LEGISLATIVE COUNCIL

Tuesday 4 May 1993

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

ASSENT TO BILLS

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

Classification of Publications (Film Classification) Amendment,

South Australian Tourism Commission,

Supply (No. 1)(1993).

PAPERS TABLED

The following Papers were laid upon the table:

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

Regulations under the following Acts—

Classification of Films for Public Exhibition Act 1971 - MA Classification.

Classification of Publications Act 1974 - MA Classification.

Firearms Act 1977—General.

Summary Offences Act 1953—Traffic Infringement Notice.

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

Committee Appointed to Examine and Report on Abortions Notified in South Australia—Report 1992.

Regulations under the following Acts—

Controlled Substances Act 1984—Pest Controllers'—Licence Fees.

Metropolitan Taxi-Cab Act 1956—Smoking Bans.

Road Traffic Act 1961—

Pedal Cycles.

Photographic Detection Devices.

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

Regulations under the following Acts—

Local Government Act 1934—

Budget and Reporting.

Members Allowances for Expenses.

Waste Management Act 1987.

PUBLIC SECTOR REFORM

The Hon. C.J. SUMNER (Attorney-General): I seek leave to make a ministerial statement.

Leave granted.

The Hon. C.J. SUMNER: The Premier recently announced, as part of the Economic Statement, a number of important reforms to the public sector. These include:

- the merging of a significant number of Government departments, an amalgamation of functions and the collapsing of unnecessary statutory authorities by June 1994;
- substantial savings in the amalgamated administrative areas of agencies, with the elimination of duplication which will arise from the mergers and the achievement of economies of scale, with a reduction in overheads and management layers;
- a review of the core activities of Government, with functions undertaken by Government to operate at optimum efficiency, be competitive with other sectors and funded accordingly;
- the introduction of voluntary targeted separation packages to reduce the public sector workforce over the next year by 3 000;
- the integration of enterprise bargaining with budget arrangements and the core business reconstruction of government;
- strengthening the accountability of public corporations through the public corporations legislation and the development of training packages for board members to lift expertise;
- the introduction of a citizens' charter as a means of boosting service standards and ensuring accountability of our public services to the community.

Today, I will expand on those measures. I will also build on them by detailing a significant move by the Government to develop a new-style public sector for South Australia. Because of the cohesive package of measures involved, I am tabling a more substantial document which outlines our proposals in greater detail. I seek leave to table a ministerial statement on the public sector reform agenda.

Leave granted.

The Hon. C.J. SUMNER: The South Australian Government has announced the significant reform of the public sector as a strategic response to the State's economic problems. However, the pressure for reform is not just economic. Around the world, public sectors are increasingly being recognised as a major community resource: a mechanism for making communal decisions, providing services which equitably benefit all citizens and for solving collective problems. Along with this, community expectations of the public sector are changing. In South Australia, the Government intends to meet the challenge of those changing expectations.

In the coming weeks, the Government will be distributing a booklet to public sector departments and agencies which I am pleased to release today called, "A Bias for YES: The Public Sector Response in the Revitalisation of South Australia". I seek leave to table this document.

Leave granted.

The Hon. C.J. SUMNER: As the title suggests, our public sector will develop a bias in favour of the community—one which finds ways of getting things done for our citizens, rather than giving reasons why they cannot be done. The plan is developed around a vision for the South Australian public sector, namely: 'That it develop a competitive advantage for the State by being known as the most strategic and responsive public sector in the nation'.

Some suggest that we can only 'afford' a public sector which endeavours to achieve social justice for the community once we have strong economic growth. However, the most successful, modern, industrial economies of the world act on the premise that addressing the needs of their citizens and their work force is integral to their achievement of economic efficiency. This is the path that the South Australian Government will take. It will embark on a reform agenda which enhances the quality and responsiveness of the public sector to ensure that its value as an asset for the economy grows and that it rebuilds community and business confidence. Its emphasis will be on strategic planning, innovation and the direct involvement of our customers and stakeholders.

DIRECT BENEFITS FOR CITIZENS

At the heart of our reforms are the interests of South Australian citizens, who are daily customers of State public services, such as our schools, hospitals, Housing Trust, our roads, water, electricity and so on. South Australians will be provided with timely, friendly and better quality services designed to meet their needs. The entire State public sector will be reshaped to meet this challenge: to ensure that everything we do becomes customer focused.

It is a task that must be undertaken with the community. Agency by agency and service by service, we will ask our customers how we can lift our performance to better meet their needs. This will not be a one-off process but one of continuous improvement.

It will be driven by a citizens' charter, the introduction of which was announced by the Premier in the Economic Statement. The charter will require agencies to do everything in their means to help customers obtain the most favourable outcome through the fastest, fairest, friendliest and most flexible service that can be provided. Even where the State is engaged in regulating, taxing or administering justice, these functions will be carried out fairly, effectively and courteously.

Members of the South Australian public will be formally involved in deciding what public services they want and how they should be delivered. They will be involved in setting the standards and in measuring the performance of agencies against those standards.

The citizens' charter will be a commitment to the community to deliver those services. An outline of the charter is attached to the statement that I have tabled today. Consistent with the Government's intention to involve the community in the design of our programs and services, the Department of Premier and Cabinet will lead a consultation with the community, who will be invited to work with us to further develop the citizens' charter in relation to specific agencies.

The Government will also adopt a range of other strategies in the drive to develop customer focused services. We will:

- establish a central information service to provide the community with 'one-stop-shop' information about the range of Government services available to help meet their needs. The service, which will be opened in the near future by my colleague the Minister of State Services, will include a 008 line service to improve access to information on Government services for South Australians in remote locations.
- extend opening hours for shop front Government services so that South Australians can access them without having to miss work or school.
- review the flexitime scheme thoroughly over a three month period to provide opportunities to improve service convenience to customers including extended opening hours while assisting staff to balance their work and family responsibilities.
- establish special training and greater delegated authority for our front-line staff so that customer service is a top priority.
- promote friendly service and provide customers with a consistent contact point; employees in the public sector who provide services directly to the public, will identify themselves (unless it is unsafe to do so), wear name tags, and provide contact phone numbers for any follow up.
- provide customer advocacy systems in Government agencies to provide a simple process for our customers when things go wrong. The system will ensure customers are clear about who they can contact if they are dissatisfied, and expect a prompt, satisfactory explanation and solution.

STREAMLINING GOVERNMENT AGENCIES

In the Economic Statement, the Premier announced the Government's intention of merging a significant number of existing Government departments and eliminating those statutory authorities no longer considered necessary.

The Government began the process of streamlining the business of government in late 1992, when Ministers were allocated portfolios which brought together Government activities and objectives. The changes were supported by the appointment of an initial seven portfolio coordinators.

We are now moving into the second stage of the Government's major restructuring program with a commitment to reduce the number of operational agencies from 30 to 12 by June 1994.

The Government intends to develop the precise configuration of the 12 core departments around clearly defined principles and in a considered manner. The Premier will make a series of announcements over the next few months, as we finalise arrangements for each core department and prepare the smaller departments for the mergers.

The process will be informed by a Core Business Review which the Government will conduct with all agencies. Each agency will be challenged to clearly define their core business and strategic purpose; they will be asked why they operate in the way they do, and whether what they do adds value to the South Australian economy or community. Any Government activities deemed to be out of date will cease.

We are already progressing down the path of successfully rationalising statutory authorities, with 52 statutory bodies either having been recently eliminated, in the process of elimination or consolidation, or identified by Chief Executive Officers to be considered

for elimination. Further rationalisation of statutory bodies will be considered.

CONSULTING FOR CHANGE

The successful implementation of structural changes contained in, the reform agenda requires both an understanding of the problems faced by the Government and a commitment by all interested parties to arrive at constructive solutions.

Ministers and Chief Executive Officers will play a key role in achieving the goals set by the Government and will be accountable for the quality of the change process.

Following decisions reached between the Government and public sector unions, the Government intends to develop, with the unions, a formal process for consultation. This will build on the constructive experience of consultation which was achieved during the work of the Government Agency Review Group and which led to substantial change in the South Australian public sector from 1990 to 1992.

MEASURES TO IMPROVE THE BUSINESS CLIMATE IN SA

The public sector will look at all opportunities to make doing business in South Australia easier and more productive, with a view to developing the State's competitiveness and quality of life.

Consistent with this, the Government is concerned to maintain a regulatory system which involves necessary safeguards but does not impede appropriate economic development or impose undue costs on the community or business.

Our regulatory reform program will continue to be prominent in the Government's drive to improve South Australia's business climate, with our efforts in this area becoming integrated with the wider public sector reform agenda.

The Government's record in deregulation is impressive. Since introducing the sunsetting of regulations in 1989, 104 sets of regulations have been abolished and another 40 sets rationalised. In addition, 25 licences have been abolished or are in the process of being abolished.

A Business Licence Information Centre, designed to make it easier for people who have to deal with licensing requirements when they are setting up a business, will be launched later this month at the Small Business Corporation by my colleague, the Minister of Business and Regional Development.

The Government will be closely examining its inspection functions, to see where there are opportunities for further rationalisation, with the aim of improving efficiency and delivery of services to industry. We will be taking a range of other measures to remove barriers to business.

Each agency, for instance, will be required to justify the circumstances in which customers must seek their approval for activities they wish to undertake. Cumbersome processes, layers of approval and unnecessary regulation will be removed to assist public servants to provide rapid responses to queries and requests for assistance.

Forms will be streamlined and rationalised across the public sector, with outdated and inappropriate questions or wording being deleted.

ECONOMIC DEVELOPMENT AND INFRA-STRUCTURE

The Government also intends to foster a positive business climate through the provision of physical infrastructure services which are easily accessible, reliable, high quality and value for money. This includes: energy, water, transport, waste disposal and land.

As the reform process gains momentum, public trading enterprises, which are a major component of the State's economy and on which industry relies, will show significant improvements in profitability. This includes the Engineering and Water Supply Department and the Electricity Trust, which are soon to merge to become the joint Power and Water Utility as part of the Government's streamlining efforts.

Information technology within the public sector will be used as a tool for improving customer service, as well as stimulating economic development through a series of strategic alliances with private sector companies. Partnerships with the business community will be designed to increase investment in the State as well as boosting the skills of the local technological service industry.

The Government will act as a catalyst for the business community to use technology to improve its national and international competitiveness and to access markets beyond our borders. This will include the provision of infrastructure, and the lead, to encourage the private sector to adopt modern practice and conduct business electronically within, and beyond, the State.

As part of our efforts to forge mutually beneficial partnerships between the public and private sectors, the Government will pursue opportunities for private investment in infrastructure developments. As companies need to know the ground rules before they commit substantial resources, guidelines have been developed in consultation with industry and final confirmed guidelines will be released shortly by my colleague, the Minister of Public Infrastructure.

The Government will also ensure that the capital works program has a greater emphasis on economic infrastructure and projects which generate work for the local economy. A Government co-ordinating group is being established to oversee this.

The Government is determined to ensure the most cost effective use of the State's resources. An important area in which this must be achieved is capital assets, with the South Australian public sector responsible for the management of $30-billion worth of such assets. We will implement a co-ordinated and commercial approach to asset management. This will involve a modification of the role and composition of the Government's Capital Works Committee, so that it focuses on developing a culture of effective asset management in the public sector.

THE CONTRIBUTION OF STAFF IN DEVELOPING A DYNAMIC PUBLIC SECTOR

We know from experience that there are enormous benefits to be gained from the development of equitable

and co-operative working relationships across the nation. There are similar benefits to be gained for the community from developing these kinds of systems inside our public sectors.

A significant element of our reform of the South Australian public sector will be the way in which we manage the people who make it happen — our staff. It is important that we take steps to ensure that all our staff want, and are able, to contribute their full potential.

In line with this, we will implement across the public sector, administrative systems, management style and modes of operation which motivate our staff to give of their best. We will embark on a process of workplace reform designed to increase the contribution of staff and their representatives, which guides them to be self-reliant, to work collaboratively, to challenge basic assumptions and old habits and to introduce more productive work practices.

The workplace systems we intend to develop will also be geared toward fostering a high level of innovation in our public sector. An important strategic tool which will be adopted by the South Australian public sector is Best Practice, in which we will benchmark our standards against the best in the nation and ultimately the world.

Best Practice as part of micro-economic reform is an exciting process which has achieved results in the quest by Australian industry to become internationally competitive, particularly those organisations and companies which have participated in the Commonwealth Government's Australian Best Practice Demonstration Program.

In the quest by the South Australian public sector to develop a competitive advantage, the vision is that it become known as the most strategic and responsive to the nation. It will not be good enough to simply be the best. We must be known as the best in order to develop a reputation and advantage nationally, and eventually internationally.

The South Australian Government intends to draw on the experience of the Commonwealth Department of Industrial Relations, which runs this program, to use Best Practice in the re-shaping of our public sector and to assist agencies in achieving high standards in service delivery, whilst working at optimum levels of productivity.

A better trained work force is a more effective, productive and responsive workforce. To achieve this goal, we will introduce competency-based training across the public sector and each agency will develop a learning strategy which provides for the continuous development of our staff.

With the significant challenges facing the public sector, the culture within our agencies will be crucial to the development of a workforce which is dedicated rather than disillusioned.

Staff will not thrive in workplaces where the organisational shape is so rigid and hierarchical that their good ideas can never be realised.

The Government will therefore ensure that the development of leadership in the public sector is given priority.

A Leadership 2000 Program will be developed by the Government Management Board which will promote the development of focused leadership skills at all levels of management. The program will give priority, in 1993-94, to Strategic Human Resource Planning, Customer Service, the Management of Information Technology and Financial Management.

The Government is taking a number of important steps to make it easier for staff to move across the public sector to areas of greatest need. The new term appointment category in the GME Act will enable CEOs to fill positions for up to five years. This change together with others such as those relating to reassignment, casual and part-time employment and the management of excess employees will enable CEOs to better manage their staff. No longer will there be a culture of ownership of positions. This will also promote greater competency development and career opportunities.

The Government will also be encouraging public sector employees to seek opportunities to pursue their public service career in the private sector, thereby benefiting all sectors through their experience. Negotiations have begun with the Chamber of Commerce to develop joint work using both public and private sector staff.

Further, the Department of Labour will assist agencies to train managers to recognise, value and utilise the vast range of difference that employees bring to the workforce through their cultural, racial, gender, age and social perspectives.

FINANCIAL MANAGEMENT ACROSS THE PUBLIC SECTOR

In the drive to develop a public sector which is strategic and highly efficient, agencies will be required to adopt financial management practices which are the best in Australia.

The Government will introduce a cohesive Financial Management Reform Program which will lead to better decision making and will be focussed on achieving optimum allocation and management of resources.

The key themes of this process will be accountability for performance, devolution of authority, flexibility and responsiveness, and improved financial information.

Government agencies delivering the same service as other sectors will do so on a competitive basis and will be funded accordingly. It is expected that where Government carries out an activity which could be, or is, carried out in the private sector, then this will be carried out at no greater cost on a directly comparable basis.

Training in financial management competencies throughout the public sector will be enhanced.

All general financial and management accounting reports will be prepared on a full accrual basis by 1996 in order to provide the sector with a greater measure of the true cost of activities.

ACCOUNTABILITY

The Government is concerned to improve the accountability of public sector operations at all levels and is taking a range of measures to achieve this.

These include the tightening of accountability of senior public servants; the development of guidelines for the ethical conduct of all public sector employees; the improved accountability of public trading enterprises; a review and strengthening of the expertise of board members; legislation to protect people who expose waste, fraud, incompetence, abuse of privilege and so on; and

of course, greater accountability of our public services to members of our community with the introduction of the Citizens' Charter.

CONCLUSION

Along with economic development, reform of the public sector remains a top priority of the South Australian Government.

The proposal for reform is not a sudden event, building as it does on a history of change and innovation in the South Australian public sector. However the need to consider the 'big picture' in determining the directions we take is of increasing importance.

There is a need for considerable improvement in the performance and competitiveness of the local economy in relation to the global market. For the public sector this requires a significant increase in the pace and scope of reform. Action is required on a broad front if we are to achieve the vision of revitalising the public sector and leading the development of a competitive edge for the State.

The Government will therefore require all agencies, and not just some, to act strategically, develop a high level of responsiveness and meet all the objectives. Total commitment across the public sector is essential.

The program starts now and improvements in the service should be apparent to our clients and customers within 12 months.

As I have said, the Government believes that it is imperative in the reform process that we achieve both our economic and social goals. Reform which directly benefits the community while it reduces the recurrent deficit and boosts the State's competitiveness is an important challenge which this Government intends to meet.

QUESTION TIME

HELLABY CASE

The Hon. K.T. GRIFFIN: My question is to the Attorney-General. In the light of the Attorney-General's strident criticism of the State Bank for continuing to fund legal representation of former directors of the bank, does he have the same criticism of the bank for spending large sums of money on legal fees in pursuing journalist David Hellaby in what looks. like a course of persecution and a fishing expedition, particularly when no action has been taken by the bank for damages against either the *Advertiser* or the journalist?

The Hon. C.J. SUMNER: As I understand the position, the State Bank has taken legal proceedings to get discovery of certain matters as a prelude to considering whether or not the State Bank and/or others should be sued. In doing that it is pursuing its rights. As I understand it, the bank maintains that as a result of the article on the front page of the *Advertiser* in which Mr Hellaby said that there was criminal activity in the bank and its subsidiaries on an incredible scale, that the bank lost a considerable amount of money—

The Hon. R.I. Lucas: It was alleged.

The Hon. C.J. SUMNER: It was alleged, that's right. The bank alleges that it lost a considerable amount of money as a result of that article. It is for that reason that it has pursued this matter and is operating—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I assume it will. I assume that is why it is taking this course of action, in the pre-action discovery process, to see whether it has the basis for suing for damages.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: However, the bank has determined to take this course of action. It believes that it lost a considerable amount of money. I am not sure whether or not the figure is mentioned in their proceedings, but the figure I have heard is half a million dollars, as a result of the story that appeared in the *Advertiser,* a story which the State Bank maintains is incorrect, and certainly on the information that I have is incorrect. I have not been given any indication that the problems in the State Bank or Beneficial Finance indicate criminal activity on an incredible scale. It has always been envisaged that the inquiries that were set up would look—and it is clearly set out in the terms of reference—at whether there was any evidence of breaches of the law, criminal activity, breaches of the corporations legislation, breaches of duty etc.

The Hon. L.H. Davis: You can't pre-empt the Auditor-General's finding.

The Hon. C.J. SUMNER: Of course I can't. That is all set out in the terms of reference for the royal commission and for the Auditor-General. So, they have a specific brief to look at these matters, and there may be matters dealing with criminality which are referred on to other agencies following an assessment by the royal commission. I have already announced that the commissioner designate, Mr John Mansfield QC, is already examining the first report of the Auditor-General on the topic of possible breaches of duty or breaches of the law. He is getting on with that job now. So, those matters are all being looked at as a result of the two inquiries that have been set up. However, I have not been given any information which would support the proposition that was put forward by Mr Hellaby in the *Advertiser* in the article about which the State Bank complained. The State Bank is, as I said, using the legal resources available to it to pursue an action to get information by way of pre-action discovery because it alleges—and I say 'it alleges'—that as a result of that article it lost a significant amount of money.

PETER

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister representing the Minister of Education a question about year 12 English studies.

Leave granted.

The Hon. R.I. LUCAS: My office has been contacted by several concerned parents who have drawn my attention to a book that is part of the compulsory reading list for year 12 students completing school assessed English studies. Two of the parents say the book *Peter*

by Kate Walker was drawn to their attention by their son who complained that its content appeared to foster homosexuality. The parents subsequently read sections of the book and agreed with his conclusion. The parents have sent to me a rear cover abstract of the book which says in part:

I am not scared of sex, I want it like crazy but not like that, with someone I don't even like. Peter is 15, an ordinary kid who enjoys riding his dirt bike and wants to be a photographer. In his world a boy is considered a man only if he obeys an unwritten set of rules. He must seek out danger, talk rough, get girls—any girl. If he is different, he is labelled a poof. Pressured by his peers and by society to conform to the stereotyped male image, Peter finds himself both confused and repelled. His confusion and his horror increase when he finds he is attracted to David, a friend of his older brother, and gay.

This powerful new teenage novel looks honestly at the issue of sexuality, and shows that the 'straight line' is perhaps not quite as straight as we think it is.

Members might recall that in April 1985 the then Education Minister, Mr Arnold, had to move to prevent the teaching of homosexuality in schools. This followed the drafting of policy by the South Australian Institute of Teachers aimed at protecting the rights of homosexual teachers. The draft policy caused widespread criticism from parent groups and some teachers. It was interesting to recall what Mr Arnold said on this matter at the time. He said:

Advocates of homosexuality are regarded by the Government in the same light as people advocating particular religious or unorthodox moral and political beliefs and as such will not be allowed access to schoolchildren.

The parents who have contacted me believe that the inclusion of books such as *Peter* on compulsory reading lists by the Education Department allows the views of homosexuals to be subtly disseminated to developing minds in a similar way as a formal lesson on homosexuality. They believe that the overwhelming majority of parents of teenage boys in the education system would strongly oppose *Peter* being made compulsory reading for their sons in English studies or, for that matter, in any other subject. My questions to the Minister are:

1. Will the Minister investigate why the book was selected as part of the compulsory reading component of year 12 school assessed English studies?

2. How many people from the department were involved in the decision to select this book for the compulsory year 12 list and, of those, how many have read the book and how many made their selection on the basis of the Children's Book Council of Australia endorsement?

3. Does the Minister believe that this book is suitable for 'compulsory' year 12 reading and, if not, will she act to have it removed from the compulsory reading list for this subject?

The Hon. ANNE LEVY: I will refer those questions to my colleague in another place and bring back a reply. I would like to point out that in all these matters one does have to view the work in context. I am not familiar with the particular work to which the honourable member refers, and I am sure my colleague in another place will familiarise herself with it. However, context is all important in judging these matters.

TRANSIT SQUAD

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister of Transport Development a question on the subject of reorganisation of the STA Transit Squad.

Leave granted.

The Hon. DIANA LAIDLAW: The Transit Squad, established by the Labor Government in May 1991 to improve security for passengers and staff on STA services, has not worked well. Graffiti and vandalism continue to be major problems while fear for personal safety remains a major concern, particularly among women and older people. Currently, the Transit Squad comprises a mixture of seven members of the Police Force, 17 special constables and 56 authorised officers. Administration is shared between the Police Commissioner and the STA. Each category of personnel has different powers on and off STA property and all have different degrees of training.

When the Liberal Party released its passenger transport strategy in January, it stated that in Government it would address the STA's security problems by transferring to the Commissioner of Police full responsibility for law enforcement on the STA system. Until now, however, Labor's response to these problems has been to increase the powers of authorised officers (STA employees) to the status of police officers, but without the same level of police training.

Two Bills to this effect were introduced in March last year to amend the State Transport Authority Act. Both Bills were reintroduced on 14 October but further debate has been repeatedly adjourned by the Government since 6 November for some five months. When I asked the Minister, on 24 March, whether she proposed to proceed with the Bills, she said:

I would certainly like to proceed with the legislation this session in order to provide the additional powers that are required by the transit officers—and hopefully negotiation with relevant parties will be resolved very soon.

Since the Minister gave this advice to the Parliament less than six weeks ago, I have learnt that the Minister has had a dramatic change of heart and has now decided to adopt Liberal Party policy on this matter. I understand that in a couple of weeks the Minister plans to announce that, instead of increasing the powers of authorised officers, she will get rid of not only all 56 Transit Squad positions but also the 17 special constable positions. I ask the Minister:

1. Can she confirm that the Commissioner of Police has agreed to take over responsibility for all security arrangements on STA services and properties?

2. Can she confirm that, pending finalisation of details about wages and training standards—I understand that negotiations are going on about those at present—all STA employees currently working in the Transit Squad as authorised officers and special constables will be invited to join the South Australian Police Force, subject to passing the appropriate training, or be offered redeployment?

3. Can the Minister confirm that, pending an announcement of the foregoing changes, the Transit Squad has effectively been reduced to the status of a toothless tiger because all authorised officers and special

constables have had their past powers reined in recent weeks and currently are empowered to use only the restricted policing powers provided under the State Transport Authority Act?

The Hon. BARBARA WIESE: Considerable negotiations have been taking place over past months with respect to the powers of the Transit Squad officers employed by the State Transport Authority. As I indicated when the honourable member last asked a question on this subject, a number of matters had been raised following the reintroduction of legislation by me into this place in about October last year on which I had initiated further work, and I was seeking further advice and agreement on various matters.

A number of the issues that were raised with me were new to me; they had not been raised with me previously or drawn to my attention as issues of concern to parties prior to the reintroduction of the legislation. In addition, a number of issues were raised during the second reading debate on which I wanted further advice and information.

Since that time negotiation has been taking place between the State Transport Authority and the South Australian Police Force, and I have also had discussions with my colleague the Minister of Emergency Services about some of the outstanding matters. Agreement has not yet been reached on this matter. I hope that in the very near future I will have a resolution to the problems that have been raised with me, and hopefully that will mean that the legislation which is currently before the Parliament will not be necessary.

That is as much as I can say about the matter at this point, because I am waiting for advice on it. I am hoping to hear very soon from the Minister of Emergency Services on propositions that have been under discussion during past weeks. I hope that we can reach an agreement which will be satisfactory to the State Transport Authority and to the South Australian Police Force and which will also mean that Transit Squad officers working on STA trains and buses will have the necessary powers to ensure that passengers travelling on the system can be protected and that action can be taken in cases where offenders are found and further legal action needs to be taken.

The Hon. DIANA LAIDLAW: As a supplementary, having received advice, which I have had subsequently confirmed, that the Commissioner of Police has agreed to take all responsibility for policing arrangements on the STA system, will the Minister confirm whether she supports the police taking over full responsibility rather than the present arrangements that apply with the Transit Squad?

The Hon. BARBARA WIESE: I have indicated that matters are currently under discussion. I am not prepared at this stage to talk about my preferred position on the issue, except to say that it is important that the police and the STA should be in a position to work cooperatively in the best interests of the community and of the State Transport Authority system.

It is important that there is that agreement if there is to be an effective policing system on STA trains and buses. In the absence of an agreement between the two organisations, which is currently being negotiated, there has already been a considerable improvement in the ability of Transit Squad officers to undertake their role in the system because during the past 12 months there has been an improvement in the role undertaken by the South Australian Police Force. Much greater cooperation has emerged from the work of Inspector Trueman, in particular, a police officer who is in charge of the STA Transit Squad and who has been responsible for improving the training program of our personnel and, therefore, their effectiveness.

If the measures that I have set in train are agreed to and there is cooperation from both organisations, very shortly we will have a system in place which will be in the best interests of the whole community and which, hopefully, will improve the faith and interest of members of the South Australian community in our public transport system.

RUNDLE MALL

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Attorney-General a question relating to conflict of interest and the Rundle Street Mall Act.

Leave granted.

The Hon. I. GILFILLAN: Through the Rundle Street Mall Act the Government is involved in appointments to the committee and obviously it has an ongoing legislative responsibility—

The Hon. Anne Levy: The Minister of Housing, Urban Development and Local Government Relations makes the appointments.

