LEGISLATIVE COUNCIL

Wednesday 20 April 1994

The PRESIDENT (Hon. Peter Dunn) took the Chair at 2.15 p.m. and read prayers.

LEGISLATIVE REVIEW COMMITTEE

The Hon. R.D. LAWSON: I bring up the eleventh report 1994 of the Legislative Review Committee and move:

That the report be read.

Motion carried.

The Hon. R.D. LAWSON: I bring up the twelfth report 1994 of the Legislative Review Committee.

QUESTION TIME

JUDICIAL INDEPENDENCE

The Hon. C.J. SUMNER: I seek leave to make a brief explanation before asking the Attorney-General a question about judicial independence.

Leave granted.

The Hon. C.J. SUMNER: A question of judicial independence has arisen in relation to the new Industrial and Employee Relations Bill which is before the House of Assembly. In particular, the question arises as to whether the Liberal proposal not to provide a tenure for the judges of the Industrial Court and the Industrial Commission compromises the question of judicial independence. No security of tenure is provided.

One of the principles of judicial independence is appointment to judicial office until a fixed retiring age. If judges can be removed by Governments, judicial independence is compromised.

The Chief Justice of the Supreme Court has been a forceful advocate of judicial independence in the past, and most recently when the Kennett Government in Victoria sacked the Workers Compensation Tribunal. I am surprised that the Supreme Court judges have made no public comment on the Bill before the House.

However, yesterday in another place, the Minister for Industrial Affairs (Mr Ingerson) revealed that the Chief Justice had written to the Attorney-General on this topic. The Minister in another place invited the Opposition to ask a question of the Attorney-General on the topic. Accordingly, I am taking up his suggestion by asking the following—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: Well, when the Minister for Industrial Affairs offers good advice, I am quite happy to take it. I must say that, in my long time in Parliament, this is the first time that I have felt that this was advice that was worth taking. However, as I said, basically the Minister dropped the ball and said, 'It's not my problem; ask the Attorney.' So that is what I am doing. My questions are as follows:

1. Will the Attorney-General confirm that the Chief Justice has written to him about the threat to judicial independence in the current Industrial and Employee Relations Bill?

2. Will the Attorney-General table or make public the letter and the Attorney-General's reply?

3. What submissions has the Chief Justice made to the Government on this topic, and what is the Government's response?

4. Has the Law Society and/or the Bar Association written to the Attorney-General or the Government on this topic and, if so, what view has the Law Society and/or the Bar Association put on this important issue?

The Hon. K.T. GRIFFIN: I am delighted to hear that the former Attorney-General is prepared to accept some advice from a Liberal Government Minister. I would hope, as I interjected, that he might do it on a few more occasions, particularly in relation to some of the Bills that we will be debating in here in relation to issues which are matters of Government policy and which I suspect from public statements will have a rough ride through this Chamber.

In relation to the issue of the Industrial and Employee Relations Bill, it is not yet with us. I expect that we will get it today or tomorrow, and certainly there will be an opportunity to debate the issue to which the former Attorney-General has referred when we get to the consideration of that Bill.

It is correct that the Chief Justice has written to me in relation to the provisions in the Bill that is presently in the House of Assembly. I have discussed it with the Chief Justice and indicated that the issues which he has raised are being addressed by the Government and that I would be in a position, by the time the Bill reached the Legislative Council, to indicate a response to the letter which he has written and to the issues which he has raised.

The Hon. C.J. Sumner: Will you table the correspondence?

The Hon. K.T. GRIFFIN: No, I'm not going to table it yet.

The Hon. C.J. Sumner: Is it secret?

The Hon. K.T. GRIFFIN: It's not secret. You didn't table all the correspondence you received from judges and everybody else.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Come on! You did not, and you know you didn't.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: You know you didn't.

Members interjecting:

The Hon. K.T. GRIFFIN: You did not, on all occasions. On occasions you made them available to me—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Not all the time.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: Anyway, there has been no formal reply to the—

The Hon. C.J. Sumner: He doesn't agree with your Bill; that's why you won't table it.

The Hon. K.T. GRIFFIN: Look, the Government has not made a formal response by correspondence to the Chief Justice. As I have indicated, I have discussed the issue with the Chief Justice. I have indicated that the matters he has raised will be considered by Government and that they will be addressed on or before the time the Bill reaches the Legislative Council.

The issues of judicial independence are sensitive, and I acknowledge that. We have seen the Federal Labor Government move Justice Staples and abolish a court at the Federal level. There was certainly some outcry about that, but it was

fairly muted. When the Victorian Government abolished the Workers Compensation Tribunal, the uproar was a bit less muted and, of course, if there are to be changes in any court, we will address the issues as a matter of principle.

The Hon. C.J. Sumner: Does the Chief Justice agree with the Bill as it has been introduced?

The Hon. K.T. GRIFFIN: All I am saying to you is that the Chief Justice has written to me and made representations about—

The Hon. C.J. Sumner: Simple question: yes or no?

The Hon. K.T. GRIFFIN: It is not a question of whether or not he is in favour of the Bill. He has raised issues—

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: He has raised issues with me: I have indicated that I have discussed the issues with him and that there will be a response on or before the occasion on which the Bill is debated in the Legislative Council. I do not intend to table the letter at the moment, because there has not yet been a formal response. In relation to the Law Society, I have received a letter from the Law Society.

Members interjecting:

The PRESIDENT: Order! The Leader of the Opposition.

The Hon. K.T. GRIFFIN: Again, there has been no formal response from the Government on the issue—

The Hon. C.J. Sumner: What has it said about it?

The Hon. K.T. GRIFFIN: It has raised questions about the Government's policy in relation to the Industrial Court; it is as simple as that. It has raised questions about it and expressed a view about what it believes is the intent of the Government following the drafting of the Bill that is in the House of Assembly. So, again there has been no discussion with the Law Society about that by me and, certainly, no formal response. I can assure the Council that, in relation to the Industrial Court and the issues that have been raised by the Opposition in another place in relation to the Industrial Court under the Government's Bill, they will be properly addressed according to principle at the time when they are considered in this Chamber, which I expect to be the week after next.

TRAM BARN

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister representing the Minister for the Environment and Natural Resources a question about the Hackney Tram Barn.

Leave granted.

The PRESIDENT: There is so much background noise here I cannot even hear the question. The Leader of the Opposition has had three questions already, or enough for three.

The Hon. CAROLYN PICKLES: Thank you, Mr President. I cannot even think about the question.

The PRESIDENT: The Hon. Carolyn Pickles.

The Hon. CAROLYN PICKLES: Tram barn A is listed on both the Register of the National Estate and the South Australian Register of Heritage Items. On 20 August 1992 the member for Adelaide (Hon. Dr Armitage) made a strong speech in another place congratulating the previous Minister for the Environment for maintaining protection for this building and for creating certainty for the process of protecting heritage buildings. In fact, the member for Adelaide was quite fulsome in his praise of the Minister's decision on that occasion. I quote from the *Hansard* of 20 August 1992 when, in speaking to a motion that he had moved, the honourable member stated:

> The reason that I agree with the Minister's decision of 11 August is that the building in question has been listed by the National Trust, it is on the Register of the National Estate and it is on the Register of State Heritage Items. That is a pretty impressive list for a building. In my view, it would be appalling for a Government to bulldoze such a building in direct contravention of those various listings, taking a decision unto itself which private owners are unable to do. . . It is my view that there is a clear call from the community for the fact that, when a building is placed on the register, that is the level of certainty. As the member for the State seat of Adelaide, which contains many of our heritage buildings, I am constantly regaled by developers who maintain that there is no certainty in building and planning in South Australia, and in the State electorate of Adelaide in particular. I say to them that that is not true: there is certainty, it is the City of Adelaide Plan. However, what makes it uncertain is that many developers put plans for five, six or seven-storey buildings, where the City of Adelaide Plan states quite clearly that they can only be three storeys, or whatever.

Further in the same speech, referring to the demolishing of the building, he states:

> It did provoke an enormous reaction from the National Trust, the Adelaide Parklands Preservation Society, the Aurora Heritage Action Group, a number of city councillors, the Institute of Engineers, the Conservation Council, the History and Conservation Executive Committee for the Bicentenary, the Royal Australian Planning Institute, the Construction, Mining and Energy Union of South Australia and the Building Construction Workers Federation.

In an interjection the Hon. Mr Atkinson said, 'Your mates!' and the member for Adelaide replied:

> Indeed, my mates. I speak regularly with Mr Ron Owens about a number of matters.

He went on to say:

> I applaud Mr Ron Owens; we look like we are getting somewhere. What a grouping of people were angry at the Minister's decision! However, it is not only the Minister's decision.

He further said:

> So, I think I may have done the Minister for Environment and Planning an injustice because having expressed admiration only to her I think all her Cabinet colleagues deserve a gong, and I am happy to give it to them.

My questions to the Minister are:

1. Is he still considering the demolition of tram barn A at Hackney?
2. Has he consulted with the member for Adelaide, who strongly supports the retention of this building?
3. Does he agree that the demolition of a heritage listed building owned by the Government would create uncertainty for the protection process and set a precedent that will threaten other Government and privately owned heritage buildings in South Australia?

The Hon. DIANA LAIDLAW: I will refer the questions to the Minister and bring back a reply.

SPEED LIMITS

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Minister for Transport a question about urban speed limits.

Leave granted.

The Hon. BARBARA WIESE: There has been considerable debate nationally about reducing urban speed limits for local streets. Both Victoria and New South Wales propose to lower the urban speed limit to 50 km/h. In parts of Europe and the United States speed limits in many built-up areas are already below 60 km/h. It is most unlikely that South Australia will be able to avoid having a debate on this issue as well, particularly in view of the increasing problems that are emerging in local areas where councils, in particular, try

to balance the needs of local communities and the needs of motorists who want to use local streets.

Last year a 40 km/h local area speed limit trial was completed in Unley. While the Unley report recommended against a piecemeal approach to a lower speed limit it recognised that potentially important benefits could be gained from implementing a lower general speed limit in local areas. Last year, as Minister of Transport Development I requested the Office of Road Safety to prepare a discussion paper addressing the pros and cons for the adoption of a lower general built-up area speed limit of 40 or 50 km/h in South Australia, compared with retention of the current 60 km/h limit. The discussion paper was to be distributed to all bodies likely to be affected by a lower limit as well as to the general community.

I also established an advisory group to thoroughly review the lower speed limit question, taking into account community responses to the discussion paper. After careful consideration of all relevant issues it was intended that the advisory group would make a recommendation on whether the speed limit should be lowered or retained at the present level. My questions to the Minister are:

1. Does the Government intend to continue this review of local area speed limits?

2. If so, when does the Minister expect this work to be completed, and will she make the results publicly available?

The Hon. DIANA LAIDLAW: The answer to the first question is 'Yes'. In relation to the second question, I received some advice about this matter a couple of weeks ago from Professor Michael Taylor. I understand that I should get the results of the latest study within one month or slightly longer, and 'Yes' to the third question.

SMALL BUSINESS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister for Industry, Manufacturing, Small Business and Regional Development a question about small business in regional South Australia.

Leave granted.

The Hon. M.J. ELLIOTT: My question relates to the Government commitment to the small business sector in South Australia. I have been approached by concerned traders in the northern Spencer Gulf region who are facing major problems due to the extended trading which is allowed in their proclaimed shopping districts.

They have told my office that for the past 20 months or so two supermarket chains have been allowed to trade 24 hours a day, seven days a week in Port Pirie, Port Augusta and Whyalla. They say that this has had a devastating effect on the area's 556 small businesses in terms of job losses and a drop in turnover of between 30 and 40 per cent. The issue of proclaimed shopping districts is one which the Government said would be investigated by its present inquiry into shop trading hours. However, the membership of the inquiry does not include any representative of the regional small business sector. Regional traders have called on the Government to allow traders a right to appeal decisions to grant extensions to shopping hours. Failing this, they request that South Australia be made one proclaimed shopping district. The questions I ask the Minister are:

1. Why has no regional retailer been included in the shop trading hours inquiry? In fact, I understand that there have not even been visits to regional centres.

2. Will the Government address the problems facing country traders when deciding shop trading hours policy?

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

UNION FEES

The Hon. A.J. REDFORD: I seek leave to make a brief statement before asking the Attorney-General a question about legal costs.

Leave granted.

The Hon. A.J. REDFORD: In this morning's *Advertiser* it was reported in an article entitled 'PS seeking legal advice on fees case' that the Public Service Association took court action to try to block Government changes to the system of automatic payroll deductions for public sector union fees. In a judgment yesterday, Justice Legoe refused to grant any injunction and ordered costs against the union. Apparently, the Government will require public sector employees to re-authorise the deduction of union fees from their pay on an annual basis, thereby giving members freedom of choice. In that regard, I ask the Attorney-General:

1. Does he have any idea of the amount of the costs that the Public Service Association is likely to have to pay as a result of its ill-fated legal case?

2. What requirements are there under existing legislation on the part of management of the Public Service Association, first, to obtain permission of members to undertake such legal action and, secondly, to determine whether or not the management had advice on the prospects of success in embarking on this futile exercise?

The Hon. K.T. GRIFFIN: I do not know what the costs may be, and I do not know whether the matter is going on appeal or not. I gather from the newspaper reports that the PSA is considering its position. I will make some inquiries about the level of costs and bring back a reply, if I can get that information. In relation to the second question, I am not familiar with the rules of the Public Service Association in relation to the powers given to its executive and the obligations to consult with membership, but again I will endeavour to ascertain the answer to that question and bring back a reply.

YOUNG FARMERS' INCENTIVE SCHEME

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General a question about the Young Farmers' Incentive Scheme.

Leave granted.

The Hon. R.R. ROBERTS: Since the Liberal Party came to Government in December, it has indeed finally honoured its pledge to introduce a Young Farmers' Incentive Scheme. The proposal for assistance to young farmers came up as a result of a Lower House inquiry into rural debt. One of those recommendations, as you would remember, Mr President, was that the State Government ought to look at some forms of assistance to allow young farmers to stay on the land. I am the first to congratulate the Liberal Party on taking up that matter. I have been approached by numerous people in rural South Australia with inquiries in respect of this subject. Small businessmen have put the question to me: 'Why can't we be involved? If we are under 30 and we want to be involved in a rural based industry we could do with some assistance.' I answer them in these terms, 'It is because the commitment was to young farmers.'

As I said, I am not criticising the Liberal Government for introducing the Young Farmers' Incentive Scheme; I congratulate it on that. The questions I address to the Attorney-General today, rather than to the Minister for Primary Industries, revolve around the number of comments that have been made to me by people saying that the Government is discriminating on the basis of age, and these people are, say, 35 years old. I have been in contact with farmers, particularly those aged between 30 and 35, who because of the economic circumstances a few years ago were forced to leave their farm and are now working in industry. These people did not leave their farm because they wanted to: it was a matter of having to. Those people would now welcome the opportunity to go back onto the land.

My question to the Attorney-General relates to how I answer my constituents when they say to me that they are being discriminated against on the basis of age. I am aware of some of the provisions under the Equal Opportunity Act 1984, which provides in general terms that one cannot discriminate on the basis of age. I am aware of the provisions of section 85P, which provides:

> This part does not render unlawful an act done for the purposes of carrying out a scheme or undertaking for the benefit of persons of a particular age or age group in order to meet a need that arises out of, or that is related to, the age or ages of those persons.

The proposition that is being put to me is that the problem that applies to that age group—and I accept that they have particular problems in getting onto the land—is no different from that which applies to those between 35 and 40. My question is not an aggressive one: I am seeking advice from the Attorney-General and his officers so that I can inform my constituents of the precise nature of the law in this respect. So my question is: does the proposed scheme for young farmers contravene the Equal Opportunity Act in South Australia, in particular, the provisions in respect of discrimination on the basis of age?

The Hon. K.T. GRIFFIN: The honourable member has asked what he can tell his constituents and those who ask him why they cannot participate too and whether this is not a matter of age discrimination. I would suggest the best thing he tells those people is that they obviously went off the land during a period of Labor maladministration and that, whether State or Federal, they can blame Labor for many of the ills which forced them off the land. The fact of the matter is that the Government does not have sufficient money to make available the sorts of schemes which are available to young farmers under our Young Farmers' Incentive Scheme. The Government does not have a bottomless pit, and members opposite ought to recognise that after the debacle that we have been through with the State Bank.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: I know the honourable member said he was not asking the question in an aggressive manner, but I genuinely believe that there was some hidden barb in the question. If there was not, fair enough.

Members interjecting:

The Hon. K.T. GRIFFIN: I can answer it without the rhetoric. We looked at the issue of age discrimination. We were satisfied that this was a special measure, it could be justified and it was quite within the power of the Government to target its program to those people who are most in need in the sense that we want young farmers back on the land. In the rural communities of South Australia there is significant pressure on families, because they cannot afford to transfer properties to children.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: That's all right. No, I'm just telling you.

Members interjecting:

The Hon. K.T. GRIFFIN: I am answering it in a legitimate fashion.

The Hon. C.J. Sumner: There was an age criterion then.

The PRESIDENT: Order!

The Hon. C.J. Sumner: There is an age criterion.

The Hon. K.T. GRIFFIN: Of course there is an age criterion—it is a special measure. I have just said that. What are we arguing about?

The Hon. Barbara Wiese: No-one is arguing. He was just asking a simple question.

The Hon. K.T. GRIFFIN: It didn't seem too simple to me. I am giving the honourable member the answer. It is a simple answer, but it does not seem to be getting through. The fact of the matter is that it is our advice that it is not in breach of the Equal Opportunity Act, and in any event—

The Hon. C.J. Sumner: Who provided the advice?

The Hon. K.T. GRIFFIN: It does not matter who provides the advice. The fact is that the advice to Government is that it is a special measure and that it is not in breach of the Equal Opportunity Act. In any event, we as a Government take the view that this group needs to be specially targeted. The honourable member will know that the Stamp Duties (Concessions) Amendment Bill incorporates at least part of that package in respect of an exemption from stamp duty relating to the conveyance of a family farm. There is no problem on the advice we have. I have looked at the matter as well, and I am satisfied that it could be justified as a special measure if anyone ever took the point (and I doubt that they would), that it was discrimination on the basis of age. It was a special measure directed towards a specific group to assist that group, and it is well within the provisions of the Equal Opportunity Act.

PARLIAMENT HOUSE BELLS

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking you, Mr President, a question about the noisy bells in Parliament House.

Leave granted.

The Hon. C.J. Sumner: Up to your usual standard.

The Hon. L.H. DAVIS: That shows the sharp division in the Opposition. I have been complimented already by one of the members on the front bench for raising this important subject.

Mr President, you may be aware that there have been a number of complaints about the extraordinarily loud bells which fill every room in the Legislative Council first floor offices every time there is a division in the House of Assembly. The noise level is unacceptably high in the first floor Legislative Council offices, and yesterday it was driving members to distraction because of the frequent divisions in the House of Assembly. The bells are so loud that they overwhelm telephone conversations, and make radio interviews almost impossible and meetings with constituents most difficult. I understand that the bells distract *Hansard* staff, and they must also be a source of great annoyance to political journalists on duty in the building.

One Liberal member told me that he was in the gentlemen's washroom when the bells started ringing. They rang

so loudly that it became a painful experience, but unfortunately he was unable to retreat immediately to save himself from this noise pollution. In fact, he felt quite rung out by the bells. As soon as he was able, he fled the bells. One might say that he was flushed out by the bells. The noise from the bells in Parliament House may well be in breach of noise pollution legislation. I must say that I have not had the opportunity to discuss with Labor Legislative Councillors how loud the House of Assembly bells are in their basement offices, but I gather from their reaction to the question that they are also suffering. My question is a simple one, Mr President: will you investigate this matter and take what steps you can to reduce the decibel level of the House of Assembly bells in the Legislative Council precinct?

The PRESIDENT: I, too, have been concerned at the loudness of the bells, particularly in the committee rooms.

An honourable member interjecting:

The PRESIDENT: Yes, and I am getting old and losing my hearing. On most bells I understand there is a rheostat which can down turn the noise level. I will ask the electrician to investigate the problem and endeavour to bring back a response tomorrow. Perhaps we can investigate the installation of a switch that will work for a certain period so that the bells can be turned down during Committee stages.

POKER MACHINES

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister representing the Treasurer a question about poker machines.

Leave granted.

The Hon. T.G. ROBERTS: An article in today's *Advertiser* entitled 'Pokies corruption fears' indicates some changes that the Government is anticipating or making to the legislation to enable safer oversight of the poker machine legislation. Members on both sides of this place would remember the debate and the length of time it took to get the legislation through. As it was a conscience issue, there was a lot of to-ing and fro-ing, but at about 6 o'clock on the Friday morning everyone went away feeling that the legislation covered most of the issues raised by members regarding the possibility of corruption.

However, the Government has seen fit to indicate to the *Advertiser* and to make public that it intends to amend the legislation to enable a new overseeing body to be incorporated into the process, and that will delay the introduction of poker machines. Regardless of what we think of poker machines as social, recreational outlets, it has caused major delay and concern to people, particularly in the hotel and club industry. However, another element was added in today's *Advertiser*, the article in which states:

> . . . after being alerted to schemes which [the Treasurer] said could widen the industry's exposure to corruption.

That leads me to believe that some events or information must have been brought to the Treasurer's attention which necessitated the changes to the legislation to make poker machines safer from corruption. It was the Government's intention to separate poker machine owners and operators from licensed premises. My question is: what events prompted both the initiatives to change the poker machine legislation that was passed by the previous Government?

The Hon. R.I. LUCAS: I am sure we all remember with fondness those few days that we spent together solving the problems of—

The Hon. T.G. Roberts: Parliamentary bonding.

The Hon. R.I. LUCAS: Yes, parliamentary bonding—the gaming machine legislation. I will refer the honourable member's question to my colleague and bring back a reply, but my understanding of the Treasurer's ministerial statement yesterday to the House of Assembly, a copy of which I tabled in this Chamber yesterday, was that the amendments to the legislation involved trying to close some loopholes in the legislation as it related to gaming machine dealer licences and gaming machine licences. I do not believe that yesterday's ministerial statement referred to the comments made by the Treasurer regarding the possibility of establishing an overarching body. Nevertheless, I will refer the honourable member's question to the Treasurer and bring back a reply.

MOTOROLA

The Hon. T. CROTHERS: I seek leave to make a statement before asking the Hon. Mr Lucas, as Leader of the Government in this place, a question about a ministerial statement made by the Leader on Tuesday 19 April 1994 on the subject of Motorola.

Leave granted.

The Hon. T. CROTHERS: First, I congratulate the Federal and State Governments for the work they have both done to attract this industry to South Australia. I make this point lest it be said in some quarters that my statement implies criticism of both Governments for the work they have done in securing this new industry for South Australia. I do not, moreover, intend to become a Cassandra railing against the Government just for some short-term political advantage to my Party or to myself which could have the effect of doing detrimental damage to any good works that are being carried out, by whomsoever it might be, for the citizens of this State.

Hansard history, of course, records that I cannot say the same for the present Government when it was in Opposition. We all know, however, that Australia is in an advantageous position to attract new industries, because we are seen by the multi-nationals from Europe and the North Americas as being a politically stable springboard into the burgeoning markets of eastern Asia. It was also nice for me see that my old trade union mate, Senator Peter Cook, the Federal Minister in question, has not forgotten that he is by birth a native son of South Australia.

The Leader's statement was very broad and not very specific in its parameters as to what constituted a deal to members of this Parliament. Of course, in saying that I am conscious that multi-nationals the world over play one Government off against another in order to maximise their profit margins with respect to any new investments that they are about to put in place. Being aware that all assistance, of whatever kind, given by Governments to attract these new industries is ultimately paid for by the ordinary taxpayers' dollars, and also being conscious of our Westminster parliamentary traditions, I direct the following questions to the Leader:

1. What role did the Federal Government and its Minister Senator Peter Cook play in negotiations?

2. What aid and assistance was given or promised by the Federal Government in order to ensure that the project came to South Australia?

3. What will be the final cost of any type of aid, subsidy and/or assistance to South Australia already promised by the State Government to Motorola in order to attract that industry to this State?

The Hon. R.I. LUCAS: I am delighted, first, to hear that the Hon. Trevor Crothers will not become a Cassandra. The notion of the Hon. Cassandra Crothers would be too much even for me to behold in this Chamber.

I will have to refer those questions to the Premier and to the Minister for Industry, Manufacturing, Small Business and Regional Development, particularly the first two questions about the role of the Federal Government and the role of the Federal Minister. I would have to say that the Government package to attract Motorola—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS:—is an investment which I indicated will directly create some 400 jobs in South Australia, and many of those jobs, as the Hon. Mr Crothers will know, because the industry will be located in the northern suburbs, at Technology Park, may involve constituents with whom he has had past connection and whom he continues to represent, at least in part.

The broad parameters of the deal and the incentives are certainly within the broad parameters that the previous Labor Government looked at in trying to attract significant companies, both national and international, to South Australia. As I said, I will refer the detail of the question to the Premier and the Minister to bring back a reply.

However, I believe it is likely that they will indicate that, as we are currently negotiating with a number of other significant companies, both national and international, with the intention of trying to attract them, too, to South Australia as part of our economic revival, it might not be in the best interests of South Australia and its taxpayers to indicate either the quantum or the detail of the attraction or the incentive that is being offered to—

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: We might have that over that cup of coffee again, you think, the Hon. Mr Crothers. It might not be appropriate to reveal either the quantum or the detail of the package, lest it indicate to other potential investors how far or to what extent the Government is prepared to go in relation to trying to attract significant investment.

I am trying to put myself into the position of the Premier, the Treasurer and the Minister there. Therefore, I will leave it at that and say that I will refer all those questions to them and bring back a reply. However, I suspect the answer might be something along those lines.

HOSPITAL SERVICES

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Health, a question about funding for hospital birthing services.

Leave granted.

The Hon. SANDRA KANCK: The Minister may be aware that the Lyell McEwin Health Service provides a birthing service for low risk obstetric patients. The aims of the service are to provide for minimal intervention in normal active births and continuity of care for women throughout their pregnancies as well as post-natally. The Lyell McEwin birthing unit is a short-stay unit in that when a mother has delivered her baby she can normally go home within 24 hours, as opposed to more conventional hospital birthing where mothers generally stay in for several days after delivery.

I understand that the Queen Victoria Hospital also has an alternative birthing unit which provides a similar birthing service to that of the Lyell McEwin Health Service but without the same continuity of service. The Lyell McEwin birthing unit has delivered around 130 babies since it opened in October 1992, and I understand that the hospital would like to continue the service.

However, I also understand that funding has not been secured beyond this financial year when direct Commonwealth Government funding ends, and responsibility for funding birthing services will then transfer to the South Australian Health Commission. My questions are:

1. Can the Minister give an assurance that alternative birthing services will continue to be funded in South Australia beyond this financial year?

2. If so, can the Minister tell the Council whether he favours the continuity of care concept for birthing centres as provided at the Lyell McEwin Health Service and birthing units in hospitals interstate or more limited models?

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

POLICE OPERATIONS

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Emergency Services, a question about police.

Leave granted.

The Hon. A.J. REDFORD: I understand the South Australian Police Department has caused a number of management reports to be prepared over the past few years regarding its efficiency and what changes need to be made to improve its efficiency. This is particularly important having regard to the Liberal's stated policy of having more police officers on the streets and particularly our current budgetary constraints. With that in mind, I ask the following:

1. Over the past three years, has this Government, the previous Government or the South Australian Police Department caused to have prepared management reports or management consultant reports into the operations of the South Australian Police Department and, if so, how many such reports have been prepared?

2. Would the Minister consider making public those reports or such parts thereof that do not affect the operation of the South Australian Police Department?

3. What recommendations were made by these reports, and which of those recommendations have been implemented; and what has been the extent of the success of the implementation of those recommendations?

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

WRITERS' WEEK

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for the Arts a question about the sacking of the Writers' Week committee.

Leave granted.

The Hon. ANNE LEVY: Most people learnt this morning or late last night that the committee responsible for organising the recent highly successful Writers' Week had been sacked by the board of the festival. Unlike usual practice after each festival, where the Writers' Week committee may have one or two people who leave the committee and the same number

of new faces on the committee, in this case the board has sacked the entire Writers' Week committee. Further, I understand that it has done so without any consultation.

Certainly, it was done with no prior discussion with the Chair or any other members of the Writers' Week committee. They have put this into place having originally made the decision to reorganise the running of Writers' Week last December but having waited until yesterday to inform the members of the committee who have, since December, been working very hard to achieve the very successful Writers' Week which occurred a few weeks ago.

As we all know, the structure of the board of the Festival is currently under review. The Minister has asked that it be one of the matters to be looked at by her Arts Task Force, which is expected to report in just over two months, so the whole future of the Board of Governors of the Adelaide Festival is under review, and one could say there is a hiatus at the moment as to just what form the organisation of future Festivals will take. And yet this group has unilaterally sacked the entire Writers' Week committee which, I am sure everyone would agree, contains some very distinguished members of the South Australian literary community, which has never shown any Party political preference one way or the other. I, along with many people, wait with joyful anticipation for the next issue of the *Adelaide Review*, since its editor was one of the members of the Writers' Week committee that was summarily dismissed in this way. My questions to the Minister are:

1. Does she approve of the process that the Festival board has followed in sacking the entire Writers' Week committee?

2. Has she had any contact on this matter either with any members of the Festival board or with Mr David Malouf, the highly esteemed Australian novelist who has, apparently, agreed to head up the advisory committee proposed by the Festival board for the next Writers' Week?

The Hon. DIANA LAIDLAW: I neither approved nor do I approve of the process adopted by the Board of Governors in this matter, and my views have been conveyed in the strongest terms—the Chairman of the Board of Governors may describe them as harsh terms—to the Chairman of the board today. I did not have an opportunity to speak to him last night, although I would like to have done so. I have received correspondence from the Editor of the *Adelaide Review*, and if the next edition is as lively as this correspondence it will make interesting reading.

The Hon. Anne Levy: Will you table it?

The Hon. DIANA LAIDLAW: I will read it, if you wish me to, to save you reading the next edition of the *Adelaide Review*.

