bill mark two, there may be some need for clarification as to the roles of the privacy committee, the Ombudsman and the Police Complaints Authority once an alleged breach of privacy has been identified. I would ask the Attorney-General to address how he believes the interaction of those particular groups would occur and say at what point one body would take over the investigation of a breach. Does the Attorney-General envisage the privacy committee undertaking spot checks as part of its role to check that the information held by Government agencies is used expressly for the reason for which it was collated and that access is being monitored and controlled? That is something that the current privacy committee does not do but I would have thought it is absolutely necessary under the proposal.

I would also ask the Attorney how he envisages the process: should a person complain to the privacy committee that a file held by a Government agency might contain incorrect or erroneous data? These issues go to the very heart of the operation of data protection principles, because without the mechanics of checking and investigating the legislation will be useless.

Thus far I have focused very much on data protection and data protection in the Government sector. I think it is important, though, that the Privacy Committee also will be able to assist the private sector to establish codes of practice in relation to information security and privacy. I think it should be noted that it is not a mandatory requirement that the private sector comply with the guidelines, but those guidelines are guidelines to which all people should be giving their earnest consideration. I would hope that major keepers of information and major collectors of information in South Australia would attempt in general terms to comply with those guidelines, and where they need assistance in terms of operational assistance I believe the Privacy Committee should be in a position to advise. I see the Committee playing the role of assistant and educator, but not enforcer. This is an appropriate role, as each industry knows best what information it requires and how that information is used.

Each industry can develop a code of practice under the guidance of the Privacy Committee which will not curtail legitimate business activities. While the committee will be able to oversee compliance with the privacy principles and refer complaints to other bodies for investigation in the public sphere, it will have the ability to investigate complaints about alleged violations of privacy in the private sector. This ability is curbed by the lack of coercive or remedial powers and, as the Attorney has mentioned, by a recent ruling in the High Court, which makes it clear that the committee is required to proceed in accordance with the rules of natural justice. This function is one that has been undertaken by the New South Wales Privacy Committee since 1975, so it should cause no particular anguish to the media or other industries in South Australia.

I must admit that I have been rather surprised by the vehemence of the reaction of journalists. I understand their fears in relation to the tort, but I do not understand their fears in relation to the Privacy Committee as now proposed. In terms of the impact upon journalists here in South Australia it would be no different from the impact of the Privacy Committee in New South Wales which has been operating for some 17 years. It has created no problems there. I cannot see why a committee operating in a similar way is going to create problems here in South Australia. Yes, there are complaints about the media invading privacy, as there will be complaints about other individuals. I do not see that the media deserves special attention in regard to the Privacy Committee. When I say 'special attention', I mean the right to be exempt from the investigations.

To sum up: the Privacy Bill provides a way in which the privacy of ordinary people can be protected. As I said earlier, I believe the vast amounts of personal data held by Governments to be the greatest threat to personal privacy, if treated improperly. The Privacy Committee will have the task of ensuring that information is handled according to information privacy principles. It will also provide a clearing house for privacy related issues and complaints and be a focus to raise awareness among the private sector of the right to privacy. The Democrats support the Bill.

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

COMMERCIAL ARBITRATION (UNIFORM PROVISIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 9 September. Page 319.)

The Hon. K.T. GRIFFIN: This is a Bill which is not likely to be politically controversial. It basically relates to uniform arbitration provisions on both domestic and international contracts. The Attorney-General indicated that the substance of the Bill has been approved by the Standing Committee of Attorneys-General and that corresponding legislation has been enacted, so far in New South Wales, Queensland, the ACT and the Northern Territory. I wonder whether, in reply, the Attorney might indicate where, if in any place, the interstate legislation differs from the South Australian Bill. There are, I think, some typographical errors which we will deal with in Committee. One would hope that they are not included in the interstate legislation. There are several other matters that I want to raise, one of which might be typographical, but which might otherwise be substantive.

One of the amendments proposed is to provide that in an arbitration an arbitrator may undertake a process of conciliation by agreement between the parties, but when acting as a conciliator or mediator the arbitrator or umpire is bound by the rules of natural justice. The Institute of Arbitrators (South Australian Chapter) has raised with me this issue that this should be a provision that does not require the application of the rules of natural justice in mediation, because even though the parties may agree on the results of a mediation or conciliation they may subsequently take action to set aside the determination because the rules of natural justice have not been applied. That seems to me to be sound commonsense, and subject to the response of the Attorney-General in his reply it may be appropriate to move an amendment to deal with that issue. One can expect that fairness will apply but mediation may not necessarily apply the rules of natural justice.

