LEGISLATIVE COUNCIL

Tuesday 13 October 1992

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

QUESTION ON NOTICE

The PRESIDENT: I direct that the written answer to the following question, as detailed in the schedule that I now table, be distributed and printed in *Hansard:* No 5.

RESTRAINT ORDERS

The Hon. DIANA LAIDLAW asked the Attorney-General: For each financial year since the introduction of section 91 of the Justices Act relating to domestic violence intervention orders—

1. How many applications were received?
2. How many applications were lodged by the police?
3. How many orders were granted by the courts?
4. How many applications were withdrawn?

The Hon. C.J. SUMNER: Table 1 presents the number of applications for restraint orders finalised in the Courts of Summary Jurisdiction from 1 July 1982 to 31 December 1991. This table also gives a breakdown of the number of applications granted and the number withdrawn as requested in parts 3 and 4 of the question.

The number of these applications lodged by the police during this same period is shown in Table 2.

Table 1. Outcome of Restraint Orders finalised in the Courts of Summary Jurisdiction 1982-91.

Period	No. of cases finalised	No. of orders granted		No. of orders withdrawn		No. of orders rejected by the court		Other outcome	
1982*	393	267	(67.9)	69	(17.6)	57	(14.5)	—	—
1983	851	632	(74.3)	131	(15.4)	85	(10.0)	3	(0.4)
1984	1 457	1 089	(74.7)	317	(21.8)	50	(3.4)	1	(0.1)
1985	1 602	1 150	(71.8)	328	(20.5)	121	(7.6)	3	(0.2)
1986	1 567	1 149	(73.3)	316	(20.2)	95	(6.0)	7	(0.4)
1987	1 779	1 350	(75.9)	329	(18.5)	100	(5.6)	—	—
1988	1 741	1 283	(73.7)	347	(19.9)	111	(6.4)	—	—
1989	1 358	979	(72.1)	239	(17.6)	138	(10.2)	2	(0.1)
1990	1 582	1 217	(76.9)	246	(15.5)	118	(7.5)	1	(0.1)
1991	1 702	1 271	(74.7)	292	(17.2)	139	(8.2)	—	—

* 1 July-31 December 1982 only.
Numbers in brackets represent percentage of applications during the given year.

Table 2. Analysis of Complainant of Restraint Orders finalised in the Courts of Summary Jurisdiction 1982-91.

Period	Police as complainant		Individual as complainant		Other		Total	
	No.	%	No.	%	No.	%	No.	%
1982*	183	46.6	210	53.4	—	—	393	100.0
1983	723	85.0	128	15.0	—	—	851	100.0
1984	1 387	95.2	68	4.7	2	0.1	1 457	100.0
1985	1 506	94.0	96	6.0	—	—	1 602	100.0
1986	1 437	91.7	130	8.3	—	—	1 567	100.0
1987	1 668	93.8	111	6.2	—	—	1 779	100.0
1988	1 630	93.6	111	6.4	—	—	1 741	100.0
1989	1 296	95.4	60	4.4	2	0.1	1 358	100.0
1990	1 522	96.2	60	3.8	—	—	1 582	100.0
1991	1 636	96.1	66	3.9	—	—	1 702	100.0

* 1 July-31 December 1982 only.
Numbers in brackets represent percentage of applications during the given year.

Following table 1 there is a graph (figure 1) and, following table 2, a further graph (figure 2): as these graphs are unsuitable for inclusion in *Hansard*, I will furnish the honourable member with the relevant details.

PAPERS TABLED

The following papers were laid on the table:

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

Court Services Department—Report, 1991-92.

Friendly Societies Act 1991—General Laws, Lifeplan Community Services and Manchester Unity Friendly Society.

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

Reports 1991-92—

Adelaide Festival Centre Trust
Department for the Arts and Cultural Heritage
Department of Housing and Construction

The University of Adelaide—Report, Financial Statements and Legislation, 1991.

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

Reports, 1991-92—

Department of Industry, Trade and Technology
Medical Board of South Australia
Office of Transport Policy and Planning
Technology Development Corporation

Highways Act 1926—Lease of Department of Road Transport Properties.

CASINO

The Hon. C.J. SUMNER (Attorney-General): I seek leave to table a ministerial statement being given in another place by the Deputy Premier on the role of Genting at the Adelaide Casino, together with a report of the Casino Supervisory Authority on an inquiry into the operation of the licensed casino and the current role of Genting (South Australia) Pty Ltd.

Leave granted.

QUESTIONS

CREDIT CARDS

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister of Consumer Affairs a question about credit card fees.

Leave granted.

The Hon. R.I. LUCAS: Monday's edition of the *Australian* and other newspapers carried stories and a statement by the Federal Treasurer, Mr Dawkins, that banks should be permitted to charge credit card holders a small administration fee in return for a dramatic reduction in interest rates. Although this issue has been debated for many years, it has always been assumed that the final decision for this issue rested with State Governments. However, the article in the *Australian* states that the Prices Surveillance Authority will advise the Treasurer this week that the Federal Government could deregulate the credit card industry without State cooperation by using section 109 of the constitution. The Minister has made some comments with regard to my first question, but I ask:

1. Does the Minister agree with the Treasurer's statement that banks should be permitted to charge credit card holders a small administration fee in return for a dramatic reduction in interest rates?

2. Is the Minister aware of the argument that the credit card industry could be deregulated by the Federal Government without State cooperation by using section 109 of the Constitution and what advice, if any, has the Minister formally received on this issue?

The Hon. ANNE LEVY: To answer the second question first, I have not received any formal advice on that matter at this stage; I hope I will be able to do so before long. Obviously that is a matter requiring legal investigation. With regard to the first question, certainly the Federal Treasurer made comments regarding an up-front fee for credit cards to be associated with a substantial drop in interest rates on credit cards. It is also true that this matter has been discussed at meetings of Consumer Affairs Ministers, who have indicated that they are happy to consider the question of an up-front fee, provided that there is a concomitant drop in interest rates.

The Prices Surveillance Authority has been investigating the whole question of credit cards, and the Consumer Affairs Ministers requested the Federal Government to ask the Prices Surveillance Authority to include in his investigation the question of a trade-off between up-front fees and a reduction in interest rates, which question the Federal Government did refer to the Prices Surveillance Authority. The report from the Prices Surveillance Authority on this matter is expected in a few days time, and I am sure all the Consumer Affairs Ministers in Australia will be very interested as to the results of this investigation on this matter.

As I have previously indicated, I am very happy to consider the question of a small up-front fee for credit cards, provided that it is linked with a drop in interest rates on credit card balances, and also provided that there is agreement amongst all the Consumer Affairs Ministers around Australia. As I said, it has been discussed at meetings of Consumer Affairs Ministers and doubtless will be continued to be discussed by them at their next meeting.

AUSTRALIAN SECURITIES COMMISSION

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question on the subject of the Australian Securities Commission and the National Crime Authority.

Leave granted.

The Hon. K.T. GRIFFIN: Last week the Federal Attorney-General, Mr Duffy, gave directions to the Australian Securities Commission to start investigating general white-collar crime, instead of just Corporations Law offences. This was part of the settlement of disputes between the Australian Securities Commission and the Commonwealth Director of Public Prosecutions which have been gaining a fair bit of publicity over the past month or so.

One commentator has observed about Mr Duffy's direction that this will turn the ASC into a national white-collar crime police force, rather than just a securities regulator, and has said that the direction potentially represents the takeover by the Federal Government of the investigation and prosecution of all fraud which has traditionally been the preserve of the States and their police forces, because largely State laws were involved. In fact, that same commentator did suggest that there was now a *de facto* serious fraud office in existence as a result of the decision of Mr Duffy.

Under the Federal Attorney-General's direction, the ASC will have to give equal weight to identifying breaches of the State's criminal laws as it does to breaches of the Corporations Law and must investigate them to completion and deliver a brief to the Commonwealth Director of Public Prosecutions, unless a Federal, State or Territory police force can be persuaded to take over the investigation. Mr Hartnell, the Chairman of the ASC, is reported to have said that the ASC will do the best it can with the resources available to it.

Mr Ray Schoer of the Australian Stock Exchange warned that this change may compromise many

achievements of the ASC and will divert the ASC from its primary role of regulating financial markets by becoming a criminal prosecution organisation. If these predictions were not serious enough, there is another development that seems to have been little noticed.

The National Crime Authority was initially focused on drug investigations and organised crime. That changed when Justice Phillips became Chairman to a focus on white collar crime and fraud, and recently has swung back to investigating organised crime and drugs under its new Chairman, Mr Tom Sherman. It seems that the pendulum is swinging rather wildly. This seems to indicate that the NCA does not know where it is going, although it appears to be too much of a coincidence that at about the same time the ASC has been directed to move one way, to investigate fraud, and the NCA another, out of the white collar crime area into the drugs area in order to give a focus to that.

The NCA is giving the impression that it does not seem to know where it should go or is going, while the ASC appears to be moving in a direction that previously covered the NCA's field. My questions to the Attorney-General are:

1. Did the intergovernmental committee responsible for the NCA endorse the second change of direction of the NCA and, if so, what were the reasons?

2. Was the change of direction of the NCA tied in with the new role of the ASC?

3. Was the new focus of the ASC on dealing with State criminal law investigations involving companies discussed by the ministerial council on corporations and, if so, did it agree with the Federal Attorney-General and, in any event, does the Attorney-General agree that the ASC should be more an investigator, particularly in relation to State-based offences, than a regulator?

4. Has there been any discussion between State police and the ASC on the problems of overlap that the new direction will undoubtedly create and, if so, will the Attorney-General indicate what discussions have taken place?

The Hon. C.J. SUMNER: The directions that were laid down by the Federal Attorney-General to the ASC and to the DPP followed a dispute that had arisen between the Commonwealth Director of Public Prosecutions and the Chairman of the Australian Securities Commission. The handling of that dispute was a matter for the Commonwealth Attorney-General; the States were not involved in it. I do not believe that it would have been discussed at the last ministerial council meeting on corporations, which was held in July, because I understand at that stage the dispute had not arisen or, at least, had not been public property.

I was not present at that meeting, but I do not believe that the question of the new role of the ASC would have been discussed with the ministerial council. However, I see no problems with the ASC's being both an investigative body and a regulator. That was the situation with the Corporate Affairs Commission in South Australia for many years. The Corporate Affairs Commission here not only investigated but also prosecuted criminal offences under both companies law and State law, and was also responsible for general regulations.

So, I have no problem with that, provided, of course, that the resources are adequate to enable the ASC to carry out the task. I also have no problem with the ASC's being asked to look at State criminal offences if those matters arise during the course of an investigation. To do otherwise would be ludicrous.

Quite clearly, that proposal should have the support of anyone concerned with law enforcement in this country. It does not mean that the ASC, when it is investigating a matter, might not decide that it is more appropriate, after consultation with the State police, for the State police to take over that inquiry. But as the honourable member would know, criminal offences can occur under Commonwealth law and under State law, and in the area of corporate fraud sometimes there are breaches of companies law, corporation law and there may also be general fraud offences that can be the subject of prosecution under State law. If that occurs and those things come up in the one investigation it seems to me to be quite sensible for the ASC to pursue those inquiries, and, if there is evidence, to produce a brief for the Commonwealth Director of Public Prosecutions, who could prosecute on behalf of the State DPP if there are State offences involved or, alternatively, if it is substantially a matter of State law then it can be referred to the State Director of Public Prosecutions. One would expect, of course, that if there were substantial State matters involved, the State police would be involved.

So I do not see any difficulty with that, and I think the Federal Attorney had to take some steps to resolve the dispute that had arisen. I suppose it just emphasises the importance of there being some ministerial power to direct these so-called independent bodies, because had there been no power to direct the ASC or the DPP, presumably they would have continued their brawl *ad infinitum*, to the detriment of the public interest in Australia. At least when there is a Minister who is responsible for an ASC or a DPP then directions can be given and those directions can be made public and, as the honourable member is doing by way of this question, the issue can be debated in the Parliaments of Australia and in the public arena.