The Hon. I. GILFILLAN: The Minister says that the Minister of Housing, Urban Development and Local Government Relations makes the appointments. One would assume that those appointments and the Minister do not act totally at odds with the general wishes and trend of the Government at large, so I use the word 'Government' in a generic sense. The Government continues to be involved in the management of the Rundle Mall through the legislation and it has an ongoing concern. The Minister of Housing, Urban Development and Local Government Relations (Hon. G.J. Crafter), as the Minister interjected and rightly pointed out, is directly involved, and he has indicated publicly that the Government will provide taxpayers' money for an upgrading contribution to the viability of the Rundle Mall.

I know the Attorney-General would be fully aware that the Rundle Street Mall Act has no section dealing with conflict of interest. There is nothing specific in that legislation about a member of the Adelaide City Council or a member of the committee actually promoting his or her own interest commercially through sitting in on and being party to decisions which will favour trading in the Rundle Mall.

Mr President, the now Lord Mayor of Adelaide, Henry Ninio, is the owner of Birks Chemist in Rundle Mall. He has also been an ardent and persistent advocate for upgrading of the mall at Government expense. In fact, today he is quoted in the *Advertiser* as saying that the Government will have to pay for it because the council does not have any money, and he expects that particular project to cost about $1.5 million. Just a quick reminder: the taxpayers of South Australia have

contributed substantially to Rundle Mall, both in the original development and also in the indirect and somewhat unwilling subsidy in the massive loss in the Remm development which was going to be the saviour of the mall. It seems rather ironic that, so soon after the opening of that, the traders on the mall are pleading for more taxpayers' money. However, the questions that I want the Attorney to address specifically are: first, does he believe that a case of conflict of interest could apply to the Lord Mayor, Henry Ninio, as the owner of a trading business in the mall, at the same time presiding over and taking part in meetings discussing and urging Government money to be spent in developing the mall; and, secondly, would he seek to have a conflict of interest section included by way of an amendment in the Rundle Street Mall Act?

The Hon. C.J. SUMNER: I think most people in South Australia, apart it seems from the Hon. Mr Gilfillan, want to see the Rundle Mall upgraded. It was a great success when it was first introduced in South Australia; and I believe it was the first mall to be introduced in Australia. It was developed and paved and renovated some 20 years or so ago. Obviously, in that time the mall's paving and other aspects have deteriorated to some extent. So, I thought it was common ground among South Australians that the mall needed some attention. Certainly, on this matter the Liberal Opposition and the Labor Party seem to be agreed, except that I do not think the Labor Party agrees with the Leader of the Opposition's proposal in another place that it be covered with a tent or some awnings or something—I do not think we necessarily supported that proposition that he put up.

Nevertheless, on the general point as to whether the mall should be upgraded, there seems to be an agreement at least between the major political Parties; and I thought that that was the general view of South Australians, that there was a need for the mall to be upgraded. Of course, the private interests may benefit from that, but it is also a very public area. It is used by the citizens of South Australia for all sorts of activities. So, it is not just a private area; it is also a public area which is in need of upgrading. I do not know what the situation has been as far as trader representation on the Rundle Mall committee in the past has been, or the situation relating to conflict of interest.

The Hon. Anne Levy interjecting:

The Hon. C.J. SUMNER: However, as the Hon. Ms Levy says, there is written in the Act provision for Rundle Mall traders to be on the committee. So, presumably, when the Act was passed by the Parliament it was felt that the traders, the people who actually worked in the area, and who benefited from it—

The Hon. Anne Levy: And paid for it.

The Hon. C.J. SUMNER: And paid for it through a levy to some extent, should be represented on the committee. So, I understand a levy was paid by the traders when the mall was first created. There was a contribution from the traders, from the Adelaide City Council and, I believe—I cannot say for sure—from the Government, even at that time, 20 years ago. So, I suppose there is nothing necessarily wrong with the Government upgrading the mall with a contribution again in the future, given that there seems to be common ground—except for the Democrats—that an upgrading is required.

As to whether the conflict of interest in the Rundle Street Mall Act was specifically addressed when the Bill went through, I cannot recall; however, it is true that some traders were given positions on the Rundle Mall committee. I suppose you could say, if you were going to take it all the way down the line, that there should be no traders on the Rundle Mall committee because they all might have a conflict of interest. However, what can be said about this is that presumably if they are traders on the mall, and they are in a prominent position—whether it be the current Lord Mayor or others—while there may be a conflict, everyone knows about it. It is not that it is a hidden conflict; it is not that it is one that has not been disclosed. If they are appointed as representatives of traders on the committee then naturally the conflict is disclosed to the world.

I do not know whether there is a problem in this particular matter, because I think there is full disclosure. Even with the Lord Mayor, it would be common knowledge—everyone knows—he has a business in the mall. The traders on the committee have businesses in the mall, so there is full disclosure of any conflict. In any event, it is not a specific conflict; it is not a conflict where a particular business is getting a direct monetary payment from Government or from the local council. Anything that traders in the mall would get out of an upgrading of the mall would be in common with every other trader on the mall. So, it is not a conflict of interest situation which is unique to one particular trader. It is obviously fully disclosed. I am not sure that there would be a problem. However, they are just my remarks off the cuff—brief remarks, of course, as usual—but I will look to see whether there is anything further that I need to say about it.

CROYDON PARK TAFE

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage, representing the Minister of Education, Employment and Training, a question about Croydon Park College of TAFE.

Leave granted.

The Hon. L.H. DAVIS: On 28 October 1992 I raised the question of students of Croydon Park College of TAFE painting a Jaguar E-type and an Aston Martin which cost the owners of these cars only $250 each, compared with the cost of between $6 000 and $10 000 for respraying such classic cars in the private sector. On 22 April I reported serious allegations made to me regarding car repairs being carried out by a TAFE college in the western suburbs. In October 1991 a person in a vehicle collided with another motor vehicle driven by a lecturer of this TAFE college. Because the first person believed at the time that they may have been in the wrong, they agreed to pay for repairs to the damaged vehicle owned by the TAFE lecturer. The TAFE lecturer went to the driver's house with two quotes and said he would like to accept the lesser of the two quotes, which was from Queenstown Crash Repairs and totalled $4 747.33. The 2 1/2 page quotation in handwriting

appeared not to be dissimilar to the handwriting of the lecturer himself. The lecturer initially claimed the vehicle was already at Queenstown Crash Repairs and that he had obtained a full front clip for his damaged vehicle for just $600 which effectively covered the parts required for the repair to his vehicle.

However, the driver paying for the repairs to the lecturer's car not surprisingly wanted an independent inspection, and under questioning the lecturer finally admitted that the car was at the TAFE college where he worked. The next morning the TAFE college was visited and the lecturer's vehicle identified, and it was confirmed that students were waiting for parts to repair that vehicle.

The Hon. Anne Levy: You asked all this last week.

The Hon. L.H. DAVIS: I know; I am telling you again. The driver and his family were most unhappy with this discovery and they made inquiries which showed that Queenstown Crash Repairs existed in name only and was now a carpet shop. In the end, after objecting, the quote from the lecturer was cut in half to $2 423.24. This amount included $1 807.81 for the cost of parts which could have been obtained out of the full front clip which, as I mentioned, the lecturer claimed that he had received for just $600. Quotes from three other wrecking companies showed that the parts required could have been obtained in each case for $900 or less. In other words, the TAFE college was charging $900 more, or double, the amount for parts that could have been obtained from three crash repairers.

I can now reveal that the college of TAFE involved is the Croydon Park College of TAFE. The mother of the driver involved in the accident wrote to a senior person at the Croydon Park College of TAFE expressing concern about the matter and stated that the TAFE account sent to her listed parts from the front clip which appeared to be 'costed out at top dollar value'. The day after I asked that question in the Parliament the mother received a reply to her letter which, in my view and certainly in her view, was most unsatisfactory. Although the account that she received is clearly headed 'Croydon Park College of TAFE', the Acting Director of the Croydon Park College of TAFE in his reply states:

> The parts listed on the account sent to you by the owner were all purchased and supplied by the owner of the vehicle and were incorrectly listed in a way which could lead to the impression they were supplied by the college.

If the Minister saw the account there was no other way it could have been construed. Elsewhere in the letter the claim is made:

> The school is not involved in the purchase or supply of replacement parts.

Nowhere in the letter is there an attempt to answer the very serious allegation that parts could have been obtained for around $1 000 less than the final account. Since I raised these matters, a number of serious allegations have been made about the fact that lecturers have used the students to repair their own cars or cars brought in for repair and subsequent resale for profit. The circumstances surrounding the repairs to the lecturer's motor vehicle appear to have been ignored by those in authority at the Croydon Park College of TAFE, as indicated by the letter from which I have just quoted. My questions to the Minister are:

1. Can the Government ascertain why those in authority at Croydon Park TAFE appear to be so unwilling to investigate the serious matters raised in this case?

2. Now that this additional information is to hand, will the Government immediately investigate the circumstances of the above case and the allegations raised, and explain why the Croydon Park College of TAFE appears to have no internal procedures to safeguard against abuse and possible rorting of the system?

The Hon. ANNE LEVY: It is an interesting way of asking the same question twice. I will refer the extra question to the Minister in another place for her to be able to respond, but it has already been announced that an investigation is occurring into these matters and that a report will be provided to her as soon as possible. This is published in the *City Messenger,* of which I have a copy. Doubtless the honourable member has seen it already. The extra information which the honourable member has provided can be added to the list of items to be investigated, but to suggest that the Minister has taken no action, as the closing part of the honourable member's explanation implied, is quite erroneous as the *City Messenger* indicates.

The Hon. L.H. DAVIS: I have a supplementary question. As I asked this question on 22 April, can the Minister explain why the Parliament has been so arrogantly flouted by the Government and the Minister? Instead of responding directly in this Parliament to the question I asked on 22 April (as the Minister is yet to do), why does she seek to make the announcement about a Government inquiry in the pages of the *Messenger*?

The PRESIDENT: Does the honourable Minister for the Arts and Cultural Heritage wish to respond to the supplementary question?

The Hon. ANNE LEVY: I do not think it was a supplementary question: I think it was a statement of opinion.

FINGER POINT SEWAGE TREATMENT WORKS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister of Public Infrastructure a question about the Finger Point Sewage Treatment Works.

Leave granted.

The Hon. M.J. ELLIOTT: The Finger Point Sewage Treatment Works has a rather long history which includes bulldozers arriving the week before an election and disappearing within days after it, but that is not the bit I wish to focus on now. Before the Finger Point Sewage Treatment Works was constructed the parliamentary Standing Committee on Public Works examined the issue and recognised some potential problems with the construction of the sewage works, and those are discussed in the final report titled PP173A. It notes:

> [As a result of the treatment] The dried sludge will be an inoffensive, humus-like material which will be removed by earthmoving equipment and trucked to outer areas of the site where it will be spread. It is envisaged the sludge will help promote revegetation.

It appears that most of the heavy metals that are currently in the sewage will settle into the dried sludge. The report notes that there is some potential for pollutants—that is both heavy metals and other substances—to eventually find their way into the ocean either by way of moving through the floor of the lagoons which are using exposed natural soil as a floor base and also from where the sludge itself is dumped, although the report suggests that it might take many years but gives no indication as to how long 'many' years might be. It also notes:

> This assessment could be detrimentally affected by the presence of sink holes and major fissuring which could provide relatively unimpaired channelling of seepage from the lagoons to the sea.

It states that there has been no evidence from site investigations to suggest that major geological discontinuities of this nature existed in the location. The report also notes the problems which were being created by high levels of E.coli and heavy metals which were going into the sea before the construction of the treatment works.

The very existence of heavy metals, in particular, in the sewage and hence later on in the sludge occurs because Mount Gambier unlike, I think, every other sewage works in Australia that I know of allows industrial pollutants to be discharged into the sewers. It is noted within the report that there will be need for some monitoring to see what happens after the works are constructed.

Also, the report notes that a great deal of the pipe between Mount Gambier and the Finger Point plant needed replacement. I am aware that in recent years there have been a couple of pipe bursts, which I understand have related to the age of the pipe. I have been contacted by several people from the lower South-East who are concerned both about the pipeline running to the sewage works and whether or not the sewage works is working properly, and whether in particular the sludge is retaining heavy metals and other pollutants, or whether they are eventually finding their way to sea. They have had some difficulty in getting questions answered and so I ask the following questions in the Council:

1. Will the Minister say what monitoring is occurring of both effluents and leakage from the treatment ponds, and also in relation to any movement of pollutants from the sludge itself?

2. Will the Minister say what analysis is being done in relation to metals and bacteria content of the sludge itself?

3. Can the Minister give some indication as to how much of the pipeline from Mount Gambier to Finger Point has still not yet been replaced since that report was released?

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

SPEED CAMERAS

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Emergency Services, a question about the use of speed cameras.

Leave granted.

The Hon. J.F. STEFANI: The Government, by change to regulations under the Road Traffic Act, which were gazetted and became operative from 29 April 1993, has approved changes to the method by which photographic detection devices will be used to detect speeding offenders. From midnight on Thursday, 29 April 1993, the Government has authorised the use of speed cameras to be positioned to take photographs of the front of speeding vehicles. The new regulations also make reference to taking photographs of more than one vehicle and the whole of more than one vehicle. In view of the substantial change to the operation of speed cameras, my questions are:

1. Will the Minister advise why the change of operation in the use of speed cameras has been effected?

2. Will he also advise whether this change is expected to improve the accuracy, operation and efficiency of the speed cameras?

3. Will he confirm or deny that this change will photograph an increased number of offenders?

4. Will the Minister advise what precautions will be taken in terms of the possible breach of privacy provisions?

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

CHILD, ADOLESCENT AND FAMILY HEALTH SERVICE

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health and Community Services a question about the Child, Adolescent and Family Health Service.

Leave granted.

The Hon. BERNICE PFITZNER: Recently I asked questions about the restructuring of the Child, Adolescent and Family Health Service (CAFHS), which is concerning senior nursing staff in view of the contraction in the number of regions with a resulting surplus of senior staff members. I have been further informed that the problem is only the tip of the iceberg. I understand that the clinical nurse consultants and the nurse managers are now to combine their roles. This would cause great difficulty with regard to the nursing career structure, as separate clinical skills and managerial skills were initially promoted to obtain these new senior nursing positions, with the resultant senior pay levels. There is also a difficulty with the management line of authority at the level of Assistant Director of Clinical Nursing and Assistant Nursing Director of Administration. I also understand that the ANF is not amused. My questions to the Minister are:

1. Will there be an amalgamation of the role of the clinical and management nurse consultants?

2. If this eventuates, what happens to the nursing career paths which was used to justify the creation of the two types of senior nurse consultants?

3. To whom are the Assistant Nursing Directors responsible?

4. The nursing staff structure is reported to be in a shambles. How is this affecting client service which has been of a very high standard?

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

TRAVEL DOCUMENTS

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Premier, a question about the issue of credentials to overseas travellers.

Leave granted.

The Hon. J.C. BURDETT: All members of Parliament recently received a circular from the Premier dated 23 April on this subject. The first paragraph read:

> The provision of official credentials to individuals has recently been reconsidered. There are some concerns that even if the bearer makes no direct misrepresentation their conduct may create a misinterpretation that the bearer is a Government official. There is no effective way of monitoring the use of credentials once issued.

A perusal of the form of credentials issued makes it difficult to see how there could be any suggestion that the bearer was a Government official.

The Hon. C.J. Sumner: Have you ever seen it? A great big seal and—

The Hon. J.C. BURDETT: Yes. I have used them. It is not suggested in the circular that there has been any abuse. Several constituents on whose behalf I have obtained accreditation from the Premier have told me that they have appreciated the provision of credentials. It was not mainly business people but private citizens, especially those travelling to remote or troubled parts of the world. They have expressed appreciation of the fact that they valued the security of having some credentials if they ran into difficulty—and occasionally have—and have found the credentials helped them. My question is: what evidence has there been of abuse of accreditation and, if there is no evidence of abuse of accreditation, what are the matters which have led to concern that the conduct of bearers of letters of accreditation may create a misinterpretation?

The Hon. C.J. SUMNER: This decision was based on the reasons outlined by the Premier in the document that the honourable member has. I understand also that other States have now abolished the provision of Government accreditations to private citizens. What evidence there was of abuse I am not aware, but I can certainly refer that part of the question to my colleague and see if he can provide further information. Although the honourable member says that, on reading the document, it could not possibly be interpreted as someone travelling with the authority of the Government, I am not sure that that is the case because it certainly was a very impressive document, with a red seal and properly done up, and I think it could easily have given the impression to people overseas that the bearer had some connection with Government. However, I will check whether there have been any instances of abuse and bring back a rely to the honourable member.

HELLABY CASE

The Hon. K.T. GRIFFIN: I ask the Attorney-General the following questions:

1. In view of the Attorney-General's unequivocal view, which appears also to be the view of the Government, that the State Bank ought to be the subject of ministerial direction, has he or any member of the Government been consulted by the bank on the bank's continuing action against journalist David Hellaby, which may lead to his imprisonment?

2. Is the Government effectively funding the legal costs of the State Bank in its action against Hellaby, either through the taxpayer funded Government indemnity to the bank or through reduced profit distribution to the Government by the bank?

3. Can he provide details of the extent of the State Bank's legal costs so far in the action against Hellaby?

The Hon. C.J. SUMNER: The question of funding of the legal costs I assume is something that the bank is handling within its own resources as it has made the decision to take these proceedings. I will see if I can find any details of the funding and bring back a reply, and also see if I can get a response to the first question asked by the honourable member.

STATE BANK

In reply to **Hon. L.H. DAVIS** (3 March).

The Hon. C.J. SUMNER: The reply is as follows:

1. Both Mr Malouf and Mr Paddison have employment contracts with the State Bank.

2. Mr Malouf's contract is due to expire on 30 December 1993. Mr Paddison's contract is due to expire on 30 June 1993.

3. There are currently 14 senior executives of the bank who have employment contracts containing a termination and/or redundancy clause.

4. Mr Paddison and Mr Malouf will be paid out their legal entitlements in accordance with the redundancy clauses of their individual contracts. Details of these contracts in relation to remuneration and package components cannot be revealed as to do so would require the bank to breach the confidentiality clauses in the contracts and so risk legal proceedings.

5. In the normal course contracted officers of the State bank have redundancy and termination clauses included in their contracts. There are no similar provisions for Government employees engaged for a fixed term under the negotiated conditions provisions of the Government Management and Employment Act, nor has the Government set down guidelines of the kind to which the honourable member refers. However, some contracts of employment for persons employed under the authority of the Constitution Act specify that a payment in lieu of notice shall be made if the contract is terminated without giving the agreed period of notice. Each such contract is considered on its merits by Cabinet before approval by the Governor in Executive Council.

BENEFICIAL FINANCE

In reply to **Hon. J.F. STEFANI** (11 March).

The Hon. C.J. SUMNER: The Treasurer has provided the following response:

1. The Treasurer has no knowledge of any payments of the type described by the honourable member being made to any officer of Beneficial Finance or the State Bank Group.

2. The Australian Federal Police are investigating the affairs of Luxcar Ltd which is a subsidiary of Beneficial Finance.

3. The investigation currently being undertaken by the Auditor-General should uncover any such practices.

4. The Auditor General is still investigating the past affairs of the State Bank and Beneficial Finance and the Australian Federal police are still investigating the Luxcar matter. The bank has cooperated fully with all these Inquiries.

In reply to **Hon. J.F. STEFANI** (25 March).

The Hon. C.J. SUMNER: The Treasurer has provided the following response:

1. It is confirmed that the Australian Federal Police are still continuing their investigation into the Luxcar transaction.

2. The Treasurer is not aware of any person being charged in relation to the Luxcar transaction.

3. Beneficial has settled with the Australian Taxation Office the tax implications of its involvement in the Luxcar transaction as part of its global settlement of the Tax Audit. Therefore, there are no income tax contingent liabilities in relation to the Luxcar transaction.

In addition, in the event of a sale, there is unlikely to be any need to make provision or provide any guarantee to cover speculative contingent liabilities that might arise from any criminal prosecution from the Luxcar transaction.

In reply to **Hon. J.F. STEFANI** (30 March).

The Hon. C.J. SUMNER: The Treasurer has provided the following response:

1. The information contained in the annual report about Beneficial Finance's ratings was factual.

2. No action has been taken by the Australian Securities Commission against Beneficial Finance for publishing this information, nor has the bank been notified that such action is intended.

3. In light of the information provided, the bank does not expect any liability to arise.

CHILD ASSESSMENT TEAM

In reply to **Hon. R.I. LUCAS** (1 April).

The Hon. ANNE LEVY: The Minister of Education, Employment and Training has provided the following response:

1. The Child Assessment Team at Flinders Medical Centre deals with students with multiple handicap problems at a rate of 80 per year. Typically these children are not progressing academically, have coordination problems with writing and visual perception and memory problems which are made more complex when they have behavioural problems.

The Education Department supplies a special education member to the multi-disciplinary team that assesses these children, 75 per cent of whom are school age and 50 per cent of whom are referred by the Flinders Medical Centre.

The State Interagency Committee—Students with Social and Behavioural Problems—which has members from Family and Community Services (FACS), Child and Family Health Services (CAFHS), Child and Adolescent Health Service (CAMHS), the South Australian Health Commission and the Education Department, are working towards an improved multi-disciplinary service to children at risk at all levels in their organisation.

2. Students usually start in alternative learning centres within three weeks of recommendation by Interagency Referral Managers. Should there be no place available at the learning centre an appropriate alternative placement is found.

3. Schools have many programs in operation that are encouraging students to be more responsible for their own behaviour and the care of property and person. The new suspension, exclusion and expulsion procedures are an element of this.

A review of the procedures later this year will give an accurate indication of the need for these facilities, in the meantime the waiting period is being monitored regularly and the number of placements can be increased if problems occur.

TRADE MEASUREMENT BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: Can the Minister give some indication when it is expected that the legislation will be brought into operation? Will it be brought into operation on a uniform basis across Australia or is it proposed to bring it into operation on a State-by-State basis, notwithstanding the fact that some States may not have enacted the legislation or, if they have, may not have brought it into operation?

The Hon. ANNE LEVY: This uniform legislation is already in operation in four States. It has not only been passed but is actually in operation. The suggested date for proclamation of this legislation is 1 October this year, but I would not want to be held too closely to that date if it were found that it had to be pushed out further.

The Hon.K.T. GRIFFIN: It is probably appropriate to use this clause also to raise the issue of the Australian Hotels and Hospitality Industry Association. In her second reading reply, the Minister did say that there would be a period of 12 months to phase out the equipment presently used by members of the association and the industry generally. The industry did actually seek a two-year phasing out period for existing beverage measures and for spirit measuring instruments in hotels and restaurants. Because of other pressures in this place, I have not had an opportunity to ascertain from the association whether or not that 12-month period is adequate, but I would have thought, notwithstanding the view of the Commissioner for Consumer Affairs, that it may be appropriate to give a longer period of time for the changeover process. Is the Government likely to be amenable to a further period of time within which the industry may be able to bring its substantial stock of plant and equipment into line with the requirements of the Bill?

The Hon. ANNE LEVY: I indicated in the second reading speech that we were happy to give the industry 12 months to obtain the approved measuring devices, particularly with regard to spirits, which will be required under this Act, and I am certainly happy to be flexible and give longer time if it should prove difficult for the

industry to obtain these spirit measures. At one time there was a shortage of these approved spirit measures, and it would have been difficult for the required number to be obtained. As I understand it there is no shortage at the moment, so a period of 12 months should be quite adequate for the hotel industry to obtain the approved spirit measures. However, if this should prove difficult, if stocks become hard to obtain or if there are any problems, I would be happy if the Hotel and Hospitality Industry Association drew this to our attention. Obviously in those circumstances I would be prepared to be flexible.

The Hon. K.T. GRIFFIN: The beverage and spirit measure was one of two issues that I had raised in my second reading speech and the only one to which the Minister responded in her second reading reply. The other issue I raised related to dining rooms and restaurants, and the Minister may recall that I did make the point that customised glassware was used in some of the so-called upmarket facilities where the measuring levels were not etched or inscribed on glassware and this would not fit in with the normal obligations to have clearly identified and marked glassware. Is the Minister in a position to respond to that issue? Is it still proposed that there will continue to be an exemption for dining rooms and restaurants in licensed facilities, or is there some other way by which this will be dealt with?

The Hon. ANNE LEVY: I apologise, as I thought this had been dealt with in the second reading reply. Several comments could be made in this regard. First, it is possible to obtain upmarket glassware which has the appropriate measuring marks. That glassware is available. Given a period of time, any establishment that wishes to obtain that glassware can do so. On the other hand, I think it unlikely that many upmarket restaurants would do so. I cannot pretend that I am a regular frequenter of upmarket restaurants but, in my experience, if people in such places order beer they are more likely to be ordering a particular imported beer or boutique beer, which is brought to them in a bottle from which the top is removed in front of them. In that situation a glass with a measuring mark is not required because the bottle is there. Therefore, I do not feel that this is a problem for upmarket restaurants. Certainly, if they do wish to have quality glassware with marks on it, it is available and can be purchased if they feel that it is desirable.

Clause passed.

Clauses 3 to 8 passed.

Clause 9—'Supplying incorrect, etc., measuring instrument.'

The Hon. K.T. GRIFFIN: Clause 9(1) refers to those situations where 'a measuring instrument is unacceptable for trade use if it is incorrect or unjust [that is understandable] or is not of an approved pattern'. Can the Minister give some indication as to how such approvals are to be given and notified, and in respect of what particular instruments is that likely to be the operative criterion?

The Hon. ANNE LEVY: The approving of all trade instruments will be carried out by the National Standards Commission, which is, as its title indicates, a national, non-government and independent body. The reason for having this in the Bill is that a particular measuring instrument, while it may be accurate at the time that it is tested, may be of a type that can readily become inaccurate or can easily be incorrectly used, and so give inaccurate measures.

This is not a question of the accuracy of the instrument but of its design. The particular design of any measuring instrument must be approved by the National Standards Commission to ensure that it is not only accurate in its measurement but that its design is such that inaccuracies are not likely to occur.

The Hon. K.T. GRIFFIN: I should point out that there is a typographical error in line 10: 'had not reason to suspect' should be 'had no reason to suspect'.

Clause passed.

Clauses 10 to 24 passed.

Clause 25—'Special provisions for sale of meat.'

The CHAIRMAN: There is a correction to be made in this clause. Page 14, line 13 appears twice, so it will be crossed out once as a clerical correction.

The Hon. K.T. GRIFFIN: I appreciate the response the Minister gave to my questions at the second reading stage. Subclause (2) seems to provide that if a meat article is sold and consists of more than one cut then it must also not only comply with the requirements to specify the net mass but also the mass of each cut. Could that be clarified? Does that mean that if you have a pack of four lamb chops that each one is a separate cut? I am not so familiar with the technical description but I wonder whether the Minister might clarify that.