Section 38 of the principal Act allows courts to review some awards in circumstances identified in the section. A proposed change to broaden the scope of the power of the courts to review arbitration awards is, I would suggest, contrary to the original intention of the legislation, which seeks to limit judicial interference in arbitration decisions. The Institute of Arbitrators (South Australian Chapter) does claim that, where there is strong evidence—and that is the term used in the amendment to section 38, as proposed in clause 15 *(b)* of the Bill—that the arbitrator or umpire has made an error of law and that the determination may add substantially to the certainty of commercial law, the court may intervene. But the objection that has been made by the institute is that the reference to strong evidence which changes the earlier reference to a manifest error of law is inappropriate and that what ought to be provided is that there is manifest evidence that the arbitrator or umpire has made an error of law and that the determination may add substantially to the certainty of the commercial law. That seems to be better than the reference to strong evidence, and I ask whether it is possible for us to make that amendment without adversely affecting the concept of uniformity.

An amendment to section 20 might, I suppose, be controversial, in the sense that this provides that a party to an arbitration agreement may be represented in proceedings before an arbitrator by a legal practitioner, but only in circumstances which includes those where the value of the claim exceeds $20 000 or such other amount as is prescribed by regulation. In the principal Act the amount is presently $2 500, and it may be varied by regulation. I think on the occasion we first considered this uniform Bill we accepted it on the basis that it was uniform but I draw attention to the fact that, in the courts restructuring package, $5 000 is the limit for the small claims jurisdiction which then precludes legal representation. I cannot understand why the $20 000 figure has been proposed. I would suggest that it is more appropriate to make the limit consistent with the small claims jurisdiction limit of $5 000 and, again, unless there is some good reason why such an amendment should not be proposed I will be considering this in Committee and to make it then consistent with our Small Claims Court jurisdiction.

The Institute of Arbitrators says that several other problems ought to be addressed but suggests that they ought be made on a uniform basis. One relates to section 46 of the principal Act. Clause 18 of the Bill seeks to delete subsection (3). The Institute of Arbitrators states:

> Section 46 (3) adopts the uniform legislation and is very similar to the existing legislation except that it deletes that descriptive and ancient provision 'intentional and contumelious' as a specific ground of striking out a claim. In our view the uniform provisions ought to be amended to return to the original criteria to strike out a claim for delay. In our view, where a party gives the thumbs up sign to the other party [I am not sure that it is thumbs up] and acts in a contemptuous manner which is an abuse of process, he ought not have the benefit of the judicial or arbitral system at all for that action. (I accept that it will not happen very often.) The new provisions have the effect of making it virtually impossible to strike out a claim for delay. The existing South Australian provision is still applicable in Hong Kong.

The institute has a copy of section 29A of the Hong Kong ordinance should it become relevant. The argument from the institute is to revert to existing 46 (3) rather than adopt a new provision which makes the law less certain.

There is another question in relation to the amendment to section 34 (6), which refers to the rules of court. It is not clear whether those rules of court relating to offers of compromise relate to the general Supreme Court rules which deal with the power to make varying orders as to costs with regard to either payment into court or offers to consent to judgment or whether it applies to rule 120 of the Supreme Court rules made pursuant to the Commercial Arbitration Act. It was suggested to me by the Institute of Arbitrators that it ought to be clarified as to which rule applies. They prefer the general Supreme Court rules to the specific rule 120. I might raise one or two other minor matters during Committee but, subject to that, I support the second reading.

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

CRIMINAL LAW (SENTENCING) (SUSPENSION OF VEHICLE REGISTRATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 9 September. Page 320.)

The Hon. K.T. GRIFFIN: The Liberal Party is prepared to allow the second reading of the Bill to be passed and will propose amendments. It is likely that, if those amendments are not carried, it will oppose the third reading. The Bill provides that, where a vehicle is owned by a company and is used in the commission of an offence such as a parking offence, a speeding offence, a red light camera offence, although not necessarily limited to those, and the fine or other pecuniary sum remain unpaid, a court may suspend the registration of all motor vehicles of which the company is a registered owner until the fine has been fully satisfied.