As to the question relating to the NCA, new directions were promulgated by Justice Phillips when he became Chair of the NCA, and that did give a greater emphasis to white collar crime, but I should say that it was white collar crime which fitted within the brief of the National Crime Authority, in accordance with its Acts, so it is not all white collar crime, but white collar crimes of an organised kind. Following that, the NCA, under Justice Phillips, did a significant report on money laundering in Australia, which contained certain recommendations about legislative change and the like.

I do not think the NCA has changed its focus away from organised crime, but it is true, I think, that under Mr Sherman the emphasis will now be back towards more traditional organised crime rather than white collar crime. That does not mean to say that if there are white collar crimes involved or money laundering offences involved in an organised way—which is what the National Crime Authority was set up to look at—and organised in a way that crosses State boundaries it will not continue to investigate those matters. In any event, the NCA is governed by references that are given to it by

the Inter-Governmental Committee, and that is what governs its work. I can only refer the honourable member to the most recent report of the National Crime Authority, which will set out its current priorities in the matters that it is working on, and presumably in the not too distant future there will be a report on the 1991-92 year.

The Hon. K.T. GRIFFIN: As a supplementary question, did the intergovernmental committee of the National Crime Authority discuss and approve the report and change of direction?

The Hon. C.J. SUMNER: I do not think any formal document was put out following the last meeting of the intergovernmental committee but I will check that and bring back a reply for the honourable member.

CONTAINER TERMINAL

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister of Transport Development a question about the operation of the container terminal.

Leave granted.

The Hon. DIANA LAIDLAW: I understand that the former Minister of Marine (Hon. R.J. Gregory) on his last day in office—and that would have been 30 September—signed two important letters relating to the future operation of the container terminal, the operation of which has been the subject of controversy since the Government advised the current operator, Conaust, and its parent company P & O, that the Government would compulsorily resume the lease which had another 4½ years to run. The former Minister's two letters compound this controversy.

I believe that one letter was to P & O in Sydney offering to make an out-of-court settlement of compensation to cover anticipated losses of income and goodwill. It certainly has been reported that P & O is seeking compensation of about $10 million. The second letter was to the Managing Director of Australian National in Melbourne rejecting that company's joint proposal with Conaust to operate the terminal through a new consortium, South Australian Terminal Limited. I ask the Minister (and if she does not have the answers to these questions perhaps she would be prepared to bring back a reply as there is a lot of interest in the answers to these matters):

1. What are the details of the compensation offer made to P & O?

2. Has P & O accepted the offer made by the Government and, if not, does the Minister believe that the case against Conaust continuing as the operator is so great as to warrant getting rid of Conaust at any cost?

3. On what grounds was the bid by Conaust/ANL assessed and then rejected by the Government, because interstate newspaper reports that I have read on this matter indicate that the bid would have saved taxpayers in South Australia a multimillion dollar payout to P & O and secured continuation of all four of the shipping lines that make direct calls to the container terminal at the present time?

The Hon. BARBARA WIESE: I will probably have to seek information on some of the issues that the honourable member has raised, but I can respond at least in part to the questions that have been raised here. I think it has been known for quite some time that the State Government believes that it would be in the interests of the South Australian economy if we could encourage much greater use of the Port of Adelaide, and it would certainly assist with the development of the transport hub concept for South Australia if greater use of the Port of Adelaide could be generated.

An assessment has been made over a period of time—and this I understand has the support of the Chamber of Commerce and some of the major users of the port here in South Australia—that the current operators of the port are probably not delivering as much business to South Australia as is desirable, and an assessment has been made that we could probably do better. With that in mind and, as I said, as I understand it with the support of industry in this State, an offer of compensation was recently made to Conaust just prior to the change in ministerial positions.

I do not believe that at this time it would be appropriate to release the details of the compensation offer. Suffice to say that the offer at this stage has not been accepted, although a deadline was set and extended by one week which expires today and I expect that I will receive correspondence from the operators of the terminal today with their views on the matter. I met with the principals of P & O yesterday to discuss concerns that they have with respect to this proposal. I understand that later in the day, yesterday, the same people met with the Leader of the Opposition and, I imagine, discussed their concerns with him.

The Hon. Diana Laidlaw: They met with me, not with the Leader.

The Hon. BARBARA WIESE: I see. The point is that they came to see me yesterday to outline their concerns with respect to this proposal so that I am fully informed prior to further assessment of whatever correspondence it is that they will forward to me today. I imagine that once the correspondence has been received further discussions will take place between the principals of the company and the Department of Marine and Harbors officers with a view to reaching a mutually satisfactory agreement concerning compensation.

As to the second correspondence the honourable member referred to, it is true that the joint bid that was put forward by ANL and Partners was assessed by the Department of Marine and Harbors and found to be unsatisfactory. That was communicated to that consortium at about the same time the offer for compensation was communicated to P & O. I will seek further information as to the methods by which such registrations of interest were assessed and provide that for the honourable member at a later time. I am advised by officers of the department that the proposal as put forward by the consortium was not considered to be satisfactory in a number of areas, and particularly in the main area, which was the concern that we have that the Port of Adelaide should be used to its maximum. As I understand it, it was considered that the plans that were put forward in that bid would not satisfy that aim in particular. As to the specific way in which that bid and other bids were assessed, I will seek information about that and bring back a report at an appropriate time for the benefit of the Council.

I believe that the efforts being made by the South Australian Government to better utilise the port facilities in South Australia are an aim that is worth pursuing, and I believe there have been negotiations with a range of companies that believe they could provide a service to South Australia. Hopefully, the negotiations taking place will lead to a better utilisation of the port and in turn the generation of much more business for South Australian companies.

The Hon. DIANA LAIDLAW: As a supplementary question, what guarantees has the Government received that any new operator will generate additional business for the port?

The Hon. BARBARA WIESE: Those companies that have registered an interest in operating the port have provided business plans of one kind or another, of varying types, as to what sort of activity they would pursue in generating more business for the Port of Adelaide. Those proposals are all being assessed for their viability and feasibility and a decision will be made based on assessments as to which of the proposals that has been brought forward is likely to generate the most business.

KANGAROO ISLAND

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister of Transport Development a question about road funding for Kangaroo Island.

Leave granted.

The Hon. I. GILFILLAN: I ask the Minister these questions because she is most uniquely placed to answer, having served with distinction as Minister of Tourism just recently.

Members interjecting:

The Hon. I. GILFILLAN: Some form of distinction. The lack of funding and planning by the State Government is threatening the livelihood of one of South Australia's—

Members interjecting:

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

The Hon. I. GILFILLAN: —most popular tourist destinations. I am talking of Kangaroo Island and giving the opinion held by most South Australians, certainly of the people from Kangaroo Island who have approached me. It is recognised here, interstate and overseas as one of the State's most popular tourist destinations, but access around the island is handicapped at various times of the year (all the year, I might say) by road conditions which affect the traffic: wet weather and also hot dry weather with corrugations.

Extremely heavy tourist traffic has devastated the island's unsealed roads, which are dangerous, dusty and corrugated in summer and slippery, pot-holed and washed away during winter. For tourists to visit the islands key attractions such as Seal Bay, Kelly Hill Caves and Flinders Chase, they must use the South Coast Highway and the West Coast Highway. Both these roads are unsealed and the long wet months of winter and early spring have devastated parts of the island's road network.

I received a letter dated 30 September from the Chief Executive Officer of the Kingscote council, Mr B.C Hurst, which states in part:

> Over the past one to two months it has been necessary for council to temporarily close the South Coast Road in the interests of motorists' safety. Because of the heavy rains experienced here during August and September, we have suffered substantial damage to our road network generally but, more particularly, the major tourist route of the unsealed South Coast Road and West Coast Highway. Several washaways have required filling with material carted from Kingscote (the most suitable and accessible material), which has been most expensive. The problems which occur annually would, of course, be eliminated if the South Coast Road and West Coast Highway were sealed, as recommended in the Tourist Road Evaluation—Kangaroo Island Study undertaken in 1990-91 by Tourism South Australia.

It is the Minister's own area of previously held responsibility. The final paragraph states:

> The problems we have recently experienced will be ongoing and a continuing burden on our ratepayers, particularly as Kangaroo Island becomes more popular as a tourist destination.

Mr Hurst tells me that the cost of sealing both those important roads is estimated at $13.5 million, but it appears that State Government funding will be limited this year to just $200 000, which will seal a mere three kilometres of highway, leaving another 82 kilometres unsealed and at threat from the elements.

Mr Hurst admits that it will never be possible for the Kingscote council to carry out this project or maintain it without substantial outside assistance, so the chances of Kangaroo Island's tourism appeal being developed fully on a year round basis is under threat and, of course, would never be fulfilled with the current road situation.

In addition, the poor quality of the Island's roads creates significant accident dangers at various times of the year for both tourists and island residents and impacts on the economic lifeblood of Kangaroo Island's business and commerce.

It is important to outline that the residents of Kangaroo Island are very nervous about the hazard of really serious accidents taking place with bus and tourist traffic, as many of those drivers have never driven on loose surface roads and it is a situation waiting for a tragedy to occur. I hope that we can see the Government act before that takes place. My questions to the Minister are:

1. Does she believe that the current condition of Kangaroo Island's road network is acceptable for tourist access and safe for both tourists and local residents?

2. Will she outline what plans the Government has to improve the road network, the timeframe and level of funding that it will make available for the project?

The Hon. BARBARA WIESE: I thank the honourable member for his question and his complimentary remarks about my period as Minister of Tourism over the past few years. If he has followed my record he would have found that I have been probably the most tenacious of all members of Parliament in attempting to secure Government commitment, whether it be local, State or Federal, for road funding for Kangaroo Island.

Due to my personal efforts, a tourist infrastructure development program was commenced in 1986 and implemented over a five or six year period. Through my personal intervention the roads survey study that was undertaken on Kangaroo Island over the past 18 months has now identified very clearly—

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —what road upgrading requirements there are for Kangaroo Island and for the first time has assessed the cost of such a road upgrading program. The honourable member quite rightly points out that these roads on Kangaroo Island are designated as local roads and are therefore the responsibility of local councils. The two councils on Kangaroo Island will never be in a position to upgrade those roads to a standard that I would consider satisfactory for the future development of the tourism industry on Kangaroo Island or indeed satisfactory for local use over a long period of time. It is for those reasons that I have been trying to change attitudes within Government about the question of road funding for areas such as Kangaroo Island.

Within the past week—the first week that I have been Minister of Transport Development—I have taken up this issue with the Chief Executive of the Department of Road Transport. I indicated to him that the department ought to look seriously at criteria followed in the past with respect to road funding applications. I have asked him to examine the Kangaroo Island roads situation in particular, and he has undertaken to do that in consultation with the Managing Director of Tourism South Australia in order to gain further input from the tourism authority.

So, I hope that over time it may be possible to come forward with a plan that will accelerate the road upgrading program for Kangaroo Island so that the roads can be improved at a much greater pace than has been possible through use of the tourist roads grants scheme to which the honourable member referred. That scheme provides less than $500 000 per year, and during the past few years I have ensured that a good portion of that money has been directed to Kangaroo Island roads.

As the honourable member indicates, the amounts of money are relatively small and not much work has been able to be conducted each financial year. However, the program has proceeded and it may be possible to accelerate it if there is some way of assessing the roads program in a slightly different way.

In the meantime, I hope that the two councils on Kangaroo Island are pursuing avenues that are open to them. There is a local government roads program, about which decisions are made by representatives of local government, and I should hope that local government authorities in South Australia would recognise, too, the importance of the Kangaroo Island roads and would agree that part of that roads program funding should go towards the upgrading of the most important roads on Kangaroo Island.