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: No, it's certainly not compulsory. The letter, dated 19 April, states:

> I have received a letter this morning from John Bishop informing me that the Writers' Week committee has been disbanded in line with a proposal from Barrie Kosky which was apparently 'adopted' in December. I attach a copy of the letter. I wish to protest in the strongest terms at the manner in which this matter has been handled, as well as the substance of the change. Mr Kosky was scarcely in a position to venture an opinion on 'a revised programming structure' since he had not seen the fruits of the then new structure which resulted, in March, in a most successful Writers' Week. Mr Kosky's behaviour in interfering with Writers' Week is unprecedented in the history of the Festival. The Festival Artistic Director has never had a directorial role in Writers' Week. For such a role to be conceded him, on request, by the board, with no consultation whatever with the WW committee, is very bad management practice as well as extremely offensive to a hard-working committee which produced one of the rare successes of the Festival. The delay between the decision in December and communicating it in mid-April is again offensive. . . and hole-in-the-corner. The impertinence of a board—which is itself properly undergoing review with the prospect of radical reform—pre-empting the decision of the review and the Minister and disbanding its most effective constituent section at a time when WW is considering the prospect of an autonomous existence, is staggering. It is the kind of behaviour which makes me wonder why people, whose time is valuable, volunteer their services on boards and committees. I urge you to take whatever steps are necessary to persuade the board to rescind this decision.

In fairness, I should read the reply sent the same day from Mr Bishop, the Chairman of the Festival, to Mr Christopher Pearson. It reads as follows:

> Thank you for the copy of your facsimile to the Minister. I am sorry that you are unhappy about the change and the manner in which it has been handled. There are, however, some misunderstandings that I would like to clarify:
>
> 1. The Artistic Director's vision for the 1996 Festival—including Writers' Week—was reported to and endorsed in principle by the board on 17 December 1993. It has since been fleshed out and was adopted in greater detail at the executive meeting on 15 April 1994. There was, therefore, no delay in communicating the decision once the detailed proposal for 1996 was adopted.
>
> 2. The board has absolutely no intention of 'pre-empting the decision of the review or the Minister'. Clearly, planning for the 1996 Festival, including the increased emphasis on its national significance, has to continue—notwithstanding that structural or other changes may be made as a result of the review group's recommendations.
>
> 3. It seems to me that for Writers' Week (as a subcommittee of the board) to be 'considering the prospect of an autonomous existence'—or of becoming an annual event—without consultation with the Board of Governors, is not good communication. I brought this to the attention of the Chair of Writers' Week on 5 March when I first saw a public reference to Writers' Week as an annual event. Since then, I understand that a lot of discussions have taken place, and a committee meeting held *in camera*, but I have received no communication from the Chair, nor any of the information which I understood was to be provided to the board.

A lack of communication is but one of the problems that appear to plague the Adelaide Festival and its relationship with the Writers' Week committee. I would add that the legal advice that I have received is that the decision by the board is in accord with rule 15 of the Festival's consolidated rules and by-laws. However, I find the manner in which this matter has been handled to be provocative—and unnecessarily so. Also, I find it offensive to me personally and to the Government after the Government sought to bail out the board with $860 000 just a few weeks ago, and to do so promptly, following an artistically successful Festival, albeit a Festival that nevertheless incurred enormous financial problems.

The Government acted as the board would wish. We did not at that time—and I advise that we were able to do so—seek the Board of Governors themselves to be liable for that debt. We did not seek the Board of Governors to personally fund that debt. I understand that some members of the Board of Governors had taken out insurance for that purpose, in case the Government did choose that option.

The Government has gone out of its way to cooperate with the Board of Governors because it recognises that the Festival is such an extraordinarily important institution for the whole of the State. I believe that the actions that the board has taken in the handling of this matter, although legal, are provocative and most unfortunate. I have spoken to the Chairman of the board on the telephone today and I have indicated to him that I wish to speak to him in person early next week to discuss the matter further.

The fact that Mr David Malouf is prepared to be associated with Writers' Week is excellent but it should not be at the cost of offending excellent people who have contributed time,

energy, talent and skills to ensure that the last Writers' Week was probably the most successful ever.

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: There were many successful events in the Festival. It was not the most successful event, but it certainly was one of the most successful Writers' Weeks—

Members interjecting:

The PRESIDENT: Order! I remind the Minister of the time.

The Hon. DIANA LAIDLAW:—and it was enjoyed a great deal by all who attended in terms of interstate guests, and I think the manner in which this has been handled by the board is amateurish.

WORKERS COMPENSATION REGULATIONS

The Hon. M.J. ELLIOTT: I move:

That the regulations under the Workers Rehabilitation and Compensation Act 1986 concerning assessment of non-economic loss, made on 17 March 1994 and laid on the table of this Council on 22 March 1994, be disallowed.

Some people in this place have made something of a specialty of quoting Liberal Party policy to me in this area of workers compensation.

An honourable member: It was not me.

The Hon. M.J. ELLIOTT: It was not you. I have read the Liberal Party policy and have found it, in relation to this particular regulation, to be most instructive, at least in understanding the mindset of the Liberal Party before the election in terms of what it believes should happen. Most significantly, at page 6 it states:

The objective of this Liberal policy is to accelerate this process so that South Australia achieves competitive levies much closer to the time promised by Labor without reducing benefits to those injured at work.

I repeat: 'without reducing benefits for those injured at work'. Anyone who cares to analyse the regulation introduced by the Government would see that it shows that the Government has broken an election promise. It seems that the Government is telling us that we are not allowed to break promises but it is allowed to break its promises at will.

This is no minor reduction in benefits; this is no minor breaking of a promise. The third schedule contains a list of compensable disabilities in relation to non-economic loss, pain and suffering and it specifies a number of injuries and what the compensation will be for those injuries. For instance, it specifies the compensation payable for the loss of a finger, the loss of a thumb, the loss of all fingers, the loss of a hand or whatever. There is quite a range of specified disabilities within that schedule. That schedule also notes that injuries not covered within the schedule will be covered by regulation.

The Government has changed things by degrees here. Sometime ago it adopted some of the American Medical Association's procedures for determining compensation in relation to injuries that could not easily be put in a table. For instance, if you have a percentage immobility in certain parts of the back or somewhere else or something which you cannot measure in relation to placing it in a table, the AMA guides give some description as to how you might go about determining how much that injury is worth. Clearly you need a regulation like that to handle some injuries.

However, the worst of the new regulation is that they have now tackled the issue of what happens if a person receives two injuries. If you lose one hand, as I said before, you receive a particular level of compensation and if you lose two hands the schedule tells you what you get for that. There are all sorts of combinations possible and the table could go on forever. However, the AMA guides show how you can add two injuries together and come to a sum figure from which you can derive compensation.

The Hon. Anne Levy: Two and two make five.

The Hon. M.J. ELLIOTT: According to this scale two and two make a lot less than four. I might add that there may be some justification to say perhaps that two fingers are not worth exactly twice one in some senses but that is not the way this particular table is worked. The worst of it is that this table is built upon a premise that one hand in the AMA guides is not worth as much as one hand in the third schedule. So, when you add two or three injuries together you can actually have a situation where having two injuries can actually be worth less than having one, and that is quite absurd. However, that is the sort of thing that has happened.

Let us take one specific example under regulation 16: a worker loses a right hand and a left thumb in an industrial accident. If you think about that it is quite a significant injury because he has lost one hand and the other hand does not have the use of the thumb so he cannot really hold things. He has been significantly disabled. Section 43 entitles the worker to a lump sum for permanent disability for the loss of the hand and the loss of the thumb, but the amount cannot exceed the prescribed sum. Under the third schedule the loss of a right hand is equal to 80 per cent of the prescribed sum; the loss of a left thumb is worth 35 per cent. Prior to the regulation 16 amendment, subsection 43 (7) limits the amount to 100 per cent. Therefore, the worker would receive 100 per cent of the prescribed sum even though the additive figure would have been 115 per cent, and that figure, in 1994, is equal to $96 200. Because the two disabilities arise out of the same trauma the amended regulation 16 requires the compensation authority to use the AMA guides and the combined values chart. Loss of the right hand under the AMA guides equates to 100 per cent loss of hand to 90 per cent impairment of upper extremity. Table three equates 90 per cent impairment of upper extremity to 54 per cent impairment of the whole person. So, under the AMA guides losing a hand is worth 54 per cent impairment, as against the third schedule which gives 80 per cent.

For the loss of the left thumb, table 1 equates the 100 per cent loss of thumb to 40 per cent impairment of hand; table 2 equates 40 per cent impairment of hand to 36 per cent impairment of upper extremity; table 3 equates the 36 impairment of upper extremity to 22 per cent impairment of whole person. Compare that with schedule 3 which provides for 35 per cent. Now, we bring the combined values chart into force. Regulation 16 requires the use of this chart, and on page 255 states:

. . . to add the whole of body impairments as calculated by the AMA guides.

That addition is not an addition in the sense that we understand it; it will produce a number less than a normal addition total. The larger amount 54 per cent (right hand) is found on the vertical axis and 22 per cent on the horizontal axis. Where

they meet gives a value of 64 per cent. Therefore, under regulation 16 the worker will get 64 per cent of the prescribed sum or $61 568.

But there is still more to it yet. Prior to the amendment of regulation 16 the worker would have received 100 per cent of the prescribed sum ($96 200) plus the supplementary benefit of 67.5 per cent which is another $64 935 for a total of $161 135. After the amendment of regulation of 16, the worker would receive 64 per cent of the prescribed sum, which is $61 568, plus 13.5 per cent supplementary benefit (which is an additional $12 987), for a total of $74 555. Compare those two figures: previously, the injured person would have received $161 135 compensation; under the new scheme, less than half—$74 555. You might even note, perhaps, that that sum is virtually the same as schedule 3 gives for losing the right hand. So, for the right hand you lose about that sum of money: if you lose the left thumb, which virtually immobilises the other hand for many uses (so you do not have a useable hand), you get nothing extra—nothing extra at all. The difference between the two figures received is $86 580.

The Hon. T.G. Roberts: What is the policy?

The Hon. M.J. ELLIOTT: Perhaps we had better remind people again, because the policy has been quoted here a few times. The objective of this Liberal policy is to accelerate this process so that South Australia achieves competitive levies, much closer to the time promised by Labor, without reducing benefits for those injured at work. We have a ridiculous situation, in two senses. First, there is a broken promise: the benefit is halved. You cannot get a much clearer breach of a promise than that. Secondly, the compensation for the dual injury of loss of hand and loss of thumb on the other hand is virtually equivalent to the compensation of one hand alone, and that defies logic. Once we started making some inquiries about this, everybody went to ground; nobody wanted to talk about it. The Government realised that it was gone on both counts: it was gone because it had broken a promise, and it was gone because it did not even make sense. Nobody can justify what is happening under this regulation.

I said that I can understand the need for a table similar to the AMA table as to how you might derive a final benefit, but the particular application of this one and the way it supplants schedule 3 and the final results of that are clearly unacceptable in any sense, and the Democrats oppose this regulation. That is why I have moved for its disallowance.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

VICTIMS OF CRIME

The Hon. M.J. ELLIOTT: I move:

That the Legislative Review Committee be required to examine and report on the following matters:

1. The effect of the introduction on 12 August 1993 of the amendments to the Criminal Injuries Compensation Act.
2. The adequacy of the compensation being provided to victims of crime.
3. Whether the required burden of proof be changed from 'beyond reasonable doubt' to 'upon the balance of probabilities'.
4. Whether the award of damages be indexed to inflation.
5. The manner in which the Attorney-General has been exercising his discretion to make an *ex gratia* payment.
6. Other related matters.

In 1969 the Criminal Injuries Compensation Act became law in South Australia, granting for the first time the rights to victims of crime to claim compensation. At that time the maximum award was $1 000. It was subsequently increased in various increments to $50 000. In recent years considerable publicity has been given to the existence of the legislation, resulting in a substantial increase in the number of claimants exercising their rights pursuant to the legislation. This is benevolent legislation, in that it introduces by statute a cause of action not previously available under the common law.

The community generally supports the principle that people who are victims of crime should have an entitlement to claim compensation from a State fund. Victims of crime frequently suffer not only physical injuries but severe and ongoing emotional distress, often leading to post-traumatic stress disorder, involving the loss of ability to work, loss of confidence, nightmares, fear and loss of capacity to enjoy life. This trauma should not to be underestimated or understated, as most victims of violent crime report that it is the worst experience of their life. I guess that is not surprising.

In the final year of the previous Government, legislation was introduced to markedly reduce the amount of payments made to victims of crime in order to limit the escalating cost of the scheme to the public. The result of the introduction of the scheme has meant that the awards of damages in most cases has been reduced to about one-fifth of previous entitlements. Many victims with comparatively minor injuries have been excluded from claiming any compensation at all. At the time of the introduction of the legislation, the then shadow Attorney-General (the Hon. Mr Griffin) indicated that he would keep a close eye on the scheme to see that it was working effectively.

A number of legal practitioners working in this jurisdiction have indicated to me that the scheme is not working efficiently and that the compensation now awarded is entirely inadequate. Many victims of comparatively minor assault have their expectations raised by the police, who inform them of their rights under the Criminal Injuries Compensation Act, only to be informed by a solicitor that their injuries are too minor to qualify for an award of damages.

Similar schemes operate in all States of Australia with various levels of awards of compensation being assessed in a variety of different ways. The South Australian Act is unique, in that it requires an applicant to prove beyond reasonable doubt the commission of the offence giving rise to their injury. This is a different burden of proof from the usual civil burden of proof on the balance of probabilities. The result of this is that there are many cases in which it would reasonable be considered that an offender was probably guilty of an offence, but, because the matter could not be proved beyond reasonable doubt, no conviction is recorded and, consequently, no compensation can be awarded.

In an effort to overcome this difficulty, the Attorney-General has an ability under the Act to exercise a discretion to make an *ex gratia* payment in suitable cases. It has been reported to me that the present Attorney-General is exercising his discretion differently from the previous Attorney-General, is in fact making relatively few *ex gratia* payments, and is at times failing to follow the advice offered to him from the Crown Solicitor's office. I recognise, of course, it is his discretion, but that observation has been made.

There are two major areas where the Attorney-General is usually invited to exercise his discretion. The first is in infant victims of sexual abuse, where the child is too young to give evidence or because the child's evidence is uncorroborated, and the Crown Solicitor's office considers the chance of a successful prosecution to be remote. In many of these cases

the child undergoes treatment at the Children's Hospital or at a private psychiatrist, and it is often abundantly clear that the child has suffered damage. Often because of the psychological damage that has been caused, the child's ability to give coherent evidence is also affected and the chances of a prosecution are even further reduced.

The second category of offences where the Attorney-General is often invited to make an *ex gratia* payment is in cases where there is a perverse verdict of the jury. These are the case where it is fairly clear that an offence has been committed, but that a jury may be persuaded that there may be some reasonable doubt as to the commission of the offence. In many of these cases, if burden of proof was on the balance of probabilities, a conviction would be recorded. Although it is appropriate that the burden of proof remains in criminal cases, it is inappropriate that such a burden of proof be applied to persons attempting to make a legitimate claim for compensation upon a fund established for the purpose.

Both the previous Government and the present Government have placed law and order as a high priority and have indicated that they are prepared to provide substantial support to victims of crime in their publicity material. This is an important issue, with which all right thinking members of the community would agree. It is important, if the rules governing the administration of the criminal injuries compensation fund be set fairly, so that the funds available are justly and equitably distributed between all legitimate claimants.

Certainly, in discussions that I have had with people, I have been persuaded that there is a problem here. It is one which deserves attention. The Legislative Review Committee is the appropriate committee to examine this further. The issue 'beyond reasonable doubt' as compared to 'upon the balance of probabilities' is an extraordinarily important one, because there are so many times when the prosecution is quite aware of guilt, but of course the criminal requirement for 'beyond reasonable doubt' does mean from time to time that guilty people escape.

I guess we accept that with reluctance. However, if we are convinced that there is real guilt, the failure to prosecute or successfully to prosecute should not become a burden upon the victim, as it is currently. I think that is probably the most important of the issues. However, there are others and I have, in fact, under term of reference No. 6, referred to 'other related matters' so that the committee feels free to range widely across this issue, and I am hopeful that the committee will bring back a useful report to this place. I ask members to support the motion.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

STIRLING SIGNS

Adjourned debate on motion of Hon. R.D. Lawson:

That District Council of Stirling By-law No. 42 concerning moveable signs, made on 20 December 1993 and laid on the table of the Council on 10 February 1994, be disallowed.

(Continued from 13 April. Page 406.)

The Hon. R.D. LAWSON: This motion seeks disallowance of the District Council of Stirling by-law concerning moveable signs, which by-law contravenes section 370 of the Local Government Act. The proposal was supported unanimously by the Legislative Review Committee and I commend the motion.

Motion carried.

MURAT BAY SIGNS

Adjourned debate on motion of Hon. R.D. Lawson:

That District Council of Murat Bay By-law No. 16 concerning moveable signs, made on 12 January 1994 and laid on the table of this Council on 15 February 1994, be disallowed.

(Continued from 13 April. Page 407.)

The Hon. R.D. LAWSON: This motion seeks disallowance of District Council of Murat Bay by-law concerning moveable signs, which contravenes section 370 of the Local Government Act. This proposal was supported unanimously by the Legislative Review Committee and I commend the motion.

Motion carried.

RACISM

Adjourned debate on motion of Hon. Carolyn Pickles:

1. That this Council condemns the racist activities of certain elements of our community and calls on all South Australians to join in this condemnation of racism in our society.
2. That a message be sent to the House of Assembly requesting its concurrence thereto.

(Continued from 13 April. Page 408.)

The Hon. BERNICE PFITZNER: I rise to speak on the motion of racist activities in our community. Indeed, these activities have frequently culminated in racist violence. The definition of racism can be described in two parts: first, it is the belief that certain races are inherently superior to others and, secondly, discriminatory behaviour or practices based on this view. Racism in the community has raised its ugly head again and with two recent incidents here in Adelaide—the outright racist violence shown in the Rundle Mall incident and, again, at a racist rally at Prospect, which was joined by an anti-racist group challenging them.

It is a natural reaction for to us try to play it down and hope that these nasty incidents will go away. However, the report of National Inquiry on Racist Violence in 1991 relates that the overseas experience is that racist violence cannot be ignored and must be challenged and addressed fully. When the National Inquiry on Racist Violence was originally released in 1991 I spoke in depth with Irene Moss, the Federal Race Discrimination Commissioner, and all the findings and recommendations of that report are still relevant. We do not seem to have improved—now three years down the track.

It is stated that 40 per cent of Australians are either immigrants or the children of immigrants but, in spite of this diversity, Australia is still remarkably free of the severe racial tensions that exist in other countries, for example, the Los Angeles riots in the USA and the Brixton riots in the UK. However, the report says that a problem does exist and indicates that it is a problem with the potential to affect us all. Racism violence and harassment are social problems whose etiology is based on racism in our society and at stake is our continued development as a just society.

While the impact of racist violence on people from non-English speaking backgrounds is experienced as fear of physical attack or abuse rather than the actual incident, this fear should not be overlooked. Racism reduces one's self

esteem; it promotes insecurity; and it leads to a feeling of being ashamed of one's own identity. In Perth the inquiry was told that many children had been badly affected by the Australian Nationalist Movement campaign. The inquiry stated:

> It manifested itself especially in the weaker members of the community, such as young children and older people. Children were going home and saying, 'Why am I black?' or 'Why am I Asian?'

There are a number of reasons why racism needs to be confronted. We are told in the Arthur D. Little report that our economic future lies with our surrounding Asian neighbours. The inquiry was told in Perth that a racist poster campaign by the ANM did untold damage. The ANM activities were widely reported in the Asian media. The Singapore newspaper *The Straits Times* ran an editorial in 1989 warning potential migrants that they ignored racism in Australia at their own peril if they planned to emigrate. They were told to balance the existence of racial prejudice against the economic benefits of migration. There was a subsequent loss in terms of tourism and business, which prompted the then Premier of Western Australia the write to major Asian newspapers to assure business people and politicians that Asians are welcome in Australia. That was in 1989, and here we are again with the slogan 'Asians out'—five years later. Mr Ross Garnault conducted a survey of 40 business people, advisers and decision-makers in Hong Kong. He writes:

> Australia is not yet perceived to have the collective will to market effectively in Asia. There is worry over what is seen as racism in Australia, spilling over into a certain amount of condescension by visiting Australians to Chinese businessmen and an unwillingness by Australians to take seriously the idea of being part of Asia. Australia's perceived racism was regarded as hindering the development of new trade relationships, although the majority thought Australia's image had improved a lot over the last five years. Perceptions about racism in Australia were seen to make it harder to establish good relationships because of Chinese suspicion that they will not be welcome, or be accepted on an equal footing.

This was the comment made in a report entitled 'Australia in the North East Asian Ascendancy'. Unfortunately, although we have improved, the perception lingers on.

On purely practical economic terms, Australia cannot afford to be perceived by its Asian Pacific neighbours as being a racist country. There is also the risk to Australia's human rights reputation if we are perceived to be racist. Last year, on a fact-finding trade mission to Singapore, Malaysia and Vietnam, we found that Australia was accepted as the most preferred country, especially in Vietnam. The people from these countries admired our consistent stance on human rights. As a nation with a high international profile on human rights issues, Australia has particular obligations to uphold.

It will not do for us to be seen as a country where racial discrimination flourishes. Some comments have been made which suggest that, if there is racist violence, multiculturalism is not working. This view is rejected by the inquiry, an opinion which I strongly support. The real threat to social cohesion is the presence of racist violence, intimidation and harassment to people of non-English speaking background. This is perpetrated by a small number of racist individuals and groups who translate their own racist beliefs and social problems into overt racist behaviour.

In Australia, the mainstream of the community prides itself on tolerance and cultural and ethnic diversity. I would like to list some of the inquiry's findings, which are not particularly happy ones, as follows. Racist attitudes and practices, conscious and unconscious, pervade our institutions, both public and private. The inquiry finds that racist violence on the basis of ethnic identity in Australia is nowhere near the level of that of many other countries; nevertheless, it exists at a level that causes concern, and it could increase in intensity and extent unless addressed firmly now.

The inquiry finds that the existence of a threatening environment is the most prevalent form of racist violence confronting people of non-English speaking background, and that people of non-English speaking background are subjected to racist intimidation and harassment because they are visibly different. For recent arrivals, unfamiliarity with the English language can exacerbate the situation. It finds that the perpetrators of racist violence against people of non-English speaking background are generally young, male Anglo-Australians.

There have, however, been some notable exceptions. It finds that, in public places, racist violence usually takes the form of unprovoked one-off incidents by strangers, and that neighbourhood incidents are more likely to be sustained campaigns by perpetrators known to the victim.

The inquiry finds that social, economic and international crises produce a climate that is conducive to the most extreme form of racism—that of racist violence. It finds on the whole that public authorities do not respond effectively to reports of racist violence, and that the activities of extremist groups, which have become more violent in recent years, constitute a small but significant part of the problem of racist violence in Australia.

The inquiry finds that the activities of extremist groups, some of which have resulted in prosecutions, have shown a close connection between racist propaganda and racist violence. It finds that in assessing the extent of organised racist violence it is important to acknowledge the role of long-standing racist organisations which themselves do not perpetrate violence but which nevertheless provide the impetus for others. These organisations essentially incite and maintain prejudice.

These are worrying findings, and we must combat each and every one of them whenever and wherever they are encountered. I would like to uphold one of the recommendations, and that is that Federal and State Governments should accept ultimate responsibility for ensuring through national and State leadership and legislative action that no person in Australia is subject to violence, intimidation or harassment on the basis of race. In closing, I quote a member of the Jewish community in Sydney, who stated:

> Just what kind of society has Australia become: one that tolerates racism which has as its end result harassment, intimidation and violence or one that has the resolve to confront the evil of racial hatred head-on, offering protection to the targets of racial thugs who have chosen to bully the weak and the powerless?

Most Australians, like ourselves, support the latter and, as the inquiry urges, we the Australian community accept unequivocally the challenge to confront racism and racist violence. I therefore support, in essence, the Hon. Carolyn Pickles' motion that this Council condemns the racist activities of certain elements of our community, and I call on all South Australians to join in this condemnation of racism in our society.

The Hon. M.S. FELEPPA: I support the motion. I have no hesitation in adding my condemnation of the racism of the neo-Nazi skinheads and the like who recently paraded their anti-Asian, anti-black, anti-Jewish and unethnic prejudices. In that performance, they exhibited their racism in support of

some kind of an ideal race that is supposed to be superior to all others.

Australian people today come from 100 different countries, and we are in the process of forming a uniquely Australian society and cultural character. As has already been said by previous speakers, we are truly a multicultural community. That is how it is and that is how it should be. We are not a melting pot of the dregs of humanity striving to maintain white supremacy. That is now well past, in my view.

We are an amalgam of peoples and cultures in the process of becoming a new national character made up of those who have had the courage to take up life in a distant land on the rim of the Pacific. We are at the southern end of the earth between South Africa and South America. There is only one place more distant from the world's activities, and that is Antarctica, which is impossible to colonise.

We are becoming more and more a racially mixed community. Of course, there are some narrow minds that deplore it, but there are many more enlightened and good minds that accept and welcome it. They accept it as inevitable because of our geographic location.

It is my view that the neo-Nazis represent themselves as expressing an undertone of discontent. They claim that the racial supremacy of the white race is the salvation of the world. Their philosophy is false and dangerous to peace. The truth is that they practise overtones of malcontent. Their malcontent is the evil intention of exploiting racism so that their own egos can feed on the fear they generate—fear of those who look different from them.

They are not really interested in fairness, justice or equality for all. They are simply playing a game that makes them feel superior and gives them the illusion of power by fomenting conflict and oppression. We can think ourselves very fortunate that conditions do not encourage them to flourish. That is the true fact. They do not have a leader with the eloquence of Adolf Hitler, for instance. It was said recently in a newspaper that Adolf Hitler could hold an audience spellbound on subjects such as art, of which he knew nothing. The neo-Nazis in Australia have no speaker, fortunately, of that calibre to lead them. Social and economic conditions in Australia are far better than they were in Germany at the end of the First World War which gave Hitler the opportunity to rise to power.

Our parliamentary and government structure is such that no one person can grab complete power in one office and go on to rule Australia alone. For instance, the offices of the Prime Minister and Governor-General cannot be constitutionally combined, as Hitler was able to combine the Government and chancellorship of Germany into a dictatorship. We can be thankful for that. We need not be troubled by Peter Goers' remark:

> God forbid if more join them and they became politically organised.

In Europe, it might be different but in Australia neo-Nazism is a long way from becoming politically conscious, much less a power. However, I must admit they are a social nuisance and a threat to peace in the community, and for those reasons they should be forcibly condemned by all Australians. However, what should trouble us is that the few neo-Nazis do foment racial hatred and community discontent. They do that by posturing and parading, and the media, unfortunately, profit by reporting their activities, and that is just what the neo-Nazis want: free publicity.

In the Human Rights and Equal Opportunity Commission's Report, which has already been referred to by previous speakers and which is entitled 'Racist violence', the mass media comes under criticism in several references. There is truth in the reference that the mass media:

> . . . are the means by which most Australian residents receive information about race issues.

It is the principal means by which issues come before the public. The mass media do not only inform but they also control and manipulate public opinion by what they say and by what they omit to say. They have this control because the press, radio and television are almost the sole, means of mass communication and a powerful means of mass education. In my view, the mass media, therefore, has a duty and the absolute responsibility to act with caution and deference to the utility of the truth in informing the public.

I support entirely the remarks made the other week by my colleague, the Hon. Ms Carolyn Pickles, and of course today's remarks by Dr Pfitzner, concerning the role of the mass media. The Hon. Ms Pickles made some telling points. The neo-Nazis are an insidious group who aim to divide rather than unite the community, and their activities border on treason. They should, therefore, be subjected to the rigours of the law. It is recommended in the report of the National Inquiry into Racist Violence in Australia, referred to earlier by its short title, that the States and Federal Crimes Act and the Federal Racial Discrimination Act 1975 should be amended:

- to enact new offences of racial violence and intimidation
- to create a clearly identified offence of incitement to racial violence and racial hatred which is likely to lead to violence
- to prohibit incitement of racial hostility with civil remedies similar to those provided for racial discrimination
- to enable courts to impose higher penalties where there is racial motivation or elements in the commission of an offence.

In my view, these amendments would provide a legal solution to the problem of neo-Nazism. The legal solution is needed as it can be anticipated that negotiations with the prejudiced opinions would be doomed from the start because it is hardness of heart that has allowed such prejudices and hatreds to grow in the first place. The report previously quoted said:

> Many people opposed to racism support the racial vilification legislation and legislation to prohibit racist intimidation. Whilst the proponents of legislative reform acknowledge that these may be criticised on the grounds of restricting freedom of expression, they believe that incitement to racist violence and racist hostility should be punishable by law.

As a leading anti-racist campaigner, Ms Irene Gale, well known in our community in South Australia, told the inquiry in Adelaide:

> I think most people do not like to break the law, and changing the laws is a very good way of changing people's attitudes and making them think about what they are doing . . . the general community would think more about the situation.

None of the proposed amendments would adversely affect the lives of the ordinary law abiding citizens who subscribe to fairness and equality in the community, but it would affect people who harbour gross racial prejudices and whose hatred and violence are an expression of bigotry and intolerance.

By responsible education by the mass media, the public will see exposed the divisiveness of neo-Nazism. So, by the application of the law, the insidiousness of neo-Nazi opinions can be eliminated from our community, which is otherwise happily coming to terms with its multiculturalism. I support strongly the motion, and I urge that other members do likewise.

The Hon. ANNE LEVY: I rise to support the motion, and I do so with enthusiasm and passion. Racism unfortunately occurs in many countries today and probably has for many centuries. It is usually directed at minority groups, and examples which spring to mind include racist activity towards people of Chinese extraction, in Indonesia and Malaysia and anti-Semitic activities in Eastern Europe and some Arab countries.

There is racist behaviour towards blacks and Hispanics in the United States and there is racist behaviour towards people of Arab extraction and blacks in France and other European countries—all deplorable, all very much to be regretted and, luckily, in most cases of fairly minor extent. I join with others in saying that racism has no place in Australia today. We need think only of how Australian Aborigines, in particular, have suffered appallingly for more than 200 years from ferocious racism on the part of white settlers in this country. The current spate of racism in Australia is mainly directed at Asian people and at Aboriginal people, whatever its perpetrators may be saying regarding the original Australians.

At the anti-racism rally, which was held 11 days ago, a number of Aboriginal people arrived very shaken and upset because, to reach it, they had had to walk past the Prospect Town Hall, where the neo-Nazi thugs had attacked them—not physically, but verbally—in a very distressing way. These Aboriginal people—most peaceful, law-abiding citizens—were most upset at the epithets that had been thrown at them by this group of people. It is perhaps interesting that so far in this debate the people who have spoken are those who are of non-English speaking background themselves and who have probably suffered in consequence, however slightly, from the racism that occurs in our community.

