LEGISLATIVE COUNCIL

Thursday 19 August 1993

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

HOMOSEXUAL VILIFICATION

A petition signed by 41 residents of South Australia, concerning homosexual vilification legislation, and praying that the Council will, as a conscience issue, reject, if presented in South Australia, all so-called homosexual vilification legislation which would give a small minority homosexual group special privileges and legal rights not afforded to other citizens, as homosexuals, like all other citizens, should simply avail themselves of the existing protection of the law against any violent threats or violent acts, so that all citizens of South Australia can continue to be equal under the law, was presented by the Hon. Bernice Pfitzner.

Petition received.

LEGISLATIVE REVIEW COMMITTEE

The Hon. M.S. FELEPPA: I bring up the evidence of the Legislative Review Committee on regulations under the Firearms Act concerning fees.

QUESTION TIME

PUBLIC SECTOR REFORM

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

Leave granted.

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: We do. Is that a trick question? In April, the Arnold Government released its Economic Statement entitled 'Meeting the Challenge'. Contained in that document was a proposal to reduce the size of the public sector by 3 000 full-time equivalent positions. The statement said specifically:

> The Government estimates that a total of 3 000 full-time equivalent positions will be removed from the South Australian public sector by 30 June 1994.

Earlier this month, the Premier in another place was forced to concede that his Government had failed to honour its promise to deliver half those 3 000 reductions in the public sector by the end of the 1992-93 fiscal year. He attempted to fob off the delay in public servants taking up voluntary separation packages by saying it was 'really rather irrelevant' whether these people took up their separations on 30 June 1993 or 1 July 1993.

However, the Premier, addressing a meeting of senior business leaders just before the end of the last fiscal year, said it was likely to be the end of September before the first half of the job cuts were achieved—that is three months later than was planned.

Senior public servants have informed the Liberal Party that there are serious doubts that the Government can meet its target of cutting by 3 000 the number of public sector positions by 30 June 1994. Obviously such a delay would have serious implications on the Government's plans to shave $85 million off the budget. My questions are:

1. Will the Minister confirm that the Government is on line to obtain the revised promised cut of 1 500 public sector positions by 30 September 1993 and, if not, what is the reason for the second delay in delivering on its commitment, and what is the new deadline for removing those 1 500 positions?

2. Will the Minister confirm that the Government will deliver on its promise outlined in 'Meeting the Challenge' to reduce the public sector by 3 000 full-time equivalent positions by 30 June 1994 or whether these people will also be pushed over to the 1994-95 fiscal year target? If the Government will not achieve the 3 000 cuts in 1993-94, why not?

The Hon. C.J. SUMNER: The Government's policy in this area is to reduce public sector numbers by voluntary separations; there are not any compulsory requirements. It was estimated that the target would be 3 000 jobs by the middle of next year. A significant number of separation packages have been taken up since the program was announced. I do not have the exact figures in front of me at the present time, but I can certainly get them for the honourable member and bring back a reply.

COURT HEARINGS

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about evidence given to preliminary court hearings.

Leave granted.

The Hon. K.T. GRIFFIN: In the 1992 Supreme Court judges report, the judges drew attention to the publication of proceedings at a preliminary hearing of a charge of an indictable crime. They suggest that publication of the proceedings has 'great potential for the prejudice of the fair trial in due course of the accused by the jury'. The judges make the following comments in their report:

> The potential for prejudice has been increased by the enactment of section 106(2) of the Summary Procedure Act which permits oral evidence at preliminary hearings only for special reasons. In consequence the evidence at preliminary hearings consists of written statements by witnesses which are not at that stage tested by cross-examination or are permitted to be cross-examined upon only to a limited extent.
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> The evil of the prejudice to trial by jury arising from publication of evidence at preliminary hearings has been tackled in the United Kingdom by section 8 of the Magistrates Court Act. Publication, except by request of the accused, of the proceedings is prohibited except as to certain restricted information concerning the accused, the charges, those involved in the hearing and the outcome.
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> Similar legislation is recommended for this State. The restriction on publication might be extended, for similar reasons, to evidence given on bail applications and also to the grounds expressed for opposing and refusing bail.

That issue will undoubtedly create some controversy. The issue was raised at the time the Parliament dealt most recently with the suppression order issue, although at that time the amendments to the courts legislation had not been before the Parliament. My questions are as follows:

1. Has the Attorney-General considered the judges' recommendation and, if so, does he intend to adopt it?

2. If he has not considered it, does he have any intention of doing so, and if he does have that intention can he give some indication as to the time frame within which that consideration might be given?

The Hon. C.J. SUMNER: No, the Government does not intend to act on that recommendation. I do not accept the argument put by the judges that the enactment of section 106(2)

of the Summary Procedure Act has made the potential for prejudice worse. I understand what the honourable member has read out, namely, that the argument is that, because most of the committals are now paper committals, that increases the prejudice. I would have thought that the reverse would be the case: the fact that they are paper committals means that less attention is given to them at the preliminary hearing stage than if there is a full-blown preliminary hearing with cross-examination and all the allegations.

The Hon. K.T. Griffin: The papers are accessible, aren't they?

The Hon. C.J. SUMNER: Sure, they are accessible. But the media are much more likely to take an interest in a committal that goes for two or three weeks with oral cross-examination of the witnesses, etc., and allegations coming out than they are in a hand-up of a whole lot of statements.

So, on the face of it I do not accept their argument that it will be more prejudicial to trial by jury than what happened prior to the enactment of that section. In fact, I think you can argue equally that it is lessening the capacity for prejudice to any subsequent jury trial. But in any event, whatever the arguments are on the matter, the Government does not intend to change the existing law relating to suppression orders. In this community I think we have to deal with the problems of prejudice in other ways, in particular by judges ensuring that proper warnings are given, that there is proper selection of jury panels, etc.

I actually think that juries, properly instructed, are less likely to be swayed by public debate about issues than perhaps they were in the past. In other words, I think we have to be somewhat more robust about these issues than the judges apparently would consider appropriate. That is my view, Mr President. The matter has not been formally before the Government, but as far as I am concerned that particular recommendation will not be acted on.

FILM CORPORATION

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister for the Arts and Cultural Heritage a question about the South Australian Film Corporation production facilities.

Leave granted.

The Hon. DIANA LAIDLAW: I am aware that in recent weeks the Sydney based head of ABC television, Mr Paddy Conroy, and ABC's Marketing and Distribution Manager, Mr Lloyd Capps met with the Minister to canvass a proposal to radically restructure and relocate the South Australian Film Corporation from its current site at Hendon. The proposal envisages closing down the corporation's production studios and moving the corporation's head office to the ABC's building at Collinswood. Apparently the ABC argues that the proposal would be beneficial to both organisations, as the ABC would gain a compatible tenant to rent some of its under utilised floor area, and the corporation would be relieved of much of the burdensome rent, amounting to $200 000 plus, that it now pays each year at Hendon.

I recall that in 1989 the KMPG Peat Marwick Review of the South Australian Film Corporation recommended:

> . . . the board vigorously pursue the prospect of a shared studio facility, even if it means the reduction or even closure of the Hendon studio.

The review went on to canvass the possibility of some joint use of ABC facilities at Collinswood. Since that time the corporation's 1991-92 annual report notes at page 28:

> . . . that negotiations with the lessor of the Hendon premises resulted in the lease expiry date being changed from December 2001 to November 1994.

Further, the annual report notes that a major upgrade of the Hendon studios would be required during 1994, and this is so if the corporation is to retain a high quality post production and sound mix capability. The ABC's relocation offer comes at a time when the South Australian Film Corporation is the subject of a further Government inquiry by the Caust committee into the future of the organisation. My questions are:

1. What was the Minister's response to the recent proposal by ABC management to relocate the South Australian Film Corporation to the ABC's head office and studios at Collinswood?

2. In relation to the Caust committee report, which I understand she has now received, did all members of the committee agree with all the recommendations, or does the report include a dissenting report by two members of the committee—Ms Colleen Ross, representing the Media Entertainment and Arts Alliance, and Mr Mark Thompson?

3. As the Minister is probably aware, it is a badly kept secret in Adelaide that a third member of the committee is upset that the reporting process was hijacked by the Minister's adviser, and that a fourth member of the committee has since expressed misgivings about the committee's recommendations since visiting the set of the Film Corporation's production *The Battlers*. Is the Minister absolutely satisfied that the report she has received was formally endorsed by all members?

4. Does the Minister intend to release the report and, if so, when?

The Hon. ANNE LEVY: Certainly I did have meetings with representatives of the ABC. My response to them was that we would be very happy to look at any proposal that they put to us. My discussions with the representatives of the ABC were obviously in general terms. There was no discussion regarding actual sums of money or the very important questions of priority of access to various facilities which, as I understand it, if the corporation were to move to Collinswood, would mean that there would be sharing of facilities, particularly things like sound mixing studios and so on.

Obviously, a great deal would need to be worked out in terms of priority of access, plus a whole lot of financial details. That was my response to the ABC. A letter was sent to the ABC requesting a response to a number of specific questions. At this stage, there has been only a general response from the ABC to the effect that all these matters would need to be discussed.

Obviously, this is one of the matters that is being considered, together with the report into the South Australian Film Corporation from the review team.

The honourable member raises the question of a dissenting report. It is not a dissenting report; there is only one recommendation amongst a vast number on which there was a difference of opinion amongst the members of the committee, and the dissenting opinion on that one recommendation is included in the report. The honourable member further mentions a change of heart by members of the committee. No such change of heart has been communicated to me or to the Government. Obviously, if such exists, I would be interested to hear about it.

However, I suggest to the honourable member that the film industry, as with most of the arts industry, tends to abound with wild rumours, very often with no substance whatsoever. Whether or not this is true in this particular case, I do not know, but no change of opinion has been expressed to me. I reiterate that frequently there are rumours which turn out to be

completely baseless. If there were no such rumours in the arts industry, Basil Arty would have nothing to write about each week. As to when the report will be released, no date has yet been set. The matter is still being considered and obviously it will be taken to Cabinet before there is any suggestion of a release.

The Hon. DIANA LAIDLAW: As a supplementary question, will the Minister confirm that the ABC's proposal is being looked at by the Minister and the department in isolation from the Caust committee report or was it received in time to be considered by the Caust committee as part of the overview of its assessment of the future of the corporation? As the Minister has not yet received advice about a committee member having misgivings about the recommendations, would she care to speak at least to the women members of the committee to determine whether there are any misgivings?

The Hon. ANNE LEVY: As to the second part of the question, certainly not. I have received a report that has been signed by certain people. If any of those people wish to alter the advice they have given me, I feel it is up to them to do so. Obviously, it is not my function to continually go around checking with all members of all committees as to whether they still adhere to the view to which they have put their signature.

With regard to the first part of the honourable member's supplementary question, I cannot recall the exact sequence of events or dates on which particular events occurred, but the first discussion with the ABC occurred before the committee finalised its report, so it was aware of these moves, but equally obviously there have been no definite proposals, nothing which could possibly be considered seriously as part of the report, because no details at all were made available to the committee when it made its report. However, it obviously is one of the matters which is being considered at the moment.

ATHLETICS SA

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister representing the Minister of Recreation and Sport a question about building an athletics complex on the parklands.

Leave granted.

The Hon. I. GILFILLAN: I have received confirmation that the Minister of Recreation and Sport (Hon. G.J. Crafter) has been secretly involved in plans for an extensive hard-surface sports complex with grandstands and administration buildings on the west parklands. I will quote from an Adelaide City Council brief and from the Athletics SA submission. The briefing document states:

Informal Briefing
9 August 1993, 6 p.m.
Colonel Light Room
Discussion Paper No. 4
Subject: Athletics SA—Establishment of athletics field in parklands

1. A confidential submission has been received from Athletics SA (Attachments A-E) to gauge reaction on an informal basis from members of council to a proposal to establish an athletics field suitable for international and local competition in the parklands. The site of the athletics field would be either Park No. 24, West Parklands (rear Adelaide High School) or Park No. 21 West, South Parklands, the area bounded by South Terrace, Sir Lewis Cohen Avenue, Goodwood Road and Greenhill Road.

2. The proposal has been developed following discussions between the South Australian Government, Athletics SA and the administration [that is, the administration of the council]. The submission is intentionally brief and does not include any specific details on design, the layout of the facilities or other matters which would need to be addressed at a future stage in a more detailed submission. However, the key issues which need to be addressed at this discussion are as follows:

2.1 The construction of buildings on the parklands.

2.2 The erection of some form of security controls around the perimeter of the facility (fence, hedge or other physical barrier).

2.3 Car parking.

2.4 Public access.

I want to quote from another document marked 'Confidential' and entitled 'Athletics South Australia Submission to the Corporation of the City of Adelaide'. It is marked 'Attachment A, 25 May 1993' and has the logo of Athletics SA. After an introduction and details of the background of Athletics SA, which I will not read, it states:

3.0 Proposal seeking a lease to be managed by Athletics SA.

Athletics SA is the current lessee of Olympic Sports Field. This lease expires at the end of 1994. If a favourable renewal of the lease for Olympic Sports Field cannot be renegotiated, then a base for athletics must be developed elsewhere.

During the past 18 months Athletics SA has met on many occasions with both the former and present South Australian Minister of Recreation and Sport and the Chief Executive Officer of his department. As a result of this series of meetings, alternative options for the development of a future base for athletics in South Australia have been proposed.

Athletics SA has been invited by the Minister to undertake a feasibility study into Athletics SA's relocating to an alternative site.

Possible site options in the Adelaide Parklands:

It is understood that two possible options for the development of an athletics facility may exist within the Adelaide Parklands. The relevant sites are described as:

1. Park 24—North West Sector—adjacent Henley Beach Road, Adelaide High School, Railway Yard (Mile End Station) and other parklands.

2. Park 21—West—adjacent South Terrace, Goodwood Road, Sir Lewis Cohen Avenue and Goodwood Road.

Both sites offer significant advantages in terms of public access and are extremely well placed from a public transportation viewpoint.

It is understood that Park 24 would offer joint use with the broader recreational park objectives of the city, whilst Park 21 West, while having the same complementary objectives, would also be an excellent central location for festivals such as Glendi, Italian, Schuetzenfest, Festival of Arts and other events.

Athletics SA considers that an alternative site would need to be centrally placed from a metropolitan perspective. It is essential that the new site can provide convenient access for participants and spectators from all sectors of expanding Adelaide and be accessible for country people as well.

We would be looking for space to accommodate two tracks:

1. The major competition venue; and

2. The training, warm up and public recreational track.

The major event venue area will need to be secured by carefully planned fencing to prevent damage. Public access would be limited only to times when the facility is unmanned or during planned events. Lighting for evening events will need to be considered but this would be unlike a major Football Park type requirement. Low level sensitively placed strategic lighting is more appropriate for Athletics events. Some limited car parking would be required on site and spectator parking available on street and within other areas of the parklands for larger events. We expect that existing south-western corner parking facilities will be more than adequate. The site must be capable of accommodating the administrative requirements of the sport and provide a spectator viewing grandstand and terraced mounding.

Supporters—and many of them have spoken to me since this news has been circulated—are shocked that the City Council could even entertain the idea. They were horrified to find that the Minister of Recreation and Sport (Hon. G.J. Crafter) has stealthily been encouraging a major destruction of the nature of the parklands with a full scale athletics complex in the parklands. It is quite obvious that the details of this submission would have been widely known and discussed in previous discussions with the Minister of Recreation and Sport. There is no way that it came suddenly like a rabbit out of a hat to appear in this briefing meeting. The appropriate alternative,

if there has to be one, to the Kensington Olympic Sportsfield would be at Gepps Cross, well away from the parklands. My questions to the Minister are:

1. How can the Minister even consider such a proposal on the parklands?

2. Will he categorically and publicly reject any idea of putting this project on the parklands, and inform the Adelaide City Council that it should reject the proposal?

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

HOUSING, PUBLIC

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister representing the Minister of Housing, Urban Development and Local Government Relations a question about public housing.

Leave granted.

The Hon. L.H. DAVIS: One aspect of the Federal budget which has had a devastating consequence on South Australia is the Keating Government's decision to defer the social housing subsidy program. In last year's Federal budget, the Government introduced a program to enable the States to raise additional funds for shared home ownership and other rental accommodation for low and moderate income earners. This subsidy of $24 million would have provided about 20 000 shared home ownership opportunities in Australia in the three financial years to 1995-96.

However, the Government has now decided to defer this program which would have allowed the South Australian Government to provide up to 2 000 shared home ownership places by 1995-96. This broken promise hurts families most in need. The Federal budget has already punched them in the solar plexus with increased taxes on leaded petrol, new cars, grocery items, general household and electrical goods. South Australia will now lose at least $2 million and the ability to raise additional moneys to support these home ownership opportunities because the social housing subsidy program has been dumped.

Information made available in late 1991 showed that the average waiting time for public housing with three bedrooms at a middle distance from the GPO was 60 months in Adelaide. This was one year longer than Melbourne with 48 months waiting time, and all other States had waiting times of 37 months or less. The average waiting time for a three bedroom dwelling in an outer suburb from the Adelaide GPO was 28 months, the second longest of any of the eight capital cities in Australia. The Housing Trust waiting lists in South Australia continue at a very high level, and the State will suffer as a result of the postponement of the important social housing subsidy program in this year's Federal budget. My questions are:

1. What consultation did the Federal Government have with the State about its decision to defer the social housing subsidy program in the 1993-94 Federal budget?

2. What will be the impact of this deferment on the public housing program in South Australia?

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

POLICE AIR WING

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Emergency Services a question about the police air wing pilots.

Leave granted.

The Hon. PETER DUNN: Australian Flight Test Services, which is a small company in South Australia, has brought to my attention that it has lost a contract to provide pilotage for the Department of Environment and Land Management's Turbo Commander aircraft, Delta Lima Kilo. This is a specialist aircraft designed for high altitude flying and has fitted to it cameras for land photography. The Department of Land Management needs up-to-date photography of its land mass, and this aircraft supplies that need. The Australian Flight Test Services contract was to provide pilotage for approximately 200 hours per year, and it has done so in the past.

Providing pilotage is not quite as simple as it sounds and requires pilots who have the correct endorsements for the type of aircraft that they fly. They must have currency, that is, they must have flown the aircraft type in recent weeks or days, and Australian Flight Test Services would have provided the maintenance for the Turbo Commander Delta Lima Kilo.

It appears that after the GARG report the Police Department Air Wing has noted this Government-owned aircraft and convinced the Minister that it can provide the pilotage for Delta Lima Kilo. The problem with this action is that the Police Air Wing did not have pilots endorsed to fly this aircraft and, to obtain them, the Government would have to endorse at least four pilots, at a cost of between $20 000 and $30 000.

Australian Flight Test Services has informed me that its contract price was indeed less than the use of the Police Air Wing pilots, taking into account the cost of endorsing these pilots. Bearing in mind that the Government departments do not have to pay many Government charges applicable to private enterprise, my questions are:

1. Will the Minister explain to this Council how they came to this decision to use Police Air Wing pilots?

2. How much is the Police Air Wing charging the Department of Land Management for pilotage for 1993-94?

3. What is the cost to the taxpayers of South Australia of training Police Air Wing pilots so that they are endorsed to fly the Turbo Commander Delta Lima Kilo and what, if any, are the cost savings to the South Australian taxpayers?

The Hon. C.J. SUMNER: I will have to take those questions on notice and seek details. But an inquiry was done into the use of aircraft by various Government departments to see whether any rationalisation in savings could be made. As a general principle, there is nothing wrong—in fact it is part of the public sector reform program—with Government departments contracting with other Government departments for particular work, such that (and I have mentioned this before in this Council) if there is a small department or agency it may be cheaper for that agency to contract in the services for corporate services and the like from another larger department.

In this case, I assume the decision has been made to enable the Police Air Wing to tender for the work with the Department for the Environment, and that has been done on the basis that the end result is cheaper to the taxpayer. That is by way of a general response, because I do not have in front of me the full details. However, I will refer the question to the appropriate Minister and bring back a reply.

BARKER INLET

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 Barker inlet.

Leave granted.

The Hon. M.J. ELLIOTT: Early this week, I received copies of papers presented to a seminar on estuarine management, and in particular focusing on the Barker inlet. One of the papers in particular painted a quite horrific picture of the damage that is being done to the marine environment in that area. The paper was presented by a Mr Neverauskas, who has had a very long involvement with the Barker inlet area, going back to 1973, when he graduated as a marine biologist and worked for ETSA for several years in that area. In the early 1980s he worked with the E&WS Department, again concentrating on the area and looking at damage being done by sewerage works. I understand that he is now with the Department of Primary Industries working on fisheries matters. So, he has had a long history working in area.

During his speech Mr Neverauskas described the way things were and what things have become. Talking about his very first days in the area, he said:

> One of my study sites was located in the upper reaches of a large tidal creek which almost bisects Torrens Island. Travelling to there was entering a fascinating world where large deep pools were host to schools of spawning fish, and diving among the mangroves at high tide revealed schools of bream feeding among the pneumatophores of the mangrove forest.

He also described the area around Gawler River, saying:

> I recall my first trip to the river where, with a group from the university, we overstayed our time and found the tide too low for us to breach the sandbar at the mouth of the creek. We towed, pushed and pulled the boat for what seemed an eternity through endless seagrass meadows before finding deep water. But I clearly remember starting the push just outside the line of mangroves.

What he is describing here in the mid 1970s is a very healthy marine environment.

Mr Neverauskas then goes on to describe what he saw when he had a second stint working in the area with the E&WS Department, in the early 1980s. In fact, he was called in because some damage was apparent in relation to sewage outfall from Port Adelaide—an outfall which had commenced in 1978. Mr Neverauskas arrived in 1982. He said:

> A survey prior to the date had mapped extensive seagrass meadows at the outfall site: 85 per cent cover of seagrass, mainly the tape weed *Posidonia* and the wire weed *Amphibolis*. By 1981 there was no seagrass left and an extensive survey indicated that an area of 365 hectares had been denuded with total effects spreading over an area of 1 900 hectares.

A little later he said:

> Towards the end of my time with the Engineering and Water Supply Department I began to turn my attention to the Bolivar effluent outfall. It began discharging in 1967 and by 1987 was discharging around 150 megalitres per day or around 54 000 megalitres *per annum*. The capacity of Mt Bold reservoir is 56 000 megalitres.

So, the discharge from Bolivar is equivalent to the total capacity of Mt Bold. He continues:

> I inspected the mouth of the Gawler River to find bare sand where I had previously struggled through the knee deep seagrass meadows. The sea lettuce *ulva australis* grew prolifically throughout the area and now swamped mangrove trees, clinging to their pneumatophores, and the smell of mounds of rotting *ulva* was a source of constant complaint to residents and visitors of St Kilda.
>
> I revisited the estuary again in 1991, 17 years since I had first been there. The water of Barker inlet was a rusty brown colour. Swan Alley Creek had wracks of large algae. The large tidal creek which had left such an impression on me in 1975 left me with a feeling of despair as there was little seagrass left and that which was left was overgrown with mats of algae. The water was brown and still and unbroken by the characteristic ripples of small schools of fish. The mangrove forest was heavily covered with *ulva* and the absence of seedlings was disturbing.

He said:

> I left the estuary that day feeling overwhelmed but within little more than a year I found myself looking at the algal bloom which you have seen today. It extended from Barker inlet to Port Parham. A bloom which I would never have predicted, a bloom which, I suggest, no-one would ever have predicted. And the area affected by sea lettuce is spreading. Sheets of *ulva* are now clinging to the mangroves north of Port Gawler Beach.
>
> I believe that we are at a crisis in the history of this estuary. The link between algal blooms, seagrass dieback and nutrients is clearly established. The link between mangrove dieback and these processes is evident.

Finally, he says:

> . . . the health of the Port River estuary will not improve until the outflow from both relevant sewage treatment works, but in particular Bolivar, reduces to a trickle.

There I think is something very powerful from a person who would know better than anyone in this State what has happened to that area. I am aware that experimental work is happening, for example, the tree trials at Bolivar where they are using effluent to grow trees. The damage there is extreme. Many of our fisheries in the Gulf of St Vincent are in collapse, particularly the Gulf of St Vincent prawn fishery which we have debated in this place on many occasions.

I ask one question: will the Government set a date after which no effluent from sewerage works will be allowed to enter the Gulf St Vincent, or will this situation continue to deteriorate?

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

HOUSING TRUST PROPERTIES

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage, representing the Minister of Housing, Urban Development and Local Government Relations, a question about the sale of housing trust properties.

Leave granted.

The Hon. J.F. STEFANI: I have received a letter from a concerned resident in the Elizabeth Downs area who believes that many Housing Trust properties in the Elizabeth area have been sold and wonders how the Housing Trust will be in a position to provide affordable housing to many South Australians who are on the Housing Trust waiting list. In the interests of this and other concerned taxpayers, my questions are:

1. Will the Minister advise how many housing properties and the location of such properties have been sold by the Housing Trust during the period 1991-92 and 1992-93?

2. What was the total amount realised for each of the above periods?

3. How many Housing Trust properties did the trust acquire during each of the above financial periods and where were the properties acquired?

4. What was the amount expended by the Housing Trust to acquire new Housing Trust properties during each of the above financial periods?

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

CHILD PROTECTION

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister of Transport Development, representing the Minister of Health, Family and Community Services, a question about child protection services.

Leave granted.