The Hon. ANNE LEVY: The Hon. Mr Griffin obviously conforms to the figures produced by the Australian Bureau of Statistics yesterday as being one of the male spouses who undertakes very little of the shopping, as was found to be fairly common throughout the nation by the ABS survey. I can assure the honourable member that four lamb chops are not four separate cuts. I suppose they could be; if two were loin chops and two were chump chops that would be a different cut, and I think that is what is meant here. If there are four loin lamb chops then that is the one cut but if there are different cuts or different meats—if one had a packet with a mixture of blade bone steak and oxtail—then it would be necessary to indicate the relative quantities of each, seeing that they are different cuts, even though from the same beast, but of very different relative values. So, the quantity of each does need to be indicated so that people know whether they are getting a lot of the more expensive or a lot of the cheaper meat when the two are put together into the same pack.

The Hon. K.T. GRIFFIN: I must rise in my defence. If the Minister starts to make those assertions she must expect a response. I do, in fact, do the shopping frequently but we just do not buy meat other than sometimes prepacked meat, and the Minister should realise that these days most Australians go into supermarkets to buy their meat or they go into a butcher shop. They do not ask, 'Can I have a cut of lamb chops?'; they ask for four lamb chops or whatever.

The Hon. R.I. Lucas: If they go to a supermarket it is all prepacked.

The Hon. K.T. GRIFFIN: Yes.

The Hon. Anne Levy: If you are getting a pack that contains two types of meat, if it contains steak and

kidney it must indicate how much steak and how much kidney it has in it.

The Hon. K.T. GRIFFIN: That is a bizarre proposition—how much the kidney weighs and how much the steak weighs. That is taking it to ludicrous limits.

The Hon. Anne Levy: They are very different costs.

The Hon. K.T. GRIFFIN: Of course they are very different costs but it imposes quite a significant cost to the consumer. If the consumer sees that there is one kidney in the pack the consumer must surely be able to make a judgment that that is a minor part of the cost.

The Hon. Anne Levy: There might be other ones tucked underneath that you cannot see in the pack.

The Hon. K.T. GRIFFIN: We are getting into a very technical area. This is uniform legislation and I am not going to spend a lot of time debating it. The fact of life is that the majority of Australians seem to buy their meat prepacked from supermarkets and they do not address, and are not required to address, the issue: what is a particular cut of meat. If they buy a leg of lamb or if they buy some other part of the beast they are not identifying whether each one is a separate cut or what that really means. Whilst it might have that technical connotation, I just question the commonsense approach to what this appears technically to mean.

The Hon. ANNE LEVY: As someone who frequently buys meat, I would strongly defend its existence. As anyone who has bought packeted goods in supermarkets knows, one can only see through the cellophane or plastic what is on the top, and inferior quality material can be tucked underneath. I frequently feel that that situation applies when I buy bacon, to which this clause would not apply because it is not more than one cut. I also point out that this clause in the uniform nationally agreed legislation is virtually identical to that which exists in our own Trade Measurement Act, and that has been recognised nationally as being desirable and useful legislation. The South Australian approach has been adopted nationally.

The Hon. K.T. GRIFFIN: My understanding of the current law in South Australia is that, whilst the essential ingredients of clause 25 have been taken from our regulations, in drafting they are quite different. Regulation 193A refers to the net weight of each cut of the meat on which the purchase price is based, unless delivery is made to the purchaser on or at the premises of the seller immediately after the meat has been weighed in the presence of the purchaser. Then there is a proviso about any cut of the meat being boned, trimmed or subject to any other process involving loss of weight before delivery. Whilst it may contain the essential ingredients, there is a substantial change in the format of the drafting, even to the extent that there is a definition of 'butcher's meat' which there is not in this Bill. So, whilst the elements of the provision may be similar, they are not on all fours with the current legislation.

Clause passed.

Clauses 26 to 28 passed.

Clause 29—'Defences concerning packaging of pre-packed articles.'

The Hon. K.T. GRIFFIN: This clause deals with defences. I raised this issue in the second reading debate, and the Minister, in part, said that in the absence of provisions similar to clause 29(2)(a) an importer would be liable to prosecution for the failure of an overseas packer to label the pre-packed article with the name and address of the packer and that this was considered to be an unreasonable burden to place on an importer who may have had no opportunity to specify this requirement to the packer.

The only issue which this raises—and it is not one that we can resolve today in the context of the Bill—is the extent to which the local butcher or producer might be disadvantaged by the fact that certain information must be included, but the importer is exempt from that obligation. Whilst I understand the rationale of the Minister's response, it suggests to me that it is not a level playing field in Australia under this Bill because there is no obligation on importers to add information which is required to be shown by producers at local level. It may be that finally there is no cost differential, but it may be that there is an additional process to pass through if the importer were to approach the labelling in accordance with the labelling obligations of local producers. I observe that it is not a particularly level playing field in those circumstances.

The Hon. ANNE LEVY: I am not sure that the Australian producer is necessarily disadvantaged in this case. To suggest that he may be disadvantaged presupposes that putting the name of the packer on the label is a disadvantage. I do not see that that necessarily follows. Experience shows that Australian consumers are examining packages to see whether the contents are made in Australia, and, given a choice, they will tend to go for the Australian-made product. I understand that a number of retailers have commented on this phenomenon in recent times. It is certainly one that I endorse and follow and I am sure that others in the community do, too.

I also point out that the fact that the name of the packer may not have to be on an imported packaged article does not relieve the importer or seller of his obligations in this respect. The quantities and contents, as specified under the health regulations, must be specified. There is no relaxation of the requirements in those respects which, from my own experience, are the things for which many shoppers look when choosing an article.

Clause passed.

Clauses 30 to 76 passed.

Clause 77—'Packaged article presumed to be pre-packed in certain circumstances.'

The CHAIRMAN: This clause contains a clerical error. At line 21 the words 'or are kept after being packed for sale' appear twice, and that error will be corrected.

Clause passed.

Remaining clauses (78 to 81) and title passed.

Bill read a third time and passed.

TRADE MEASUREMENT ADMINISTRATION BILL

(Second reading debate adjourned on 28 April. Page 2109.)

Bill read a second time.

In Committee.

Clauses 1 to 5 passed.

Clause 6—'Inspectors.'

The Hon. K.T. GRIFFIN: I raise the question of who will be likely to be appointed as inspectors. At the second reading stage the Minister gave me a response, and I appreciated that. She also said that the current course for weights and measures inspectors is conducted over a period of seven months, incorporating full-time and part-time on-the-job training. She indicated that inspectors will be classified at the administration services officer 3 and 4 levels. Can the Minister indicate whether it is intended that the current course will be the form of the course for new inspectors under the new legislative regime; is she able to say what other qualifications are sought in applicants for the position of inspectors; and is she able to tell us the mix between full-time and part-time training and also who conducts the training?

The Hon. ANNE LEVY: There is a national training scheme for this particular task, but there is no obligation to follow the exact national scheme, and in fact in South Australia what we have been doing and what we expect to continue to do is to have training done on an in-house basis, conducted by officers of the department, though obviously there is close liaison and a relationship between the curriculum for our course and the national one, but the national one is done entirely by correspondence. We feel there are advantages in the mixture of course work and practical experience—the course work not by correspondence—which so far we have conducted here in South Australia. I understand the course consists of one month's course work and then one month's practical experience on the road, followed by another month of course work and another month of practical experience on the road and so on, making up the time. As I understand it, there is no suggestion, at this time, anyway, that our procedures will be changed, though I emphasise that there is, of course, constant liaison with regard to content of the course, and in terms of curriculum the courses are obviously comparable.

Clause passed.

Clauses 7 to 10 passed.

Clause 11—'Time for instituting proceedings.'

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

Page 5, line 6—Leave out 'five' and substitute 'three'.

This is the time within which procedings for an offence may be instituted. I made the point at the second reading stage that I thought a five-year time frame was much too long and I am seeking to reduce that back to three years. So, it will be two years in any event from the date of the commission of the offence, and a further year after that, with the authorisation of the Attorney-General.

The Hon. ANNE LEVY: I am quite happy to accept this amendment. I know we undertook this argument with regard to building regulations under the Development Bill only a few days ago, at which time the Government was strongly opposed to reducing the time. While the same principle is involved, obviously the two are not comparable, in that buildings are far more substantial structures and it may take much longer for defects to become apparent, whereas in the trade measurement area it is unlikely that any possible defects resulting from a breach of the Act would not be detected within the three years that the honourable member is suggesting. So, it is unlikely that there would be situations where breaches of the Act were detected more than three years after the commission of the offence. In consequence, I am happy to accept the honourable member's amendment.

Amendment carried; clause as amended passed.

Clauses 12 to 14 passed.

Clause 15—'Search warrants.'

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

Page 7, line 7—Leave out 'suspects on reasonable grounds' and substitute 'reasonably believes'.

This amendment is to bring the Bill in line with the Trade Measurement Bill, which in clause 60 relates to powers of entry: giving a power of entry where the inspector reasonably believes that an offence has been committed. In the Bill before us, the inspector need have a suspicion on reasonable grounds, which is a lower level of expectation than in the Trade Measurement Bill. There ought to be consistency and 'reasonably believes' is the appropriate standard to set.

The Hon. ANNE LEVY: Again, I am quite happy to accept the amendment, though I point out that my legal advice is that it makes very little difference which term is used. Although the Trade Measurement Bill talks about 'reasonable belief, in preparing the Trade Measurement Administration Bill, for which the same uniformity agreement does not apply around Australia, we did in many respects follow New South Wales which has in its trade measurement administration legislation 'suspects on reasonable grounds'. So it was, if you like, copying New South Wales, which was the first cab off the rank in getting this legislation up, and hence the use of that phrase in our legislation. If the honourable member wishes it changed so that we maintain a difference from New South Wales I am perfectly happy to accept it.

The Hon. K.T. GRIFFIN: I think there is some difference. We could argue about the subtleties of the difference between a suspicion on reasonable grounds and a reasonable belief for a long time. It has always been my understanding that a reasonable belief is a higher standard than a suspicion on reasonable grounds. However, because the Minister has indicated support for the amendment we are saved from the need to debate the issue *ad infinitum*.

Amendment carried; clause as amended passed.

Remaining clauses (16 to 24) and title passed.

Bill read a third time and passed.

LIMITATION OF ACTIONS (MISTAKE OF LAW OR FACT) AMENDMENT BILL

In Committee.

(Continued from 22 April. Page 2016.)

The Hon. T. CROTHERS: Mr President, I draw your attention to the state of the Committee.

A quorum having been formed:

Clause 3—'Limitation on actions for recovery of money.'

The Hon. K.T. GRIFFIN: As I understand it, we adjourned on the last occasion because we had addressed the issue of amendments proposed by the Attorney-General. We had a debate about whether it should be three years or six years and then we argued

about the recovery by the taxpayer of a tax or charge which subsequent to payment was declared by the court to be invalid. The Attorney-General then took away the issues which we had raised and undertook to have further discussions about the issue.

The Australian Finance Conference and the Credit Union Services Corporation raised some specific issues subsequent to that debate and, as I understand it, there is now a new amendment by the Attorney-General, to which I will move a series of amendments. I seek leave to withdraw the amendment that I moved previously. I would then expect that the Attorney-General will move his amendments of 30 April, following which I will move the amendments that I have on file.

Leave granted.

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

Page 1, lines 17 to 29, and page 2, lines 1 to 3—Leave out proposed new section 38 and substitute:

Limitation on actions for recovery of money

38 (1) Subject to subsection (2), an action for the recovery of money paid under a mistake (either of law or of fact) or otherwise based on restitutionary grounds must be commenced—

(a) if the cause of action arose on or after the commencement of this section—within three years after the cause of action arose; or

(b) if the cause of action arose before the commencement of this section—within the limitation period that would have been applicable if this section had not been enacted or three years after the commencement of this section (whichever expires first).

(2) If money paid by way of a tax or purported tax is recoverable because of the invalidity of the tax, an action for the recovery of that money must (whether the payment was made voluntarily or under compulsion) be commenced—

(a) if the payment was made after the commencement of this section or within six months before its commencement—within 12 months after the date of the payment; or

(b) if the payment was made more than six months before the commencement of this section—within the limitation period that would have been applicable if this section had not been enacted or six months after the commencement of this section (whichever expires first).

(3) The period of limitation prescribed by subsection (2) cannot be extended and, if the action is not brought within that period, the right to recover the money is extinguished.

(4) In this section—

'tax' includes a statutory business franchise or licence fee, or other statutory fee or charge.

Limitation to be part of substantive law

38A. A limitation of action imposed by this Act is to be regarded as part of the substantive law of the State.

Last week I indicated that I would re-examine this matter in the light of the discussions. My understanding is that members are prepared to agree to a 12 month limitation period on actions to recover payment pursuant to a tax but that they have concerns regarding the contraction of time for the recovery of payments made under a mistake of law or fact. Representations have also been received from the Credit Union Services Corporation Australia Limited and the Australian Finance Conference regarding the original Bill and in particular the blanket 12 month limitation period.

The main issue raised by the organisations revolves around the treatment of overpayments of valid tax as opposed to the payment pursuant to an invalid tax. It has been suggested that Victorian legislation refers to only invalid taxes. This view is based on a 1992 decision of the appeal division of the Supreme Court of Victoria. This case is currently on appeal to the High Court. Both organisations have accepted that a lesser period would be appropriate in respect of the recovery made pursuant to an invalid tax but consider that actions for recovery of over payments of valid taxes should have a minimum three year limitation period.

After further examination, the Government is prepared to separate the two issues so that the recovery in respect of invalid taxes is restricted to 12 months but that recovery of payments made under a mistake of law or fact or other restitutionary grounds (including an overpayment of a valid tax) can be made up to three years from the date of payment. Subsections (1) and (2) of my amendment provide accordingly.

The proposed amendment to extend the limitation period for actions for recovery of moneys paid under a mistake of law or fact or on restitutionary grounds to three years will address some of the problems raised by the Credit Union Services Corporation and the Australian Finance Conference. Whilst the two organisations would prefer a six year period of limitation, the Government considers that the period of three years is reasonable. This three year period proposed in the amendment provides a longer period within which to discover a payment under a mistake and a longer period within which to negotiate a settlement.

The Australian Finance Conference has also referred to the provision in the stamp duties legislation in Victoria, which gives the Comptroller of Stamps a discretion concerning refunds of duty. Although there is no statutory discretion vested in the Commissioner of Stamps, the Government would have a discretion to make a repayment if it considered the circumstances of the case warranted it.

As to the issue of conflict between provisions in other legislation which allow for a different limitation period, the Australian Finance Conference suggests the insertion of a provision out of 'an abundance of caution and for certainty'. The Government does not consider that such a provision is necessary.

Subsection (3) of the amendment provides that the 12 month limitation period in respect of recovery of invalid taxes cannot be extended and that if an action is not brought within the period the right to recover the money is extinguished. If an extension is allowed a person may be able to recover a tax payment some time after the payment because of a subsequent judicial determination which, in effect, renders the tax invalid. This is not considered appropriate. This subsection does not extend to actions covered by subsection (1), that is, money paid under a mistake of law or fact.

New section 38A provides that a limitation of action imposed by the principal Act is to be regarded as a part of the substantive law of the State. This is consistent with a decision of the Standing Committee of Attorneys-General aimed at avoiding the problem of forum

shopping, that is, taking action in another State to avoid a limitation period.

The Hon. K.T. GRIFFIN: I move to amend the Hon. Mr Sumner's amendment as follows:

(a) In paragraphs (a) and (b) of the proposed new section 39(1)—Leave out '3 years' wherever occurring and substitute, in each case, '6 years'.

The concern is that the three year period in relation to moneys paid under a mistake is too short. The relevant New South Wales legislation provides for three years from the date when the payment by mistake was discovered and that really does leave it open-ended. It seems to me that six years from when the cause of action arose is consistent with other time limits relating to recoveries of moneys under contract or otherwise and is the appropriate period of time. One has to take into consideration that when moneys are paid under a mistake someone is enriched as a result, and it seems only just that the person who has been enriched might disgorge that where it is paid by mistake. Financial institutions are concerned about this and I think others would be, too—and even Governments for that matter—where payments have been made to the wrong person and not discovered for a long period of time. It may be in relation to relatively dormant accounts that that occurs. I am proposing six years instead of three.

My second amendment deals with money paid by way of a tax or a purported tax. The Government's proposition is that that is recoverable, where the money is paid and, as a result of the tax, been declared to be invalid, one year after the payment was made. There are some transitional provisions: whether the payment was made voluntarily or under compulsion. I did flag to the Attorney-General, by way of letter, that I would like some clarification as to what a 'voluntary payment' is and what a 'compulsory payment' is, and I hope he might be able to enlighten us on that shortly.

Basically, my amendment seeks to provide that where you have a valid tax, but there has been an overpayment, then the one year limitation, for which there is to be no extension, does not apply. In relation to a tax which is invalid but, at the time of payment of an amount, was obviously not then declared to be invalid, if there is an overpayment in those circumstances that is not to be the subject of this subclause (2) limitation of 12 months.

As to my last amendment, whilst the Attorney-General says that he does not regard it as necessary, I think it would put the issue beyond doubt that, if there is an inconsistency between the provisions of the Limitation of Actions Act and the provision of any legislation dealing with recovery of taxes and charges, the specific legislation should prevail. I understand the rule of statutory interpretation that that is normally the position, but I think in the circumstances of limitation of actions it would be important to put it beyond doubt. My amendment seeks to give the specific legislation primacy over the Limitation of Actions Act. So it is there in the legislation and no-one can raise a question about it in the courts, which is not going to advantage anybody, except the legal profession.

The Hon. C.J. SUMNER: The Government is prepared to accept the three amendments, although there are some differences of view as to whether they are necessary. However, the matter has been canvassed fully, and we are prepared to accept them. The honourable member asked about clarification of what is meant by voluntary and compulsory and voluntarily and compulsion in subclause (2). I offer the following contribution.

These references have been included because of the uncertainty surrounding the approach to be adopted by the High Court when looking at action for recovery of an invalid tax. As mentioned in my second reading, the existing test as set out in *Mason v New South Wales* is that payments of money made under compulsion are recoverable where the demand is *ultra vires,* whereas voluntary payments are not recoverable. It is possible that this test may be modified by the High Court so that some voluntary payments may be recoverable. The Government would want such payment to be covered by the amendment also. In *Mason's* case the High Court examined the payments made under compulsion. The court held that licence fees paid under the State Transport Coordination Act were made under compulsion because it was possible to infer that unless the plaintiffs paid the prescribed charges they would be prevented from operating in the course of their business by seizure of their vehicles. After the fees were collected the Privy Council held that relevant parts of the Act had no valid application to the plaintiffs. The High Court held that the plaintiffs were entitled to recover the amount claimed because of the involuntary nature of the payment. If the payment had been made voluntarily, they would not have been able to recover. In his decision, Chief Justice Dixon stated:

> The moneys were paid over by the plaintiffs to avoid the apprehended consequence of a refusal to submit to the authority. It is enough if there be just and reasonable grounds for apprehending that unless payment be made an unlawful and injurious course will be taken by the defendant in violation of the plaintiff's actual rights.

A number of cases were referred to by the defendants with respect to what constitutes a voluntary payment. For example, in *Slater v. Burnley Corporation* it was decided that an excessive payment to a water company on demand was not recoverable, notwithstanding that the company had power to cut off water, because there was no threat to do so. The payment was held to have been made voluntarily and not under compulsion.

In *William Whiteley Ltd v. The King* it was decided that duties wrongly demanded under the Revenue Act and paid were not recoverable because they were paid voluntarily and not under duress. The duress relied upon was that a revenue officer had told the taxpayer that if duties were not paid proceedings would be taken for penalties. As to this, Walton J. said that to the knowledge of the suppliant the Commissioners of Inland Revenue 'could take no action if the duties were not paid except by legal proceedings. They could not distrain.' In that case there was no compulsion beyond the threat of legal proceedings.

In David Securities, the issue of voluntariness was also examined by the court. Chief Justice Mason indicated:

> An important feature of the relevant judgments is the emphasis placed on voluntariness or election by the plaintiff. The payment is voluntary or there is an election if the plaintiff chooses to make the payment even though he or she believes a particular law or contractual provision requiring the payment is,

or may be, invalid, or is not concerned to query whether payment is legally required; he or she is prepared to assume the validity of the obligation, or is prepared to make the payment irrespective of the validity or invalidity of the obligation, rather than contest the claim for payment. We use the term 'voluntary' therefore to refer to a payment made in satisfaction of an honest claim rather than a payment not made under any form of compulsion or undue influence.

In short, it is probably true to say that whether any particular payment was made voluntarily or under compulsion will be a question of fact, depending on the circumstances of the particular case.

The Hon. I. GILFILLAN: I wanted not to contribute but rather just to ask a question to satisfy my own curiosity and that of other casual readers of *Hansard.* With apologies to the Hon. Mr Griffin's explanation, what significance does his amendment have to section 38(2)? I would have assumed that subsection (2) virtually covered the meaning of what is included in the parenthesis, which states:

(but this subsection does not apply to the recovery of an amount that would, assuming that the tax or purported tax had been valid, have nevertheless represented an overpayment of tax).

What does that add to what could be interpreted from the original text of the Attorney-General's amendment?

The Hon. K.T. GRIFFIN: It may be out of an excess of caution but, as I interpret the Attorney-General's amendment to subclause (2), it refers to money paid by way of a tax or purported tax and, if there is an action for recovery which results in a declaration that the tax is invalid, whether the payment was made by the citizen voluntarily or under compulsion, there is a period of 12 months within which to take action to recover the invalid tax that has been paid. However, there is a distinction because there may be some cases where you have both the amount of the tax and the Act which imposes that subsequently is declared to be invalid, so you have what would have otherwise been a lawful amount of tax, but there may also have been an overpayment. If so, subclause (2) would prevent recovery thereof unless the application is made within 12 months. With my amendment, that is not included in that limitation period of 12 months.

The Hon. I. GILFILLAN: I thank the honourable member for that explanation. I have two other matters that need clarification. In relation to the Hon. Mr Griffin's amendment to section 38(4), subclause (5) provides:

In the case of inconsistency between this section and the provisions of any other Act, the other Act prevails to the extent of the inconsistency.

I may have missed the honourable member's explanation of the reason for that.

The Hon. K.T. GRIFFIN: The Attorney-General said in his contribution that he did not really think it was necessary. That may be the case: that a general statute such as a limitation of actions will not override the provisions of a specific Act of Parliament which might have a different period of limitation. However, there are taxing statutes which have a coherent procedure for objection, appeal from a determination of an objection and time limits within that specific legislation.

All I am suggesting by this amendment is to put the whole issue beyond debate as to which applies and which does not apply. If there is a specific provision in, say, the Payroll Tax Act, then that is to prevail over the limitation period imposed by this amendment.

The Hon. I. GILFILLAN: Finally, I ask the Attorney-General to confirm what I understood was the point he was taking from the various judgments about the nature of voluntary payment. If I heard him correctly, he stated that the payment of an account, say, to the E&WS or ETSA, which did not carry with it the threat that if the payment was not made within 30 days the power or water would be cut off, would stand as a voluntary payment and would not be recoverable.

The Hon. C.J. SUMNER: Well, that is a possible result. It depends also whether it is a tax. It may not be a tax. The problem with this area of the law is that it is in somewhat of a state of flux. As I mentioned, the Victorian case which is currently before the High Court means that we are to some extent trying to sort things out without clearly knowing what the High Court might determine in those matters. However, we do think we have to do something. It might well be that this issue will have to be revisited at some time in the future.

The Hon. I. GILFILLAN: I just make the observation that the ordinary citizen who pays an invoice or request for payment on official documentation often accepts that if there is non-payment there will be dire results down the track. It might not be spelt out on the document itself. Without asking the Attorney to respond, it certainly seems to me to be fraught with inconsistency at least.

The Hon. C.J. SUMNER: One could not but note that observation on the cases that I have read out, and it does depend on the facts of each particular case. While it is possible that in the circumstances the honourable member has outlined that could be regarded as a voluntary payment, it is also possible, depending on the circumstances, that it could be regarded as a compulsory payment. Then it is also a question of whether or not it is a tax, anyhow.

Amendment to amendment carried.

The Hon. K.T. GRIFFIN: I move to amend the Hon. Mr Sumner's amendment as follows:

Insert the following passage at the end of the proposed new section 38(2):

'(but this subsection does not apply to the recovery of an amount that would, assuming that the tax or purported tax had been valid, have nevertheless represented an overpayment of tax).'

Amendment to amendment carried.

The Hon. K.T. GRIFFIN: I move to amend the Hon. Mr Sumner's amendment as follows:

Insert the following subsection after proposed new section 38(4):

(5) In the case of an inconsistency between this section and the provisions of any other Act, the other Act prevails to the extent of the inconsistency.

Amendment to amendment carried; amendment, as amended, carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT BILL

In Committee.

Clause 1—'Short title.'

The Hon. M.J. ELLIOTT: I have a few words to contribute at this stage because order of business was changed without any notice being given to me and the Council went into the Committee stage without my having an opportunity to speak at the second reading stage. So, I want to take this opportunity to cover the matters that are of interest to the Democrats.

There is really no disagreement that there has, for some time, been a call for the establishment of a specialist court to deal with increasing amounts of environmental cases from all quarters. New South Wales has been a leading example in this respect, with the establishment of the New South Wales Land and Environment Court. The Minister pointed out in his explanation of the Bill that there is a veritable plethora of court procedures for disputes and enforcement in relation to planning, building and environmental issues, the simplification of which is well overdue.

For this reason I support the establishment of a court to deal with matters arising from the Development Bill, the Environment Protection Bill and other related legislation. I applaud the fact that the Government has decided that the proposed court should be a separate court rather than part of the District Court as the original drafts of the Development Bill indicated. I am certainly of the view that the range of functions that the court will be given, and its very nature, illustrate that it would be ill suited to the existing District Court structure.

I am also pleased to see that the court will be an informal court. In my opinion it is essential to the very nature of planning, building and environmental disputes that the court not be viewed as having truly adversarial hearings. There must be a mix of adversarial hearings and inquisitorial hearings, as well as provision for conciliation and mediation. In this respect I support the continuation of the current successful provision for conferences between the parties before trial. However, I recognise that there is a definite need for provisions relating to the punishment for offences and therefore there must be some corresponding formality in the court to deal with these matters. In my view this Bill meets both those needs. The court is flexible enough to adapt to the changing requirements for formality and adherence to rules of evidence, and also for informal hearings to resolve disputes. I believe that it is totally appropriate, indeed desirable, that the court have criminal jurisdiction as well as civil jurisdiction. One of the main reasons that this court was created was to allow for civil and criminal matters to be heard concurrently by a specialist judge in order to streamline the whole process.

The creation of this specialist court also allows judges to gain specialist and expert knowledge in planning, building and environmental matters. This will be similar to the situation within the Family Court of Australia where judges deal with the Family Law Act every day, deal with a large number of cases, and therefore become experts in the field. In my opinion, the ability for a judge to become a specialist in an area should only be encouraged.

To turn now briefly to the specific provisions of the Bill, I have a few comments I would like to make. Clause 10 provides for the appointment of commissioners of the court. I think that it is appropriate to include within the areas of knowledge and experience of the commissioners a knowledge of, and experience in, agricultural and rural industries. Clause 15 details the arrangement of business of the court. Subclause (2) provides:

> The court will only be constituted of a full bench if the presiding member of the court is of the opinion that the questions to be determined by the court are of such importance that they should be determined by a full bench of the court.