Other speakers so far have been women, who, if they do not experience racism, certainly experience sexism, which is analogous to racism and women, in consequence, are likely to be particularly sensitive to the effects on individuals of racist and sexist attitudes of other people. I, of course, am not only female but am of Jewish background, on whom the horrors of the Holocaust have an additional personal and family impact.

The Hon. Carolyn Pickles: The neo-Nazis don't think it happened.

The Hon. ANNE LEVY: Yes, as Ms Pickles says, the neo-Nazis say the Holocaust never happened. I just wonder why so many of my relatives never returned when the war was over. I hope that other speakers in this debate will include, shall I say, fifth generation Australian males, who will never have experienced racism or sexism personally but who I hope will have the imaginative sympathy to understand its distressing effects on those who have to suffer it.

The question has been asked: why should we speak up in this way? Why should we deplore the action of racists? Why should we take part in anti-racism rallies and make our opinions known? Why not ignore this this, fortunately, tiny band of neo-Nazi thugs in the hope that no-one will take any notice of them and they will get tired of their rantings and go away?

I do not support that argument. It is very important that there be a response from right-thinking people; that we do take a stand and make our opinions clear, so that these individuals do not have the whole field left to them and their vile message. I should like to close by quoting a very famous statement from Pastor Niemoller. He was a Lutheran Pastor, a well known anti-Nazi in Germany during the Hitler period who, because of his views, did not survive the Second World War but suffered the same fate as many of the Jews and other people who were the victims of Hitler's racism. Pastor Niemoller wrote:

> First, they came for the Communists, and I didn't speak up because I wasn't a Communist.
>
> Then they came for the Jews, and I didn't speak up as I wasn't Jewish.
>
> Then they came for the trade unionists, and I didn't speak up as I was not a trade unionist.
>
> Then they came for the Catholics, and I didn't speak up as I was a Protestant.
>
> Then they came for me—and there was no-one left to speak up.

This quotation, which I may say I have up on the wall, is a constant reminder that where we see injustice, where we hear disgusting things, we have a moral duty to speak out and make our opinions known, whether or not it touches us personally. Evil in our community must be opposed by everyone and we must all take the opportunity to say so whenever we can. I support the motion.

The Hon. M.J. ELLIOTT: I rise on behalf of the Democrats to support the motion. We find racism in all its forms to be beyond contempt. I must say that one of the concerns I have is that, to some extent, this may be responding to the reactions of a small number of extremists who actually seem to thrive on people taking notice of them, and to that extent they have been successful in that we have noted their activities.

The Hon. Carolyn Pickles interjecting:

The Hon. M.J. ELLIOTT: No, but noting some rather extreme things that have happened in recent times I cannot help but think that it may have helped act as a trigger. I suppose if I had any reservations about the motion it would be only in that regard, although not about the substance of the motion at all. I believe that the great majority of Australians are very tolerant, and it is important that members of all political Parties stand up and make it quite plain that they do not condone racism in any form.

I have grave concerns that if anything is helping to exacerbate the situation in relation to racism it is the current economic and social circumstances as they are evolving in Australia. There is no doubt that extremism in all its forms flourishes when there are large numbers of people who are unemployed, who are poor, who perhaps are not receiving adequate education and who generally speaking feel that they are not getting a fair deal in life. In those sorts of circumstances it seems that racism flourishes most actively. I believe that is one of the essential ingredients for the growth of the anti-Jewishness that we saw flourish in Europe before World War II. It comes in handy to have somebody to blame, and in many cases race is obvious, where people stand out and look different, and so they are an identifiable group.

It is unfortunate that in hard times those things occur and that is one of the many reasons why we must not allow the division currently occurring in our society between the haves and the have-nots. In the first instance that situation does not arise due to race: it arises due to economic policy. However, a consequence of that economic policy and the subsequent economic and social destruction is that racism is allowed to breed and fester. I hope that all members, when they support this motion, as I expect they will, might at least stop to ponder what are some of the root causes which allow racism to flourish.

In some recent by-elections both in South Australia and interstate people standing on a 'stop-immigration ticket' did quite well, and that has been taken as a sign that racism is

flourishing in Australia. As I understand it people who voted for that group did so for a range of reasons. There is no doubt that a number of people who voted for that group were racist and were thinking in terms of migration, particularly from Asia and the Middle East. However, many more voters were simply reacting to economic circumstances and were saying, 'There don't seem to be enough jobs in Australia now; can we afford to have more people coming here?', while others were saying, 'The Australian environment compared to other environments is fragile; there is very little well-watered fertile land and Australia's population cannot grow much more,' and they voted for those reasons. So votes were cast in those by-elections for a range of reasons, but there are some signs already that some people are reading that the vote was based purely on racist grounds, and that might be a real encouragement to some racial extremists to go about their work. With those comments, I indicate again that the Democrats support the motion.

The Hon. T.G. ROBERTS: I welcome the motion as an indication that, as members of Parliament, we have been requested to take a public stand in relation to what many of us see as a rising expression of racism through public activities of a few. However, the social ingredients as indicated by the Hon. Mr Elliott do harbour and foster the extreme positions that are adopted by many people, whereas when there is social equalisation, if you like, and an economy that is delivering equally to all people in all areas it tends to put a dampener on those extreme expressions.

We are living in a time that is economically difficult and those people who have a vested interest in fostering racist views and expressions take advantage of those economic circumstances, and it is up to people such as ourselves in Parliament and other community leaders to come out in public and express revulsion at the use of racism to divide communities and to bring about violent acts to make their points.

Australia has been very lucky in relation to its social development and its social mix. Our recent history in terms of immigration and the way in which all the ethnic groups within Australia have lived and worked harmoniously to direct and redirect the course of Australia has been one that is the envy of the world. There are not too many nations today that can boast the record that we have in relation to harmonious groups and the integration of cultures within Australia. There is a bipartisan view that the majority of Australians express the wish that people should be proud of their heritage in terms of where their forebears came from, but also it is recognised that, as a nation, we need to have a united view in relation to our own national identity. Australia's national identity has been forged through specific periods of broad immigration. Particularly after the traumas of the world wars in Europe, Australia's makeup altered with large scale immigration patterns that helped develop Australia into what it is now. Many of the communities that came from war-torn countries during those periods and the recent refugees from Latin America, Timor, and the Asian countries have settled well into Australia. There is a general acceptance of their cultures in Australia as long as the social bounds by which they operate are in harmony with the general direction of what would be regarded as Australia's national identity. The immigration patterns that have occurred have all added to the richness of Australia's culture.

The leaders of all the immigrant groups that have developed over the years have been particularly responsible. Until probably the last 20-odd years, the political system has been dominated by Anglo-Saxon and Anglo-Celtic faces in Parliament Houses, but that is beginning to change to reflect that changing national identity. Discussion has taken place in relation to Australia becoming a republic and that has something to do with forging our new identity. The issue of the Australian flag is also open for discussion in a democratic way. These matters all add to a unified direction for a nation, and that is the intellectually balanced debate that should be progressing, but unfortunately some would like to take advantage of the differences to which I have referred to bring their brand of hatred into the community, so that their views of the world, basically through neo-fascism, can thrive. The only way they can do that is through division.

The only black mark against this in relation to our own cultural identity is the impact that the development of our own modern day culture has had on the original inhabitants, and the debate at the moment is trying to address a lot of those problems associated with white development over the last 200 years on the culture of black people. Black people generally in Australia have been very tolerant, in the time frames that we have set, to balance the ledger; and, if we have a look at the not so subtle forces that have tried to interfere in the balancing of the scales in returning some power and equity back to black people, the leaders in that debate, in trying to slow down that process, could be regarded as having racist undertones, but in a lot of cases the criticism would probably be fairer by saying that they tend to be misguided and to have a flavour of strong vested interest in making sure that the balance is not tipped too strongly towards a power shift within the structure that already exists.

There are racists amongst those groups, but the motion before us is more identifiably attacking the overt forms of racism that are now starting to emerge that have a violent streak with them. The covert form of racism that exists in all societies—and Australia is not exempt from that—has an impact. It certainly has an impact at a social and economic level, but generally the perpetrators of covert racism tend not to want to debate their positions publicly: they generally carry out their policies in a very quiet and, in most cases, effective way, until challenged. That is where it is incumbent on us as members of Parliament to intellectually challenge all forms of racism, whether overt or covert, and work towards a harmonious relationship within society that reflects a society in which we would like to live, that is, a caring, sharing, and well-balanced society, so that we are able to stand up and isolate the racism when it appears during these difficult times, both economically and socially, so that they see that they are part of a minority that is gaining no ground, and, hopefully, they will give up their cause and try to work through the democratic processes that are available to them to argue their cases.

The Hon. DIANA LAIDLAW (Minister for Transport): I wish briefly to participate in this debate. The issues are important. I have always considered that one of the most special qualities about Australia and Australians is our tolerance: it is quite phenomenal when one looks around the rest of the world to see the extent of our multicultural society, and the fact that Australians have welcomed and this country has provided opportunities for so many people from so many different nations to settle in Australia.

Australia is, I understand, the most multicultural country outside Israel, and that is something that we should share with pride and continue to work at hard, because tolerance is a

feature that can be easily overridden. One of the things that concerns me about the recession and unemployment in recent times is that at times one can detect the increasing intolerance in our society. We have seen it, of course, where unemployment levels are high and when times are unsettled in Germany and in other places in more recent times.

When handing out how-to-vote cards at a booth in Elizabeth during the Bonython by-election, I was concerned about one of the people at the booth who was handing out cards for the 'Stop Immigration' political Party. I found it distasteful how selective that gentleman was with the how-to-vote cards that he presented to people. Certainly, no Asian person or person of remote Asian descent was handed one of those cards. I mentioned to the gentleman at the time that as a Liberal—

The Hon. Carolyn Pickles: Did he hand them to English migrants?

The Hon. DIANA LAIDLAW: Oh, yes, the English migrants certainly received them.

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: Yes, but it was not to stop their immigration: it was to stop others. That was not plain in the literature that was being presented, but it certainly was in the manner in which this gentleman was selective in presenting his how-to-vote cards. What I found so disturbing on this Sunday morning was to note how well that Party had done in that area. It is not for me simply speaking in this place or noting the results in the paper and finding it distasteful that a Party that is so racist in its attitudes and represents views so contrary to my own should be allowed to flourish. I was aware at that time that, if the tolerance I find so special about Australia is to continue to thrive, then I have to do more about it.

In relation to the issue of the holocaust and Nazism referred to by a number of members, I want to recall the shock I received at the play *Cabaret* presented by the State Theatre Company a few years ago. I had certainly seen swastikas on television, in films and in museums, but I had never seen a swastika on a living person in an army uniform. I remember being quite shocked at the sight of this swastika and being troubled about whether I could even return after half time. I did—and it was an excellent production—but I will never forget that black, red and white band on the gentleman's arm: it is a sight that I hope I never have to witness again, at least in this country and hopefully elsewhere, if these views can be countered.

We have this week noted the ethnic cleansing in Rwanda and Bosnia—I suppose that is still going on in the Moslem enclave there—and in Uganda with Idi Amin years ago. There are horrible, horrible examples of such prejudice in our community. It is something that I stand very strongly against and I am pleased to have an opportunity, very briefly, to have my views noted on the subject and to support this motion.

The Hon. CAROLINE SCHAEFER: I had not intended to speak today, not because I do not find bigotry such as was displayed recently in this town as abhorrent, but because of my belief that had no-one attended that rally—and particularly had the press not attended that rally—the bullies and thugs who got so much publicity would hopefully crawl back into the hole where they belong. However, after listening to the Hon. Anne Levy, I had to rethink. I agree with the honourable member that there are some things for which we must all stand up and there are principles that must be enunciated in this place. One of those, I am sure, is our abhorrence of racism.

I believe that this motion is not so much in support of multiculturalism or even just condemning racism: it condemns bigotry and bullying of one group of our multicultural society by another group. As such, I would like to have it recorded that I believe that everyone in this place would agree with those sentiments and would congratulate the Hon. Carolyn Pickles on her motion. I do not wish to say anything else, other than that I hope that, should the occasion arise again, that this Council will unanimously condemn bigotry and bullying by any minority group.

The Hon. CAROLYN PICKLES: I thank members for their remarks and it is very pleasing to me that there is, as I expected, unanimous support for this resolution, which is the reason I kept it simple and straightforward. I felt that both Chambers should make an expression of their views so that the people of this State can be assured that every member of this Parliament condemns racism in whatever form it may take and especially, perhaps, racism that turns to violence. As I noted previously in moving the motion, this Chamber itself reflects the multicultural and multi-racial nature of our society. If we can work together harmoniously on most occasions—which is often difficult with the political differences that we have—then I believe that the society we represent should do the same.

In putting this motion through today, not all members have spoken, but this is no reflection on any of those members who have not spoken; it will go through with unanimous support. However, I wish the motion to go to the House of Assembly, as the message indicates, so that the members of that House can also have an opportunity to speak on this motion so that we have the view of the whole of the Parliament, and not just that of the Upper House. I commend the motion to the members and thank them for their support.

Motion carried.

DRIED FRUITS

Order of the Day, Private Business No. 7: Hon. R.D. Lawson to move:

That the regulations under the Dried Fruits Act 1993 concerning Registration (Producers/Packers), made on 18 November 1993 and laid on the table of this Council on 10 February 1994, be disallowed.

The Hon. R.D. LAWSON: I move:

That this Order of the Day be discharged.

Order of the Day discharged.

SELECT COMMITTEE ON THE CONTROL AND ILLEGAL USE OF DRUGS OF DEPENDENCE

Adjourned debate on motion of Hon. M.J. Elliott:

1. That a Select Committee of the Legislative Council be established to consider and report on—

(a) the extent of illegal use of drugs of dependence and prohibited substances;

(b) the nature and extent of illegal use of drugs of dependence and prohibited substances;

(c) the effectiveness of current drug laws in controlling trafficking in prohibited substances and drugs of dependence;

(d) the cost to the community of enforcement of the laws controlling trafficking in prohibited substances and drugs of dependence;

(e) the impact on South Australian society of criminal activity arising out of substance abuse and trafficking in prohibited substances and drugs of dependence.

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

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

4. That Standing Order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

5. That the evidence to the Legislative Council Select Committee on the Control and Illegal Use of Drugs of Dependence be tabled and referred to the select committee.

(Continued from 30 March. Page 352.)

The Hon. BERNICE PFITZNER: This select committee was appointed in April 1991—three years ago. Indeed, it was at the time when I first entered Parliament and it was the first select committee on which I was to serve. I must say that on the medical committees on which I have served there has always been a plethora of hard and fast data and statistics to make a comprehensive and valid determination. These present terms of reference will certainly need similar statistics if we are to make a valid report on: first, the extent of the illegal use of drugs of dependence and prohibited substances; secondly, the nature and extent of illegal use of drugs of dependence and prohibited substances; thirdly, the effectiveness of current drug laws in controlling trafficking in prohibited substances and drugs of dependence; fourthly, the cost to the community of enforcement of the laws controlling trafficking in prohibited drugs and drugs of dependence; and, fifthly, the impact on South Australian society of criminal activities arising out of substance abuse and trafficking in prohibited substances and drugs of dependence.

The community has personally related to me numerous anecdotal accounts which, although of great interest, are not of significant validity upon which to make a decision. However, the select committee has almost come to the end of taking evidence and deliberations and the final report will not take too long to complete. I suppose that after three years of meetings we ought to produce something. I would like to move the following amendment:

Insert new paragraph as follows:

(1a) That the committee consist of six members and that the quorum of members necessary to be present at all meetings of the committee be fixed at four members.

The Hon. Anne Levy interjecting:

The Hon. BERNICE PFITZNER: I know that the Hon. Anne Levy has had a lot to do with numbers on select committees. In support of this amendment, I would like to remind this Council that the Liberal Party won the last election with a resounding vote of confidence. I understand that the voting percentage for the Upper House at the December election on primary votes was 52 per cent Liberals; 8 per cent Democrats; and 27.4 per cent ALP. Also, as we note, there are 11 Liberals members here, nine ALP members and two Democrats. We note that there is almost a two-to-one ratio between the two major Parties. That being the case, the select committee with six members, three of those being Government members and three non-government members seems to be more than fair. So, in conclusion, apart from numbers on the committee, I support the motion.

The Hon. CAROLYN PICKLES: I support the motion. I was a member of the former select committee on drugs. The committee had nearly finished its deliberations and would have reported had it had a little more time. I am happy to support the motion. I think that it is an important issue and one on which this Council should perhaps take some further evidence, although I do not think that very much has changed since the committee finished its deliberations, but there may be some new issues that we would want to look at.

In relation to the Hon. Dr Pfitzner's amendment, all I can say is: what absolute cheek! Every time the Labor Party when in Government tried to have a select committee of six, it was defeated. Every time it was defeated on the votes of the Australian Democrats and the Liberal Party. Well, I think it will be defeated again this time as there is the same number of votes. However, it seems to me that the Hon. Dr Pfitzner has put in a good try, but it will not be successful. I think it is absolute cheek! Over and over again for the past four years we have had this debate in this Chamber, and according to my recollection every select committee had five members: two Labor, two Liberal and one Australian Democrat. I cannot honestly remember one—correct me if I am wrong—that in the past four years had a different membership.

I think this is a good try on the Government's part. I guess members opposite can count and perhaps they thought their influence might not be as strong as they believed it should be. However, it seemed to me that on this particular committee there was not a huge divergence of views and that we could reach some kind of sensible resolution. The Council, unlike another place, is given the opportunity for a minority report. If any member feels strongly enough about not concurring with the views of the majority of members on a committee, the Legislative Council has the facility to enable a minority report. So if the Hon. Dr Pfitzner is worried that her views will not be taken into consideration and if she needs an extra person to help her along, I assure her that if she is a committee member she can put in a minority report if she chooses to do so. I am happy to support the motion as printed; I do not support the amendment.

The Hon. M.J. ELLIOTT: I am pleased that the Council will allow this committee to finish its deliberations. The committee, as I said when moving this motion, had already drawn up a draft report and was well advanced in the process of bringing something to the Parliament when Parliament was prorogued. The issues are of such importance that it is fitting that this committee be revived. A couple of select committees will not be revived because they have become outdated, but the sorts of issues raised in this motion are not outdated; they are real; they are with us now in society; and, if we do not address those, we may pay the price later. So I am pleased that the support exists for the motion.

I turn briefly to the amendment. During my first four years in this place there used to be committees which were three-two-one. As a member of those committees I noted that many Liberal members found them frustrating. Unfortunately, it happened that when three members were from the one Party and when the Chair had the casting and deliberative vote there was a temptation for those three immediately to caucus in a way in which they should not. That temptation not only existed but also occurred. There were many times, unfortunately, when I thought that would lead to the committee's becoming political. Some Labor members may recall occasions when Labor chairpersons of committees overused their powers in those circumstances. I found that frustrating, and the Liberal Party was also frustrated.

In the four years of the previous Parliament, the Liberal Party had discussions with the Democrats and said, 'We cannot allow committees to get like this because they have turned into a farce.' We agreed between us that we did want committees that would not be so political.

The Hon. Bernice Pfitzner interjecting:

The Hon. M.J. ELLIOTT: I will get to that in a moment. That is how we moved from a three-two-one situation to a two-two-one situation to start off with. Perhaps the Liberals might like to put the view that they might use the power differently, but I am a member of a standing committee which has a similar three-two-one break-up with the Chair having a casting deliberative vote. I already have some reservations about the impact of that. I will not say more, because I do not want to undermine the committee, but my reservations in relation to the Labor Party and the way they used the numbers—three-two-one and the casting and deliberative vote—and the impact that had on the way the committee worked, causing it to be political, has not changed. As that view has not changed, I will not support the amendment.

On the whole, I think the committees in this place have worked extremely well. As long as they are not allowed to become Party political, they work well. As I said, caucusing can happen to the extent that one group says, 'We have the numbers, so blow the rest of you.' Even though there is a chance for a minority report, the reality is that the committee can be debased immediately. I do not want to see that happen, because I think the committees are far too important to the working of this place. Although we probably will not have as many select committees in future because of the new standing committee system (as I recall this committee is a carry-over from before the time when standing committees were established, and that is why it and a couple of others are being revived), when we do have them I believe the two-two-one formula is the best one.

I suppose it could be argued that there could be caucusing where the one joins with the two, but I think that is a lesser risk than with three from one Party, and unfortunately the caucusing will inevitably happen on some issues. I listened to what the honourable member said, but my experience in this place in committees, select and standing, is such that I cannot support the amendment.

The Hon. Bernice Pfitzner interjecting:

The Hon. M.J. ELLIOTT: I expected that that would be the case. In any event, the alternative is to end up with a deadlocked committee, and that would make the committee equally dysfunctional at the end of the day because it cannot come to a decision. So I oppose the amendment. I understand the sentiments behind it, but for other reasons I need to disagree with the honourable member.

Once again, I thank members for supporting the motion to set up the committee. I think the matter is of such great importance that we cannot simply allow it to die.

Amendment negatived.

Motion carried.

The Council appointed a select committee consisting of the Hons M.J. Elliott, J.C. Irwin, Bernice Pfitzner, Carolyn Pickles and G. Weatherill; the committee to have power to send for persons, papers and records, and to adjourn from place to place; the committee have leave to sit during the recess, and the committee to report on the first day of the next session.

The Hon. M.J. ELLIOTT: In accordance with resolution of this Council, I lay upon the table the minutes of evidence of the previous Select Committee on the Control and Illegal Use of Drugs of Dependence.

PATIENT FEES

Order of the Day, Private Business, No. 14: Hon. R.D. Lawson to move:

That regulations under the South Australian Health Commission Act 1976 concerning compensable and non-Medicare patients' fees, made on 30 September 1993 and laid on the table of this Council on 6 October 1993, be disallowed.

The Hon. Diana Laidlaw (Minister for Transport), for the **Hon. R.D. LAWSON:** I move:

That this Order of the Day be discharged.

Order of the Day discharged.

MINING

Adjourned debate on motion of Hon. M.J. Elliott:

1. That this Council recognises the significant public concern in relation to:
   (a) a recent attempt to implode a cave at Sellicks Hill;
   (b) massive leakage of water from tailings dams at Roxby Downs.
2. That the Standing Committee on Environment, Resources and Development be instructed to examine the above matters, make recommendations as to further actions and in particular comment on the desirability of the Department of Mines and Energy having prime responsibility for environmental matters in relation to mining operations,

to which the Hon. C.A. Pickles had moved the following amendment:

Leave out all words after 'That' and insert the following:

'1. (a) This Council recognises the significant public concern in relation to a recent attempt to implode a cave at Sellicks Hill;
   (b) The Committee on Environment, Resources and Development be instructed to examine all aspects of this matter including—
      (i) the role of the Department of Mines and Energy;
      (ii) the adequacy of the treatment of economic impact and compensation issues;
      (iii) the role of Southern Quarries in this matter;
      (iv) whether there should be remedial legislation.
2. (a) This Council also recognises the significant public concern in relation to a massive leakage of water at Roxby Downs;
   (b) The Committee on Environment, Resources and Development be instructed to examine this matter, make recommendations as to further action and in particular, comment on the desirability of the Department of Mines and Energy having prime responsibility of environmental matters in relation to mining operations.'

(Continued from 23 March. Page 263.)

The Hon. CAROLINE SCHAEFER: I move:

Leave out all words after 'That' and insert:

'the Environment, Resources and Development Committee be instructed to examine the nature of, and responsibility for, environmental monitorings in South Australia and to comment on the appropriateness of the current arrangements for ensuring sound environmental management'.

My reason for moving this amendment is that it is my belief and that of the Government that the motion and the Hon. Ms Pickles' amendment as they now stand are too limiting and too narrow in their scope of their ability, and that many of the questions asked in the motion and the amendment have already been answered by information previously sought. At

the time, the Government sought extensive information in regard to the cave and quarry operations at Sellicks Hill, including consideration of the facts by two independent assessors. Their assessment included factors associated with the calibre of the cave before and after the implosion, the stability and safety of the cave and associated rock formations.

Advice was also considered in relation to the cave's potential for tourism, geological significance, and the economic considerations if quarrying was partially or totally stopped. A decision was made to allow quarrying to continue. That announcement was made on 11 March. A submission following that was made to the State Heritage Authority by the South Australian Speleological Society to make the cave interim listed on the State Heritage list.

The authority's terms of reference are limited to heritage issues, and therefore other related and relevant issues are not considered. Following the decision by the authority to interim list the caves, the Minister for Environment and Natural Resources consulted with the authority and then directed it to remove the cave from the interim list.

This matter is now before the Supreme Court, and it is therefore not appropriate to comment further. It is considered that nothing constructive can be gained by the matter being investigated by the parliamentary standing committee. Work has already commenced to develop a code of practice for dealing with similar incidents in the future. Constructive negotiations are well advanced between the Department of Environment and Natural Resources and the Department of Mines and Energy, and it is anticipated that agreement will soon be reached on the operating framework.

On the matter of the Roxby Downs tailings dam, monitoring of the local water table has been in place since the Olympic Dam operations began in 1988. At that stage, there was representation from the Health Commission, the Department for Environment and Planning and the Department of Mines and Energy. With the change in the departmental structures in 1993, representation on the monitoring group became a function of the Department of Housing and Urban Development, which retained that function of environmental assessment.

There has been criticism that the Government's environmental agency has not been involved in monitoring, but this has now been rectified and the department will be represented at the meetings with the company. Again, it is considered that no value will be gained from revisiting this matter as the monitoring arrangements have been changed to ensure involvement from the Department of Environment and Natural Resources.

To argue that the Department of Mines and Energy has prime responsibility for environmental matters in relation to mining operations is not correct. However, it is clear that procedures needed to be tightened, with greater involvement coming from environmental agencies. These issues are currently being addressed cooperatively to ensure adequate involvement and monitoring from the Department of Environment and Natural Resources, with the ability for expertise in this area to be effectively utilised in ensuring that sound environmental management practices are adhered to.

Under these circumstances, it would be counterproductive to support the motion as it stands. However, it is acknowledged that these and many other such matters do cause significant public concern and, as such, need to be addressed. It appears that this motion and its amendment are rather limiting in that they look only at the mining industry, which is, of course, only one aspect of environmental management in this State.

This motion, in fact, provides an excellent opportunity to take a more comprehensive look at environmental monitoring and management, and to review a broader spectrum of monitoring performances in South Australia.

Effective environmental management is based on a good knowledge of the environment and the effect of human induced changes to the environment. Established monitoring procedures are a means of tracking management performance over time. It would be timely, with a new Government and new agendas, to gauge the State's performance in this monitoring area. Such a review could encompass a broad spectrum through monitoring of mining operations, monitoring of aquatic and marine environments, and land management and environmental impact monitoring. The Environment, Resources and Development Committee would be well placed to undertake this task.

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

INDUSTRIAL RELATIONS (OUTWORKERS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 13 April. Page 409.)

The Hon. K.T. GRIFFIN (Attorney-General): In relation to this Bill, I did seek leave to conclude on the last occasion that the matter was before the Council, because I thought there might be some further information which I wanted to put on the record. In fact, there is nothing further that I need to add, except to repeat that this is an issue that will be capable of further attention when legislation relating to industrial relations is received by us from the House of Assembly, legislation which is currently being debated there. I would have thought that the substantive issue in relation to outworkers should be addressed on that occasion. I therefore indicate that, because we will be considering this issue in the broader context in the not too distant future, I will not support the second reading of this Bill.

The Hon. M.J. ELLIOTT secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 9 March. Page 189.)

The Hon. K.T. GRIFFIN (Attorney-General): The Bill before the House is a combination of two separate Bills introduced by the previous Government just before the election, the first of which relates to the stalking provisions. The Parliament has now dealt with this issue, all Parties supporting the initiative, so this part of the Leader of the Opposition's Bill will need to be removed. Therefore, I will confine my remarks to the second part of the Bill, that dealing with charging practices in cases where child sexual abuse is alleged. In considering the matter I found that the issue of principle is a most difficult one. It involves a conflict of opinion on both sides of the question, opinions genuinely and strongly held. The conflict admits of no easy resolution. This is not an issue on which there is an agreement on all hands

that there is a problem, let alone agreement on all hands that there is a solution.

If there is a problem, what is it? The answer appears to lie in the trend in modern times to effect a drastic change in social attitudes to child sexual abuse in the direction of exposing crimes that would have remained hidden in former times, and to prosecute with vigour those who are sexually abusing children. Cases that would have been more likely to have been hidden in the past are allegations of sexual abuse within the family or extended family. A part of this trend has been the prosecution of allegations of abuse that occurred 10, 15 or 20 years ago, in some cases. For technical, legal reasons that do not matter in this debate, South Australia has not seen this particular manifestation of social change, but that may not last. The legal system has been forced, among other things, to confront the particular legal issues which arise in this kind of case.

The legal issues and problems have probably always existed, but the prosecutions were relatively rare and prosecutors were not subject to such social pressure to take on cases, so the legal problems were avoided or thought unimportant. All that has changed. Whether or not that is a mixed blessing is neither here nor there. Things have changed and one cannot turn back the clock. Where the criminal justice system is confronted with allegations that a child, particularly a small child, has been sexually abused, difficult legal and policy issues are raised, which are particular to this kind of case. This Parliament, like others, has paid attention to some of these in the past. Matters such as screening of vulnerable witnesses; corroboration warnings; the use of video technology in conducting interviews; questions about the extent to which the child must testify at committal; a host of issues.

The area with which this Bill deals is the problem posed by these special cases for the ordinary criminal law of procedure known as the rule against duplicity. That was the subject of the decision of the High Court in *S*, which was really the motivator for consideration of change. In that case the accused was charged with three counts of incest with his daughter. She gave evidence that he had engaged in a course of conduct of sexual abuse from the time she turned nine or 10 to the time she was 17. This amounted to an allegation of sexual abuse between about 1975 and 1983. Her evidence was that sexual intercourse began when she was 14 in 1979 and took place every couple of months for a year. The charges specified intercourse on a date unnamed between 1 January 1980 and 31 December 1980; 1 January 1981 and 31 December 1981; and 8 November 1981 and 8 November 1982 respectively. A defence request for particulars was refused and the trial judge declined to make any order.