The Hon. BERNICE PFITZNER: In the past week the newspapers have detailed reports of horrendous incidents of child abuse. In recent weeks four children have died, possibly due to child abuse. In South Australia we have two peak bodies providing child protection services: the Child Protection Unit at the Women's and Children's Hospital, and FACS.

The Child Protection Unit at the Women's and Children's Hospital has an unacceptably long waiting list of approximately two weeks—in spite of the fact that the Minister of Health has reported that there was no waiting list. It was promised three years ago that the Director would have a reliever, but he is still on duty seven days a week, 365 days a year. Their figures for child abuse are: 1989, 474 children; 1990, 658 children; 1991, 920 children; 1992, 1 103 children; and to July 1993, 748 children. That is a frightening increase in intake figures. This year, to July, for significant physical abuse, there were 75 children, with peak numbers at two years of age and under four months of age. Their injuries included fractures, bruising, lacerations, choking, burns and head injuries, and death.

Referrals of these children under 18 months for physical abuse were: 1990, 34; 1991, 38; and 1992, 70. From 1991-92 there was a doubling of the number of referrals. These young children are at greatest risk of death, severe injury, permanent physical damage, intellectual retardation and developmental delay.

The national Committee on Violence has reported on four main points:

> The ABS figures in 1987 indicate a homicide rate of 4.2 per 100 000 of the 0 to 1 year population. Approximately 10 per cent of homicide victims were children under 10 years of age. Infants up to one year of age is the age group at greatest risk of homicide, and the overwhelming majority of these child victims are killed by their parents or other relatives.

The other peak body providing child protection services is FACS. I understand that some of the workers providing direct child protection services have been offered early retirement packages. A particular senior worker, with excellent skills and wide experience in negotiation and child development, has been offered such a package. The person felt that four weeks was needed to complete the work load but was told to terminate the duties at two weeks. My questions to the Minister are:

1. What is the true waiting list at the Child Protection Unit at the Women's and Children's Hospital in terms of numbers and waiting time for first appointments?

2. When will the Director of the unit be given some relief from his heavy duties?

3. In view of the increasing numbers of child abuse, why are the numbers of FACS staff providing direct child protection services being reduced?

4. Who will take the workload of the child protection worker at FACS who is about to retire?

5. How many FACS staff involved in direct child protection services have been put off?

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

HEALTH UNITS

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister of Transport Development, representing the Minister of Health, Family and Community Services, a question about health budgeting.

Leave granted.

The Hon. CAROLINE SCHAEFER: Honourable members may not be aware that the South Australian health units have recently received their annual budgets with a new proviso. They have been given a private bed and public bed occupation target, weighted to the ongoing reduction in private health cover. This target has been reached by using last year's daily bed average per hospital. However, a penalty system has been introduced, where the hospital will lose $405 per day for every patient over the private bed allowance and lose $405 per day for every patient under the public bed allowance. This is a Commonwealth Government initiative to create a shift from public to private hospitals by patients with private health cover.

I have been contacted by a country hospital board which is concerned that this is a further impost on country hospitals where there is no private hospital. This board is concerned that a country hospital cannot know the composition of its bed occupation in the same way as a city unit. For example, a rural hospital may be on target with its budget, only to have, for instance, a bus accident in the area. Suddenly, if too many of those patients happen to be private patients, the budget is blown out the window. They believe the ridiculous scenario could be reached where the Chief Executive Officer may need to ask patients with private cover to register as public patients, even though the difference in income to the hospital between private and public patients is well known to assist in meeting revenue targets. My questions are:

1. Has the Minister taken into consideration the impost this arrangement places on South Australian country health units?

2. If so, will he initiate an inquiry into alternative and more practical methods of funding for country health units?

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

NATIONAL AUSTRALIA TRUSTEES LTD

In reply to **Hon. L.H. DAVIS** (5 August).

The Hon. C.J. SUMNER: The replies are as follows:

1. The amendment to the Trustee Act relating to the Authorised trustee investment status of National Australia Trustees Common fund will be included in an Attorney-General's Portfolio Bill which I expect to be ready for introduction in October. As the Hon Member will be aware, portfolio bills are used as a vehicle for making non-controversial minor amendments to a variety of Acts, thus saving Parliamentary time in dealing with such amendments in separate Bills.

2. In relation to the request by National Australia Trustees for the inclusion of their common fund in Section 5 of the Trustee Act I advise that it was originally intended that the amendment would be included in the Attorney-General's Portfolio Bill of the last session. However, this did not occur for the following reasons:

- Treasury advice was sought on 3 February with a view to the necessary amendment being included in the Portfolio Bill then being prepared. Treasury required further information of the company, which was sought and provided. The Treasury advice (which was received in my office on 19 March 1993) as to the suitability of the National Australia Trustees Common Fund to be included in the list of authorised trustee investments, also raised two further sub-sections in section 5 which potentially required amendment—the need for these further amendments had been raised with Treasury by another trustee company.
- On 22 March correspondence was received from solicitors acting for a financial institution requesting that consideration be given to including that particular institution in the list of authorised trustee investments. This would necessitate a further change to section 5.
- These three matters, which all required possible amendments to the same section of the Trustee Act, were considered together with the National Australia Trustees common fund amendments.
- The Attorney-General's Portfolio Bill for the last session was approved for drafting on 8 March and was subsequently introduced on 30 March (only 6 sitting days before the scheduled end of the session and 12 days before the actual end of the session). In view of the number of potential amendments to section 5 of the Trustee

Act which had been suggested it was decided to do them altogether either in a Trustee Act amendment or in the next Portfolio Bill—with the decision ultimately being taken that the Portfolio Bill is the most appropriate vehicle.

ADELAIDE AIRPORT

The Hon. DIANA LAIDLAW: I have questions for the Minister of Transport Development in relation to the Adelaide Airport, as follows:

1. What is the Government's view of the Prices Surveillance Authority's report on the Federal Airport Corporation charges and its potential impact on charges at Adelaide Airport?

2. Is the Government considering funding improvements at the Adelaide Airport? In relation to that question, I have heard that Cabinet has considered, or is about to consider, such a funding improvement as part of that transport hub proposal.

3. If so, why should South Australian taxpayers funds be used to subsidise the Federal Airports Corporation when the Government is already using taxpayers funds to pay high charges for use of airport facilities?

The Hon. BARBARA WIESE: With respect to the first question concerning the Prices Surveillance Authority report in relation to the Federal Airports Corporation, I believe that officers within the Office of Transport Policy and Planning are currently examining the Prices Surveillance Authority report.

It may in fact be a task which is unnecessary, to the extent that we would need to make submissions if we had concerns about the PSA's views on the matter, because as I understand it the Federal Minister of Transport and Communications, Senator Collins, has quite clearly indicated that he does not support the general thrust of the PSA's report on the Federal Airports Corporation, and that he believes that the Federal Airports Corporation, as it is currently operating, has been undertaking its job very appropriately and successfully.

The Hon. Diana Laidlaw: Do you believe that?

The PRESIDENT: Order!

The Hon. BARBARA WIESE: Do I believe that the Federal Airports Corporation has been undertaking its job successfully? In some respects I think that it has been undertaking its job successfully. However, I believe also that, because of some aspects of its commercial charter, it is in some respects required to ignore Federal Government policies with respect to regional development, and this is one of the matters which, over the coming months, I will be taking up with the Federal Minister, because the Federal Airports Corporation's policies with respect to investment in infrastructure at the airport, etc. are based on criteria which tend to exclude regional airports such as the Adelaide Airport. I do not think that that is acceptable, and it is certainly contrary to the Federal Government's policies on regional development. I would like that matter examined in more detail by the Federal Government, and representations will be made to the Federal Minister in greater detail on matters of that sort in the coming months.

As to the future arrangements for the Adelaide Airport, it is well known that the South Australian Government believes that there should be more investment at the Adelaide Airport, so that we can maximise South Australia's economic potential. We have stated on numerous occasions that we believe that the terminal facilities should be upgraded, and that the runway should be extended. Thus far we have not been able to convince the Federal Airports Corporation that these steps should be taken, and part of the work of the—

The Hon. Peter Dunn interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —Maunsell study has been to examine exactly what sort of development should take place at Adelaide Airport, and what opportunities there might be to encourage investment of one kind or other, either from the public sector or the private sector. Further work is being undertaken on that matter over the next few months with a view to examining some of the recent developments that have begun to emerge in the airline industry. And it should be taken into consideration that there are a number of uncertainties at the moment as to the future of aviation in Australia. There is uncertainty about the future of Qantas Australia. There is uncertainty about the future plans of a number of international airlines with respect to which airport facilities in Australia they might want to use, and these issues must be taken into consideration in developing any plans at the State level, as to what investment propositions can or should be proposed by the State Government. The question of whether or not the South Australian Government should be involved in investment at the Adelaide Airport is one of the issues that will be examined closely as part of that study.

LEGAL COSTS

In reply to **Hon. K.T. GRIFFIN** (17 August).

The Hon. C.J. SUMNER: In relation to the current situation the Crown Solicitor has provided me with the following information: The Information systems in this Office do not identify our client by class or type. It has been necessary for us to do a 'person by person' check to ensure that there are no matters which I was not aware of. It would appear that there are no such matters, but I caution that this method of checking may not be particularly accurate. For example, it is possible that there may be a subpoena etc directed to a Minister in his or her personal name of which I am not aware; it is also possible that there may be proceedings where the Minister is named personally but it is clearly in respect of that persons Office where my officers have overlooked the matter, although that is most unlikely.

At the present time:

1. This Office is acting in a large number of matters for various Ministers in their corporate or official capacity. For example, 'in need of care' applications are taken by the Minister as a corporation sole, and this Office acts for the Minister in those proceedings. I assume that the question was not directed to those matters; I have assumed that the question is directed to matters where the relevant Minister or former Minister is sued etc. in his or her personal name.

2. The only such matter currently in the Office is *McSkimming & Ors v Cornwall & The State of South Australia & Ors*. These are proceedings arising out of the decision to withdraw funding from the Christies Beach Women's Shelter. I am instructed to act for both the State of South Australia and the former Minister and for various other persons. (I note that AGS is acting for the Commonwealth, the former Commonwealth Minister and others). In my view any liability found against the former Minister would be payable by the Crown pursuant to the Crown Proceedings Act, and it is appropriate that I act for the Minister, as well as the State, in these proceedings.

3. There is currently no matter in the Office where I am acting for Mr Bannon.

In respect of the recent past:

1. The Crown Solicitor did act for the Minister of Labour Relations and Occupational Health and Safety in relation to an allegation of defamation made by the Hon J Stefani MLC. The Minister made an apology to the Hon Mr Stefani which I tabled on 6 May 1993. There was also an agreement that the Minister pay Mr Stefani's costs. The Government did not pay any costs for the Minister.

2. The Crown Solicitor acted for Mr Bannon in the matter of *Modra v Branda*, defamation proceedings in the District Court. That was a matter between private individuals and did not involve the Crown. A subpoena was issued on Mr Bannon requiring him to give evidence about matters respecting his former role as Premier. On my instructions the Crown Solicitor acted for Mr Bannon in respect of that subpoena;

in particular to draw attention to the fact that Parliament was sitting at the time that he was required to attend. A similar subpoena was served on me. In the result the private proceedings were apparently finalised and the parties did not need to call Mr Bannon. While a subpoena may not technically be 'proceedings issued against former Premier, Mr Bannon' the information is included for the sake of completeness.

3. In the matter of Lee v Bannon, defamation proceedings were issued by Laurence Lee against Mr Bannon in respect of statements made by Mr Bannon at a Press Conference when Premier, Cabinet determined to indemnify Mr Bannon because the matter arose out of his official duties. The Crown Solicitor did not act for Mr Bannon, but was involved in certifying his legal costs. The matter was settled in July 1992. This involved payment of Mr Bannon's legal costs of $13 780.31. This payment was made by the Department of Premier and Cabinet.

4. In his trial in the District Court, Mr Nicholls sought discovery of confidential material namely the transcripts of evidence given by the Hon B Wiese and Mr Stitt before the Inquiry into the Minister of Tourism. It was considered necessary to have the views of the parties affected. Consequently, the Hon B Wiese incurred legal costs of $660.00. These costs were paid by the Government as it was considered to be a flow on from the Inquiry.

In the recent Royal Commission respecting the State Bank the Crown Solicitor did not act for Mr Bannon personally; rather, he acted for the Crown. Mr Bannon was a witness for the Government. Mr Bannon has been contacted by various parties in respect of some legal proceedings relating to the State Bank (the proceedings are between Marcus Clark and Finlaysons), and has been asked to assist them by making and giving statements etc. Mr Bannon contacted the Crown Solicitor respecting these requests and the Crown Solicitor offered to provide to those parties copies of the relevant statements and evidence given by Mr Bannon to the Royal Commission. However, in this context the Crown Solicitor has not been acting for Mr Bannon, he has merely been providing assistance to a former witness.

This list may not be exhaustive—a more detailed answer on past matters would require extensive searching of past and closed files which is not considered justified. If the Hon Member has a particular matter in mind I will attempt to get information about it.

LIBRARIES FUNDING

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister for the Arts and Cultural Heritage a question about public library funding.

Leave granted.

The Hon. I. GILFILLAN: Mr President, a constituent approached me very concerned that she had heard from what she believed to be a reliable source that the joint funding of the public library which, as I understand it, is very close to 50-50 between the city council and the State Government was to be threatened because of the substantial reduction in State Government funding in a period of time of six weeks, which makes it about five weeks from this particular time. Can the Minister assure the Chamber and the public generally that there will be no reduction from the Government funding of the public library, either in the next five weeks or at any time in the foreseeable future?

The Hon. ANNE LEVY: I am not quite sure to what library the honourable member is referring. As he mentions the Adelaide City Council, perhaps he means the City of Adelaide Lending Library which is situated in Kintore Avenue, and is a library run jointly by the Libraries Board of South Australia and the city council. The funding is, I think, 50-50. The relative contributions and amounts from the State Government and the city council were set out in a signed agreement between the Chair of the Libraries Board and the then Lord Mayor, Mr Steve Condous. It is an agreement which runs for a specific time, and there is no suggestion that the Government will in any way depart from the sums which have been agreed in the signed agreement.

I am also quite taken aback at any suggestion that the city council might propose in any way reneging on the agreement. I certainly have heard no suggestion that it is not keeping its side of the agreement as to the sums which are being proposed. What is occurring is that the city council has engaged a consultant, or certainly is having prepared for it a report on the possible future for the City of Adelaide Lending Library, which would include, as I understand it, consideration of whether or not there should be some amalgamation with its library in North Adelaide or whether it should stay in its current location or go somewhere else—in other words, in relation to what the city council feels should be the long-term future.

That report has not been completed. It will of course go to the city council, which has commissioned it, and the Libraries Board, and indeed I, will be very interested to see it when it is available, and consultation can then occur with the staff who are involved at the City of Adelaide Lending Library, who obviously have a great interest in the long-term future of that body. I think it may be misinformation about the report which the city council has commissioned on the possible long-term future of the library, that has been misunderstood by the honourable member's constituent. Or it has reached him or her in a garbled form that they have interpreted as meaning imminently affecting the funding of the library.

ADDRESS IN REPLY

Adjourned debate on motion for adoption.

(Continued from 18 August. Page 192.)

Motion carried.

STATUTES AMENDMENT (ABOLITION OF COMPULSORY RETIREMENT) BILL

In Committee.

Clauses 1 to 11 passed.

New clause 11a—'Exemptions.'

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

Page 3, after line 16—Insert new clause as follows:

11a. Section 85f of the principal Act is amended by inserting after subsection (4) the following subsection:

(4a) Notwithstanding any Act or Law to the contrary, a provision in an award or industrial agreement made or approved under the Industrial Relations Act (SA) 1972 that—

(a) imposes, or requires or authorises an employer to impose, a compulsory retiring age in respect of employment of any kind;
or

(b) requires or authorises an employer to terminate the employment of any person on the basis of the person's age,

is void and of no effect.

I am advised that there are approximately 10 State awards which prescribe a retirement age. Section 85f(4)(a) of the Equal Opportunity Act 1984 provides that the division prohibiting discrimination in employment on the ground of age does not render unlawful an Act or an order to comply with the requirements of an award or industrial agreement made or approved under the Industrial Relations Act of South Australia 1972. This amendment is necessary to ensure that employers do not circumvent the equal opportunity law by way of the award system.

The Hon. K.T. GRIFFIN: I have not taken any specific advice or consulted on this matter, but it seems logical that, if there is to be the abolition of a compulsory retiring age throughout the private sector other than in respect of those areas covered by Federal legislation or awards, the compulsory retiring age should also be abolished from State industrial awards. Logically, this proposition should not be opposed; accordingly, I do not raise any objection to it.

New clause inserted.

Clause 12—'The tribunal may grant exemptions.'

The Hon. K.T. GRIFFIN: The Opposition opposes this clause, which seeks to prevent the Equal Opportunity Tribunal from granting any exemption if the effect of the exemption would be to permit an employer to impose a compulsory retiring age in respect of employment. As I said during the second reading debate, it was presumed when the last Bill was before us during the last session that this provision would be available to those who may have some particular difficulties in accommodating the abolition of a compulsory retiring age. They would then have the opportunity to apply to the tribunal for an exemption, but that exemption would have to be won on its merits, as is any other exemption sought from the tribunal.

It seemed to the Opposition to be a strange provision that took from the Equal Opportunity Tribunal this power to grant an exemption only in respect of one particular matter when the power of the tribunal is very wide in respect of all other areas of discrimination and equal opportunity covered by the Equal Opportunity Act, which include sex, marital status, sexuality, pregnancy, disability and race. There seems to be no logical reason why the tribunal should not be able to consider exemptions in respect of this particular aspect of the age provisions in the principal Act. For that reason I indicate that we very much oppose this clause.

The Hon. C.J. SUMNER: The Government takes the view that, although there are exemptions generally under this Act whereby people who feel that for some reason or another it cannot be complied with, there is provision in the general law for an exemption to be applied for to the Equal Opportunity Tribunal. As the honourable member has pointed out, that applies to sex, race, etc. However, the Government thought that, as it had taken the view that this matter should be put off for a couple of years in any event—that is, the introduction of this section—and as members were so opposed to that, they would not have wanted there to be any capacity for exemptions to be granted.

The Hon. K.T. Griffin: I didn't say that. There was the power to grant an exemption, and that was one of the bases upon which we said that we should bring the date back to 31 December.

The Hon. C.J. SUMNER: We tried to put it off for a couple of years; the Opposition objected to it; we have now come back to 31 December; and we think that in the light of the Opposition's attitude to the matter previously, that it did not want any shilly-shallying about all this, we should introduce it in this form. The Government supports the clause.

The Hon. K.T. GRIFFIN: There seems to be an element of sulkiness on the part of the Government, because when we debated the compulsory retirement age provisions in the last session, as I interjected when the Attorney-General was responding, I specifically made the point that there was this power of exemption, and that there may be agencies—and I referred specifically to universities—where there is that difficult position of tenured places for some academic staff plus the fact that they have to deal with Commonwealth awards which still contain compulsory retiring ages. In those circumstances, there was the flexibility to deal with special cases. That was one of the bases upon which we said that we did not think the suspension of the compulsory retiring age provisions ought to be for as long as the Government wished. There was an option to allow flexibility, and we brought it back to 31 December this year. That is contrary to what the Attorney-General is arguing. I would have thought that there is nothing which distinguishes compulsory retiring age provisions from any other provisions of the Equal Opportunity Act.

A power of exemption was in the Sex Discrimination Act and then its successor, the Equal Opportunity Act. So it has been around for nearly 20 years. I have not heard of any problems with that in relation to either sex discrimination or other areas of discrimination. I would have thought that it was a sensible safeguard to allow any unforeseen disadvantages of the legislation we passed in the last session to be accommodated by the Equal Opportunity Tribunal on the basis of a proper, fair and open hearing.

The Hon. I. GILFILLAN: I agree that we were very inclined to eliminate any delay—described as shillyshallying, although that may be too loose a term. I agree with the Hon. Trevor Griffin that there seems to be some argument that certain groups may not have been comprehensively considered in the run up to the introduction of this Bill. Certainly, until I am persuaded that it ought to stay in, as an instruction to the tribunal not to grant exemptions, that option to grant ought to still be within its power. I support the opposition to clause 12 as spoken to by the Hon. Trevor Griffin.

The Hon. C.J. SUMNER: This matter has been in the public arena for some two years—in fact over two years now. Institutions, including universities, have known that this legislation would come into effect, originally on 1 June this year. The Government attempted to extend that time for a further two years, but this Council opposed that and has agreed that as a general principle the date should be 31 December this year. So, even from May of this year when this matter was discussed there has been time for institutions to be alerted to the fact that this legislation would come into effect by the end of this year. So, effectively, people and institutions in the community have had 2½ years to get their act together to deal with the introduction of this legislation. In my view that should have been sufficient time for them to get their procedures in order and to put the programs in place that they might need to deal with the effects of compulsory retiring age, and accordingly I continue to oppose the amendment.

The Hon. I. GILFILLAN: I acknowledge the point made by the Attorney-General, but it is reasonable to anticipate that there may be circumstances which we have not foreseen. If, in effect, over the period of the ensuing months or years the tribunal does appear to be granting exemptions which conflict with the general principle that there will be no widespread compulsory retirement, then I believe the Parliament should properly review it. However, I do not have any great apprehension about entrusting the tribunal to use its judgement, at least in the foreseeable future.

The Hon. K.T. GRIFFIN: I agree with that. Although, as the Attorney-General says, the whole concept of the abolition of compulsory retiring age in employment has been around for 2½ years, the fact of the matter is that it is only since the Bill was introduced that anyone has known that the Government had intended to repeal the exemption power of the tribunal. So, that has not been on the public agenda. It is correct that two or three days before that the Attorney-General faxed me an advance copy, and I appreciated that. But, in the wider

community, where the whole issue of compulsory retiring age has been debated, it has always been on the basis—if not directly then certainly indirectly—that the tribunal had a power to grant exemptions in special cases.

Clause negatived.

Clauses 13 to 21 passed.

Clause 22—'Repeal of s. 11aa.'

The Hon. K.T. GRIFFIN: This relates to the amendments to the Police Act. I have outlined at length the submission that the Opposition received from the Police Commissioner and from the South Australian Police Association, a submission which in similar terms was considered by the working party. I have noted the Attorney-General's reply to the propositions which were put by the Commissioner and by the South Australian Police Association. But, notwithstanding that, we still wish to proceed with our opposition to this clause and, in conjunction with that, clause 23. We have taken the view that there is a special position in which police are placed and special requirements are placed upon police.

Whilst we did not agree with several of the submissions made by the police as the basis for opposing this clause, nevertheless there seemed to be considerable weight in the other arguments about the mental and physical levels of fitness required of police officers to undertake their work. I note what the Attorney-General has said, that there is a power to remove from office persons who are not capable of undertaking the responsibilities of their office effectively, and maybe that can be achieved over a period of time. The fact that the Police Act itself sets a retiring age of 60, which is younger than for other Government employees prior to the consideration of this legislation I think reinforces the view that there ought to be some special consideration for police in the context of compulsory retiring ages. So, we take the view that the clause ought to be opposed for the reasons which I set out when we first considered the Bill at the second reading stage and for the reasons I have again elaborated upon.

The Hon. I. GILFILLAN: I indicate that I support the retention of the clause in the Bill. I am not persuaded that the police argument is substantial enough to give them special exemption from it.

The Hon. C.J. SUMNER: That is the Government's view. The matter was very carefully considered by the working party that reviewed all the age provisions in State Government legislation following the original passage of this Bill. They gave very careful consideration to the police submissions and rejected them, and the Government believes that that should be upheld.

The Hon. K.T. GRIFFIN: I am disappointed at that, but I can count the numbers and therefore indicate that, if we are not successful on the voices in opposing the clause, I do not intend to divide because I certainly do not have the numbers.

Clause passed.

Clause 23 passed.

Clause 24—'Amendment of Police (Complaints and Disciplinary Proceedings) Act 1985.'

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

Page 5, lines 17 to 20—Leave out this clause and insert new clause as follows:

Substitution of s.7

24. Section 7 of the principal Act is repealed and the following section is substituted:

Term of office

7(1) The Authority will be appointed for a term of office of seven years.

(2) Subject to this Act, a person appointed to be the Authority is, on the expiration of his or her term of office, eligible for reappointment for a term of not less than three years and not more than seven years.

I raised the point relating to the Police Complaints and Disciplinary Proceedings Act that it appeared that the authority is presently appointed for a fixed term of seven years, and there is presently a mandatory retiring age of 65 years. If the retiring age is removed, then there is only the fixed term of seven years. That may be renewed for an incumbent member of the Police Complaints Authority. It may be that it is inappropriate to continue the renewal of an appointment for a full term of seven years, so we gave some consideration to the ways by which that issue could be addressed, particularly for persons who were at the older age range rather than younger. A younger person may well be quite capable of serving two periods of seven years, but a person who is more senior, either in the legal profession or in other areas of the community, may not even wish to be re-appointed for a full term of seven years, having served at least one term of seven years.

The Attorney-General pointed out in his reply that there is power in the Governor to remove a person as a result of incapacity. I would suggest that that is not entirely satisfactory. It might be the final solution to difficulties experienced with an incumbent member of the Police Complaints Authority. It would be desirable to be able to appoint on renewal a person for a shorter period than seven years. I recognise that it should not be for a period entirely at the discretion of the Governor, and effectively the Government, that is why there is a minimum term of three years with flexibility upon a renewal for some period between three and seven years. Therefore, I commend the amendment to members.