I must also indicate that the honourable member is not the only member in this Parliament who has expressed an interest in Kangaroo Island roads in recent times, because just yesterday I received a request from Mr Brown in another place, the House of Assembly local member for the area, to receive a deputation from council representatives on the island, and I have agreed to do that some time during the next couple of weeks. I will be talking to those council representatives about my plans for Kangaroo Island, and we will discuss what options might be available to us. I have not yet completely lost hope that it might be possible to attract Federal Government funding for the Kangaroo Island roads, and that is a matter that I will be pursuing through the Department of Road Transport as well.

GAWLER RIVER

The Hon. BERNICE PFITZNER: I seek leave to make an explanation before asking the Minister representing the Minister of Environment and Land Management questions about the Gawler River flood plain.

Leave granted.

The Hon. BERNICE PFITZNER: The Minister of Environment and Land Management might also have to consult with the Minister of Housing, Urban Development and Local Government Relations in relation to these questions. The floods in the Gawler River flood plain have been of great concern to the community all this week. The local councils are saying they need State flood relief, and it is reported that the State Minister is insinuating that it is the local council's fault and that he will have a task force look into the flood mitigation plan. In fact, the fault lies with both the State Government and local councils.

During 1983, nearly 10 years ago, this flood plain was subdivided and developed with the consent of council, as councils are the authority for planning decisions in this area. Local residents were concerned and called for the mapping of the Gawler River flood plain, which mapping was completed around 1987-88. A newsletter from the River Gawler Residents Association, which identifies their concerns about that area, states:

> The River Gawler Association promised to send out an information pamphlet about the flood and drainage study for the Lewiston area following a public meeting. This has proved difficult due to lack of available information. The association is not opposed to developers making money or to other people moving into the district.

They are concerned about the so-called little people who are to lose the land for a drainage system which may not even work when it is finished.

With regard to zoning, the newsletter further states that apparently this area is not actually zoned for development, and it appears to mean that council can do whatever it pleases. Further, regarding State Emergency Services, it states:

> We are informed by these people [meaning the council] that there are plans for flood emergency in the area. In fact, animals in the district are to be moved to the Wayville Show Ground if a show is not in progress. The State Emergency Service would like to put an emergency unit in this area, but council thinks there may not be enough volunteers to run it.

This newsletter, which was published in 1987, identified the concerns of the residents in this area. After documenting the obvious, that is, that the Gawler flood plain plan involved a flood problem, the State then used section 50 which, in effect, prevents further subdivision and development. Section 50 was put in on 23 December 1987. This caused conflict in the local councils around the area.

I should like to read the different types of conflict between the local councils and the developers as indexed in questions and statements from the local council of Mallala. The District Clerk, Mr Dunlop, stated when this section 50 was put into place:

Due to the section 50 declaration by the Governor, negotiations between council and developers are now in jeopardy.

However, other councillors and residents have asked further questions, which are documented in the council minutes, regarding planning approvals in these areas. They asked what the number of planning approval applications was for dwellings in that area: it was 147. They asked how many of those were constructed on land in the flood plains: the answer was 64. They asked, 'How many had conditions of approval that flood levels be 300 millimetres above the predicted flood height?' The answer is that it was 60 dwellings. Further, in the council minutes, regarding flood liability and doubts, the following question was asked:

If it is proved that council has not notified some landowners that foundation heights be a certain height above flood level where this would seem to be necessary, is council therefore liable for damage from flooding?

The answer to that is:

Council may be held liable in any subsequent court action. Further, as documented in the minutes, an error in the calculation of flood plains has been identified, possibly by 50 per cent.

The question was:

Have the consultants contacted the council regarding the possible error in calculation of the Gawler River flood plain in the Lewiston area by a possible 50 per cent?

The answer was:

Preliminary investigations by council's consulting engineers on the southern side of the Gawler River have found that a further 50 cubic millimetres of water would flow back into the river and ultimately find its way through the Mallala council area.

So you see, Mr President, at that time, nearly five years ago, these statements and questions on notice for the Mallala council show the grave concerns of some of the councillors. Further, the South Para Dam is said to provide some flood mitigation—

The PRESIDENT: Order! I do not like to cut across the member's question, but she is taking a fair amount of latitude in asking a question. I draw to the attention of members that a fair amount of latitude has been given by the Chair, and it has usually been respected by members. However, to date only four questions have been asked today. I therefore ask members to try to keep the questions and answers relevant to the subject.

The Hon. BERNICE PFITZNER: This information is very relevant to the questions I will ask, and it is a very important situation, because the South Para Dam also has something to do with flood mitigation. However, taking into account your requirements, Mr President, I will short cut it and now ask the questions. We now have a flood on land that possibly ought not to have been developed and, as some councillors and residents state, both State and local governments have been remiss, irresponsible and incompetent. My questions are:

1. Why did the Minister not expedite the completion of the Gawler—

The Hon. C.J. Sumner interjecting:

The Hon. BERNICE PFITZNER: I did say that some councillors and residents have stated that both the State Government and local governments have been remiss, irresponsible and incompetent: I did not say it was my opinion.

The PRESIDENT: It is someone's opinion.

Members interjecting:

The Hon. BERNICE PFITZNER: It is someone else's—

Members interjecting:

The PRESIDENT: Order! It is still an opinion.

The Hon. BERNICE PFITZNER: My questions are:

1. Why did the Minister not expedite the completion of the Gawler River Flood and Drainage Study of 1985-86 and incorporate its principles into an SDP, especially after the application of section 50 in 1987?

2. Will the Minister look into the processing of planning issues in the four councils as it relates to the Gawler River flood plains development?

3. Is section 50 still in place as regards the Gawler River flood plains, and when is it likely to be lifted?

4. With the irresponsible and incompetent track record of some local councils, does the Minister still believe that schedule 7 of the Planning Act should be deleted rather than strengthened and other areas of potential planning problems be added to the schedule?

5. Will the task force as proposed by the present Minister look at flood mitigation not only around the Gawler River area but in other areas such as the Adelaide Hills?

The Hon. ANNE LEVY: I will refer those five questions and the lengthy explanation to my colleague in another place. I am sure that an examination of *Hansard* will reveal that question 4 is definitely stating an opinion, not attributed to anyone.

ELECTRICITY TRUST

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Public Infrastructure a question about ETSA practices.

Leave granted.

The Hon. PETER DUNN: Regular maintenance of lines is essential for ETSA as it is necessary that those lines do not come down and cause fires. It is necessary to inspect them to ensure that no trees overhang them and to see that the insulators and the transformers are serviceable. The lines I am speaking of in particular are single wire earth return (SWER) lines, which are given a cursory inspection by aircraft. At times it is necessary to wash the insulators by helicopter. In fact, I have myself spent all night manning a CFS truck to wash these insulators after dusty conditions, as they tend to arc over. There is no question by anyone that this maintenance is necessary, since we do not want breakdowns with the refrigerators being out of commission when people are not there, and with computers coming down, etc.

So, it is necessary to maintain those lines. Part of that is a land based maintenance and observation operation and, particularly in my area, is always carried out in September or October. ETSA has an easement to travel through our properties to inspect these lines, but always does it in that September-October period—and that is the problem: it is wet; the crops are usually at their full height, and ETSA's driving through them causes them to be knocked down. But that is not the worst problem. The worst problem is the transfer of weed seeds: when there is mud on the vehicles, the high crops tend to rub that mud off.

When one goes out in 12 months time, therefore, one can see the weeds that have come up wherever ETSA vehicles have been driven. Another difficulty is that, as I understand, one of the ETSA vehicles finished up in a hole, which it did not see in the middle of a crop. There is also the possibility of vehicles running into objects. My question is: if an annual inspection is necessary—and I suggest that it is—why not do it in late summer or at some more suitable time?

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

WHALES

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for the Arts, representing the Minister of Environment and Land Management, a question about whale watching guidelines.

Leave granted.

The Hon. M.J. ELLIOTT: The whale watching season along the Encounter Coast south of Adelaide is virtually over for another year, and it is important that the impact of this new activity be reviewed. After discussing the season with several people involved at Victor Harbor, it has become clear to me that there is a need for alterations to the whale watching guidelines for the area and some argument for those guidelines to be given the force of regulations.

Although the guidelines restrict boats to beyond 300 metres from a whale, I have been made aware of one incident off the Yorke Peninsula where a boatload of beer drinking lads deliberately drove over the top of a mother and calf, to the horror of whale watchers on shore. I am told that, unless it can be proven that either whale suffered physical injury as a direct result of the incident, no action can be taken, under current legislation, against the louts, although witnesses to the incident report a change in both whales' behaviour, indicating that they had been disturbed and apparently distressed by the action.

Closer to home, National Parks and Wildlife Service officers have expressed concern that some boats have worried whales in Encounter Bay to the point that the whales have moved on. In one incident I am told that a boat approached a whale in such a way as to have the effect of driving it closer to the shore. Helicopters, too, have caused some anxious moments, dropping well below the allowable 300 metres. I understand that the downdraft caused by helicopter rotors can distress whales, as it interferes with their communication and navigation, which is by sonar.

Unfortunately, it is the television stations, which have brought us so much fascinating footage of whales off our coasts, that have, I am told, been repeat offenders. The people charged with protecting the welfare of these unique visitors have told me of their frustration in being able only to refer offenders repeatedly to the whale watch guidelines—which cannot be enforced. They say that a few prosecutions will act as a deterrent and show that this State is genuine in its protection and preservation of whales, which, I might add, are a major tourist attraction.

It has also been suggested that altering the allowable height to almost 450 metres for waters within Encounter Bay will further reduce the stress and confusion caused to the whales by helicopters. My questions to the Minister are:

1. Is the Minister aware of problems caused by some whale watchers acting in breach of the guidelines?

2. Will the Minister consider making the guidelines into regulations under the National Parks and Wildlife Service Act and, if not, why not?

3. Will the Minister investigate the need to raise the allowable height for helicopters viewing whales, particularly within the Encounter Bay area?

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

MINISTERS' BEHAVIOUR

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General, as Leader of the Government in the Legislative Council, a question about ministerial behaviour.

Leave granted.

The Hon. L.H. DAVIS: On 13 April 1989 the Hon. Mike Rann in another place made a scathing and lengthy attack on the Liberal Party for daring to ask questions about the State Bank of South Australia. He described the questioning as sabotage and the grossest economic vandalism that this Parliament had seen in recent memory. The honourable member claimed that the State Bank was one of the greatest success stories in the economy of this State. He said that the Liberal Party was putting headlines before facts. As we know, the State Bank has reported a record loss of $3.1 billion.

Yesterday I issued a press release about a major survey of 3 600 holiday makers in New South Wales, Victoria and Queensland, conducted by the Queensland Tourist and Travel Corporation, which showed that South Australia ranked very poorly as a preferred holiday destination. Yet on a television news service last night the Hon. Mr Rann had the effrontery to call me a traitor and a quisling for raising these facts. The words and tactics used by Minister Rann in October 1992 seem remarkably similar to the words and tactics used by Mr Rann in April 1989 when he bagged the Liberal Party for expressing concern about the State Bank of South Australia. My questions are:

1. Has an instruction been given to Ministers in the new Arnold Administration to adopt a less complacent and arrogant attitude to matters of vital importance to South Australia's economic prosperity, such as tourism?

2. Does the new Arnold Administration accept the complacent attitude adopted by Minister Rann?

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

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The Hon. Mr Davis will come to order. Question Time has finished.

CRIMINAL LAW CONSOLIDATION (APPLICATION OF CRIMINAL LAW) AMENDMENT BILL

In Committee.

Clause 1 passed.

Clause 2—'Territorial application of the criminal law of the State.'

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

Page 2, line 14—Leave out 'applies to offences committed before or after its commencement but'.