On appeal from conviction the High Court, Brennan J. dissenting, ordered a new trial. The court felt very strongly that this was fundamentally an unfair trial, but the result of the decision was that there remained no legal way in which to charge cases of this type. Directors of Public Prosecutions were understandably unhappy that there was no way in which they could test allegations of very serious criminal behaviour in front of a judge and jury. The solution found was to legislate what is in effect a new criminal offence, maintaining a sexual relationship with a child, which concentrates on the existence of a course of conduct rather than on specific instances of abuse.

All Australian Directors of Public Prosecutions agreed that this was a needed reform. It is therefore clear that there is a problem, but is this the solution? There can be no doubt that a price is to be paid in the erosion of a traditional common law protection against duplicitous charges. The possibilities for injustice are spelled out clearly in the judgment of the High Court and in other like cases. Those dangers have been forcefully brought home to the Government through submissions passionately opposing the measure from both the Law Society and the criminal law section of the Law Council of Australia. After anxiously considering the matter, the Government has concluded that there is no other workable solution to the problem and that the general principle involved must be supported.

In so saying, I want to place on record my thanks to those who worked hard to try to convince the Government otherwise: the decision to support in principle does not involve a rejection of the concerns they have expressed. Indeed, the Government has taken them most carefully into account for, whilst supporting the Bill, the Government intends to move amendments designed to strengthen, as far as it can, protection for the traditional rights of people accused of serious crime. In the end, the argument that the *status quo* should be maintained has already been lost. By the end of 1994 it is highly likely that some version of this legislation will be in force in every other Australian jurisdiction.

Of course South Australia could stand alone, but it might look very foolish in so doing. Therefore, the position of the Government is that it will support the second reading, and I foreshadow that I will be moving amendments during the Committee stage. The purpose of these amendments will be to make sure that, if there is in this measure any erosion at all of the rights of the accused, that erosion is minimised and people accused of these serious offences have every opportunity possible to make full answer and defence to the charges. Because this Bill was introduced by the former Attorney-General (when he was Attorney-General and subsequently after the election) I have taken the view that, rather than the Government itself seeking to introduce similar legislation, it would be appropriate merely to move to amend this and to support it.

I indicate an offer to the Leader of the Opposition that, if the Bill is passed with reasonable amendments, I am prepared to arrange that it be adopted as a Government Bill for the purposes of consideration in the House of Assembly. So, the invitation is there and, whether or not that is accepted, certainly in this Council there is generally speaking a fair degree of agreement between the Parties on the way in which this Bill ought to progress. I indicate support for the second reading.

The Hon. A.J. REDFORD: In rising to support this legislation I do so with some reservation. It is absolutely fundamental to our principle of justice that no man should be convicted of an offence unless it is proved beyond reasonable doubt that he has committed that offence. That carries with it a whole host of issues, including the ability of that person to undergo a fair trial and also to be able to put himself into a position where he can properly defend himself.

In my practice I have acted on behalf of defendants in matters where the charges have been vague and non-specific and where references to time and date have been missing. A defendant confronted with those charges finds himself in a very difficult position, particularly if he is innocent, and in our system he is presumed innocent until proven guilty. I cite the example of someone who is accused of having committed a sexual offence on a particular occasion, and if they know the date on which the offence allegedly occurred they may be

able to defend themselves by saying that they were not there, they were overseas, there were other people present who can show that that offence did not occur or that surrounding circumstances would indicate the complaint was not true. In the absence of a specific time reference it is exceedingly difficult for an accused to defend himself and, indeed, a jury will be confronted with an allegation, a counter allegation and, in some cases, very little opportunity to assess the surrounding facts to determine the veracity of the evidence of either the complainant or the accused. That can lead to gross injustice, and the last thing we would want to see in relation to criminal legislation is people who are innocent being convicted because they have not had a fair and reasonable opportunity to defend themselves.

These charges are always very difficult to deal with, whether you are involved in the prosecution or in the defence. I appreciate that we are dealing with younger people who do not have the capacity or the ability to be precise in terms of date and time and that we cannot expect the quality of evidence that we might expect from an adult. One has to live with that given the nature of the crime and the nature of the problem that exists.

Over the past five years the quality of investigation of this sort of crime on the part of police officers and various other people has improved markedly. Cases have been heard where people have schooled witnesses—and it is very easy to school child witnesses—to such an extent that their evidence had become so polluted that it was almost impossible to rely upon what they were saying. One case that springs to mind involved an allegation by a number of children about a teacher in an Adelaide school—and I will not name the school—and it was discovered during the trial, after a lengthy *voir dire* hearing, that these children had given no less than 30 statements each on the conduct complained of in relation to the defendant. I do not think I need to explain to this place what an adverse effect that has, first, psychologically in relation to the children, and secondly, in assessing whether or not these children are telling the truth. It is pleasing that those sorts of incidents are not recurring and that the quality of investigation has improved so that it does not occur.

I have some reservations about this legislation in that it gives the Director of Public Prosecutions or our prosecuting authorities a very easy way out. Instead of taking some trouble in the investigation of these incidents to at least endeavour to ascertain the time they occurred, it is very tempting to an investigating officer just to charge this offence. So one does not have to investigate the time and one does not have to look at extraneous material to see whether one can precisely determine when these incidents occurred. By not taking all reasonable steps to determine the time of the alleged offence, the accused persons might be deprived of a valuable opportunity to at least properly and fairly defend themselves. So, it is my view that, whilst there are extreme dangers in relation to improper convictions arising out of this, we must take into account, first, that the conduct being addressed is very serious and something which this Parliament must look at and, secondly, the problems arising from such charges can be addressed by giving proper protection to the accused people. That course of action has not been followed up.

However, my view is that it ought to be treated in the same way as a general deficiency is treated in a fraud case. Generally in crimes of theft or fraud a person is charged with committing an offence on a specific occasion so that if, for argument's sake, I happen to be working for a bank and I am stealing money out of a particular account on a regular basis and I am finally caught up with the charge is addressed that I have done these things on a specific day. Then all the issues can be clearly explored such as my mental intent: did I intend to defraud, was I responsible for actually taking the money? The common law recognised that that could not occur in every case and a principle was devised called a general deficiency, so that if you cannot identify specific dates and times at which money has been taken out of an account, the prosecution is entitled to say, 'Look, we cannot identify the precise dates and times that an the event occurred, so we will say there is a general deficiency and during those two periods of time you committed an offence of fraud or misappropriation by fraud and at the end of the day you are guilty of an offence for that general deficiency.' That has worked quite well because the common law has also provided protection to the defendants.

I will now address some of the problems that those general deficiencies can cause to a defendant and also to a prosecuting authority, and I cite a case in which I was involved some 10 years ago. The Managing Director of the Swan Shepherd Group of companies was convicted of a general deficiency in defrauding that company of about $6 million. The argument put by the defence was that, during the initial periods, the defendant had every right to take those moneys and he certainly did not have a fraudulent intent when he utilised them. However, later on in the period he did have a fraudulent intent. That argument was not accepted by the jury. However, the court instructed the jury that he had to have that mental intent for the whole of the period for the charge to stick and if, in fact, the prosecution did not prove beyond reasonable doubt that he had that intent for the whole of that period, he would have to be acquitted.

That is just one of the problems that you can have with general deficiencies. So, it is my view that what should happen in relation to this offence—in maintaining a sexual relationship—is that the protections that are given to a defendant in the charge of a general deficiency should also be given to a defendant in a charge of this nature. This is my view and, certainly, it does not reflect the proposed amendments from our side, but my view is that the court should have an ability to at least supervise whether or not a charge of this nature should be made, and in particular should determine that the prosecuting authorities are not just taking a shortcut and avoiding proper investigatory processes, so preventing a defendant from properly defending himself.

At the end of the day, the Government has agreed that the protection can be upheld by stating that the Director of Public Prosecutions is the one who must give approval to a prosecution under this section. I understand the Attorney will be requesting that there be a series of policy guidelines issued by the Director of Public Prosecutions as to when a charge of this nature is to be laid, because my real fear is that without that protection this section will be used more than the substantive section and, at the end of the day, will encourage sloppy investigation processes, may encourage sloppy prosecution processes and ultimately lead to injustice. With the proviso that there is a proper protection, this Bill ought to be commended to this place.

The Hon. SANDRA KANCK: I rise to support the second reading. The issue of sexual abuse of children is something about which I feel very strongly, and I see it really as being the ultimate crime. When someone is killed they are killed, they are not around to think about it afterwards, but

sexual abuse and particularly persistent sexual abuse remains with that child forever, until they are ageing people and die. Almost inevitably, unless there is some pretty powerful counselling and support, it turns those abused children into life long victims, and I know so many women who have been sexually abused as children who are victims in everything they do in their lives. They simply do not have any control of their lives. They tend to become unemployed; they tend to become helpless social security recipients, because they have learnt that they do not even control their own bodies. If they do not turn into victims, they turn into perpetrators of the same crime, because it is given to them as an example, and hence my very strong feeling that anything we can do to assist children in this regard has to be commended.

I want to address the question of honesty of children. It is often suggested that children are not honest and they are not reliable witnesses. Having been a primary school teacher, I can assure people that they are incredibly honest, to the point of being painfully honest about some of the things that I have heard children say about what happens in their homes. It is quite incredible. Generally speaking, they are not old enough to have learnt the tricks of the trade that adults have as far as lying, covering up and making up stories is concerned.

When I supported the Government's stalking legislation some weeks ago, I spoke then about the persistent sexual abuse of a child aspects of the Hon. Mr Sumner's private member's Bill, and I raised the question then with the Attorney-General as to what the Government would do in regard to those aspects. I was pleased to hear from the Attorney-General that he is willing to take this matter up as a Government Bill (at least subject to his amendments). I support the second reading.

The Hon. C.J. SUMNER (Leader of the Opposition): I thank members for supporting the Bill, with the stalking matters removed, of course, because we have now dealt with the stalking issue and that has been passed in the House of Assembly. I would just emphasise that South Australia is not unique in the introduction of legislation creating an offence of persistent sexual abuse of a child. As I understand it, legislation has been introduced—if not passed—in Queensland, Victoria, Western Australia and the Australian Capital Territory, and all the Directors of Public Prosecutions in Australia have agreed that such legislation is necessary. The South Australian Director felt that the Western Australian model should be introduced, and that is what I believe the Bill was at the time that it was introduced. Whether the amendments by the Attorney-General will undercut that, I do not know, but it needs to be recalled that we are not unique. It is a problem that has been recognised around Australia. I note the amendments foreshadowed by the Attorney-General, and generally they are acceptable, although I will have a couple of questions in relation to them. I will be raising two issues with respect to the Attorney-General's amendments with which I am not happy, but I will pursue those in Committee.

Bill read a second time.

In Committee.

Clause 1—'Short title.'

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

Page 1, line 10—Leave out 'Miscellaneous' and insert 'Child Sexual Abuse'.

As I indicated in my second reading speech, the reason for the amendment is obvious, namely, that Parliament has already enacted stalking laws. If my amendment is carried, as the Leader of the Opposition indicates that it should be, then the Bill will be confined to the issue of child sexual abuse and should be retitled accordingly.

The Hon. C.J. SUMNER: I support the amendment.

Amendment carried; clause as amended passed.

Clause 2 passed.

Clause 3—'Insertion of section 19AA.'

The Hon. K.T. GRIFFIN: This clause relates to stalking and I indicate opposition to that for the reasons already indicated.

Clause negatived.

Clause 4—'Insertion of section 74.'

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

Page 3—
Line 7—Leave out '(the 'victim')'.
Line 11—Leave out 'victim' and insert 'child,'

These amendments seek to substitute the word 'child' for the word 'victim'. The purpose is quite simple and straightforward. The use of the word 'victim' contains a presumption that the accused is guilty, and I think that is inappropriate.

The Hon. C.J. Sumner: They can still be a victim without being guilty.

The Hon. K.T. GRIFFIN: Sure.

Amendments carried.

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

Page 3, lines 16 to 19—Leave out paragraphs (b) and (c) and insert—

(b) must describe the general nature of the conduct alleged against the defendant and the nature of the sexual offences alleged to have been committed in the course of that conduct.

The current Bill contains a proposed section 74(4)(c), which requires the charge to describe in reasonable detail the conduct in the course of which the sexual offences were committed. The purpose of that section is praiseworthy, for it is an attempt to get as much particularity into the charge as is possible with a view to informing the accused of the nature of the charge which he or she must meet. Nevertheless, the responses to consultation by the Government agree that the clause should be deleted. This material will usually be provided in witness statements and opening addresses, in any event. Inclusion of the material will often result in an unwieldy charge, and there appears to be no advantage to prosecution or defence in doing it. The replacement paragraph (b) is designed to effect a compromise between that conclusion and the concerns expressed that there should be as much particularity as possible without unduly compromising the normal criminal process.

Amendment carried.

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

Page 3, lines 23 to 28—Leave out subsection (5) and insert—

(5) Before a jury returns a verdict that a defendant is guilty of persistent sexual abuse of a child—

(a) the jury must be satisfied beyond reasonable doubt that the evidence establishes at least three separate incidents, falling on separate days, between the time when the course of conduct is alleged to have begun and when it is alleged to have ended in which the defendant committed a sexual offence against the child; and

(b) the jury must be agreed on the material facts of three such incidents in which the defendant committed a sexual offence of a nature described in the charge (although they need not be agreed about the dates of the incidents, or the order in which they occurred).

(5A) The judge must warn a jury, before it retires to consider its verdict on a charge of persistent sexual abuse of a child, of the requirements of subsection (5).

Consultation conducted by the Government revealed that representatives of both the prosecution and defence sides of the legal profession did not approve of the requirement in proposed subsection (6) that the jury be required, in effect, to deliver a 'special verdict'. For example, the Criminal Law Committee of the Law Society said:

> It is not desirable. . . to seek 'special verdicts' from juries who often have difficulty in sufficiently formulating and articulating their joint position on subsidiary matters.

Again, the problem at which proposed subsection (6) was aimed remains. Suppose, for example, the accused is alleged to have committed a sexual offence on 10 occasions. If that person is convicted, it will not be possible to tell whether there has been the required agreement by jurors. For example, three jurors may have been satisfied that the first three allegations were proved, four jurors may have thought the second three allegations were proved but not the first three, and so on. The purpose of this amendment is to address that problem in a way different from the 'special verdict'. It makes it quite clear that the jury must reach the required agreement on specifics, and, by insertion of a new subclause, requires the trial judge to warn the jury of this requirement.

The Hon. C.J. SUMNER: This may be an appropriate time to ask the Attorney-General, in relation to this amendment and others, whether these amendments seriously affect the Bill as introduced and, in particular, whether it seriously impacts on the original Bill, which I understand was based on the Western Australian model and which I assume went through considerable consultation in that State. Has the Director of Public Prosecutions in this State considered these amendments and subsequent amendments and is he now happy that the amendments being proposed do not undermine the original intention of the Bill such as to make it less efficacious than it might otherwise have been?

The Hon. K.T. GRIFFIN: The Director of Public Prosecutions has been involved in consultations on this for some time with me and members of the legal profession.

The Hon. C.J. Sumner: Is he happy with it?

The Hon. K.T. GRIFFIN: My understanding is that he is happy with the provisions. We did wrestle with some of the issues of principle. It is my understanding that he is happy with the amendments, that this does not undermine the intent of the legislation and provides the appropriate protection for defendants, just reinforcing what I think was probably implicit in the original Bill, that is, that there had to be the required number of jurors who agreed on each particular count.

The Hon. C.J. SUMNER: I thank the Attorney for that indication. I have one other question which perhaps I could have asked when we deleted the reference to 'victim' and inserted the reference to 'child'. It relates to a person who complains, after attaining the age of 18, in relation to events that occurred when that person was a child. The question is whether or not the provisions of this Act would apply to that person such that the offence of persistent sexual abuse of a child could be made out, and the provisions relating to children would apply, even though the person, when they complained, was an adult at the time they complained in relation to actions that occurred when that person was a child.

The Hon. K.T. GRIFFIN: Yes, it does apply. In fact, I covered that in my second reading speech when the Leader of the Opposition was unavoidably absent. I specifically referred to the fact that there is the trend for the prosecution of allegations of abuse that occurred 10, 15 or 20 years ago in some cases. In that circumstance it may be that the person who is making the complaint may in fact not be able to identify the events with such particularity as is normally required. It is certainly my understanding that it does not matter when the complaints are made, if the incidents occurred whilst the person was a child then the provisions apply.

Amendment carried.

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

> Page 3, lines 29 to 33—Leave out subsection (6) and insert—
> (6) A person convicted of persistent sexual abuse of a child is liable to imprisonment for life.

The reasons why the Government proposes by this amendment to delete proposed subsection (6) have been set out in speaking to the previous amendment. The deletion of proposed subsection (6) leaves the offence without a penalty. The purpose of this amendment is to insert one. With the deletion of the proposed 'special verdict', there is now no certainty in the precise behaviour upon which the verdict is founded. It follows that if the formula in the current section 74(6) is used it will simply transfer the problem to a disputed facts hearing before a judge, who is bound to accept the verdict of a jury which may be inscrutable. In the interests of simplicity and certainty, the best solution is to set an overall maximum rather than try to relate the applicable maximum to the conduct actually pursued.

The course of conduct involved in these charges may include rape and will often include unlawful sexual intercourse with a child under 12. The applicable maxima for these offences is life imprisonment. It follows that if there is to be one overall maximum for this offence, it would not make sense to set it lower than life if only because the jury will have found three or more such offences. In the interests of clarity, the maximum applicable should therefore be life imprisonment. Sentencing judges will, of course, set the actual sentence by reference to the verdict and the charge, in any event.

I understand that the Leader of the Opposition has an amendment on file which seeks to remove the reference to 'imprisonment for life' and to insert a term of imprisonment proportionate to the seriousness of the offender's conduct, which may in the most serious of cases be imprisonment for life. That reflects broadly what I was endeavouring to get to, and I indicate that if the honourable member moves that amendment I will certainly be happy to support it.

The Hon. C.J. SUMNER: I move to amend the Hon. Mr Griffin's amendment, as follows:

> Leave out 'imprisonment for life' and insert 'a term of imprisonment proportionate to the seriousness of the offender's conduct which may, in the most serious of cases, be imprisonment for life'.

My concern was that, with just a blanket reference to the penalty being 'imprisonment for life', there is a potential disparity between the seriousness of the offence and the penalty that could be imposed. At the more serious end of the scale, these incidents could involve rape; at the other end of the scale, they could involve the less serious and perhaps relatively minor offence of indecent assault. It seems to me that to have a situation where imprisonment for life is in the statute as, in effect, the maximum penalty is bad in principle. I think my amendment overcomes that problem at least to some extent and recognises that some of these offences would not in the normal circumstances call for imprisonment for life.

Amendment to amendment carried; amendment as amended carried.

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

Page 4, after line 10—Insert new subsection as follows:

(8A) A prosecution for persistent sexual abuse of a child cannot be commenced without the consent of the Director of Public Prosecutions.

The purpose of this amendment is to ensure that the use of this charging device is done only with the consent of the Director of Public Prosecutions. As I noted in my second reading speech, this change to the law is controversial, and many believe that it erodes the traditional rights of the accused. In the course of consultation, a number of suggestions were made to the Government for amendments designed, in effect, to limit the operation of this offence to the situations in which it was truly needed.

After considering these suggestions, the Government has concluded that they are well intentioned but will really complicate the law and may not achieve the purpose. However, the Government accepts that good charging practice belongs to the office of the Director of Public Prosecutions. There comes a point where we must trust the DPP to act in the public interest—that is what the office is for. The DPP has undertaken, if this measure is passed, to formulate and issue prosecution guidelines making it clear that the charge will be used only in relation to cases where it is truly required and not to cover up an inadequate investigation or to bolster an already weak case.

I indicate to the Leader of the Opposition that a provision similar to this is contained in the Western Australian legislation, according to the DPP; it requires the consent of the DPP in Western Australia. I am told that the relevant section is 321A(6). It is possible for the DPP to give directions in relation to this—it is also possible for the Attorney-General to give directions—but it seems to me that because of the nature of the offence which is being created and the potential for abuse of it (and I say' potential' only) it is important for the Legislature to indicate specifically that it requires the consent of the DPP.

I know that that will mean that no ordinary citizen can lay the information without the consent of the DPP, but my information is that, probably after a committal, any trial must have the consent of the DPP if it is to proceed beyond that committal. So in any event there is a measure of protection but not necessarily at the committal stage. The Government therefore feels strongly that there ought to be that protection. It will not prejudice prosecutions; in fact, it will act as a protection against abuse of process.

The Hon. C.J. SUMNER: I strongly oppose this amendment. I think it is offensive and that it undermines and undercuts something that we have been trying to do in the criminal law over recent years, that is, ensure that potential victims—people who feel they have been aggrieved by criminal acts—are not sidelined in the criminal justice process.

I come to this debate with that experience. Many victims' advocates argue that, as a result of the State's taking over the prosecution process—as it has done over a period of centuries but, in particular, in the last century when the State became the prosecutor of criminal offences—the victim has become a mere witness in the prosecution process, whereas some academics and victimologists argue that, centuries ago, victims had more direct access to bringing offenders to account than they do in the current situation.

So, there has been, as part of the victims' movement, a strong push to recognise the rights of victims in order to try to give them a more effective say in the prosecution of offences. The victim impact statement is one aspect which has picked up the rights of victims.

In debating this issue, one of the things to which we have always been able to point and to say to people who might have been victimised by a criminal offence is that, in the case of summary offences, they do have the right to take private prosecutions before the courts, and even in relation to indictable offences they do have the right to put a case before a magistrate to see whether a magistrate will commit that offender to trial.

It is true that that is only a first step and that then the Attorney-General, and now the DPP, must decide, following committal, whether or not that person will go to trial. So, ultimately, there is still the responsibility of the Attorney-General or the DPP to put that person on trial on indictment before a jury. However—and you might argue that it is not used very often—

The Hon. K.T. Griffin: Never.

The Hon. C.J. SUMNER: Okay, never, but it is in the law, and I think, given the concern about victims, given the philosophical concerns about the sidelining of victims in the criminal justice process, and given that in some other jurisdictions victims can go along in tandem with the prosecutor (with the State), it would be a retrograde step in our system to take away a right that a victim currently has of bringing a person before a court during a committal hearing. That is why I oppose it.

If it relates only to within Government, that is fine, but I think the way it is worded it clearly deprives an aggrieved person, a victim of a criminal offence—in this case, this offence—or anyone else who might be minded to file a complaint on their behalf, of the capacity to do that. As I said, I think that is a retrograde step. It is the only area in the criminal law where a victim, a person aggrieved, will be denied this right, except in the very rare cases where the consent of the Attorney-General or the DPP is needed, and that is in the area of prosecution for criminal defamation and prosecutions under section 33 of the Summary Offences Act which deals with obscenity and indecency offences. Both those matters—

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: Okay, there are some others. But in the criminal law in the State—

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: Most of those have been taken out.

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: What do you mean? Corporations can be prosecuted without the consent of the Attorney-General; what are you talking about? Of course they can.

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: You do not need the consent of the Attorney-General to prosecute corporate offences under Commonwealth law. You need the consent of the Attorney-General for certain purposes. There may still be some relics in our criminal law where the consent of the Attorney-General or the DPP is required, but they are not very many, and most of them were cleaned out when we did the DPP exercise. So, the only two where, as a matter of principle, it is reasonable that the consent of the Attorney-General be required are the two I have mentioned, namely, criminal defamation and obscenity and decency, which deal with free speech issues. It was generally felt that there needed to be some accountability for prosecution in those areas which impacted on free speech.

What you have here—and it is a very important issue of principle that needs to be resolved by the Council—is a situation where the law is being changed to take away a right from persons who may be victims of criminal offences. No doubt it will be argued that it is never used, and so on, but it is an issue which has undoubtedly come up in discussions in the victims' movement. If you read the literature about the topic, you will see that the argument is put that victims have been sidelined in the criminal justice process. We, at least in this State, have been able to point out, 'Well, perhaps that has happened in practice, but the law still says that a victim can take a case to a magistrate to see whether they can get a person committed for criminal trial.' It would be a mistake to remove it. I say that because you do not have to. There is no need for this provision.

If you are dealing with just relationships between the DPP and the police, the Attorney-General and the police, or the Police Commissioner and the police, you can get over the problem by the DPP providing instructions to the Police Commissioner under the DPP Act about the conduct of prosecutions, and I am sure he could give a general instruction to say, 'No charge of this kind shall be laid, unless it is previously referred to me for consideration.' If that is not satisfactory, you can use the Police Regulation Act, and get the Governor in Executive Council to direct the Police Commissioner to refer all cases of this kind to the Director of Public Prosecutions before any complaint is laid.

So, I am saying that you do not need it, and it has the undesirable effect that I have outlined. It would therefore be a retrograde step for victims for the principles I have outlined, so I indicate that that new subclause proposed by the Attorney-General will be opposed by me.

The Hon. A.J. REDFORD: I have to say that the past 10 minutes has indicated what we in the profession have had to put up for the past 10 years. I will say this and I will say it quite strongly: back in the early 1980s, we had this great extraordinary drama of child sexual abuse cases of little merit coming before the court. We had what was going on in the United Kingdom with that Australian professional deciding, through some extraordinary test, what was and was not child sexual abuse. I cannot remember the name of the religion, although I think it involved Children of God, who were herded up, put in buses and accused of child sexual abuse. Basically, we had a period of mass hysteria on this topic. A whole community was upset, because second-rate, half-baked prosecutions, under your Administration, were coming before the courts. They were being chucked out over and again. You had Directors of Public Prosecutions and their staff saying, 'I don't know why I am prosecuting this; there is nothing in this,' and sitting there and running the range of a judge asking, 'Why are you here? Why are we doing this? Why isn't this being chucked out?' We had it over and over again.

The Hon. C.J. Sumner: That is an insult to the prosecutors.

The Hon. A.J. REDFORD: It wasn't an insult to the prosecutors. I am not intending to do that at all. Just have a look at it. I sat on the Criminal Law Committee for a number of years, and that comprised 50 per cent prosecutors and 50 per cent defence lawyers. They looked at this legislation, and the biggest fear you have as a Director of Prosecutions officer or as a prosecutor is getting the brief put on the desk 12 months after the alleged offence has occurred and it is too damn late to fix up the inept investigation.

The advantage of this is that, when the investigation starts, they go to the Director of Public Prosecutions if they are thinking of laying this charge. It can be supervised—

The Hon. C.J. Sumner: They can give the directions internally.

The Hon. A.J. REDFORD: Why not have it enshrined and give some legislative protection to it?

The Hon. C.J. Sumner interjecting:

The Hon. A.J. REDFORD: Let me look at your regime, because since we have taken government we have had to put someone in the Director of Public Prosecution's Adelaide prosecution section to get some consistency in prosecution policy. You put some poor police officer—

The Hon. C.J. Sumner: They were put in under our lot.

The Hon. A.J. REDFORD: Well, they may well have been, but it took you a long time to do it—after 10 or 11 years.

Members interjecting:

The CHAIRMAN: Order!

The Hon. A.J. REDFORD: As a practising lawyer, I knew which prosecutor with whom I could do good deals, which ones I could get to withdraw charges and which ones I could not, because they simply did not have the necessary education and the experience. I was acting for my client and that was my duty.

The Hon. C.J. Sumner: What an appalling reflection on the prosecutors.

The Hon. A.J. REDFORD: Absolutely! It is not appalling; it is a basic lack of training and support that they had. What is wrong with getting the Director of Public Prosecutions involved in this right at an early stage when it is investigated?

The Hon. C.J. Sumner: Nothing, nothing at all.

The Hon. A.J. REDFORD: And what is wrong, then, with putting it in the legislation?

The Hon. C.J. Sumner: Because it takes away—

The CHAIRMAN: Order!

The Hon. C.J. Sumner: That is what's wrong with it, if you listen to the argument.

The Hon. A.J. REDFORD: But you are talking about absolutely no prosecutions.

[Sitting suspended from 6.3 to 7.45 p.m.]

The Hon. A.J. REDFORD: Before we broke for dinner we were talking about a clause in this Bill as to whether or not a prosecution should proceed without the approval of the Director of Public Prosecutions. The amendment that we seek to oppose is a deletion of a requirement that, for a prosecution to occur for this offence, maintenance of a sexual relationship, there ought to be Director of Public Prosecutions approval. One of the things that members should be aware of is what has happened in the High Court over the past five years in relation to its direction in dealing with criminal matters. If one looks at cases such as Dejesus and Dietrich, the underlying philosophy behind any criminal prosecution is that there must be a fair trial.

In that regard the reason why the High Court made its decision in the case that has led to this proposed legislation is that a defendant must know precisely what he is facing. In other words, he must know precisely what the case is against him. What this legislation is endeavouring to do is to create a new offence, namely, that he has engaged in some sexual conduct on three occasions. I am not sure why three has been picked out instead of two, four or six, but that is what

everyone has agreed on. It is my view and that of the Government that some protective measure needs to be put into this legislation, and the best protective measure is to ensure that some senior prosecutor is involved in this process at a very early stage.

It does nobody any good for a half baked prosecution to go through the system and then to have the High Court throw it out at the end of the day because principles involving a fair trial have been offended against. One of those principles will be (because I imagine that there will be some argument that this is not a substantive offence, that it is an offence in the category that conspiracy and other offences fall into) that the prosecuting authority should look at a substantive offence in the first place, that is, charge the original unlawful sexual intercourse or whatever offence one is looking at. It is my view that in order to prevent or at least to reduce the risk of trials being aborted because they are not fair—and there is an overlying duty that we have a fair trial—the Director of Public Prosecutions be brought in at a very early stage.

The Hon. C.J. Sumner: There is no argument about that. I agree with you.

The Hon. A.J. REDFORD: Why then are you opposing clause 8a?

The Hon. C.J. Sumner: For the reasons I outlined, which you totally ignored.

The Hon. A.J. REDFORD: But the reasons you outlined, from a practical point of view, and I understand what you are saying—

The Hon. C.J. Sumner: They are conceptual, philosophical reasons.

The Hon. A.J. REDFORD: You have this conceptual, philosophical reason—

The Hon. C.J. Sumner: Exactly, and just occasionally they are important in the criminal law.

The Hon. A.J. REDFORD: And just occasionally you must recognise there is an equal and opposite conceptual, philosophical principle, and that principle is that there must be a fair trial and, from a practical point of view, the Director of Public Prosecutions ought to be involved at an early stage.

The Hon. C.J. Sumner: You've missed the point.

The Hon. A.J. REDFORD: I haven't missed the point at all. You are saying that invariably, if the Attorney-General gives a direction that the Director of Public Prosecutions ought to scrutinise this sort of prosecutorial process, then it will inevitably happen. But unfortunately, in the real world—

The Hon. C.J. Sumner: It will happen just as much as putting it in here.