The Hon. C.J. SUMNER: The Government will not oppose this amendment.

Existing clause struck out; new clause inserted.

Clause 25—'Amendment of Renmark Irrigation Trust Act 1936.'

The Hon. K.T. GRIFFIN: I raised this issue during the course of the second reading consideration of the Bill. It relates to the Renmark Irrigation Trust. I made the point that the age limit was a relevant provision which did not offend against the principle of removing compulsory retiring ages, because the age limit of 60 years was included in the Renmark Irrigation Trust Act so that it was the point after which members of the trust did not become compellable to serve as trustees. It seemed that if we removed that age, everyone at whatever age would become compellable. It was for that reason that we did not believe that the amendment was appropriate. I therefore indicate that I oppose clause 25.

The Hon. C.J. SUMNER: Agreed.

Clause negatived.

Clauses 26 and 27 passed.

Clause 28—'Amendment of Supreme Court Act 1935.'

The Hon. K.T. GRIFFIN: I raised the issue of clause 28 in the second reading debate. The Attorney-General replied that there were no currently serving masters of the Supreme Court who were affected by the present section 13b. I presume, therefore, that the repeal of the section is more a tidying up matter rather than raising any issue of principle.

Clause passed.

Clauses 29 and 30 passed.

Clause 31—'Membership of the tribunal.'

The Hon. K.T. GRIFFIN: I raised during the second reading debate the necessity for and desirability of this clause. It relates to the Workers Compensation Appeal Tribunal. Members of that other than judicial members retire at age 65

years but, if we remove the age, they can serve for life. That is inappropriate, and for that reason I am opposing the clause.

The Hon. C.J. SUMNER: I agree with this, and there was an amendment from me on file to similar effect. If the workers compensation and rehabilitation review officers are officers with absolute tenure, similar to judicial officers, it is important that a retiring age be maintained. Judges, magistrates and the like are not included in this legislation, because I believe that retiring ages for those judicial officers should be maintained. Because that they do have tenure and the only way of getting rid of them—judges at least—is by an address in both Houses of Parliament or, in the case of magistrates, a complicated procedure.

I do not think it is appropriate to have judicial officers going on beyond the retirement ages which are currently set, even though some of them may be capable of doing it. But the problem is that, if some of them are not, it is almost impossible to get rid of them, whereas, of course, if they are ordinary Government employees, it is much easier to dismiss them for incompetence or for some other legitimate reason.

For that reason, my opinion would be that, if these officers are akin to judicial officers—and they are to some extent—there should be a statutory retiring age for them, and that position will be reviewed if we delete this clause from the Bill.

The Hon. K.T. GRIFFIN: I appreciate that. But I want to raise just one other issue, and if the clause goes I may not have another opportunity to do it. I did raise the issue of section 35(5) of the Workers Rehabilitation and Compensation Act and the effect of age discrimination legislation. The Attorney-General did respond to my point and drew attention to the fact that the working party report referred specifically to section 35(5) being exempt from the provisions of the Equal Opportunity Act. He referred me actually to page 35 of the report, which must be a different version from the one that I have.

On page 39 of my copy, which might have been a superseded copy, there is a reference to the criteria which determine when weekly payments cease. A date on which the worker attains the age at which a worker would be eligible to receive age pension is a Commonwealth limit which is fixed by Commonwealth legislation (so that is a relevant criterion) or a date on which the worker attains a normal retiring age for work is engaged in the kind of employment from which worker's disability arose, or 70 years of age, whichever is the lesser.

It has been drawn to my attention by legal practitioners particularly that up until now the normal retiring age for workers has been the 65 years of age or, if the specific retiring age is different from that in an award, then that retiring age.

As State law will no longer have a retiring age fixed either by award or by legislation, as in the Government Management and Employment Act, it then raises the question whether some other criteria may be used to establish normal retiring age under the Workers Rehabilitation and Compensation Act. Has the Government given consideration to the impact of the abolition of compulsory retiring age on the interpretation of normal retiring age, under the Workers Rehabilitation and Compensation Act where, in respect of non-Commonwealth award matters, there will no longer be a fixed retiring age? Is it something that will have to be established from work group to work group by statistical data, or will 70 years of age become the effective cut off point for benefits under the WorkCover legislation?

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Seventy. Well, as I understand it, it's the normal retiring age or 70 years of age, whichever is the lesser. I would like some clarification of that, because it could have the sort of impact which the working party referred to, and I would like to have some clarification of that issue.

The Hon. C.J. SUMNER: I cannot satisfy the honourable member at the moment. I understand the point. All I can do is refer the honourable member's comments to the Minister of Labor and perhaps the WorkCover Board to see what view they have on the topic, and we will let the honourable member know.

Clause passed.

Title.

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

To delete from the title the words 'the Renmark Irrigation Trust Act 1936; in the penultimate and last lines 'and the Workers Rehabilitation and Compensation Act 1986'; and insert 'and' between '1975' and 'the' on the penultimate line.

Amendments carried; title as amended passed.

Bill read a third time and passed.

CORRECTIONAL SERVICES (CONTROL OF PRISONERS' SPENDING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 17 August. Page 167.)

The Hon. I. GILFILLAN: I will make some brief comments in relation to this Bill because it is a measure that is geared towards management of prisons. Honourable members will know that a long and exhaustive select committee process looking at prisons in South Australia has been under my Chairmanship for nearly three years—I think it may be three years—so this is just one aspect of what is a vast mosaic of issues that are of concern and interest in the prison system.

I am not opposing the measure, but I am questioning, quite profoundly, one aspect of it, and that is the arbitrary control of the spending of prisoners' money by the manager of the prison. It is one of the most widely held opinions of prison inmates that there is victimisation and discrimination against one or several of them in a whole range of matters. I am not standing here supporting the justification of that; I am just reporting the fact that it exists. One that I can anticipate occurring is that where a prisoner is not able to have access to funds which have come into his account to spend on the ordinary canteen provisions in the prison, on the arbitrary determination by the manager. It could be the cause of a very profound sense of grievance by the prisoner.

It may be, as has been argued, that it will be an incentive for inmates complying with the requirement to work, but if it has that effect that is probably the only justification for that control being given to the manager of an institution, and it is based on the principle that it is better for the inmate and *ipso facto* better for the institution for the inmates to be working.

In some cases, I put it to the Council, the word 'work' could be a euphemism for actually just being in a place, because there is no way that a person can be compelled to perform what would be regarded as satisfactory work just by insisting that they be in a certain work situation under threat that if they do not go there they will not be able to spend money on tobacco and other purchases that they may wish to make at the canteen.

So, I repeat: I will not oppose this Bill, but I do believe that it is based on the very dubious argument that it will to any substantial extent improve the general environment within a

prison. It may result in more inmates attending at the industry locations or at the work stations from time to time, and I assume that some managers believe that that is a desirable power that they have in their hands. However, having seen a lot of prisons from inside and out over the years that I have been in this place, we will need far more substantial repair and reform of the way they are run to have enthusiastic and productive work performance from inmates. I do not believe it will be brought about just through the arbitrary power of the manager being able to prevent prisoners spending money, which legally, of course, is theirs and remains theirs. So, with that reservation, I indicate that the Democrats will not oppose the Bill but do not believe that it will achieve much.

Bill read a second time and taken through its remaining stages.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

Adjourned debate on second reading.

(Continued from 5 August. Page 59.)

The Hon. BERNICE PFITZNER: I rise to speak to the second reading of this Bill and I will be very brief and concise. The Bill was introduced in the last session and, in contributing to that second reading, I supported it. After considering the other contributions and listening to some valid concerns from my colleagues I still consider that this Bill will do much, first, to clarify the medical practitioner's legal position; secondly, to endorse patients' autonomy in the circumstances of emergency medical treatment and in the care of the dying; and, thirdly, to make provisions that address the difficult and vexed issues of prolonging life and thus supporting the concept of the sanctity of life and hastening death in support of the concept of the quality of life.

Therefore, this Bill will inevitably be a difficult and contentious Bill. It is difficult, as it has many rather technical details and implications which perhaps some of us have not experienced. Further, the Bill is contentious in that it deals with emotions related to death and dying and the need to help by offering or instituting medical treatment and palliative care. All of us have experienced a friend or relative in such circumstance. The Bill also repeals the Natural Death Act 1993, which legislated for an advance directive made by the patient himself or herself, but this directive has been deleted to make way for a medical agent to act for the patient. This omission of a living will is regrettable and should be reinstated.

The Bill also repeals the Consent to Medical and Dental Procedures Act 1984, but the principles of that Bill are carried into this Consent to Medical Treatment and Palliative Care Bill. It should also be noted that the prohibition against assisted suicide remains in section 13a of the Criminal Law Consolidation Act.

A historical resume is interesting, and perhaps will help to put the concept of this new Bill into perspective. From ancient Greece into the twentieth century debate has been continuing on ethical issues and principles commonly associated with medical care for the dying in Western civilisation. Devotion to the medical good, concern for the quality of life and respect for the sanctity of life are all expressed in the earliest medical and philosophical writings of ancient Greece. For Plato in 400 B.C.—the father of Western philosophy, over 2 000 years ago—the central consideration in caring for the dying was not on the quantity but rather the quality of life, and in his writing in the *Republic* he said:

> But they thought that the life of a man constitutionally sick and intemperate was of no use to himself or others, and that the art of medicine should not be for such, nor should they be given treatment even if they were richer than Midas.

However, Plato's student, Aristotle, in 350 B.C. discussed the related topic of suicide, which he condemned. Socrates in 399 B.C. said:

> I should only make myself ridiculous in my own eyes if I clung to life and hugged it when it has no more to offer.

The medical fraternity's own Hippocratic oath was committed to the restoration of health and the alleviation of suffering. It prohibited assisted suicide and espoused the sanctity of human life. Hippocrates said:

> I will give no deadly poison to anyone when asked to do so, nor will I suggest such a course.

The Middle Ages, with the rise of Christianity, saw the strong emergence of the principle of the sanctity of life. To those basic ideas the Renaissance, from 1300 to 1600, added the aspiration to prolong life. Modern life-prolonging technologies heightened the debate by allowing these two standards—the sanctity of life and the quality of life—to dramatically conflict, particularly in critical care. Finally, in the twentieth century modern science has rendered this aspiration of the prolongation of life—and I quote from *Critical Care Medicine 1992*—'a reality of unclear merit.'

Our present community attitudes have changed. A recent survey by the Flinders University showed that there was a significant percentage of respondents who had been asked by patients to hasten his or her death by permitting the patient to forgo life-sustaining treatment. I have reported on that study in detail in the previous second reading speech. It is to be noted that another similar survey involving Victorian nurses in 1991 showed similar trends, and that similar reasons were given for the hastening of death, and these reasons were: persistent and unrelieved pain, terminal illness, infirmities of old age, incurable conditions, not wanting to be a burden on others and fear of a slow dying process. The Americans showed a similar community trend, and when asked the survey question of when a person has a disease that cannot be cured, 'Do you think doctors should be allowed by law to end a patient's life, if the patient and his or her family request it?', the ascending graph showed that from 1950 the 'Yes' percentage was 36 per cent, increasing to 53 per cent in 1970 and 63 per cent in the 1990's.

On the question of allowing withdrawal of life support or life-sustaining treatment for the terminally ill, the average support for this was 75 per cent: that is, three- quarters of Americans believe that law should sanction the withdrawal of life support if a terminally ill patient requests it. However, in an article in the *Australian Doctor* of July 1993, the President of the Federal AMA says:

> Sociologists and criminologists have much to offer, but I would prefer to see the debate led by the AMA and those of us who endure these experiences on a day to day basis and over a professional life time.

I think that this topic is too important, too complex and too emotional to just leave it to the medical profession. We all must take equal part in this debate, whatever our disciplines and whatever our occupations. My own experience has led me to support the concept of the quality of life, as the suffering of the patient and his or her family has been a significant factor in the medical treatment and palliative care of patients.

Briefly, I mention the amendments that I hope to make, and, as previously, they are to clarify the right to consent and

to refuse, to ensure the parents' involvement in decisions on medical treatment of a child, to prioritise the sequence of medical agents and to provide and continue the facility to make an advance directive by the patient himself or herself. I have noted my colleagues' amendments with regard to more detailed advance directives, additional supervision by the Supreme Court, additional checks that the Guardian Board and some difficulties with the restriction of food and water. I hope to debate all these amendments at the appropriate time.

In closing, Mr President, just to recapitulate on the attitudes of medical practitioners, one has to remember that medical doctors are healers of disease and injury, preservers of life and relievers of suffering. Ethical judgments become complicated, however, when these duties conflict. The considerations that must be weighed in each case are: the principle of patient autonomy and the corresponding obligation of the doctor to respect the patient's choice, and whether what is offered by the doctor is what I call good medical treatment. I am aware that this is a very subjective phrase, but I would note that in a case the High Court was guided by medical opinion. A further consideration is the potential consequence that permits a doctor to act in a way that will possibly result in a patient's death.

In relation to pain, the great medical practitioner, Dr Albert Schweitzer, once said:

> We all must die. But that I can save him days of torture that is what I feel is my great and ever new privilege. Pain is a more terrible lord of mankind than even death itself.

On the subject of dying with dignity and not being a prisoner of medical technology, the Archbishop of Canterbury said:

> It is misleading to extend the term 'euthanasia' to cover decisions not to preserve life by artificial means when it would be better for the patient to be allowed to die.

Life at all costs cannot be the way to go. We need to have compassion and understanding when making these difficult decisions. So, I support the second reading of this forward-looking and morally advanced Bill.

The Hon. J.C. IRWIN: At about 1 o'clock on 1 April this year I received a telephone call in my office saying that my son had been involved in a serious car accident in Queensland. It took some time for it to dawn on me that the accident was serious and that I should go with his mother immediately to Broadbeach Hospital in Queensland. I want to thank members of this Council for their indulgence and their generous support of us as a family. My immediate duty was to stay with my family until the situation improved, and that meant that I was away from this place and from South Australia for a month. I have not counted them, but I certainly missed a number of sitting days.

I was listed to speak on the Consent to Medical Treatment and Palliative Care Bill on the day I left South Australia. I put in my briefcase the speech that I had more or less prepared, intending to work on it while I was away, which I thought might be a week or 10 days at the most, including the Easter break. As it turned out, I did not do any work on the speech physically but I gave a great deal of thought to what I had intended to say pre-accident and then in the light of the accident. The direction I had intended to take on the Bill and the injury to Campbell were somewhat related. Despite the traumatic and painful experience of the injury to my son I had strengthened my resolve to oppose the Bill at the third reading. I am pleased to report to my honourable friends that Campbell is well on the way to resuming his studies at Bond University, hopefully at the beginning of 1994.

To say that we as a family have witnessed a remarkable recovery is an understatement considering what we faced on the first and subsequent days. I give full credit for this achievement to the great strength, support and faith of his family and close friends, including his girlfriend who stayed with him day and night for a couple of months and never wavered in her conviction that all would be right. It is also a tribute in a small way to Campbell's physical and mental fitness prior to the accident and to his personal drive to better himself, which was evident then and still is. The intensive care unit at the Broadbeach Hospital was magnificent. The Memorial Hospital and the Royal Adelaide Hospital in South Australia were for the most part very satisfactory in dealing with part of Campbell's recovery. The Julia Farr Centre, of which my father was Chairman for many years, particularly the South Australian Head Injury Unit, Rotary A and Rotary B, was magnificent, and I pay a sincere tribute to the Director and his staff for their great skill and tender care.

Like other members, I am somewhat reluctant to put before the Council personal matters of this sort, but considering my experience and its relevance to the Bill before us I decided that I should use it to substantiate my position on the Bill.

I have great difficulty with the Bill. I have difficulties with the issues, some of which are as important as any we will ever have to face as legislators in this place, particularly those of a social issue nature. I have had difficulty with trying to resolve my position on the issues, for whenever I would think my way to a certain position I would find an obstacle or an inconsistency in my thinking and logic, just as I find inconsistency and lack of logic in the contributions of others. The easy course would have been to say nothing. As most of my colleagues in this place have said before me, my obligation is to front up and not shut up.

My contribution is made without any professional experience in the areas of law, medicine or theology. I can only draw on my lifetime of experience, which has included a strong Anglican influence, and I certainly do not come to this debate as a humanist. When looking around me in the Parliament, I feel that the background I can bring to this debate and my experience are little different from those of the majority of my colleagues. I will support the second reading of the Bill and I will watch and participate with interest in the Committee stage. Certain vital amendments need to be made, and that point has been made by many before me. I note that there are some amendments on file to this recommitted Bill, and I assume that by the time it gets to the Committee stage there will be many others as there were to the original Bill when we debated it in April-May.

I am not yet persuaded by arguments so far advanced in the debate to support the legislation in whatever form it comes to the third reading. I have read the whole of the debate in the Assembly and followed with interest the contributions in this place. I must acknowledge that my friend and colleague the Hon. Dr Bob Ritson has so far, to my way of thinking at least, made the most telling contribution. As it turned out, his contribution on this legislation was the last he made before retiring. It certainly ranks with me as one of his most significant. One thing is certain about any contribution from the Hon. Dr Bob Ritson and that is that we cannot afford to ignore what he says. In this debate we cannot and should not ignore his contribution, even though it is recorded as part of the debate on the other Bill that was before us.

What he raised has also been raised in one way or another by others. It goes to the heart of the proposed legislation; indeed, it goes to the heart of its underlying philosophy, which is, first,

that this legislation is yet another example of the great difficulty of putting ideals based on moral standards—although some people might use a different phrase—into some sort of legislative form in order to legislate between what is right and what is wrong. My dilemma is between what is wrong with the practice now. Without any proof whatsoever I believe that one of my parents passed away following a medical decision. That parent had signed a Natural Death Act certificate, although to my knowledge it was not used.

My dilemma is between what I and my family accepted as a very sad but logical end and the advice that we on the select committee received that doctors and others fear prosecution if they withdraw treatment. Secondly, the unfettered power of the proposed medical attorney, which is the real centrepiece of the legislation and links the medical attorney, is the part the Guardianship Board may or may not play. It is undoubtedly true that every member of Parliament who has contributed to the debate on this Bill, either by speaking or by voting, has a genuine concern about the dignity of death and of dying.

I believe there is another underlying matter that has had no attention in the Parliament nor has it been the subject of public debate. I am convinced that the cost of health in Australia today is such that it is increasingly becoming a factor overtly and/or covertly in the thinking and planning around how long certain people should be allowed to live. As Australians move further and further away from the notion of self-insurance for health and the collective costs of medical treatment soar—and as we noticed in the Federal Budget just handed down that the Medicare levy has risen again and that does not anywhere near cover the cost of health in this country—there will be moves from some people to eliminate those in our society who can no longer contribute in one form or another to our society. Eventually what starts as a trickle becomes a rushing tide based on and justified by economic considerations alone.

It is also curious that as governments move more and more to run our lives at our expense and as they move more and more towards the concept of user pays when it suits them, they refuse to let those of us who can afford it to fully insure ourselves for all manner of things medical, including our old age and the medical treatment that goes with it. That includes insuring ourselves against the consequences of indulging in some legal habits that may or may not cause a medical expense somewhere later in our life. I do not ever expect that what I choose to do should ever be a burden on others. Similarly, I object to paying for the excesses and indulgences of others.

I will never accept the concept of the perfect race and I have a very strong belief that imperfection is in fact a good thing. For instance, it was a privilege for me to sit with each of my parents as they passed away. It is a privilege for me to have a niece who would have been a cot death statistic if it were not for the actions of her father, who revived her. That now adult person is undoubtedly a cost to our society and makes no material contribution to it. Yet she and many like her are living reminders that those more fortunate have much for which to be thankful. I am sure members of other families have similar experiences to tell. My niece is not dependent on a life support system and this legislation is not about that sort of person; I understand that. But my real fear is that the legislation we are debating now is just the forerunner to a much more sinister agenda.

We all bring to this place life's experiences, certainly in debates on a Bill such as the one before us. Most of the experiences that relate to this Bill are painful and ones on which we do not want to dwell. However, I will relate just part of my recent experience with my son, Campbell, at this stage of my contribution, because it is very relevant, at least to me. Campbell was in a coma for 21 days. After 18 days I eventually trapped the Director of the Intensive Care Unit at Broadbeach and asked for some answers to some questions. I have spoken to people about this, including doctors, and I have made the point that it is very hard to stop them because they are very busy people and in an intensive care unit I do not think they Rare all that keen to be confronted by parents or relatives asking the very hard question about how a person is going. I do not think they particularly want to give an answer which they know has very little chance of being accurate.

When I did trap this person I was told that there were three broad results of a serious brain injury. I was told: 'Your son could achieve independent living; he could achieve a dependent level stage; or he may never get past a vegetative level.' I was told by the doctor that, in his opinion, my son would be at the latter end of scale—and there were reasons for that advice that I will not go through now. That is a shattering thing to hear, even given that no doctor on earth can give an accurate prediction when a brain-injured patient is still in a coma. Quite simply, the testing cannot be done until the patient wakes up.

The impact of the revelation to me took some time to sink in. But with my son on a life support system there was a very real possibility that he may be in the exact position that is embodied in this Bill, in particular relating to Objects 3(c) and section 10(1) and (2), which relate to emergency medical treatment. I will not go on in this vein because I think I have given sufficient explanation to amplify a relevant point that I wanted to make. It is perhaps sufficient for me to say that I would not want anyone on earth to go through my family's recent experiences in order to get close to a real life and death drama which amplifies a point to someone.

Perhaps a family member, an agent or a doctor in terms set out in the Bill always will have to make heart rending decisions. I do not believe I could ever make a decision to end the life of a member of my family. Again, that is a matter I have talked about quite openly to many people in the parliamentary community and outside it. I well recognise that everyone has very strong views on this matter and they are very emotional ones. I reached that point when first considering this Bill, which I had put in my briefcase when travelling to Queensland, and was writing my contribution to the second reading debate. I am still at that point, having gone through the trauma of recent months.

I am satisfied that the proponents of this Bill do not have euthanasia in mind, but I firmly believe that others do. Organisations such as the South Australian Voluntary Euthanasia Society gave evidence to the select committee that this Bill does not go far enough. One has to ask how long it will be before this Parliament has before it a legislative agenda that is similar to that already being practised in the other parts of the world. I want to refer to movements in other parts of world because the signposts are already there for the progression which I fear and to which I referred earlier.

The proposed law on euthanasia in The Netherlands has already passed the Dutch House of Commons. If it passes the Senate the law will make it possible for a doctor to kill a patient on his or her request, but also without request. According to the May issue of the Dutch newspaper *Detelegraaf*, members of the Dutch Parliament's Upper House have voiced their concerns that the new regulation on voluntary euthanasia for the terminally ill and chronically ill passed by the Lower House on 9 February this year will lead to ever widening interpretations

of the law to include the depressed and the mentally ill, as well as those who cannot express their wishes, such as newborns, children and the mentally retarded and so on.

It is now unlikely that the Upper House will pass the regulation. Passage by both Houses of the Netherlands Parliament is required, as it is here, for a measure to become law in The Netherlands. We will have to wait now to see what will happen in that jurisdiction. Were they to pass, the new regulations would be an official acknowledgment of the current euthanasia practice in Holland, where doctors who directly kill patients or provide patients with the means to kill themselves are not prosecuted as long as they follow certain established guidelines. It would amend only the Coroner's law. Penal codes which make euthanasia and assisted suicide illegal in Holland would remain in force.

Karl Gunning, MD, Dutch Doctors' Federation Board member, told Kathi Hamlon of IAETF, Public Information Director, that the 21 April 1993 landmark Dutch court decision affirming euthanasia for psychiatric reasons had a very sobering effect on the Dutch lawmakers. This court ruling found that psychiatrist Dr Boudewijn Chabot was medically justified and followed established euthanasia guidelines in helping his physically healthy depressed patient to commit suicide after the deaths of her two children and the break-up of her marriage. According to Dr Gunning, the decision caused many Lower House members to say, 'This is not what we intended by the new legislation.' He added that the mood of the Dutch people on the issue seems to be changing.

In 1991 the Dutch Government said that euthanasia accounted for one in 50 Dutch deaths. The term 'euthanasia' there only applies when a doctor gives a lethal drug to a patient at his or her explicit request. There were 2 300 cases in one year or a total annual mortality of 130 000 people. If the patient himself or herself takes the drug prescribed by a doctor, which represents 400 cases, it is not called euthanasia but assisted suicide. If the doctor gives the legal dose without the patient's request, which represents 1 000 cases, it is not called euthanasia either but 'killing without request'.

Then there are about 8 000 cases where an overdose is given with the explicit or implied intention to kill the patient, and another 3 000 cases where the treatment is stopped with the intention to kill. These two categories are not called euthanasia but normal medical practice. Adding all these categories together, we can conclude that the doctor had the intention to kill the patient in about 20 000 cases, that is, one in six Dutch deaths.