First, can the Attorney-General indicate in what jurisdictions this legislation or similar legislation has been enacted? Will he indicate whether it has been enacted in those jurisdictions in identical form, and can he give an indication as to when it might be enacted in other jurisdictions where it is not already enacted?

The Hon. C.J. SUMNER: No, it has not been enacted anywhere else and I do not know when it will be.

The Hon. K.T. GRIFFIN: Do I take it from that that it will be enacted in each of the other State and Territory jurisdictions, or is this just hope and, if there is some doubt about that, looking at this Bill, it is going to come into operation when it is assented to, so would it therefore be wise that its operation be suspended until the measure is enacted in other jurisdictions?

The Hon. C.J. SUMNER: All I can say is that it has been considered by the Standing Committee of Attorneys-General over a long period of time and it has been the subject of extensive consultation by Solicitors-General and also, I think, by the Parliamentary Counsels' Committee. SCAG has endorsed the Bill for passage by Parliaments around Australia and we are just complying with that policy decision that has been made. As the honourable member knows, once these decisions are taken by the standing Committee the rate of implementation varies depending on the situation in each State, including the intervention of elections from time to time. So we are just doing our bit to implement the agreed policy of the Standing Committee. The Bill stands on its own, I am advised, so as to whether or not it is implemented in other States, although it is preferable that it is implemented in all other States, it does not need a coordinated, simultaneous introduction for it to have effect.

The Hon. K.T. GRIFFIN: The focus of my amendment is on the question of retrospectivity. I appreciated the Attorney-General's reply during the second reading stage and the fact that he addressed the various issues that I had raised during the course of the second reading debate. It is a difficult area, and I do not profess to be an expert in the criminal law area, and it was of assistance to have that reply and also to have some information forwarded to me on cases where a problem had arisen, that is, the problem to which this Bill addresses itself. But I want to focus now on the issue of retrospectivity.

I indicated during the second reading debate that I was concerned that the Bill applies to offences before or after its commencement but does not apply to an offence if a charge has been laid before the commencement of this section. Notwithstanding the Attorney-General's reply at the second reading stage, it seems to me that if there is going to be a retrospective application of this enactment it does have the potential to create some injustice. If it has been a problem for such a long period of time, and the cases would suggest that it has certainly been a vexed question for at least the past 10 years, and probably much longer, I wonder why it is necessary to apply it retrospectively and why it should not just be applied as from the date of this enactment. It seems to me that, as a matter of principle, that is the appropriate way to go. I know that in the course of the reply the Attorney said, 'Well, there may be a body somewhere where an offence has not yet been detected, where the issue might arise,' but all I can say to that is that, whilst I do not condone criminal acts, let the law apply as it has applied up to the enactment of this legislation and change the law from now, rather than giving it retrospective operation, which might in fact be, as he said, in—

The Hon. C.J. Sumner: It would look pretty good if there is a case, I tell you.

The Hon. K.T. GRIFFIN: It is what the law is.

The Hon. C.J. Sumner: Your mates won't be too happy with you. You had better talk to your Leader.

The Hon. K.T. GRIFFIN: So be it. These things may crop up, but are unlikely to crop up, and the fact is that the law is what it is, and one has to be very cautious about just retrospectively applying the sort of changes which apply here or in other legislation which is brought up.

The Hon. C.J. Sumner: But it facilitates the proof of the crime.

The Hon. K.T. GRIFFIN: It is not just a question of facilitation; it changes the law. Anyway, what I am proposing is to eliminate the aspect of retrospectivity completely, and it is in that context that I move my first amendment.

The Hon. C.J. SUMNER: As has been indicated, the effect of the amendments is to delete the partial retrospective operation of the Bill. As indicated in the second reading reply, I oppose these amendments. First, the Bill is only partially retrospective. It does not remove legal rights or entitlements accrued to any person by reason of their having been charged with a criminal offence at or before the time of commencement. Secondly, the Bill does not impose true retrospectivity at all because of its peculiar nature. In reality, the chance of any person being found guilty of a criminal offence where he or she could not have been found guilty because of the operation of the Bill is likely to be nil. There is one exception to that, which I will deal with in a moment.

There is a real possibility that there will be cases where a person could be found guilty of an offence in a State or Territory, where, under the old law, he or she would have had to be extradited to another State or Territory and found guilty there. The only possible prejudice that might be caused by this is the possibility that there might be such a difference in the criminal laws of one State or Territory compared with another, such that an accused person might be found guilty in one place, where the laws of the other are so different that the same facts would lead to acquittal.

I think that such cases would be extremely rare, but it is possible. Where the legislation really bites is the case in which the accused can in effect fold his or her arms and say, 'You might be able to prove that I am guilty but

you cannot prove where I did it.' These cases are again uncommon but I suggest to members that that sort of position is so devoid of merit or justice that it is entirely appropriate that the legislation should apply to such cases retrospectively.

As I said in a previous debate, it is not beyond the bounds of possibility that, for example, a hidden body could be discovered years after the event in a part of bushland close to a border. I think that members opposite, if they have not followed this and they probably have not, should understand that, if that situation eventuates and the prosecution establishes that there has been a murder but cannot establish where it has occurred, the people who committed the murder will escape justice. It is as simple as that; they will not be able to be prosecuted.

This Bill facilitates the prosecution by establishing a mechanism whereby the place of the murder can be identified. If members want to live with that I suppose it is fine, but it seems to me to be a peculiar situation that the Hon. Mr Burdett would want the murderer to escape in those circumstances and that is what he his doing by supporting, as I assume he his, the Hon. Mr Griffin's amendment.

The third point to be made is that if the Bill is not retrospective in the partial way suggested, two sets of practical problems will arise. The first is that, in the sort of case I have mentioned, the time at which the murder occurred will become an issue to be proved by the Crown if it wants to take advantage of the provisions of the Bill. The second is that if, for example, there is large scale interstate fraud involving a large number of interstate transactions, the course of conduct may fall on either side of the commencement date with the result that the Bill will apply in relation to some of the counts and not others. That would I think be a most unfortunate consequence.

The Solicitors-General, as I said, were involved in the preparation of this Bill, and I have consulted the South Australian Solicitor-General in order to obtain his views on this aspect of the Bill, and he has asked me to say that he agrees with the position that I have just outlined. So for these reasons I oppose the amendment.

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

Amendment negatived.

The Hon. K.T. GRIFFIN: The remainder of my amendments are consequential and I will not proceed with them.

Clause passed.

Clause 3 and title passed.

Bill read a third time and passed.

POLICE SUPERANNUATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 August. Page 245.)

The Hon. J.C. IRWIN: I support the Bill. In many ways the Bill tidies up the substantial changes that were made to the police superannuation arrangements in 1990. I understand that some discrepancies have been exposed, and this Bill seeks to deal with them to make the police scheme more consistent with public superannuation schemes. The changes proposed include clarification of the employees' salaries applying as at 31 March to determine the highest qualifying salary; lump sum benefits payable to a spouse when the contributor retires before the commencement of the Act; a determination that dismissed officers will be deemed to have retired; a reduction of benefits for a retrenched or invalided employee who returns to work; and allows demoted members to receive the benefits applicable in relation to the salary being received prior to the demotion on a *pro rata* basis. I believe this in itself creates an anomaly when compared with the arrangements for a dismissed officer, and I will return to that later.

I note that the Bill before us comes from the other place with an amendment moved by the Minister of Finance to section 4 (3), and again I note that the Opposition had no time to properly consider the Minister's amendment or consult on it prior to the Committee stage in the other place. I have no qualms at all about getting it right but I do have concerns, and have expressed them previously, about the Government amending its own legislation and not allowing sufficient time for the Opposition to properly carry out its duty to consult.

I have consulted with the shadow Minister, Mr Baker, on this amendment and with our limited resources we do now accept the amendment. It was a matter referred to by Mr Baker in the other place in relation to this amendment brought in by the Minister that we would try to consult in the time period between the passing of the Bill in the Assembly and its discussion here. In the time between the passing of the Bill in the other place and now we have not received any advice from the Police Association or others that the refinements made to section 4 do other than improve the drafting and clarify this section.

The proposed amendment to section 34 dealing with the resignations and the preservation of benefits is of concern to the Opposition. The Liberal Party views dismissal from the Police Force very seriously. It is our view that dismissal should not only carry with it the public stigma of being removed from the Police Force, a job which after all carries with it the responsibility of public trust more so than any other position I can think of in the public arena. We should, at some later time, consider adding a further burden of loss of benefit for an officer who has been dismissed. I said earlier this Bill fixes up a number of anomalies but it seems to me we also, by passing this Bill, if we do, create another anomaly.

I can accept some reasoning in the Police Association's stance on this point that the Police Superannuation Act is not an Act which itself should carry certain penalties for individual police indiscretion. Indeed, I do not think other superannuation Acts seek to carry individual penalties for misconduct. Maybe we should be making the provisions for dismissed officers consistent with the amendment I have already spoken about of demoted officers where they will suffer a penalty; that is obviously where there is an anomaly.

Section 22 (8) of the Police Superannuation Act of 1990 provides:

> For the purpose of this section, a contributor will be taken to resign if the contributor is not to be taken as having retired from employment pursuant to section 4 (8) and the contributor's

employment terminates or is terminated for any reason except invalidity, retrenchment or death.

The key words there, as far as I am concerned, are 'for any reason except invalidity, retrenchment or death'. It is this area which is of interest to me and to the points that I put now.

There are far too many areas now where people receive public money, offend against the public trust and walk away with publicly subsidised benefits intact and in place. The present police superannuation scheme is subsidised by the public in excess of 75 per cent because of the benefit it offers and the under-performance of the scheme's investments. The arrangements in the Bill to section 34 seek to retain all of the benefits. They seek to change the present arrangements where a dismissed police officer would receive now his or her contribution to superannuation plus interest. I am strongly of the opinion that the present scheme for dismissed officers is more correct in principle than the proposed amendment.

The police, above all others, spend their whole time imposing discipline on individuals in the community. Most of these penalties come from legislation passed by this Parliament. There is no reason why discipline should not be imposed on them as police officers—if you like, further discipline. In other words, police officers should think long and hard before putting themselves in a position which may result in dismissal. They will lose their job; there will be some public humiliation; and they will lose their benefit. Not every act against the public interest is on impulse. That is the excuse that is used quite often, that people who are offending against the public interest are mainly doing it on impulse and therefore they would not think, in the case of a police officer, that they may indeed lose their superannuation benefits as part of that discipline. As I say, some offences are indeed hatched up, practised and plotted with a certain degree of calculation. I do not expect there are many dismissed officers, but we in this Parliament should do all we can to make sure there are as few as possible; I am sure the public would accept that.

Dismissal is viewed as being a very harsh penalty because it is consistent with a serious offence. Police officers are not dismissed for negligence, unless it results in harm being done to others, or for minor breaches of regulations. Police officers are normally dismissed for serious offences. In these circumstances I cannot countenance why a person who may also be subject to the criminal law should have the benefits which are paid for by the taxpayer. The old pension superannuation schemes are subsidised by the State Government by as much as 80 to 82 per cent and the more recent scheme—the 1990 scheme, as I understand it—is subsidised by the taxpayers at about 75 per cent.

It is wrong in principle that a person who has transgressed to the point of being dismissed from the Police Force should benefit and continue to benefit by superannuation from the State Government. The argument cannot be mounted that this scheme can be regarded in any parallel sense with lump sum schemes in which officers might have placed a certain amount of money with a matching contribution by the State Government. Such schemes cannot be regarded as being the same as the 3 per cent provision, which will become 4 per cent in terms of the national wage case determination. So, we are looking at a situation in which the taxpayer will continue to pay the superannuation of a dismissed police officer, and I have extreme reservations about this and await the Attorney-General's explanation as to why this Parliament should in fact support this anomaly. It is not good enough for the Minister of Finance in the other place to have said in the debate:

The case is unanswerable. If a person has a contract for a superannuation scheme, I cannot conceive of any circumstances whatsoever where what that person has paid for superannuation to a given date should not be preserved. To take away retrospectively a benefit that has been purchased is absolutely abhorrent to me.