The Hon. A.J. REDFORD: But in the real world—and I have only recently been there—it simply does not work that way.

The Hon. C.J. Sumner: You've been in the courts.

Members interjecting:

The Hon. A.J. REDFORD: I am sorry; I have to say that I have seen both areas and I can tell you where there is more reality. I have grave reservations that charges of this nature are going to have great practical effect unless the prosecutorial approach—

The Hon. C.J. Sumner interjecting:

The Hon. A.J. REDFORD: That is why I cannot understand why you're opposing that clause.

The Hon. C.J. Sumner: Well, sit down and I'll tell you.

The Hon. A.J. REDFORD: I'll sit down when I'm ready to sit down. At the end of the day, all this clause is seeking to ensure is that there is a proper and fair trial, that both victims and accused do not go through an unnecessary trial only to find that at some stage down the track, whether it be in the Court of Criminal Appeal or in the High Court, it is said that there should have been a more substantive offence charged, that this one has given little opportunity for an accused person to have a fair trial, and that the conviction is overturned. And there is as much trauma involved for a victim in having an appeal overturned as there is in a prosecutor standing up and saying 'I am sorry, but we cannot proceed in this case because we do not have sufficient evidence.'

There is no way of avoiding either of those two prospects, but at least you can minimise it by bringing senior lawyers into the process at a very early stage, and this clause at least will ensure that.

The Hon. C.J. SUMNER: I hope they do not miss the point in the real world as often as the Hon. Mr Redford seems to be missing it. His response, with respect, is extremely disappointing. Perhaps I can take him very slowly through it again and he can make out he is on the bench and, provided he does not go to sleep, he will probably get the point.

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: No, it was his. The one you are talking about was appointed by the Hon. Mr Griffin. He is a perpetual sleeper.

The CHAIRMAN: Order! We will get back to the debate in hand.

The Hon. C.J. SUMNER: Everyone knows who he is: he was not appointed by me, I can assure you. No-one is arguing about the importance of a fair trial or about the importance of professional prosecutors being involved in cases at the earliest possible moment, but that was not the point I was making. Had the honourable member listened to the argument in the first place he would have understood the point I was making, which is why I found the response disappointing, because he went off on a tack that was not really the one that I was taking. What I did was make an argument based on victims' rights and based on the rights of individuals in the community to make complaints of criminal behaviour to the courts: in other words, the principle of access by the community not just to the civil courts but to the criminal courts of this land.

The basis of that is that there ought to be no exclusive right on the police, the prosecutors or the Government in our community to bring cases before the criminal courts. That is the situation now. Individuals in this community can make complaints before the criminal courts in their own right in summary matters, and in preliminary hearings in committal matters before magistrates, in the case of indictable offences and, subsequently—

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: I am sorry, but you are not actually following the point. If the police do not go ahead with the case and you are aggrieved about it and feel strongly about it, and you feel that the evidence is there, you are able to instruct a lawyer to take that matter before a magistrate and see if that magistrate will either convict the person, in the case of a summary offence, or commit that person for trial, in the case of an indictable offence.

You as a citizen have that right now. I have that right. Every citizen in this State has that right, and what you are doing here is depriving citizens of that right in this category of offences, and that is the point I am making.

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: Just a minute; just listen. You are not understanding the argument, with respect. If you just

listen to it for a minute. I went through in a very brief way the history of the role of victims in the criminal justice system, how the State took over the question of criminal prosecution on behalf of the community and how in that process victims were left out to some extent. They believed that they were the forgotten people; they believed all they were was witnesses and that they had no rights within the criminal justice system.

So, what has happened over the last decade or so has been a move to say to victims, 'Yes, you do have certain rights in the criminal justice system' and I will not elucidate them, but some of them were introduced as a result of actions that I took and the Parliament took when I was Attorney-General. But one right the victims do have and which the community has is to be able to take a case to the courts if the police do not take action. That is what I am saying should not be interfered with in these circumstances. But that does not mean that, if the police decide to take action, you ought not have circumstances where there are professional prosecutors involved and that the final decision as to whether to go ahead with the matter should not be something that the DPP decides on. In the unlikely event that a citizen did take a case of this kind and a committal was made by a magistrate, presuming the magistrate would have been satisfied that there was sufficient evidence, even then the DPP could decide, 'Sorry, I do not think there is, and I will not present that to a jury.'

The way it could be overcome is by amending this amendment of the Attorney-General's to say that in a case where the police prosecute the DPP should be involved at an early stage. It still leaves open the, albeit fairly theoretical, capacity for individuals to take the cases while providing that, if the police are involved, then the DPP should be involved immediately. So, I did not oppose the desirability of the DPP being involved in the early stages. In fact, if the honourable member asked me I would say I fully support a completely independent and professional prosecution service so that all prosecutions are done under the auspices of the Director of Public Prosecutions. So, you would do away with police prosecutors. That is in my view the desirable situation, but you have to find something like $6 million or $8 million in order to fund it. If you would like to approach the Attorney, he will probably give you the report that was done on the topic.

So, it is very expensive. But undoubtedly we should, as a community, have an aim to introduce a fully professional prosecution service, so I support that; I support the DPP being involved in committals before the courts in indictable offences because ultimately it has to decide whether or not to take them on. Provision has been put in place now for that to happen. There are professional prosecutors from the DPP's office doing committals for serious offences. The proposal for extra staff in the DPP's office to screen these cases—a couple of experienced criminal solicitors in the DPP's office—was put in place before this Government came into office; they went ahead with it and that is fine, but there was no need to make some slighting comment about the fact that it did not happen under the previous Government. That was in place.

What I am saying is that I think the honourable member missed the point. I do not think there was any real justice in launching an attack on the prosecution policy in place when I was the Attorney-General. You were right to point out the problems of hysteria in some of these cases such as child abuse and others, and the very important responsibility of those prosecuting cases to ensure that they have adequate evidence. I am as alert to that situation as anyone. I find it hard to believe that there would have been prosecutors who were presenting cases to the courts where they believed that there was inadequate evidence because that, in my view, would have been unprofessional conduct on the part of the prosecutors. Certainly they did not have any instructions from me or anyone else within the prosecution system to take on cases where, in their professional opinion, there was insufficient evidence to secure a prosecution. So, I do not think—

The Hon. A.J. Redford: That is all subjective, dependent upon experience, isn't it?

The Hon. C.J. SUMNER: Of course it is subjective, depending on experience, but the point is that there has always been a large number of quite experienced prosecutors in the Crown Prosecutor's Office and the DPP's office. The policy is determined at that level and all I am saying is that, if prosecutors were taking cases where they did not think there was sufficient evidence to secure a conviction, they were not behaving professionally and I just do not believe that that happened. The other argument about forum shopping to get a result for your client brought the interjection from the Hon. Ms Wiese: that is the problem with the law.

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: Sure, but the fact of the matter is that lawyers are not held in very high regard in this Parliament. It may be that the compliment is returned from the legal profession, but the reality is that lawyers, as you will realise after a little time, are not held in very high regard because they are often seen as people who take technical points and use legal manoeuvres, people who are not interested in justice but are basically interested in trying to get a result for their client using whatever tactics are available.

Whether that is true or not, that is the perception that many members of Parliament have. All I am saying is that the comments made about forum shopping for prosecutors to get a result, which provoked the interjection from the Hon. Ms Wiese, is probably some evidence of that. I do not want to dwell on that because I would like to get to a solution to this issue and I think there is one, which I think the Hon. Mr Redford perhaps indicated *sotto voce* might be acceptable at least to him but which the Attorney-General says is not acceptable to him. I do not know why; I would like to hear the reason.

As to the prosecution policy implemented by me while I was Attorney-General, there were actually changes that occurred in prosecution policy and to the approach that prosecutors took, in particular to victims of crime. I am very proud of the fact that I was able to shift the culture, if you like, of prosecutors and perhaps the police in accordance with those principles that have been outlined. I frankly do not want to see that whittled away in any way, and I think that is a legitimate point of view. If you deprive victims of the capacity in this case to take private prosecutions I suppose you can argue that it would be seen as the thin end of the wedge in some circumstances. You could argue it as a precedent. For instance, if you do set up a completely new professional prosecution service under a DPP it might be argued that when you do that the State should take over all prosecutions because you have a professional service and so on. That argument could come up. It could also be argued that individual citizens should have their rights to bring prosecutions taken away. I think that would be wrong, but that is in fact what you are doing here. You are only doing it, I admit, in one very small area, but because of that philosophical approach which I take and which I have tried to outline I think that it would be wrong to take that step in this case.

You remove the capacity for individual victims, individual complainants, or any member of the community, to get access to the criminal courts, and that is wrong. You can achieve what you want—that is, if it is a police prosecution that you are talking about, which it inevitably will be—and I do not see why you cannot say, 'Well, in those cases the DPP has to be involved,' and I would be prepared to talk to Parliamentary Counsel to draft up a suitable amendment to change the Attorney-General's proposal to give effect to that intention, which would achieve the objectives outlined by the Government and by the Hon. Mr Redford but still leave that right—a right which a citizen currently has—intact.

The Hon. K.T. GRIFFIN: I want to carefully go through the rationale behind the amendment which I move and to answer the Leader of the Opposition's assertions about my amendment and the problems it may create.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: Are you talking to me?

The Hon. Anne Levy: This is a general observation: there are too many lawyers here.

The Hon. K.T. GRIFFIN: Well, go outside. You don't have to sit here if you don't want to.

Members interjecting:

The CHAIRMAN: Order! The Attorney-General has the call.

The Hon. K.T. GRIFFIN: Mr Chairman, there is a very important issue of principle involved. If one were to put this Bill to one side completely for the moment—it in fact creates a new criminal offence, that is, the offence of persistent sexual abuse of a child. So let us put that to one side for a moment; then I can agree with the Leader of the Opposition in relation to the other areas of the criminal law where an ordinary citizen has a right to lay an information or issue a complaint. It is not done very often at all, nevertheless—

The Hon. C.J. Sumner: But it can be done.

The Hon. K.T. GRIFFIN: As I said, nevertheless, the right is there. But in all of those cases particulars must be given, so that the person who is charged by the citizen knows what he or she may be charged with, and the particulars of that charge. It is quite clear that in those circumstances there is no significant problem, if an ordinary citizen lays a complaint or an information, because it is clear that that person can be thrown out of court if there are no particulars to identify the charge which the accused person has to answer. In those circumstances one can quite readily accept that removing those rights, even if theoretical rather than practical, would send a signal to a person who is a victim that they are being removed further and further from the process. The other point that needs to be made is that in the majority of criminal cases there is a certain proximity of the offence to the complaint or information, and of course in those cases, such as murder, assault, robbery, housebreaking, larceny—

The Hon. C.J. Sumner: They still have to get through a magistrate. There is always a filter.

The Hon. K.T. GRIFFIN: In all of those cases they are more recent. In this Bill we are creating a new offence of persistent sexual abuse of a child, where there is not the obligation to give the particulars, which in every other offence have to be given.

The Hon. C.J. Sumner: So?

The Hon. K.T. GRIFFIN: It is a totally new offence.

The Hon. C.J. Sumner: So?

The Hon. K.T. GRIFFIN: And no particulars. So, you have an accused person who may, at the instigation of a citizen—10 or 15 years after an alleged period of sexual abuse occurred of the person when that person was a child—lay an information: no particulars, no police information, no evidence necessarily, and the allegation can be made. In those circumstances—

The Hon. C.J. Sumner: It has to go to a magistrate.

The Hon. K.T. GRIFFIN: Well, it goes to a magistrate, but the career, the reputation of that person, can be absolutely destroyed by someone with malicious intent or with—

The Hon. C.J. Sumner: It can happen with anything.

The Hon. K.T. GRIFFIN: But more likely with this, because you do not have to give any particularity. There is no particularity required, and it is for that reason that it is my view—and the Government's view—that there needs to be some safeguard built into the system (and it is an exceptional case) to meet the High Court decision, and in this case alone it is my very strong view that the DPP ought to be in a position to approve or not approve the laying of the information. It applies to all cases—

The Hon. C.J. Sumner: He has to decide that at the end of the committal, anyhow.

The Hon. K.T. GRIFFIN: Of course he does.

The Hon. C.J. Sumner: Why can't the citizen have it heard before a magistrate?

The Hon. K.T. GRIFFIN: This is a special case where there is no obligation upon the person laying the information—10, 15, 20 years after the alleged event— without particularity, so the accused is not able—

The Hon. C.J. Sumner: You still have to establish a case before the magistrate, before he will commit for trial.

The Hon. K.T. GRIFFIN: But it is the laying of the complaint, the laying of the information, which is—

The Hon. C.J. Sumner: You can do that with a whole range of matters in the criminal law.

The Hon. K.T. GRIFFIN: But they are more easily dismissed.

The Hon. C.J. Sumner: Larceny, fraud, rape: you name it.

The Hon. K.T. GRIFFIN: But with particularity, so that the accused is able to know the charge which he or she has to face, and more capably answer that, if the person is not guilty. It is my very strong view that my amendment applies to all cases within this new offence and it is there in order to ensure that it is not an offence which is abused. As I said, when I made my contribution at the second reading stage, there is very grave concern about the way in which a citizen may abuse, or even a prosecutor may abuse, the rights which are given under this new section to issue proceedings. It is because that right has been traded off in all cases under this clause (persistent sexual abuse of a child), that I believe there ought to be some safeguard.

It is not satisfactory and acceptable, in my view, that the Leader of the Opposition and former Attorney-General seeks to attend my amendment to limit it to a direction in respect of all those who may issue proceedings other than an ordinary citizen complainant. My intention is that it should apply across the board; that it is necessary in the context of the dangers inherent in the establishment of this new offence; that there ought to be at least some safeguard, and it is not an unreasonable safeguard that the DPP should be satisfied, but at least there is evidence sufficient to establish a *prima facie* case.

The Leader of the Opposition says, 'Well, you're cutting off options.' You are not cutting off any of the options which exist in the law for existing offences. You are bringing in a totally new offence and you are setting a framework within

which that may be dealt with, and it is different even in respect of the direction which we are saying the judge must give to the jury. So, it is different: it is being treated differently. A person who is aggrieved is more likely, in any event, to take action in the civil courts where, of course, there is a lesser burden of proof, and of course not the same level of stigma and potential for ruin, which may occur through the criminal process.

I urge members to think again about the way in which this new offence has been created. The need for some protections and the fact that, in the context in which this new offence is being created, a requirement that the DPP should give his or her consent to the laying of an information is only a very small protection against abuse. Nevertheless, in the circumstances I think it is a reasonable one.

The Hon. C.J. SUMNER: I have an amendment to the Attorney-General's amendment. I move:

Insert after 'prosecution' the words ', on behalf of the Crown,'.

If that amendment were accepted by the Committee then the Attorney-General's amendment would read:

. . . the prosecution, on behalf of the Crown, for persistent sexual abuse of a child cannot be commenced without the consent of the Director of Public Prosecutions.

That should resolve my problem, and despite what the Attorney-General has said I think it should resolve most of the problems from the Government's point of view.

The Hon. K.T. GRIFFIN: I do not think the amendment is adequate. It certainly goes part of the way towards addressing the problem. However, in the context of this totally new offence, designed to meet a special set of circumstances in the High Court's decision, it seems to me that we really ought to reject that amendment and accept the clause which I propose.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Well, it is not anti-victim. The fact of the matter is that the proposed section 74 creates a totally new offence. It is to deal with a set of circumstances where the potential to abuse the process is much more evident than in relation to the others.

The Hon. C.J. Sumner: You can't get it before a jury unless the DPP takes it to the jury.

The Hon. K.T. GRIFFIN: I know, but you get through to the committal process before a magistrate.

The Hon. C.J. Sumner: You can do that across a whole range of criminal offences.

The Hon. K.T. GRIFFIN: Of course you can, but there are also many other areas where there has to be the consent of either the Attorney-General, the Minister for Consumer Affairs, some other Minister, or the DPP, but mostly Ministers, in relation to a number of prosecutions which do have imprisonment attached to them.

The Hon. SANDRA KANCK: The Attorney-General has been talking about potential for misuse or potential for abuse. I take it from what he was saying a few minutes ago that he is talking about the possibility of a malicious action. I must say I have some doubts, regardless of whether it is this particular legislation or existing laws, that a child or an adult recounting experiences from the point of view of experience as a child, would be going through the process of having their name carried through the courts with descriptions of sexual acts performed upon them, and do it in a malicious way. I would be interested to know what the Attorney-General has in mind in terms of current law of the level of so-called malicious actions that might be launched, so that I can have some idea of any potential for it to occur if this becomes law.

The Hon. K.T. GRIFFIN: It is intended to be a safeguard. I suppose in some respects it falls into a category similar to that which the Leader of the Opposition has referred to, where citizens can lay complaints themselves. It does not happen very often. In fact, I do not know of any recent cases where citizens have laid complaints or informations.

The Hon. C.J. Sumner: They often lay complaints.

The Hon. K.T. GRIFFIN: Yes, they lay complaints, but not informations. It may be that there will not be cases where citizens follow that particular course in relation to this section. However, one does not know in this world. There are many people around who have obsessions or who believe, perhaps with some justification, that the law has ignored them or that the authorities have ignored them. The Hon. Mr Summer will know that there are plenty of those who crossed his doorstep as they now cross mine with a fixation about the system that they have been wronged, that transcripts have been altered, or that the police will not listen to them. Some of them may be the sorts of people who would ultimately seek to go to court and lay an information.

The Hon. C.J. Sumner: But the DPP would not take them on in that case.

The Hon. K.T. GRIFFIN: But when it gets through the committal stage. Here the magistrate has no discretion. If the information is laid alleging persistent sexual abuse of a child, without significant particularity in the allegation, then under this legislation the magistrate must surely have to hear the case before determining that it does not fall within the criteria specified in the section. So, the court goes through that process.

The Hon. C.J. Sumner: Under the new committal proceedings they can still call oral evidence.

The Hon. K.T. GRIFFIN: Sure, there are all sorts of possibilities, but what I am suggesting is that because this is different from the offences already in the Act in relation to rape, for example, where there does have to be particularity about what occurred, when it occurred and where it occurred, or with sufficient particularity at least, so the accused knows what the case is that has to be answered. In this instance there does not have to be that particularity. So, it is much easier to make a broad allegation and to lay an information in respect of this particular offence—and it is a serious offence because it is persistent sexual abuse of a child—than it is in respect of other provisions of the Criminal Law Consolidation Act. I am not saying that there will be abuse; I am saying that there is the potential for abuse. What I am proposing is that in all of those cases, under section 74, the DPP should at least be satisfied that there is a *prima facie* case and it is reasonable to proceed before it actually proceeds. As I said, that is a protection against—

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: They can be investigated if there is adequate evidence.

The Hon. C.J. Sumner: You can argue that for the whole criminal law; that is my point.

The Hon. K.T. GRIFFIN: The distinction is that in the rest of the criminal law you have to prove particularity. That is the difference between them.

The Hon. C.J. Sumner: You could run false rape reports if you wanted to.

The Hon. K.T. GRIFFIN: But you have to assert that it was rape on a particular day, on a particular occasion and

who it was. Really, there is quite a significant difference. All I can say to the Hon. Sandra Kanck is that what I am seeking to do is to build in a protection against abuse in what is a unique provision. I remind the honourable member that in Western Australia, on the information which I have, the law provides in a similar case as this that the DPP must consent—and that to all cases.

The Hon. SANDRA KANCK: I am still grappling with this. I refer to this question of the role of magistrates. The Hon. Mr Sumner has described them as being a filter. It seemed to me that the Attorney-General was saying that because of this lack of particularity the Magistrates Courts might not get it right.

He said this was because it was lacking in particularity. What we have agreed to so far are the words 'must specify with reasonable particularity'. I ask the Attorney-General to elaborate on that.

The Hon. K.T. GRIFFIN: I am making the point that a charge may be laid by a citizen under section 74, and there would have to be a committal hearing in the Magistrates Court. The magistrate can then determine whether or not there is a case to answer. If there is a case to answer, the DPP must determine whether there is a sufficient case upon which to proceed to trial in the District Court or the Supreme Court. The point I am making about that process is that the matter goes to the Magistrates Court without any prior filter, without necessarily any prior investigation. So, a citizen, believing that he—

The Hon. C.J. Sumner: It wouldn't get very far without an investigation.

The Hon. K.T. GRIFFIN: It may. That is the potential under this section. A citizen can lay a charge.

The Hon. C.J. Sumner: As they can in all criminal cases.

The Hon. K.T. GRIFFIN: But they have to give not just 'reasonable particularity'. Proposed new subsection (4)(a) provides:

> . . . must specify with reasonable particularity when the course of conduct alleged against the defendant began and when it ended. . .

So, it may have been, as in the High Court case, that there was an allegation of sexual abuse between about 1975 and 1983. The evidence was that sexual intercourse began in 1979 when the woman was 14 and that it took place every couple of months for a year. The charge specified intercourse on a date unknown between 1 January 1980 and 31 December 1980—a full year; 1 January 1981 and 31 December 1981—another full year; and 8 November 1981 and 8 November 1982. So, there is a period of three years in which there is this rather vague allegation that every couple of months for a year sexual intercourse occurred. The dates were unknown. The defence requested particulars; they were refused by the trial judge; but the High Court said that that was quite unfair.

So the potential is still there for an accused to say not that they were sexually assaulted on such and such a date at such and such a place and again on another occasion but that, as a 12 year old child, it started in such and such a year and it occurred on every weekend or every few months until they were 16 or 18, or something like that. So it is possible to allege 'reasonable particularity' in the sense that it occurred between the starting date and the ending date. The nature of the sexual offence may not be difficult. The Bill provides:

> . . . in reasonable detail, the conduct in the course of which the sexual offences were committed, but the charge need not state the dates on which the sexual offences were committed, the order in which the offences were committed, or differentiate the circumstances of commission of each offence.

In ordinary circumstances, the law requires much greater detail to be specified by the prosecution about the charges which an accused person must face—that is, specific dates, specific places and specific behaviour.

This section is designed to overcome that problem, because there are people who suffer sexual abuse persistently but who cannot remember the exact details. So that is the distinction to be made between the ordinary—if one can call them that—cases that relate to unlawful sexual intercourse, rape, indecent assault, and so on, where you must specify dates and occasions and this section, where you do not have to. The jury must be satisfied that it happened on at least three occasions.

There is a provision for a direction by the judge to the jury that the jury cannot be satisfied only that it happened on three occasions if some members of the jury believed it happened on one occasion and other members of the jury believed it happened on another occasion, while still other members of the jury believed it happened on yet another occasion. So there is no unanimity or a majority of at least 10 jurors who agree that it happened on a certain occasion. So, there must be a direction to overcome the present requirements of the law and the obligations on prosecutors.

When the case goes to the Magistrates Court, under section 74, if it is alleged that the offence happened over the space of three years from such and such a date to such and such a date, but the victim cannot remember exactly when or all the details but thinks it happened here, here and here, it may be that that has not been the subject of any examination at all by investigators, police or otherwise—it is just a complaint that has been issued. It may be that it will never happen, but I think we need to include some safeguards so that the DPP who is charged with instituting prosecutions at least acts as a check to ensure that there is no abuse of process.

The Leader of the Opposition's amendment makes it clear, at least in statute, that the State is prepared to trust a citizen complainant but not a police prosecutor. Whilst that may be an unintended consequence of the way it would read if the amendment were carried, that would certainly be one construction that one could put on it, but I see that as peripheral to the principal argument.

The Hon. C.J. SUMNER: The question asked by the Hon. Sandra Kanck was a good one, but I do not think it has been answered by the Attorney-General, certainly not to my satisfaction and I do not expect to her satisfaction, either.

The Hon. K.T. Griffin: Are you going to speak for her?

The Hon. C.J. SUMNER: No. I simply reject the proposition, as I am sure she does, that women and children will launch malicious prosecutions in this area if we retain the general principles in the criminal law, namely, that citizens have access to the courts, whether they be civil or criminal. That is all I am arguing for. Women and children do not have a greater propensity to issue malicious prosecutions than others, but there is a suggestion involved in this that somehow or other women or children will launch malicious prosecutions. That was the question that was asked, and it really has not been answered. The Attorney goes off and talks about the details of this new offence. I leave that aside. The principle is the same. The proposition that is being put is, with respect, another version of the myth of the male dominated legal system, which says that many women make false rape reports, that children cannot be trusted—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I know, but the proposition is that children cannot be trusted as witnesses and that they will make malicious prosecutions. This is a myth, and I am sure the Hon. Sandra Kanck has picked it up as a myth; that is why she asked whether children will take malicious prosecutions and go through the process, and the guess is—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: As adults as well. It seems a bit odd to me that we have just had an Australian Law Reform Commission report coming down about access to justice for women, and one of the arguments we are getting thrown up here is that children and women are going to take malicious prosecutions in this area. That should be just thrown out of the Council. I just come back to the basic proposition, which I think is very simple. I am surprised it has provoked so much argument, in view of my amendment, which I think overcomes the problem and which reinstates the status quo for citizens, because there is no case for making a distinction between this offence and other criminal offences. If the problem is that there will be malicious prosecutions, there is a whole range of areas in the criminal law where, if you take that argument, malicious prosecutions could be taken. I do not accept that; it does not happen. It just does not happen, except in the most extremely rare case. So, in my view you are setting up a straw man, or straw woman in this case. There is not a case for making a distinction between this criminal offence and other criminal offences.

To answer the second question the Hon. Sandra Kanck was asking, I just reaffirm that there is a filter. Despite the particular nature of this offence and the fact that it deals with the children giving evidence, if a private citizen took a prosecution, it would still have to be filtered through the magistrate. The magistrate would still have to be convinced that there was enough evidence to commit a person for trial and, even if the magistrate did that, there is still the further filter that, before the matter could be presented before a jury, the DPP would have to agree that the matter goes forward.

All I am saying is that there is no reason for departing from the general principles of the criminal law in this area, and that general principle—although it is not used often, as we know—is that victims of the community do have access to the criminal courts of this land and we should not detract from that.

The Hon. K.T. GRIFFIN: It has been a long debate, and I can add very little to it, except to say that what the Leader of the Opposition has just indicated is a gross distortion of the views which I presented. There is just no basis for that assertion. I think he must be trying to appeal to emotion. The fact of the matter is that there this is a new offence, breaking new ground, and approached in quite a different context from the other provisions of the criminal law where citizens have a right to lay informations.

The Hon. SANDRA KANCK: I queried whether the magistrate's court would operate as a filter. We have passed an amendment moved by the Attorney-General to clause 4, in which a new section was added. Assuming that somehow the Magistrates Court is not effective in operating as a filter to sort out what might be a malicious complaint, would the Attorney-General explain, with the amendment that we have got through about how the jury has to be satisfied and instructed, whether there is some deficiency in it that would still allow a malicious prosecution to proceed?

The Hon. K.T. GRIFFIN: To be fair, if the magistrate found that there was a case to answer, the DPP would then have to determine whether or not the matter should proceed to trial before a jury in either the District Court or the Criminal court. So, there is that filter at that point.

The Hon. C.J. Sumner: That's two filters; you only want one.

The Hon. K.T. GRIFFIN: What I am saying is you put the DPP before the court, before the Magistrates Court rather than leave it until the end of the magistrate's hearing.

The Hon. C.J. Sumner: The private citizen has a right to get to the court.

The Hon. K.T. GRIFFIN: We could argue about this for a long time, I suppose. The point I make, though, is that an information laid by a citizen against an accused does have the potential to create significant hardship and ruin the person who might be the accused where that could have been prevented if the DPP had, first, given his or her consent to the actual laying of the information before it was even heard in the Magistrates Court. That is the issue. Under the Leader of the Opposition's proposal, the DPP would come in at the end of the Magistrates Court hearing. Under my proposition, the DPP comes in before it gets to that point.

The Hon. C.J. Sumner: It stops people from getting to the courts.

The Hon. K.T. GRIFFIN: Maybe with some justification.

The Hon. C.J. Sumner: That is a fact, isn't it? It stops the citizen from getting to the courts.

The Hon. K.T. GRIFFIN: It may do. We come back then to the character of this offence which is being created. It is a very serious offence which is different from any of the other offences in the criminal law and is differently treated in relation to particulars of the charge which the accused has to face.

The Hon. SANDRA KANCK: I have come to a conclusion, after my questions and the answers I have received: I do not see that the Hon. Mr Sumner's amendment really will solve anything in terms of clarification. Having listened to what the Attorney-General has to say, I just cannot see that not having his subclause (8A) included will somehow increase the number of malicious prosecutions. So, I simply do not see the need for that amendment now. I see no need for either the amendment or the amendment to the amendment.

The Hon. C.J. SUMNER: I seek leave to withdraw my amendment in the light of the indication by the Hon. Ms Kanck.

Leave granted; amendment withdrawn.

The Hon. K.T. Griffin's amendment negatived; clause as amended passed.

Title passed.

Bill reported with amendments; Committee's report adopted.

ADELAIDE TO DARWIN RAILWAY LINE

Adjourned debate on motion of Hon. S. M. Kanck:

1. That recognising that the completion of the Adelaide to Darwin railway line is of prime importance to the prosperity of South Australia and the Northern Territory and that its completion enjoys the support of all political Parties—Liberal, Labor and Democrat—the South Australian Parliament supports the setting up of a joint South Australian-Northern Territory Parliamentary Committee to promote all steps necessary to have the line completed as expeditiously as possible.

2. This Council respectfully requests the House of Assembly to support this measure and that the Presiding Officers approach the Presiding Officer of the Northern Territory Parliament with the aim

of establishing the joint multi-party committee and to arrange a secretariat to the committee,

which the Hon. Diana Laidlaw had moved to amend by leaving out all words after 'South Australian Parliament supports' and inserting the following:

(a) the setting up of a South Australian Government team comprising representatives of the Economic Development Authority, the Department of Mines and Energy, the Transport Policy Unit and the Marine and Harbors Agency to prepare a detailed submission for presentation to the Wran committee on the costs-benefits of the rail link and to coordinate a strategy that enables the State to maximise the benefits which will flow from the railway, while minimising any potential repercussions to the port of Adelaide.

(b) the initiative taken by the Premier to invite the Chief Minister of the Northern Territory to participate in a joint South Australian-Northern Territory team of officials responsible for the preparation of funding proposals to the Commonwealth Government and the identification of potential private sector investment in the project.

2. This Council endorses the State Government's decision to pledge $100 million over five years towards the construction of the missing link (Alice Springs-Darwin) in the Transcontinental Railway, a commitment matched by the Northern Territory Government.