Members would be aware of the exploits of Dr Jack Kavorkian freed by court after court in America who continues to kill patients with disabilities who are not terminally ill. In America, the advocates of euthanasia began in the 1970's by building on an almost universally accepted premise that, in the absence of truly exceptional circumstances, a competent adult may accept or reject any medical treatment. Rooted in the doctrine of informed consent, and long accepted by the common law, this principle became the starting point for a steady progression in two directions along two axis. One axis represents the degree of voluntariness: 'voluntary' meaning the patient, while competent, has requested it; 'non-voluntary' meaning the patient's wishes are unknown and a court or a surrogate imposes a decision. There is some familiarity in those terminologies. 'Involuntary' means death is chosen for the patient against his or her explicit wishes. The other axis is the method by which death comes moving progressively from deprival of lifesaving medical treatment through starvation and dehydration by removing food and fluids to direct killing.

In 1976 in America, the Quinlan case inaugurated the doctrine of substituted judgment regarding medical treatment and non-voluntary euthanasia, and in 1992 the Virginian Legislature empowered doctors to deny life saving treatment, food and fluids against their patients' wishes whenever they think the treatment medically or ethically inappropriate. This, of course, is involuntary euthanasia. In Washington in 1991 and in California in 1992, moves for voluntary direct killing were narrowly defeated. It may not be the end of it. My gut feeling is that the progression in America today, already evident, will inevitably be implemented.

As I previously indicated, the Netherlands have already moved past that non-voluntary direct killing. How long will it be for the Netherlands to move to involuntary direct killing? The legislative proposals in the Bill before us are better than I have outlined in other parts of the world, if 'better' is the appropriate word. I note that the Hon. Dr Ritson and others had alluded to the real problems with substituted judgment. I also note that the Heads of Churches and, in particular, Archbishop Leonard Falkner, while generally supportive of the Bill, are anxious that amendments be made to clauses 3 and 6.

I have spent some time trying to justify my argument about progression, just as no doubt some members would have raised when the Natural Death Act was debated before my time in this place. The debate at that time, in 1983, which was 10 years ago, was prior to the actions in other parts of the world to which I have alluded. The Bill before us now may seem to some as an improvement on the maybe soon to be superseded Natural Death Act, and by others it will be seen to be a progression. In this context, and as another example of progression, an example of a practice going beyond the intentions of legislation, if I may use the example, is the practice of abortion, which to a considerable number of people in this State is the taking of a life. Where the life is aborted, there is no choice and certainly no dignity.

I have noted littered throughout the whole of the debate an argument justifying the ending of life with dignity. Whilst I, too, in a perfect world would want every death to be with dignity, it is not a perfect world, and I would hazard a guess that most deaths are not strictly with dignity. I am not even sure that all deaths were ever meant to be with dignity or dignified, whatever that might be in this terminal position.

I said right at the outset of my contribution that it is very difficult to go down any path in this debate without finding an inconsistency or, in fact, as no doubt others will pick up and put to me, my own inconsistencies. For instance, there are those totally opposed to capital punishment, usually on the grounds of not supporting the taking of a life and/or because of the fear of taking the wrong life. There will be those in this debate who oppose capital punishment but will support this legislation knowing that this Bill facilitates the ending of a life under certain circumstances—maybe even the wrong life. Examples were given in the other place by some members who gave examples of the experiences of other people being close to death or recovering from a so-called medically impossible position. Indeed, almost every day, there are public examples of miracle recoveries.

I will conclude by saying that I will support the second reading of the Bill. It should be thrown out, in my opinion, at the second reading, but sufficient members have indicated a desire not to follow that course, with some indicating their desire to amend the Bill in the Committee stage and then

consider their position prior to the third reading vote. As I indicated earlier, I will most certainly not be supporting the third reading, no matter what amendments are made.

The Hon. M.J. ELLIOTT: I rise to support the second reading of the Bill. I will not speak at length, because I spoke to it on 9 March this year when the legislation was last in the Council. I will focus on the two issues which I raised at that time which I felt needed to be addressed, and there are some signs in the amendments that are before us that they are being addressed, but I am not quite sure that they are being addressed adequately. Over the next couple of days, I will be scrutinising those amendments rather closely.

The first concern that I raised was that there was no provision for dealing with someone who seemed to abuse their power of medical attorney, or someone who is no longer competent to carry it out, and the latter is probably an even more real danger than the former. There may have been, I noted last time, an avenue to go to the Supreme Court in those situations, but that is a very lengthy, expensive and cumbersome process.

I had an amendment on file last time which saw a role for the Guardianship Board to oversee the conduct of medical agents, not only when their decisions relate to a person under the board but also where there are allegations of abuse or neglect, or when agents themselves are no longer for whatever reason fit for the task. The Victorian Medical Treatment Act allows its Guardianship Administration Board to suspend or revoke powers of attorney. The rights of intervention I believe do not need to be particularly broad, but the question as to whether a person is no longer competent, for instance, to act as an agent, is a matter that should be capable of challenge, and I think the Guardianship Board is the appropriate board to do that, rather than the court.

The second issue was one that I did not have on file, but one on which I was considering amendments, and that is in relation to having a living will. As the original Bill stood, a person could appoint an agent, and that agent had quite a wide degree of discretion, as wide as the Bill itself allowed. I personally would not like to leave some of those decisions to another individual, because they are in some cases quite difficult decisions to make. Although you may appoint somebody in whom you have confidence, you are also putting a dreadful weight upon them. It is my belief that the use of a living will is a much better way to go than to rely upon an agent.

I believe that you can give quite specific directions by way of a living will, and during the debate back in March, I tabled in this place an example of a living will which came from Canada which I felt fulfilled the sorts of prerequisites that would satisfy me. As I said, personally I do not like the idea of basically giving a blank cheque to an agent, not so much because I do not trust the agent but because I think it is a dreadful burden for anybody else to have to bear.

I note that the Minister has on file an amendment to produce a living will, but the present form of it is extremely limited. In my discussions with the Minister of Health, who I believe chaired the committee which looked at this matter, he said that he expected that would be further modified, and I suggested that that modification should happen by regulation and not at discretion, which the Minister wanted the power to do.

However, I am now examining whether we should not have schedule 1(a) proposed as a more comprehensive document than the one that is currently before us. I will not speak any longer. As I have said, I have already spoken on this matter on a previous occasion. I support the second reading. I do not have any problems with the purpose and intent of the Act, but I have those two concerns which I have covered again very briefly during this speech. I support the Bill.

The Hon. R.R. ROBERTS secured the adjournment of the debate.

STATUTES REPEAL AND AMENDMENT (PLACES OF PUBLIC ENTERTAINMENT) BILL

Adjourned debate on second reading.

(Continued from 18 August. Page 207.)

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): Mr Acting President, I draw your attention to the state of the Council.

A quorum having been formed:

The Hon. ANNE LEVY: In winding up the debate on this Bill, I would like to respond to a number of the points raised by the Hon. Mr Griffin in his contribution to the debate last night. As I understand it, his queries can basically be put into nine different topics, although there are subcategories of some of those.

First, with regard to the honourable member's queries as to whether a person could be prohibited by this Bill from smoking in the members' stand at Football Park, the advice from Parliamentary Counsel is quite definitely 'No'. For the purposes of controlling smoking, the Bill defines a place of public entertainment as:

> . . . a building, tent or other structure in which entertainment is provided. . .

At Football Park, the entertainment is clearly not provided in a building or structure. The oval may be surrounded by various buildings and structures but it is obviously not in any of them. The Bill prohibits smoking in an auditorium, which is defined by the Macquarie dictionary as:

> The space for the audience in a concert hall, theatre, school or other building.

The Collins dictionary defines it as:

> The area of a concert hall, theatre, etc. in which the audience sits.

Parliamentary Counsel said:

> It is clear that a grandstand at an oval is not an auditorium. A sporting arena does not fall within the same genre as a concert hall or theatre, and the word 'audience' is not normally used to refer to spectators at a football match. Therefore, Football Park is not a place of public entertainment, nor does it incorporate an auditorium.

That advice comes from Parliamentary Counsel.

Secondly, the honourable member raised the question of the need for a certificate of classification to be obtained for the erection of a structure pursuant to the Building Act. There is currently such a requirement under the Building Act. Certificates of classification are issued pursuant to the fourth schedule under the building regulations and no amendment to the Building Act or any other Act is required for the purpose with which the honourable member was concerned.

He then raised a number of queries, I suppose with regard to entering premises, and in the same paragraph he queried inspection of scaffolding, checking of first aid facilities and the issue of evacuation from a place of public entertainment. Currently, pursuant to the South Australian Metropolitan Fire Services (Miscellaneous Powers) Act, which was passed in 1991, an authorised officer may enter a public building at any reasonable time—not only in emergency situations but at any

reasonable time—to determine whether there are adequate safeguards against fire. Actually, this matter was discussed in the initial review paper.

With regard to the inspection of scaffolding, there is currently a bit of an overlap, as the Department of Labour can inspect any workplace scaffolding whenever it wishes and, of course, the erection of scaffolding would need the approval of the local council under the Building Code. So, to erect scaffolding local council approval is required and, when erected, it can be inspected by the Department of Labour.

Currently, the inspectors under the Places of Public Entertainment Act do not inspect scaffolding themselves; they ask the Department of Labour inspectors to do it on their behalf, so that repeal of this Act will in no way affect that situation.

The honourable member also mentioned the question of the checking of first aid facilities, but no change is currently proposed in this regard. There is no checking of first aid facilities in relation to places of public entertainment. It is true that first aid facilities must be provided in all workplaces under the Occupational Health, Safety and Welfare Act, and places of public entertainment are, of course, workplaces for employees. However, there never has been any requirement that there be first aid facilities available for members of the public in a place of public entertainment. This never has applied and, obviously, will not apply when this Bill becomes law.

With regard to questions of evacuation from a building, the Occupational Health, Safety and Welfare Act provides for the establishment of fire and emergency evacuation procedures and, in addition, the Building Code has extensive exit requirements—in fact, a large portion of the Building Code is concerned with this question of exit facilities for public buildings—and it was definitely felt that these two provisions, the Building Code and the Occupational Health, Safety and Welfare Act, adequately provided for the issue of evacuation.

I should perhaps indicate that the result of passing this Bill will be that the powers of the State Emergency Services are being neither increased nor decreased by this measure. There may be some members of Emergency Services who would prefer that their powers were increased, but the passing of this legislation and repeal of this ancient Act will not affect their powers in one way or another.

The honourable member then raised questions as to whether amusement devices are covered under the Occupational Health, Safety and Welfare Act. Amendments to that Act were passed only a few months ago, in the early part of this year, and the amendments do allow the adoption of national standards relating to plant and the certification of users and operators of industrial equipment. The standard includes amusement devices, and this was done specifically at the request of the Public and Consumer Affairs Department. An amusement structure is defined by the standard and includes all the amusement devices which are presently licensed under the Places of Public Entertainment Act, for example, water slides. So, when that legislation is proclaimed there will be no loopholes for amusement devices.

The Act that we passed a few months ago has not yet been proclaimed, but is expected to be so proclaimed early next year, and the proclamation of this legislation will be delayed until the other legislation is ready to be proclaimed. So, no gap in coverage will occur.

The Hon. Mr Griffin also raised the question of what impact there will be on the sorts of powers that are believed necessary to ensure proper and safe facilities in places of public entertainment. The Building Act provides that building surveyors and building inspectors have powers of entry which are considered adequate to ensure that building work complies with the requirements of the Act.

Related to this was the question of whether the powers of entry of building surveyors and building inspectors were too limited to look at questions of control of overcrowding. When it comes to questions of overcrowding, as was discussed in the review paper, the Metropolitan Fire Service officers can inspect public buildings at any reasonable time to determine whether there are adequate safeguards against fire.

The purpose of these inspections is to ensure that overcrowding does not occur, and the means of egress are not obstructed. As indicated, Metropolitan Fire Service officers can enter at any time to check that there is not overcrowding, which could result in danger from fire. If they feel that the safety of persons in a public building cannot be reasonably assured by any other means, there are powers to issue closure orders, which must immediately take effect. So, if there is suggestion of overcrowding, and it is felt that this could be a fire danger, appropriate officers have the authority under other Acts to both enter and make investigations, and to close the entertainment occurring and empty the building should they feel it necessary.

The honourable member also raised the question regarding temporary structures. This certainly was a loophole in the past, under the Building Act and similar pieces of legislation. However, the Development Act, which was passed a few months ago in a marathon session in this place, does include temporary structures in the definition of building work. So, under the Development Act the tents and other temporary structures—circus tents and so on—which the honourable member raised, will be classed as building work, and as such the requirements of the Building Code of Australia for class 9b buildings, that is places of assembly, will then be applied, although councils will have powers to grant modifications as felt appropriate. But there is no question of lack of control.

The honourable member also raised the question of panic bolts and fire proofing of curtains and, while these are not dealt with specifically in the Building Code, the Building Code does require that exit doors must be able to be opened without the use of a key, and this, of course has the same practical effect as panic bolts. The Building Code also requires any curtains in the path of egress to be treated with a fire retardant substance, so that these old provisions under the Place of Public Entertainment Act are adequately covered by means of the Development Bill and the Building Code of Australia.

I think the last question the honourable member asked related to fixed seating. Part 8(1) of the Building Code addresses seating areas. Although this part does not require fixed seating, it does stipulate required distances between rows of fixed seats, and it has been agreed nationally that this is an appropriate requirement for halls, theatres and stadiums, etc., and this will allow the construction of multipurpose facilities with removable seating, as is happening more and more with halls and places of entertainment in the modern era. The banks of retractable seats and adjustable seating configurations give greater flexibility, and that is very much the way that modern places of public entertainment are designed. It is certainly felt that the Building Code addresses this question, while permitting the flexibility that is desired in modern construction.

That covers the questions the honourable member asked in his contribution. He did refer to the question of the abolition of the licences for cinematographers, and it is certainly true that these were brought in at the time when nitrate film was the usual medium, and there were great fire dangers inherent

in the use of nitrate film. It was felt very desirable at that time—and I stress that this was in 1913—that people who were dealing with such highly potentially dangerous material should be trained and licensed. That is certainly not true today. There is no doubt that modern cinemagraphic material is complicated, and that someone who is not competent could cause a great deal of damage to the machinery or instrumentation, and I feel that it would be most unwise for a cinema operator to employ people who were not trained, and could damage his or her highly expensive equipment. However, there is certainly no danger in terms of public safety which needs to be addressed and it is felt that, rather than legislate, pure good sense on the part of cinema owners will ensure that they only employ people who are capable of using their extremely technical and sophisticated equipment, as is found today.

I think that covers the main points that the Hon. Mr Griffin raised in his second reading contribution. I thank him for his support for the Bill, and hope the Council will adopt the second reading.

Bill read a second time.

ENVIRONMENT PROTECTION BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

The Environment Protection Bill is landmark legislation. It provides a framework amongst the most advanced in Australia to safeguard the essential life-supporting qualities of the South Australian environment.

The Bill sets out to promote and stimulate sustainable development and environmentally sound practices on the part of the vital wealth-generating sectors of the State, public authorities and the community as a whole. The Bill will foster a partnership between government and all sectors of the community necessary to achieve effective environmental protection and improvement. At the same time it sets out the essential backdrop of rules, policies and remedies to apply when environmental performance does not match agreed community expectations.

Environmental rules, offences, penalties and remedies are necessary but not in themselves effective in achieving the environmental goals sought. Collaborative planning and action to meet the challenges and address the shortcomings will be essential elements in reaching those goals.

The focus of the new South Australian Environment Protection Authority (EPA), established by the Bill, will be to work positively and constructively with industry and the community to achieve cost-effective pollution prevention, waste reduction and management.

In South Australia, just as nationally and globally, we recognise the importance of economic development and employment proceeding hand-in-hand with measures to protect the quality of life of the community and future generations. That quality of life is dependent on effective measures to:

- protect air quality from motor vehicle, factory and other emissions;
- protect water quality from discharges affecting rivers, catchments, marine and ground waters;
- guard against land contamination from landfills, industrial and other activities;
- protect the community from excessive noise; and
- to conserve natural resources by minimising industrial and domestic waste and encouraging recycling and the wise use of resources.

For the first time the Environment Protection Bill brings together these essential goals within a strategic framework provided by the principles of ecologically sustainable development (ESD). Those principles, incorporated into the objects of the Bill, mean that economic and environmental considerations will be integrated in addressing these so-called 'brown' environmental issues of pollution, waste, contamination and environmental harm generally. With a community now united in wanting to see economic and environmental progress, we can, by cost-effective environmental protection, promote economically and ecologically sustainable development. This ensures that the environment protection system also supports the South Australian economic development strategy.

To borrow a description coined by the former head of the Department, Dr Ian McPhail, this means 'wealth creation and environmental protection will be in line, not head-to-head'.

The Environment Protection Bill is not an extra layer of environmental law superimposed on existing legislation. The Bill replaces more than six existing Acts and licensing and approval systems. It provides instead a single, integrated and streamlined system of environmental protection. The Bill covers, in an holistic way, previously separate controls relating to clean air and ozone protection, the marine environment, inland and underground water resource protection, noise control, solid, liquid and hazardous waste management and beverage container recycling.

This integrated legislative approach to environmental protection, taking into account affects on land, air and water simultaneously, is the best path to effective environmental outcomes. But this fresh approach also means we can simplify the law, reduce the preoccupation with permit chasing by business, and abolish a series of separate statutory authorities numbering six in all.

Those benefits are consistent with the Government's agenda of public sector reform and will assist rather than impede the business sector. The Government Adviser on Deregulation concluded in his review of small business licensing that this Bill's streamlining of the current multiple licensing requirements will be beneficial to South Australian business.

The process culminating in this Bill has involved extensive consultation with environment, industry and community organisations beginning with a Green Paper published in 1991. This was followed by a White Paper and draft Bill released in August last year, along with the package of measures to finance the programs of the EPA. The draft Bill attracted eighty four submissions which demonstrated broad support for the EPA and the proposed legislation, with some reservations from sectors of industry.

Since that time, a wide round of consultation with companies, industry sectors and industry associations has ensured that previous reservations about the Bill, and the mode of operation to be adopted by the EPA, have been clarified and addressed. That dialogue and partnership, which will be a feature of the new arrangements, has been recognised, for example, by the General Manager of the SA Chamber of Commerce and Industry, Mr Lindsay Thompson, who has praised the consultative process undertaken and the commitment of staff of the Office of the EPA in addressing legitimate views and positive suggestions advanced by the business sector.

The result of those consultations is an Environment Protection Bill which is directed at effective environmental solutions and goals, and yet provides to industry the requisite degree of certainty and time to adjust current practices, plant and technologies to meet desired environmental outcomes.

As a result of this landmark initiative, we can look forward to progressively achieving the environmental improvements sought by government, environment groups and the wider community.

The Environment Protection Bill has been developed as part of a legislative reform package with the recently enacted Development Act 1993, and the Environment, Resources and Development (ERD) Court Act 1993. The respective systems of initial development authorisation and ongoing environmental oversight are linked, resulting in streamlining of approval and licensing requirements and greater certainty for environmentally sound developments. The Environment Protection Bill, together with the Development and ERD Court Acts, completes a major Government initiative in legislative reform consolidating fourteen Acts of Parliament into these three principal Acts and two associated Acts dealing with coastal and heritage matters.

Development proposals with the potential to pollute the environment or generate significant waste will be referred to the EPA by the relevant development approval body under the Development Act. The EPA will have an input into that initial development authorisation and may impose conditions or, in certain instances, veto proposals. This means that the EPA can take a vital preventative approach to pollution and waste at the stage when development proposals are being planned, designed and assessed for approval.

Where the EPA has agreed to a development authorisation, the applicant will be assured of receiving an environmental authorisation under the Environment Protection Bill. An environmental authorisation, such as a licence, provides for ongoing environmental oversight of

activities into the future. Conditions governing activities of environmental significance are adjusted periodically as scientific knowledge, environmental standards and expectations and technological advances to protect the environment change. The EPA will have an important role in seeing that environmental improvement is progressively achieved.

The Government's initiative in developing the EPA proposals has, in itself, had the welcome effect of stimulating industry and various public authorities to examine and improve their environmental performance. A range of companies and government agencies are undertaking environmental audits and waste minimisation audits, assessing their compliance with legal requirements, introducing best practice environmental management, negotiating environment improvement programs, and factoring in to their future investment and plant upgrading plans changes needed to meet environmental goals.

For its part, the Government's Cleaner Industries Demonstration Scheme is a tangible expression of commitment, through the Office of the EPA, to assist industry to make environmental progress. The Office, the Economic Development Authority and the Commonwealth Environment Protection Agency are each contributing $200 000 to the Scheme.

Positive environmental steps on the part of industry and public authorities will be recognised, encouraged and rewarded under the new legislation.

A range of measures in the Bill recognise and reward environmental planning initiatives and good practice by industry, and provide a greater degree of certainty for environmentally sound activities. These include:

- the entitlement for a business to propose its own environment improvement program together with a matching term for which its environmental authorisation should apply;
- encouragement for businesses to undertake voluntary environmental audits which would then be afforded legal protection;
- certainty that an environmental authorisation will be granted for activities approved under the Development Act, where the EPA has had an input and supported that approval;
- third party appeals being dealt with at the stage when development authorisation is granted, avoiding a second round of such appeals;
- the option for business to seek a single environmental authorisation covering their activities at various locations;
- greater certainty that the EPA will not 'shift the goalposts' set for industry by changing conditions under which they operate unless there is specific and substantial reason to do so;
- scope for industry to adjust and make environmental improvements over practicable time frames in line with investment in new processes, equipment and technologies; and
- capacity for the EPA to set differential fees reflecting the polluter pays principle, and to include an incentive component to reward environmental improvement.

Together, these measures mean an Environment Protection Bill at the forefront of environmental regulation in Australia, providing, in a range of ways, a comparative advantage for environmentally responsible businesses in South Australia. The Bill measures up well when assessed against the recent report of the Australian Manufacturing Council, The Environmental Challenge: Best Practice Environmental Regulation (June 1993), which emphasises the need to produce 'outcomes consistent with enhanced environmental performance and improved competitiveness'.

The Bill establishes the South Australian Environment Protection Authority as a statutory authority of six members.

The EPA's charter is to oversee the protection, restoration and enhancement of the quality of the environment having regard to the principles of ecologically sustainable development and the specific objects set out in the Bill.

The EPA has responsibilities independent of the Minister in relation to its reports and recommendations, its decision-making functions on environmental authorisations, such as licences and exemptions, and its enforcement responsibilities under the Bill.

The EPA will be supported in its work by the Office of the EPA, a group within the Department of Environment and Land Management formed by an amalgamation of departmental staff and former employees of the Waste Management Commission.

The specific functions of the EPA set out in the Bill include—

- preparing draft environment protection policies;
- contributing to the development and implementation of national environment protection measures;
- instituting or supervising environmental monitoring and evaluation programs;
- promoting the development of the environment management industry of the State; and
- encouraging and assisting in implementation of best practice environmental management, emergency planning, environment improvement programs and similar programs.

For the first time, this legislation requires that a South Australian State of the Environment report be prepared and published at least every five years. The EPA will be responsible for coordinating contributions and information from public authorities and for assessing and reporting to the Minister, the Parliament and the people of South Australia on the state of the environment. The range of matters to be reported on is specified in the Bill. The report will provide an assessment of progress towards environmental goals and significant issues and priorities that need to be addressed.

The membership of the EPA has been designed so that it has the requisite expertise, standing and credibility for such important responsibilities. It is not to be composed of members representing sectional interests or particular organisations.

A broadly-based, representative body called the Environment Protection Advisory Forum is also established to advise the EPA and the Minister on issues, proposals and policies under the Bill and to ensure that the views of a wide range of interested organisations are taken into account.

The membership of the Advisory Forum has been structured so that it includes representatives of the various sectors of industry affected by, or interested in, the measures and policies to be developed under the legislation. Its membership also includes representatives of environment and conservation organisations (including local community environment interests), the Local Government Association and the United Trades and Labour Council. State Government agencies with significant responsibilities in environmental protection, natural resources, economic development, public and environmental health and disaster prevention and planning are also represented.

Nominations for membership of the Forum must be sought from relevant organisations. As well as the Advisory Forum, there is provision for the EPA to establish specialist committees.

The framework of the Bill is provided by a series of objects which delineate the scope and purpose of the Bill. Reinforcing these objects, the Bill creates, for the first time, a general statutory environmental duty which requires us all to take reasonable and practicable measures to prevent or minimise harm to the environment from activity that pollutes the environment or produces wastes.

The Bill sets out the process for establishing environment protection policies which will include the specific requirements, standards, criteria and guidelines for activities with the potential to cause environmental harm from pollution or waste.

Initially, the State's environment protection policies will consist of the current requirements, standards and guidelines contained in various provisions of the Acts and regulations being replaced by this Bill. This will include those covering air and water quality, noise and waste management. The translation of those current requirements into environment protection policies is provided for by the transitional provisions in Schedule 2 of the Bill. Existing environmental standards are to be maintained in the initial set of environment protection policies.

Subsequent environment protection policies will be developed according to the consultative processes specified in the Bill. The policies will be considered by the Forum, the Minister and Cabinet and the Environment, Resources and Development Committee of Parliament. Once declared by the Governor, environment protection policies become disallowable statutory instruments under the Act.

The Bill also provides for policies to come into effect on an interim basis, prior to the consultative processes being undertaken, where there are good grounds for the policy to operate immediately. The processes of consultation and consideration of submissions would then follow. The process for establishing environment protection policies and interim policies is analogous to that used in the Development Act 1993 for development plans.