As I have already said, this is up to 75 per cent or more subsidised and I would have thought that a contract could and should include the possibility of a penalty if there has been an indiscretion.

The key to whether or not someone should receive benefits relates to whether that person has lived within the rules. There are a number of rules, including length of service, a minimum retiring age or satisfactory service over a period of time. Under the circumstances, if the person has failed to complete the minimum length of service, has not reached the minimum retirement age, or has not completed satisfactory service within the public sector then that person should not receive the long-term benefits that are paid by the taxpayers of this State having in fact, as I say again, broken a contract.

In the context of this debate and argument around clause 6, I refer to the proposed amendment to the Bill, to clause 3, which amends section 4 of the Act, and in the Minister's second reading speech he says:

An amendment is also sought to the provision of the Act which deals with the situation where a member's salary is reduced for a disciplinary reason. Under the existing provision the member's salary, after demotion, is used to calculate all benefits. The effect is that the accrued benefit, even up to the date of the misdemeanour, is retrospectively reduced through the application of a lower salary. The Government is concerned principally because of its retrospective aspect that the provisions can have a large and unintended financial effect upon the member's accrued superannuation entitlement. The Government believes a fairer and more appropriate arrangement in such circumstances would be to allow the member to retain the accrued benefit at the higher salary and continue to accrue a benefit applicable to the lower salary after demotion. The Bill seeks to amend the Act by introducing such an amendment as an arrangement and the Police Association supports the proposed arrangement.

It is interesting to note the Minister's comments about retrospectivity but just as interesting to note the arrangements for officers who have been demoted. They will cop a penalty for being demoted, not as severe as the Act now stands with respect to retrospective demotion but nevertheless a penalty. Why is it deemed appropriate for a penalty for a demotion, albeit a reduced penalty, but no financial penalty for a dismissed officer? This is surely an inconsistency that the Parliament must eventually address.

I accept, as does the Opposition, that police officers must conform to a higher standard of behaviour than most others in the community. It must cause considerable anguish for them as police officers to read about and indeed observe the activities of some in this State and nation who openly flout the law and suffer no consequence. Indeed, hundreds of people who through legal and accounting tricks walk away from financial disasters which, in many cases, have sent many innocent

people broke, but with a cash nest egg that no-one can touch.

Nevertheless, police officers have a special place of trust in the community. They should know from the start of their job that certain disciplinary measures apply, including a cash penalty, and it should be part of the contract. If this arrangement were to be at odds with other public superannuation arrangements for dismissed people, we should seek to amend the other schemes and not be inhibited from taking strong measures in this Act because no other Act has the same strong disciplinary measure. We will support the measures in this Bill, but I hope the Attorney-General takes note of the points raised and will furnish the Council with some explanation of the matters that were not adequately addressed by the Minister of Finance in another place. I indicate the Opposition's support for the Bill.

The Hon. R.J. RITSON: I wish to comment on the matters that were just referred to with regard to the disciplinary aspects and their effects on pensions. To give a slightly different perspective, if a person in a disciplined service such as the Police Force was convicted of a crime, the law deserves the appropriate punishment and declares what it shall be. Indeed, our society is based on the premise that we are all equal under the law, but more so being a policeman one would be liable to dismissal in order to set an example. That is in a sense a double jeopardy. I do not see why a triple jeopardy should be incurred, namely, the removal of a benefit earned while the person was in good behaviour.

I am not so concerned about the situation of a dismissed officer, although I agree that it seems rather anomalous that a demoted officer, in contrast to the dismissed officer, should suffer a reduction in benefits earned while previously of good behaviour. I have some sympathy, therefore, for the Police Association's view of this. However, I do not expect that we will be dividing on such matters.

Some years ago we had an equivalent situation in the Royal Australian Navy with respect to defence forces retirement fund benefits, and one of the penalties handed down by courts martial was a loss of so many months or years seniority. That sort of penalty had an effect upon a pension benefit if the officer so penalised were to resign or retire whilst of that reduced seniority.

So, this is not the first time that the problem has come up. I believe that appropriate penalties apply in law that can be handed down to anyone including police officers and that we are supposed to be equal in the law. A police officer is more likely to be dismissed for a minor offence than is a member of the general community, and I suppose that is in order to reinforce public confidence in the police. I do not see why a third level of jeopardy, most of it earned whilst the person was in good behaviour, should be applied. So, the Bill is at odds with itself in that regard. It is my belief that we will not divide on the issue. I support the passage of the second reading.

The Hon. C.J. SUMNER (Attorney-General): The Government believes that police officers should be able to preserve their accrued benefits, even if they are dismissed, for basically two reasons: first, the accrued benefit is part of their past remuneration package and, secondly, police officers in the old scheme, that is, the pension scheme, have paid for being able to preserve the accrued benefit by forgoing 1 per cent of salary of the productivity benefit which emerged in 1988. For those two reasons, including those outlined by the Hon. Dr Ritson, the Government believes that the Bill as is should be supported with the preservation of accrued benefits.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

The Hon. C.J. SUMNER: The Hon. Dr Ritson queried why the police officer who was demoted as opposed to being dismissed could not keep his accrued benefit. I am advised that clause 3 and the formula contained therein does enable the demoted officer to keep the accrued benefit up to the point of demotion and it then accrues after demotion at the lower rate. So, the problem raised by Dr Ritson is overcome by this Bill and there is no inconsistency in what the Government is doing.

The Hon. R.J. Ritson: It is a bit like the loss of seniority in the Navy.

The Hon. C.J. SUMNER: I do not know anything about the Navy—I get seasick if I go on boats. The Hon. Dr Ritson knows more about it than do I, and it may be the same as occurs in the Navy. However, the Bill with the formula that is set out in clause 3 is designed to ensure that accrued benefits are preserved as they were at the higher salary but after demotion they continue to accrue at the lower salary. That is consistent with what we are doing with dismissed officers and is the fair way to go.

The Hon. R.J. RITSON: If a senior officer had a maximum period of higher office—and we can use the parliamentary equivalent perhaps, because it seems to be that a higher salary is included in the formula—and he chose to resign a day after demotion, would his accrued benefit be virtually the same as though he had not been suspended?

The Hon. C.J. SUMNER: He would have one day at the lower salary rate; yes, that is right.

The Hon. R.J. RITSON: If indeed he applied himself with great diligence to recovering his position and was promoted back to his former level let us say two years later, would his ultimate retirement package after several years of service at the higher level be virtually the same as that under his initial position?

The Hon. C.J. SUMNER: Yes, he would not lose any benefit if after that period of demotion he returned to the same or a higher rank than he held at the time of demotion; his superannuation would not be affected.

The Hon. R.J. RITSON: So nothing that he earned credit for whilst in good behaviour would be lost to him?

The Hon. C.J. SUMNER: Yes, that is right.

Clause passed.

Remaining clauses (4 to 10) and title passed.

Bill read a third time and passed.

[Sitting suspended from 4.1 to 4.37 p.m.]

ACTS INTERPRETATION (AUSTRALIA ACTS) AMENDMENT BILL

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Declaration of validity of laws made before Australia Acts.'

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

Page 2, after line 7—Insert the following subsection:

(2) This section does not operate retrospectively and hence does not validate or affect the operation of a provision as at a time before the commencement of this section.

In the course of my second reading contribution I referred to the issue of retrospectivity and the likely unforeseen effect of this Bill, and that largely is the issue in respect of my amendment, that it is very difficult to indicate where this Bill is going to have a beneficial effect and a disadvantageous effect. During the course of my remarks I also referred to a specific example which had been drawn to my attention, and that was the glebe lands, where they were not granted under State law but pursuant to imperial law, and the suggestion that the passing of this Act might have the effect of invalidating those glebe lands.

The Hon. C.J. Sumner: What are they?

The Hon. K.T. GRIFFIN: I shall read from Halsbury, if you like. The Attorney did not answer this during the second reading stage.

The Hon. C.J. Sumner: The Solicitor-General does not know what you are talking about.

The Hon. K.T. GRIFFIN: Well he didn't bother to do any research, did he?

The Hon. C.J. Sumner: Rubbish. Get on with it.

The CHAIRMAN: Order!

The Hon. K.T. GRIFFIN: You've just been out for an hour—

The Hon. C.J. Sumner interjecting:

The CHAIRMAN: Order!

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: We are shirty today. What is the problem?

The Hon. C.J. Sumner: Just get on with it.

The CHAIRMAN: Order! The honourable Attorney will have a chance to respond.

The Hon. C.J. Sumner: It is just nitpicking away into every little Bill that comes through this Chamber.

The Hon. K.T. GRIFFIN: Well, maybe you ought to look at them properly before you bring them in. Maybe you ought to consult before you bring them in.

Members interjecting:

The CHAIRMAN: Order! The Committee will come to order.

The Hon. C.J. Sumner interjecting:

The CHAIRMAN: Order! The honourable Attorney will come to order.

The Hon. K.T. GRIFFIN: That is a lie. I do not nitpick on the Bills with a view to wasting the time of the Council. The Attorney-General has obviously had a bad day somewhere but he need not take it out on me and the rest of the Council.

Members interjecting:

The CHAIRMAN: Order!

The Hon. K.T. GRIFFIN: The Attorney ought to be pleased that at least I give some conscientious attention to the Bills that he brings into the Council—and I do it without the benefit of all the research facilities that he has got.

Members interjecting:

The CHAIRMAN: Order! The Committee will come to order. The Hon. Mr Griffin has the floor.

The Hon. K.T. GRIFFIN: Obviously something has trodden on the Attorney-General's toes, and I don't think it was me. If I bring matters before the Council they are genuine questions which I believe ought to be examined. It is quite obvious that, with respect to this Bill, the Standing Committee of Attorneys-General and the Solicitors-General Committee did not apply their mind to a number of the possible consequences of the legislation. If the Solicitor-General did not understand what a glebe was all he had to do was look up Halsbury and he would have got a few definitions of what glebe lands were. I am raising a point which has been made to be and which I think needs to be addressed, because there are glebe lands in South Australia, and they are associated with various branches of the church across South Australia. They were early grants of land for the benefit of churches, particularly attached to the Anglican Church, but also to the Church of Scotland and the Presbyterian Church, and those early churches, and some of those lands still exist.

The point in relation to glebe lands is that they were not granted under State law, but subsequent Acts like the Crown Lands Act purported to address the issue of all Crown lands. If the legislation that the Attorney-General has now brought before us is applied we run the risk of validating any exceptions which might have been current at the time of the enactment of the Crown Lands Act and therefore invalidating the grants of glebe lands. That is all I have been putting. If I did not put it explicitly enough in the second reading speech, I am sorry for that, but the Solicitor-General, presumably, could go and have a look at what was meant by glebe lands and look at the consequences of those grants and the consequences of later legislation passed in South Australia.

All that I am saying in relation to this particular Bill is that there are areas where there may be unintended consequences. Obviously they have not been addressed. It is a *carte blanche* piece of legislation and my amendment seeks only to apply it as from the date upon which this amending Bill comes into operation.

The Hon. C.J. SUMNER: The Government opposes the amendment. Basically it undermines what was intended to be done with this legislation. It does astonish me that the honourable member, as I have said, is prepared to engage in this sort of nitpicking with legislation of this kind—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Well it is—which basically is designed to overcome a potential problem if someone at some point in time challenges South Australian law and uses the fact that it is inconsistent with imperial legislation as a basis for challenging it. This will ensure that that cannot happen. I would have thought as a sovereign State independent of the United Kingdom now as a result of the Australia Acts that even the Hon. Mr Griffin would find that that was an acceptable position. Every Attorney-General in Australia finds it to be acceptable; the Solicitor-General has recommended it; but that is apparently not good enough for the Hon. Mr Griffin. I am not saying that it ought to be on every

occasion but I would have thought that where it is legislation which clarifies the current situation and where it is legislation that in effect upholds the validity of legislation passed by this Parliament the Hon. Mr Griffin would find it acceptable.