I understand that it is the practice of the current Planning Appeals Tribunal that the full bench is made available if all the parties request it. I am interested to hear why there has been this change.

Finally, clause 16, which deals with conferences, provides:

> (11) Unless a party to the proceedings objects, the member of the court who presided at the conference is not disqualified from sitting as a member of the court for the purpose of hearing and determining the matter.

In my opinion this clause should be reworded so that the presumption is that the member who has presided at the conference will not qualify as a member of the court to determine the matter unless the parties agree to allow it. This is simply to remove the responsibility from the parties to take action to object. If the clause were reworded the onus would not be on the parties.

I fully support this Bill. I believe that the creation of an independent specialist court will vastly improve the system for planning, building and environmental disputes and offences.

Clause passed.

Clause 2 passed.

Clause 3—'Interpretation.'

The Hon. K.T. GRIFFIN: I heard what the Hon. Mr Elliott had to say about the nature of the Environment, Resources and Development Court. The Liberal Party and I do not agree with the proposition that he puts, even though we have also been the object of representations from those who have been anxiously lobbying for a separate court. Whilst the Hon. Mr Elliott has given a clear indication as to where he wants to go in relation to this Bill, nevertheless I will persist with my amendments on particular issues. Our view is that the establishment of a new bureaucracy and a new court is not justified and will not achieve the benefits that both the Government and the Australian Democrats propose that it will have. The jurisdiction of the proposed court is obviously one of some contention. The definition of 'relevant Act' is probably the most appropriate point at which we deal with that issue of jurisdiction.

The Hon. Anne Levy: There are lots of consequentials.

The Hon. K.T. GRIFFIN: Yes. We have the very strong view, as we do with the Industrial Court, that the criminal jurisdiction ought not to be exercised outside the mainstream of the courts for a number of reasons. Whilst there may be an argument that one can develop expertise in dealing with particular offences, for example, in industrial matters or in planning matters or other environmental matters, and therefore maintain some

consistency in sentencing, it is, in our view, undesirable that the statutory offences be dealt with outside the mainstream court system because if they were dealt with in the mainstream court system there would be—at least in those judges and magistrates exercising criminal jurisdiction—a greater sensitivity to the consistency of approach across the system, if that is possible to achieve in the difficult area of sentencing. But there would not then be a disproportionate emphasis placed upon certain offences and disproportionate penalties being imposed when taken in the context of the general run of statutory offences and criminal cases dealt with by the mainstream courts. So, we hold the very strong view that no criminal jurisdiction ought to be exercised by this court.

I want to pick up one point that the Hon. Mr Elliott made, that there is a hope that criminal and civil matters will be dealt with together. I would have thought that that would not be possible because criminal matters require a particular standard of proof (proof beyond reasonable doubt) and a particular notice being given of the facts upon which the prosecution relies. The civil jurisdiction of the court requires a lower standard of proof (the balance of probabilities) and there are really two different sorts of issues involved between the civil sorts of cases and the criminal cases.

For example, an attempt to deal with both in the one hearing will not be possible either procedurally or, I suggest, in principle. If one gets to that point, one seriously has to indicate that in setting up a new criminal jurisdiction—this is what the Bill does in so far as the court will exercise criminal jurisdiction—it requires people both at the administrative level and in the judicial area to be familiar with the whole range of law and evidence that applies to criminal prosecutions. It is true that there is a limitation on the penalties that the court may impose (up to two years' imprisonment), but that is irrelevant to the principle as to whether this court, which will be dealing essentially with civil matters, is periodically required to deal with criminal-type issues. I do not believe that it is in the interests of the community that persons in a court with such limited exposure to other influences and experience should be placed in the position of making a judgment about guilty or not guilty issues which will not be dealt with on a frequent basis by this court and which will be dealt with away from the mainstream of other statutory offences.

I should like to take a little longer to deal with the concept of the court. There is an article in the *Queensland Planner,* which is a reprint of an article in the New South Wales *New Planner* of October 1992, about the Land and Environment Court in New South Wales. The article is by Mr Frank Hanson, who was Chairman of the Local Government Appeals Tribunal from 1973 to 1979, Senior Assessor at the Land and Environment Court, and returned to the city of Sydney as Director of Planning and Building in 1986, retiring in 1991. If the Committee will bear with me, there are some excerpts from that article which are relevant to this debate. He says:

> The Wran Government, elected in 1976, continued with the revision of the planning system but in a radical change of direction constituted a new avenue of appeal—to a superior court of record, the Land and Environment Court. While the reasons for that new policy direction were, at least in part, political, the advantages claimed for it were: (a) all remedies, both civil and criminal, would be available under one roof and from a specialist court; (b) questions of law could be decided in-house and on the spot whereas previously they needed to be taken to the Supreme Court (Administrative Law Division); (c) the Land and Environment Court, being a superior court of record, could enforce its own decisions; (d) the combination of judges and expert assessors, particularly sitting as panels, would give a streamlined system with increased efficiency and hence reduce costs.

That is exactly what the Government is proposing in this package of legislation, and it reflects the views expressed by the Hon. Mr Elliott. Mr Hanson then goes on to say:

> The court has failed to achieve these laudable objectives. The reasons are intrinsic to its nature as a court and are not solely because of personalities, although the *modus operandi* of the court leaves proceedings more open to be influenced by single personalities than where the bench is constituted of a multi-member multi-disciplinary panel. However, the chief criticism is that, like all legal proceedings, costs have put the ordinary citizen out of court. It is worth looking to the experience of the past 11 years.

Then he goes on to outline the lessons, saying:

> Rather than being an expert review of an application, hearings became a judicial weighing of evidence and submissions despite the injunction given to the court in its charter. Nowhere is this more evident and disturbing than in matters of objections made pursuant to—

then he has some technical matters—

> (planning matters) or...(building matters) where expertise in the bench is essential to give assurance of an informed decision.

Later he goes on to say:

> There is a case for the Institute—

I think that was the Planning Institute—

> to press the Government to re-examine the question of the appeal system in the planning scenario. Setting up the court was a radical departure from the whole thrust over the last century. Experience has now shown that move to have been ill-conceived.

It may be that the Minister and the Hon. Mr Elliott will say that we are going to be different and that we should go for something other than a court. I believe that what Mr Hanson is saying will be the experience that we have with tribunals and courts: that, because of the important issues which are before those courts, a measure of procedure will always be necessary to ensure that parties appearing before the tribunal or court are treated justly before the court and are enabled properly to exercise their rights. Although there may be a criticism of the court process, it has yet to be established that in other tribunals we can do any better in terms of achieving justice. In my view, Mr Hanson's article reflects that, no matter how good the intention, it is very difficult to implement in practice. If the decision of the Wran Government in 1976 is now demonstrated to be a cumbersome failure, we are on the road to the same sort of proposition. I move:

> Page 2, lines 1 and 2—Leave out the definition of 'relevant Act' and substitute new definition as follows:
>
> 'relevant Act' means an Act which confers jurisdiction on the court;.

It is left to each Act of Parliament to confer a particular jurisdiction. That was my argument on second reading. There is no reason to suggest that, by being part of the

District Court—an issue I will deal later in another amendment—this will promote formality. It denies the experience in New South Wales and also ignores the reality which is likely to occur.

The Hon. ANNE LEVY: The Government opposes this amendment. As the honourable member said, this amendment, plus all the consequential amendments that flow from it, would mean that the specialist Environment, Resources and Development Court would not be able to deal with criminal offences relating to the Development Bill and the Heritage Bill, and the Environment Protection Bill which we have not yet considered. It is splitting the role of the court and, as the Hon. Mr Griffin said, placing criminal offences back in the Magistrates and District Courts. I do not accept the Hon. Mr Griffin's reasoning in this respect. The Bill clearly sets out that, where criminal offences are being considered, the matters can be heard only by judges and magistrates. The commissioners, while expert in their own areas, are not members of the judiciary and they will not be involved in determining criminal offences or penalties relating to criminal offences.

The Hon. K.T. Griffin: I didn't say that they would.

The Hon. ANNE LEVY: No, I appreciate that; but I point out that this is the protection that the legal purists would wish in terms of examining criminal offences, namely, that these matters should be considered only by judges and magistrates. That is the case with the Bill as it stands. On the other hand, there is certainly merit in having all these cases heard by specialist judges and magistrates who, if they do not have great expertise and experience in the area when first appointed to the court, will soon gain that experience. This will mean that the same judges and magistrates will be dealing with all facets of the matter, that their experience will lead to greater consistency, and there will be a greater appreciation of the parallels that should be taken for breaches of environmental laws, planning laws or building rules. This will be of considerable advantage in relation to consistency and smooth functioning of this whole area.

The criminal burden of proof will still apply in criminal cases and, as the Hon. Mr Griffin indicated, the court will be limited as to the penalties that it can impose. It seems to me that all the legal niceties, which quite rightly some legal people are concerned about, are being met in the legislation before us and there is no need to split the role of this court, as suggested by the Hon. Mr Griffin in this and in all the consequential amendments.

The Hon. M.J. ELLIOTT: I indicated when I spoke earlier that the Democrats have no problems with the role of the court as described in this Bill, and we will not support the amendment.

The Hon. K.T. GRIFFIN: The Minister has used a couple of descriptions that I want to make some passing remarks about. She has talked about legal purists. I do not think there is any suggestion that the proposition that criminal matters should be dealt with by the mainstream courts is a matter of legal purism—if that is the correct description. It is a question of the best way to get justice, and we must remember that there are periods of imprisonment which the court can impose and, in our view, it is more appropriate for a court which is essentially concerned with civil issues not to be addressing the criminal matters outside its normal experience and that there is a much better prospect of consistency of approach and justice if the offences are dealt with by the mainstream court.

The Minister has also made reference to some legal niceties. I do not think any of what I am suggesting is directed towards achieving a legal nicety. We are endeavouring to establish a properly accountable system where the parties will be the beneficiaries of a system which provides justice and equity. I acknowledge that it is a matter of judgment, but in terms of the criminal jurisdiction it seems to us that it is quite inappropriate to have this court dealing with criminal matters. It is not a matter of dealing with criminal and civil issues arising from the same set of facts.

I would have thought that there may well be a valid point taken that, if a judge or magistrate hears a particular civil issue, that judge or magistrate may then be disqualified from dealing with the criminal matter. That is quite possible, and I think that they are, in effect, two separate and distinct sets of proceedings which have to be kept that way, because of the different issues that are involved. If I lose this on the voices I intend to divide. I indicate to the Committee that I am not going to divide on every issue but there are some which are important and which, notwithstanding the pressure of business, it is important to take to that final resolution.

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 (teller), Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner, G. Weatherill, Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clauses 4 to 6 passed.

Clause 7—'Jurisdiction.'

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

Page 3, lines 13 to 32—Leave out this clause and substitute new clause as follows:

Jurisdiction

7. (1) The court will have the jurisdiction conferred on it by or under this or any other Act.

(2) The court does not have jurisdiction to try a charge of an offence.

This clause deals with jurisdiction. This amendment is not consequential, although in some respects it may be construed as such. The concern I have, notwithstanding the criminal jurisdiction to which I have referred, is that the Governor may by proclamation confer on the court jurisdiction with respect of offences. I think it is particularly offensive to have jurisdiction being conferred on a court by proclamation, where there is no accountability, so that the Government can make a proclamation, vary a proclamation, revoke by proclamation and can confer on the court jurisdiction in respect of offences against a specified Act or statutory provision. Whatever jurisdiction it has ought to be conferred on it by an Act of Parliament and not by proclamation. Whilst this does impinge upon the earlier

issue, it is also an issue standing alone. Jurisdiction ought, as I say, to be conferred only by statute and not by proclamation, which is the worst form by which jurisdiction can be conferred.

The Hon. M.J. ELLIOTT: I do not disagree that it is primarily a question of proclamation, but it appears to me that the honourable member's amendments are far more radical than that one issue. I am not sure whether the Minister is picking this up, but I have had a fairly long history in this place of resisting proclamation. I would have been quite satisfied with regulation, but that is not the pathway that the Hon. Mr Griffin has followed. I wonder why he did not do that because I would have found that acceptable, as distinct from what he has done here.

The Hon. ANNE LEVY: The Government opposes this amendment. Despite what the Hon. Mr Griffin says, proposed subclause (2) is consequential on the amendment that has already been lost and would be a nonsense given the failure of that amendment. Furthermore, my legal advisers tell me that the amendment is trying to do a lot more than what the Hon. Mr Griffin indicated in his contribution and that he has touched on only part of what he his trying to do. The Government certainly opposes it.

The Hon. K.T. GRIFFIN: This is what happens when you get to the end of a session and the Government says that it wants everything through; but in fact it will not get everything through. I must confess that I checked the amendments but was not quick enough to identify that because I had lost the first amendment I should have moved this amendment in a different form. I apologise to the Committee for that. It seems that, in the context of having lost the last amendment, all I should do is move for the deletion of subclause (2); and then it seems to me that it is then by Act of Parliament that jurisdiction is conferred upon the court without the necessity for matters to be dealt with by proclamation.

The Hon. Mr Elliott said that he would be happy to do it by way of regulation; I am not happy about that. But if it is the only position we can achieve it may be that that is what has to happen. However, it does seem to me to be wrong in principle that you have a proclamation, or even a regulation, saying 'This court can deal with these particular types of offences against a particular Act or other statutory provision,' and that that can be the subject of variation from time to time. Before I seek leave to withdraw my amendment, it may be that the Hon. Mr Elliott has some other view, following what I have explained is the error I have made and the focus I want to make on this clause.

The Hon. M.J. ELLIOTT: The Hon. Mr Griffin has now conceded that what he originally moved was way beyond what he spoke to, and we are now really just looking at subclause (2). We have no difference of opinion in that neither of us find proclamation acceptable, and the question then becomes a matter of whether or not it happens by regulation or we leave it to come back to Parliament. I do not lose a huge amount of sleep either way. Where regulation causes me concern is where regulation is passed and something can happen in the intervening months which can be abused, if you like, and that is where Governments may be tempted to do so. I am not sure that regulation can be abused here in the same way as it might be in other cases. As I say, I am not greatly fussed either way, but as a matter of course I prefer legislation to regulation and regulation to proclamation. I cannot see, as least on the face of it, what the Government would want to do even by regulation that would require that. All I do at this stage is invite the Minister to give an example of where regulation would be necessary as distinct from perhaps seeing it as being easier to do.

The Hon. ANNE LEVY: I understand that subclause (2) is the method by which criminal offences are to be brought into the jurisdiction of this court. There is nothing in the Development Bill which brings the offences there to this court. It is understood that by proclamation criminal offences in the Development Bill will be brought into the ERD Court. Likewise, when the EPA has been considered and adopted by Parliament, criminal offences under that can, by proclamation, be brought into the jurisdiction of this court. It is the method by which the criminal offences under the different Acts can be brought into the jurisdiction of this court. There is no intention, by proclamation, of bringing completely unrelated matters to court. It is merely the way of getting development, heritage, environmental and criminal matters into the jurisdiction of this court.

The Hon. M.J. ELLIOTT: Despite the assurances of the Minister, the simple fact is that by proclamation a later Minister may decide that some other Bills, which they think may be related in some ways—where they relate to land use, agricultural or whatever else—may be appropriately handled by this court. Other environmental legislation might also be deemed later to be suitable.

I simply do not find proclamation acceptable. I ask the Minister why indeed it cannot be done legislatively, perhaps within the other Acts that she mentioned or, as a minimum, by regulation? I think the Minister should be saying why it cannot be done legislatively. The question of proclamation is just not on the table, as far as I am concerned, and it is a question of regulation versus legislation.

The Hon. K.T. GRIFFIN: It is very much open to speculation and, even if it were by regulation, it would seem to me that it is possible to do it all in one sort of omnibus set of regulations in respect of which there might be difficulty in relation to disallowance.

I should have thought that if the Government wanted to deal with particular sorts of offences, whether they were certain offences under the Development Act, marine pollution legislation, building legislation, or whatever, that ought to come before us in an Act which says, 'These are the offences which we are going to deal with.' We then pass judgment and say, 'Look, you can add that,' or 'We think you ought to take that out,' and the Parliament will ultimately decide what jurisdiction this court will exercise.

At the moment all criminal matters are dealt with by the mainstream courts. It may be, now that the principle has been established, that only a limited number of offences ought to be given to this court. It may also be that matters relating to fraud, if there are any, should be dealt with by the mainstream courts. I think all that ought to come legislatively, rather than by regulation, and I would be very much more relaxed about it if we

had an opportunity as a Parliament, through the legislative process, rather than through the review process of regulations, to look at what is proposed.

It means also that the Government and Government's advisors must concentrate the mind and make some decisions, look at the principles which are to apply and put up a proposition rather than doing it in this way, which enables the decisions to be taken later within the department.

The Hon. ANNE LEVY: In the light of discussions and legal advice that I am getting at long distance, as it were, it is suggested that I move an alternative amendment to that moved by the Hon. Mr Griffin, which is to clause 7. I therefore move:

Page 3, lines 16 to 19—Leave out subclause (2) and substitute new subclause as follows:

(2) The regulations may confer on the court jurisdiction in respect of offences against a specified Act or statutory provision.

This would mean that offences under the Development Act, the EPA Act (when it is enacted) or any other Act, if it was felt that they related to the matters to be considered by the ERD Court, would be put in regulations. Parliament would then be able to disallow them if the Parliament felt that they were too far removed from the purposes of the ERD Court.

If it is agreed that the particular offences are appropriate for that court to consider, then the regulation would not be disallowed by Parliament and the court could then have that jurisdiction conferred on it to deal with those, as with other, matters.

The Hon. K.T. GRIFFIN: I have acknowledged that I was moving an amendment which would effectively replace the whole of clause 7. I now formally seek leave to withdraw that amendment. I acknowledge that it is inappropriate in the light of the amendment which I earlier lost.

Leave granted.

The Hon. K.T. GRIFFIN: I acknowledge that the Minister's amendment is preferable to what is in the Bill. However, I still believe that we ought to insist upon the conferring of jurisdiction by legislation. We then have absolute control over that. We know what is being proposed, and both Houses of Parliament have an opportunity to examine that. They certainly have the opportunity by way of disallowance motion but there it is, in a sense, reversed to the positive legislative process. I indicate that if the Minister moves that amendment I will still oppose it. I will support the deletion of subclause (2) but I will oppose the replacement.

The Hon. M.J. ELLIOTT: I am satisfied to accept the amendment that the Minister has now moved. The only possible weakness is the possibility that a regulation might be used in relation to Acts other than those which the Minister has indicated. I think the Minister would recognise that doing so is just simply taking the risk that it will be rejected. The major reason for wanting to insist on doing it within legislation rather than regulation is that it could be abused in some way, and that abuse usually occurs by taking advantage of the time between which the action is carried out and the time at which it may be rejected. I cannot see how that could occur in this situation, so I feel relaxed about regulation, with a clear understanding at this stage at least that we are talking about the Development Bill and the Environment and Protection Bill when that is eventually passed also.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: There is no guarantee, but also there is no guarantee that, if they tried it with anything else, we would not throw it out, too.

The Hon. K. T. Griffin interjecting:

The Hon. M.J. ELLIOTT: That's unlikely. It is more likely for it to happen in relation to other Bills which might be close, but that is something that we can debate. I do not think it is something that can be abused by the Government in terms of getting it through and the hiatus before we have a chance to reject it being used to achieve some goal of which the Parliament does not approve. I am relaxed about the Minister's amendment and will support that. I do not see a need to oppose the whole clause, acknowledging that the original clause was quite clearly unacceptable.

Amendment carried.

The Hon. K.T. GRIFFIN: It is a constant problem with regulations that, if there is an omnibus set of regulations, it is virtually impossible to disallow it because there are always competing pressures. For example, it is said, 'This part is desirable, but if you throw that out you will get kicked by this group; if you do not throw that out, you will get kicked by somebody else,' and so it goes on.

In another piece of legislation that we dealt with a couple of weeks ago, I remember that we specified in relation to one matter that a regulation should deal only with that particular matter. I am contemplating something along the same lines when we reach the regulation-making power, namely, that a regulation relating to the conferring of jurisdiction on the court should deal only with the conferring of jurisdiction under one Act of Parliament at a time. So, if it is under the Development Act, we have a set of regulations which confer jurisdiction in relation to offences under the Development Act. If we have the Environment and Protection Authority Act, there is a separate set of regulations in relation to that.

The Hon. M.J. Elliott: You draft it: I will support it.

The Hon. K.T. GRIFFIN: Will you? I just flag that that is what I would like to see happen. The conferring of jurisdiction is an important issue. The Hon. Mr Elliott has indicated that he will support it if I get it drafted. I will do that for the purposes of a later clause dealing with regulations, but I just wanted to put that on the table now so that the Minister could think about it as well.

The Hon. ANNE LEVY: I think the Government would be quite happy to accept that as a proposal. I understand that this would not be an amendment to clause 7 but an amendment to a later clause.

The Hon. K.T. Griffin: Yes, one dealing with regulations at the end.

The Hon. ANNE LEVY: If the honourable member wanted to do it with respect to clause 7, I would be quite happy to recommit the Bill.

Clause as amended passed.

Clause 8—'Judges of the Court.'

The Hon. K.T. GRIFFIN: Again, this is an important issue. It depends on how one views the establishment of an Environment, Resources and Development Court. I have already indicated that our preference is that the

criminal jurisdiction not be conferred, but we have lost that debate. Then there is the issue of whether the court will be a division of the District Court and therefore be under the general supervision of the District Court, so that judicial, magisterial and other resources can be properly managed within the system or a separate court on its own.

The Liberal Party proposes that this in effect be part of the District Court, but as the District Court presently has the administrative appeals division which brings together a range of administrative and other tribunals we envisage that this court, even though a separate court in name, would be yet another division of the District Court. If it is that, there are two ways one can go in relation to the appointment of the presiding member and other members of the court.

As provided in clause 8, the presiding member of the court must be a judge of the District Court appointed by the Governor after consultation with the Chief Judge. Other judicial members are to be judges of the District Court designated by the Governor by instrument in writing as a judge of the Environment, Resources and Development Court. That does raise a couple of issues.

As I indicated at the second reading stage, in the early 1980s we were concerned to ensure that the Planning Appeals Tribunal, which had a life of its own away from the court where the judges were judges of the District Court but nevertheless very rarely at the District Court, should be brought within the umbrella of the District Court. That is how it operates at the moment, except there is still a very significant measure of dedication of particular judges to the work of the Planning Appeals Tribunal.

It is not a desirable situation for the Chief Judge of the District Court to have judges who are nominally judges of the District Court nominated and appointed to positions in other jurisdictions without at least the Chief Judge being involved in that decision.

My proposition is that the presiding member will be a judge of the District Court nominated by the Chief Judge rather than by the Governor in consultation with the Chief Judge, apart from the constitutional issue of how a Governor consults with the Chief Judge, which is another issue that we can deal with later. The primary concern is to identify the relationship between the Chief Judge and the judges of the new Environment, Resources and Development Court. Another alternative is to continue to allow the Governor to make the appointment but only with the concurrence of the Chief Judge.

That may be an option that the Hon. Mr Elliott, for example, or the Minister may be comfortable with rather than leaving the appointments only to be made by the Chief Judge. However, there does need to be more than consultation, in my view, to ensure that the appointment of the judges is done in such a way that it has the concurrence of the Chief Judge and does not create problems either way for the operation of the District Court or this new court. My preference is for the presiding member to be appointed by the Chief Judge or to be nominated by the Chief Judge. I will be prepared to accept something less than that, such as the Governor making the appointment but with the concurrence of the Chief Judge so that there is much more than just consultation. I move:

Page 4, lines 6 and 7—Leave out subclause (2) and substitute new subclause as follows:

(2) The presiding member will be a judge of the District Court nominated by the chief judge.

The Hon. ANNE LEVY: The Government opposes this amendment and argues strongly for the clause as presented in the Bill before us. It is true that the initial planning review recommended that the ERD Court should be established as a division of the District Court and the earlier draft Bills had this incorporated. However, the vast majority of the many submissions received, particularly from judges and people in the legal areas, planning areas, and the building field all strongly argued for a completely separate court to be established. To reassure the honourable member, it is not intended that this means the creation of a new bureaucracy. This can be avoided by bringing this new court under the new Courts Administration Act. The Bill is also proposing the sharing of resources in exactly the same way as the District Court and the Planning Appeal Tribunal currently share resources.

In his second reading speech the Hon. Mr Griffin appeared to assume that the Planning Appeal Tribunal operated under the District Court, but this is not correct. The Planning Appeal Tribunal is separate but for convenience it happens to share administrative resources. That is similar to what is being proposed in this Bill. While the ERD Court will be a completely separate court, the staff who serve in the District Court can service the ERD Court, so eliminating the need for separate staff.

The Hon. M.J. Elliott interjecting:

The Hon. ANNE LEVY: It is relevant in that this amendment is the first of a series of amendments. I thought we would save time by debating the whole group simultaneously, but I will come to the matter which is mentioned in this particular amendment which is the first of many that hang together. Certainly this amendment is proposing that the appointments would be made by the Chief Judge of the District Court rather than appointments being made by the Governor.

The Government is very keen to promote the concept of a specialist court. We feel that the judges and magistrates should be specifically appointed to the ERD Court because of their knowledge in the relevant fields, and that this will underscore the specialist nature of this jurisdiction. Surely it is the Government who should decide who is appointed to the ERD Court. The selection of appropriate people to hear specialist matters is an executive function and should not be left to a person who is quite outside the normal system of accountability to the Parliament. This will be a specialist jurisdiction and there needs to be careful consideration of the appropriate appointments to the jurisdiction, and the responsibility for the choice of those people must be one which is accountable to the Parliament, as with the choice of other judges in other jurisdictions.

Judges to the District Court are not chosen by the Chief Judge. The Government chooses the judges of the District Court: the Government should choose the judges of the ERD Court. It is an executive function and there is accountability to the Parliament. I am sorry if I started arguing other matters, but this is the first of a series of

amendments from the Hon. Mr Griffin which is trying to make the ERD Court part of the District Court, subservient to the District Court, and not a specialist court as intended by the legislation.

The Hon. M.J. ELLIOTT: I will not support the amendment, but as I indicated concern in another piece of legislation debated recently about the use of 'Governor', I can understand why the term 'Governor' is used but I do not see the Governor as being accountable to the Parliament.

The Hon. Anne Levy: All the Ministers are.

The Hon. M.J. ELLIOTT: The Ministers are, but this is not a ministerial decision.

The Hon. Anne Levy: They are Cabinet appointments—

The Hon. M.J. ELLIOTT: You are not really accountable to the Parliament in the sense that I understand the word 'accountable' where Parliament can actually intervene other than saying that we think you are wrong.

The Hon. Anne Levy: I think it is too important to be left to a single Minister.