(Continued from 30 March. Page 359.)

The Hon. BARBARA WIESE: On behalf of the Opposition I am pleased to join with speakers from the Liberal Party and the Australian Democrats in placing on the public record again our support for efforts to complete the Alice Springs to Darwin railway line. Members will be aware of the many public statements and actions taken by our Party when in Government to encourage the Federal Government to accept that this is a project of national significance which would be of great benefit to the nation, and we are certainly not Johnnies-come-lately in advocating the development of the national railway system. After all, it was Labor Governments that initiated the Trans-Australian Railway, the Adelaide to Alice Springs rail link, the Darling to Southwood line and also the formation of Australian National and the National Rail Corporation. And it was the Whitlam Government that conceived a national railway network that would unify the gauges around the country.

That national vision was strongly supported by the Labor Governments of South Australia and Tasmania, which cooperated with the Federal Labor Government in trying to create an efficient national network. It was the then Liberal Governments of Victoria, New South Wales, Western Australia and Queensland that vetoed that initiative and scuttled the massive capital investment planned by the Whitlam Government in the 1970s, and we have had to wait until the Keating Government's One Nation commitments to see this vision progressed. With respect to the Alice Springs to Darwin railway, the former State Labor Government was also very active. I do not intend to go over this ground in detail.

The former Government's actions have been outlined very well in previous debates on this issue, but the key contributions it made during the past decade included forwarding a major submission to the Hill inquiry, which was jointly prepared by the Chamber of Commerce and Industry and the United Trades and Labor Council, and in November 1983 the then Premier appeared in person before the inquiry to present the submission. We played a major role in trying to turn around the Commonwealth view on this matter and can be credited in no small way with keeping the project alive. We joined forces with the Northern Territory to support the United States based Morrison Knudsen Corporation efforts to prepare a detailed business plan involving private sector financing of the line. And we provided assistance to the Northern Territory Government by way of technical help with feasibility studies and the like.

The assistance has been publicly acknowledged by the Chief Minister of the Northern Territory during his efforts to focus attention on the rail link. With respect to more recent efforts to pursue the rail link project, I believe that the updated report of Australian National, presented late last year, provides a new focus and a catalyst for renewed effort. So, indeed, does the establishment of the Wran committee by the Federal Government, which is charged with the responsibility to identify ways in which the Darwin economy can be improved. In February, when Mr Wran visited Adelaide, the Leader of the Opposition in another place met with him to discuss the Alice Springs to Darwin railway and, as a result, the Opposition is making a submission to the committee on this matter.

I was pleased to hear the Minister for Transport acknowledge, if belatedly, the need we have in South Australia to bear in mind the impact on the port of Adelaide of any plans to complete the rail link. When in Opposition the Minister seemed most reluctant to acknowledge the potential for adverse impacts. But I am encouraged that she now recognises that South Australia has a considerable interest and investment in ensuring that our own port's interests are taken into account. It is certainly the intention of the Opposition to raise this issue in our submission to the Wran committee in support of the Alice Springs to Darwin railway line, because it is something that must be taken into consideration, and we would hope that any repercussions that might flow to South Australia and to the port of Adelaide can be minimised by the fact that the matter is raised in the national context and is given proper attention.

I agree with the Government that the Kirner committee's deliberations, to identify national projects to mark the centenary of Federation in the year 2 000, also provides another avenue to gather support for the completion of the rail link. This is a project that befits such a celebration, and this and the other windows of opportunity I have mentioned should be taken advantage of by this State. The Minister indicates that speed is essential in putting forward our case and, while I do not disagree, I believe that her Government's efforts should not be taken in isolation. It is important that the whole community (and the Parliament) is behind the effort to bring the project to fruition. Therefore, while the Opposition supports the moves outlined by the Government, with the exception of one that I will come to later, we also believe it is desirable to keep the Parliament involved.

Therefore, I intend to move an amendment that will embrace the Hon. Ms Kanck's desire to establish a joint South Australian-Northern Territory parliamentary committee, and which will also support the Government's moves to establish Government teams to work on various proposals. We believe that these ideas can be combined so that a joint parliamentary committee could operate in parallel and in cooperation with the Government teams, sharing information and thus ensuring ongoing tripartisan support.

I indicated that there was one issue where we disagreed. The Australian Labor Party continues to believe that the South Australian Government should not have to contribute financially to the railway project. We have always maintained

that this should be a national project for which the Federal Government should take responsibility.

Of course, the Northern Territory Government is also free to participate financially if it chooses, and there is a greater argument in favour of that in its case. It will derive major benefit from the completion of the line. South Australia, too, will benefit but not to the same extent, although clearly there will be benefit for this State. But we have taken the view that direct financial contribution to the construction project is not appropriate. Therefore, my amendment deletes any reference of support for the Government's commitment of $100 million. I commend my amendment to the Council and move:

Leave out all words after 'South Australian Parliament' and insert the following:

(a) supports the setting up of a joint South Australian-Northern Territory Parliamentary Committee to promote all steps necessary to have the line completed as expeditiously as possible.

(b) supports the setting up of a South Australian Government team comprising representatives of the Economic Development Authority, the Department of Mines and Energy, the Transport Policy Unit and the Marine and Harbors Agency to prepare a detailed submission for presentation to the Wran committee on the costs-benefits of the rail link and to coordinate a strategy that enables the State to maximise the benefits that will flow from the railway, while minimising any potential repercussion to the port of Adelaide.

(c) supports the initiative taken by the Premier to invite the Chief Minister of the Northern Territory to participate in a joint South Australian-Northern Territory team of officials responsible for the preparation of funding proposals to the Commonwealth Government and the identification of potential private sector investment in the project.

(d) calls on the State Government to allow the Joint Parliamentary Committee in (a) above to draw on advice as required from officials in the teams mentioned in (b) and (c) above.

II. This Council respectfully requests the House of Assembly to support these measures and that the Presiding Officers approach the Presiding Officer of the Northern Territory Parliament with the aim of establishing the joint multi-party committee and to arrange a secretariat to the committee.

The Hon. SANDRA KANCK: I want to thank members for their contributions to this debate on what is an important issue for the whole of the South Australian economy and employment. I was disappointed at the Government's response with its amendment. It appears to be taking an 'either/or' attitude; it has to be either what the Democrats have suggested or what the Government has suggested when in fact we can have both. I was also disappointed in the Government's amendment because the committee that has been suggested to be set up could be easily done by the Government at any time without any action being required by this Parliament and I think it is a bit of a cop-out.

The Opposition's amendment is much more acceptable. It combines both my original motion and the Government's rather ineffective amendments. By combining them in the way in which the Opposition has done, it has actually been able to give some teeth to the Government's amendments. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

LIQUOR LICENSING (GAMING MACHINES) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Liquor Licensing Act 1985. Read a first time.

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

That this Bill be now read a second time.

This is a Bill to amend the *Liquor Licensing Act 1985*, to allow licensed clubs with gaming machine licences to seek approval to operate under trading conditions, some of which are similar to those enjoyed by hotels. The Bill, which results from an agreement between the Hotel and Hospitality Industry Association and the Licensed Club's Association, reflects the level playing field approach inherent in the *Gaming Machines Act 1992* and applies that philosophy to the *Liquor Licensing Act*.

The hotel and club industries have argued that licence conditions applying to clubs, which are based on the traditional concept of a club as an association of members with common aims and interests, would disadvantage clubs from a gaming machines perspective. While the *Gaming Machines Act* seeks to establish a level playing field, the hotel and club industries believe that the more favourable position of hotels in respect of trading hours and access by the general public would result in the predomination of hotels in the gaming machine industry unless club trading hours and membership conditions are extended.

To protect the rights of local residents, a club seeking these trading rights will be required to advertise its application, giving local residents the opportunity to object on the grounds of disturbance, annoyance or inconvenience. Advertising will also alert local councils and police who have rights of intervention.

This Bill provides industry supported regulatory consistency for gaming and liquor licensees, while preserving the rights of those who live nearby licensed premises and the expectations of employees.

Some people do have misgivings about this Bill; for example, several small clubs without gaming machines have expressed a concern that they will be overwhelmed by the larger clubs. However, the general response from our consultation, including with smaller clubs, is that they support the proposal.

Some concern has been expressed that this amendment will change the character of clubs who apply for extensions. However, clubs and their members ultimately have control over whether or not they seek to install gaming machines in the first place and then make application for extensions. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Clause 1: Short title

Clause 2: Commencement

Clauses 1 and 2 are formal.

Clause 3: Amendment of s. 34—Club licence

Clause 3 amends section 34 of the principal Act to provide that the licensing authority may endorse a licence held by a licensed club that also holds a gaming machine licence, to authorise the sale of liquor to any person, whether or not a member or a visitor, during periods specified in the licence, not exceeding ordinary hotel authorised trading hours, for consumption on the licensed premises. The licensing authority may only so endorse the licence if satisfied that to do so would be unlikely to result in undue offence, annoyance, disturbance, noise or inconvenience.

Clause 4: Amendment of s.35—Conditions as to visitors

Clause 4 amends section 35 of the principal Act to provide that the conditions in relation to visitors to which a club licence is subject do not apply to a licensed club that has been authorised to sell liquor to any person.

Clause 5: Amendment of s. 50—Power of licensing authority to impose conditions

Section 50 of the principal Act provides for the licensing authority to impose conditions on licences. The amendment provides for conditions to be imposed, varied or revoked on the endorsement of a club licence to authorise the sale of liquor to any person.

Clause 6: Amendment of s. 58—Certain applications to be advertised
Section 58 of the principal Act states that various applications must be advertised. The amendment provides that an application by the holder of a club licence and a gaming machine licence to sell liquor to any person is an application which must be advertised.

Clause 7: Amendment of s. 84—Rights of intervention in relation to application for club licence
Section 84 of the principal Act provides that on an application for a club licence any person with a proper interest in the matter may intervene in the proceedings. The amendment provides that this is also to apply to an application to vary a club licence to authorise the sale of liquor to any person.

Clause 8: Amendment of s. 107—Contracts for provision of services
Section 107 of the principal Act provides that a licensed club may enter into a contract for the provision of services to, or for the benefit of, the members of the club. The amendment provides that this is not to apply to a licensed club that has been authorised to sell liquor to any person.

The Hon. BARBARA WIESE secured the adjournment of the debate.

SOUTH AUSTRALIAN PORTS CORPORATION BILL

The Hon. DIANA LAIDLAW (Minister for Transport) obtained leave and introduced a Bill for an Act to provide for the management of public commercial ports in the State; to establish the South Australian Ports Corporation; and for other purposes. Read a first time.

The Hon. DIANA LAIDLAW: I move:

That this Bill be now read a second time.

As a key element of its transport policy commitments, the Government has announced it will establish a ports corporation to operate South Australia's public commercial ports as a business enterprise and to facilitate the development of commercially viable trade through its ports. This is a critical step in improving access to international markets for South Australian importers and exporters.

The Bill seeks to establish a South Australian Ports Corporation and to provide a clear separation of responsibility for the management of South Australia's public commercial ports from the responsibilities for maritime regulation and also the provision of various other community service obligations (CSOs). These CSOs include responsibility for the *Island Seaway* ferry service to Kangaroo Island, services to the fishing industry and recreational boating, recreational jetties and West Lakes waterways which are presently the responsibility of the Marine and Harbors Agency of the Department of Transport.

The Department of Transport will continue to undertake the present maritime regulatory functions and community service obligations (CSOs) of the Marine and Harbors Agency.

The draft Bill has been widely canvassed with importers and exporters, peak industry bodies, port users, other port service providers and unions. Their constructive comments were appreciated. It is particularly pleasing to note that the consultative process has not discovered any major concerns and the general support shown is indicative of the need for further port authority reforms as proposed in the Bill.

The Bill will establish the Ports Corporation and its board, set out the corporation's principal functions and responsibilities and provide appropriate powers relating to the management of the corporation. The Bill contains only the core elements necessary to establish the corporation and its board as the corporation is to comply with all provisions of the *Public Corporations Act 1993* (with two minor exceptions relating to council rate equivalents and stamp duty).

The Bill also mirrors sections in the *Harbors and Navigation Act 1993* such as clearance of wrecks, restrictions on the use of waters within corporation ports and control of vessels in ports which are directly relevant to the corporation's operational activities and which should lie with the corporation rather than the Minister in respect to corporation ports.

The main function of the corporation is to operate the State's public ports on a sound commercial basis as a business enterprise. However this does not mean the corporation is only to take a narrow financial view of the role of ports in the State's economic development.

The corporation will also be required to take an active role in the marketing and development of South Australian ports and port services, including the facilitation of trade, and shipping and other port-related transport services for the economic benefit of the State, provided these activities are consistent with the operation of the corporation as a viable business enterprise.

Where the Government considers that broader economic and other trade-related policy initiatives should be pursued through the corporation's activities, but which are not of direct financial benefit to the corporation, then these activities can be undertaken by the corporation where external Government funding is provided. Apart from the corporation's active marketing and development role, the Bill is otherwise consistent with many of the reforms proposed by the Hilmer report on national competition policy and various recent national port inquiries, including the recent Industry Commission report on port authority services and activities.

The Bill provides for flexibility in operational and commercial matters but retains overall strategic control with the Minister. It does not provide for full exposure to the same incentives, rules and regulatory environment as private sector corporations. This approach does not preclude full corporatisation as a public company at a later stage, such as is now being considered for some port authorities interstate and overseas.

In particular, the Bill provides exemption from the provisions of the Government Management and Employment Act 1985 and the State Supply Act 1985. The Government is also reviewing the basic management principles that are to apply to all Government enterprises, agencies and statutory authorities. South Australia is now the only State where its public ports still operate under a departmental structure.

Autonomy in the day-to-day operational and commercial management of the State's commercial ports will be essential to exploit the benefits of greater exposure to commercial disciplines and the expertise of a commercial board. It will also clearly separate responsibility for the day-to-day commercial and operational activities of the corporation from the Minister who presently has these responsibilities as a body corporate under the present legislation.

The Government will retain strategic control over the corporation through the Public Corporations Act 1993, the Public Finance and Audit Act 1987 and through the ministerial control and direction of the corporation, and in particular controls on fixed scale charges, disposal of land and appointment of board members as proposed by the Bill.

Only one corporation and board is to be responsible for the State's commercial public ports. This arrangement will exploit economies of scale in use of resources and ensure consistent commercial arrangements with the many customers who use more than one port. To ensure a balanced commer-

cially oriented board, it is crucial that the five members recommended by the Minister for appointment by the Governor be drawn from people with skills and expertise appropriate to the corporation's activities.

The corporation will be able to develop work force and workplace arrangements appropriate to the ports and waterfront industries without being tied to public sector conditions and practices. The Bill enables the corporation to establish its own employment terms and conditions for new employees. The Bill also provides for the transfer of staff from the Department of Transport to the corporation if that is appropriate. Any such transfer would be without loss of accrued rights in respect of employment. The corporation will also be able to utilise public sector employees on mutually agreed terms with the responsible Minister if required, for example, on a hire or secondment basis.

The corporation will be able to negotiate variations in prices and charges for its services directly with its customers and will allow the corporation to respond immediately to commercial initiatives. This is of particular importance as immediate responses to commercial proposals are essential and, in addition, negotiations relating to the marketing and development of shipping and port services are increasingly occurring interstate and overseas. The Minister will, however, retain control of the overall levels of prices and charges through publication of a scale of basic charges. The Bill does not specify the assets and indeed the ports for which the corporation is to be responsible; it only establishes a mechanism for the vesting of appropriate assets, including land, in the corporation.

A task force, chaired by John Pendrigh AM, is (amongst other things) presently reviewing Marine and Harbors assets and will make recommendations to Government on the disposition of Marine and Harbors assets and other resources between the corporation and the Department of Transport. Only land and assets directly associated with the operation of commercial ports, such as the channels, certain navigation aids, berths and wharves presently used for commercial activities and certain cargo handling facilities such as the bulk loading plants (unless otherwise sold) are to be vested in the corporation.

The Harbors and Navigation Act 1993, which has been assented to but not yet proclaimed, is to be the State's marine safety legislation covering all South Australian harbors and navigable waters, including corporation ports. This Act will be administered by the Department of Transport on behalf of the Minister. The Harbors and Navigation Act 1993, as amended by a Bill which I am about to introduce, will be proclaimed at the same time as this Act and will repeal the existing Harbors Act, Marine Act and Boating Act.

In summary, the Bill will provide a framework for the South Australian Ports Corporation that provides for operational and commercial autonomy in its day-to-day activities but retains strategic control with the Government. It will establish a corporation with a clear commercial focus and culture, which will lead to more cost-effective use of port assets and further improvements in service delivery and reliability of South Australian ports. I commend this Bill to the House, and seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for the Act to come into operation by proclamation.

Clause 3: Object

This clause sets out the object of the Act, which is to set up a statutory corporation with the principal responsibilities of managing the ports vested in the corporation as a business enterprise and promoting the development of commercially viable trade through the use of those ports.

Clause 4: Interpretation

This clause provides some necessary definitions. The definitions of "owner" and "vessel" are compatible with the definitions in the *Harbors and Navigation Act*.

Clause 5: Establishment of the Corporation

This clause establishes the South Australian Ports Corporation.

Clause 6: Application of Public Corporations Act

This clause provides that all the provisions of the *Public Corporations Act* apply to the Corporation.

Clause 7: Non-application of GME Act and State Supply Act

This clause provides that certain Acts do not apply to the Corporation, namely, the *Government Management and Employment Act* and the *State Supply Act*.

Clause 8: Ministerial Control

This clause merely reiterates part of section 6 of the *Public Corporations Act* which provides that the Corporation is subject to control and direction by the Minister.

Clause 9: Functions of the Corporation

This clause sets out the functions of the Corporation. The primary function of the Corporation is to manage the Corporation's ports and other facilities on a sound commercial basis as a business enterprise. In doing so, the Corporation must endeavour to ensure that the best possible service is provided to port users. The Corporation must also encourage outside investment (whether private or public sector) in the provision of port services and facilities and endeavour to undertake any other activity that will facilitate the development of trade or commerce through the use of the Corporation's ports. Subclause (2) recognises that the Corporation may have other functions assigned to it by Act of Parliament.

Clause 10: Powers of the Corporation

This clause provides that the Corporation has all the powers of a natural person. It emphasises that the Corporation may provide consultancy services to any person (including the Government). Subclauses (3) and (4) require the Corporation to obtain Ministerial approval for disposing of any of its land, except where it leases out land for a term of less than 21 years.

Clause 11: Power to acquire land compulsorily

This clause empowers the Corporation to acquire land in accordance with the *Land Acquisition Act*.

Clause 12: Common seal and execution of documents

This clause makes provision for the execution of documents by or on behalf of the Corporation. A single person may execute documents on behalf of the Corporation if the Corporation so authorises.

Clause 13: Establishment of the board

This clause establishes a board of directors as the governing body of the Corporation. The board will be appointed by the Governor on the nomination of the Minister and will have a maximum of five members. The Governor will appoint one director as the chair and may appoint another director as the deputy chair.

Clause 14: Conditions of membership

This clause sets out the usual conditions of membership. Three years is the maximum term of appointment, but a director can be re-appointed. The Governor may remove a director from office for misconduct, failure or incapacity to carry out official duties satisfactorily or if the Governor believes that the Board should be reconstituted because of irregularities or failure on the part of the Board.

Clause 15: Vacancies or defects in appointment of directors

This clause is the usual provision validating acts of the Board despite there being a vacancy in membership or a defective appointment of a director.

Clause 16: Remuneration

This clause entitles a director to be paid (from the Corporation's funds) remuneration, allowances and expenses as fixed by the Governor.

Clause 17: Proceedings of the board

This clause makes provision for the Board's procedures. The director chairing a meeting has a deliberative vote and a casting vote. Provision is made for telephone or other electronic meetings, and for resolutions to be made by fax or other documentary means. Apart from these provisions, the Board will determine its own procedures.

Clause 18: Staff of the Corporation

This clause gives the Corporation the power to appoint its own staff, on terms and conditions fixed by the Corporation. The Minister and the Corporation may arrange for the compulsory transfer of Department of Transport employees to the employment of the Corporation. Such a transfer will be effected without any reduction in the employee's salary and does not affect any other existing or accruing employment rights.

Clause 19: Appointment of authorised persons

This clause grants the Corporation the power to appoint authorised persons for the purposes of the enforcement provisions of the Act. The Corporation may appoint its own employees, or authorised persons under the *Harbors and Navigation Act* or any other suitable person to this office. Appointments may be subject to conditions. Police officers are automatically authorised persons (see the definition of "authorised person").

Clause 20: Production of identity card

This clause requires an authorised person to produce on request his or her identity card (or warrant card in the case of the police).

Clause 21: Powers of an authorised person

This clause sets out the powers of an authorised person. These powers are virtually the same as those exercisable by an authorised person under the *Harbors and Navigation Act*, except, of course, that they are only exercisable in relation to this Act, and the power to board a vessel is restricted to vessels that are within a Corporation port. Immunity from self-incrimination is given to persons required to answer questions or produce documents.

Clause 22: Vesting of land in the Corporation

This clause empowers the Governor to vest in the Corporation any harbor, or part of a harbor, or any other land that belongs to the Minister under the *Harbors and Navigation Act*. Any navigational aid (whether within or outside a harbor) may be vested in the Corporation. Any land or facilities so vested in the Corporation will constitute a Corporation port under a name to be assigned by the proclamation. Other matters of a transitional nature may also be dealt with in the same or a subsequent proclamation. The Governor also has power to resume any land dedicated for public purposes and vest such land in the Corporation. The vesting of any real or personal property in the Corporation under this clause is exempt from stamp duty.

Clause 23: Liability for council rates

This clause sets out the Corporation's liability to pay council rates. The Corporation's land will not be rateable, except to the extent that some other person (other than the Crown) is the occupier of the land. The Corporation will not have to pay to the Treasurer (under the *Public Corporations Act*) amounts equivalent to council rates on land that is not being used by the Corporation or that is being used predominantly for administrative purposes.

Clause 24: Liability for damage

This clause provides the same liability to the Corporation for owners of vessels that damage Corporation property as is provided in the *Harbors and Navigation Act* in relation to Crown property.

Clause 25: Establishment and maintenance of navigational aids

This clause empowers the Corporation to establish navigational aids. The Corporation is under an obligation to maintain all navigational aids in good working order. The Corporation is given the same power as the Minister under the *Harbors and Navigation Act* to direct certain port users to establish, maintain and operate a specified navigational aid. It is an offence for such a person to fail to do so.

Clause 26: Interference with navigational aids

This clause makes it an offence to interfere with any of the Corporation's navigational aids. The Corporation has the power to direct the person in charge of a device that emits a light or signal that might be confused with one of the Corporation's navigational aids to take steps to prevent the confusion. It is an offence for the person to fail to do so, and the Corporation may in that case carry out the remedial work itself and recover the cost from the person in default. This provision is the same as the provision in the *Harbors and Navigation Act* dealing with the same subject.

Clause 27: Clearance of wrecks, etc.

This clause gives the Corporation the same powers in relation to the clearance of wrecks from its ports or the removal of other obstructing or polluting matter as the Minister has under the *Harbors and Navigation Act*.

Clause 28: Licences for aquatic activities

This clause gives the power to license aquatic activities within Corporation ports to the Corporation. The Minister's powers to license such activities will therefore not extend to Corporation ports. Licences for aquatic activities grant exclusive rights to use certain waters to the holder of the licence and it is an offence for a person to enter those waters during the relevant times with the consent of the licensee or the Corporation.

Clause 29: Restricted areas

This clause enables the Governor to make regulations, regulating or prohibiting the entry of vessels, water skiers, etc., into specified areas of the waters within a Corporation port. The Corporation has the obligation to inform the public of any such prohibition or restriction. Again, this provision is similar to the one in the *Harbors and Navigation Act* dealing with restricted areas.

Clause 30: Port charges

This clause provides that the charges for the use of the Corporation's ports and other services and facilities will be fixed either on an individually negotiated basis (e.g., contracts are likely to be entered into with the major port users) or in accordance with a scale approved by the Minister and published in the *Gazette*. If charges are fixed in accordance with such a scale, then provision is made in subclause (2) for the imposition of default charges, waiver or reduction of charges, recovery of charges, etc. These latter provisions are identical to the fee recovery provisions in the *Harbors and Navigation Act*.

Clause 31: Conduct of vessels in ports

This clause requires any person in charge of a vessel in a Corporation port to comply with the directions of an authorised person relating to the mooring, manoeuvring and unloading of vessels. The authorised person may board a vessel for those purposes if there does not appear to be a person on board to whom directions can be given. The cost of doing so is recoverable by the Corporation from the owner of the vessel.

Clause 32: Offences by authorised persons

This clause makes it an offence for an authorised person to hinder, obstruct, abuse or use force against another person.

Clause 33: Evidentiary provision

This clause provides certain evidentiary aids for the purposes of legal proceedings. These are self-explanatory.

Clause 34: Time limit for prosecutions

This clause enables prosecutions for offences against the Act to be brought within 12 months (instead of the usual six months) of the alleged commission of the offence.

Clause 35: Immunity from liability

This clause gives the same immunity from civil liability to the Crown, the Corporation and its directors and employees as the Minister has under the *Harbors and Navigation Act* in respect of the issuing of licences or authorities or the establishment, positioning or operation of navigational aids. The usual immunity is given to an authorised person with respect to the exercise, or purported exercise, of powers under the Act. This liability devolves on the Corporation.

Clause 36: Regulations

This clause is the regulation-making power.

The Hon. BARBARA WIESE secured the adjournment of the debate.

HARBORS AND NAVIGATION (PORTS CORPORATION AND MISCELLANEOUS) AMENDMENT BILL

The Hon. DIANA LAIDLAW (Minister for Transport) obtained leave and introduced a Bill for an Act to amend the Harbors and Navigation Act 1993. Read a first time.

The Hon. DIANA LAIDLAW: I move:

That this Bill be now read a second time.

The Harbors and Navigation (Ports Corporation and Miscellaneous) Amendment Bill 1994 complements the South Australian Ports Corporation Bill. It continues the provision of a uniform marine safety environment throughout the State but transfers specific responsibilities which relate to port operations, such as control of navigation aids, licences for aquatic activities and restricted areas within corporation ports, to the Ports Corporation for its ports. It also includes a number of minor amendments unrelated to the establishment of the Ports Corporation, which are to improve maritime regulation in South Australia. These latter amendments arose

from the drafting of regulations for the Harbors and Navigation Act 1993.

The Bill also provides for the appointment of corporation employees as 'authorised persons' under the Harbors and Navigation Act 1993. This will allow corporation employees to administer this Act (on an agreed basis with the Minister) where duplication of resources is inefficient, such as in the regional ports.

This Bill was submitted to the consultation process in conjunction with the South Australian Ports Corporation Bill and has received general support. I commend this Bill to the House, and seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

This clause is formal.

PART 2

AMENDMENTS CONSEQUENTIAL ON THE ESTABLISHMENT OF THE SOUTH AUSTRALIAN PORTS CORPORATION

Clause 2: Amendment of s. 4—Interpretation

This clause inserts two new definitions in the Act, one dealing with references to the South Australian Ports Corporation, the other with references to the Corporation's ports.

Clause 3: Amendment of s. 12—Appointment of authorised persons

This clause empowers the CEO to appoint an authorised person under the *South Australian Ports Corporation Act* to be an authorised person for the purposes of the *Harbors and Navigation Act*. Such an appointment can only be made with the concurrence of the Corporation.

Clause 4: Amendment of s. 15—Property of Crown

This clause makes it clear that property subsequently vested in the Corporation no longer falls within the Minister's jurisdiction under the *Harbors and Navigation Act*.

Clause 5: Amendment of s. 21—Liability for damage

This clause excludes Corporation property from the provision that deals with liability for damage to harbors and related property.

Clause 6: Amendment of s. 22—Control of navigational aids

This clause excludes the navigational aids vested in the Corporation from the control of the Minister.

Clause 7: Amendment of s. 26—Licences for aquatic activities

This clause makes it clear that licences for aquatic activities within Corporation ports will be issued by the Corporation and not the Minister.

Clause 8: Amendment of s. 27—Restricted areas

This clause similarly makes it clear that regulations cannot be made under this section for establishing restricted areas, etc., in respect of Corporation ports.

Clause 9: Amendment of s. 28—Control and management of harbors and harbor facilities

This clause provides that the Minister's control and management of harbors and harbor facilities do not extend to a port or ports facilities vested in the Corporation.

Clause 10: Amendment of s. 83—Regattas, etc.

This clause provides that exemptions for the purposes of regulation, etc., within Corporation ports will still be granted under this section, but such an exemption can only be granted if the Corporation concurs.

PART 3

MISCELLANEOUS AMENDMENTS

Clause 11: Amendment of s. 4—Interpretation

The definition of "fishing vessel" is amended to include all vessels used in connection with a fish farm.

Clause 12: Amendment of s. 15—Property of Crown

Section 15 is amended so that all land currently held by the Minister subject to trusts or reservations under the *Crown Lands Act* or the *Harbors Act* is vested in the Minister in fee simple free of those trusts or reservations.

Clause 13: Insertion of s. 18A—By-laws

Section 195 of the *Harbors Act* currently provides for councils to make, subject to the approval of the Minister, by-laws that operate in a harbor. Such by-laws may be varied or revoked by the Governor at any time.

New section 18A allows councils to make by-laws that operate in relation to a harbor or other adjacent or subjacent land vested in the Minister, subject to the approval of the Minister. The Governor is given power to revoke such by-laws after the Minister has consulted with the council concerned.

A transitional provision is inserted by clause 26 relating to the continuation of existing by-laws.

Clause 14: Amendment of s. 25—Clearance of wrecks, etc.

Section 25 is amended to bring the wording of the provision into line with that used in the Ports Corporation legislation. The section gives the Minister powers with respect to the removal of "materials" from waters that may cause navigational obstruction or pollution. The reference to "materials" is altered to "substance or thing" to ensure that the Minister's powers may be exercised no matter the nature of the matter involved.

Clause 15: Amendment of s. 33—Licensing of pilots

The amendment enables the period of a pilot's licence to be specified by regulation. It also clearly enables the CEO to cancel a pilot's licence in appropriate circumstances.

Clause 16: Amendment of s. 34—Pilotage exemption certificate

The amendment enables the period of a pilotage exemption certificate to be specified by regulation. It also makes it clear that an exemption lapses if it is not used as often as is specified by regulation.