That is what this Bill is designed to do—uphold the validity of legislation passed by this Parliament—and not provide the basis for lawyers to head down to the Supreme Court and argue that legislation passed by this Parliament is inconsistent with some obscure imperial law which they probably did not advert to at the time the legislation was passed and which in any event we have clarified by the passage of the Australia Acts. I find that that approach is just astonishing, because what the honourable member is not prepared to do apparently is to uphold the laws that have been passed by this Parliament. That is what this Bill—

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

The Hon. C.J. SUMNER: That is what you are doing.

The Hon. K.T. Griffin: You don't understand the argument I am putting.

The Hon. C.J. SUMNER: I do understand the argument you are putting. In fact, I answered it in the response that I gave on the second reading, as follows:

> 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.

If what the honourable member is talking about is his so-called glebe lands I do not see that this legislation is going to affect that in any event. It basically ensures that what we did with the Australia Acts in 1986 applies to legislation that was passed prior to 1986 by this Parliament and it avoids the technical point being taken that legislation passed by this Parliament is inconsistent with some imperial law. That is all it does. I would have thought it was sensible legislation but apparently that is not the view of the honourable member.

The Hon. I. GILFILLAN: It is unfortunate that the Attorney chose this occasion to criticise the contributions of the Hon. Trevor Griffin. There are times when I wish he was a little less long-winded but basically the quality of his contributions are admirable and I think he does contribute to the basic purpose of this place which is the analytical review of legislation. I would argue in his defence that I do not believe that at any time he deliberately takes a tactic which delays the process of this place. In fact, I would say that the performance of the Attorney is sort of John McEnroeish: it is sort of like someone who is nearing retirement and who is letting his irked reactions overtake good judgment. Fortunately that does not apply all the time. I stand to defend the Hon. Mr Griffin—not that he needs it. His contribution in raising this amendment is well within the bounds of proper and responsible involvement in this place. Having said that, I indicate that I will oppose the amendment.

The Hon. K.T. GRIFFIN: I do not want to prolong this debate between the Attorney-General and me. Quite obviously the Attorney-General is rather testy; maybe he has something else that he has to learn about such as public sector reform or perhaps he has to come to grips with some foreign subject which challenges him in Government. I do not know what his problem is. If one looks at the proposed—

The Hon. C.J. Sumner: Basically it is you.

The Hon. K.T. GRIFFIN: You can be as offensive as you like; I do not mind.

The CHAIRMAN: Order!

The Hon. K.T. GRIFFIN: I can live with my conscience about the job I do in here.

The CHAIRMAN: Order! Every member is entitled to put a viewpoint and be heard in the Chamber without the interruption of another member.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. Griffin: You must be easily driven silly if that is all it takes to drive you silly.

The Hon. C.J. Sumner interjecting:

The CHAIRMAN: Order! The Hon. Mr Griffin has the floor.

The Hon. K.T. GRIFFIN: It seems to me that clause 4 of the Bill is open to the interpretation to which I have referred; that it is not just a matter of preserving existing rights but that it is a matter of overriding those rights if it has the effect of validating earlier enactments of the South Australian Parliament, perhaps in the past century or even this century, where in the interpretation of those South Australian statutes it might be presumed that grants such as glebe grants and land grants may have been subsumed by Acts such as the Crown Lands Act. All I want to do is to ensure that people who have those sorts of rights are not prejudiced by this. That is the major aspect of it that concerns me. If the Attorney-General and the Australian Democrats are not going to support me that will be on their heads. I have drawn attention to the problem. I have done the best I can and I have been outvoted.

The Committee divided on the amendment:

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

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

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Title passed.

Bill read a third time and passed.

COURTS ADMINISTRATION BILL

Adjourned debate on second reading.

(Continued from 7 October. Page 375.)

The Hon. I. GILFILLAN: On reflection I believe there is merit in referring this Bill to the appropriate Standing Committee. There are several reasons but I will just enumerate a few which have brought me to make this decision. First, it is quite a substantial change in the method and structure with which the court systems would be conducted and controlled in this State. I have concerns about the structure and decision making of the judicial council. There are other questions as to what involvement there would or should be in the Industrial Court; what if any contribution directly from the Juvenile Court; but more important than my own uncertainties and questions is the contribution that I believe the standing committee

structure of this Parliament was set up to achieve, and that is to allow for a wider forum of taking evidence, considering input from a diverse series of those who have an interest or experience and then reporting to this Parliament for the deliberation by the members before proceeding with the legislation.

It may be argued that this is an unnecessary delay. I do not believe it is an unnecessary delay nor do I believe it should be a particularly long delay. The committee concerned receiving, as it could, a motion directly from this Parliament has the matter high on its priority list, and I believe that it could well be, if it is the wish of this Parliament, a specific request that the committee deal with it as expeditiously as possible, and if, as has been mentioned to me by the Attorney-General, there is general agreement on the legislation and the standing committee, on receiving submissions in evidence on that, is convinced of that fact, then I do not see why there would be any particular delay in the sense that months will go by before the report could be tabled in Parliament. Because of those matters I believe it is appropriate for this Bill to be referred to the Legislative Review Committee and intend to support that move.

The Hon. C.J. SUMNER (Attorney-General): I will close the debate. There is no point in referring this to the Legislative Review Committee; it is a total waste of time. In my view the committee system, which I had a lot to do with, was not set up to obstruct legislation, but if Bills like this are going to be referred to the Legislative Review Committee then that is the mode we are in and I guess we just have to cop it. I have said before that the Hon. Mr Griffin nitpicked his way through legislation and did his best to delay dealing with legislation in the Council and that regrettably is a fact, something I have become used to over the last decade, but something that I have had to live with.

The Hon. K.T. Griffin: Why are you testy?

The Hon. C.J. SUMNER: Not at all. I have had to live with that a long time, as the honourable member goes through and puts in his commas, semicolons and dot points through the Bills that we have to deal with. He should have been a parliamentary counsel; perhaps that should have been his real role in life. Perhaps the real reason he does not want to get on with it is that he is too busy out fighting his preselection battles and arguing with the Hon. Mr Davis, who seems to be running around in a fair state of agitation at the moment, but that is something the Liberal Party can sort out. I just wish it did not impinge on the parliamentary program.

There is no point in referring it to the Legislative Review Committee; it is a straight out obstruction. The issues of principle in this Bill can be dealt with by this Council as a whole. The Bill is not of such a technical nature that it needs the attention of a committee. While it does introduce some new principles, those principles are well known through the various reports that have been done and, as a matter of principle, it simply does not need to go to a committee. The Council can make a decision on that; it is not a complex piece of legislation. However, the Council has decided it will be referred to the committee and that is the end of that; I am not going to worry about it any more. However, the Hon. Mr Griffin made a number of comments which I will reply to. Whether he wants me to bother now I am not sure; perhaps there is no point; perhaps I could write him a letter or something and save everyone the time.

An honourable member interjecting:

The Hon. C.J. SUMNER: That is right, you do it in a public place and then refer it on to a committee; it is a total waste of time as I said. It is a pointless exercise if ever I have seen one. It means the committee system is being abused. It was set up to facilitate the procedures of the Parliament; it is now being used to obstruct the business of the Parliament. As I said, if that is what people want then that is fine.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I thought the committee would be a boon to the Parliament but experience so far is that it is really just being used by Opposition members for their own political purposes when it suits them and this is another example.

The Hon. K.T. Griffin: It was used by Mr Groom for his political purpose.

The Hon. C.J. SUMNER: And pretty successful he was. I do not know what you are talking about; he was pretty successful. The honourable member made a number of remarks. I will respond as follows.

The honourable member misunderstands the position in relation to the ministerial arrangements for accountability to Parliament in respect of the budget process for the new Courts Administration Authority. The South Australian Bill clearly follows the Commonwealth models set out in the Commonwealth Courts and Tribunals Administration Amendment Act 1989, which assigns to the Federal Attorney-General the statutory responsibility of approving budgets and estimates for the Family Court, the Federal Court and the Administrative Appeals Tribunal: see sections 24U, 38V and 18V respectively of the Courts and Tribunals Administration Amendment Act. The High Court, under section 36 of the High Court of Australia Act 1979, as amended, has similar obligations to prepare estimates in such forms as are approved by the Minister, and appropriated moneys are not to be expended except in accordance with the estimates of expenditure approved by the Minister.

The Courts Administration Bill has been prepared in conformity with the principles of the Public Finance Act and bearing in mind the fundamental constitutional axiom that it is for the Parliament to grant appropriations, and that ultimate responsibility for financial accountability rests with the Minister, and the Parliament, as the supreme legislative body in our democratic constitutional structure. Financial accountability for courts administration must imply managing budgets within parliamentary appropriations.

Secondly, the honourable member should be aware that all the jurisdictional heads (Chief Justice, Chief Judge and Chief Magistrate) participated in the establishment committee which produced the report upon which this Bill is based. The Bill enables the Judicial Council to assume and to discharge responsibilities for the administrative affairs of the courts—but of course, the Judicial Council is assisted in these tasks by the State courts administration, and by the other staff of the Courts Administration Authority. The essence of the Bill is that the Judicial Council is empowered to administer the

courts, independently of control by executive government, but assisted by specialist courts administration staff who are subject only to the control and direction of the Judicial Council.

Thirdly, the present jurisdiction of the Ombudsman in relation to complaints about matters of courts administration will remain unchanged.

Fourthly, the Courts Administration Authority will be subject to the normal parliamentary processes of scrutiny by parliamentary committees.

Fifthly, as I have earlier indicated, there is no barrier or inhibition to the attendance of members of the Judicial Council before the Estimates Committees. However, I do expect that, in the normal course of events, there would be no requirement or necessity for the members of the Judicial Council to attend before the Estimates Committees—I anticipate that the Minister, the State courts administration, and the senior staff of the Courts Administration Authority will attend and will be able to satisfy members of the Estimates Committees as to all matters of accountability for expenditure of public moneys, and administration of the statutory authority. I do not think it assists for the honourable member to speculate as to the attitude or views of any individual members of the Judicial Council in relation to their responsibility to Parliament. I am satisfied that the Bill enables the attendance of those members of the Judicial Council before Estimates Committees on such occasions as may be required.

Sixthly, as to the questions of composition of the Judicial Council, I advise that the Chief Justice, whose views in the circumstances I regard as very highly persuasive and critical to the essence of the proposal, strongly supports the proposals set out in clause 7 of the Bill. Honourable members will note that associate members, appointed by each jurisdictional head may attend meetings of the council in a non-voting capacity, and may, when acting as deputies and in the absence of a council member, act as a full member of the council.

Seventhly, consideration was of course given by the establishment committee and by the Government to whether the Industrial Court might be included in the model. Honourable members will be aware that the Industrial Court has had separate administrative and ministerial arrangements from the other courts for a considerable time, and in addition there is a process of vesting Industrial Court judges with Federal jurisdiction, and indeed with Federal appointments. The State Government is of the view that it is not appropriate at this time to include the Industrial Court in the Courts Administration Authority—but, of course, clause 4 *(f)* enables 'participating courts' to be brought into the scheme from time to time.

Eighthly, the name 'Judicial Council' has been recommended by the Chief Justice and, properly understood, emphasises that the legislation establishes, in essence, a judiciary based courts administration model—that is, the Judicial Council is comprised of the judicial heads of the relevant courts.

I also refer the honourable member to clause 5 of the Bill—the Judicial Council, the State Courts Administrator and other staff of the council are collectively referred to as the Courts Administration Authority.