The Hon. M.J. ELLIOTT: I did not disagree. What I was raising was more a matter of philosophy as to what one believes the role of Governors should be. I am not happy with this instrument of 'Governor' and, frankly, would prefer to see another instrument being used. It is an issue that has concerned me for some time. Essentially, decisions by Cabinet and by Ministers are protected significantly by the fact that the term 'Governor' is used and the implications of that. Having noted that, I do not have problems with the Government making the decision about who the presiding member may be. So I am supporting the clause as it stands and am opposing the amendment; but I am flagging, as I have done previously, that I do have some concern about the use of 'the Governor'. I understand why it is being used but I think it is open to abuse as well. I must say that I would prefer to see some other instrument devised rather than that one.

The Hon. K.T. GRIFFIN: I thought I had won the Hon. Mr Elliott for a short time but then he lost me when he began to talk about 'the Governor', because, where one appoints members of the judiciary, I do not know of any other mechanism, other than a judicial council or the Parliament, which would be satisfactory for making the appointment. I disagree with the Minister in relation to the executive responsibility. Certainly it is an executive responsibility to appoint judicial officers to courts, but I make the point that this one is different because this is not an appointment only to the Environment, Resources and Development Court; it is an appointment of a judge as a judge of the District Court. That is the primary appointment and so having been appointed a judge of the District Court they are then also appointed as a presiding member of the Environment, Resources and Development Court.

There are executive functions and I did flag that one of the possibilities is appointment by the Governor but with the concurrence of the Chief Judge. There are 30 to 40 District Court judges and one of the problems over the years with the District Court is that anybody who is appointed to judicial office for a function, such as the Commercial Tribunal, Licensing Court or Planning Appeal Tribunal, is always appointed a judge of the District Court. The Chief Judge does not know where those people are, how they are functioning and has no sort of administrative responsibility for them and I think there ought to be. You might say, 'Well, the Chief Judge is not accountable' but, after all, at least the Chief Judge has a responsibility for the District Court. This, by establishing the presiding member as a judge of the District Court and also a judge of the Environment Resources and Development Court, really means that the Chief Judge has no effective responsibility for judges under his jurisdiction.

Amendment negatived.

[Sitting suspended from 6.2 to 7.45 p.m.]

The Hon.K.T. GRIFFIN: I should like from the Minister some outline of how she sees this court operating, particularly in relation to criminal and civil matters. The judges of the District Court go on circuit and magistrates are posted to particular locations, so they are on the spot dealing with issues and people do not have to come to Adelaide. Can the Minister indicate how the new court will deal with issues outside the metropolitan area?

The Hon. ANNE LEVY: I understand that the new court, like the Planning Appeal Tribunal, will meet outside Adelaide, will have on site meetings, and so on. Currently the Planning Appeal Tribunal outside Adelaide may sit in local magistrates courts or council chambers. It is expected that this court will act in the same way. Furthermore, for non-criminal matters, where there are specialist commissioners, it is expected that a number of them will be part-time and resident in non-metropolitan areas, so they will be able to deal with matters in their local areas. I understand this happens with building referees, and, of course, building specialists can be part-time commissioners of this new court.

The Hon. K.T. GRIFFIN: I recognise that the Planning Appeal Tribunal presently goes on views and does go outside the metropolitan area, but it has a very limited jurisdiction; it relates only to planning matters within that specific jurisdiction. I understand that this court will have development legislation and civil and criminal jurisdiction. Those issues relate not only to matters that arise in the metropolitan area, but also in country centres. It will also exercise other jurisdiction—maybe under the Environment Protection Act. It seems to me that there will be a lot more work to be done outside the metropolitan area for that court than there is in relation to the Planning Appeal Tribunal. In those circumstances, if the judges of the new court are to go on circuit, as District Court judges do and as magistrates go on a visiting circuit to various locations, will that sort of thing happen with this court? Alternatively, are ordinary magistrates and judges of the District Court also to be judges of the Environment, Resources and Development Court so that, when judges of the District Court go to Whyalla, to the Riverland or to Port Lincoln, they deal not only with District Court matters, but also Environment, Resources and Development Court matters? Is it intended that perhaps one week judges of the District Court will go on circuit and the next week or so a judge of the District Court,

who is also a dedicated judge of the Environment, Resources and Development Court, will go on circuit so that there will be a duplication of resources and time and no efficiency and removal of overlapping administrative activities?

The Hon. ANNE LEVY: I understand that it is not expected that there would be duplication of magistrates following each other round the regional areas. Nor is it expected that there will be a great number of cases to be dealt with by the court because of the compulsory conference procedures which are built into the legislation. It is anticipated that these will resolve a very large number of the issues and that those remaining for the actual court will not be large in number. This is the expectation at the moment. Should experience prove otherwise, consideration would have to be given to meeting that situation. It is not anticipated at the moment that there would be many sittings outside the metropolitan area.

The Hon. K.T. GRIFFIN: The Minister has said that it is not expected that magistrates will follow each other around. Does that mean that ordinary magistrates will, in addition, exercise jurisdiction under this legislation in relation to matters which are within the jurisdiction of the court?

The Hon. ANNE LEVY: The answer is 'No'. It is anticipated that specialist individuals will deal with these matters, not magistrates or non-specialist judges on circuit.

The Hon. K.T. GRIFFIN: Mr Chairman, I expect the same answer would be given in relation to the District Court and the judges of the Environment, Resources and Development Court, that they would duplicate visits if it ended up being necessary to visit the same location but for different purposes.

The Hon. ANNE LEVY: I point out that most cases will be able to be dealt with by commissioners sitting alone. It is not anticipated that there will be any great necessity for judges to move around the regional areas; but obviously if necessary they will hold sittings in non-metropolitan areas.

The Hon. K.T. GRIFFIN: Can the Minister tell us how many judges it is proposed will be appointed to the new District Court, and how many magistrates and how many commissioners?

The Hon. ANNE LEVY: I understand that to begin with it will have the same strength as the current Planning Appeals Tribunal and that, if necessary, further appointments will be considered.

The Hon. K.T. GRIFFIN: I do not know what the current strength of the Planning Appeal Tribunal is—

The Hon. Anne Levy: I will find out.

The Hon. K.T. GRIFFIN: Of course, that only deals with the judges and the commissioners. There is the question of magistrates. Is the Minister able to tell us how many magistrates it is proposed to appoint for the purposes of the court?

The Hon. ANNE LEVY: I do not think that has been finalised as yet, but I will certainly see if there is a guesstimate available and let the honourable member know.

The Hon. K.T. GRIFFIN: Whilst talking about resources, can the Minister indicate whether any assessment has been made of additional resources that might be necessary for the operation of the court and, if so, is she able to give me some indication of what those resources are, in addition to the current resources, and of what the projections might be for the next financial year or so?

The Hon. ANNE LEVY: Estimates or guesstimates have been made on this matter, but I am afraid I do not have the information here. I will certainly get it for the honourable member.

The Hon. K.T. GRIFFIN: I appreciate that the Minister will get that information. It might be appropriate, if the Bill is finally passed, that in some way we have it incorporated by way of answers to questions or something so that it is on the record at some stage.

The Hon. ANNE LEVY: I will certainly follow up that matter, Mr Chairman.

The Hon. K.T. GRIFFIN: This is an observation, Mr Chairman: as I said at the outset, I am concerned about this question of this court having a life of its own. I know that the debate has already been conducted, and I have lost on the issue, but I need to put on the record that I have some very serious concerns about the resource implications of the court, particularly where it does have a life of its own, and particularly in the light of the information which the Minister has provided that the ordinary magistrates and the ordinary judges of the District Court will not have a concurrent jurisdiction to deal with matters which might be covered by this court.

As I envisage it, and from what the Minister has indicated so far during debate in Committee, this court is going to be a more broadly based committee than the Planning Appeal Tribunal. It is going to have a wider jurisdiction in a range of areas which presently the Planning Appeal Tribunal does not have jurisdiction in, and there will of course be the criminal jurisdiction where, obviously, it is not in the interests of citizens to have to traipse down to Adelaide—or even in the civil jurisdiction, for that matter—and obviously the court will have to go on circuit.

The point I make is that that is going to cost money: there will not only be the judicial officers or the commissioners who go, but also the clerks, the reporters and everybody else who goes along and is necessary to make such an operation work. That will be duplicating what is happening with the District Court and the Magistrates Court. I express grave concern about the resource implications of that, particularly in the context of a Government which says that it wants to reduce costs across the public sector; yet here is something which I suspect will incur quite considerable additional costs in the medium term. But I do not need to take the issue of the court further. I have lost most of the amendments on this—but I will not go peacefully.

Clause passed.

Clause 9—'Magistrates.'

The Hon. K.T. GRIFFIN: Mr Chairman, I do not intend to proceed with my amendment to lines 24 and 25. It is all related to the question of who makes the choice of judicial officers. I have not been successful in my attempts to have that related more directly to the responsibilities of the Chief Judge, so I do not propose to move that amendment.

Clause passed.

Clause 10—'Commissioners.'

The Hon. ANNE LEVY: I move:

Page 5, line 6—After 'environmental' insert 'protection or'.

This amendment is designed to broaden the range of experiences that a commissioner can have so that the requirements of the proposed Environment Protection Bill can be accommodated. It is to allow for the future responsibilities which are expected under the Environment Protection Bill when dealt with by this Parliament.

The Hon. K.T. GRIFFIN: I do not have any objection to it.

Amendment carried.

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

Page 5, after line 6—Insert new paragraph as follows:

(ea) agricultural development;

One of the matters which has been put to the Liberal Party is that there is no reference within the range of experience that commissioners must have for agricultural development, yet that is one of the cornerstones of South Australia's economy. So, I am proposing that an additional area of practical knowledge and experience should be 'agricultural development'.

The Hon. ANNE LEVY: I accept the amendment.

Amendment carried.

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

Page 5, line 7—After 'land' insert 'care or'.

It was suggested that, again, the list of experience should not relate just to 'land management' but also to 'land care or management'. There is a distinction between the two, and I move the amendment accordingly.

The Hon. ANNE LEVY: I accept the amendment.

Amendment carried; clause as amended passed.

Clause 11—'Masters.'

The Hon. K.T. GRIFFIN: Is it proposed that an additional master be appointed to the court rather than a master of the District Court already appointed exercising concurrent jurisdiction? The master has the status of a magistrate but also has special responsibilities under the District Court Act. It would seem to me that if there is no consultation with the Chief Judge—and that is not required in this clause—it may adversely affect the operation of the District Court if there is to be no new appointment. I am not advocating a new appointment; I would just like to ascertain exactly what is proposed to occur.

The Hon. ANNE LEVY: I understand that it is expected that it will be the same master as for the District Court. Currently he fulfils the role of master for the Planning Appeal Tribunal, and it is not anticipated that there would be any problem for him to be master of the ERD court instead of the Planning Appeal Tribunal.

Clause passed.

Clauses 12 to 14 passed.

Clause 15—'Arrangement of business of the court.'

The Hon. K.T. GRIFFIN: Can the Minister indicate on which occasions only one commissioner will sit with a judge or magistrate?

The Hon. ANNE LEVY: As I understand it, this has been put in the Bill at the request of one of the judges of the Planning Appeal Tribunal to enable there to be greater flexibility. He felt it was desirable to have such flexibility, although off the cuff it is hard to think of situations where such flexibility may be required or desirable. Perhaps the judge had such occasions in mind when he made this suggestion.

The Hon. K.T. GRIFFIN: I understand that this was included in the House of Assembly, and I appreciate that the Minister cannot tell me when it is likely to occur. I confess that I interpreted that initially as a judge and not less than one commissioner or a magistrate and not less than one commissioner, but when one reads that it looks as though there is a judge and a magistrate and one commissioner, so the three sit together. With due respect to the Minister and her last answer, I wonder how that really does give greater flexibility because you have two judicial officers with a commissioner rather than a judge and two non-judicial officers or a magistrate and two non judicial officers. I must confess that I am somewhat confused about the circumstances in which that will make some savings or give greater flexibility.

The Hon. ANNE LEVY: On the face of it, it looks that way. I can only repeat that it was suggested by one of the judges on the grounds that it could provide a needed or desirable flexibility in some circumstances.

The Hon. K.T. GRIFFIN: Is the Minister able to ascertain the rationale for that and the occasions on which it might apply and in due course let me know?

The Hon. ANNE LEVY: I would be happy to attempt to find a reason.

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

Page 8, lines 31 to 33 and page 9, line 1—Leave out subclause (14).

This clause deals with the arrangement of the business of the court and subclause (2) provides:

The court will only be constituted of a full bench if the presiding member of the court is of the opinion that the questions to be determined by the court are of such importance that they should be determined by a full bench of the court.

I understand that what currently happens in the Planning Appeal Tribunal is that if the parties request a full bench they get one, and that usually it is established within about six weeks after a conference has failed to reach a compromise. I would have thought that the parties at least ought to be able to request that the court be constituted of a full bench, particularly if the issue is one of significance to the parties. Rather than leaving that only to the discretion of the presiding member, I would have thought that if all the parties agreed that request ought to be agreed to.

The Hon. ANNE LEVY: The Government opposes this amendment. Under the Bill as it stands, each party will be able to express a point of view at the compulsory conference stage, and that information will be passed on to the presiding member before he or she decides whether or not a full bench is to be constituted. It is felt that if the honourable member's amendment was incorporated this could be used to slow down dispute resolution by any party requesting a full bench hearing even though it was not required. This could quite unnecessarily slow down the resolutions, which most people agree it is desirable to have as soon as possible.

The Hon. M.J. ELLIOTT: When I spoke earlier I indicated that the Democrats felt that such a change was necessary, and we will support the amendment.

Amendment carried; clause as amended passed.

Clause 16—'Conferences.'

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

Page 10—

Line 17—Leave out 'a party to the proceedings objects' and substitute 'all parties to the proceedings agree to his or her continued participation'.

Line 18—Leave out 'not'.

This clause deals with conferences. I want to clarify the circumstances in which a member of a court who presided at a conference is disqualified from sitting as a member. Rather than putting it in what I would regard as the negative, unless a parry objects then the member of the court is not disqualified, and that, I think, puts a pressure upon a party, if the party makes that objection, I would prefer to put it in what I would regard as the positive, namely, that the member of the court is disqualified unless all parties agree.

The Hon. ANNE LEVY: I am happy to accept that.

Amendments carried; clause as amended passed.

Clause 17—'Parties.'

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

Page 11, line 9—Leave out subclause (3).

This clause deals with the parties to proceedings and subclause (3) provides that an order to join a person as a party may be made on an *ex parte* application. That means that one of the parties already to the proceedings, as they have been issued, can make an application to the court to join another party, and the other party is not given an opportunity to argue whether or not that application should be granted.

I take the view that if someone is going to be joined as a party by the court they at least ought to have an opportunity to be heard on that, because what follows from that may be a very expensive piece of litigation, and they may not necessarily want to be part of it or, for that matter, ought to be part of it once their position has been clarified with the courts. So, by deleting subclause (3) it means that anyone who is to be joined must at least be given an opportunity to be heard before the order is made, and I think that is fair and reasonable.

The Hon. ANNE LEVY: The Government opposes this amendment. I point out that the equivalent to this is currently in the Planning Act. A recent situation in the Planning Appeal Tribunal was brought to my attention where it was highly desirable to have such a clause. A commissioner went to a regional area to hear an appeal between an individual and the local council. As the case proceeded he found that on the facts of the case the commission itself should be joined as a party to the proceedings. He proceeded to do so there and then so that the matter could proceed; otherwise, he would have had to adjourn the hearing, come back to Adelaide, arrange for the commission to be joined and at some much later stage return to the particular regional area and hear the case. It certainly saved a great deal of time, expedited the matter and a resolution was arrived at much more rapidly by this sensible use of this provision.

The Hon. K.T. Griffin: Was the commission represented?

The Hon. ANNE LEVY: I understand that it was not represented in that particular case.

The Hon. K.T. GRIFFIN: I am not familiar with that matter. I must confess that I cannot quite see how it can be resolved quickly in that case if the commission is joined as a party and is not represented at the hearing, but some order can be made against the commission in respect of which the commission has not had an opportunity to respond or to put a point of view. I must say I find it difficult to see how that was achieved in those circumstances, but I am not familiar with the case.

I would have thought that if, for example, a private citizen or a company had been joined as a party the matter still could not proceed if it was ever intended that as a party some order should be made which bound that particular party, because the rules of natural justice require that that party, even under the informal provisions for proceedings, be given an opportunity to be heard before some adverse order is made.

So, as I say, I cannot understand how that came about in that case, but as a matter of principle I think that parties ought to be given an opportunity to be heard before they become embroiled in the continuing litigation.

The Hon. ANNE LEVY: I am afraid I do not know the details of the case which has been mentioned to me. I am given to understand that such a joining would never be done without an opportunity for somebody to be heard, particularly if serious consequences were likely to arise or if considerable sums of money were involved.

I am told it did provide a great flexibility in this particular case, which allowed resolution there and then without having to drag the matter on for weeks or months. I reiterate that it is a transfer from the current Planning Appeal Tribunal procedures.

The Hon. M.J. ELLIOTT: The Democrats do not support the amendment.

Amendment negatived.

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

Page 11, lines 18 and 19—Leave out 'or rule of a prescribed class' and substitute ', or a rule or order of the Court'.

It seems to me that it is inappropriate for a regulation to be made which identifies a certain rule in respect of which summary judgment can be given. It is more appropriate to refer to a rule or order of the court being within that category and not addressed by regulation.

The Hon. ANNE LEVY: I am happy to accept it.

Amendment carried; clause as amended passed.

Clauses 18 to 20 passed.

Clause 21—'Principles governing hearings.'

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

Page 13, after line 23—Insert new subclause as follows:

(4) The court must, to the extent or in the manner provided by the rules, ensure that the parties obtain access to any material submitted under subsection (2).

This amendment seeks to provide that, where material is made available under subclause (2), all parties obtain access to the material. Whilst that would probably be the case, it is important to specify it in the law.

The Hon. ANNE LEVY: I am happy to accept it.

Amendment carried; clause as amended passed.

Clause 22—'Power to require attendance of witnesses and production of evidentiary material.'

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

Page 13, line 31—After 'to an officer of the court' insert ', or to any other person'.

This clause deals with summonses and there is a provision in subclause (2) relating to a summons to produce evidentiary material. It may be that, in addition to the summons providing for production of the material to an officer of the court nominated in the summons, it

be appropriate for the material to be produced to, say, one of the parties or some other person. It is for that reason I move this amendment.

The Hon. ANNE LEVY: This would provide flexibility and we are happy to accept it.

Amendment carried; clause as amended passed.

Clauses 23 to 27 passed.

Clause 28—'Powers of court on determination of the matter.'

The Hon. ANNE LEVY: I move:

Page 15, line 19—Leave out 'POWER OF COURT ON DETERMINATION OF MATTER' and substitute 'SUPPLEMENTARY POWERS'.

Pages 15 and 16—Leave out this clause and substitute new clause as follows:

Declaratory judgments

28. The court may, on matters within its jurisdiction, make binding declarations of right whether or not any consequential relief is or could be claimed.

I understand that these two amendments are consequential on an amendment made to the Development Bill in this Chamber by agreement of all Parties. I am told it was an amendment to clause 87a of the Development Bill, which was a non-controversial amendment.

The Hon. K.T. GRIFFIN: I have no objection to that.

Amendments carried; clause as amended passed.

Clause 29 passed.

Clause 30—'Right of appeal.'

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

Page 17, lines 17 to 19—Leave out subclause (2).

This clause deals with rights of appeal. All members would know that for a long time I have held the view that there ought to be no limitation on the right of appeal. Subclause (2) provides:

An appeal lies as of right on a question of law and by leave on a question of fact (but this principle may be displaced or modified by the provisions of the relevant Act under which the jurisdiction is conferred).

I acknowledge that that is a provision which the Government has managed to include in much legislation, so that on questions of law there is an appeal as of right but on questions of fact leave has to be granted by the court. I do have a concern that that is too limiting, particularly in relation to the sorts of issues with which this new court is to be dealing.

As a court, it ought to be accountable in every respect. It is not like the Industrial Relations Commission. It is a court of record. It is wrong in principle to limit the right of appeal from decisions of that court, even on matters of fact. If I lose it on the voices, not having yet heard what the Hon. Mr Elliott will do, I regard the issue to be of such importance as to be one upon which I will divide. We have to start off with an acknowledgment that it is a court of record, with all the powers and functions of a court, and as a matter of principle on all issues there ought to be a right of appeal. If subsequently the Development Act wants to limit rights of appeal, that is a matter for Parliament in the Development Act; likewise with the Environment Protection Act. At the moment some appeals are limited under the Planning Act, but it is wrong in principle and undesirable for it to be embodied as a general provision restricting this court.

The Hon. ANNE LEVY: The Government opposes this amendment. The aim of this group of Bills is to keep the court matters quite separate from the Development Bill (and the EPA Bill when it arrives) where they deal with where such limitations should be placed. It is felt appropriate that there be some limitation placed on appeals from a decision of the ERD Court. Certainly, questions of law can always be appealed, but questions of fact can be appealed only by leave. In this respect, the Bill is trying to promote a level of certainty with regard to decisions, so that in questions of fact there is some control on the right to appeal. To remove the provision as suggested by the honourable member would allow parties to escalate costs and create all sorts of delays without any restriction at all, simply by instituting appeals.

While this would obviously benefit more wealthy parties, it could be severely detrimental to those with fewer economic resources. This is not a precedent. There is currently a provision in the District Courts Act relating to the Administrative Appeals Tribunal which is set out in exactly the same terms: that appeals can occur by right on questions of law, but by leave only on questions of fact. We are not creating a precedent here but merely repeating what already exists in the District Courts Act.

The Hon. K.T. GRIFFIN: This is a precedent for a court in the sense that it is a court of record. It is acknowledged that where there is an administrative appeals division then there may be some limitations upon the rights but mostly they are embodied in the provisions of the Act under which jurisdiction is conferred. It seems to me that we are not dealing with an administrative appeals division now but dealing with a court in its own right. The question of escalation of costs is always a matter of concern, but one has to weigh that against the issue of accountability, and with judges, magistrates, and lay commissioners it is always important to ensure that proper diligence is exercised and that that is always subject to review by a higher court. If the Environment, Resources and Development Court is to be a fully blown court, provisions as to the limitation and rights of appeal ought not to be embodied in it.

The Hon. ANNE LEVY: I can only reiterate that this will add to costs, will cause delays, and is really contrary to the whole notion of the ERD Court being an informal one without the full legal trappings which are found in other courts. It is part and parcel of the whole ethos of the court: informality, certainty and rapid decision making, with the ability to appeal on questions of law always present.

The Hon. M.J. ELLIOTT: I am not of a mind to support the amendment but I have a question of the Hon Mr Griffin. He is talking about principles. Let us go from principles to actualities. Can he illustrate by example where he feels that this principle actually causes a problem in fact?

The Hon. K.T. GRIFFIN: One has to practise in particular jurisdictions to have all those sorts of things at your fingertips. I can envisage very substantial cases, as well as minor cases, where there may be an issue of fact and law which is difficult to distinguish, and in that instance there may be a party who says 'My witnesses should have been believed' and the weight of the

evidence is in support of that view. If it is just an issue of fact leave has to be granted to appeal, but it may be a very large case and, to leave that decision merely to a commissioner, magistrate, or judge without at least the prospect of having the matter resolved on appeal, seems to me to create a potential for injustice rather than resolution.

The Minister has said that this is all about certainty. It may be about certainty, but it also has to be about justice. It also has to be about getting the right decision, and we have seen that when appeals occur, whether they be on questions of law or of fact—and I must say that there are many occasions when questions of fact are the subject of appeal in the ordinary jurisdictions of the courts, because the weight of the evidence is insufficient upon which to base the judgment of the judicial officer or even a jury for that matter—cases are overturned. What this says is that you have to get leave to appeal. The concept of leave means that the judge has a look at it and says 'Well, maybe there is an argument, maybe there is not', but if we follow the Minister's argument, we want certainty, so therefore we are not going to allow the appeal to continue.

It may be a form of rough justice, and may be that is what the Government is after, but the concern that I have is there will be cases—and I cannot draw them to mind immediately—where appeals cannot occur because leave is not granted, and those appeals relate to factual situations which may be complex and which do need to run the gauntlet of further scrutiny by a court of appeal.

The Hon. M.J. ELLIOTT: I am not convinced by that. I must say that I know of many cases in the area of environmental and planning law where the appeal process has been abused by a person who is cashed up against somebody who is not. In the planning process that is not an unusual situation where you have an unequal matching of financial capacity and the final consequence has nothing to do with the law but the capacity of one person to continue to fight the case.

The Hon. K.T. Griffin: It might be a cashed up loan agreed to in the first instance.

The Hon. M.J. ELLIOTT: That indeed may be the case, but if that happens then the other person quite often is not in a position to appeal any further, anyway. In my experience, the reality is that in this area of law, more than anywhere else—and I have had many experiences brought to my attention—the power of the dollar is what is the deciding factor and it has nothing whatsoever to do with justice. Recognising that, it is an extra reason why I am not convinced by the Hon. Mr Griffin in relation to this particular case because of the sorts of imbalances that exist in these cases.

The Hon. ANNE LEVY: I could perhaps add to that that we are discussing leave to appeal to the Supreme Court. If there is the suggestion of rough justice, as hypothesised by the Hon. Mr Griffin, it would seem to me that the Supreme Court, if it suspected that justice has been a bit rough, would grant leave to appeal.

The Council divided on the amendment:

Ayes (9)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C, Irwin, R.I. Lucas, Bernice Pfitzner, R.J. Ritson, J.F. Stefani.

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

Pair—Aye—The Hon. Diana Laidlaw. No—The Hon. Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived.

Clause passed.

Clause 31 to 38 passed.

Clause 39—'Power to require security for costs, etc.'

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

Page 19, line 20—Leave out 'commencing proceedings in' and substitute 'to proceedings before'.

Clause 39 seems to relate only to a party commencing proceedings where an order may be made that the party give security for the payment of costs. I think that ought to be broadened. I am proposing that it relate to any party to proceedings before the court so that it does not necessarily relate only to a party commencing proceedings.

The Hon. ANNE LEVY: I am happy to accept it.

Amendment carried.

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

Page 19, line 28—After 'dismissed' insert ', or that judgment (with costs) be given against the party'.

This relates to where security is not given in accordance with an order the court may order that proceedings be dismissed or the judgment be given against the party. It is an additional option which advises.

The Hon. ANNE LEVY: I accept the amendment.

Amendment carried; clause as amended passed.

Clauses 40 to 43 passed.

Clause 44—'Legal costs.'

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

Page 20, line 20—Leave out 'The Governor may, by regulation' and substitute 'The rules may'.

My first inclination was to oppose the clause, but when I saw the Minister's amendment I had second thoughts. I decided that it was not such a bad proposition after all, except that I do not like to see regulations prescribing scales of costs. I think it is more appropriate for rules of court to prescribe those scales. The Minister has been using the District Court Act against me on occasions. I now draw her attention to section 51(1)(f) of the District Court Act, which provides, 'Rules of court may be made ... regulating costs.' It seems to me that the question of costs ought to be handled by the court.