Special provision is made in the Bill for national environment protection measures to become South Australian environment protection policies. The Bill thereby provides the means by which South Australia will meet its obligations under Schedule 4 of the Inter-Governmental Agreement on the Environment entered into on 1 May 1992 by the Commonwealth, all State and Territory governments and the Australian Local Government Association. This Agreement provides for national environment protection measures directed at achieving greater consistency in environmental standards across Australia and effective environmental protection with allowance for more stringent State policies where appropriate.

Under the Agreement, national measures for the protection of the environment may cover—

- ambient air quality;
- ambient marine, estuarine and freshwater quality;
- noise related to protecting amenity where variations in measures would have an adverse effect on national markets for goods and services;
- general guidelines for the assessment of site contamination;
- the environmental impacts associated with hazardous wastes;
- motor vehicle emissions; and
- the re-use and recycling of used materials.

An extensive prior consultative process, which parallels that required in this Bill, is required for development of all national environment protection measures, including consideration of regional environmental differences and the impact of measures.

Under the Agreement, national measures will be decided upon by a two-thirds vote of the national ministerial body and will be disallowable by the Commonwealth Parliament.

Schedule 4 of the Agreement is to be given effect by complementary legislation in each jurisdiction and it is envisaged that the South Australian complementary legislation will be prescribed as the relevant national scheme laws for the purposes of this Bill.

Once this prescription is made, a national environment protection measure that comes into operation under such prescribed laws will automatically come into operation as an environment protection policy under the South Australian Environment Protection Act.

Until the Parliament of South Australia enacts the complementary legislation being developed to give effect to Schedule 4 of the Inter-Governmental Agreement on the Environment, the provisions of this Bill dealing with the application of national measures as State environment protection policy will have no effective operation. The complementary Commonwealth and State Bills to give effect to the Agreement are expected to be available for consideration late this year.

The Environment Protection Bill will also facilitate future collaboration and cooperation in various environmental endeavours on the part of local government authorities in matters such as recycling of waste and improved stormwater management.

The obligations of the South Australian Environment Protection Bill apply equally to public authorities and the private sector and the Crown is bound by its provisions. This includes the requirements—

- to comply with mandatory provisions of environment protection policies; and
- to obtain and conform with the conditions of an environmental authorisation (works approval, licence or exemption), if undertaking a prescribed activity of environmental significance listed in Schedule 1 of the Bill.

There are other significant features of the Bill to which I draw the attention of the House.

The Bill—

- establishes a single, integrated system of environmental authorisations for specified activities of environmental significance listed in Schedule 1 of the Act in place of the six licensing systems that currently apply (Clauses 36-57);
- invites industry to initiate their own environment improvement programs and undertake voluntary environmental audits (which would have legal protection) while enabling the EPA to require an audit in certain circumstances (Clauses 45, 59 and 43);
- provides that an environmental authorisation must be granted for development approved under the Development Act 1993 where the EPA has been consulted and has concurred with that approval (Clause 48);
- transfers regulatory responsibility for pollution of water to the EPA (Schedule 2, Clause 2); and provides for referral of applications within water protection areas to the Minister of Water Resources (Clauses 62-65);
- re-enacts SA's beverage container deposit and ozone protection systems (Clauses 66-79);
- provides for a general environmental duty (Clause 25) and general offences of causing environmental nuisance (Clause 83), material environmental harm (Clause 81) and serious environmental harm (Clause 80) and appropriate defences to a charge of a contravention (Clauses 85 and 125);
- provides for environmental protection orders (Clauses 94-96), clean-up orders to deal with environmental harm (Clauses 100-104), emergency powers and dispensations (Clause 106);
- provides applicants with a right of appeal against certain EPA decisions to the Environment, Resources and Development Court (Clause 107-109);
- provides for the EPA and any person who would have standing at common law to seek injunctions and other civil remedies through the ERD Court (Clause 105);
- allows the ERD Court to use mediation and conciliation mechanisms for the resolution of disputes and to make restraining orders (in the same way as the District Court) to prevent disposal of property that may be required to satisfy a judgement of the Court (amendment of ERD Court Act in Schedule 2, Clause 3 of the Bill);
- provides criminal penalties ranging from on-the-spot fines to a maximum $1 million for the most serious environmental harm in line with the maximum penalties set in the Acts being replaced (Clauses 80-85, 35);
- provides for corporate and related company liability, and, in common with numerous other SA Acts of a similar kind and comparable interstate laws, for directors to be liable in certain circumstances (Clauses 128-130, 125, 138) along with appropriate defences such as having complied with licence conditions or mandatory policies (Clause 85) or not having been negligent (Clause 125).

The Bill before the House does not deal with the matter of contaminated sites caused by previous polluting activity, or with related questions of financial liability for contaminated site remediation. These matters are currently the subject of a national discussion paper released under the auspices of the Australian and New Zealand Environment and Conservation Council. The Government will be developing policies and proposals for contaminated site matters over the next eighteen months, after which the necessary new provisions to be incorporated into the Environment Protection Act will be presented to Parliament.

As I said at the outset, this Environment Protection Bill is landmark legislation. It is forward-looking; it accommodates the anticipated development of greater consistency in environmental protection under national environment protection measures to the benefit of industry and the environment; it also takes a forward-looking approach to progressive achievement of environmental goals.

The Bill provides an effective, advanced and streamlined framework for environmental protection (in South Australia, together with an approach which will encourage a positive, constructive and collaborative partnership between government, industry and the wider community in the move towards economically and ecologically sustainable development.

I commend the Bill to the Council.

PART 1—PRELIMINARY

Clause 1—Short title

This clause is formal.

Clause 2—Commencement

This clause provides for the commencement of the measure on a date to be set by proclamation. Under the Acts Interpretation Act 1915 different provisions may be brought into force on different days.

Clause 3—Interpretation

This clause defines the terms used in the measure. In particular, the following terms are defined:

'amenity value' of an area refers broadly to all the qualities of an area that may be enjoyed by humans.

'environment' means land, air, water, living things, ecosystems, human made structures or areas and the amenity values of an area.

'environmental nuisance' means any adverse effect on an amenity value of an area caused by noise, dust, fumes, smoke or odour that unreasonably interferes with the enjoyment of the area by persons occupying land within, or lawfully resorting to, the area or an unsightly or offensive condition caused by waste.

'pollutant' means any solid, liquid or gas (or combination thereof) that may cause any environmental harm, and includes waste, noise, smoke, dust, fumes, odour and heat and anything declared by regulation to be a pollutant.

'pollute' means to discharge, emit, deposit or disturb pollutants or to cause or fail to prevent the discharge, emission, depositing, disturbance or escape of pollutants.

'prescribed activity of environmental significance' means an activity referred to in Schedule 1. The activities listed in that schedule are largely based on the sorts of industrial processes carried on by the persons licensed under the pollution licensing requirements of the Acts to be repealed by this measure. Schedule 1 may be amended by regulation.

Subclauses (2) and (3) define the classes of person who will be taken to be associates of another person.

Clause 4—Responsibility for pollution

Clause 4 provides that the occupier of a place or the person in charge of a vehicle will be responsible for pollution emanating from that place

or vehicle. This provision does not however affect the liability of any other person in respect of that pollution.

Clause 5—Environmental harm

Clause 5 defines the concept of 'environmental harm'.

Subclause (1) states that environmental harm includes potential harm.

Subclause (2) defines potential harm to include both harm that will occur in the future and harm that may occur in the future.

Subclause (3) defines 'material environmental harm' and 'serious environmental harm'.

Material environmental harm has occurred if—

- an environmental nuisance occurs that is of a high impact or on a wide scale; or
- environmental harm occurs resulting in actual or potential loss or damage to property and the value of that damage exceeds $5 000; or
- environmental harm occurs that involves actual or potential harm to the environment or to human health that is not trivial.

Serious environmental harm has occurred if—

- it involves actual or potential harm to the environment, or to human health, that is of a high impact or on a wide scale; or
- it results in actual or potential loss or property damage and the value of that damage exceeds $50 000.

Subclause (5) provides that harm may be taken to be caused by pollution despite the fact that it is the indirect result of pollution, or results from the combined effects of the pollution and other factors.

Clause 6—Act binds Crown

This measure binds the Crown in right of the State and as far as is legally possible in its other capacities, but provides that the Crown (as opposed to its agents) is not criminally liable under this measure.

Clause 7—Interaction with other Acts

Subclause (1) states that this measure does not derogate from the provisions of any other Act.

Subclause (2) states that the measure does not apply to circumstances to which the Environment Protection (Sea Dumping) Act 1984, the Pollution of Waters by Oil and Noxious Substances Act 1987 or the Radiation Protection and Control Act 1982 apply. The first two Acts are enacted as part of cooperative legislative schemes with the Commonwealth and States and for reasons of uniformity are to remain discrete from this consolidation of environmental controls. The Radiation Protection and Control Act is to continue to be administered as part of the Health portfolio.

Subclause (3) provides that this measure is subject to the provisions of the Pulp and Paper Mills Agreement Act 1958, the Pulp and Paper Mill (Hundreds of Mayurra and Hindmarsh) Act 1964 and the Roxby Downs (Indenture Ratification) Act 1982.

Subclause (4) provides that this measure does not apply in relation to—

- petroleum exploration activity under the Petroleum Act 1940 or the Petroleum (Submerged Lands) Act 1982; or
- wastes produced in the course of an activity, other than a prescribed activity of environmental significance (in relation to which an authorisation is required under this measure), authorised by a lease or licence under the Mining Act 1971, the Petroleum Act 1940 or the Roxby Downs (Indenture Ratification) Act 1982 when those wastes are produced and disposed of to land and contained within the area of the lease or licence; or
- wastes produced in the course of an activity other than a prescribed activity of environmental significance (in relation to which an authorisation is required under this measure) authorised by a lease under the Mining Act 1971 when those wastes are disposed of to land and contained within an adjacent miscellaneous purposes licence area under that Act.

Clause 8—Civil remedies not affected

Nothing in this measure affects a person's right to take civil action against another person. In particular, compliance with this measure does not necessarily indicate that a person has satisfied their common law duty of care in relation to others.

Clause 9—Territorial and extra-territorial application of Act

This measure covers the State's coastal waters and applies to acts or omissions of a person outside the State that cause pollutants to come within the State or that cause environmental harm within the State and that, if committed within the State, would constitute an offence against this measure.

PART 2—OBJECTS OF ACT

Clause 10—Objects of Act

This clause sets out the aims and philosophies of this measure.

Subclause (2) provides that the Authority, Forum and all persons and bodies involved in the administration of this measure must have regard to and seek to further the objects of this measure.

PART 3—AUTHORITY, FORUM AND FUND

DIVISION 1—ENVIRONMENT PROTECTION AUTHORITY

Clause 11—Establishment of Authority

This clause establishes the Environment Protection Authority ('the Authority') as a body corporate and an instrumentality of the Crown.

Subclause (4) provides that the Authority is subject to the direction of the Minister except where making a recommendation or report to the Minister or deciding on matters with respect to environmental or development authorisations under Part 6 or in relation to the enforcement of this measure.

Subclause (5) provides that any direction given by the Minister must be in writing.

Clause 12—Membership of Authority

This clause states that the Authority is to have six members, five of whom will be appointed by the Governor and one of whom will be a prescribed public servant (who will be the Deputy chairperson of the Authority).

The members appointed by the Governor will be persons with the environmental and industry expertise set out in subclause (2). One of these members will be appointed to chair the Authority.

Subclause (5) provides that the Governor may appoint deputies for members.

Clause 13—Functions of Authority

The Authority has the primary function of administering and enforcing the provisions of this measure to achieve environmental protection. Other functions of the Authority include the promotion of the objects of this measure amongst government bodies, the private sector and the public, the conducting of research and public education in relation to environment protection, encouragement of voluntary environmental audits and the regular review of environment protection policies.

Clause 14—Powers of Authority

The Authority has all powers that are necessary or expedient for the performance of its functions under this measure but in particular may seek expert advice and make use of the services of government employees (with the approval of the relevant Minister) or council employees (with the approval of the relevant council).

Clause 15—Terms and conditions of office

The chair of the Authority may be appointed for a term not longer than five years. Other appointed members may be appointed for a term not longer than two years. Appointed members may be removed for misconduct, neglect of duty, incapacity or failure to satisfactorily carry out duties. Remuneration of members is to be determined by the Governor.

Clause 16—Proceedings of Authority

Clause 16 provides for the procedures of meetings of the Authority and provides that the Authority must meet at least monthly.

Clause 17—Committees and subcommittees of Authority

Clause 17 provides that the regulations may prescribe that specified committees and subcommittees must be set up by the Authority. The Authority may also set up committees or subcommittees with the approval of the Minister.

Clause 18—Conflict of Interests

A member of the Authority or a member of a committee or subcommittee of the Authority who has a conflict of interests in relation to a matter must disclose that conflict and must not take any part in deliberations or decisions in relation to that matter. Failure to disclose such a conflict renders the member liable to a maximum penalty of division 6 imprisonment (1 year) or a division 6 fine ($4 000). A disclosure of interest must be recorded in the minutes of the Authority.

DIVISION 2—ENVIRONMENT PROTECTION ADVISORY FORUM

Clause 19—Establishment of Forum

This clause establishes the Environment Protection Advisory Forum ('the Forum').

Clause 20—Membership of Forum

The Forum is to consist of 20 members, 19 of whom will be appointed by the Governor and one of whom will be the deputy chair of the Authority.

Subclause (2) specifies the interests that are to be reflected in the membership of the Forum. Members will include a balance of representatives of industry, environmental, union and governmental groups.

Subclause (4) provides that the chair and deputy chair of the Forum will be chosen by the Governor.

Subclause (7) provides that members may nominate deputies.

Clause 21—Function of Forum

The function of the Forum is to advise the Authority and the Minister of the views of interested organisations and of the community in relation to the protection, restoration and enhancement of the environment within the scope of this measure.

Clause 22—Terms and conditions of office

A member of the Forum may be appointed for not more than three years and is entitled to the allowances and expenses determined by the Governor. A member may be removed for misconduct, neglect of duty, incapacity or failure to satisfactorily carry out his or her duties.

Clause 23—Proceedings of the Forum

The Forum is to meet at least once in every three months. Subject to the directions of the Authority, the Forum may determine its own procedures.

The Forum must keep minutes of its proceedings which are to be available to the public.

DIVISION 3—ENVIRONMENT PROTECTION FUND

Clause 24—Environment Protection Fund

Clause 24 establishes the Environment Protection Fund ('the Fund') which is to be comprised of the monies referred to in subclause (3) including financial assurances and a prescribed percentage of the monies paid in penalties and fees.

The Fund may be applied for purposes including the making of payments under environment performance agreements (see clause 60) and to fund investigations, research, pilot programs or education and training in relation to the environment and its protection.

PART 4—GENERAL ENVIRONMENTAL DUTY

Clause 25—General environmental duty

This clause imposes a general environmental duty on persons to take all reasonable and practicable measures to prevent or minimise environmental harm arising out of a polluting activity. Subclause (2) sets out criteria for determining what constitutes 'reasonable and practicable' measures. These criteria include environmental, financial and technical considerations.

Failing to comply with the general environmental duty does not constitute an offence in itself but may constitute grounds for the issue of a environment protection order or clean-up order or clean-up authorisation under Part 10 or for the making of an order of the Court under Part 11. Conditions of authorisations may also be framed to secure compliance with this duty.

The issue of environment protection orders or clean-up orders and conditions of authorisations are appealable to the Environment, Resources and Development Court.

Subclause (3) provides that it will be a defence in criminal proceedings or civil proceedings (proceedings for civil remedies under Part 11) where it is alleged that a person failed to comply with the general environmental duty that—

- the pollution concerned was dealt with in a mandatory provision of a policy or in an environmental authorisation and did not exceed the limits specified in the policy or authorisation; or
- a policy or authorisation stated that compliance with the policy or authorisation would constitute compliance with the duty and the person complied with the policy or authorisation.

PART 5—ENVIRONMENT PROTECTION POLICIES

DIVISION 1—GENERAL

Clause 26—Interpretation

This clause provides that the procedures set out in this Part in relation to a draft environment protection policy apply equally to a draft amendment or draft revocation of an existing environment protection policy.

Clause 27—Nature and contents of environment protection policies

Subclause (1) provides that environment protection policies may be made for any purpose directed towards securing the objects of this measure.

General provisions of environment protection policies will be more specific than the general duty established under clause 25. A policy may form the basis for decisions of the Authority and may, for example, be a factor in determining the conditions subject to which a licence will be granted. Policies may also be enforced by the issuing of an environment protection order under clause 94 directing a person to act in a specified manner consistent with the policy or face prosecution.

Under subclause (2)(c), a policy may provide that it may be enforced by the issue of an environment protection order under Part 10.

Policies may contain mandatory provisions which will largely take the place of regulations currently in place under the various Acts to be repealed under this measure. Breach of a mandatory provision of a policy constitutes an offence under clause 35.

A three tiered penalty system is created in relation to breaches of mandatory provisions of environment protection policies. Penalties are set out in clause 35. Subclause (3)(a) provides that each mandatory policy must specify the level of penalty which applies to each of its requirements.

Subclause (3)(b) provides that a policy may, on its terms, specify that a person may not be granted an authorisation exempting them from compliance with its provisions or may limit the circumstances in which such an exemption may be granted.

Subclause (4) provides that policies may incorporate standards prepared by a body as in force from time to time and may allow matters to be determined at the discretion of the Authority.

Clause 28—Normal procedure for making policies

This clause sets out the normal procedure that will be followed in making environment protection policies. The procedure is analogous to that provided in the Development Act in relation to development plans.

Subclause (3) provides that the Authority must, by newspaper advertisement, notify the public of its intention to prepare a draft environment protection policy.

Subclause (5) provides that once the draft policy and accompanying explanatory report have been prepared, these documents must be referred to the Forum and to any public authority particularly affected in the matter.

At the same time the Authority must, as provided in subclause (6), publicise the proposed making of a policy by *Gazette* and newspaper advertisement which will advise that interested persons may obtain copies of the draft and will invite written submissions from the public which will be available for public perusal. The newspaper advertisement will specify a date for a public hearing into the making of the policy (although under subclause (7) the Authority may, with the approval of the Minister, dispense with the necessity of holding a hearing if satisfied that it is not warranted in the circumstances).

Once the comments of the Forum, relevant public authorities and the public have been received, the Authority may modify the draft and will then refer the draft to the Minister who may accept, alter or reject the policy. The draft will then be referred to the Governor under subclause (12) who may declare the policy to be authorised and on gazettal the policy will come into operation on a date specified in the gazettal.

Clause 29—National environment protection measures automatically operate as policies

Clause 29 sets out the means by which South Australia will meet its obligations under Schedule 4 of the Inter Governmental Agreement on the Environment entered into on 1 May 1992 by the Commonwealth and all State and Territory governments. This agreement provides for national environment protection measures directed at achieving greater consistency in environmental standards across Australia and effective environmental protection.

Schedule 4 of the Agreement is to be given effect by complimentary legislation in each jurisdiction and it is envisaged that the South Australian complimentary legislation will be prescribed as the relevant national scheme laws for the purposes of this measure.

Once this prescription is made, a national environment protection measure that comes into operation under such prescribed laws will automatically come into operation as an environment protection policy under this Division without the authorisation of the Governor.

Subclause (2) provides that an environment protection policy that comes into operation by virtue of subclause (1) is to be treated as a policy that is to be taken into account by the Authority in determining any matters for the purposes of this measure to which the policy has relevance and may be given effect to by the issuing of environment protection orders under Part 10.

Subclause (3) provides that an environment protection policy that comes into operation by virtue of this clause cannot be varied or revoked except by a further national environment protection measure or by a more stringent environment protection policy made in the normal way under this Division.

Clause 30—Simplified procedure for making certain policies

A simplified procedure exists in the case of the adoption of a policy prepared by a body prescribed for the purposes of this clause. This procedure will cater for the adoption of standards and for the adoption of other documents where public consultation will have already occurred (such as a Standards Australia measure or an Australian Design Rule).

Such a draft policy may be referred directly to the Governor who may authorise and gazette the policy.

Clause 31—Reference of policies to Environment, Resources and Development Committee of Parliament

This clause sets out a procedure for Parliamentary consideration of environment protection policies that is analogous to that provided in the Development Act in relation to development plans.

Any policy that has been authorised by the Governor must be referred by the Minister to the Environment, Resources and Development Committee of the Parliament within 28 days. The Environment, Resources and Development Committee may either accept, object to or suggest amendments to a policy.

If an amendment is suggested by the Committee, the Minister may either recommend to the Governor that the amendment be made in which case the Governor may make the amendment, or the Minister may report to the Committee that the Minister is unwilling to make the suggested amendment in which case the Committee may either insist on the amendment or accept the policy as originally proposed.

If the Environment, Resources and Development Committee objects to a policy, copies must be laid before both Houses of Parliament and if either House resolves to disallow the policy, it ceases to have effect.

Subclause (9) provides that where a policy is disallowed by either House of Parliament, notice of this fact must forthwith be published in the *Gazette*.

Clause 32—Interim policies

The normal procedure for the making of policies set out in clause 28 is necessarily a time consuming one and it might in some cases be necessary to bring a policy into force immediately. This clause allows the Governor by notice in the *Gazette* to declare the interim operation of a policy as soon as the matter is referred to the Forum under clause 26(3)(a).

An interim policy will operate for one year unless sooner terminated by the Governor, disallowed by the Parliament or suspended by another policy coming into operation under this Division.

Clause 33—Certain amendments may be made without following normal procedure

The Minister may by notice in the *Gazette* amend a policy to correct an error, to make a change of form rather than substance or in order to make a change of a prescribed kind and such an amendment comes into operation on the day specified in the notice.

Clause 34—Availability and evidence of policies

The Authority is to keep copies of each environment protection policy and of each standard or other document referred to in an environment protection policy available for inspection and purchase by the public.

The Authority may, for evidentiary purposes, certify a copy of a policy or standard as a true copy of the policy, standard or other document.

DIVISION 2—CONTRAVENTION OF MANDATORY PROVISIONS

Clause 35—Offence to contravene mandatory provisions of policy

This clause creates offences of breaching a mandatory provision of an environment protection policy. The offences fall into two categories, the more serious of which involves proof of recklessness or intention. Penalties on breach depend on which penalty level is specified in the policy (see clause 27).

The maximum penalties are as follows:

Intentional or reckless breach:

Category A: Body corporate—$250 000.

Natural person—$120 000 or Division 5 imprisonment (2 years) or both.

Category B or C: Division 3 fine ($30 000).

Other breaches:

Category A: Body Corporate—$120 000.

Natural person—Division 1 fine ($60 000).

Category B: Division 6 fine ($4 000).

Category C: Division 9 fine ($500).

Expiation fees (for a breach that is not intentional or reckless):

Category B: Division 6 fee ($300).

Category C: Division 9 fee ($100).

Subclause (4) provides that where a person is charged under subclause (1) with reckless or intentional contravention of a mandatory provision of a policy, the court may, in the alternative, find the person guilty of a lesser offence that does not involve a mental element.

PART 6—ENVIRONMENTAL AUTHORISATIONS AND DEVELOPMENT AUTHORISATIONS

DIVISION 1—REQUIREMENT FOR WORKS APPROVAL

Clause 36—Requirement for works approval

This clause provides for a system of works approvals governing the construction and alteration of structures or plant proposed to be used for a prescribed activity of environmental significance (an activity referred to in schedule 1). The aim of the system of works approvals is to ensure that works are initially set up in a manner that will lead to better environmental performance hence avoiding the need for expensive remedial action in relation to inadequately constructed works. A person who carries out works without such a works approval is liable to a maximum penalty, in the case of a body corporate, of a fine of $120 000 and, in the case of a natural person, of a division 1 fine ($60 000).

Subclause (2) provides that a works approval will not be required in relation to an activity authorised by a licence. In such a case, construction and alteration of works will be governed by conditions contained in the licence. A works approval will also not be required for works for which a development authorisation is required under the Development Act.

DIVISION 2—REQUIREMENT FOR LICENCE

Clause 37—Requirement for licence

A person must not undertake a prescribed activity of environmental significance (an activity referred to in schedule 1) unless the person holds a licence under Part 6. The maximum penalty on breach is, in the case of a body corporate, a fine of $120 000 and, in the case of a natural person, a division 1 fine ($60 000).

DIVISION 3—EXEMPTIONS

Clause 38—Exemptions

A person may obtain an environmental authorisation (an exemption) exempting the person from the application of a specified provision of this measure in respect of a specified activity. An exemption may be conditional and may be issued for a limited term.

DIVISION 4—GRANT, RENEWAL CONDITIONS AND TRANSFER OF ENVIRONMENTAL AUTHORISATIONS

Clause 39—Applications for environmental authorisations

This clause provides for the manner in which an environmental authorisation (a licence, works approval or exemption) is to be applied for and provides that a prescribed application fee may be charged.

Clause 40—Public notice and submissions in respect of applications for environmental authorisations

The Authority must, on receipt of an application for the grant of an environmental authorisation, publish notice of the application in a newspaper and invite interested persons to make written submissions in relation to the application. Public notice is not required in respect of an application for an exemption from the application of a provision of Division 3 of Part 8 (in relation to ozone protection) or of an application for a licence to conduct a waste transport business (category B) as described in Part A of Schedule 1.

Clause 41—Grant of environmental authorisations

The Authority must, by written notice, advise an applicant of its decision as to whether to grant or refuse an authorisation and, in the case of a refusal of a licence or works approval, must include in the notice the reasons for the refusal.