Ninthly, as to the decision-making process of the Judicial Council (clause 9 of the Bill), the draft reflects the essential and pre-eminent position of the Chief Justice as the presiding officer of the council: it is clearly unthinkable that decisions could be made affecting matters of courts administration without the Chief Justice's support, given the Chief Justice's role at the apex of the State's courts, and bearing in mind the Chief Justice's statutory responsibilities, and the historical conventions governing the Chief Justice's position and powers.

10. I refer honourable members to clause 15 of the Bill in relation to the question of control of property. After investigation into the legal aspects of dedication, registration and vesting of buildings for court purposes, it was considered unnecessary and cumbersome to transfer titles of registration, etc., from the Crown (or relevant Ministers) to the council. The formula adopted by the Bill enables the council, consistently with proper notions of jurisdictional independence, control and accountability, to exercise management and control over 'courts' related property. There will be no difficulty of the nature put forward by the Hon. Mr Griffin. Honourable members will note that clause 26 (3) *(b)* provides that 'The council must ensure . . . that proper control is maintained over the Council's property, or property in the council's control.'

The State Government will retain ownership of most court facilities, and will be responsible for the provision of 'new' facilities, and for the decisions as to where new court facilities might be placed.

11. I point out that pursuant to clause 28 (2), liabilities that would otherwise attach to persons engaged under the Act in functions related to the administration of a participating court attach to the Crown. The Judicial Council is expressed, by clause 6 (9) of the Bill, to be an instrumentality of the Crown. Proceedings by or against the Crown are regulated by the Crown Proceedings Act 1992—see particularly section 5. Similar provisions dealing with liability and immunity are contained in the Commonwealth legislation—see sections 24W, 38X and 18X of the Courts and Tribunals Administration Amendment Act 1989 dealing with proceedings arising out of the administration of the Administrative Appeals Tribunal, the Family Court and the Federal Court respectively. No difficulties have been experienced or perceived in these areas in the Federal sphere.

I also draw attention to the declaration of interest provisions governing the position of the State Courts Administrator (clause 16 (3)): the provisions of Part M of the GME Act (particularly sections 65 and 66 dealing with disclosure of pecuniary or other interests) which cover all other staff of the authority.

12. All senior staff of the council, including registrars if such positions are prescribed pursuant to clause 18, will be subject to Part 3 of the GME Act: all other staff will be appointed by the Administrator or pursuant to the GME Act.

13. The appointing authority for senior staff of the council is the Governor, and the appointing authority for other staff is the Courts Administrator. The disciplinary authority for senior staff, and all other staff, is the State Courts Administrator, and clause 22 makes provision for lines of responsibility for staff to the Administrator, or, if

the position relates to a particular court, to the judicial head of that court.

14. The power of the Judicial Council to revoke determinations of the Commissioner for Public Employment, and to otherwise exercise the powers of the Commissioner for Public Employment, are necessary concomitants of the fundamental shift in responsibility from an executive based courts administration to a judiciary based administration. Honourable members will note that the Commissioner for Public Employment is required to consult with the Judicial Council before making determinations that relate specifically to council staff—and this vital consulting mechanism will, without doubt, reduce to a bare minimum areas of potential conflict. At the end of the day, it is essential that the Judicial Council have the capacity to direct and manage their own staff, but it is also clear that there is no desire whatsoever to supplant or overturn the general content of the determinations and instructions issued by the Commissioner for Public Employment.

15. As to the issue of delegation of the Judicial Council's powers (clause 12 of the Bill) it is clear that it may in many cases be convenient for a delegation to be made to, for example, State Courts Administration, in respect of the Judicial Council's powers to enter into contracts or arrangements, or to acquire or hold real or personal property, or for the State Courts Administration to act as a delegate of the Judicial Council in respect of any of its other powers under clause 11. The provision of a delegation power is not intended to, and does not, supplant the fundamental role and functions of the Judicial Council—the provision is merely facultative and enabling, and does not derogate from the council's power to act itself in any matter.

I do not consider it necessary or desirable to make express provision compelling judicial heads to disclose interests in matters before them. As honourable members will be aware, members of the judiciary are more keenly aware than anyone of the necessity to disclose interest in cases that come before them, and I am confident that the judicial heads constituting the Judicial Council will, without more, honourably discharge to the fullest extent, duties of diligence and honesty, and will disclose any conflicts of interest in proceedings or decisions before the council. However, if it is thought desirable, I would be prepared to consider an amendment dealing with conflict of interest.

I have already covered the question of indemnities for members of the council: the Bill does no more than reflect the Commonwealth position, and assimilates the council as an instrumentality of the Crown for the purposes of the Crown Proceedings Act.

Bill read a second time.

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

That, contingently on the Courts Administration Bill being read a second time, the Courts Administration Bill be referred to the Legislative Review Committee for consideration and report.

I presume that the Attorney-General is happy that this debate go on now.

The Hon. C.J. Sumner: Yes, get on with it: get on with it.

The Hon. K.T. GRIFFIN: Stop telling me to get on with it. I only asked you as a matter of courtesy whether it was something you wanted to proceed with now; that's all.

The Hon. C.J. Sumner: Well, get on with it.

The Hon. K.T. GRIFFIN: Okay!

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Well, I haven't failed to show up, Mr President.

The Hon. C.J. Sumner: You sit around for weeks doing nothing.

The PRESIDENT: Order! The honourable Attorney will come to order.

The Hon. K.T. GRIFFIN: It is obvious what has made the Attorney-General tetchy: he will obviously not get his way for a change on this Bill.

The Hon. T.G. Roberts: We are concerned that you will come up with seven; we are a bit worried about you.

The Hon. K.T. GRIFFIN: I'm not worried: my priorities are the Parliament, and the preselection comes second.

The Hon. C.J. Sumner: You've got to crack open the champagne first.

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

The Hon. K.T. GRIFFIN: I won't be buying you champagne; I can tell you that.

Members interjecting:

The PRESIDENT: Order! It is getting very tedious listening to that interchange.

The Hon. K.T. GRIFFIN: It is tedious listening to it, too, Mr President. The intention of referring the Bill is to ensure that some of the issues of principle are examined in relation to the establishment of the statutory authority. I have raised a number of issues in the second reading. Some of them have been answered adequately: others have not. It is important to give the Legislative Review Committee an opportunity to peruse it and also to give others who have an interest in this issue, too, an opportunity to make submissions to that committee. I recognise that the Government has the numbers on the committee, so it may control the affairs. I do not believe that the committee is going to—

The Hon. M.S. Feleppa: That doesn't mean that the committee will not do the right thing.

The Hon. K.T. GRIFFIN: I was just about to say that. The Hon. Mr Feleppa has said that that does not mean that the committee will not be seeking to do the right thing, and I am pleased about that. I would never believe that the Hon. Mr Feleppa would not give this proper consideration. But it does raise some important issues. It sets up a new statutory authority for the administration of the courts. There is an issue of accountability, as well as liability, and the interrelationship between the Executive and the judiciary. It seems to me that the Legislative Review Committee is the appropriate body to conduct that investigation.

I am not fussed if the Attorney-General wants to propose that some deadline be set on the work of the committee. It must be a realistic deadline and not something which requests the committee to deal with it within a week or two weeks. I would have no difficulty with that, because it is an issue that we do need to address.

The Attorney-General did say in his second reading reply as an opening gambit that he thought that the committee system was being used to obstruct the business of the Parliament and that the intention of establishing

the committees was being abused. I would suggest that that is not the case. The very intention of establishing the committees—in a form which the Opposition did not support, I should remind the Attorney-General—was to enable Bills of this nature to be considered by the various standing committees.

It is on the record that the Liberal Party wanted to have a different structure for parliamentary committees; but we have a committee system and we ought to ensure that it is used effectively. It is certainly not being used in this instance to obstruct the business of the Parliament. The issues which the Opposition has raised are important, and they need to be explored, and undoubtedly we will be exploring them in more detail, whatever the report of the standing committee.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: That's not necessarily so.

The PRESIDENT: Order!

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order, the honourable Attorney-General!

The Hon. K.T. GRIFFIN: That's not so. I have indicated that we are prepared to support the concept, and that is why we have supported the second reading of the Bill. A number of important issues of principle must be worked through, and the Legislative Review Committee is the important committee which can undertake that task. We will debate the report when it comes back. It may be that they are—

The Hon. C.J. Sumner: It won't change your mind on it.

The Hon. K.T. GRIFFIN: Well, it may: you don't know. I have raised the issues.

The PRESIDENT: Order, the honourable Attorney!

The Hon. K.T. GRIFFIN: You don't know: I've raised the issues.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: You do not know.

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: You really are on the wrong side of it today; you are anti-everything because it is going to the committee; that is the reason why you are now off side. We have facilitated not only in this Bill but in other legislation a consideration of the issues which are raised by the Bills which the Government introduces. We make a number of proposals. Privacy is one where the Attorney-General has had to bow to the will of the Independent Labor members, as he has had to bow to the will of Independent Labor members on other issues. I suppose that is another reason why he feels he is losing control of the situation. In any event, I hope that the Council will support the reference to the committee.

The Hon. I. GILFILLAN: I support the motion. As indicated in my second reading speech, it may be good reason to indicate a need to finish the report as rapidly as can be properly done by the committee. There may well be a problem with having the staff to allocate to the task—and I am not sure of what is the capacity within the committee to deal with this Bill forthwith. It may be appropriate for an officer with legal expertise to be seconded to the committee so as to expedite its work in this matter and also to provide that firsthand expert assistance to the committee. Under those circumstances, I should hope that we would get a rapid report from the committee, and I would be quite happy to support a motion which puts a requirement that it report back to Parliament within six weeks or two months.

The Hon. C.J. SUMNER: We could do it in six days. I have indicated that I oppose this motion. There is no point to it. As I said, the Parliament has dealt with many more complex Bills than this through the normal parliamentary system. Just because we have a committee system does not mean that every Bill should be referred off to it. The issues of principle involved in this, while important, are not that difficult to grasp for the average member of Parliament or for the Hon. Mr Griffin. I would have thought that he could cope with it in the normal Committee stages of the Parliament. However, he feels unable to do so and, therefore, has moved that this Bill be referred to the committee.

The concept is not complex, although important, nor is the drafting, yet we must go through this process of referring it to a committee. As I said, there is no need: it can be dealt with. We have dealt with much more complex matters than this on previous occasions without the delay. I make it quite clear that there is no doubt in my mind that this is a tactic of the Opposition to delay the Government's program so that it can use that politically by saying that the Government cannot get on and govern.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That is what you are interested in. It can be the only possible reason for referring this to a committee: there is no rational reason for it and the only possible reason is a political one. That is fine, but all it does is waste everyone's time. It wastes the time of the Hon. Mr Feleppa and members of the committee, it wastes Parliament's time and the time of all the people who have to come and give evidence before the committee. And I will say this—and I say it with conviction: that, when the report of the committee comes back, the Hon. Mr Griffin will not take one jot of notice of it. He will just go ahead with the issues that he has already raised in this Parliament and will move amendments to give effect to the issues he has raised in this Chamber up to this time, no matter what the committee says.

That will be the position. He will move his amendments in accordance with the concerns he has expressed during the second reading speech, no matter what the committee says. I am quite happy to put that on record, because I am absolutely sure that that is what the honourable member will do.

The Hon. I. Gilfillan: You've said that: that is the second time you have put it on the record.

The Hon. C.J. SUMNER: I know that. So what?

The Hon. I. Gilfillan: You're wasting the time of Parliament.

The Hon. C.J. SUMNER: That is all right: it is not the first time that has happened—including by the honourable member from time to time, I have noted. However, I wish to move an amendment to insert after 'report' the following words:

and that the committee be requested to deal with the matter as a matter of priority and, in any event, to report back to the Legislative Council by 18 November 1992.