I think that familiarity with the complexities of issues and the length of time which matters may take to be resolved is a more appropriate way of addressing that issue than by regulation. It is similar to the Supreme Court where all legal costs may be the subject of taxation and disallowance if in excess of a scale set by the Supreme Court. Amendments have recently been made to the Legal Practitioners Act so that, where there is a complaint by a client about legal costs, it may be addressed more expeditiously than previously. That is peripheral to the main issue, which is that the court ought to decide on questions of costs. In the event that scales are set by the court, I would be prepared to agree with the Minister's later amendment which allows costs to be paid by a client to a practitioner either in accordance with the scale or, if there is an agreement in writing, in accordance with that agreement.

The Hon. ANNE LEVY: The Government opposes this amendment. I do not propose to refer to the District Court Act, but I inform the Committee that this clause is modelled on section 10 of the Criminal Injuries Compensation Act, which provides for scales to be prescribed by regulations. I am glad to hear that my amendment is regarded by the Hon. Mr Griffin as reasonable. The Government was keen to be involved in setting the appropriate scales in order to protect the interests of parties in proceedings before the court. Of course, by regulation the Parliament can protect the interests of parties by ensuring that appropriate scales are set. This is as opposed to having the scales set by a judge who is not accountable to anyone.

The Hon. K.T. Griffin: The rules are subject to disallowance under the Subordinate Legislation Act.

The Hon. ANNE LEVY: But having them set by regulation means that the approval of the Government as well as the Parliament must be obtained, which is an added control in the interests of parties, rather than having them set by a judge who is not accountable to anyone. Even though the Parliament can disallow it, there is no accountability for whatever scale is put up in the first place. Having it done by regulation means that the Government has accountability. We feel that it will be to the advantage of parties for the Government to have a say in this way over the scale of fees simply to ensure that they do not become inordinate.

The Hon. K.T. GRIFFIN: The precedent to which the Minister sought to refer is not a precedent for this at all. The Criminal Injuries Compensation Act is quite different from any other piece of legislation. The Criminal Injuries Compensation Act provides a Criminal Injuries Compensation Fund and provides that an application for compensation can be made to the court by a person who is a victim of crime. That compensation is payable by the community through the Criminal Injuries Compensation Fund, and it is an *ex gratia* payment. It is a payment not of right, but an *ex gratia* payment at the discretion of the Attorney-General. The whole object of providing for fees to be set by regulation under that Act was to retain control over *ex gratia* payments. Therefore, it has nothing to do with this matter. I might say in relation to the Criminal Injuries Compensation Act that the scale has not been amended since 1988, so very few legal practitioners can afford to do criminal injuries compensation work. That is another issue. The fact is that it is not a precedent.

It is all very well for the Government to want to keep a finger on the question of fees, but this will be without precedent in the Supreme Court, the District Court and the Magistrates Court. I also point out that this clause was not in the draft which was exposed last year. It came into the legislation for the first time in the Bill that was introduced into the House of Assembly, so it has not been the subject of any public comment or scrutiny or representations by the Law Society or other bodies that might have an interest, such as the architects, the planners, and so on. I submit that the provision for the fixing of a scale by rules of court is the appropriate way to go. It is consistent with all the other courts legislation and it provides an appropriate mechanism for dealing with legal fees.

In respect of the Supreme Court setting fees—and I think also the District Court as well as the Magistrates Court—there has not been any problem about consultation with the Government. I understand that magistrates and judges formally make it known to the Government that they intend to allow a particular scale of fees. Then they hear submissions from a range of persons, whether the Government or those with specific interests. I do not see that there is any problem with the rules of court, and it is important that there be consistency.

The Hon. M.J. ELLIOTT: It is correct that there has been no real debate about this issue thus far and it appears to be a significant change in direction. I have some sympathy for anybody who attempts to rein in legal costs, which represent a significant problem. There was an example in the paper this morning which illustrated the absurdities that are occurring.

It does appear that the law exists primarily for the benefit of lawyers and secondarily for the benefit of people who get involved in the legal cases. In every case the lawyers win and sometimes somebody else gets something as well. It seems to be the way the law works. There is something seriously wrong with the legal processes, particularly the cost of the law in South Australia. It is probably inappropriate that we try to solve that problem here in one little clause of this particular Bill. It is an issue which is long overdue for resolution more generally in some way but, as I said, I am loath to do it here and now in this clause without the necessary and appropriate public debate occurring.

So, whilst I have grave reservations, that I have already expressed, I will support the amendment at this stage, but I am flagging quite clearly publicly that it is an issue in which I am personally willing to be involved further at a later stage.

The Hon. K.T. GRIFFIN: I appreciate the Hon. Mr Elliott's reservation about it. I do not think lawyers or any other members of the community like being beaten around the head about legal costs. It is a major problem not only in Australia but overseas, and not only in common law countries. To some extent the rules and regulations which are imposed upon citizens are a significant contributing factor that people have to go to court or a tribunal and then, when they get to the tribunal, our system requires that they be given reasonable opportunity to present a case and to test the case which is posed against them; and that does involve costs, as much as in any other area of the community. Planners, architects and engineers are all providing some service for which there has to be some payment.

So, I have the same concern—and it is a frustrating concern—that it is very difficult to know how you handle the resolution of disputes in a way which achieves all the goals that we set for the legal system at the cheapest possible price and how ordinary citizens can have access to that. The world is not perfect, but certainly we ought to continue to find ways by which that can be done. Price control as such is not necessarily the answer to it, and it has been shown to be defective in many communities, whether it involve legal fees or prices of products.

I appreciate that the Hon. Mr Elliott is prepared to support the amendments which I am moving and which, I

should say, do provide for some justification of legal costs. It is not open slather; it is subject to negotiation with clients; and it is subject to review by the court. I think they are important safeguards against overcharging.

Amendment carried.

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

Page 20, line 22—Leave out 'the regulations' and substitute 'the rules'.

This amendment is consequential.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 20, line 23—Leave out 'Neither charge nor seek' and substitute 'not, without the agreement in writing or his or her client, charge or seek'.

I understand that the clause as currently drafted is setting an upper fee and the amendment is changing the approach, in that the rules would set a level of fees and the lawyer could charge more than that level of fees if the client had been informed and agreed in writing. This enables the ordinary person to get a clear understanding on the fee level, and they can then decide if they want to engage the lawyer or look for somebody else.

Amendment carried; clause as amended passed.

Clauses 45 to 47 passed.

Clause 48—'Rules.'

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

Page 21, line 31—After 'made by' insert 'the Chief Judge,'.

This amendment relates to the question of who makes the rules of court. I would have thought that to ensure that there was some consistency of approach the Chief Judge ought to be involved in that.

The provision in the District Court Act is that the rules of that court may be made by the Chief Judge and any two or more other judges. For that reason I think it is appropriate to have the Chief Judge involved in this exercise as well.

The Hon. ANNE LEVY: The Government certainly opposes this amendment. I am surprised in some ways that the Hon. Mr Griffin has moved it. I would have thought it was consequential on his earlier attempts to achieve the integration between the District Court and the Environment, Resources and Development Court. As we have moved through the Bill, we have a completely separate court—the ERD Court—and I can see no reason why the Chief Judge of the District Court should be involved in setting the rules when he has nothing like the connection with the court which had been proposed by the earlier amendments from the Hon. Mr Griffin which the Committee has opposed.

The Hon. M.J. ELLIOTT: The Democrats oppose the amendment.

Amendment negatived; clause passed.

Clause 49—'Regulations.'

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

Page 21, after line 3,—Insert new subclause as follows:

'(3) A regulation may not be made for the purposes of section 7(2) in a form such that jurisdiction in respect of offences under more than one Act are conferred on the Court by the same regulation.'

This is the issue which we raised earlier and which the Minister said she would be happy to consider. It probably went further than that. It relates to the regulation which may confer jurisdiction on the court. The principle was agreed at the earlier stage of consideration of the Bill that regulations conferring jurisdiction should relate only to the one Act at a time. So, this does that.

The Hon. ANNE LEVY: In the light of the discussion earlier in the Committee stage, I am happy to accept this amendment.

Amendment carried; clause as amended passed.

Schedule.

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

Page 23, line 21—'Leave out 'A' and substitute 'Subject to subclause (4a), a'.

Before I deal with this amendment, I have some questions about commissioners. Earlier, the Minister indicated that it was expected that the same number of persons involved in the Planning Appeal Tribunal would be involved in the Environment, Resources and Development Court. What I did not ask, and I now ask, is whether the Government intends to appoint all the current members of the Planning Appeal Tribunal, both judges and commissioners. As I understand it, they do not continue in office and new appointments will be made. Is it intended to appoint existing judicial and commissioner office holders to the court?

The Hon. ANNE LEVY: As I understand it, in the third Bill which we have not yet considered but which is part of the package, it is indicated that there will be automatic appointment of current members of the Planning Appeal Tribunal, subject to provisions relating to retirement age. I have an amendment on file relating to the retirement ages in that case.

The Hon. K.T. GRIFFIN: There are several other questions I want to ask, but I will do that under the statutes amendment and repeal legislation. I have always had a view that, whenever an appointment is made to a judicial office or a quasi-judicial office, it ought to be for a fixed term. There are occasions where I have not been successful in that. If there is not a fixed term, the prospect of shorter term appointments and appointees looking over their shoulders to determine whether or not they will be reappointed is more likely, and there may be at least the potential for them to modify decisions in order to ensure that that occurs. That may be a cynical attitude, but I think it is always a possibility. Certainly, in all the discussions on this issue, it has always been regarded as creating a greater measure of independence of the judiciary or quasi-judicial officers from the executive if there is a permanent and longer term appointment.

I have argued on occasions that even five years might be regarded as too short to satisfy that criterion. On this occasion, however, I merely seek to move for a fixed term of five years, which will then address, at least to a substantial extent, that issue of independence of the officers so that there are not short-term appointments which can be manipulated or as a result of which the appointee feels unable to make decisions without fear or favour. So, my amendment is to firm up to a fixed term of five years, rather than to the variable term.

The Hon. ANNE LEVY: The Government opposes the amendment. I understand the honourable member's point when he suggests that for a lesser term someone might be looking over their shoulder and that this might affect the decisions they make. It would seem to me that that argument applies with equal force as the five years

expire. One would hope that people do not look over their shoulder and let that influence their judgments, but, should it occur, it will occur anyway, whatever time limit is placed. The flexibility that the Government would prefer would apply to situations where, say, a part-time building commissioner may be going overseas for a period of 12 months. Someone with his expertise will be required for that time but it is not desired to appoint another part-time commissioner for a period of five years. What is wanted is to appoint someone to that part-time position for the period of 12 months for which the other part-time commissioner will be absent. While five years will be the generally accepted term of appointment, it is felt desirable to have the flexibility to be able to appoint for less than five years in situations such as this. If someone is to be away for 12 months, you do not want to appoint a replacement for five years so that you have a doubling up for four of the five years.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: I am not losing now; I was waiting for the Hon. Mr Elliott to make his contribution. It is correct that at five years people may be looking over their shoulder, but the argument (which I think is reasonable) is that it is less likely to occur with that fixed term of five years when one knows that that ought to be treated as the limit. If anything happens to the contrary, that is good luck if the person wants to continue, but five years give a measure of certainty and stability.

The Hon. Anne Levy: That would be the usual situation.

The Hon. K.T. GRIFFIN: I am not able to comment on whether or not that is the usual situation. We have had legislation where there have been much shorter term appointments—three years. Also, this applies with the Youth Court legislation (and I will address some remarks to that when we get to it), where there is to be appointment for periods up to five years, except for principal judicial officers, whose appointments are up to 10 years.

In those circumstances it seems to me that there is a measure of uncertainty about whether or not the person is to be reappointed. That is not to suggest that any appointee in any jurisdiction will necessarily modify views and decisions to conform to the best prospect of being reappointed, but in all the argument about the issue of independence—and there has to be independence from the Executive arm of Government in fact as well as perceived to be so—a longer period fixed term is appropriate.

We raised this issue in the course of the debate on the Director of Public Prosecutions legislation. In Victoria the argument is that with virtually life appointment of the DPP the DPP is incorruptible (in the broader sense of that word). I acknowledge that the commissioner may go overseas but, as I understand it, part-time commissioners are paid not so much on a yearly basis but per sitting. If that is the case, going overseas for 12 months really has no effect on the operation of the affairs of the court.

With the longer period fixed term there is less prospect that there will be a modification of decisions than if, for example, there were one or two year appointments. Again, I believe that it is important to have fixed term appointments even for part-time commissioners, and that is why I believe we ought to insist on the amendment.

The Hon. M.J. ELLIOTT: This is one of those cases where both arguments have merit. I think the obvious solution would have been to come up with a fixed term, allowing for the fact that casual vacancies could be filled for a particular duration. It would have made sense to me, if you are worried about someone being overseas for 12 months, to be able to appoint somebody to fill that vacancy for as long as they are away. It seems to me that that would have been the obvious solution to the problem.

The Hon. Anne Levy: That is how the Bill will operate.

The Hon. M.J. ELLIOTT: Except that it does not offer a fixed term. In practice, while somebody is away, they will be replaced. However, there is not generally a fixed term.

The Hon. Anne Levy: But if someone is away for 12 months someone else will be appointed for a 12-month term.

The Hon. M.J. ELLIOTT: I understand the need for that flexibility. I am simply saying that it would have been possible—I am not sure whether it was too late—to tackle that question. Perhaps the Hon. Mr Griffin will take it up; it is just a question of how strongly he feels about this matter. In the absence of an amendment which I think tackles the issue of people being away for periods of time, I will not support it.

The Hon. K.T. GRIFFIN: I do not think it is appropriate to deal with this question of filling a vacancy while someone is away. One of the difficulties is that there is no fixed number of commissioners, part-time commissioners or permanent part-time commissioners, and it is therefore difficult to say that when someone is away there is a temporary vacancy. It is a difficult issue to resolve in that context. Notwithstanding that it looks like I will lose the amendment, I will persist with it.

Amendment negatived; schedule passed.

Title passed.

Bill read a third time and passed.

STATUTES REPEAL AND AMENDMENT (DEVELOPMENT) BILL

Adjourned debate on second reading.

Continued from 1 April. Page 1864.)

The Hon. K.T. GRIFFIN: My colleague the Hon. Diana Laidlaw will speak on this Bill in a moment, but there are several issues that I want to raise. This Bill is largely consequential on the Development Bill and the Environment, Resources and Development Court Bill. There are a number of transitional provisions, most of which seem to have picked up the issues that require to be addressed. The Hon. Diana Laidlaw has an amendment on file in relation to councils, as does the Minister, to which I will leave her to speak to in due course.

The Mining Act is amended to ensure proper advertising of mining leases or applications for mining leases and miscellaneous leases. That was an issue of concern, because if it had not reflected what is presently

in the Mining Act the mining and resource industry in South Australia could well have been adversely affected. It seems that on checking that legislation the provisions relating to the Mining Act largely rephrase the provisions already in the principal Act.

I notice that the Swimming Pools (Safety) Act is amended to provide that the Act does not apply to any swimming pool approved under Part IV of the Development Act. It will then become a development issue. The whole issue of swimming pools is a rather vexed one which the Government does not yet seem to have adequately resolved. However, there is no point, from my perspective, of seeking to take that issue further.

The only major issue I want to refer to relates to the transitional provisions in clause 28. The Minister has already made passing reference to that in the Committee consideration of the last Bill, but it relates to the continuing in office of commissioners of the Planning Appeal Tribunal as commissioners of the Environment Resources and Development Court.

I raise now (but it will be an issue during the Committee consideration of the Bill) the issue of Commissioner Tomkinson who took the State to court. Although I indicated at the time I raised the question that he was not dealing with a lot of issues before the court, I now understand he is not undertaking any work. The Attorney-General was somewhat equivocal when he responded to me on that question and promised to obtain information. I have not yet received an answer to that question.

The issue that related to Commissioner Tomkinson was that a retiring age was held not to have been fixed in relation to the commissioner, very largely as a result of a number of changes from the time when he was first appointed under the Planning and Development Act as a part-time commissioner until subsequently his appointment under the most recent Planning Act. His conditions of employment, including a retirement age, were not set.

This Bill may not address the issue because a person to whom subsection (1) of clause 28 applies must retire 'on or before the retirement age that applied to the person immediately before the relevant day'. The 'relevant day', I presume, is the date upon which the Act comes into operation. So unless the Government takes some action in relation to Commissioner Tomkinson he is not likely to be caught by subclause (2)(a). He may be caught by paragraph (b), which provides:

> if no such retirement age applied—on or before the person attains the age of 65 years unless the Governor, by instrument in writing addressed to the person, sets another day for his or her retirement (which instrument will have effect according to its terms).

There is a question whether that will apply to Commissioner Tomkinson because he has already attained the age of 65, so he cannot retire on or before the date when he attains the age of 65 years, and the action of the Governor seems to be predicated upon taking action on or before that date and by instrument in writing setting another day for retirement.

I do not know whether the Government believes that it is going to address that issue by this amendment, but if it does believe that then I would have thought that the Government should face up to that and deal with it head on, rather than slipping it into a Bill where it may not have been noticed. That may be unkind but it is a reasonable comment to make in the circumstances.

That issue needs to be clarified. It also needs to be clarified in relation to one of the other commissioners who has a retiring age of 71, as I understand it, prior to this legislation coming into operation. That is the issue which is of most concern and which needs to be clarified. I indicate support for the second reading.

The Hon. M.J. ELLIOTT: I support the Bill and have only a few brief comments to make. The Bill repeals the current legislation that now forms the basis for the Development Act and supplies the necessary transitional provisions to ensure that the transition from the existing legislation to the scheme established under the Development Act is smooth.

Of most interest are some other amendments that relate to the National Parks and Wildlife Act, the Local Government Act and the Swimming Pools (Safety) Act. The Local Government Act is amended under clause 8 of the Bill, which provides councils with the power to delegate. This amendment, if accepted, will certainly improve section 41 of the Local Government Act as it clearly details to whom a delegation may be made.

I particularly support the amendment suggested in this Bill to the National Parks and Wildlife Act under clause 10 of the Bill. This amendment will require the Minister, when preparing a plan of management or an amendment to a plan, to consult with the Development Policy Advisory Committee under the Development Act. The Minister must also have regard to the principles and policies of the planning strategy and the provisions of any relevant development plan. I think this is a positive step, as it will mean the management plans will be consistent with other local policies.

The only potentially controversial clause in the Bill is that which relates to the Swimming Pools (Safety) Act. This amendment will ensure that the provisions of the Swimming Pools (Safety) Act will not apply to new swimming pools approved under the Development Act. This effectively means that stricter requirements in relation to fencing, etc, will apply to new pools. We are currently expecting a Government white paper on the issue of pool safety; it is something that I believe deserves greater discussion. Obviously if we, as legislators, are to take action in this area we must be certain that the action proposed is the most effective type. If the proposed action is to adopt stricter requirements of safety then we must ensure that this will be more effective than any other proposal. I believe the whole issue requires further inquiry.

Certainly, I have had brought to my attention statistics which suggest that the rate of drownings in fenced pools appears to be greater than in unfenced pools. The kneejerk reaction of trying to save children by putting fences around them, if the stats say that it actually leads to more drownings, raises some important questions and we may have to address this problem of pool safety in other ways.

It does appear that once people have a fence installed they tend to assume everything is okay; they tend not to watch children so carefully and that is unfortunately

when drownings occur. Children, despite the most elaborate gates, seem to find their way in, over, whatever else, into those safety compounds. Indeed, if we are to insist upon some form of safety device there may be other safety devices. There are a number that I can think of—everything from actual in-pool devices that detect movement in the water and could set off a significant alarm to even, as one person suggested, something akin to a roller door, which can simply be dragged over the pool and locked so a child simply cannot fall in. I imagine you could have one of those for the same cost as a fence, and yet we are going for the fencing option, which statistically appears to be actually costing lives rather than saving them.

I think that is a matter needing further inquiry. We must be careful of the kneejerk reaction which makes things more dangerous. For now I indicate my support for this Bill and it is not my intention to move any amendments.

The Hon. DIANA LAIDLAW: I support the Bill and I thank my colleague the Hon. Trevor Griffin for making a contribution to this debate. I regret that I was not here at the time of the introduction of this Bill.

The Liberal Party does support this Bill, which is part of a package to reform planning and development procedures and controls in South Australia. The Bill repeals the Building Act, the City of Adelaide Development Control Act and the Planning Act. It removes the development control provisions of the Coast Protection Act, the Real Property Act and the Strata Titles Act and amends the planning and development related provisions in a number of other Acts.

I was interested to learn during the debate on the Development Bill that there are some 109 Acts in South Australia which control some aspect of development. It is an amazing statistic. My colleague the Hon. Mr Dunn would probably describe such a statistic as a 'dog's breakfast'. It is one that Rex Leverington could use as one of his quiz night questions, because I am confident that very few people would appreciate that such extensive controls and such wide-ranging Acts in this State seek to control planning and development.

This plethora of Acts embraces, as the Minister noted in her second reading explanation, different procedures applied at different stages of a development proposal. They are administered by different State and local government agencies and have different dispute and enforcement provisions for different courts, tribunals and referees. There is clearly a need to tidy up this messy mixture of development controls, and this Bill will certainly help that process. As the Bill only deals with the development provisions in nine Acts, we have a long way to go before we can claim to have streamlined our planning and development system so it no longer needlessly frustrates the operation of an efficient and effective planning and development system that enjoys community confidence.

I will comment on a number of specific provisions in the Bill. The Bill amends section 666b of the Local Government Act which addresses the unsightly condition of land. Its powers are confined at the present time to any structure or object on land deemed to be unsightly. This Bill extends local government powers to include any land considered to be unsightly. It also amends the appeal provisions so appeals against a council direction will be lodged in future in the Environment, Resources and Development Court rather than the local court. It will be interesting to hear, during the summing up of the second reading debate or in the Committee stage, what the Government actually deems to be unsightly aspects and conditions of land, because in my view most of such unsightly conditions would relate to objects and structures which are covered already by the present legislation.

The Bill also amends the National Parks and Wildlife Act to require the Minister responsible for that Act to consult with the development policy advisory committee, established under the Development Bill, during the preparation of a plan of management. It also requires the Minister to have regard for the planning strategy and any relevant development plan when preparing a plan of management. The Development Bill provides in clause 9(2):

> ...that the development policy advisory committee should, in the performance of its functions, take into account the provisions of the planning strategy.

So, whilst neither the advisory committee nor local government in the preparation of a development plan, nor the Minister responsible for the National Parks and Wildlife Act are bound to take into account the planning strategy, there are a number of provisions in the National Parks and Wildlife Act and the proposed Development Act which aim to ensure that there are closer ties in future between both Acts, and that is a positive initiative.

I recall during debate on the Development Bill that the Liberal Party sought to ensure similar close links between the proposed Heritage Act and the Development Act by requiring the Minister responsible for the Development Act to consult with the Minister responsible for the administration of the Heritage Act and the State Heritage Authority about the preparation of certain amendments to the development plan. So, there are a number of initiatives in this package of legislation which seek to establish much closer links under a range of legislation. That initiative is in addition to the Government's move to bring more and more provisions in various Acts under the umbrella of the Development Act.

There are amendments also to the Mining Act. This Bill provides for a new notification procedure to landowners following receipt of an application for a mining lease or a miscellaneous purposes lease. This is long overdue and is a positive initiative by the Government. In the past, I have been aware of landowners who have not been aware of any application made in respect of their land and who were taken by surprise when the actual application was not only lodged but approved. So, by this amendment, which we support, the Government is trying to rectify that unacceptable practice.

The Bill also provides for new procedures to be adopted whereby the Minister must not grant a mining lease until the public has been alerted to the application and until it has been invited to present written submissions. The period for public input has been reduced from 28 days to 14 days, and I would be interested to learn why that is so and why the Minister

believes that 14 days will be sufficient in all cases, including applications that relate not just to minor developments but major developments.

My colleague the Hon. Mr Griffin and the Hon. Michael Elliott both referred to the provisions of this Bill that relate to swimming pools. It is important to note that this Bill clarifies the current confusion about the need for safety fences around private swimming pools. Existing pools will continue to be controlled by the Swimming Pools (Safety) Act, and that Act at present imposes a minimum requirement of perimeter fencing of a property containing a private pool to a standard described in the Act which, in effect, is the height of 1.2 metres or more, constructed so as not to provide a foot or hand hold or access through or beneath the fence for a small child. That fence is also to be child proof, with a self-latching device on the gate.

As I say, those are the current provisions under the Swimming Pools (Safety) Act, and they are to continue at this time for all existing pools, although I note that, in her second reading explanation, the Minister suggested that the provisions of the Swimming Pools (Safety) Act could be strengthened later in the year if deemed necessary following consideration of feedback on a white paper which has been prepared on the issue and which will be circulated shortly by the local government relations unit. This paper has been a long awaited event, because I recall that the Minister currently handling this Bill, when she was Minister of Local Government, even before she became Minister for Local Government Relations, was discussing this issue of safety and swimming pools.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: I respect the fact that there were a number of distractions, but I suspect that this issue of swimming pool safety has been discussed in local government for at least four years now—

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: In the Ministerial Council for four years and in this State more actively for the past three years. It will be somewhat of a relief when this white paper is actually produced, although some of the options canvassed in that paper may not be palatable for all.

The arrangements for fencing new swimming pool developments are already far more stringent than those in place for existing pools which are either below or above ground. These provisions for new swimming pools are contained in the Building Code of Australia which is to be incorporated in the regulations which accompany the Development Act. I have looked at the regulations that I have received for the Development Act and actually could not find these provisions. The Minister may be able to tell me in which part of the proposed regulations they are, but I could not find them in the quick look I had this evening.

As honourable colleagues who have addressed this Bill earlier in the debate have noted, this issues paper will be controversial in respect to both any tightening of provisions for existing swimming pools and certainly provisions for new pools. There will be other opportunities to discuss those matters in greater depth when we have either the regulations before the Environment, Resources and Development Committee and possibly before this place, or we have amendments to the Swimming Pools (Safety) Act.

I note that the Minister has a number of amendments on file. One relates to clause 8 and I also have an amendment on file to that clause. It is an important amendment to an important provision that has been included in this Bill by the Government. The Government has proposed in subsection (3)(a) that:

> A council must not undertake a project outside the area of the council if the primary reason for proposing the project is to raise revenue for the council.

This issue has been discussed more widely in relation to the Henley and Grange council, in relation to which I have received numerous complaints—and I know that my colleagues, and no doubt the Government, have also received complaints—from developers in this State, and also from local councils, including the Local Government Association. They have all been concerned about the initiatives being undertaken by the Henley and Grange council.

We believe, however (and looking at the Government's amendments that are on file it is apparent that the Government also believes) that this subsection (3)(a) in the Bill is too broad and may well encompass a number of other developments that are inappropriate in the circumstances: developments that have been established for some time such as the Adelaide City Council waste disposal dump at Wingfield and other developments such as those proposed by Port Augusta council for aquiculture initiatives. Such initiatives, on advice from Port Augusta council, involve some stages within its own council area and also within the LeHunte council area, based on Ceduna. We believe that there are instances where such developments should be encouraged to proceed.