The Authority must give notice of the granting of an exemption in the *Gazette*.

Clause 42—Authorisations may be held jointly

An environmental authorisation may be held jointly by two or more persons but where so held, those persons are jointly and severally liable where any civil or criminal liability attaches to the holder of the authorisation under this measure.

Clause 43—Time limit for determination of applications

If the Authority has not determined an application for an authorisation within the prescribed time, the applicant may, after having given the Authority 14 days notice, apply to the Environment, Resources and Development Court for an order setting the time in which the Authority must make its decision.

Clause 44—Term and renewal of environmental authorisations

An authorisation remains in force according to its terms and, subject to the terms of the authorisation, must be renewed on due application.

Subclause (6) provides that the Authority may renew an authorisation of its own motion, including after the expiry of the authorisation, if it is necessary for the protection or restoration of the environment that the holder continue to be bound by its conditions. If this were not the case, a person might be released from the duty to fulfil the conditions on an authorisation by lapse of time.

Clause 45—Applicants may lodge proposed environment improvement programs

An applicant for an authorisation may, with the application for the authorisation, lodge with the Authority a proposed environment

improvement program to be carried out by the applicant. A program may be lodged—

- in association with an application for an exemption from compliance with the general environmental duty or an exemption from a mandatory provision of an environment protection policy, in which case the application must consist of a program setting out action to be taken within specified periods to achieve compliance with the general environmental duty or with the mandatory provisions, as the case may be; or
- in association with an application for the grant or renewal of a licence, in which case the application may consist of a program setting out action to be taken to achieve compliance with provisions of an environment protection policy that are to come into operation on a specified future day or may consist of a program for the protection, restoration or enhancement of the environment beyond standards required by or under this measure.

Clause 46—Conditions

The Authority may grant an environmental authorisation subject to conditions contemplated in this measure or necessary or expedient for the purposes of this measure. Imposition, revocation or variation of a condition must be notified in writing.

Subclause (3) provides that a condition of an authorisation may be imposed or varied on the granting or renewal of an authorisation, at any time by consent of the holder of the authorisation or where the imposition of the condition is made necessary because of the contravention of this measure by the holder of the authorisation, the risk of serious or material environmental harm, because of the making or amendment of an environment protection policy or in any other circumstances specified in the conditions of the authorisation.

A condition of an environmental authorisation may be revoked at any time.

A person who contravenes a condition of an authorisation is guilty of an offence and is liable to a maximum penalty, in the case of a body corporate, of a fine of $120 000 or, in the case of a natural person, of a division 1 fine ($60 000).

Clause 47—Public notice and submissions in respect of proposed variations of conditions

The Authority must notify the holder of the authorisation of the reasons for the proposed variation and must invite the holder to make written submissions within a period specified in the notice.

The Authority must also place a newspaper advertisement setting out the reasons for the proposed variation and inviting interested persons to make written submissions in relation to the proposed variation.

Subclause (3) provides that notice of a proposed variation is not required to be given to the holder of the environmental authorisation if the proposed variation is made with consent of the holder or if it constitutes the revocation of a condition.

Subclause (4) provides that public notice of a proposed variation is not required if the proposed variation does not result in any relaxation of the requirements for the protection or restoration of the environment imposed on the holder of the environmental authorisation.

Subclause (5) sets out further classes of variation in relation to which notice is not required.

Clause 48—Criteria for grant and conditions of environmental authorisation

This clause sets out the criteria that the Authority is to apply in determining applications for authorisations.

In general, subclause (1) provides that the Authority must have regard to the objects of this measure, the general environmental duty, any relevant environment protection policies, the terms of any relevant environmental impact statement, assessment report and development authorisation under the Development Act, relevant environment improvement programs or performance agreements and submissions of the public and of the holder of the authorisation.

Subclause (2) provides however that a person who has been granted a works approval or, on an application referred to the Authority in accordance with the Development Act 1993, a development authorisation under that Act specifically authorising the construction or alteration of a building or structure for use for a prescribed activity of environmental significance and who has complied with the conditions of the works approval or development authorisation imposed by the Authority, must be granted a licence by the Authority authorising the person to use the building or structure for that prescribed activity of environmental significance.

Notwithstanding subclause (2), the Authority may refuse to grant a licence to an unsuitable applicant and in particular, an applicant with a record of environmental contraventions. If the applicant is a body corporate, the Authority may take into account the previous records of directors of the body corporate.

Clause 49—Annual fees and returns

Where the term of an authorisation is greater than two years and the authorisation is not of a prescribed class, the holder must pay an annual fee to the Authority in relation to the authorisation and must lodge an annual return. The aim of this clause is to maintain adequate records in relation to long term authorisations and to spread the burden of fee payment over the term of the authorisation.

Clause 50—Transfer of environmental authorisations

This clause provides that the Authority has the same power to screen, on the grounds of suitability, persons who might obtain an authorisation by transfer as it has in relation to the initial grant of an authorisation under clause 48.

Clause 51—Death of person holding environmental authorisation

This clause provides for the temporary transfer of an authorisation to a person approved by the Authority where the holder of the authorisation dies.

DIVISION 5—SPECIAL CONDITIONS

This Division sets out a number of specific conditions that may be applied to environmental authorisations.

Clause 52—Conditions requiring financial assurance to secure compliance with Act

This clause provides that an authorisation may, where the activity involves a significant degree of risk of environmental harm, where the holder of the authorisation has contravened this measure or in other prescribed circumstances, be subject to a condition that the holder lodge a bond (supported by a guarantee or insurance policy) or sum of money with the Authority to ensure that, should the holder cause environmental damage, there will be sufficient funds in hand to apply towards loss suffered as a result of the damage.

Subclause (4) provides for a bond or pecuniary sum to be paid into the Environment Protection Fund. On the expiry of the authorisation, the bond or sum will be returned to the holder with interest when it is clear that there is no residual harm to be dealt with.

Where the holder of an authorisation fails to satisfy the conditions of discharge or repayment of the bond or pecuniary sum, the Authority—

- may determine that the whole or part of the amount of the bond or pecuniary sum is forfeited to the Environment Protection Fund;
- may apply from the Fund any money so forfeited in payments for or towards the costs or loss suffered by the Authority,a public authority or other person as a result of the failure by the holder of the authorisation;
- may, in the case of a pecuniary sum, on the expiry or termination of the authorisation and when satisfied that there is no reasonable likelihood of any or further valid claims in respect of costs, expenses, loss or damage incurred or suffered as a result of the failure of the holder of the authorisation, repay any amount of the pecuniary sum that has not been repaid or forfeited to the Fund.

Clause 53—Conditions requiring tests, monitoring or audits

A condition of an authorisation may require the holder to undertake self-monitoring and to make specified reports to the Authority or to carry out an environmental audit and compliance program. The Authority may require changes to be made in management practices and technical systems on the basis of an audit and compliance program carried on by the holder of the authorisation.

Subclause (3) provides that requirements that the holder of an authorisation carry out an environmental audit and compliance program may only be imposed on the holder where the holder has contravened this measure.

Clause 54—Conditions requiring preparation and publication of plan to deal with emergencies

A condition of an authorisation may require the holder to assess the risk of environmental emergencies that might arise out of the holder's activities and to prepare a plan of action to be taken in the event of such an emergency occurring. The condition may require the publication of the plan or an outline of the plan.

Clause 55—Conditions requiring environment improvement program

The holder of an authorisation may be required to prepare an environment improvement program and to comply with such a program as approved by the Authority. The aim of such a program is to ensure orderly and progressive improvements in environmental standards and to ensure that, when new standards are to be applied in the mandatory provisions of a policy, holders of authorisations will be in a position to meet those standards.

DIVISION 6—SUSPENSION, CANCELLATION AND SURRENDER OF ENVIRONMENTAL AUTHORISATIONS

Clause 56—Suspension or cancellation of environmental authorisations

The Authority may suspend or cancel an authorisation where the holder has ceased to undertake the activity authorised, has obtained the authorisation improperly, has contravened the measure or a requirement imposed under the measure or, in cases specified by regulation, has been guilty of other misconduct. The holder of an authorisation, or, if the holder is a body corporate, a director of the body corporate, may also be disqualified from holding further environmental authorisations.

Before the Authority acts under this clause, the Authority must notify the holder in writing of its reasons for the proposed suspension and allow the holder at least 14 days within which to make submissions in relation to the proposed suspension.

Clause 57—Surrender of environmental authorisations

An authorisation may only be surrendered with the approval of the Authority. On application for such a surrender, the Authority may apply further conditions necessary for the protection or restoration of the environment and, in such a case, will approve the surrender on the fulfilment of those conditions.

DIVISION 7—CRITERIA FOR DECISIONS OF AUTHORITY IN RELATION TO DEVELOPMENT APPLICATIONS

Clause 58—Criteria for decisions of Authority in relating to development applications

This clause provides that where the Authority is considering a matter referred to it under the Development Act, it must have regard to and seek to further the objects set out in this measure, and have regard to the general environmental duty and any relevant environment protection policies.

PART 7—VOLUNTARY AUDITS AND ENVIRONMENTAL PERFORMANCE AGREEMENTS

Clause 59—Protection for information produced in voluntary environmental audits

This clause provides that a person may apply to the Authority in advance for protection against the seizure or use in evidence against the person of certain documents to be produced in the process of undertaking a voluntary environmental audit.

Subclause (3) provides that the Authority may, in its discretion, issue to an applicant for such protection a determination conferring the protection of this clause in respect of a report of the results of the audit program but subject to such conditions as the Authority thinks fit, which may include—

- conditions limiting the kinds of information that may be included in the report;
- conditions requiring that the report be compiled and kept in a specified manner and form;
- conditions requiring the person to lodge with the Authority evidence (supported, if the Authority so requires, by statutory declaration) as to the time of completion of the audit program and as to the compilation and keeping of the report.

Subclause (4) provides that information that is approved as attracting the privilege is not admissible in evidence against the person in any proceedings under this measure and that it may not be seized or obtained for the purposes of the administration or enforcement of this measure.

Subclause (5) creates an offence of knowingly claiming the protection of this clause in relation to information to which the protection does not apply. A maximum penalty of a division 2 fine ($40 000) applies on breach.

Finally, the clause makes it clear that the provision for protection of voluntary audit results does not limit or derogate from a person's obligation to report the results of tests or monitoring, or the results of an environmental audit and compliance program, as required by conditions of an environmental authorisation or the obligation of a person to report an incident causing or threatening serious or material environmental harm.

Clause 60—Environment performance agreements

Clause 60 provides that the Authority may, with the prior approval of the Minister, enter into environment performance agreements with any person. An environment performance agreement is a binding contract between the Authority and another party (which may be a Minister, a council or other public authority or any other person) under which the party agrees to undertake environmental protection, restoration or enhancement programs aimed at securing the objects of this measure but which the party is not required to undertake under the terms of this measure.

Under the clause, the Authority may offer incentives in the form of financial assistance (with the agreement of the Minister) or remission of State or council rates and taxes (with the approval of the Treasurer or council respectively) encouraging parties to make such agreements. Incentives may not include relief of a party from their duties under this measure or any other Act.

Clause 61—Registration of environment performance agreements in relation to land

Where an environment performance agreement relates to land, it may, with the consent of all persons having an interest in the land (not being parties to the agreement), be registered with the Registrar-General. The agreement is then binding on succeeding owners and occupiers of the land.

PART 8—SPECIAL ENVIRONMENT PROTECTION PROVISIONS

DIVISION 1—WATER QUALITY IN WATER PROTECTION AREAS

This Division provides for the coordinated operation of this measure and the Water Resources Act.

Clause 62—Interpretation

This clause defines the term 'water protection area' to mean a water protection area for the purposes of Part V of the Water Resources Act 1990 and defines 'Water Resources Minister' to means the Minister administering that Act.

Clause 63—Authorised officers under Water Resources Act

This clause deems authorised officers under the Water Resources Act to be authorised officers for the purposes of this measure, subject to any conditions placed on their powers by the Authority with the approval of the Minister and the Water Resources Minister.

Clause 64—Water Resources Minister may exercise Authority's enforcement powers

The Water Resources Minister may exercise the enforcement powers of the Authority for the protection of water quality within a water protection area.

Clause 65—Certain matters to be referred to Water Resources Minister

Applications for environmental authorisations in respect of activities to be undertaken in a water protection area must be referred to the Water Resources Minister. Regulations may be made specifying the weight that is to be given to the Water Resources Minister's response by the Authority.

DIVISION 2—BEVERAGE CONTAINERS

This Division reproduces in simplified form the controls on beverage containers currently contained in the Beverage Container Act 1975.

Clause 66—Interpretation

This clause defines a number of terms. 'Category A' and 'category B' containers are defined as containers approved by the Authority as category A and category B containers respectively. Category A containers are to be returnable at point of sale whereas category B containers are to be returnable at collection depots.

Clause 67—Division not to apply to certain containers

As is currently the case under the Beverage Container Act, glass wine and spirit bottles will not come under the ambit of the measure, although glass bottles containing wine-based beverages, or the new analogously defined class of spirit-based beverages, will be covered.

Clause 68—Exemption of certain containers by regulation

Classes of containers may be exempted from this Division or specified provisions of this Division by regulation.

Clause 69—Approvals, markings, etc., required before sale or supply of beverages in containers

A retailer is prohibited from selling a beverage in a container unless it has been approved as a category A or B container or both and has been marked in the appropriate manner and, in the case of a category B container, unless the beverage is sold from within a collection area and the appropriate sign is displayed on the premises (if required). A maximum penalty of a division 7 fine ($2 000) a division 7 expiation fee ($200) applies on breach.

A person who supplies a retailer or consumer with containers that do not satisfy the requirements of this clause as to marking and approval as category A or category B containers will be liable to a maximum penalty of a division 6 fine ($4 000) or to a division 6 expiation fee ($300).

Subclause (4) provides for proof of the fact that premises were not within a collection district.

Clause 70—Grant, variation or revocation of approvals

This clause sets out the means by which approvals to be are applied for and granted. Under the Beverage Container Act approvals are

granted by the Minister. Under the proposed new regime, approvals are to be granted by the Authority and notified in the *Gazette*.

Subclause (1) provides that applications are to be made in a form approved by the Authority and accompanied by the prescribed fee.

Subclause (3) provides that the Authority may refuse to approve a container unless it is satisfied that proper arrangements have been made to ensure that containers of that class will be returned and recycled or properly disposed of. The Authority must give reasons for refusal to approve a container.

Subclause (6) provides that conditions of an approval may be amended by notice in the *Gazette* and subclause (8) provides that an approval may be revoked if the approval has been contravened.

Clause 71—Retailers to pay refund amounts for certain empty category A containers

A retailer who sells beverages in a particular class of category A containers must accept the return of clean used containers of that class and must pay the appropriate refund. A maximum of a division 7 fine ($2 000) or a division 7 expiation fee ($200) applies on breach.

Subclause (3) makes provision as to proof of the fact that a retailer sells beverages in a container of a particular class.

Clause 72—Collection depots to pay refund amounts for certain empty category B containers

A person operating or in charge of a collection depot must accept, and pay the appropriate refund in respect of, clean used category B containers that are returned to the depot and for which the depot is approved by the Authority as a collection depot. A maximum penalty of a division 7 fine ($2 000) or a division 7 expiation fee ($200) applies on breach.

Clause 73—Certain containers prohibited

Ring pull containers are to be prohibited as is currently the case under the Beverage Container Act.

Specified glass containers may be also be prescribed as prohibited as is currently the case under the Beverage Container Act.

A retailer must not sell a beverage in a prohibited container. A maximum penalty of a division 7 fine ($2 000) a division 7 expiation fee ($200) applies on breach.

A person who supplies a retailer or consumer with a beverage in a prohibited container will be liable to a maximum penalty of a division 6 fine ($4 000) or to a division 6 expiation fee ($300).

Clause 74—Evidentiary provision

Clause 74 provides that an allegation in a complaint that a specified liquid was a beverage or that a specified container was a glass container, is, in the absence of proof to the contrary, proof of the matter so alleged.

DIVISION 3—OZONE PROTECTION

This Division replaces the ozone protection provisions of the Clean Air Act 1984 without making any changes of substance to the regime established under that Act.

Clause 75—Interpretation

This clause defines a number of terms for the purposes of the Division. 'Prescribed substance' is defined to mean a substance referred to in schedule 1 of the Commonwealth Ozone Protection Act 1989 or a substance prescribed by regulation.

Clause 76—Prohibition of manufacture, use, etc., of prescribed substances

A person must not manufacture, store, sell, use, service or dispose of or allow the escape of a prescribed substance, or a product containing a prescribed substance, unless permitted to do so under the regulations or an exemption under Part 6 of this measure, subject to a maximum penalty, in relation to a body corporate, of a division 1 fine ($60 000) or, in relation to a natural person, of a division 3 fine ($30 000).

Clause 77—Authority may prohibit sale or use of certain products

The Authority may, by notice in the *Gazette*, prohibit the sale or use in the State of products manufactured inside or outside the State using a prescribed substance. A person who fails to comply with such a notice is subject to a maximum penalty, in relation to a body corporate, of a division 1 fine ($60 000) or, in relation to a natural person, of a division 3 fine ($30 000).

Clause 78—Labelling of certain products

This clause allows the making of regulations prescribing labelling for certain products and provides that the manufacturer of such products must not sell them without that labelling. A person who fails to comply with this provision is subject to a maximum penalty, in relation to a body corporate, of a division 1 fine ($60 000) or, in relation to a natural person, of a division 3 fine ($30 000).

Clause 79—Requirement for grant of exemptions in certain cases

Where a person applies for an exemption under Part 6 from a provision of this Division, the exemption granted to the applicant by the Authority must be consistent with the terms of any licence or exemption held by that person under the Commonwealth Ozone Protection Act 1989.

PART 9—GENERAL OFFENCES

Clause 80—Offences of causing serious environmental harm

Clause 80 contains the general offences of causing serious environmental harm. These offences are the most serious under the measure and this is reflected in the maximum applicable penalty of a fine of $1 000 000.

The term 'serious environmental harm' is defined in clause 5 as meaning actual or potential harm to the environment or to the health or safety of human beings which is of a high impact or on a wide scale or which results in actual or potential loss or property damage of an amount exceeding $50 000.

In order to prove the most serious offence, the prosecution will have to prove that serious environmental harm has been caused, that the polluting act was committed intentionally or recklessly and that the perpetrator knew that this pollution would or might result in serious environmental harm. The maximum penalty for this offence is a fine of $1 000 000 in the case of a body corporate or, in the case of a natural person, a fine of $250 000 or division 4 imprisonment (4 years).

A lesser offence requires the Authority to prove serious environmental harm but does not require proof of any mental element on the part of the offender. The maximum penalty in relation to this offence is, in the case of a body corporate, a fine of $250 000 and, in the case of a natural person, a fine of $120 000.

The provisions of clause 125 (which includes a general defence of non-negligence) should be noted in relation to this and all other offences under this measure. The defence under clause 85 also applies to the offences under this Part.

Subclause (3) provides that a court may find a person guilty of the lesser offence that does not involve a mental element despite the fact that the person has been charged with the offence involving the mental element.

Clause 81—Offences of causing material environmental harm

Clause 81 creates offences of causing material environmental harm which are parallel to the offences created in clause 80. Clause 5 provides that material environmental harm has occurred if—

- an environmental nuisance occurs that is of a high impact or on a wide scale; or
- environmental harm occurs resulting in actual or potential loss or damage to property of an amount exceeding $5 000; or
- the environmental harm that occurs involves actual or potential harm to the environment or to human health that is not trivial.

While penalties for the offence of causing material environmental harm are less than those in relation to serious environmental harm, they are still significant. A body corporate that knowingly causes such harm it is liable to a maximum fine of $250 000. A natural person in the same situation will be liable to a maximum fine of $120 000 or to division 5 imprisonment (2 years). Where no mental element is proven, a body corporate will be liable to a maximum fine of $120 000 and a natural person to a maximum penalty of a division 1 fine ($60 000).

Subclause (3) provides that a court may find a person guilty of the lesser offence not involving a mental element despite the fact that the person has been charged with the offence involving the mental element.

Clause 82—Alternative finding

If a person is charged with causing serious environmental harm and the court is satisfied only that the person caused material environmental harm, the court may proceed to find the defendant guilty of the latter offence without new proceedings being brought.

Clause 83—Offence of causing environmental nuisance

Clause 83 provides that where it is proved that a person caused an environmental nuisance (note definition in clause 3) by polluting the environment intentionally or recklessly and the person knows that such pollution will or might cause an environmental nuisance, the person will be guilty of an offence punishable by a maximum penalty of a division 3 fine ($30 000).

Examples of such conduct would be the intentional dumping of waste or emission of noise or odour despite the knowledge that it is or might be upsetting residents or others in the vicinity.

It will later be seen that environmental nuisances will be dealt with largely by the issue of environment protection orders.

Clause 84—Notification of incidents causing or threatening serious or material environmental harm

Where an incident occurs arising from a person's activity and that incident causes or creates a risk of serious or material environmental harm resulting from pollution, the person must notify the Authority

unless the person has a reasonable excuse for not doing so (defined in subclause (2)). Failure to so notify the Authority renders a body corporate liable to a maximum penalty of a fine of $120 000 or, in the case of a natural person, a division 1 fine ($60 000).

Subclause (2) provides that a person is not required to notify the Authority of such an incident if the person has reason to believe that the incident has already come to the notice of the Authority, but a person is required to notify the Authority of such an incident despite the fact that to do so might incriminate the person or make the person liable to a penalty.

Information given by a person under this clause is not admissible in evidence against the person in any proceedings (other than proceedings in relation to the making of a false statement under this clause).

Clause 85—Defence where alleged contravention of Part

Clause 85 provides that it will be a defence in any civil or criminal proceedings where it is alleged that a person contravened this Part that—

- the pollution concerned was dealt with in a mandatory provision of a policy or in an environmental authorisation and did not exceed the limits specified in relation to that pollution in the policy or authorisation.
- an environment protection policy or an environmental authorisation stated that compliance with the policy or authorisation would constitute compliance with the duty in relation to the pollution concerned and the person complied with that policy or authorisation.
- the pollution resulted in harm only to the person or the person's own property or to another person or the property of another person with that other person's consent.

PART 10—ENFORCEMENT

DIVISION 1—AUTHORISED OFFICERS AND THEIR POWERS

Clause 86—Appointment of authorised officers

Authorised officers have duties including the carrying out of investigatory functions under this measure and, in certain circumstances, of preventing or making good environmental harm.

Authorised officers may be appointed by the Authority. Members of the police force are *ex officio* authorised officers and councils may, in consultation with the Authority, appoint employees to be authorised officers. The powers of authorised officers may be limited by condition of their appointment and the powers of authorised officers who are appointed by councils may also be limited by regulation.

Clause 87—Identification of authorised officers

Authorised officers (other than police officers) must be issued with identity cards and all officers (other than uniformed police officers) must produce evidence of their authority on request. Where the powers of an authorised officer have been limited by the conditions of appointment of the officer, the identity card issued to the authorised officer must contain a statement of the limitation on the officer's powers.

Clause 88—Powers of authorised officers

Clause 88 sets out the powers of authorised officers. These powers include—

- power to enter and inspect places or vehicles, to stop vehicles and, in emergencies or on the obtaining of a warrant, to break into a place or vehicle;
- power to take samples for analysis;
- power to require the production of documents or information and to take copies of such documents or information;
- power to examine or test plant, equipment or vehicles to determine if this measure has been complied with;
- power to seize, or issue a seizure order in relation to, anything used in, or constituting evidence of, a contravention of this measure;
- power to require a person's name and address and proof thereof;
- power to require a person to answer questions;
- power to give directions in connection with the exercise of these powers or the administration or enforcement of this measure.

It should be noted that subclause (2) provides that the powers of entry under this clause (as opposed to entry with a warrant obtained under clause 89) may only be exercised in respect of business premises during business hours or where the authorised officer has a reasonable suspicion that a contravention of this measure has been, is being or is about to be committed or that evidence of a contravention may be found on the premises.

Subclause (3) provides that a person is entitled to be assisted by an interpreter if they are not reasonably fluent in English.

Clause 89—Issue of warrants

A justice may issue an authorised officer with a warrant authorising the authorised officer to use reasonable force to break into a place or vehicle if satisfied that there are reasonable grounds to believe that a contravention of this measure has been, is being or is about to be committed or that evidence of a contravention may be found on the premises. The grounds of an application for a warrant must be verified by affidavit.

Subclause (4) provides that an application for the issue of a warrant may be made by telephone where it is urgently required and there is insufficient time to make the application personally.

Clause 90—Provisions relating to seizure

This clause makes provisions in relation to a seizure order issued by an authorised officer pursuant to clause 88(1)(i).

Subclause (1) provides that such an order must be in writing.

Subclause (2) provides that a person must not without the permission of the Authority remove or interfere with anything that is the subject of a current seizure order. A person who does so is liable to a maximum penalty of a division 6 fine ($4 000).

Subclause (3) provides that a court may order the forfeiture of seized property where the property was seized in relation to proceedings for an offence and the defendant is found guilty of that offence. If proceedings are not instituted within 6 months, the defendant is found to be not guilty of the offence or the defendant is found guilty but the court makes no order for forfeiture, the person may recover the property, or its value, from the Authority and the seizure order is discharged.