Clause 17: Amendment of s. 35—Compulsory pilotage

The amendment gives the CEO power to exempt a vessel from the requirements of compulsory pilotage.

Clause 18: Amendment of s. 46—Vessels to which this Part applies

The amendment means that all powered recreational vessels are subject to the requirements relating to certificates of competency.

Clause 19: Amendment of s. 47—Requirement for certificate of competency

The amendment enables the regulations to allow the CEO to recognise interstate or overseas qualifications as equivalent to certificates of competency for the purposes of the legislation in accordance with the regulations.

Clause 20: Amendment of s. 50—Cancellation of certificate of competency by Minister

The amendment enables the Minister to cancel a certificate of competency if the holder suffers mental or physical incapacity rendering the holder unable to perform the relevant duties.

Clause 21: Insertion of s. 52A—Duration and granting of licence

The new section enables the period of a licence to hire out vessels to be specified by regulation. It also enables the regulations to set out the circumstances in which the CEO may grant or refuse to grant such licences.

Clause 22: Amendment of s. 54—Application of Division

The amendment means that all powered recreational vessels are required to be registered and marked in accordance with the regulations.

Clause 23: Amendment of s. 57—Appointment of surveyors

The amendment enables the CEO to cancel a surveyor's licence for incompetence, breach of duty or breach of a condition of the licence.

Clause 24: Substitution of s. 81—Application of Commonwealth Act

Section 81 requires the regulations to specify the provisions of the Commonwealth Act that are not to apply in South Australian waters. The substituted section reverses this approach. The regulations must specify the provisions of the Commonwealth Act that are to apply and may set out relevant modifications.

Clause 25: Amendment of schedule. 1—Harbors

The names of certain harbors are corrected and Rapid Bay is added as a harbor.

Clause 26: Amendment of schedule. 2—Repeal and Transitional Provisions

Transitional provisions are added to ensure that loadline certificates, special permits, licences to hire out vessels and registration of vessels continue to have effect and that council by-laws made under the *Harbors Act* continue to have effect.

The Hon. BARBARA WIESE secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (SEXUAL INTERCOURSE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 April. Page 473.)

The Hon. K.T. GRIFFIN: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

The Hon. BERNICE PFITZNER: I was not going to speak to the second reading of this Bill, but just listening to our lawyers in this Council—

An honourable member: Very educational.

The Hon. BERNICE PFITZNER: Yes, it was very educational—jousting verbally and, further, on checking the debate in *Hansard* I feel that I have to clarify and qualify certain inaccuracies. However, I will be brief. I shall leave the issue of retrospectivity to my learned parliamentary colleagues, with their legal backgrounds. I want to contribute to the debate relating to the term 'vagina', and I believe that my own background and my own gender qualify me to discuss this issue.

The shadow Attorney-General in his second reading contribution made the statement: 'the Court of Criminal Appeal expressed the opinion that the word "vagina" should be given the meaning plainly intended by Parliament and not the technical physiological meaning,' and that if Parliament had been dissatisfied with it then it would have been corrected then. There was also some reference to its being Parliamentary Counsel's fault in relation to that term. Further, my colleague the Hon. Mr Lawson correctly points out that 'vagina' is a well-known term that has been used in the law for hundreds of years. He further comments that, in using the term 'penetration of the vagina', the members of Parliament did not at that time apply their minds to the question of what it meant. So, as is usual with lawyers, we are looking for where we can lay the blame: should it be upon the courts, the Parliamentary Counsel—

The Hon. C.J. Sumner: That was said in the nature of a jocular remark. It was tongue in cheek.

The Hon. BERNICE PFITZNER: Yes—or parliamentarians? But this is a very serious issue and I think it should be explained in a serious manner. From my perspective, this approach is due to a lack of knowledge. It is not the lack of technical/physiological meaning, as physiology pertains to the function or activity of a normal healthy organism. What we are alluding to here is the human anatomy. It is anatomy pure and simple. It is the anatomy of the female area, which may be rather hazy to a number of learned male judges and lawyers. We had here—

An honourable member interjecting:

The Hon. BERNICE PFITZNER: Sorry, I have lost my position now.

Members interjecting:

The ACTING PRESIDENT (Hon. M.S. Feleppa): Order!

The Hon. C.J. Sumner: This is a serious matter.

The Hon. BERNICE PFITZNER: Yes. It is the female anatomy we are talking about here—nothing about technical physiology—the parts of which, from the outer aspect inwards, are: *labia majora*, the larger outer flaps; *labia minora*, the smaller outer flaps; *introitus*, outer entrance; and the vagina, or the vaginal canal. For penetration to arrive at the vagina in an adult female the distance involved is approximately one centimetre or less. Usually, if penetration is attempted then the vaginal canal is breached. However, this may not be so with children, who have an additional barrier at the *introitus* known as the hymen. It is quite possible for penetration to reach only to the *introitus* and not into the vagina. I also note the comment of the Hon. Mr Elliott that with some female circumcision the outer parts may not be present. This may be true. However, the new provision will read in part:

> . . . that sexual intercourse includes activities consisting of or involving penetration of. . .

And the new word would be *labia majora*. Therefore, even though the *labia majora* is not present there will still be an involvement of the anatomical area of the *labia majora*. More importantly, with our increasing awareness of child sexual abuse, we must be very clear on our definition of what the legal term for 'sexual intercourse' should be, not only for lawyers but for medical practitioners. We therefore have to have a clear picture of the anatomy, which knowledge is the crux of the matter. Then we will be in a better position to support this Bill in an informed manner. I support the second reading.

The Hon. ANNE LEVY: I support the second reading of this Bill and do not wish to go into any detailed anatomical discussions. I think the major question of concern with regard to this Bill is whether or not the measure should be made retrospective. There has been discussion on this matter, particularly from those who feel that the absence of retrospectivity is a question of paramount importance before which everything else must bow.

I do not resile from the fact that retrospectivity is something which needs to be considered seriously. I think it should not be elevated to an absolute principle, but each case should be considered on its merits. I maintain that this is a situation where retrospectivity should be given a great deal of careful consideration by this Parliament. When the original definitions were passed in the mid-1980s, there was no doubt what this Parliament meant. At that time whatever words were used, the definition of 'rape' was clearly meant to include any penetration of the female genitalia. That was the impression which all members of this Parliament had, and it was agreed that it was the appropriate definition for 'rape'.

The courts have chosen to interpret the words differently. I will not enter into an argument as to the rights and wrongs of this matter, but I maintain that the Parliament always intended the definition of 'rape' to include any penetration of the female genitalia. Consequently, to make this measure retrospective would, in fact, not be changing the mind of Parliament but making clear what had been the intention of Parliament all along. It seems to me that there is a strong case for considering retrospectivity as reflecting the intention of Parliament from the very beginning.

To some extent, I presume this is a theoretical argument. Whether it has any practical effect would depend on the number of potential cases which may arise resulting from incidents which have occurred between 1985 and the present. I imagine that most of those would have already been brought to trial. There may be some which have not and, while it may be impossible to estimate the number because in some cases the complaint may not yet have been lodged, I imagine that the number in this category is very small indeed. I would certainly be interested if the Attorney could let us know whether there are cases in the pipeline where complaints have been laid and investigations are being made which could be

affected by whether or not retrospectivity is included in the Bill. Even if the number is small, while the prosecutors may be able to get around it by charging with attempted rape instead of rape, I disapprove of this as a subterfuge. I think rape is much better charged as rape. Regardless of what the sentences may be, the connotation in the minds of many people is quite different. 'Attempted rape' may stop far short of 'rape', and I believe we should call a spade a spade and that rape should be called rape. However, even if the number of potential defendants who could be affected is small, I still think the Parliament should consider seriously whether or not this matter should be made retrospective.

In this particular case, I maintain that we would not be changing the law retrospectively; we would merely be placing on the statute book what had been intended by the Parliament all the time. In the 1980s, we did not discuss whether 'vagina' included 'labia majora'; the anatomical configurations of the female genitalia played no part in our deliberations. I would assert that all members of Parliament at that time believed that 'rape' meant any penetration of the female genitalia.

The Hon. M.J. Elliott: I do not think the specifics of a woman's anatomy would be in the mind of a rapist, either.

The Hon. ANNE LEVY: I agree wholeheartedly with the comment by the Hon. Mr Elliott that a rapist is hardly likely to adjust his behaviour according to definitions which Parliament has set down and decide that penetration will be minimal in order to avoid the charge of rape, whereas greater penetration would result in a charge of rape. That is not the sort of consideration which is in the mind of a rapist while he is committing rape—and I defy anyone to suggest otherwise.

In summary, it seems to me that the principle of not applying retrospectivity cannot be an absolute one, and we should give serious consideration to each case on its merits. I maintain that, in this particular case, serious consideration should be given to the question of retrospectivity, because it would not change the law in such a way to make illegal what had previously been legal; it would merely put into effect what Parliament had intended to be there all the time. I support the second reading.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contributions to the debate. During the course of the debate two matters emerged which I would like to address. The first matter I wish to address was raised by the Hon. Mr Elliott. He asked what the position would be if it was sought to apply this law to a woman who had been subjected to radical female genital mutilation in which the labia had been entirely removed. I must confess that he appears to have a point.

Technically there could be no rape because there would be no labia majora to penetrate. There are two ways in which to solve that problem. The first is to try to deal with it, and the only way that I can think to deal with it would be to replace the words 'labia majora' with some other word or words such as 'genitalia'. The second way in which to deal with it would be to say, in effect, that the problem is unlikely to arise. There is not a lot of hard information around, but such information and expertise that has been drawn to my attention on the subject seems to agree that there are very few cases of radical female genital mutilation in Australia and that the number is unlikely to increase.

That being the case, an allegation of a rape of such a woman would be a very rare event indeed, and I do not think it has ever happened in this country to date. In using the term 'labia majora', I was seeking to make only such changes to the drafting of the section as were absolutely necessary to fix the problem so as to minimise the risk of more court cases trying to establish what the new wording means when compared with what the Act currently provides. I can indicate that it is my intention in the future to look carefully at the relevant sections of the Criminal Law Consolidation Act which deal with sexual intercourse to see whether a more coherent approach could and should be taken.

So my attitude to the point is that it is probably technically right but in reality it is extremely unlikely to arise. In addition, I make the point that the offender in such a case would inevitably be found guilty of attempted rape or indecent assault in any event. So it is not as though such a person would get off scot-free.

The debate about possible retrospectivity is the difficult point, and I think it might be helpful if I exposed the thinking of the Government on the matter. Of course, it is inevitable that, when a court ruling overturns what has been for some years an accepted understanding of the law, questions of making remedial legislation retrospective arise. The Liberal Party and I are on the record as being opposed in principle to retrospective criminal legislation unless there is an exceptional case in which the exception can be demonstrably justified.

The basic principle is not challenged by any thinking person. It figured prominently in the High Court judges in the *Polyukhovich* case, and the principle can be found in the origins of our legal system. Hobbs wrote in 1651:

> No law made after a fact done can make it a crime, for before the law there is no transgression of the law.

But there have always been exceptions, albeit rare exceptions. In this case, I have sought advice and have anxiously considered whether retrospectivity in this case fits the taste of demonstrable justifiability. In the end the debate came to this: if the legislation was retrospective it would affect two groups of cases.

In determining how many of these cases there will be, it is important to remember that, in the structure of the South Australian legislation, the only cases affected will be those in which there are allegations of penetration by an object or digital penetration. That limits considerably the class of cases affected.

The first group of cases affected would be those decided between 1985 and 1994. It may be that a person convicted under the old view of the law could apply for leave to appeal out of time against conviction. In order to succeed, it would be likely that the applicant would have to show that there would have been a reasonable doubt about the matter if the new view of the law had been applied at the time. That would be hard enough, but even if that could have been done such a person would, in any event, have been convicted of attempted rape or indecent assault.

So, the only point in trying to appeal would be if a person now serving a sentence could show that the sentence would have been less than that imposed at the time. My advice was and is that no-one can identify any case that would pass those tests. One or two may exist after all, but that in itself would not justify retrospectivity.

The second group of cases affected would be prosecutions undertaken in the future in which allegations of sexual abuse are made about events occurring between 1985 and 1994. There is no knowing how many such cases, if any, there will be, because, of course, they do not exist yet. Remember also that we are talking only about penetration by object or digital penetration. If the legislation is not retrospective, and if the

allegations concern events both before and after the legislation comes into force, the conduct of the case may present some difficulty.

As I said in the second reading speech, lack of retrospectivity will cause problems in such cases if there are any. The problem will be that the judge will have to direct the jury differently about the elements of the crime, depending on when the events may be found to have occurred. But as I also said, we do not know how many such cases there will be, and in the end the offender, if found guilty, will be subject to alternative verdicts such as attempt or indecent assault.

How real would the difference be? The maximum sentence available for both rape and unlawful sexual intercourse with a child under 12 is life imprisonment. The maximum applicable for unlawful sexual intercourse with a child between 12 and 17 is seven years. By comparison, the applicable maximum for attempted rape and attempted unlawful sexual intercourse with a child under 12 is 12 years, and attempted unlawful sexual intercourse with a child between 12 and 17 is four years and eight months. The maxima applicable to indecent assault are 10 years for a child under 12 and eight years for a child between 12 and 17. So the difference is between an applicable maximum of life on the one hand and 10 to 12 years on the other, and between seven years on the one hand and about five to eight years on the other.

It follows that, first, if the legislation is not retrospective, there could be an unknowable number of cases in which the trial will be complicated or in which the verdict will be affected or both. Secondly, there will be a difference in applicable maxima. But as I hope I have just shown, that difference will not be great and, in any event, one would expect a sentencing judge to pay attention to the gravity of the behaviour when setting the actual sentence, in any event.

In those circumstances, I took the view, which I still hold, that there was not a sufficient argument to justify breaching the general and strongly held principle against retrospectivity in criminal matters. I might just make just a couple of further observations—

The Hon. C.J. Sumner: There will be problems.

The Hon. K.T. GRIFFIN: Well, I've tried to explain that. I will just go back to what I did say in my reply. I identified some cases and perhaps I can reiterate them for the Leader. As I said in the second reading speech, 'Lack of retrospectivity will cause problems in such cases, if any.' This is a qualification of what is in the second reading speech, and the second reading speech was not as clear as it should have been with respect to that matter. But I accept responsibility for it. I do not blame others for it.

I now turn to what the Hon. Anne Levy raised. She asked whether there were any known cases in the pipeline being investigated which may be affected. I did take this up with the Director of Public Prosecutions when we were considering whether or not it should be retrospective. The DPP, in a sense, shrugged his shoulders and said, 'Well, there's no way of knowing. Short of making an inquiry through the police to go through all their lists of inquiries, there is no other way of knowing what is currently under inquiry.'

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: With respect, not everything gets onto the computer with such precision as an allegation of digital penetration or penetration with an object.

The Hon. Anne Levy: The number of rapes could have been investigated; there should be something.

The Hon. K.T. GRIFFIN: You see, that is not the issue, because it is not an issue with allegations of penile penetration. So, it is not just a matter of looking at what matters are being investigated where rape has been alleged, because that does not give the full picture.

The Hon. Anne Levy: It's a start.

The Hon. K.T. GRIFFIN: It may be a start, but it might be a misleading start. All that I can do is tell the Council the position as I know it, and that is what it is. The Hon. Anne Levy also said, 'Well, we're not really changing the law on the statute books, because everyone who was in Parliament at the time in 1985 was clear as to what was intended by the Parliament'. That is really the difficulty to which I referred in my reply, namely, that it is easy to be wise after event. We have the courts, which make judgments about what Parliament intended from their interpretation of the statute. That is what happens. Fortunately—although the Leader of the Opposition may disagree—in this State the courts do not have to take into account what was said in Parliament. If they did they might be very confused.

The Hon. C.J. Sumner: They should; it might help them.

The Hon. K.T. GRIFFIN: Well, I'm not sure that it would help.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: But you can't subject the citizens to the law on the statute books on the basis of what members in Parliament at the time thought about a particular law. It is an incredible proposition that will not withstand careful scrutiny.

The Hon. C.J. Sumner: The High Court does it now.

The Hon. K.T. GRIFFIN: They interpret from what is on the statute book. In this case they have just taken the medical term 'vagina' and interpreted it as it is understood medically. It is not so easy as to say that all those of us here knew what was intended. In my view, that is not the way that the citizen ought to be governed. Again, I thank members for their contributions to this important Bill.

Bill read a second time.

In Committee.

Clause 1—'Short title.'

The Hon. C.J. SUMNER: I note the comments made by the Attorney-General on the question of retrospectivity, and I do not believe that we should amend the Bill to make it retrospective, given the balance of considerations to which the honourable member has referred. Although I did raise these questions in my second reading contribution, I do not intend to move an amendment to that effect.

The Hon. M.J. ELLIOTT: It is not my intention to extend this debate but I do want to make a brief comment in respect of retrospectivity. To me, what is important is not only what Parliament intends but also what probably 99.99 per cent of the public would have understood as the intent. The interjection I made when the Hon. Ms Levy was speaking was a serious one, in that I do believe that rapists are not thinking terribly deeply about the exactitudes of anatomy at the sort of level that the judges decided to reach when they made the interpretation that they did. It was not just a matter of the intent of this Parliament; it would have been the understanding of the community as a whole as to what it meant.

It is when nitpicking, even if accurate nitpicking, in the law changes the intent and understanding of all reasonable people that it causes me great concern. In those sorts of circumstances I am willing to look at retrospectivity. One concern that I might have, and it is one that has not been

raised in debate about retrospectivity, could be that if, by some chance—and one never knows what will happen in the courts—retrospectivity was applied and then it went on appeal and a case of rape was thrown out that would be a concern. I suppose that, recognising that we cannot predict exactly what judges will do, that in itself might be creating another set of problems for us. In any event, I do not think that the numbers are there so there is no point in pursuing the matter further.

I note that I received some correspondence from the Women's Electoral Lobby, which expressed the opinion that it believed that retrospectivity was appropriate in this case. I put on record that I received that letter and that was its request. As I said, I concede that the numbers are not here on this matter and I will not be pursuing it further at this time.

Clause passed.

Remaining clauses (2 and 3) and title passed.

Bill read a third time and passed.

CONSTITUTION (MEMBERS OF PARLIAMENT DISQUALIFICATION) AMENDMENT BILL

In Committee.

New Heading

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

Page 1, after line 8—Insert new heading as follows:

Part I
PRELIMINARY

I will use this amendment to debate the substantive issue on this point which is that, in the Opposition's view, with the removal of the provisions in the Constitution Act that prohibit MPs contracting with the Crown there should be some accountability mechanism put in their place. That accountability mechanism is to require members of Parliament to disclose in their register of interests contracts with the Crown where the monetary consideration payable by a party equals or exceeds $5 000.

This matter has been fully canvassed in the second reading debate and I do not want to reiterate the arguments. I do not accept the complications which the Attorney-General sees with the proposition that I am putting. I think the arguments that he advanced against what I was saying in the second reading debate apply to other areas involving the declaration of interests and are not just confined to declaring contracts. But I think it will be a useful discipline on members to know that they have to declare these contracts in their register of interests. The original provisions relating to MPs not being able to contract with the Crown were put there for good reason; they were put there to ensure in part probity in public life and, in particular, probity for members of Parliament.

I think that it is a useful discipline, since we are taking those clauses out—and for good reason, and I support it, and in fact proposed it last year—because they have become somewhat anachronistic and too difficult to administer and the consequences are fairly drastic, and perhaps the consequences go well beyond what might be the offence committed in terms of entering into a contract with the Crown. That being so there is this case for removing those provisions, and we are removing them holus-bolus; all the provisions are coming out, and I think that it is a reasonable *quid pro quo* to insert in the register of interests Members of Parliament (Register of Interests) Act that contracts be declared.

I am not fixing a very low monetary amount—$5 000 I think is reasonable. If the Attorney-General is not happy with that I will certainly consider other propositions, but I do think there should be a realistic monetary amount which does impose that discipline on members and does draw to their attention their obligations in this respect, and I would ask members to support the substantive amendment when it comes up, using this amendment as a test case for that substantive issue, which I have just outlined.

The Hon. K.T. GRIFFIN: I oppose the amendment and I will address the substantive issue so that if I lose this or win this, as the case may be, that determines the issue throughout the Bill. This amendment will really perpetuate the uncertainties which are presently in the Constitution Act and which we are seeking to remove by this Bill. The consequences of a failure to observe the provision, though not as serious as a failure to observe the Constitution provisions, are still serious. A member will be required to disclose many transactions, which are presently exempt under the exemptions contained in section 51 of the Constitution Act, so there is a heavier burden placed upon a member in relation to disclosure under the Register of Interests Act than there is under the existing section 51, which we are seeking to repeal.

I suggest that members who have an interest in a business will be in a very difficult situation, particularly if the business is run by managers or by a company which, whilst they might have control of the company, they do not participate in the day to day carrying on of the business. They will have to institute systems to ensure any contract over $5 000 with the Crown or an agency in the Crown is identified.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: I would not have thought they would have to. Previously these were really of no concern under the Constitution Act, if the goods or services are supplied at no better terms than those on which they are ordinarily supplied to members of the public. Members of the member's family who are in business will also have to put some system in place to identify contracts with the Crown: spouse, putative spouse, and children under the age of 18 years. Members who are members of legal partnerships would continue to face the difficulties that have been referred to earlier in the debate.

The problem of members in family companies being unaware of the contracts the company is entering into still remains. I suppose one can ask why the amendment is related only to monetary consideration. There may well be other contracts which might be even more of a problem than those which have a monetary consideration. The Members of Parliament (Register of Interests) Act states:

'a person related to a member' means—
(a) a member of the member's family;
(b) a family company of the member;
(c) a trustee of a family trust of the member:

That means that, as I said earlier, spouse, putative spouse, child, a family company of the member, and that is defined as follows:

(a) in which the member or a member of the member's family is a shareholder; and
(b) in respect of which the member or a member of the member's family, or any such persons together, are in a position to cast, or control the casting of more than one half of the maximum number of votes that might be cast at a general meeting of the company.

'family trust' of a member means a trust. . .
(a) of which the member or a member of the member's family is a beneficiary;
and
(b) which is established or administered wholly or substantially in the interests of the member or a member of the member's family, or any such persons together:

So, under the amendment proposed by the Leader of the Opposition, even if the member does not have the interest but the member's spouse or children under 18 have the interest—the member may take no interest in the business at all—the others will need to put in place some system which will identify all of these contracts. Even those contracts, as I said earlier—

The Hon. C.J. Sumner: They do that now.

The Hon. K.T. GRIFFIN: They don't, because the Constitution Act already provides that certain contracts are exempt, and if you enter into an arrangement with the Crown which is on no better terms—or they are certainly no less favourable terms—than other members of the public, one has to say, 'What is the potential conflict there?' As I said in relation to hardware shops, for example, a big enterprise may provide steel to the Government on a contract, on a proper tender basis: it may have won the best tender, and receive no better terms than any other tenderer, or provide material on better terms than other tenderers, but—

The Hon. C.J. Sumner: Surely it is reasonable, if you have a company of that kind and are trading with the Crown and you are a member of Parliament, that it be identified in your declaration of interests, and that there be a notation that the company is trading with the Crown.

The Hon. K.T. GRIFFIN: But we are seeking to identify conflicts of interest. What is the conflict there? If it is on no different terms than any other member of the public, what is the conflict?

The Hon. C.J. Sumner: That's what you don't know.

The Hon. M.J. Elliott: It's not a conflict of interest, it's a potential conflict of interest.

The Hon. K.T. GRIFFIN: Why is it a potential conflict of interest? Ministers are different; Ministers have to be particularly careful about this. But if you are a member of the Opposition, on the cross benches or you are an Independent, the question arises, 'What conflict or even potential conflict is there if you enter into that sort of arrangement', which is on no better terms than any other member of the community.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: Come on! That is a nonsensical response. The fact of the matter, in my view, is that it does not improve the situation for any member of Parliament—in fact, it makes it worse—nor does it more readily identify conflicts of interest or potential conflicts of interest; and that is the issue, in my view. I would have thought that what the Leader of the Opposition has presented is a very broad axe poised waiting to fall on many unsuspecting and otherwise innocent members of Parliament, whether they be on the Government, the Opposition or the cross benches. I do not think, with respect, that it really achieves anything, except that it removes the consequence of entering into that conflict from forfeiture of one's seat to a potential statutory offence, and in fact broadens the liability rather than limits it as the Constitution Act is at the present time. I oppose the amendment.

The Hon. C.J. SUMNER: With respect to the Attorney-General, I do not agree with his analysis of the effect of my amendment and, in particular, his criticism that my amendment would make the situation worse than the existing situation. I strongly disagree with that, because under the present situation you cannot, if you are a member of Parliament, enter into contracts unless it falls within one of the categories set out in the Constitution Act.

The effect of my amendment is that you can enter into contracts, there is no problem, but all I am saying is that with significant contracts—and we can argue about what the monetary amount ought to be—there should be disclosure. I would have thought, given the whole rationale of the register of interests legislation, that disclosure of reasonable sized contracts with the Crown by a member of Parliament is something that is desirable, because conflict of interest is not just about actual conflict, or whether or not you made a quid out of it, it is also about whether or not there is an appearance of conflict. Actually, if I was a member of Parliament who had a company that was potentially trading with the Crown, then I would make sure in any event that I put it in my Register of Interests, because I would not want someone hopping up in the Parliament and accusing me of using my influence to get contracts with the Crown.

So, you can rest assured that if I was in that situation, even if I was a lawyer, a partner in a firm, and in the Parliament and ended up doing work for Government, I would put it in. I would say: my source of income is X legal firm and this legal firm does work for the Department of Agriculture, the Department of Labour or whatever. That is all I am really asking, with slightly more particularity; and I am certainly happy, as I said privately to the Attorney-General, to look at some reformulation of my amendment if it achieves the objectives that I am looking to. But that is where I am coming from. Any sensible member of Parliament who had a business, or whose wife or kids had a business, where they were contracting with the Crown, would want to declare it up-front so it would stop nasty members of Parliament coming in, raising questions and creating an impression that there was a conflict of interest when there may in fact not be—it may be all above board. It is of use thinking about it. Ensuring it is in the register of interests legislation means that when members of Parliament go in and fill out their form, they see that, yes, I better keep an eye on that; yes, I do have this business that may contract with the Crown; I will make sure that it is all up-front and declared. I really do not see any objection to it.

When the Bill was amended on the last occasion we inserted a clause to the effect that you only have to declare what you know by the use of reasonable diligence. So, if you are unaware of a contract and you could not have found out about it with the exercise of reasonable diligence, then there is not a problem for the member.

The Hon. M.J. ELLIOTT: I did not speak during the second reading stage of this legislation but did soon after its introduction in this place indicate outside the Chamber my concern about the legislation as it originally stood. I could see why there were proposals to delete sections 49 to 54 in the Constitution Act, but I did believe it important, if members of Parliament are having significant dealings with Government departments or agencies, that it is something that should be public knowledge and need not be something which precludes a person from being a member of Parliament (which under some circumstances it currently does). This is something which I believe should be very clearly on the record. That is what the concept of register of interests is all about: it is not a matter of whether or not you have a real conflict of interest but whether or not a potential conflict exists. I agree totally with the view of the Leader of the Opposition.

Any sensible politician would be much better off declaring his or her interests rather than having accusations made in this Chamber at some other time. I must say that I have had accusations made in relation to members on both sides of this Parliament in both Houses in relation to some dealings they

had with Government departments. They are matters I have chosen not to raise but, certainly, they have been brought to me. I believe that where rumours are baseless, and some of these indeed may be, they would be put to rest if we had a register of interests in which we had reasonable confidence. Of course, if people chose not to use the register one really would then begin to question their motivation.

I support the legislation and the Hon. Mr Sumner's amendments. If there is a better form of words, I will be quite happy to look at that. However, I support the concept very strongly. With the changes that we are making to the Constitution Act I believe it is important that at the same time we make these other relevant amendments to the register of interests legislation.

The Hon. K.T. GRIFFIN: I further draw attention to the Member of Parliament (Register of Interests) Act 1983, because at the end of section 4, which deals with the contents of returns, the final catch-all provision in relation to what a member is required to disclose is:

> Any other substantial interest whether of a pecuniary nature or not of a member or of a person related to the member of which the member is aware—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: The Leader of the Opposition has indicated that if he had a contract with the Crown he would declare it. That makes good sense, whether or not it raises a question of conflict. Of course, if members are entering into contracts with the Crown, they may well be in breach of the Constitution Act if it is not within the exemptions which are specifically provided in section 51 of the Constitution Act. But the substantial interest which has to be disclosed is one of which the member is aware and which the member considers might appear to raise a material conflict between private interest and public duty that the member has or may subsequently have as a member. If one looks at earlier provisions, one sees that we do talk about benefits which a member or a person related to the member has received, and those which are excluded in relation, say, to the use of property, those which were actually acquired for adequate consideration or through an ordinary commercial transaction or in the ordinary course of business.

That really picks up the issue that I was raising earlier and provides for that safeguard in the conduct of a business where there may be some contract entered into but where it is not possible to keep a detailed record on a day-to-day basis because the member may not be directly involved in the conduct of that business. I understand that I will not win on this and all I can indicate is that if that is the case it is an issue I would certainly want to examine further. It may be that at the end of the day the amendments to the Constitution Act just do not proceed. However, we will have to have an examination to see whether the amendment moved by the Leader of the Opposition creates even greater burdens than leaving the Constitution Act as it is.

New heading inserted.

Clause 1—'Short title.'

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

> Page 1, lines 10 and 11—Leave out 'Constitution (Members of Parliament Disqualification) Amendment Act 1994' and insert 'Statutes Amendment (Constitution and Members Register of Interests) Act 1994'.

This amendment is consequential.

Amendment carried.

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

> Page 1, line 12—Leave out subclause (2).

This amendment is consequential.

Amendment carried; clause as amended passed.

New clause 1A.

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

> Page 1, after line 12—Insert new clause and heading as follows:
> Interpretation
> 1A. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.
>
> PART 2
> AMENDMENT OF CONSTITUTION ACT 1934

This amendment is consequential.

New clause inserted.

New clause 1B.

The Hon. K.T. GRIFFIN: In whatever form this will appear at the table, I move the amendment on file:

> 1B. This Act will come into operation on a day to be fixed by proclamation.