An order for suspension takes effect 28 days after notice in writing has been given to the company personally or by post of the court's suspension order. During a period of suspension, a number of consequences flow. The registration is suspended, the compulsory third party bodily injury insurance is suspended, and the Registrar of Motor Vehicles may not register or renew registration of any motor vehicle in the name of the company. A court can vary or revoke the order if it is satisfied that the fine has been reduced and that continued suspension of registration would result in undue hardship to the company. This variation or revocation may apply to any identified motor vehicle.

The scheme follows the introduction of one which was introduced in the last session and which dealt with the failure of a person to pay a fine. In those circumstances the court was empowered to disqualify a person from holding or obtaining a drivers licence until the pecuniary sum had been paid. In both cases there is an effect on third party and comprehensive insurance. A person who is unlicensed and drives a motor vehicle is in breach of CTP insurance and comprehensive insurance cover. Where a company vehicle is unregistered and/or uninsured, the company commits a breach of the CTP insurance policy and its comprehensive insurance policy if it allows the vehicle to be driven. The distinction between the two is that the company might employ an unsuspecting driver with a current licence who drives the vehicle and loses the benefit of both the CTP insurance and the comprehensive insurance protection if he or she drives the unregistered vehicle and uninsured vehicle owned by the company without any knowledge that it is unregistered and uninsured. That is an undesirable consequence of the scheme proposed under this Bill.

The other undesirable consequence is that it applies to all vehicles owned by the company. The South Australian Farmers Federation is opposed to the Bill, asserting that the proposition is a classic case of a sledgehammer being used to crack a nut. The South Australian Taxi Association is of the view that the legislation is unnecessary and may be contrary to the present position which allows for a registered owner to identify the person who was driving. I am not sure about that but that association says that it has difficulties with the Bill. So does the South Australian Road Transport Association, which calls it draconian legislation, but its major point of concern is with the right to suspend the registration of an entire fleet along with the suspension of third party insurance, which also adversely affects third party, comprehensive and public liability insurance. The South Australian Employers Federation and the Chamber of Commerce and Industry have concerns about the breadth of the Bill and one hire company has also raised concerns, although I must say that I did not circulate all rental hire companies. The RAA says that the legislation is draconian but it will not make any submissions opposing the Bill.

For companies, this piece of legislation will create more problems than did the earlier piece of legislation dealing with individuals and their licences. If a $200 or $150 fine is outstanding, it seems to be a draconian measure to allow the court to suspend the registration of all vehicles in the fleet until that fine is paid, particularly when notices may be served by post. A company with a large fleet of vehicles, whether passenger or commercial, might not receive a notice of the first imposition and even the second imposition of the penalty. It may also be that the record system of the Motor Registration Division or the police is inadequate. One of the persons to whom I sent the Bill said that he sold a vehicle at the end of last year but in September of this year received a speeding fine following a fine in the early part of this year which had been withdrawn by the police, as was the second one.

Another instance drawn to my attention was that of a company asserting that it did not receive notice of a pecuniary sum that had been imposed being taken to court and the Director of the company successfully defending it on the basis that there was more than a reasonable doubt about the receipt of the notice. In a big organisation with a large number of vehicles, it is possible inadvertently, or without knowledge of the fine, to be placed in an invidious position, particularly with employees. If an employee goes into the yard to take out a vehicle, that vehicle may have a current registration disc even though its registration may have been suspended, and it means that that employee may be significantly prejudiced if there is a motor vehicle accident, because that employee is driving an unregistered and uninsured vehicle and is liable to licence suspension himself or herself as well as losing the benefit of any insurance protection or cover if there is an accident.

That is an embarrassing and invidious position for those employees to be placed in. My amendments will propose that the power to suspend the registration be limited to the vehicle in respect of which the pecuniary fine has been imposed: that, if there is a suspension, the person who might drive the vehicle without knowledge of the suspension does not commit an offence or attract liability personally because, without that, some quite significant disadvantage would be suffered by that employee.

I will deal with that in more detail during the Committee stage. I am conscious of the time, which means that I have not adequately explored all the issues. I put them on the table and hope that the Attorney-General will be able to respond and allow the matter to go through its second reading, but the proposed amendments and the raising of other variations of the issues to which I

have referred will be dealt with during the Committee consideration of the Bill.

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

ADJOURNMENT

At 6.29 p.m. the Council adjourned until Thursday 8 October at 2.15 p.m.