Clause 91—Offence to hinder, etc., authorised officers

Clause 91 creates an offence of hindering, insulting or threatening an authorised officer,failing to comply with a direction of an authorised officer, failing to answer an officer's questions or of impersonating an officer. A person committing this offence is liable to a maximum penalty of a division 5 fine ($8 000) or division 5 imprisonment (2 years).

Clause 92—Self-incrimination

A person is not excused from answering a question or producing, or providing a copy of, a document or information as required under this Division on the ground that to do so might tend to incriminate the person but where such compliance would tend to incriminate the person, the answer to the question, or the fact of the production of a document by the person, is not admissible in evidence against the person.

Clause 93—Offences by authorised officers, etc.

An authorised officer is guilty of an offence if he or she addresses offensive language to a person or, without lawful authority, obstructs or uses force against a person. The authorised officer is liable on breach to a maximum penalty of a division 6 fine ($4 000).

DIVISION 2—ENVIRONMENT PROTECTION ORDERS

Clause 94—Environment protection orders

The Authority may issue environment protection orders for the purpose of securing compliance with the general environmental duty, mandatory provisions of an environment protection policy, a condition of an environmental authorisation, a condition of a beverage container approval or any other requirement imposed by or under this measure or for the purpose of giving effect to an environment protection policy.

Environment protection orders must be in writing and may require that a person—

- discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from the Authority;
- not carry on a specified activity except at specified times or subject to specified conditions;
- take specified action within a specified period.

Where serious or material environmental harm is occurring or is threatened, an authorised officer may issue an emergency environment protection order (including an oral order). An emergency order will expire after 72 hours unless confirmed by a written order issued by the Authority.

The Authority or an authorised officer may include in an emergency or other environment protection order a requirement that a person undertake an act or omission that would otherwise constitute a contravention of this measure and, in that event, a person incurs no criminal liability under this measure for compliance with the requirement.

Where an environment protection order is issued to secure compliance with a provision of this measure in relation to which a penalty applies (for example, a mandatory provision of an environment protection policy), failure to comply with the order is punishable by that penalty (and, if the offence is expiable, breach of the order is expiable by payment of that expiation fee). If an order is issued to secure compliance with the general environmental duty or to give effect to a non-mandatory provision of an environment protection policy, the maximum penalty on non-compliance with the order is a division

9 fine ($500) or a division 9 expiation fee ($100) in relation to a domestic activity. Domestic environmental nuisances will fall into this category. In any other case, the maximum penalty is a division 6 fine ($4 000) or a division 6 expiation fee ($300).

Clause 95—Registration of environment protection orders in relation to land

This clause provides that the Authority may cause an environment protection order to be registered in relation to any land on which the activity that the order concerns is carried on or in relation to any land owned by the person to whom the order was issued. Once registered, an environment protection order issued in relation to an activity carried on on land is binding on each owner and occupier from time to time of the land.

The Authority must apply to the Registrar-General for cancellation of the registration of an environment protection order in relation to land on revocation of the order, on full compliance with the requirements of the order or, where the Authority takes action under this Division to carry out the requirements of the order, on payment to the Authority of the amount recoverable by the Authority under this Division in relation to the action so taken.

Clause 96—Action on non-compliance with environment protection order

If the requirements of an environment protection order are not complied with, the Authority may take the action itself or authorise the necessary action to be taken and the Authority may recover the reasonable costs of taking that action from the person who failed to comply with the requirements of the order.

The Authority may give notice to the person to pay an amount owed and, if the person fails to pay that amount, the person is liable to pay interest on the debt at the prescribed rate and the debt is a charge over any land owned by the person in relation to which the order is registered. That charge has priority over—

- any prior charge on the land (whether or not registered) that operates in favour of a person who is an associate (as defined) of the owner of the land; and
- any other charge on the land other than a charge registered prior to the registration of the environment protection order in relation to the land.

DIVISION 3—POWER TO REQUIRE OR OBTAIN INFORMATION

Clause 97—Information discovery orders

The Authority may by written notice require any person to provide it with information, including documents, that it requires for the enforcement of this measure and a person must comply with such a request. Failure to provide requested information will render the person liable to a maximum penalty of a division 5 fine ($8 000).

Clause 98—Obtaining of information on non-compliance with order or condition of environmental authorisation

If a person fails to give information required by an information discovery order under clause 97 or by a condition of an authorisation, the Authority may take action reasonably required to obtain the information and may charge the person for any costs incurred.

Clause 99—Admissibility in evidence of information

This clause makes provision in relation to self-incrimination in relation to a requirement to furnish information arising from an information discovery order or the conditions of a licence similar to the provisions of clause 92.

DIVISION 4—ACTION TO DEAL WITH ENVIRONMENTAL HARM

Clause 100—Clean-up orders

Where the Authority is satisfied that a person has caused environmental harm by a contravention of this measure or a repealed environmental law, the Authority may issue a clean-up order to the person requiring the person to take specified action within a specified period to make good any environmental damage resulting from the contravention.

A clean-up order may include requirements for action to be taken to prevent or mitigate further environmental harm or requirements for monitoring and reporting to the Authority the effectiveness of action taken in pursuance of the order.

An authorised officer may, if satisfied that a person has caused environmental harm by a contravention of this measure or a repealed environmental law and of the opinion that urgent action is required, issue an emergency clean-up order and may issue such an order orally. However, an emergency clean-up order will cease to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written clean-up order issued by the Authority and served on the person.

The Authority or an authorised officer may include in an emergency or other clean-up order a requirement that a person undertake an act or omission that might otherwise constitute a contravention of this measure and, in that case, a person incurs no criminal liability under this measure for compliance with the requirement.

The maximum penalty on failure to comply with a clean-up order is, if the offender is a body corporate, a fine of $120 000 and, if the offender is a natural person, a division 1 fine ($60 000).

Clause 101—Clean-up authorisations

Instead of or in addition to ordering a person in contravention to clean up environmental damage, the Authority may issue a clean-up authorisation under which authorised officers or other persons authorised by the Authority for the purpose may take specified action to make good resulting environmental damage.

Clause 102—Registration of clean-up orders or clean-up authorisations in relation to land

The Authority may cause a clean-up order to be registered in relation to land owned by the person to whom the order was issued or, if the order was issued to a person requiring action to be taken in relation to land owned or occupied by the person, in relation to that land.

A clean-up authorisation may be registered in relation to land owned by the person whose contravention gave rise to the issue of the authorisation.

When registered, a clean-up order that was issued to a person requiring action to be taken in relation to land owned or occupied by the person is binding on each owner and occupier from time to time of the land and operates as the basis for a charge on the land securing payment to the Authority of costs and expenses incurred in the event of non-compliance with requirements of the order.

Other registered clean-up orders and clean-up authorisations operate as the basis for a charge on the land securing payment to the Authority of costs and expenses incurred in taking action in pursuance of the order or authorisation.

The Authority must apply for cancellation of the registration of orders and authorisations on their revocation, on any money outstanding in relation to the order or authorisation being paid or, in the case of an order requiring action to be taken, on compliance with its terms.

Clause 103—Action on non-compliance with clean-up order

If the requirements of a clean-up order are not complied with, the Authority may take any action required by the order through the agency of authorised officers or other persons authorised by the Authority for the purpose.

Clause 104—Recovery of costs and expenses incurred by Authority

The Authority may recover the reasonable costs and expenses incurred by the Authority in taking action on non-compliance with the requirements of a clean-up order, or in taking action in pursuance of a clean-up authorisation, as a debt from the person who failed to comply with those requirements, or from the person whose contravention gave rise to the issuing of the authorisation, as the case may be.

The Authority may give notice to the person to pay the amount owed and, if the person fails to pay that amount, he or she is liable to pay interest on the debt at the prescribed rate and the debt is a charge on land owned by the person in relation to which the clean-up order or clean-up authorisation is registered. That charge has priority over—

- any prior charge on the land (whether or not registered) that operates in favour of a person who is an associate (as defined) of the owner of the land; and
- any other charge on the land other than a charge registered prior to the registration of the clean-up order or clean-up authorisation in relation to the land.

PART 11—CIVIL REMEDIES

Clause 105—Civil remedies

Clause 105 provides that applications for orders of an injunctive nature may be made to the Environment, Resources and Development Court. The Court may also make orders for damages (including exemplary damages) or to enforce the terms of an environment performance agreement.

Subclauses (4) and (5) limit the Court's power to make awards of exemplary damages.

Subclause (7) provides that an application for orders under this clause may be made by the Authority or by any person who would, apart from this measure, have standing to pursue a similar remedy. Where action is taken by a member of the public, the Authority must be served with a copy of the application and may join as a party to the proceedings.

Subclause (9) provides that representative applications may be made for civil remedies.

Subclause (13) provides that the Court may make interim orders (including orders made *ex parte*) pending the final determination of a matter.

Subclause (14) provides that an order made by the Court requiring the respondent to take action to make good environmental damage or to prevent or mitigate further environmental harm may be dealt with under Division 4 of Part 10 (registration of orders, the taking of action by the Authority on non-compliance with an order and recovery of costs and expenses).

Subclause (16) provides that the Court may order an applicant to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed or to give an undertaking as to the payment of any amount that may be awarded against the applicant under subclause (17).

Subclause (17) provides that if, on an application under this clause alleging a contravention of this measure or a repealed environmental law, the Court is satisfied that the respondent has not contravened this measure or a repealed environment law and that the respondent suffered loss or damage as a result of the actions of the applicant and the Court is satisfied that in the circumstances it is appropriate to make an order under this provision, the Court may require the applicant to pay to the respondent an amount (in addition to any award of costs), determined by the Court, to compensate the respondent for the loss or damage suffered by the respondent.

PART 12—EMERGENCY AUTHORISATIONS

Clause 106—Emergency authorisations

This clause provides that in a situation where it is necessary in order to protect life, the environment or property that a person act in a manner that would otherwise be in contravention of this measure and it is not practicable in the circumstances for the person to obtain an environmental authorisation in the normal manner, the Authority may grant the person an emergency environmental authorisation (which may be issued subject to conditions). A person incurs no criminal liability in respect of an act or omission authorised under this clause but will have civil liability and liability for clean-up.

PART 13—APPEALS TO COURT

Clause 107—Appeals to Court

Clause 107 makes provision for appeals to the Environment, Resources and Development Court. Applicants for, or holders of, works approvals or licences have broad appeal rights conferred under subclause (1). Such an appeal must be lodged within 2 months of the making of the decision appealed against.

A person to whom an environment protection order, information discovery order or clean-up order has been issued by the Authority or an authorised officer may also appeal to the Court against the order or any variation of the order. Such an appeal must be lodged within 14 days of the issue or variation of the order.

Subclause (4) provides that the Court may extend the time limits fixed for the lodging of an appeal.

Clause 108—Operation and implementation of decisions or orders subject to appeal

Pending the determination of an appeal, a decision of the Authority that is subject to review continues to operate, but the Environment, Resources and Development Court may stay the operation of the decision, having taken into account the possible environmental consequences of such a stay and the need to secure the effectiveness of the appeal proceedings.

Clause 109—Powers of Court on determination of appeals

On hearing an appeal, the Environment, Resources and Development Court may confirm, vary or reverse a decision, may direct such action as the Court thinks fit to be taken or refrained from, and may make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.

PART 14—PUBLIC REGISTER

Clause 110—Public register

The Authority must keep a register containing specified details in relation to environmental authorisations and other matters set out in subclause (3) including records of environmental incidents, environment protection and clean-up orders and of enforcement actions. The register allows members of the public access to information in relation to significant environmental activities being undertaken in the State.

PART 15—MISCELLANEOUS

Clause 111—Constitution of Environment, Resources and Development Court

This clause provides that the Court may, when exercising jurisdiction under this measure, be constituted in the manner set out in the Environment, Resources and Development Court Act or may, on the determination of the presiding member of the Court, be constituted by one Judge and one specially designated commissioner.

Clause 112—Annual reports by Authority

The Authority must on or before each 30 September deliver a report to the Minister on the administration of this measure over the previous financial year. The report must contain financial statements of the Environment Protection Fund and must specify any directions given to the Authority by the Minister. The Minister must table the report in each House of Parliament.

Clause 113—State of environment reports

This clause places the duty on the Authority to prepare at least once in every five years a report on the state of the environment which is to be tabled before both Houses of Parliament.

Clause 114—Waste depot levy

The holder of a licence to conduct a waste depot (as described in Part A of Schedule 1) must pay a prescribed levy to the Authority in respect of waste received at the depot. Differential levies may be prescribed for the purposes of subclause (1).

Where the holder of such a licence fails to pay a levy as required under this clause, the Authority may, by notice in writing, require the holder to make good the default and to pay to the Authority the amount prescribed as a penalty for default. A levy (including any penalty for default) payable by a person under this clause is recoverable by the Authority as a debt due to the Authority and is, until paid, a charge on any land owned by the person.

Clause 115—Waste facilities operated by Authority

The Authority may, with the approval of the Minister and subject to such conditions as the Minister may impose, collect, store, treat and dispose of domestic and rural waste chemicals and containers. The Authority does not require a licence or other authorisation under any other provisions of this measure in order to carry on such operations and compliance with the conditions of the Minister's approval constitutes compliance with this measure.

Clause 116—Delegations

Clause 116 provides that the Authority may, in writing, delegate any of its powers under this measure. A delegation may be conditional and is revocable at will by the Authority.

Clause 117—Waiver or refund of fees and payment by instalments

The Authority may, in cases of a kind approved by the Minister, waive the payment of, or refund, the whole or part of any fees payable to the Authority and may allow the payment of such fees by instalments.

Clause 118—Notices, orders or other documents issued by Authority or authorised officers

This clause sets out the formal requirements for the issuing or execution of documents by the Authority or authorised officers.

Clause 119—Service

Where the Authority is required or authorised to personally serve a person with a notice or other document, it may serve the person by delivering it personally to the person or their agent, by leaving it at the person's residence or place of business with a person apparently over the age of 16 or by posting it to the person or the person's agent at his or her last known place of residence or business.

Subclause (2) provides that where the holder of an authorisation has supplied an address or facsimile number to the Authority, the Authority may serve the person at that address or via that facsimile number. Companies may be served in accordance with the provisions of the Corporations Law.

Clause 120—False or misleading information

This clause creates an offence of making a false or misleading statement in furnishing information or keeping a record under this measure. The offence is punishable by a maximum penalty of a division 5 fine ($8 000).

Clause 121—Statutory declarations

Where a person is required under this measure to furnish information to the Authority, the Authority may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the Authority.

Clause 122—Confidentiality

This clause prevents any person from divulging any information gained in the administration of this measure relating to trade processes or financial matters except as authorised under this measure, by consent of the person from whom the information was obtained, for administration or enforcement purposes or for the purpose of legal proceedings arising out of the administration or enforcement of this measure. This offence is punishable with a maximum penalty of a division 5 fine ($8 000).

Clause 123—Immunity from personal liability

The liability that might otherwise be personally incurred by a member of the Authority, an authorised officer or any other person engaged in the administration of this measure in the honest exercise or purported exercise of a power, function or duty under this measure instead attaches to the Crown, or, where the person is an council officer, the council.

Clause 124—Continuing offences

This clause provides for continuing offences and allows a further penalty, for each day on which the offence continues, equal to one fifth of the maximum penalty applicable and, where a person has already been found guilty of an offence, allows for the conviction of the person for a further offence and an additional penalty equal to one fifth of the maximum applicable penalty for each further day on which the offence continues.

Clause 125—General criminal defence

Clause 125 sets out a number of important principles which are generally applicable to the offences contained in this measure.

Subclause (1) provides a general defence of 'non-negligence' in relation to charges under this measure. The defence is that the alleged offence did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the commission of the same or similar offences.

Subclause (2) provides that the defence of non-negligence will be available to a defendant where the defendant's culpable action was committed for the purpose of protecting life, the environment or property in a situation of emergency and where the defendant was not guilty of any failure to take all reasonable and practicable measures to prevent or deal with such an emergency.

Subclause (3) deals with the situation where a body corporate or employer seeks to establish the defence of non-negligence provided in subclause (1) by showing that it had adequate systems and procedures in place to prevent the occurrence of such offences. To establish such a defence, the defendant must also prove—

- that proper systems and procedures were in place whereby any such contravention or risk of such contravention of this measure that came to the knowledge of a person at any level of the organisation was required to be promptly reported to the governing body of the body corporate or to the employer, or to a person or group with the right to report to the governing body or to the employer; and
- that the governing body of the body corporate or the employer actively and effectively promoted and enforced compliance with this measure and with all such systems and procedures within all relevant areas of the work force.

Subclause (4) provides that where a person would have been found guilty of an offence under this measure were it not for the establishment of a defence under this clause, the person is liable for civil consequences of their actions in the same manner as if they had been found guilty of such an offence under this measure.

Clause 126—Notice of defences

Clause 126 provides that where a person intends to establish the general defence under clause 125 or any other defence under this measure, the person must give notice of that intention to the Authority within the time set out in this clause.

Clause 127—Proof of intention, etc., for offences

Clause 127 provides that unless a mental element is set out in the terms of an offence established under this measure, it will be taken that the offence entails no mental element.

Clause 128—Imputation in criminal proceedings of conduct or state of mind of officer, employee, etc.

Clause 128 imputes to a body corporate or other person the state of mind of an officer, employee, or agent of a body corporate, or employee or agent of a natural person, as the case may be, when that officer, employee or agent acts within his or her actual, usual or ostensible authority.

Subclause (2) provides that where a natural person is convicted of an offence only as a result of this clause, the person is not liable to imprisonment in relation to that offence.

Clause 129—Statement of officer evidence against body corporate

This clause provides that a statement made by an officer of the body corporate is admissible as evidence against the body corporate in proceedings for an offence committed against this measure by a body corporate.

Clause 130—Criminal liability of officers of body corporate

This clause provides that, subject to the general defence, where a body corporate is convicted of an offence under this measure, an officer of the body corporate is guilty of an offence and is liable to the penalty (other than a sentence of imprisonment) that could have been imposed on a natural person in relation to the offence committed by the body corporate.

Under subclause (3), an officer of a body corporate who knowingly promoted or acquiesced in the commission of an offence by the body corporate is guilty of, and may be imprisoned in relation to, that offence.

Clause 131—Reports in respect of alleged contraventions

Where a person reports to the Authority an alleged contravention of this measure, the Authority must, at the request of the person, advise the person as soon as practicable of the action (if any) taken or proposed to be taken by the Authority in respect of the allegation.

Clause 132—Commencement of proceedings for summary offences

Subclause (1) provides that summary proceedings under this measure may be commenced only by an authorised officer.

Proceedings in relation to a summary offence must be commenced within three years of the date of the alleged commission of the offence but may, with the consent of the Attorney-General, be commenced at any later time within 10 years of the date of the alleged commission of the offence.

Where the authorised officer commencing proceedings is a council officer, any penalty imposed in relation to the offence is payable to the council.

Clause 133—Offences and Environment, Resources and Development Court

This clause provides that the Environment, Resources and Development Court may, in its criminal jurisdiction, hear criminal proceedings in relation to offences constituted by this measure.

Clause 134—Orders by court against offenders

A court may, incidental to criminal proceedings under this measure, order a person who has caused harm to the environment by a contravention of this measure to take action to make good that harm and any further resulting harm, to carry out any other project to enhance the environment, to publicise their contravention of this measure and its consequences, to reimburse a public authority for costs incurred by it in mitigating environmental harm or to pay a person damages for injury, loss or damage suffered by the person as a result of the contravention.

Clause 135—Appointment of analysts

The Authority may, with the approval of the Minister, appoint analysts for the purposes of this measure.

Clause 136—Recovery of technical costs associated with prosecutions

Where the Authority successfully prosecutes a person, a court must, on application by the Authority, order the person to pay the reasonable costs incurred by the Authority in relation to technical procedures undertaken for the purposes of the prosecution.

Clause 137—Assessment of reasonable costs and expenses

Where it is necessary to calculate the reasonable costs or expenses incurred by the Authority or a public authority, those costs and expenses are to be assessed by reference to the reasonable costs and expenses that would have been incurred in having the action taken by independent contractors engaged for that purpose.

Clause 138—Recovery from related bodies corporate

Where an amount is payable by a body corporate for the purposes of this measure and, at the time of the contravention giving rise to that liability, that body corporate and another body corporate were related (as defined in the Corporations Law), the related bodies corporate are jointly and severally liable to make that payment.

Clause 139—Enforcement of charge on land

This clause provides for enforcement of a charge on land in the same way as a mortgage may be enforced under the Real Property Act 1886.

Clause 140—Evidentiary provisions

This clause sets out a number of evidentiary provisions in relation to matters required to be proved by the Authority in proceedings under this measure.

Clause 141—Regulations

This clause provides for the making of regulations for the purposes of this measure. In particular, regulations may provide for forms, fees, publication of information and may prescribe a fine not exceeding a division 6 fine ($4 000) for contravention of a regulation. The schedule of prescribed activities of environmental significance (Schedule 1) may be varied by regulation.

Regulations may prescribe differential fees in relation to the pollution caused by persons liable to pay such fees. Regulations may also make provisions of a transitional nature and any such provision may be expressed to take effect on a date which is after the date of assent of this measure, but prior to the date on which the regulations containing the provision are published, provided that the provision does not prejudice the position of a person which existed prior to the date of publication.

Subclause (8) provides that where a regulation would otherwise have been referred for review to the Legislative Review Committee of the Parliament under the Subordinate Legislation Act, that regulation will be referred to the Environment, Resources and Development Committee of the Parliament.

Schedule 1—Prescribed Activities of Environmental Significance

Part A of the schedule sets out prescribed activities of environmental significance. A person must hold an authorisation under the measure to undertake a prescribed activity of environmental significance.

Part B of the schedule sets out listed wastes. Clause 3(4) of Part A of schedule 1 ('Waste Treatment and Disposal') specifies that any activities that produce listed wastes (other than the activities set out in clause 3(4)(a) to (x)) are prescribed activities of environmental significance.

Schedule 2—Repeals, Amendments and Transitional Provisions

Clause 1 sets out the Acts to be repealed by this measure.

Clause 2 sets out a number of consequential amendments to the Water Resources Act 1990.

Clause 3 amends the Environment, Resources and Development Court Act 1993 by inserting three new provisions.

- Proposed clause 28a provides that the Court may make restraining orders preventing or restricting a respondent or defendant in proceedings before the Court from dealing with his or her property if the proceedings appear to be brought on reasonable grounds, the property may be required to satisfy an order of the Court and there is a substantial risk that the respondent or defendant will dispose of the property before the order is made or before it can be enforced.
- Proposed clause 28b provides that the Court may, with the consent of the parties to a proceeding, appoint a mediator to endeavour to achieve a negotiated settlement of a matter or may itself endeavour to seek such a settlement. Evidence of anything said during the mediation process is inadmissible in proceedings before the Court except with the consent of the parties to the proceedings. The Court may make orders necessary to give effect to a settlement. A member of the Court who has mediated in relation to a matter is not disqualified from determining the matter.
- Proposed clause 28c provides that the Court may make any form of order that it considers appropriate in a proceedings despite the fact that an applicant has sought a different order.

Clause 4 makes a number of transitional arrangements.

Subclause (1) provides that, notwithstanding the provisions of Part 6, the Authority must grant works approvals and licences (to have effect from the commencement of this measure) as required to enable persons to carry on activities lawfully carried on by those persons immediately before the commencement of this measure.

Subclause (2) provides that, where a person would (despite being the holder of the appropriate works approval or licence, if any) be prohibited from carrying on an activity on the commencement of this measure that the person was lawfully carrying on immediately before that commencement, the person must, despite the provisions of Part 6, be granted an exemption from that prohibition to have effect from the commencement of this measure.

Subclause (3) provides that the Authority may, in cases of a kind approved by the Minister, grant works approvals, licences or exemptions without requiring a person to apply for, or pay fees in relation to the works approval, licence or exemption.

Subclause (4) provides that a works approval, licence or exemption granted pursuant to this clause has effect for a term determined by the Authority and subject to this measure and any conditions of the approval, licence or exemption imposed by the Authority under Part 6.

Subclause (5) provides that public notice need not be given under Part 6 in respect of an application for the grant of a works approval, licence or exemption pursuant to this clause.

Subclause (6) allows the Minister to refer a draft environment protection policy directly to the Governor without undertaking public consultation where the Minister is satisfied that the draft preserves as nearly as practicable the effect of provisions made by or under repealed environmental laws. The Governor may declare such a draft policy to be an environment protection policy and may fix its date of commencement as the date of commencement of this measure.

Subclause (8) provides for the continuation of current beverage container approvals.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

MUTUAL RECOGNITION (SOUTH AUSTRALIA) BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

The purpose of the Mutual Recognition (South Australia) Bill is to enable South Australia to enter into a scheme for the mutual recognition of regulatory standards for goods and occupations adopted in Australia. This scheme is already operating between New South Wales, Queensland, Victoria, Tasmania, the Northern Territory, and the Australian Capital Territory. Mutual recognition is an initiative arising out of the series of Special Premiers Conferences which have been conducted with the objective of achieving an historic reconstruction of intergovernmental relations. The principal aim of mutual recognition is to remove the needless artificial barriers to interstate trade in goods and the mobility of labour caused by regulatory differences among Australian States and Territories. Mutual recognition is expected to greatly enhance the international competitiveness of the Australian economy and is a major step forward in the achievement of micro-economic reform. It involves a recognition by heads of Government that the time has come for Australia to create a truly national market—a policy embodied in the Constitution but not made possible for almost 100 years.