So, we would be keen to see, as the Government is, this very broad-brush amendment in subsection (3)(a) refined to accommodate a variety of circumstances. Our concern in relation to subsection (3)(a) and Government developments arises from the fact that amendments to the Local Government Act some years ago encouraged local Government to become involved in entrepreneurial endeavours, and the Liberal Party has always had reservations about that provision. An example of that is the recent activities of the Henley and Grange council, and I suspect that the mayor paid a heavy price last Saturday in the local government elections for such activities. They gave legitimate grounds for concern and I am glad that the Government has sought to address them, even though, on reflection, the provision in the Bill is too broad. So, the Liberal Party supports this Bill, and we will do so with amendment.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. ANNE LEVY: I move:

Page 1—

Line 14, leave out 'This' and substitute 'Subject to subsection (2), this'.

After line 14, insert new subclause as follows:

(2) Sections 8(e) and 29 will come into operation on assent.

While obviously there will have to be a time period before some of the Act can come into operation, its date

of proclamation must coincide with the proclamation of Acts which replace those which are being repealed by this Act. Nevertheless, it is felt that clauses 8(e) and 29 should come into operation as soon as possible, and that is when the Governor grants assent to the Bill. This means that the change to the Local Government Act which will restrict the revenue raising development by councils will come into effect at an earlier date so that we can stop such kind of development in the intermediary period prior to the rest of the Act coming into effect. Both clauses 8(e) and 29 contain provisions to ensure that there is no retrospective element to the amendment and it is felt that they should come into operation as soon as possible.

The Hon. DIANA LAIDLAW: The Liberal Party will support the Government's amendments. We have amendments on file which address a similar issue but I would have to concede that, on reflection, the Government's amendment is more sophisticated than ours, on this rare occasion, and does cover a variety of circumstances which is not—

The Hon. Anne Levy: Which may or may not exist.

The Hon. DIANA LAIDLAW: That is right, which may or may not exist; but it is more cautious in its application and the Liberal Party believes is more sensitive in the circumstances and we are therefore pleased to accept the Government's amendments.

The Hon. K.T. GRIFFIN: I will ask a technical question to which there may be an easy answer. The amendment also deals with clause 29, which provides:

> The amendment effected by section 8(e) of this Act does not apply to a project approved before the relevant day by the Minister responsible for the administration of the Local Government Act.

My colleague, the Hon Diana Laidlaw, has drawn my attention to some later amendments which address the issue. I was going to say that the definition of 'the relevant day' requires a proclamation to be made, but I think that is now addressed by subsequent amendments.

Amendments carried; clause as amended passed.

Clauses 3 to 7 passed.

New clause 7a—'Amendment of the Courts Administration Act 1993.'

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

Page 2, after line 1—Insert new clause as follows:

> 7a. The Courts Administration Act 1993 is amended by inserting after paragraph (b) of the definition of 'participating courts' in section 4 the following paragraph:
>
> (ba) The Environment, Resources and Development Court;.

This new clause makes the Environment, Resources and Development Court a participating court under the State Courts Administration Council. As I recollect, the Minister did say during the debate on the Environment, Resources and Development Court Bill that it was intended that the new court would be part of that administration, and I think, therefore, that the issue ought to be put beyond doubt and be subject to the general administrative obligations imposed by the Courts Administration Act.

The Hon. ANNE LEVY: I am happy to support the amendment at this stage. It certainly is consistent with the Government's thinking and discussions. As I understand it, this question has not been brought to the attention of the Chief Justice, and I understand that the Attorney-General's Office has undertaken to do so first thing tomorrow morning and, if there are any problems, the Minister in the other place will address the matter tomorrow. So, while I support it I make that *caveat* that it might need to be readdressed in the other place tomorrow.

New clause inserted.

Clause 8—'Amendment of the Local Government Act 1934.'

The Hon. ANNE LEVY: I move:

Page 2, lines 28 to 30—Leave out paragraph (e) and substitute new paragraph as follows:

(e) by inserting after subsection (4) of section 196 the following subsections:

> (5) Subject to subsection (6), a council must not undertake outside the area of the council a project which constitutes a form of development within the meaning of the Development Act 1993 if the primary reason for proposing the project is to raise revenue for the council.
>
> (6) Subsection (5) does not apply to any development on land where—
>
> (a) the land was owned or occupied by the council immediately before the commencement of that subsection;
>
> or
>
> (b) the council had, before the commencement of that subsection, entered into an agreement—
>
> (i) to purchase the land;
>
> or
>
> (ii) to enter into a lease or licence over the land, the term of which exceeds six years or such longer term as may be prescribed, or in respect of which a right or option of renewal or extension exists so that the agreement, or the lease or licence, may operate by virtue of renewal or extension for a total period exceeding six years or such longer period as may be prescribed.
>
> (7) If land owned or occupied by a council immediately before the commencement of subsection (5) is compulsorily acquired from the council after that commencement, the amount of compensation to which the council is entitled must be assessed as if subsection (5) did not affect the council's ability to reinstate the use of the land in another place.;.

This amendment has been discussed in the second reading speeches and in the debate on the amendment to clause 2. It is a recognition of the fact that the original clause was a bit peremptory and, while the intention remains the same, it does allow for all sorts of possibilities which may or may not be in the pipeline somewhere and for which it could be regarded as unduly harsh not to make due allowance. Under the amendment previously accepted this amendment would become operative on assent. So, that could be expected in just a few days time and prevent any further undesirable activities occurring, but retain fairness for any councils which may have projects in the pipeline at this stage or have undertaken legally binding contracts for which there would be undue hardship if they were not able to complete those contracts.

The Hon. DIANA LAIDLAW: The Liberal Party accepts the amendment. Subsection (5) addresses the same matters that I had incorporated in my amendment,

which is on file but which I will not now move. Subsection (6) provides for a number of contingencies, as the Minister noted, where this provision will not apply. I again note that this is a more sophisticated amendment than that which I had earlier moved, and the Liberal Party is pleased to accept it.

Amendment carried; clause as amended passed.

Clauses 9 to 12 passed.

Clause 13—'Amendment of the Swimming Pools (Safety) Act 1972.'

The Hon. ANNE LEVY: I move:

Page 7, line 11—Leave out 'approved' and substitute 'the construction of which requires approval'.

This is a technical amendment. Clause 13 relates to the interaction between the Swimming Pool (Safety) Act 1972 and the building rules, and the effect of that interaction is presently unclear. The Government is certainly keen to resolve this matter after a long period, so this Bill provides that as from the commencement of the Development Act the Swimming Pool (Safety) Act 1972 will not apply to swimming pools that require approval under the new legislation to which the building rules will apply.

It has been suggested that the provision as drafted may still beg the question as to the potential application of both legislative schemes. As the requirements under the Swimming Pool (Safety) Act could still apply until approval was given, that Act would still be relevant to the assessment of a development proposal. The amendment which I have moved will prevent such a tortuous argument applying and will make clear that the provisions under the building rules will apply for all new pools once the Development Act is proclaimed.

The Hon. DIANA LAIDLAW: I support the amendment.

Amendment carried; clause as amended passed.

Clause 14 passed.

Clause 15—'Transitional provisions—Development Plans.'

The Hon. ANNE LEVY: I move:

Page 8, line 9—Leave out '(as the case may be)' and substitute '(and, where the plan is brought into action, it will be taken that the amendments effected by the supplementary development plan are amendments to the relevant development plan under the Development Act 1993)'.

This is a technical amendment to clarify that supplementary development plans which were completed under the repealed Planning Act are included in the development plans under the Development Bill.

The Hon. DIANA LAIDLAW: We support the amendment.

Amendment carried; clause as amended passed.

Clauses 16 to 27 passed.

Clause 28—'Transitional provision—Existing appointments.'

The Hon. ANNE LEVY: I move:

Page 14, lines 26 to 28—Leave out paragraph (b) and substitute new paragraph as follows:

(b) if no such retirement age applied—on or before the person attains the age of 65 years or, if he or she has attained that age before the relevant day, on the relevant day.

This amendment clarifies the retirement age for all commissioners of the Planning Appeal Tribunal who are appointed to the Environment, Resources and Development Court.

The Hon. K.T. GRIFFIN: I raised some questions about this on second reading, particularly about Commissioner Tomkinson. I asked the Attorney-General about this last week; I have not yet received a reply. I presume that the Minister's amendment addresses that issue and provides that, even though there is one commissioner with a retiring age of 71, that commissioner is to retire upon attaining the age of 65 and Commissioner Tomkinson is to retire on the relevant day, whenever that is fixed. If no retirement age applied—and that is what the Supreme Court held in relation to Commissioner Tomkinson—and if he attained that age before the relevant day, as he has, he retires on the relevant day. Is this designed to deal with those two commissioners?

The Hon. ANNE LEVY: The amendment is worded to clarify the retirement age for all commissioners of the Planning Appeal Tribunal who are appointed to the new court.

The Hon. K. T. Griffin interjecting:

The Hon. ANNE LEVY: It will clarify the existing situation and determine a retiring age for all commissioners who transfer from the Planning Appeal Tribunal to the new ERD Court.

The Hon. K.T. GRIFFIN: What that effectively means—because the Attorney-General said that he had had some advice about Commissioner Tomkinson—is that, even if the Governor fixed a retiring age, it might be subject to challenge. This amendment puts beyond doubt that Commissioner Tomkinson will retire on the relevant day, and the other commissioner, who retires at 71, will have his retiring age brought back to 65. In circumstances where the retiring age is 71, is it envisaged that there will at any stage be an extension from 65 to 71, or is it now sudden retirement—instead of sudden death?

The Hon. ANNE LEVY: The Bill will apply to all commissioners. We are not discussing individual cases; we are discussing a Bill and setting general principles which will apply to all commissioners. I do not think it is appropriate for me to discuss individual situations. We are drawing up legislation which will apply to all commissioners without singling out any individual. A principle is being discussed here.

The Hon. K.T. GRIFFIN: It may be that we are talking about a principle, but this is a transitional provision and it is obviously dealing with incumbent commissioners. It is not dealing with something that may happen, because the principle has been addressed in the Environment, Resources and Development Court Bill. We are dealing with specific incumbents, and this amendment appears to overcome the technical problem which was raised in relation to Commissioner Tomkinson.

The Hon. C.J. SUMNER: No-one has ever been appointed to the age of 71. In the previous debate on that matter, I said that was a mistake in the *Gazette.* It is not a mistake in his term of appointment or in the Executive Council minutes, as I understand it. At any rate, that is my advice. All of them have been appointed on certain terms and conditions. The Supreme Court has found that the retiring age of 65 is not applicable to Commissioner

Tomkinson, and I assume to the other commissioners. However, the Supreme Court has found that the Governor in Executive Council can impose an age limit of 65. As I explained before, Commissioner Tomkinson does not necessarily agree with that advice. I am having the matter examined and the Government will have to decide whether to follow that course of action or not. Whether it does or not, this clause is designed to make it quite clear that all existing commissioners, including Commissioner Tomkinson, should retire at 65. If the problem has not been fixed by Executive Council before that, either because it does not want to do so or because there are challenges to it which are successful, the passage of this clause will fix it.

Amendment carried; clause as amended passed.

Clause 29—'Application of an amendment.'

The Hon. ANNE LEVY: I move:

Page 14—

Line 31—Leave out 'the relevant day' and substitute 'the commencement of that section'.

Line 33—Leave out 'the relevant day' and substitute 'the commencement of that section.'

These amendments are consequential on the amendment that we agreed to in clause 2 and they pick up the point that the Hon. Mr Griffin noted would need to be addressed.

Amendments carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

YOUNG OFFENDERS BILL

Adjourned debate on second reading.

(Continued from 23 April. Page 2078.)

The Hon. K.T. GRIFFIN: The Opposition indicates support for the second reading of this Bill. This is one of three Bills arising from the House of Assembly Select Committee on Juvenile Justice. The Bill contains substantive changes to the law relating to young offenders. A youth is defined as a person of or above the age of 10 years but under the age of 18 years. There are some quite significant changes in the Bill from the current juvenile justice system. No doubt there are concerns about the way in which juvenile justice is now applying in South Australia, and there is a mood for change. Some of that mood for change arises to some extent from the lack of control which the court appears to have in relation to the Department of Family and Community Services and its involvement, and there are a number of other reasons for the mood for change.

There is certainly a perception of an increased rate of criminal activity among young offenders, and there is concern that some of that offending is more serious, particularly in the high profile illegal use of motor vehicles, ram-raiding, breaking and entering (which is not so high profile), graffiti (which is quite high profile and visible to the community, and for which young people are blamed). So, these visible features all suggest to ordinary people, because of the prominence given to them through the media, that there is an increased rate of offending among young people and that they are not being appropriately dealt with.

This Bill seeks to deal with the tail end of the process, that is, the juvenile justice system, after young offenders have been apprehended. It does not address all that comes before that: the question of family environment, economic disadvantage, parental responsibility or lack of responsibility, the education system and a range of other issues which do have to be focused upon to bring the whole issue into perspective. That was one of the concerns which the Youth Affairs Council of South Australia did raise in response to the legislation and the first interim report of the Juvenile Justice Select Committee in the House of Assembly. That focus was upon the tail end—the justice end—and not the other. I want to address some remarks to that issue later. However, there is no doubt that the courts and police are dealing with the product of a number of problems in the community.

There are criticisms of the educational system about lack of discipline—not just in relation to the immediate teaching staff but others involved in that system—and the lack of education in proper standards to be set, as well as the lack of appropriate standards being set by teachers and others in the system. There is obviously a need to address the issue of truancy, which is a very important factor in the process of offending by young people. My colleague, the Hon. Rob Lucas, will deal with that issue when we get to the Education (Truancy) Bill.

There is also the question of standards as set by community leaders which do affect not only the reaction and attitudes of the general community but also those of young people in particular. When you have Prime Ministers in the public arena using derogatory and demeaning language towards others—such as 'scumbag' and other more colourful language, or language which some regard as colourful—it does not send the right signals to the community about the way people should behave towards each other.

In areas such as corporate criminal activity, the standards which are set are quite inappropriate for the young people of Australia. When those people do get away, or appear to get away, with fraud, manipulation and other behaviour, it again sends the wrong signals to young people.

The economic environment creates additional pressures on young people. The lack of jobs, the lack of opportunities and the sense of frustration at not being able to get into university or technical and further education colleges all add to a very significant problem in the community, much of which leads to offending against the law both by young people and by adults. There is no doubt that in some areas of South Australia, where unemployment is well over the 30 per cent mark, there are children living in families where not only are the children unemployed and have no opportunities, but also parents have been unemployed for some considerable time; and where parents are unemployed, where there is a sense of frustration and a lack of hope, that creates an adverse environment for young people and certainly provides no incentive for them to play a useful role in society.

Obviously, if young people are on unemployment benefits and are not otherwise active in the community, it not only breeds a cynicism about society but also provides a fertile environment for young people to

commit offences. Some of them might be regarded as being committed in a somewhat light-hearted fashion, but nevertheless they are offences and ought to be appropriately dealt with.

So, it is in that background that we do have new legislation to seek to address, at least at the tail end of the system, what happens to young offenders. It is only a small minority of young people who offend, and it is an even smaller minority of people who end up in court, and an even smaller minority still who become repeat offenders. When the Hon. Terry Groom, who was the public driver of this select committee for political purposes, was promoting the interim report and the activities of the select committee in a way which I thought was at times undesirable, he frequently made the point that the evidence before the select committee was that the bulk of the offenders came from white Anglo-Saxon families or from Aboriginal families and not from those who came from other, as he described them, ethnic backgrounds. I want to address that issue at a later stage.

I have had a look at the 1991 Statistical Report on Crime and Justice in South Australia put out by the Office of Crime Statistics to see whether or not there is any statistical information available about the ethnic or racial background of young offenders, and all I can find is that the category of offenders is divided into non-Aboriginal, Aboriginal and unknown. There does not appear to be records in relation to other backgrounds of young offenders. One might question, in any event, why it would be necessary to keep that information, but it would at least help to address the issue which the Hon. Mr Groom referred to on a number of occasions, particularly in relation to the matter of parental liability.

It is interesting to note, in respect of the District Criminal Court, that there is statistical information available in relation to the country of birth of offenders. In the District Court, for 1991 there was a fairly significant sprinkling of people from various racial or ethnic backgrounds—Aboriginal, some from interstate, some from New Zealand, the United Kingdom, Germany, Greece, Italy, what was Yugoslavia, other European countries, Asia, and a category of 'other'. So there is limited information available, but it is by no means clear what that information really tells us except that offending does occur across a range of people from a variety of backgrounds and countries of birth. I suspect that that also would apply in relation to young offenders, but there is no statistical data available in relation to that.

On the basis of the problems in the community which lead young people to offending, the select committee made a number of recommendations. The Youth Affairs Council of South Australia states that there are some 127 recommendations for change. It states:

> Of many of the proposed sensible and enlightened reforms to the existing system one has dominated the media—parental liability—whilst most have received little or no public attention.

At recent discussions with its Executive Officer and another member, it did say that some 30 of the recommendations of the select committee have been adopted in the legislation which is before us but that some 97 or thereabouts were still to be addressed, and those are largely at the front end rather than the tail end of the system.

In the area of truancy there are recommendations for the development of a range of school-type programs at neighbourhood level which have specific curriculum to meet the needs of behaviourally difficult or truanting students. There is a recommendation in chapter 3, No. 11, as follows:

> The Education Department employ and train additional Aboriginal attendance officers in an effort to improve the cultural relevance and general effectiveness of attendance services.

There is a proposition in the same chapter, No. 15, as follows:

> Where a culturally based high mobility of students exists the Education Department develop flexible, individual learning packages for the students of concern.

In chapter 4, relating to juvenile offending (causes and prevention) recommendation No. 3 provides:

> Strategies be developed to alleviate the structural problems confronting young people, including unemployment, homelessness, poverty and family breakdown, and that should include, in the area of housing, priority being given to developing support services and strategies designed to keep or reintegrate the young person within the family unit.

Where the young person cannot remain or return home, the committee recommends:

> The Housing Trust and the Department for Family and Community Services increase the provision of suitable crisis medium-term and long-term accommodation for homeless young people.

It also refers to the development by these agencies of a range of relevant programs for young people including independent living skills and counselling. Then there is a recommendation for particular attention to be paid to providing culturally appropriate accommodation services for Aboriginal youth and youth from non-English speaking backgrounds.

I do not intend to deal with all the recommendations of the select committee, but I want to highlight a few which require positive attention by the Government, which certainly require resources and which are at the stage of crime prevention rather than dealing with the results of offending. The select committee in chapter 4 proposes that resources be redirected by the Department for Family and Community Services and other agencies to early intervention programs that are designed to assist families whose children are at risk of offending.

It also recommends that local councils allocate adequate resources for recreational facilities, counselling services and support programs for young people and children at risk. That of course is very important, because one of the difficulties is that if inadequate recreational facilities are available for young people they will become bored, they will meet on street corners, in shopping centres or in school grounds, and that may lead to offending, whether it be graffiti or other activity. Of course, there are some innovative programs to deal with offending, whether it be in relation to graffiti, car theft or other offences, and my colleague the Hon. Diana Laidlaw may address some of those.

There is a recommendation relating to the establishment of a long-term residential facility for drug and alcohol dependent Aboriginal youths. There is a recommendation for compulsory training of police officers in Aboriginal culture; a recommendation that the

number of Aboriginal police aides be increased and that strategies be developed to increase the number of Aboriginal police officers. There is a proposition that the Bank Street police station initiatives, developed as policing strategies, be extended to other parts of the State, and that crime prevention initiatives such as Blue Light camps be supported and extended.

There are recommendations that the Aboriginal community be given greater responsibility for developing and running appropriate treatment programs for Aboriginal young offenders and that adequate resources be made available to facilitate this. Then there is a focus on the Royal Commission into Aboriginal Deaths in Custody, and a recommendation that all the recommendations of that royal commission relating to juvenile offending be supported and implemented. We have not really heard much of that lately. Although the Government has periodically made reference to that royal commission and its recommendations, as I understand it, they are still being assessed in some areas. I would like to know where the Government proposes to go in relation to those recommendations.

In chapter 7 there is a recommendation that the Police Department establish a separate youth aid section staffed by specialist youth officers and that youth justice coordinators undergo intensive instruction on the philosophical and implementational components of family group conference, including comprehensive training in mediational techniques.

That is an important issue, particularly in the way in which family group conferences are proposed to be established. They will certainly need specialist mediation services and specialist support services available to them. There is a range of recommendations in the Interim Report of the Select Committee on the Juvenile Justice System that need to be addressed and, as I understand it, the Minister of Health, Family and Community Services (Hon. Martyn Evans) has said 'Well, the select committee has finished its work: all this is now up to the departments and individual Ministers and subject to the budgeting process.'

I suggest that, after such a comprehensive report, that is just not good enough and that the Government ought to have in place some structure by which the implementation of the juvenile justice select committee recommendations can be monitored and assured or, at least in the early stages, that there are adequate mechanisms to ensure that a response is given by the Government to all the recommendations. We had the Government focusing upon the recommendations of the Royal Commission into Aboriginal Deaths in Custody and providing some responses to the recommendations. A number of these recommendations are equally important, whether they be in relation to Aboriginal or non-Aboriginal young people.

What I would like the Government to do is indicate the mechanism by which these recommendations will be assessed, decisions taken and, if a decision is taken to implement, then the process by which that will be undertaken, and what will happen if Government departments fall down on the implementation process. If they are not to be implemented, then we are entitled to know the reasons why. If they are to be implemented, we are also entitled to know what timetable will apply to the implementation process.

While the Children's Protection and Young Offenders Bill is in the other place and will not be dealt with in this session it seems to me that that, along with the other recommendations of the legislation, ought to be addressed by the Government and we ought to know where it is going in relation to the other recommendations not covered by that Bill and the package of Bills before us now. I return to the detail of the Bill.

Under the Bill, children's aid panels and screening panels are to be abolished and the Department for Family and Community Services will no longer have an automatic right of audience in the court. I think that is a desirable move, particularly the department no longer having that automatic right of audience. It will have to justify its appearance: it will have to establish good grounds for such an appearance.

The procedure to deal with young offending follows through an informal cautioning process by police to a more formal cautioning process, without recourse to the court, then a family group conference and ultimately the court appearance. More power is to be given to police who, as I say, may issue an informal or a formal caution. There is not to be an official record of an informal caution. With a formal caution, the young offender may be required to enter into an undertaking to pay compensation to the victim or may be required to enter into an undertaking to carry out up to 75 hours of community service and be required to enter into an undertaking to apologise to the victim or to do anything else that may be appropriate in the circumstances of the case.

A police officer is to have regard to sentences imposed for comparable offences by the Children's Court and have regard to any guidelines issued by the Commissioner of Police. If a young offender does not comply with a requirement of the police officer, the officer may refer the matter to a Youth Justice Coordinator, who is to be responsible to the Senior Judge of the court, for reference to a family group conference, or the police officer may lay a charge for the offence before the court.

There are a couple of concerns about this procedure. The first is the most obvious concern and that is that the police officer will be acting as policeman and as judge. It is always a very difficult issue, and one finds difficulty in accepting that those who do the investigation also impose the penalty and have responsibility for monitoring the effectiveness of that proposal. So there is a concern about police officer involvement in the cautioning process.

There are very competent police officers; there are also police officers, I suggest in the minority, who do not address the potential offenders with any measure of sensitivity. Some of the offenders probably do not warrant sensitivity being shown, but many others do. It has been put to me that police do have real concerns about the cautioning process—that unless there is some specific training program police officers, as presently likely to be involved, will be inadequately trained. They will have wide discretions and powers, and those wide discretions and powers will be exercised by police who,

on an average, will have been out of the Fort Largs Academy for about two years or thereabouts.

We will have relatively inexperienced police exercising the responsibility for cautioning unless it is intended, as the select committee proposed, that there be more specialist police officers with the responsibility for the cautioning process. I am not sure how that is to work, and I would like the Attorney-General to give us some information about the way in which that is to operate, what sort of police officers are to be involved, how they are to be identified, what special training is proposed and so on.

The Aboriginal Legal Rights Movement is upset about the cautioning process and asserts that the involvement of police not only in the apprehension of offenders but in the quasi-judicial process will cause a breakdown in the relationship between police and Aboriginal people. It also expresses concern about lack of resources, lack of training and effectively the lack of an appeal process, although I do note that there is a right for a young person to take the matter direct to the court if he or she so wishes. The problem with that is that there will be a great deal of pressure, if not from the police officers then certainly from the fear, uncertainty and the potential trauma of the court process, and that young offenders or young people confronted by a police officer will take the easy way out and will submit to the cautioning process rather than arguing about innocence or the inappropriateness of the penalty which is proposed to be fixed. The Youth Affairs Council of South Australia makes the following submission:

While the Youth Affairs Council of South Australia supports the informal and formal cautions, we maintain that warnings should not attract penalties. Penalties should properly be the jurisdiction of the new Youth Court and other sanctions worked out through the family group conference. In addition to considerations of consistency and equity the fundamental issue remains the appropriate limit of the police role. Police will also have the power to decide how an offence will be handled. Section 7(3) allows a police officer to decide whether a matter should proceed directly to court. There is no requirement that this decision be made before taking statements and getting a signed admission from the young person.

Admissions made by young people to police in the expectation that the matter will be dealt with by way of caution or family conference should not therefore be admissible as evidence in any subsequent court proceedings concerning the same alleged offence. The young person may have made the admission solely to dispose of the matter quickly rather than dispute it in court. It would not be safe to allow the court to rely on a record of interview or admission whether signed or unsigned in these circumstances.

To compound the problem, section 58(2) would allow any such admission to be used as evidence of prior offending. Such a change would elevate a formal caution to the status of previous judicial finding without that process having taken place and without right of appeal. In circumstances where police are empowered to require a young person to apologise to the victim of an offence, there is no safeguard to ensure that this will occur in the presence of responsible adults. This may lead to situations placing one or both parties at risk and thereby directly contradicts the select committee's recommendation that offender and victim not be brought together before a matter is determined.

There is concern about the police cautioning process. We do not intend to do anything other than to draw attention to those concerns and also to propose some amendments which, I hope, will improve the safeguards in the legislation.

On the other side of the coin, there is to be no official record of an informal caution. I will certainly be asking the Attorney-General in the Committee stage what that means when it refers specifically to official caution. Does it mean that there may still be some records kept of informal cautions? Concern has been expressed in any event that some record ought to be kept of informal cautions. I am considering a proposition that, where a police officer issues an informal caution and believes it ought to be recorded for the purpose of dealing with any subsequent matters, it may be the subject of an informal record which may not be used for any other purpose than addressing the issue of formal cautions. That is something we will take up again in the Committee stage.

The second issue in relation to police cautions is the involvement of parents. Whilst a young offender who enters into an undertaking is protected to the extent that an undertaking must be signed by the parents or guardians of the young offender, there is no requirement for the parents to be involved in the negotiations leading to the undertaking. There is a provision, I think in the Evidence Act, that no questions may be asked of a young offender unless a parent or other adult is present. I think that is the import of the provision, anyway, even if it does not reflect quite precisely the drafting, but the focus is always on some person independent of the police being present, to be there to support the young person. That issue ought to be properly addressed.