I put it as a request because I do not think that we can require the committee to have a reporting date unless we do it by message from both Houses, as it is a joint committee. I think that we can request the committee to treat it as a matter of priority and request that it report back by that date, which I do not think is an unreasonable time frame in which to report on a matter that is not particularly complex.

The Hon. K.T. GRIFFIN: I have no difficulty with the Attorney-General's amendment. I have not sought to impede the business of the committee or the Legislative Council and if the committee does feel able to address the issues, call its evidence and prepare a report by 18 November, so be it. But there are some important issues. Perhaps the legislation is not the most complex we have had to deal with, but it does raise some important issues about the separation of powers, the independence of the judiciary and questions of accountability of the judiciary through the Judicial Council to the Parliament for expenditure, for its administrative Acts and for other matters that need to be addressed.

I wish to make only one other observation. The Attorney-General has said that this is a tactic to delay the business so that, somehow, on this side we can argue that the Government is not getting on with the job. There are many other more important issues, such as WorkCover, on which we can argue that the Government is not getting on with the job. I do not know why we should bother to employ that tactic on an issue such as this, which certainly does not have any public political appeal, compared with issues such as WorkCover and Government administration.

All I can do is reassert that this is not a tactic to delay but is a genuine attempt to have the important issues of principles examined by the committee over a period of a few weeks to give those who have an interest in it to focus upon those issues that have some important constitutional ramifications.

Amendment carried; motion as amended carried.

COMMERCIAL ARBITRATION (UNIFORM PROVISIONS) AMENDMENT BILL

In Committee.

Clauses 1 to 8 passed.

Clause 9—'Representation.'

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

Page 3, line 2—Leave out '$20 000 or such other amount as is prescribed instead by regulation' and substitute '$5 000'.

I have indicated that there ought to be some consistency between the issue of representation of parties in arbitrations with representation of parties in the normal court system. Instead of $20 000 I am proposing that it be $5 000, the amount of the jurisdiction of the small claims court. Although the working party appears to have reached a conclusion that $20 000 is about the level at which representation is sought by the parties it may be that, particularly where you have non-judicially trained arbitrators, something less than that is appropriate. In any event, it is the question of consistency that I think is important.

The Hon. C.J. SUMNER: The Government opposes the amendment. The honourable member suggests that $5 000 should be the limit below which legal representation is not permitted. As I said earlier, the $20 000 figure was chosen by the working party as it had evidence that, in practice, it was uncommon for legal representatives to appear in disputes involving less than $20 000. The present provision does not mention a figure; it refers only to a prescribed amount. The Bill provides that the amount is to be $20 000 or such other amount as is prescribed. I prefer to see the Bill remain as it is. Not only is it in accordance with the legislation in other States but it allows a sum of less than $20 000 to be prescribed if that is considered desirable.

The Hon. I. GILFILLAN: I oppose the amendment. I think that the figure of $20 000 in most cases should be able to be arbitrated without automatic access to a legal practitioner to be involved. I take the point made by the Attorney-General that the drafting in the Bill allows for a prescription by regulation of a lower amount. Also, of course, in subsection (1) *(d)* the arbitrator or umpire can give leave for such representation if he or she so determines. So I do not see a supportive argument for the amendment and I oppose it.

The Hon. K.T. GRIFFIN: I acknowledge that there is the provision in the Bill, as there is in the principal Act, that the amount may be changed by regulation, and during the second reading debate I indicated that, whilst we would not normally agree with that sort of provision, we had agreed to it in the original Bill in 1984 because it was in all States' legislation. So this is one of those exceptions, where we are not taking the point about the prescription by regulation. I presume from what the Attorney-General has said that, notwithstanding his suggestion that it may be prescribed at a lower level, there has been no discussion about that occurring up to the present time.

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

Amendment negatived; clause passed.

Clause 10 passed.

Clause 11—'Substitution of subsections 26 and 27.'

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

Page 6, line 7—After 'is' insert 'not'.

Clause 11 deals with various provisions relating to arbitration proceedings. New section 27 deals with the settlement of disputes otherwise than by arbitration, and in subsection (1) the parties to an arbitration agreement can seek settlement by conciliation or similar means and may authorise an arbitrator or umpire to act as a mediator, conciliator or non-arbitral intermediary. Subsection (3) provides that unless the parties otherwise agree in writing an arbitrator or umpire is bound by the rules of natural justice when seeking a settlement under subsection (1). Again, I note that the working party did give some consideration to the options available for a mediation and conciliation and they concluded that there ought to be an opting out provision in relation to the rules of natural justice rather than an opting in. I just think it is rather curious that an arbitrator or umpire who is seeking to conciliate is bound by the rules of natural justice.

The parties do not have to agree to the proposition which is made by the arbitrator or umpire and then it can go to formal arbitration, where the rules of natural justice apply. But whilst there is negotiation and conciliation, it seems to me that a requirement that the umpire or

arbitrator be bound by the rules of natural justice may be an inhibiting factor. I notice in the Attorney-General's reply he said that he believed that there is some flexibility for arbitrators or umpires, even within the rules of natural justice, for seeing one party in the absence of the other and, in effect, carrying messages from one to the other or gaining an assessment of one party's point of view in private as opposed to another.

It seems to me that that is likely to be questionable in the context of the rules of natural justice, and it is for that reason that where we are talking about conciliation the appropriate course, in my view, is to allow the arbitrator or umpire to have a fairly free hand and then make a proposition for settlement. If the parties do not like it, the parties can then take it to formal arbitration. The risk, I suppose, is that if the arbitrator or umpire is bound by the rules of natural justice, negotiates, and a settlement is effected, the question arises whether the agreement to the settlement at the time can subsequently be set aside if it is demonstrated that the arbitrator or umpire in undertaking the conciliation process in fact did not comply with the rules of natural justice. It seems that that gives an out for one of the parties who might subsequently have second thoughts about the settlement. It is for that reason that I think it is more appropriate to provide that, unless the parties otherwise agree, the arbitrator or umpire is not bound by the rules of natural justice when seeking to reach a conciliated settlement—that is apart, of course, from the formal arbitration process. It is on that basis that I therefore move the amendment.

The Hon. C.J. SUMNER: The amendment is opposed. The honourable member's amendment would have the effect that the rules of natural justice would not apply in the mediation process unless the parties otherwise agree. In other words, it reverses the position that is in the Bill. As I said in my second reading speech, the preferable view is that natural justice applies where an arbitrator has attempted to settle the dispute before proceeding to arbitration. The provision in the Bill makes it clear that this is so, but at the same time allows the parties to agree not to be bound by the rules of natural justice. It is far preferable that the parties should have to opt out rather than opt in. The Institute of Arbitrators (South Australian Chapter) suggests that, whilst parties may agree on the results of a mediation, they may subsequently take action to set aside the determination because the rules of natural justice have not been applied. It may be that if the rules of natural justice were not observed then agreement could be reached to the disadvantage of a party. If such a party should discover this, then I think it right and proper that the party should be able to apply to have the agreement set aside.

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

Amendment negatived; clause passed.

Clauses 12 to 14 passed.

The CHAIRMAN: Before proceeding, I advise the Committee that clauses 14, 15 and 17 have had clerical corrections made to them, of which I think members are aware.

Clause 15—'Judicial review of awards.'

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

Page 8, lines 24 to 30—Leave out paragraph *(b)* and substitute:

> *(b)* there is a manifest error of law on the face of the award and that the determination of the question may be likely to add substantially to the certainty of commercial law.

I drew the attention of the Council to the view of the Institute of Arbitrators (South Australian Chapter) about section 38 (5), and the amendment that is proposed. The institute's view—a view that I share—is that the way in which this is proposed to be enacted will create more problems than certainty in determining when an appeal will be allowed. Under the existing subsection (5) of section 38 the Supreme Court shall not grant leave to appeal unless it considers that, having regard to all the circumstances, the determination of the question of law concerned could substantially affect the rights of one or more of the parties to the arbitration agreement and may make any leave which it grants conditional upon the applicant for that leave complying with such conditions as it considers appropriate. That is broadened out now to include:

> Having regard to all the circumstances the determination of the question of law concerned could substantially affect the rights of one or more parties to the arbitration agreement and there is a manifest error of law on the face of the award or strong evidence the arbitrator or umpire made a error of law and that the determination of the question may add or be likely to add substantially to the certainty of commercial law.

So, you introduce two options rather than what I am proposing, and that is the one option. Strong evidence is something relatively unknown to the law as a concept whereas manifest error is something which has been addressed by the courts on a number of occasions. It is that focus which I believe ought to be made and which is the subject of my amendment.

The Hon. C.J. SUMNER: The amendment is opposed. The provision in the Bill relating to judicial review is based on the recommendations of the working group. The leading English case on this area of the law is *The Nema* case (1982) AC 724. The working group recommended that section 38 be expanded to specify the circumstances in which a court may exercise its discretion. In particular the working group considered that the guidelines set out in *The Nema* and other relevant authorities should be incorporated into the Act. Proposed new sections 38 (5) *(b)* (i) and (ii) are different tests: (i) will allow an appeal where there is a manifest error of law and (ii) will allow an appeal where there is strong evidence that the arbitrator or umpire made an error of law and that the determination of the question may add or may be likely to add substantially to the certainty of commercial law.

So, one or other of those tests will enable a court to review the decision. I think it would be totally wrong not to allow an appeal where there is a manifest error of law, that is, an error of law that is plain to see. Parties to arbitration are not agreeing that the arbitrator can determine their dispute with total disregard of the law. The amendment proposed by the Hon. Mr Griffin alters the provisions so there is only one test—a manifest error of law—and the determination of the question may be likely to add substantially to the certainty of commercial law. This in the Government's view is unacceptable. A manifest error of law of itself should be enough for an appeal. I point out also that the Bill is a uniform measure and the amendment proposed would alter significantly that uniformity.

The Hon. I. GILFILLAN: I agree that there is a change in the amendment proposed deleting one option that is spelt out in the Bill. As the Attorney pointed out, the difference between subparagraphs (i) and (ii) is quite clear so that the merged amendment would virtually eliminate the option for a judicial review purely on the basis of error of law. I suppose one could ask a question, but it would be purely academic: what is the difference between a manifest error of law and strong evidence that an arbitrator or umpire made a error of law? I am not clear that the actual difference in wording means anything different, but for the record I would ask that question of the Attorney: is there a clear difference between the significance of the wording in (i) 'a manifest error of law on the face of the award' as compared with (ii) 'strong evidence that the arbitrator or umpire made a error of law'?

The Hon. C.J. SUMNER: There is a distinction, I think. A manifest error is an obvious one—one that is clear on the face of the determination.

The Hon. I. Gilfillan: Clearer than strong evidence?

The Hon. C.J. SUMNER: Yes, I believe so. You are talking about something that is so obvious that anyone picking it up would say, 'That is wrong. He has made an error of law. It is manifest. It is obvious. It is apparent on the face of it.' The honourable member may not be able to see the distinction but I am sure that some lawyer will undoubtedly be able to argue about it, that is, a distinction between a manifest error of law and strong evidence that the arbitrator or umpire made an error. I think there is a difference.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: It may be, but it is there I think. Obviously on the face of it, manifest is stronger than strong evidence.

Amendment negatived; clause passed.

Remaining clauses (16 to 22) and title passed.

Bill read a third time and passed.

JOINT PARLIAMENTARY SERVICE COMMITTEE

The House of Assembly intimated that it had appointed Mr Ferguson to be the alternate member to the Speaker in place of the Hon. M.J. Evans.

JOINT COMMITTEE ON THE WORKERS REHABILITATION AND COMPENSATION SYSTEM

The House of Assembly intimated that it had appointed Mr Heron in place of the Hon. M.J. Evans.

ADJOURNMENT

At 5.55 p.m. the Council adjourned until Wednesday 14 October at 2.15 p.m.