At the Special Premiers Conference in Brisbane in October 1990, heads of Government agreed to apply mutual recognition of standards in all areas where uniformity was not considered essential to national economic efficiency. Heads of Government gave their in-principle support to models of mutual recognition for goods and occupations at the Special Premiers Conference held in Sydney in July 1991, subject to the outcome of a national community consultation process.

National consultation between July and November 1991 involved the release of a discussion paper entitled 'The Mutual Recognition of Standards and Regulations in Australia' and a series of seminars in each capital city led by the Honourable Neville Wran, AC, QC. Input was sought from business, industry, trade unions, the professions, standards-setting bodies and consumer and community representatives on any necessary refinements to the mutual recognition models. Some 200 written submissions were received. Results of the consultation process were considered by Premiers and Chief Ministers at their meeting in Adelaide on 21 and 22 November 1991.

While there was a range of views expressed at the seminars and in the submissions, the concept of mutual recognition was widely embraced as a means to overcome regulatory impediments to a national market in goods and services. The majority of submissions did not call for substantial changes to the models, although some expressed a preference for uniformity. On that point, it is important to note that mutual recognition is intended to complement the efforts of regulatory authorities in achieving nationally uniform standards. It will not impede those effects where it is agreed that uniform national standards are necessary. On the contrary, recent experience with the medical profession, for instance, suggests that mutual recognition will hasten the successful resolution of such endeavours. The mutual recognition proposals were subject to public scrutiny after Premiers and Chief Ministers agreed to release the draft Mutual Recognition Bill in November 1991. Changes which have been made to the draft legislation as a result of submissions received are generally of a minor drafting nature only. Again, overwhelming support for the concept of mutual recognition was evident, with a few notable exceptions, which continued to favour national uniformity. It is an indication of the common sense which underlies the concept of mutual recognition that these proposals have had the clear support of Governments of all different political persuasions from the outset.

All heads of Government agreed, when they met on 11 May 1992, to sign the Intergovernmental Agreement on Mutual Recognition. The Agreement actively promotes the development of national standards in cases where the operation of mutual recognition raised questions about the need for such standards to protect the health and safety of citizens, or to prevent or minimise environmental pollution.

The legislation is based on two simple principles.

The first is that goods which can be sold lawfully in one State or Territory may be sold freely in any other State or Territory, even though

the goods may not fully comply with all the details of regulatory standards in the place where they are sold. If goods are acceptable for sale in one State or Territory, then there is no reason why they should not be sold anywhere in Australia.

It was not so long ago that it was virtually impossible to market cooking margarine nationally in one package. Western Australia required margarine to be packed in cube tubs whereas the familiar round tub was acceptable everywhere else. Mutual recognition will mean producers in Australia will only have to ensure that their products comply with the laws in the place of production. If they do so, then they will be free to distribute and sell their products throughout Australia without being subjected to further testing or assessment of their product. This ensures a national market for those products. Similarly, goods manufactured or produced overseas which comply with the relevant standards in the jurisdiction through which they are imported will be able to be sold in any jurisdiction.

The second principle is that if a person is registered to carry out an occupation in one State or Territory, then he or she should be able to be registered and carry on the equivalent occupation in any other State or Territory. If someone is assessed to be good enough to practise a profession or an occupation in one State or Territory, then they should be able to do so anywhere in Australia. A person who is registered in one jurisdiction will only need to give notice, including evidence of their home registration, to the relevant registration authority in another jurisdiction to be entitled immediately to commence practice in an equivalent occupation in that second State or Territory. No additional assessment will be undertaken by the local registration or licensing body to assess the person's capabilities or expertise. Local registration authorities will be required to accept the judgment of their interstate counterparts of a person's educational qualifications, experience, character or fitness to practise. I stress that the occupations a person seeks to move between from one State to another have to be substantially equivalent and have to be subject to statutory registration arrangements. I am sure that everyone would agree that in Australia the existing regulatory arrangements of each State or Territory generally provide a satisfactory set of standards.

Thus, on implementation of mutual recognition, no jurisdiction will suddenly be flooded with products that are inherently dangerous, unsafe or unhealthy; nor will there be an influx of inadequately qualified practitioners in registered occupations.

In an innovative move, the States and Territories agreed to empower the Commonwealth to pass a single Act which will override any State or Territory Acts or regulations that are inconsistent with the mutual recognition principles as defined in the Commonwealth Act. The States and Territories are effectively ceding power to one another through the mechanism of Commonwealth legislation.

Let me stress that the additional powers of the Commonwealth will be extremely limited. States and Territories are not granting extensive new powers to regulate goods and occupations. The Commonwealth was empowered to pass a single piece of legislation, namely the Mutual Recognition Act 1992. Amendments to this legislation will require unanimous agreement among all participating jurisdictions. There will be no new powers for the Commonwealth to unilaterally establish new standards or controls. Under the terms of the Intergovernmental Agreement on Mutual Recognition, which all heads of Government signed in May 1992, Commonwealth Ministers, like their State and Territory counterparts on ministerial councils, will be subject to the same controls and limits. A two-thirds majority vote of Ministers in support of a new standard will bind all the parties.

I will now explain the provisions of the Mutual Recognition (South Australia) Bill in greater detail. As I have already explained, the South Australian Bill will adopt the Mutual Recognition Act 1992 of the Commonwealth. Amendment of the Commonwealth Act will require approval by a designated person from each jurisdiction—for South Australia, this person is the Governor. The mutual recognition scheme is to last initially for five years, after which time the Governor has the power to terminate the adoption by proclamation. The mutual recognition principles in relation to goods and occupations are set down in clauses 9 to 11, for goods, and clause 17, for occupations, of the Commonwealth Act.

The legislation will not encroach on the ability of jurisdictions to impose standards for locally produced or imported goods nor for local people wishing to enter into an occupation.

Mutual recognition will not affect the ability of jurisdictions to regulate the operation of businesses or the conduct of persons registered in an occupation, nor is it intended to affect the registration of bodies corporate. Its focus is on the regulation of goods at the point of sale and regulation of the entry by registered persons into equivalent occupations in another State or Territory.

Laws that regulate the manner in which goods are sold—such as laws restricting the sale of certain goods to minors—or the manner in which sellers conduct their businesses are explicitly exempted from mutual recognition. For occupations, the legislation is expressed to apply to individuals and occupations carried on by them. As I indicated earlier, mutual recognition is intended to encourage the development of appropriate uniform standards where these are considered necessary for reasons of protecting health and safety or preventing or minimising environmental pollution. Thus, provision is made for States and Territories to enact or declare certain goods or laws relating to goods to be exempt from mutual recognition on these grounds on a temporary basis, that is, up to 12 months. During that time, the intergovernmental agreement provides for the relevant ministerial council to consider the issue and make a determination on whether to develop and apply a uniform standard in the area under examination. Wherever possible, ministerial councils are to apply those standards commonly accepted in international trade.

In respect of occupations—the Commonwealth Administrative Appeals Tribunal will hear appeals against decisions of local registration authorities and will have the power to declare an occupation to be non-equivalent. This would occur in instances where there is no technical equivalence-in the sense that the activities that a practitioner is authorised to carry out under registration in two different jurisdictions are not substantially the same.

Declarations of non-equivalence may also be made by the Administrative Appeals Tribunal where there is technical equivalence but there are health, safety or pollution grounds for preventing practitioners from one State from carrying on that occupation in other States and Territories. Such declarations are to have effect for 12 months, during which time relevant State and Commonwealth Ministers have to agree on whether or not to develop and apply a uniform standard. If not, mutual recognition will apply.

The intergovernmental agreement also provides for a concerned State or Territory to refer a matter relating to a particular good or occupation to the appropriate ministerial council for a decision on whether or not to develop and apply a uniform standard. It is expected that where a ministerial council decides that a uniform standard is required in respect of a particular occupation, it will apply a national competency standard if such a standard is available. Heads of Government asked that the process of developing such standards be accelerated. It is hoped that national competency standards will be developed in the near future for all regulated occupations and professions. The legislation also provides for certain permanent exemptions in relation to goods. Heads of Government have agreed that the scheduled exemptions should be extremely limited, focusing on those products for which a national market is undesirable. Examples include pornography, firearms and other offensive weapons, gaming machines, and South Australia's container deposit legislation. Amendment of the exemptions schedules will require the unanimous agreement of all participating jurisdictions.

The mutual recognition principle in relation to goods is intended to operate by way of a defence. That is, it will be a defence to a prosecution for an offence against a law of a jurisdiction in relation to the sale of goods if the defendant expressly claims that the mutual recognition principle applies and establishes that the goods offered for sale had labels saying the goods were produced in or imported into another jurisdiction and he or she had no reasonable grounds for suspecting the goods were not produced in or imported into that other jurisdiction. It would then be up to the prosecution to rebut this or to say that the mutual recognition principle does not apply, because, for example, the goods did not comply with the requirements imposed by the law of the other jurisdiction.

The mutual recognition principle in relation to occupations will mean that a registered practitioner wishing to practise in another State can notify the local registration authority of his or her intention to seek registration in an equivalent occupation there. The local registration authority then has one month to process the application and to make a decision on whether or not to grant registration. Pending registration, the practitioner is entitled, once the notice is made and all necessary information provided, to commence practice immediately in that occupation, subject to the payment of fees and compliance with the various indemnity or insurance requirements in relation to that occupation. No other preconditions can be imposed on the entitlement to commence practice. Conditions can be placed on the practitioner's registration in order to achieve equivalence with the condition of registration applying in the first jurisdiction. In addition, the interstate practitioner is immediately subject to the disciplinary requirements

and other rules of conduct in the new jurisdiction applicable to local practitioners.

The Government is confident that participation in this legislative scheme will provide major long-term benefits for South Australia. The unnecessary costs for producers in accommodating minor differences in regulatory requirements of States and Territories in relation to goods will be removed. Genuine competition across State and Territories borders will be encouraged as a result of procedures having more ready access to the Australian market as a whole. Labour mobility will be enhanced with the removal of artificial barriers linked to registration and licensing laws. As a result, we will be able to make better use of our labour force skills.

Australia's international competitiveness will rise as producers capitalise on the economies of scale made possible by mutual recognition. This is a process that will occur over the medium to long term. More efficient standards brought about by competition among jurisdictions should result in community requirements being met at a lower overall cost to both producers and consumers. Wider consumer choice and a greater responsiveness to the needs and demands of consumers among producers and regulators should result.

At the same time, as I pointed out earlier, the mutual recognition scheme is designed to ensure that there is no compromise on standards in the important areas of health and safety and environmental protection.

This legislative scheme is an historic initiative aimed at overcoming the regulatory impediments to the creation of a truly national market in goods and services in this country. I am pleased to acknowledge the substantial contribution made by all heads of Government in fostering and promoting this important development. It is a fine example of what can be achieved when all Governments co-operate and work together in the national interest.

This essential piece of legislation will produce benefits for this State. It will confirm that South Australia is part of the national, and world, economy. It will open up markets for South Australian manufacturers and producers in other States. It will ensure that South Australia attracts those businesses and people with professional expertise necessary to build the economy of the State.

I commend the Bill to the Council.

The provisions of the Bill are as follows:

Clause 1—Short title

The clause provides for the proposed Act to be cited as the Mutual Recognition (South Australia) Act 1993.

Clause 2—Commencement

The proposed Act is to commence on a proclaimed day.

Clause 3—Interpretation

The clause defines 'the Commonwealth Act' to mean the Mutual Recognition Act enacted by the Parliament of the Commonwealth.

Clause 4—Adoption of Commonwealth Act

The clause provides for the adoption of the Commonwealth Act under section 51(xxxvii) of the Commonwealth Constitution. The adoption will have effect for a period commencing on the day on which the State Act commences and ending on a day fixed by proclamation. The proclaimed day must be no earlier than the end of five years commencing on the date of commencement of the Commonwealth Act.

Clause 5—Reference of power to amend the Commonwealth Act

The clause refers certain matters to the Parliament of the Commonwealth, being the amendment of the Commonwealth Act (other than the Schedules to that Act), but only in terms which are approved by the designated person for each of the then participating jurisdictions. The designated person for a State is defined as the Governor, for the Australian Capital Territory is defined as the Chief Minister and for the Northern Territory is defined as the Administrator.

In a manner consistent with clause 4, the referral of those matters has effect from the commencement of the State Act until a day (occurring at least five years after the commencement of the Commonwealth Act) fixed by proclamation.

Clause 6—Approval of amendments

The clause enables the Governor to approve the terms of amendments of the Commonwealth Act.

Clause 7—Regulations for temporary exemptions for goods

The clause enables the Governor to make regulations for the purposes of section 15 of the Commonwealth Act (temporary exemptions).

Clause 8—Review of scheme

This clause requires the Minister to cause a report on the operation of the mutual recognition scheme to be prepared if the adoption of the Commonwealth Act is still in effect five years and six months after the commencement of the legislation. Copies of the report must be laid before both Houses of Parliament.

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

The Hon. C.J. SUMNER: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

EMPLOYMENT AGENTS REGISTRATION BILL

In Committee .

Clause 19—'Display of information at registered premises'—reconsidered.

The Hon. L.H. DAVIS: Since we last considered this clause I have made extensive inquiries about the real world to which this clause allegedly relates. I wish to advise the Attorney-General and the Hon. Ian Gilfillan that everything I said last night about this clause is correct. I have some more information which I think is important and which certainly will persuade the Council of the accuracy of my comments and the appropriateness of my amendment.

The fact is that in dealing with permanent or temporary employment appointments through employment agencies, whether we are talking about an office, a factory, promotions or marketing, in most aspects of recruitment covering 90 per cent of temporary or permanent placements arranged through employment agents no fee will be charged to the applicant (the employee) but the fee will be paid by the employer alone.

The Hon. C.J. Sumner: What proportion did you say?

The Hon. L.H. DAVIS: The judgment by people with whom I have discussed this matter today is 90 per cent. There are very few, if any, backyarders in this business, because if they do come into the business the Department of Labour is advised and generally the people dealing in this business are very reputable. It should be said that the existing Bill (the 1915 Bill) that will be repealed following the introduction of this legislation gives South Australian employment agencies the ability to charge a fee to an applicant, provided the fee charged is not greater than that charged to the client. In fact, South Australia is the only State in which that legislation remains in place.

I will advise the Attorney-General and the Hon. Ian Gilfillan of the people with whom I discussed this matter today. I discussed it with a representative of the Chamber of Commerce and Industry who acts as the Executive Officer for the National Association of Personnel Consultants.

He confirmed that there is no fee charged to the employees. I also discussed it with three differing employment agents. One employment agent, Medstaff, does not charge a fee to nurses. The largest bureau places nurses and other health professionals and is called Nurses Specialling Bureau. It made the point that in not quite half the cases the employee is charged no fee, but in another 50 to 60 per cent of cases indeed there is a fee. But the reason for that is because either the hospitals are strapped for cash or they prefer in any event to maintain a master-servant relationship and pick up elements such as WorkCover themselves.

The nurses are happy to pay 5 per cent. The hospitals might pay in the order of 7.5 per cent. But in that situation the nurse is making a deliberate choice, where she is paying a fee, to freelance and has certain ongoing benefit from having the link with the bureau. She is paying an administrative fee and generally speaking she will be working in a hospital environment rather than elsewhere. However, the nurse has that choice of whether or not they enter into an arrangement

where they pay a fee. That fee is a percentage based on a casual hourly rate of pay, which is, generally speaking, 20 per cent above the award. So, that freedom of choice does exist.

Certainly, there are areas at the fringe—not in the mainstream—of employment which traditionally have involved a fee: musicians, modelling and acting, as I mentioned last night. The point that came out continually in my discussions was that although the existing legislation does provide for fees to be displayed, no-one does it, or not everyone does it. In fact, the Nurses Specialling Bureau made the point that even though the fee schedule, which is no more than five per cent, is up on the wall they have never seen anyone look at it. Of course, that again makes a nonsense of the arguments that have been raised against the proposition that I put last evening.

The other point that should be made is that all the bureaux said they need to have confidential business practices. It would be silly of them to display their fees because they vary enormously depending on the nature of the work involved, whether it is short or long term, whether it is permanent or temporary, or the skill involved and so on. So, the fee levels are absolute nonsense.

In summary, there is no doubt that the information that I gave the Council last night is accurate in every respect, that the Government proposal, whilst it does mimic what is in the 1915 Bill, and while there is a requirement in existing legislation for fees to be displayed, it is way out of line with commercial reality. So, I urge the Council to support the amendment.

The Hon. C.J. SUMNER: I compliment the honourable member on his diligence in the past 24 hours, but regrettably I have to advise that as far as the Government is concerned it is to no effect. I have had the matter raised again with the Minister responsible for this Bill—the Minister of Labour—and he is of the view that the Bill as introduced, with its original clause, should be maintained. As the honourable member pointed out, the displaying of notices regarding the scale of fees is something that is in the current legislation—

The Hon. L.H. Davis: The 1915 legislation.

The Hon. C.J. SUMNER: —and the Minister of Labour believes that it is reasonable that that should continue so that members of the public who come into employment agents' offices are completely aware of the fees that might be charged. In other words, it is a matter of disclosure to the people who use the services of these agents of the terms under which those services will be used. On that basis, I am instructed—which is my role in this matter—by the Minister of Labour to oppose the Opposition's amendment.

The Hon. T.G. ROBERTS: I do not think that the points that I raised last night met entirely with the Hon. Mr Davis's agreement. I refer to the point that there was a changed circumstance in relation to the employment of labour and it was a growing method of employing temporary staff for peak periods and changes in business activity. I think everyone in this Council would agree that that is a labour market flexibility that is required in the marketplace. How one puts into place a fair legislative system is the question we are debating at the moment. All parties need to have clear and distinct rights in relation to that contracting system. The problems that I pointed out last night in relation to the employee's rights in regard to the contract are still in my mind paramount in that there are some unscrupulous contractors of employment.

I know that the Hon. Mr Davis framing his contribution on the basis that the majority of the employers out of the 90 per cent of clients that he referred to behave properly. I would hope that the 99 per cent of those clients were those who operated within bounds of reasonableness. But unfortunately there are some unscrupulous operators, who probably will not be affiliated to their peak organisation and who probably will not have made contact with the Chamber of Commerce, who have the possibility or ability to dupe innocent victims.

One way to avoid that is to post a schedule of fees so that everyone knows exactly where they stand in relation to the contracting program. The other method would be by accepting the amendment, which is to ensure that those individuals involved in the contracts are aware of their rights and rates of payment. Government's position is to have a schedule of fees displayed. I guess that is where the argument is at the moment.

The Hon. L.H. DAVIS: The Hon. Terry Roberts has made a sincere and well-meaning contribution, but, with respect, he does fundamentally misunderstand the legislation, because Part II provides for the licensing of agents. It is one of the provisions of legislation for which the Liberal Party has expressed strong support. Any application for a licence as an employment agent in future will require approval by a director. The application has to be accompanied by at least two character references. Obviously, there will a monitoring role and there will be a brief to ensure that employment agents do the right thing by their clients and also by applicants for work.

So, I have no concerns about the teeth in the legislation culling out improper practices. But the point I want to emphasise to the Council is that in discussions with the Chamber of Commerce together with three other employment agencies today I was told that there is little if any evidence of unscrupulous practices or fly-by-nighters who are not affiliated. It is a very cut-throat market out there at the moment, as the honourable member would appreciate. The fee levels are pretty tight and there is no evidence to my satisfaction of unscrupulous behaviour.

The second point is in reference to matters raised by the Hon. Terry Roberts last night, when he was reminiscing about the 1970s and what the practice was then. There is clear evidence to say that the world has moved on since the 1970s. Some practices that he quite correctly alluded to last night that I recollect were in place in the 1970s, where fees were taken off the applicant as well as the employer for a job, are no longer in existence. I was told by a member of the National Association of Personnel Consultants that, in a submission to the Government some years ago, they made a request for the legislation itself to contain a requirement that no fee should be charged of the employee, but the Government did not buy it, so that is where the situation is today. All I can say is that the evidence is overwhelming. I want to ask the Attorney: in view of his intransigence on the matter, and I know he is just the messenger in this debate, does he disagree with any of the facts that I have put down? Has the Government taken the trouble to actually establish, as I have, what happens in the real world?

The Hon. C.J. SUMNER: I have not personally checked the matters that the honourable member has raised today, because obviously I am not in a position to do so. However, all I can say is that the comments made by the honourable member last night were drawn to the attention of the responsible Minister, and he wishes to pursue the Bill as originally introduced.

The Hon. I. GILFILLAN: I must congratulate the Hon. Legh Davis on what has been a fairly diligent and persistent campaign to get this amendment through. Parliament has given it a fair hearing, but I am not persuaded that the actual

requirement in the Act is causing any great distress to the agents in their current operation.

The Hon. L.H. Davis interjecting:

The Hon. I. GILFILLAN: The work as I see it is actually having a plaque on the wall, and if there is any change they go out and pencil in the change. I would expect in the foreseeable future, if the Liberal Party is of a mind to change this, that they might have a different ball game to play to do it. In the meantime, on the grounds that I do not really believe that it is causing a problem, and there is a possibility that it does offer some protection and it may offer some protection for the intending employees who turn up, I intend to oppose the amendment.

The situation of the employers paying all of the fees may well obviate the need for this, but as I understand it, it is not imprinted in the legislation. The Hon. Legh Davis pointed out that, when given the opportunity, the Government did not pick that up, so it is still open-ended. An agent legally can charge a fee from either the intending employer or intending employee. In those circumstances, I believe it is fairly lineball, and I do not see that it will turn too much one way or the other. If I was convinced that it was detrimental to the business and slowing down the process of people getting jobs, I would look at it much more intently. On balance, and having regard to the fact that the Government wants to see it in, and that it does not appear to me to be doing any harm, I do not intend to support the amendment.

The Hon. L.H. DAVIS: In wrapping up this debate, can I earnestly draw the Hon. Ian Gilfillan's attention to the wording of my amendment, because I suspect that he does not comprehend that in fact it covers the point both he and the Hon. Terry Roberts have raised. My wording picks up the mainstream, in 90 per cent of the cases, where the client, the employer, pays the fee. It also picks up the point, out of the mainstream, with respect to modelling, some of the nursing contracts, the fashion industry and musicians, where a fee is charged by tradition to the employee. That amendment picks it up in every respect. Regulations can strengthen that and tighten it up, so there can be no escape from that clause set down in the legislation. I am appalled, quite frankly, in relation to what is a matter that I would not normally go to the barricades on, that the Government has no adequate response to the facts I have diligently assembled and put together, and they are facts, and there has been no attempt to rebut the merit of the case or the accuracy of the facts. But the Minister is just standing on his digs. Can I say that if Arthur D. Little was asked to comment on that, he would throw his hands up in the air. Paul Keating one day not so long ago uttered the memorable words, 'Just watch my lips, it is L-A-W law'. Can I say as this clause goes through: it is D-U-M-B.

The Hon. J.F. STEFANI: I will not prolong the debate, but I have to say that in practical terms, the display of fees in a conspicuous place in an office foyer would not necessarily alert an employee or a person seeking employment to look at such a scale of fees. It is far more practical, in terms of the engagement of the agent, for the agent to clearly spell out the terms and arrangements that will apply, and that vary in each case. I would have thought that the clause that is proposed by my colleague the Hon. Legh Davis would place a very strong obligation on the agent, because it is defined by law in this amendment, to spell out the conditions. It is really one thing to say, let us have the fees placed in a certificate or somewhere on the wall, and the unsuspecting person to come in and enter into an arrangement which may or may not be followed, whereas the amendment does in fact make an obligation on the agent to spell out that arrangement and come to terms with it at the point of engagement. I think it does really have a great deal of merit. It safeguards everyone, right from the beginning.

The Hon. I. GILFILLAN: I want to assure the Council and the Hon. Mr Davis that I have read the amendment, very well drafted by the parliamentary draftsperson, and it is perfectly understandable. I understand it in every detail. It does not provide the same effect that the current Bill does, and I will not go back over the argument about it. The current Bill provides that the fees are clearly, immutably placed on the wall. The amendment—

The Hon. L.H. Davis interjecting:

The Hon. I. GILFILLAN: I understand what the amendment as written down is implying, and it would allow for an agreement to be reached individually with an individual client at the time at which the engagement is entered into on or before his or her engagement by a person who acts as an employment agent.

So, there is quite a clear difference. I do not intend to prolong the debate. I will not support the amendment, but I certainly understand it.

The Committee divided on the amendment:

AYES (8)

Crothers, T.	Elliott, M. J.
Gilfillan, I.	Levy, J. A. W.
Roberts, R. R.	Sumner, C. J. (teller)
Weatherill, G.	Wiese, B. J.

NOES (7)

Davis, L. H. (teller)	Dunn, H. P. K.
Irwin, J. C.	Laidlaw, D. V.
Lucas, R. I.	Schaefer, C. V.
Stefani, J. F.	

PAIRS

Feleppa, M. S.	Burdett, J. C.
Pickles, C. A.	Griffin, K .T.
Roberts, T. G.	Pfitzner, B. S. L.

Majority of 1 for the Ayes.

Amendment thus negatived; clause passed.

Bill read a third time and passed.

ADJOURNMENT

At 5.50 p.m. the Council adjourned until Tuesday 24 August at 2.15 p.m.