From the stage of police cautioning, one moves to the family group conference which involves the youth justice coordinator, the young offender, a representative of the Commissioner of Police, the guardians or other relatives of the youth who may participate usefully in the conference, and the victim. The family conference at which the young offender may be advised by a legal practitioner has power to administer a formal caution or to require the young offender to enter into an undertaking to pay compensation to the victim or to undertake up to 300 hours of community service, and to enter into an undertaking to apologise to the victim, as well as anything else that may be appropriate. There is a question there, as well as in relation to police cautions, as to what may be proposed by the description 'anything else that may be appropriate.' That leaves a very wide discretion. Certainly in relation to the police area I will be seeking to ensure that that relates only to matters which may be lawful. If there is a breach of a condition agreed at a family group conference, a charge may be laid, but if the young offender complies with all requirements, he or she is not able to be prosecuted for the offence. The ultimate course, having bypassed the police cautioning process and the family group conference, is to the court where an offence may be laid.

There are a number of issues in relation to family group conferences which need to be addressed. We support those. That support has been indicated in the House of Assembly. We think they are appropriate means by which many young offenders may be dealt with without the formality of the court process. They are

required to acknowledge their wrongdoing. They come face to face with the victim. They acknowledge their wrongdoing in the presence of parents and others, and I think there is a reasonable prospect of appropriate resolution of the issue without recourse to the more formal processes of the court.

Of course, it will be necessary for the youth justice coordinator to be properly trained and for the police who attend in a representative capacity for the Commissioner of Police to also have adequate training. I would like a response from the Attorney-General on the level of training that is likely to be proposed and the other qualifications that may be required of a person who is to be a youth justice coordinator. The youth justice coordinator is responsible to the senior judge, but it is important that that person not have any connection with police or corrections, the youth training service or, for that matter, the Department for Family and Community Services.

As I have indicated, the ultimate course is for an offence to be laid. Homicide ultimately is to be dealt with in the Supreme Court or in the District Court, and that is appropriate. A young offender may elect to be dealt with in the same way as an adult after receiving independent legal advice, or the Supreme Court may determine that the young offender shall be dealt with in the same way as an adult because of the gravity of the offence or because the offence is part of a pattern of repeated offending.

The Liberal Party policy options paper did propose that we should at least consider reducing the age from 18 to 17 years. There is a view in the community that, in relation to offences involving the use of a motor car, particularly licensing offences, young offenders, even at 16, ought to be treated as though they were adults. There are some persuasive arguments in favour of that, but we have taken the decision that we will adhere to the recommendation of the select committee that 18 be the age at which an offender becomes and is treated as an adult, rather than seeking to reduce the age.

Eighteen is the age of majority at which persons vote and at which persons can enter into valid contracts, although there are some exceptions to that. Some contracts are valid if entered into by minors, but they are somewhat limited. Even in relation to repeat offenders, where we have given consideration to those repeat offenders being dealt with as adults, we have taken the decision that we will allow this comprehensive new package to be brought into operation, monitor its progress and, if at the juvenile justice end it is necessary to deal with the issue at some later stage, maybe in a year or so, then we will address that age at that stage. Certainly, the options for the future are kept open.

When a young offender is arrested, clause 13 of the Bill does not provide for parents or guardians to be informed with a view to ensuring that they are present during any interrogation. That is an issue that ought to be addressed. In relation to the sentence of the court, we support the extension of the maximum penalty that may be imposed. The court may sentence to a period of imprisonment but may not sentence the young offender to detention for a period exceeding three years or impose a maximum fine of $2 000 or maximum community service of 500 hours. Presently there is a minimum period of detention of two months and a maximum of two years.

Fortunately, the minimum period has been deleted. That has been the cause of much concern, because sometimes the courts and others have felt that if the court could grant a short period of detention it may be an effective deterrent against subsequent reoffending. So, the minimum is removed and the maximum is increased to three years and we support that. The maximum fine is presently $1 000 and, again, the increase is supported. The maximum for community work is increased from 90 hours to 500 hours and we have no difficulty with that.

The major concern for community service is that suitable work must be available before the court can make an order, and one of the problems that the current Children's Court has had is that, even when community work has been ordered, it has not necessarily been served because the Department of Family and Community Services has indicated that such community work is not available. That is a question of resources, and that issue does need to be addressed by the Government. I hope that some information can be given to the Council as to the way in which that issue will be addressed, because suitable replacements must be available. The court must not be hampered in the options which it can exercise in addressing the issue of penalty. It is our view that there ought not to be any limitation placed on the sort of community work that can be undertaken.

The Government has a policy that community work cannot be undertaken in areas where work might otherwise be taken away from paid employees. That is a policy which has been dictated by the United Trades and Labor Council over a number of years but one which I think is inappropriate because when one visits kindergartens, for example, and finds that there is repair work which needs to be done but which cannot be done under community work orders because of this policy it is quite surprising and I think an inappropriate position, because in most instances that work will never be done anyway by paid employment because there are just not the resources available for that purpose.

The Bill establishes a juvenile justice advisory committee which has to report annually. It also reports to the Attorney-General on matters relevant to the administration of the Act which have been referred by the Attorney-General to the committee for investigation and report. It is only the former report which is to be tabled, and not the report on matters referred by the Attorney-General. I think both reports ought to be presented to the Attorney-General by 30 September in each year and ought to be tabled within six sitting days. The date for presentation of the report is 31 October and we think that is too far out. There is no time limit within which the report must be tabled in the Parliament. In addition to that, we believe that the juvenile justice advisory committee's functions ought to be extended so that it is required to monitor the administration of the police cautioning system and report specifically on that in the annual report.

The major controversial issue in this Bill will be compensation orders against parents under clause 52 of the Bill. That was amended by the Government before the Bill was introduced into the Parliament from what

was provided in the select committee report, and there has been an amendment also made by the House of Assembly to that report. The Liberal Party again expresses its concern about the issue of parental liability of an unlimited quantity. This issue has been the subject of debate on at least two previous occasions. There are a number of issues which I think have to be addressed and considered. It is important to note that the select committee report only rather briefly referred to parental liability in just under three quarters of a page. It refers to the issue of parental liability saying that it has attracted some attention despite the fact that it has already been canvassed in some depth by the select committee into the Wrongs Act.

The select committee makes the point that witnesses were divided on the matter. I think it is important that I relate what is contained in the report, a substantial part of which deals with opposition to the concept of making parents financially liable for the criminal acts of their children. The select committee refers specifically to the social justice unit of the Catholic Family Services which argued that such a proposition would facilitate family breakdown. The select committee also refers to the argument by the Children's Interest Bureau which is similar to that of Catholic Family Services. The report focuses upon the statement by the Children's Interest Bureau that many young offenders come from what could be termed as functional families which are already experiencing socio-economic hardship. The Children's Interest Bureau says that to impose additional financial burdens on these families would lead to further family breakdown.

The Department for Family and Community Services also expresses concern about parental liability. The select committee says that FACS argued that parents generally do the best job they can with the skills and resources available to them and that to place even greater pressure on them would simply intensify their sense of inadequacy, social isolation and lack of support. The report contains reference to other witnesses who gave evidence against the parental liability concept. Surprisingly, in three lines the select committee dismisses those propositions by saying:

> Other witnesses, however, did support the concept on the grounds that it would encourage parents to take greater responsibility for their children and would make them aware of the importance of providing adequate supervision.

There is no attempt to identify the witnesses. One member of the Liberal Party, Mr Wayne Matthew, gave evidence to the select committee, but I am not aware of others—in fact, I do not think there were others—who were supportive of the concept of parental liability. So, there is no evidence in the report that supports the select committee's recommendation, but there is certainly evidence that is opposed to the proposition. It surprises me that the select committee has jumped to a conclusion without relying on evidence.

The Youth Affairs Council of South Australia, through its Chief Executive Officer (Kim Davey) makes the following observations about parental liability:

> One of the fundamental propositions put by the select committee is that young people should be held directly accountable for their own actions. Holding parents liable for their children's behaviour undercuts that responsibility and accountability. In so doing, the legislation works against the basic principle of criminal collaboration; that is, that a person should not be held responsible for the actions of another if that person has no prior knowledge that an offence is to be committed.
>
> Section 51(3) cites the exercise of an appropriate level of supervision and control over the youth's activities. Yet in two separate judgments as recently as 1989 the Chief Justice of South Australia stated clearly that there are no readily recognisable standards of parental supervision. Unlike standards which can be identified for driving a car there are major problems in determining parenting capacities. Arguments over the appropriate level of supervision would involve lengthy assessment processes providing a field day for lawyers and resulting in protracted and bitter proceedings. At a community level we believe that compensatory orders will heighten tension and conflict in families experiencing difficulties. This may well provoke violence against children from parents who are threatened with or held liable—in turn leading to further family breakdown and homelessness.
>
> In setting the standard minimum rules for the administration of juvenile justice in 1985 the United Nations rejected the concept of parental liability on the grounds that offenders must be made to take responsibility for their own actions. The South Australian Parliament has yet to make a strong case for its introduction.

The Chief Justice, as the Youth Affairs Council of South Australia, did indicate in the case of *Robertson v Swincer,* that it considered the issue of parental liability. The Chief Justice in *Robertson v Swincer* (and I think it is important to refer to this) does make reference to the difficulties of establishing standards of parental care. He says as follows:

> The social consequences of a legal rule imposing a duty of care upon the custodians of children to protect them from harm requires consideration. The moral duty which rests upon parents and those acting in their place continues during every moment of the time during which the child is in their care. If that is to be converted into a legal duty it must be recognised that departure at some time from the standard of reasonable care, even by the most alert and prudent of parents, is almost inevitable. There are, moreover, no readily recognisable standards for parental supervision as there are for specific activities such as driving a motor car. Parents differ as widely as human beings themselves in temperament and personality. Some are less alert and prudent than others and they may differ widely in their parenting capacities and views as to what is required.
>
> The prospect of a parent's assets being at risk in an action by a child in consequence of a momentary failure of supervision judged by a court against an objective standard of reasonable care has alarming personal implications for parents and disturbing implications for society generally. In considering whether it is justified in erecting a duty of care arising out of a particular relationship, a court cannot ignore the considerations of loss distribution in the community which lies at the heart of the law of torts. One is, I suppose, permitted to know that the public risk policy commonly used by insurance companies excludes indemnity for legal liability to members of the insured's family residing with him. The threat to the financial wellbeing of parents of the erection of such as duty as that contended for would be considerable and might be difficult to insure against. It might arise from an action instituted for the child by a parent who was estranged from the defendant parent from an action in respect of injuries sustained long before

brought against an ageing parent by a child who has attained maturity or from a claim for indemnity or contribution by a *tort feasor* who is liable for the child's injuries.

The threat to the financial security of parents and families is by no means the only adverse social consequence to be feared. Parents and children in our society are very dependent upon the support and assistance of benefactors. Children are cared for frequently by supportive relatives and friends and by kindly neighbours. What would be the effect upon such supportive arrangements of the knowledge that a failure of care and supervision might expose the benefactor to being stripped of his assets in consequence of an action for damages?

The other judges make similar observations in relation to that issue.

What the Liberal Party is proposing in relation to this is that we cap the liability to $10 000, and there are precedents for that: in the Northern Territory, in New Zealand and in the United Kingdom. The $10 000 cap is higher than in those jurisdictions but it is not unreasonable, even though it comprises the principle to which I have referred. We will also seek to ensure that the Minister of Family and Community Services has a liability as well as providing that the so-called reverse onus of proof provision in clause 3, the defence provision, is turned around.

There are many concerns about financial liability being imposed upon parents. There is undoubtedly a moral responsibility upon parents, but when that is translated into a legal binding liability it is of concern. Mr Groom has publicly said that this is necessary to make family group conferences work, and he has given the example of sharing financial responsibility among offenders who colluded or conspired in relation to a particular criminal act.

I suggest that this provision is not necessary for the purposes of the family group conferences and that those conferences will work without parental liability. However, if the majority of the Council believe that it is necessary, then the solution to the problem is to go for the amendment that we will be moving to put a cap on the liability.

Mr Groom has mentioned that the majority of cases dealt with relate to damage where the amounts involved are about $1 000, and that is well within the limit that I am suggesting. Mr Groom has also used the quaint analogy of the Napoleonic code and laws in Europe which place a financial liability upon parents. He has asserted (I think without any substance to the assertion) that the reason why young offending is minimal in those countries is that the parents know about the liability. I have no figures which indicate the level of offending in those jurisdictions, nor do I—

The Hon. C.J. Sumner: Who says it is lower?

The Hon. K.T. GRIFFIN: Mr Groom said it was lower. I think he was just fishing around for some excuses to justify this provision. I do not believe that it is possible to draw the long bow about offending, even among so-called ethnic families in Australia, because there are no figures readily available relating to that matter, or at least I have not found them to be available.

There are concerns about parental liability being imposed by the law. There is a concern that it will prejudice families and not enhance relationships within families. One has to be alert to the fact that in the objects of the Bill, set out in clause 3, the focus is on securing 'for youths who offend against the criminal law the care, correction and guidance necessary for their development into responsible and useful members of the community and the proper realisation of their potential'. The focus is upon the youth being made aware of his or her obligations and the consequences of breaking the law. The focus is also on the statutory policy that family relationships between the youth's parents and other members of the family should be preserved and strengthened.

Parental liability imposed by law will not conform to the objects of the Bill or the statutory policies to which I have referred. It is more likely to create tension and hardship within families—certainly among families where there is economic hardship. It may result in throwing more people onto the unemployment list rather than providing support to them. It may only aggravate problems of frustration within the family about lack of job and other opportunities when pressures of parental financial liability are brought to bear.

In the other House the Minister said, 'Well, we are allowing the court to take into account the circumstances of the family.' I say to that, 'So what?' That is even more inequitable than without that specific provision. It will mean that people who have worked hard, who have saved, who have had perhaps some good fortune on their side, who have some resources and who have cared for their children (as have those who happen to be on unemployment or other benefits cared for their children) are more likely to face the liability and the pressures of liability—and maybe even bankruptcy in the most extreme case—compared with those who are somewhat more impoverished. There is an injustice in the application of that provision of the Bill.

I will now put on the record a few other matters which might facilitate the Committee consideration of the Bill. In the definition of 'minor offence' the police officer in charge of an investigation is to determine what is to be a minor offence. It seems to me that is a very vague basis upon which that determination is to be made, and I would like to know from the Attorney-General what guidelines are proposed that will enable that to be more closely defined. Regulations are proposed to be promulgated under clause 14 to make adaptations and modifications to legislation relating to criminal investigation, arrest, bail, remand and custody; what adaptations and modifications are likely to be proposed by regulation? I have concern about regulations being used in that context, particularly in relation to the criminal law. It is important for us to have that clarified.

I raise the issue of the Training Centre Review Board and the provisions for the issue of summonses. If one looks at clause 37(7) of the Bill and subsequent provisions, one sees that a member of the Training Centre Review Board may summons a youth to appear before the board or apply to a justice for a warrant for the apprehension and detention of the youth. If one recognises that a judge of the Children's Court is to be a member of the Training Centre Review Board, I wonder how the summons process is to work. Does that mean that the judge may apply to himself or herself for the issue of a summons, or will he or she be required to

apply to a justice for a warrant? There may be an easy answer to that, but I cannot see it at the moment.

The review of detention by the Training Centre Review Board under clause 39 is proposed to be at intervals of not more than six months. I wonder whether that should not be perhaps three months to ensure that there is more regular monitoring of the progress of a young offender in the detention system.

The same applies in relation to clause 42(2), relating to the period between applications for release. In relation to clause 49, 1 have already raised the issue of community service programs, but I would like to know from the Government what resources are proposed to be put into that. With respect to the power to search in clause 60, it seems to me that body searches might be permitted, although under other legislation they are more strictly controlled. I would appreciate it if the Attorney could give some information about the relationship between that provision and other provisions of the law relating to searches.

I will raise some other issues at the Committee stage. I am sorry that I have taken longer than I had expected, and probably members expected, but this is a fairly significant piece of legislation where there are a number of important issues which do have to be addressed, regrettably at the tail end of the session and in circumstances where, I suspect, this legislation will not be brought into effect for some time, largely because there will need to be some other transitional legislation passed, and that will only be passed in the budget session—certainly not in the remainder of this session. I support the second reading.

The Hon. I. GILFILLAN secured the adjournment of the debate.

YOUTH COURT BILL

Adjourned debate on second reading.

(Continued from 23 April. Page 2083.)

The Hon. K.T. GRIFFIN: I certainly will not take as long as I did on the last Bill to speak on the issues relevant to this Bill. There are some important issues which need to be addressed. The Bill seeks to establish a new Youth Court. Some concern has been expressed about the naming of the court, but I do not intend to move any amendment in relation to that. One has to acknowledge that the court will have both civil and criminal jurisdiction, and will have jurisdiction in relation to young children. Under the Children's Protection and Young Offenders Act the court does make orders where a child is in need of care, and those children are not even 10-year-olds—they may be very much younger. So, the court will be dealing with a range of young people from babies to nearly 18-year-olds. Usually one uses the term 'youth' to describe those who are more in their mid to later teens than for those who are in their earlier teens and younger.

So, there is the potential for some confusion, I would suggest, particularly where the court is exercising its civil jurisdiction. But the select committee settled upon 'Youth Court', and that is the term which the Government is proposing, so I do not intend to do anything other than draw attention to the change.

The Bill seeks to establish a Youth Court, which will comprise judges of the court, magistrates of the court, justices and special justices of the court. The senior judge of the court is to be a District Court judge designated by proclamation as the senior judge of the court. The other judges are to be District Court judges designated by proclamation as judges of the court. No judge or magistrate is permitted to serve for a period exceeding five years unless they are members of the principal judiciary, in which case they can serve for terms of up to 10 years. I will address some remarks to that in a few moments.

The court will hear all matters relating to children unless otherwise provided, yet when constituted of a judge it may determine a charge of a major indictable offence, and judges and magistrates may hear other offences. There is a provision for an appeal in an indictable offence to the Full Court of the Supreme Court. There are some other provisions for appeals within the court, and I will be addressing those issues by way of amendment, to endeavour to ensure some consistency of approach, particularly with the Environment, Resources and Development Court, which has been the subject of legislation we have just passed tonight.

The Bill differs from the Bill to establish the Environment, Resources and Development Court in a major respect: the Environment, Resources and Development Court judges and magistrates are to be appointed by proclamation after consultation with the Chief Judge. They are to be District Court judges; the Youth Court judges are also to be judges of the District Court and they are to be designated by proclamation as judges of the court. The judges and magistrates of the Environment, Resources and Development Court are not appointed for a maximum term; they may continue in office.

Rather curiously, the Youth Court judges and magistrates are to be appointed for a limited term. As I understand the select committee, that is to endeavour to achieve some turnover in personnel. I raise some concerns about that. Why is it not necessary for a turnover in the area of planning environment and resources, yet there is a need for some turnover in relation to young people in dealing with issues relating to them before the court? Sure, planning affects a person's livelihood and property issues, and one acknowledges that there is a need for some expertise, but it would seem to me that judges and magistrates in that jurisdiction could become stale; they could become out of touch with the mainstream courts.

Why do they not have a limit on the term they can serve in that jurisdiction? It may be that some people have preconceived concerns about present incumbents of the Children's Court, but I would have thought that whomever they might be they work within the law which is provided to them and the options for punishment for dealing with young offenders that the Parliament presents to them. You cannot lay all the blame for failures in the juvenile justice system at the door of the Children's Court or the personnel who operate in that court.

The whole system has now been overhauled. It does require persons with sensitivity to young offenders and family circumstances as well as to the victims of young offenders, but it seems to me to be quite inappropriate to fix a period of time up to which judicial officers and magistrates may serve, and apply it only to this particular court. Incidentally, the Chief Justice has some concerns about that. The letter from the Chief Justice to the Attorney-General has been referred to in the other place, but basically the Chief Justice says that he has considered the issue and is very concerned about the limitation on the terms of office. Perhaps for the purposes of the record I should read the letter. He says:

I have considered this Bill and its impact upon the court system has been discussed by the inchoate State Courts Administration Council. The council is strongly of the opinion that the five year limitation in clause 8 [now clause 9] on the designation of judges and magistrates as members of the Youth Court judiciary is unworkable. Your urgent attention is drawn to its practical consequences.

It will be necessary in the future as it has been in the past for most, if not all, District Court judges and magistrates to be designated as Youth Court judges or magistrates. That is necessary because they must deal with Youth Court matters on circuit. Magistrates have to clear the cells in country courts and therefore deal with youth offenders. The two Youth Court judges stationed in Adelaide would be incapable of discharging their obligation under clause 13(2) to hear and determine charges of major indictable offences unless assisted by District Court judges. It will clearly be necessary for District Court judges on circuit to hear and determine such cases.

The five year limitation would mean that at the expiration of the five year period, the whole of the District Court judiciary and the magistracy would be ineligible to hear Youth Court cases.

That issue has to some extent been addressed by the Government's decision to move for a principal judiciary and, I suppose one could call it, 'other judiciary', with a distinction in the periods of service. I would suggest that even under the proposals which the Government has in the Bill there is likely to be a problem in, say, five years time when the time of the other members of the judiciary expires. I suggest that that will be a continuing problem. In any event, I would like clarification as to the role and function of the principal judiciary as opposed to the ancillary judiciary, because that distinction, whilst by description is referred to in the Bill, is not referred to by way of function— The Chief Justice goes on:

Apart from the fact that the provision is unworkable, it is undesirable for other reasons. Persons are appointed to the judiciary for work in the youth area because of their special interest in and suitability for that work. They may not be suitable for or interested in general District Court duties.

To require that judges who have accepted appointment with a view to working in the Youth Court should then go into general judicial work is most undesirable from the point of view of both the judges and the quality of the District Court.

Again I interpose that, in debating the Environment, Resources and Development Court Bill, the Government has made the point that it wants specialist judges dedicated to planning and other development court work, so the point that the Chief Justice makes is pertinent to the proposed Youth Court. He goes on:

An even more important objection is the anticipated difficulty of attracting the best candidates for appointment to the District Court if appointees may be required to spend up to five years in the Youth Court. If there were a five year turnover most of them would be required to serve full time in the Youth Court for some years. Youth Court work is specialised in nature. It is most important judicial work but it appeals only to a limited section of the legal profession. Most highly qualified legal practitioners would regard themselves as unsuited to that type of work and would be unwilling to undertake it.

The Hon. C.J. Sumner: Sounds like a lot of nonsense to me.

The Hon. K.T. GRIFFIN: Perhaps if the Attorney-General thinks it is a lot of nonsense he might respond to it in reply, as well as to the other issues raised by the Chief Justice and by me. The Chief Justice continues:

It is of the utmost importance to the judicial system and the service which it provides to the community, that the quality of the judiciary in the District Court be maintained and enhanced. The prospect of long periods in the Youth Court would make it impossible to attract the best qualified persons to the District Court bench. The council also—

The Hon. C.J. Sumner: They're already required to do general duty as Children's Court judges.

The Hon. K.T. GRIFFIN: When they go on circuit?

The Hon. C.J. Sumner: They give an undertaking when they are appointed in the District Court that they'll sit in the Children's Court. If they don't give the undertaking, they are not appointed.

The Hon. K.T. GRIFFIN: On a permanent basis?

The Hon. C.J. Sumner: Whenever they are appointed, the Chief Judge tells them to sit there on a permanent basis. Their undertaking given at the time they accept appointment to the District Court is that they will sit in any of the jurisdictions the Chief Judge tells them to sit in, including as a magistrate, in the Children's Court, etc.

The Hon. K.T. GRIFFIN: That is a fascinating piece of information. I am pleased that I raised it and the Attorney-General has responded. Perhaps what the Attorney-General could do in his reply is to produce to us the actual form of the undertaking, if he would not mind doing it. I have no difficulty with the undertaking: the problem is, how do you enforce it? One would expect that as a matter of honour it would be accepted, but I would be interested to see what the form of the undertaking is. It may also be appropriate, if that is also expected of magistrates, if the Attorney-General might also—

The Hon. C.J. Sumner: Yes, that's right. They have to do what the Chief Magistrate tells them to do, as well.

The Hon. K.T. GRIFFIN: —make available a copy of the magisterial undertaking. If I can just finish the Chief Justice's letter, which has elicited some useful information from the Attorney-General, he goes on to say:

The council also draws attention to the appellate provision in clause 22(2)(b). There is an appeal from a decision of a magistrate to the Senior Judge or a judge of the Supreme Court. The choice of appellate tribunal is that of the appellant. The respondent has no say in that. It is plainly unjust that a prosecutor or defendant should be able to force the other party to accept the Senior Judge of the Youth Court as the appellate

tribunal and deprive that other party of recourse to the Supreme Court. The Supreme Court is the accepted appellate body for all the courts of the State. The District Court judges have no appellate jurisdiction, except the special and anomalous jurisdiction in small claims. The conferral of appellate jurisdiction on a judge of a court below the level of the Supreme Court, is out of harmony with the judicial structure of the State. It is strongly recommended that the appeal from a magistrate or justices be to the Supreme Court constituted of a single judge.

That is an issue we will address in Committee. The point I make in relation to that is that again it is inconsistent with the Bill we have just passed, the Environment, Resources and Development Bill, which does have a very clearly defined range of provisions for appeals. What I would like to see is some consistency between the two.

The Opposition supports the general thrust of the Bill. It is unremarkable in most respects. It is, I would suggest, not necessary because we already have a Children's Court but, because of the prospective repeal of the Children's Protection and Young Offenders Act, which embodies the provisions relating to the Children's Court, it is probably appropriate to have a separate piece of legislation dealing with this court.

There are two issues on which I seek further response from the Attorney-General in reply. The first relates to current cases before the court and transitional provisions. I understand there may be a Statutes Amendment and Repeal Bill in the next session, but I would think that this question of transition ought to be dealt with at the earliest opportunity although, if the Government does not intend to bring the package into operation within the next month or two, that can be dealt with in the next session if there is not an intervening election. The other issue is to ensure that this court is part of the Courts Administration Council; certainly the Children's Court is, but there will need to be an amendment to the Courts Administration Act, because that does refer only to the Children's Court. I indicate support for the second reading.

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

HARBORS AND NAVIGATION BILL

Returned from the House of Assembly with amendments.

CRIMINAL INJURIES COMPENSATION (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly with an amendment, the House of Assembly having drawn the Council's attention to the amended form in which clause 8, which was referred to that House in erased type, had been inserted in the Bill.

MEMBERS OF PARLIAMENT (REGISTER OF INTERESTS) (RETURNS) AMENDMENT BILL

Returned from the House of Assembly with an amendment

CRIMINAL LAW (SENTENCING) (EDUCATION PROGRAM) AMENDMENT BILL

Returned from the House of Assembly without amendment.

STATUTES AMENDMENT (COURTS) BILL

Returned from the House of Assembly without amendment

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

Returned from the House of Assembly without amendment.

ROAD TRAFFIC (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

EQUAL OPPORTUNITY (COMPULSORY RETIREMENT) AMENDMENT BILL

Returned from the House of Assembly without amendment.

ADJOURNMENT

At 11.57 p.m. the Council adjourned until Wednesday 6 May at 2.15 p.m.