This is in anticipation that a subsequent amendment will be carried, where a disqualification is that a member is not or ceases to be an Australian citizen. If that is passed, as I indicated in my second reading reply, I would certainly want to be assured that no members of Parliament were going to be adversely affected by this change before it was brought into operation. I also indicated that I was inclined to go along with the amendment proposed, which would include that as a qualification of members, although I must say I have some reservations about the way in which the Leader of the Opposition is proposing to do it. I have an alternative that I will be proposing. Nevertheless, as some form or other is going to be accepted, it is important to have that power to bring the Act into operation on a day to be fixed by proclamation, so that we can check any detriment to members from that later provision.

New clause inserted.

Clause 2—'Vacation of seat in Council.'

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

> Page 1, lines 14 to 17—Leave out 'by inserting after its present contents (now to' and all words in lines 15 to 17 and insert 'by striking out paragraphs (b) and (c) and substituting the following paragraph:
> (b) is not or ceases to be a Australian citizen;.

This amendment deals with establishing Australian citizenship as the sole criterion for membership of the South Australian Parliament and would have the effect of doing away with the proposition that British subjects who are not Australian citizens can become members of Parliament by virtue of the fact that they were on the electoral roll prior to 1984.

The Hon. K.T. GRIFFIN: I would like to explore this. I have had an amendment prepared that is not on file and it approaches the matter in a different way, on the basis that it is going to pass. The Leader's amendment strikes out paragraphs (b) and (c) of section 31, which are as follows:

> If any member of the House of Assembly—
> . . .
> (b) takes any oath or makes any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign prince or power; or
> (c) does, concurs in, or adopts any Act whereby he may become a subject or citizen of any foreign state or power;

In those circumstances the seat in the Assembly shall become vacant. I have a concern about deleting those paragraphs, although we may insert that, if a person ceases to be an Australian citizen, the seat is forfeited. As a State Parliament we ought to be concerned that, if any person does take an

oath or makes a declaration or acknowledgment of allegiance, obedience, or adherence to any foreign prince or power, or does, concurs in, or adopts any Act whereby he or she may become a subject or citizen of any foreign state or power, in those circumstances that person may still remain an Australian citizen and a member of Parliament. I would be proposing, subject to some discussion about it initially, that the Leader can have that amendment to add paragraph (b), which might then be renumbered. Certainly I would prefer to leave in the additional paragraphs (b) and (c) that he proposes to take out. Why is the Leader moving in that direction rather than simply adding a new paragraph?

The Hon. C.J. SUMNER: The only reason is that I thought it was the cleanest way of doing it. It was what we proposed last year when this matter was before us when we had dealings by correspondence. That is why it was moved in that way. Perhaps some informal consultation with my colleague can resolve it.

The Hon. M.J. ELLIOTT: I agree with the Attorney's suggestion that paragraphs (b) and (c) remain and the amended paragraph be inserted.

The Hon. C.J. SUMNER: After quick and informal discussions with the Hon. Mr Elliott, I am willing to accept the Attorney's approach.

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

Page 1, line 14, after 'amended' insert—

'-

(a) by inserting after paragraph (a) the following paragraph:

(ab) is not or ceases to be an Australian citizen; or;

(b)'

The Hon. C.J. SUMNER: I seek leave to withdraw my amendment.

Leave granted.

The Hon. C.J. SUMNER: I noticed earlier that the honourable member was concerned in case we picked up in the Parliament someone who was not an Australian citizen. I made inquiries of my colleagues. I just wonder whether the Attorney-General has ascertained whether anyone in the Parliament is not an Australian citizen and will have to take action to sort out their status before this legislation is proclaimed.

The Hon. K.T. GRIFFIN: I must confess I have not had time to make any inquiries, but I am sure that it will certainly be drawn to the attention of all the members in another place before the Bill is passed there. I must confess I have not had time to make any inquiry.

Amendment carried; clause as amended passed.

Clause 3—'Vacation of seat in Assembly.'

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

Page 1, after line 19—Insert paragraph as follows:

'(aa) by inserting after paragraph (a) the following paragraph:

(ab) is not or ceases to be an Australian citizen; or;'

Amendment carried; clause as amended passed.

Clause 4 passed.

New clause 5.

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

Page 1, after line 26—Insert new clause as follows:

PART 3

AMENDMENT OF MEMBERS OF PARLIAMENT (REGISTER OF INTERESTS) ACT 1983

Amendment of s. 4—Contents of returns

5. Section 4 of the principal Act is amended by inserting after paragraph (e) of subsection (2) the following paragraph:

(ea) particulars of any contract entered into by the Member or a person related to the Member during the return period with the Crown or an agency of the Crown where any monetary consideration payable by a party to the contract equals or exceeds $5 000;.

We have debated this matter. It relates to the register of interests and is consequential.

The Hon. K.T. GRIFFIN: This is technically consequential. It is the substantive part. As I have lost on this, I will not divide.

New clause inserted.

Title.

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

Page 1, line 6—After 'Constitution Act 1934' insert 'and the Members of Parliament (Register of Interests) Act 1983'.

Amendment carried; title as amended passed.

Bill read a third time and passed.

WORKCOVER CORPORATION BILL

Adjourned debate on second reading.

(Continued from 19 April. Page 516.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contribution to the second reading debate. I think it is appropriate to deal with some of the observations made by various members during the second reading debate, although if there are matters which I overlook they can be raised during the Committee stage of the Bill.

I will deal first with the Hon. Mr Ron Roberts's contribution. He made a number of points, the first of which was that the Bill seeks to weaken the WorkCover board's representative nature and allows for political interference. I think one has to recognise that the WorkCover board has not operated so well so far very much because it is of a representative nature. It is not commercially oriented, and certainly the proposition in the Government's Bill is that the Bill should be more directed towards commercial operation rather than being representative.

Under the Government's Bill it will certainly reduce the entrenched block voting which has been a feature of the existing board. Quite obviously, we have equally represented interests. It is a matter of reaching a decision based on the lowest common denominator rather than what is in the best interests of the WorkCover operation, employers and employees.

It is really a recipe for mediocrity in decision making rather than a recipe for expert decision making. That is not to reflect on the membership of the board as it is at the moment; it is merely to state a fact of life. It is all based on compromise rather than on positive decision making. The Hon. Mr Ron Roberts says that interstate levy rates are not truly reflective of the actual costs. For example, in Victoria the employer must pay the first $378 of medical costs as well as levies. There are some differences of detail between the various State workers compensation schemes. Whilst that is the case it is an undeniable fact that South Australia has the highest levy rates in Australia, with an average levy rate of 2.86 per cent compared with States such as New South Wales, where the average levy rate is 1.8 per cent.

The next point he made was that unions in New South Wales and Victoria have forced make-up pay provisions in awards so that employers must top up the payments to workers. The response to that is that the existence of make-up pay provisions in interstate awards does not mean that Parliament in this State should maintain an uncompetitive workers compensation scheme.

Make-up pay provisions should be determined on their merits by the appropriate industrial tribunal under the law as it presently exists. It really does not help either in government or in the private sector to cover up the true costs and shroud them in some form which does not allow the true facts to be presented. In proper management terms, it is important to ensure that everything is out in the open and that all decisions are made on their merits.

The Hon. Ron Roberts says that WorkCover costs are essentially variable rather than fixed. Good performance in safety can reduce these costs. Prevention should obviously be the priority focus of employers and employees. Nonetheless, a credible workers compensation and workers rehabilitation scheme is necessary to deal with situations where accidents occur, particularly given that we have a no fault system. He goes on to criticise the prevalence of cost shifting to workers in the social security system in other States. My response to that is the fact that other State schemes increase the incidence of cost shifting to workers in the social security system does not mean that South Australia's scheme should remain uncompetitive. Our scheme should certainly be looked at on its own merits, and at the end of the day its provisions need to reflect a balance between equity and the need for competitive levy rates, recognising obviously that high costs and high levy rates are contributing factors toward making South Australia uncompetitive. It is all very well to talk about padding everything out, but the fact of the matter is that if costs are high there will not be any work and there will not be any jobs, and it is not much good having everyone out of work.

The Hon. Mr Ron Roberts goes on to say that WorkCover and industrial relations legislation regresses industrial relations in the State and provokes confrontation and an adversarial mentality. The only response one can make to that is that that is an ideological view.

The Hon. R.R. Roberts: You did not say that when we were in government.

The Hon. K.T. GRIFFIN: Well, it is an ideological view of the trade union movement and the Labor Party. The WorkCover and industrial relations reforms that we are presenting as a Government are balanced and moderate reforms which reflect the interests of employers, employees and the public.

I turn now to the remarks of the Hon. Mr Elliott. He said that there should be four objectives to the WorkCover legislation: minimisation of death, injury and illness; rehabilitation; minimisation of the impact of workplace injuries on innocent parties; and cost efficiency consistent with those three objectives. My response to that is that these are laudable objectives but that the fourth objective should not be made totally subservient to the first three. The State Government is committed to prevention programs and an increased emphasis on safety in the workplace. It has committed an additional $2 million in the next financial year towards achieving that objective.

The Hon. Mr Elliott says that it is the Democrats' intention to support all three of this package of Bills; however, it is not evident from the amendments which have been tabled that that is his intention, because those amendments, if carried, would almost entirely dismantle the thrust of the Bills.

The Hon. M.J. Elliott: That's rubbish.

The Hon. K.T. GRIFFIN: It's not rubbish. We will talk about that when we get into Committee, but they significantly undermine the professed intention of the Democrats to support all three Bills. The rhetoric does not match the terms of the amendments. For example, later in relation to the subsequent Bill there are amendments that relate to journey accidents. They would have the effect of including back in the scheme the majority of journey accidents which occur.

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: I will debate it with you, but we will debate it in Committee. You have an opportunity to make your comments: you listen to mine. If you don't want to listen, go out.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: The Hon. Mr Elliott quotes percentage rates and examples interstate costs in almost identical words to those of the Hon. Mr Ron Roberts. It is interesting that in that context he seems to be taking the same line as that of the Opposition.

The Hon. M.J. Elliott: Mine were on file first.

The Hon. K.T. GRIFFIN: It doesn't matter who's following whom. Maybe the Hon. Ron Roberts is following the Democrats' line, rather than the Democrats following the Labor Party line. But whatever it is, it is a similar line.

The Hon. R.R. Roberts: We're following the line of the Labor movement—

The PRESIDENT: Order! Let us get back to the subject.

The Hon. K.T. GRIFFIN: The Hon. Mr Elliott is critical of the small number of claims quoted with bizarre results and states that some were not properly handled by WorkCover otherwise they would not have been paid. I can only say that it is perfectly legitimate to identify excesses and rorts of the current system, and no-one can deny that they are rorts. Parliament has the responsibility of amending the legislation, whereas the courts have the responsibility of interpreting the legislation. We just had a debate about that in relation to another piece of legislation. If the courts interpret legislation in a particular way, it is quite proper for Parliament to act to amend the legislation to tighten up definitions and specific provisions, otherwise the courts will go on interpreting it in the way in which they have established the precedent.

The Hon. Mr Elliott referred to the South Australian Gas Company and Du Pont who both claim their significant savings are due to better occupational health and safety practices. The Government has no difficulty with highlighting employers who have made substantial cost savings through better occupational health and safety practices, but I suggest that this does not justify maintaining a compensation and rehabilitation scheme, which provides the scope for abuses and excesses and which provides for a nationally uncompetitive cost to industry. It does have to be remembered that, even if all the Government amendments are enacted, the South Australian scheme will provide the highest employee benefits of any comparable workers compensation scheme of any State in Australia.

He then, in the same vein of occupational health and safety, talks about the South Australian public sector and its performance, making some criticism of that. The response is that the issue of management of claims and in particular the management of stress claims in the public sector is a matter of concern to the Government and one which we acknowledge needs to be addressed. However, there are grave concerns about the existing stress provisions, and there are some examples of abuse. The experience with those stress provisions does indicate that there needs to be a combination of both legislative reform and improved management, because improved management alone will not lead to the

elimination of claims which are currently accepted by reference to the legislation, and particularly by review officers.

The Hon. Mr Elliott says that the amendments concentrate on a small part of a bigger problem and that worker safety is the major issue and has not been covered. All I can say in response to that is that workers' safety still remains a pivotal role and the transfer of functions from the Occupational Health and Safety Commission to WorkCover is designed to allow an integrated approach to occupational health and safety and compensation.

Rather than simply talking about improved safety, the Government is actually doing something about it and this includes committing extra funds, to which I have referred, related to workplace safety and specific programs such as the WorkCover safety achiever bonus scheme and the new worker scheme. I note that the Hon. Mr Elliott supports one authority for WorkCover and occupational health and safety. As I have already indicated, that is consistent with the Government's policy to incorporate key management functions of the Occupational Health and Safety Commission into the WorkCover Corporation in order to provide more coordinated workplace safety and prevention programs and, in particular, to reduce duplication.

The Hon. Mr Elliott refers to the advisory committees and says that they should not be mere token approaches to this issue. The Government is serious about the proper role of advisory committees and this is evidenced by the fact that these advisory committees will be statutory committees and not simply informal discussion groups convened by the Minister. However, the degree of prescription proposed by the Hon. Mr Elliott is unreasonable. It is important to recognise that advisory committees should not become talkfests or bureaucratic formalities but rather should be sufficiently flexible in both membership and frequency of meetings and agenda items to address real policy issues.

The Hon. Mr Elliott supports the move to a commercially focussed board. We will get a chance to debate that intention when we consider the amendments in Committee. The amendments on file do not follow through that principle for which he has indicated support. The amendments seek to entrench the overall interest group base for the board. A larger board, as proposed by the Australian Democrats, does add costs and creates potential for some fracturing of the board's debate along different policy lines.

The Hon. Mr Elliott is critical of the wide power of the Minister. The Government's view is that it is appropriate in those areas where the Bill provides for ministerial discretion for that discretion to continue to apply. It is not reasonable for all management or administrative matters that touch on policy to be referred back to Parliament. This would have the tendency of politicising all major issues of policy, such as the introduction of private insurers to manage claims. As well as introducing a significant additional measure of burdensome requirements, these decisions and the various guidelines associated with the decisions need to be determined on merit and not in a politicised forum. The Hon. Mr Elliott opposes the open-ended nature of the clauses relating to delegation to private insurers, and I have made some reference to that. Again we will have a chance to debate it in depth in Committee.

The Hon. Mr Elliott makes another point that there is no guarantee for employees of the Occupational Health and Safety Commission to have jobs in WorkCover. The Government's Bill provides the opportunity for employees to become employees of the corporation. Given that some occupational health and safety functions such as the inspectorate are currently residing in the Department for Industrial Affairs, it is necessary to provide an appropriate degree of flexibility for those employees who may need to attach themselves more closely to the department's activities, at least in the short term, rather than to that of WorkCover. I understand that the Minister in the House of Assembly gave a guarantee that every member of the staff of the Occupational Health and Safety Commission would be offered a position in WorkCover. This guarantee applies to transfer. However, long term job guarantees cannot be given to anyone.

I turn now to the contribution of the Hon. Terry Roberts, who referred to the parliamentary working party from 1990 to 1992 and to evidence of the number of stress claims, claiming that it was significant and that the public sector claims were far higher in number than in the private sector. My response is that stress claims in both the private and the public sector are a problem. In the public sector in key areas such as education, correctional services and family and community services there is a problem evident from the statistics. The parliamentary working party in 1990 would have achieved nothing if it had not been for the Speaker of the House of Assembly, who decided to make some changes to the stress definition, notwithstanding the objection of the Labor Party.

The Hon. Terry Roberts talked about the history of RSI and endeavoured to relate that experience to what should happen on stress. The problems with the growing incidence and the growing costs of stress claims cannot necessarily be compared to the experience with other injuries that may have historically become a matter of public interest. A comparison of interstate stress provisions shows that the Federal Government's scheme (COMCARE) and the schemes in Victoria and Western Australia specifically deal with the issue of stress claims. He also makes the point that good management will take care of many stress related problems. Again, I make the point that stress claims need to be addressed by a combination of legislative reform and improved management and that improved management alone will not solve the problem.

The Hon. Legh Davis made some observations about the Labor Party inaction over recent years, and he made his comments from a perspective of involvement on the relevant select committee dealing with WorkCover. He was particularly critical of the WorkCover Board structure, suggesting that it leaked like a sieve, but he went further and described it as a farce. I have always been critical of the way in which the WorkCover Board was permitted to make decisions without any form of accountability, and that is really the tenor of the Hon. Legh Davis's observations: that there was no real political accountability of the WorkCover Board for policy matters since its inception.

As I said at the beginning of this reply, the board is very much divided along interest or ideological lines and it has really been a matter of making decisions at the lowest common denominator level rather than what is in the best interests of those whom it endeavours to serve and in the best interests of the corporation. In summary, the key points that I should make at this stage are:

1. The Government's Bill will improve the WorkCover scheme whilst maintaining the highest level of employee benefits of any comparable scheme throughout Australia.

2. The Federal Government's independent Industry Commission inquiry in its draft report and more recently in

its final report has advocated a greater interrelationship between occupational health and safety and workers rehabilitation and compensation schemes, and this is achieved through the Government's reforms.

3. The Government's Bills will provide for a greater degree of accountability by Government for policy matters associated with workers rehabilitation and compensation. Matters of management will be left to a commercially oriented board comprising the personnel with the relevant skills to undertake that separate function.

4. Whilst health and safety prevention in the workplace is a priority issue, the Government is not so naive as to believe that workplace injuries, particularly in a no fault scheme, will disappear. This therefore means there must be a fair, credible, cost effective and efficient compensation rehabilitation scheme. Parliament should not abdicate its responsibilities to achieve that objective simply because an overall objective of prevention is a desirable policy outcome.

5. The Council must recognise that the Government put out in the public arena details of its changes for the reform of the WorkCover scheme prior to the election and, in particular, we indicated in the election policy statement that we would be seeking to introduce private insurers to manage claims and to collect levies.

It is important to recognise that we do have a responsibility for initiating significant change in order to make South Australia a more competitive place and therefore a better place for the citizens of this State.

Bill read a second time.

In Committee.

Clause 1—'Short title.'

The Hon. T.G. ROBERTS: Why was 'rehabilitation' taken out of the title of the Act rather than leaving it as 'Workers Rehabilitation', as in the old Act, which had an emphasis on rehabilitation?

The Hon. K.T. GRIFFIN: I would have thought it was reasonably straightforward: that the title is to establish the WorkCover Corporation. It is better known as WorkCover. One can, I suppose, continue to call it the Workers Rehabilitation and Compensation Corporation but not many people know it as that. It is known throughout industry and throughout the State as WorkCover Corporation, abbreviated to WorkCover, and that is what was included in the title and in the name of the corporation. I do not think there is anything sinister in it; it is just a matter of describing the name of the corporation.

The Hon. R.R. ROBERTS: I thank the Hon. Terry Roberts for his contribution because this clause signifies that there are changes. It is the Opposition's intention to take part in the discussions in Committee. We have stated up-front that we do not believe that there is any change and we will be reserving our position until it comes to the third reading of this Bill. We do not want this measure to be an onerous one. We have moved some amendments in an attempt to try to persuade the Hon. Mr Elliott that he ought to come a little further than he has in his genuine attempts to make this Bill more humane and to achieve the objects that it originally was intended to achieve. So, I indicate that the Opposition will be involved in Committee, but it will be reserving its position on the third reading.

Clause passed.

Clause 2—'Commencement.'

The Hon. M.J. ELLIOTT: I move:

Page 1, after line 18—Insert subclause as follows:

(2) However—

(a) the day fixed for the commencement of this Act must be the same as the day fixed for the commencement of the Workers Rehabilitation and Compensation (Administration) Amendment Act 1994 and the Occupational Health, Safety and Welfare (Administration) Amendment Act 1994; and

(b) all provisions of this Act must be brought into operation simultaneously.

The purpose of this amendment is to make it perfectly clear that the package of three Bills that we are debating here will all commence on the same day, which I would expect the Government would intend in any event, and also to ensure that all provisions of this Act are brought into operation simultaneously. I do not want to see certain clauses inserted which the Government does not really like but which get passed by the Parliament, and then simply never be proclaimed. I believe the total package that leaves this place should all come into force simultaneously, with the exception of one clause in one of the other Bills, which is specifically mentioned under its particular commencement clause.

The Hon. K.T. GRIFFIN: It was never intended that we would do otherwise but nevertheless, if the honourable member wishes to have it in the Bill, we have no objection to it.

The Hon. R.R. ROBERTS: The Opposition supports this amendment.

Amendment carried; clause as amended passed.

Clauses 3 and 4 passed.

Clause 5—'Constitution of board of management.'

The Hon. M.J. ELLIOTT: I move:

Page 2, lines 16 to 20—Leave out subclause (2) and insert—

(2) The Board consists of 9 members appointed by the Governor of whom—

(a) at least 2 (one being a suitable representative of small businesses—including farming) must be nominated by the Minister after consulting with associations representing the interests of employers; and

(b) at least 2 must be nominated by the Minister after consulting with the UTLC; and

(c) at least 1 must be a person experienced in occupational health and safety; and

(d) at least 1 must be experienced in rehabilitation.

Mr Chairman, I recognise the desire of the Government to have a commercial board. During the initial stages, as much as it may have frustrated some people, the tripartite nature of the original board was very important. The legislation was first introduced during my early period in Parliament and there was incredible paranoia from employers as to how this new board might work, and they would have been rather concerned if they were not very involved in the process. At that stage there is no doubt that the tripartite nature of the board was welcomed despite some of the claimed frustrations later on.

Some of the important work that is now being carried out by the board under the current legislation will be, in part, picked up by advisory committees, and I have later amendments to ensure that they are truly tripartite. It is there that I expect to see employer and employee representation on a much higher scale than I propose with the amendments here.

It should be noted that I propose to increase the membership of the board from seven to nine. It is not a huge board by any stretch of the imagination with that increase. Within the nine members there are still five people who are not meant to represent directly either business or employee interests. Those five in their own right have a majority on the board. While I understand that in the past there was frustration that caucusing could get to a high level because there

were four employer and four employee representatives and the chair had the casting vote, with my amendment there will not be anything like that. Two votes do not represent a huge caucus out of a board of nine. I have been lobbied to take it further than that, but I believe in balance. As long as I achieve a reasonable tripartite nature in the advisory committees and they are not gutted, I am quite happy with what I have proposed here. I believe that the Government has essentially achieved what it wanted with my amendment.

The Hon. ANNE LEVY: I move to amend the Hon. Mr Elliott's amendment as follows:

After proposed new subclause (2) to be inserted at page 2, lines 16 to 20—Insert new subclause as follows:

(2a) At least three members of the board must be women and at least three members must be men.

This follows the practice which has been developed over the past 10 years or so in this Parliament that where boards and committees are set up under statute gender requirements are written into the legislation. I feel that a change of Government should not lead to a change in the attitude of the Parliament in this respect. There is a great deal of flexibility. I am suggesting that at least three members of the board must be men and that at least three must be women, which leaves anything from a 3:6 to a 6:3 ratio. It is particularly important with respect to the WorkCover board because over 40 per cent of the work force is represented by females, many of the accidents occur to women, and the occupational health and safety aspects of women's work can be quite different from those of male workers, given the segregation of the work force and the different conditions under which members of both sexes often work. Therefore, it is important that there be proper representation of both men and women on the board.

The Hon. R.R. ROBERTS: I move:

Page 2, lines 16 to 21—Leave out subclause (2) and insert—

(2) The board consists of nine members appointed by the Governor of whom—

(a) one (who will chair the meetings of the board) must be a person nominated by the Minister after consulting with associations representing the interests of employers and the United Trades and Labor Council; and

(b) at least two must be persons nominated by the Minister after consulting with associations representing the interests of employers; and

(c) at least two must be persons nominated by the Minister after consulting with the United Trades and Labor Council; and

(d) one must be a person experienced in occupational health and safety nominated by the Minister after consulting with associations representing the interests of employers and the United Trades and Labor Council; and

(e) one must be a person experienced in rehabilitation nominated by the Minister after consulting with associations representing the interests of employers and the United Trades and Labor Council.

The Opposition is trying to take up the point proposed by the Hon. Mr Elliott. This is probably a pivotal part of the whole construction of these Bills. I need to take up the point made by a number of members about the management of WorkCover. There have been criticisms that WorkCover has not been well managed.

Looking at the history in an objective way and the things that have been achieved by WorkCover, employers were paying 15 to 20 per cent of payroll, but today they are paying about 3 per cent, and we have a comprehensive rehabilitation, occupational health and safety system in place. Therefore, one must assume that most of that criticism is ideology.

In fact, what is being proposed in this amendment—and it is certainly not the preferred position of the Australian Labor Party and the Opposition—is what we have said consistently, that we believe in the system of WorkCover: we helped construct it with the assistance of Her Majesty's loyal Liberal Party Opposition and with the involvement of the Democrats. It is interesting to note that a number of contributions in this place have been criticised in fear of some sort of voting patterns where the Opposition may vote with the Democrats. That is pretty hypocritical of people who have been around this place for no more than five minutes.

When we were in Government we were consistently frustrated by the operations of the Liberal Party and the Democrats voting together from time to time. We sat in this Chamber and listened to the speeches of members of the then Opposition who often lorded the operations of the Legislative Council because they said, 'We end up with better legislation by having a broader view.' The reality of life is that it is a different game, and we have talked about mandates. We have heard consistently from members of the Government about the mandate which they hold to introduce these massive changes to WorkCover. There needs to be some understanding of the situation. The Australian Labor Party certainly has a mandate. I told every constituent that I ran into prior to the election that any votes against WorkCover would be resisted. The Australian Democrats have a mandate, too, which is 'to keep the bastards honest', and I suppose that means both of us. So, if we want to talk about mandates, let us get the ground rules right from the start. We all have mandates.

The reality of life is that we are here today to discuss the legislation. What I am endeavouring to do with this particular amendment is to take the concept as proposed by Mr Elliott and try to encourage him to look at it a little bit more broadly. We are suggesting that the Minister should appoint one, who will be the Chair of the meetings of the board, after consulting with the associations representing the interests of the employers and the United Trades and Labor Council. It seems to me not an unreasonable proposition that some consultation takes place. It does not mean that he will be directed, but it does behove the Minister to take into account the views of the principle players in this exercise. Two must be persons nominated by the Minister after consultation: this is consistent with Mr Elliott's proposition. We have differed when we come to paragraph (d). In his proposition he says that one must be a person with occupational health and safety experience, and in paragraph (e) he talks about rehabilitation in the same vein. It is my contention that those two positions could have been filled by positions in (b) and (c). We have attempted to identify those as specific nominations, and again we say it is not unreasonable due to the tripartite nature of this system when it was introduced to again consult with the principal players involved in this system and, having done that, the Minister then makes his nominations.

There are still two other positions, which are completely at the discretion of the Minister to make nominations on, whatever merit he places on his selection. I would certainly be encouraging the Minister to avail himself of the opportunity to take the options which are present in (b) and (c), which are to have at least two persons from employer associations and at least two persons from the United Trades and Labor Council. A Minister who was trying to introduce a system of consultation and cooperation between the two principal players would be well served to consider making those positions three and three. However, the capacity for the Minister to pick those two extra positions on any merit that

he wants to apply is there. I would ask the Hon. Mr Elliott to consider coming a little further along the proposition of the board of nine and indicate that he would in fact be supporting our proposition.

The Hon. K.T. GRIFFIN: The Government supports none of the amendments. We recognise that one of them at least will get up in this place, but they will be sorted out on another occasion. It is our very strong view that it is time to move away from representative boards: it is time to move towards a board which is professional and which is not necessarily bedevilled by loyalties and obligations to bodies whom they may directly or indirectly represent.

We take the view that both the amendments are undesirable. As far as the Hon. Anne Levy's amendment is concerned, it is somewhat fascinating that it is an amendment to the Hon. Mr Elliott's amendment; I wonder why the same amendment is not proposed to the Hon. Ron Roberts' amendment. Of the two amendments, the one with the fewest problems is that of the Hon. Mr Elliott but obviously, because the issue will be sorted out at a later stage, we oppose them both.

The Hon. ANNE LEVY: Mr Chair, the Attorney—

The CHAIRMAN: Chairman, please.

The Hon. ANNE LEVY: Mr Chairperson; I do not like being—

The CHAIRMAN: Chairman, please.

The Hon. ANNE LEVY: No; I will not use gender specific language.

The CHAIRMAN: I do not have four legs: I am not a chair, I am a chairman.

The Hon. ANNE LEVY: I will call you Mr Chairperson. I will not use gender specific language.

The CHAIRMAN: I am a man and I would like to be addressed as such.

The Hon. ANNE LEVY: I am addressing your position. I find it offensive to be asked to use gender specific language. The Attorney asked why I moved my amendment to that of the Hon. Mr Elliott and not that of the Hon. Mr Roberts. Quite simply, the answer is that when I put this amendment on file the Hon. Mr Roberts had not produced any amendments, whereas the Hon. Mr Elliott had. I have decided that, if the Hon. Mr Roberts' amendment is successful and the Hon. Mr Elliott's is not, I will request recommittal so that I can move to amend the amendment of the Hon. Mr Roberts at the appropriate time. There is nothing suspicious, malicious or—

The Hon. K.T. Griffin: If it was not a Party decision, what about the Hon. Mr Roberts? You didn't include it in this amendment.

The Hon. ANNE LEVY: I can assure you there is no disagreement on this whatsoever on this side of the Committee. It is purely a question of the timing, which a courteous question can readily discover.

The Hon. M.J. ELLIOTT: It is not my intention to support the Opposition's amendment. In the amendments I have moved to both pieces of legislation I have attempted not to take any positions of ambit claim or anything else. I have taken the position which I believe is fair and reasonable in the circumstances, and I put on the record at this stage that the whole legislation really is a dog's breakfast. The only reason I am prepared to handle the legislation more generally and to accede to a large number of the Government's requests at this stage is that I recognise that much of this is the Government's policy. It is for that reason that, as far as is practicable and reasonable when we get to questions like commerciality of the board, I am willing to accept that. That it is why I have not gone along the track that the Hon. Mr Roberts has taken in his amendment. I simply indicate that I will insist on my amendment and will not support his.

In relation to the amendment moved by the Hon. Ms Levy, I have said in this place on other occasions that I look forward to the day when such amendments are unnecessary—unnecessary because the real world of boards and of management and the like more closely reflect the real world beyond the board rooms of the State. I must say that in the consultations that I have had on this issue, with employer representatives, employee representatives, lawyers, medical people and so on, a substantial number of women have come to me as lobbyists—and extremely capable ones at that. There is no way known, from what I have seen, that the Minister would have any difficulty whatsoever in finding three extremely capable women—if that is the Government's concern with this sort of amendment—in a board of nine members. I believe that the amendment is perfectly reasonable and I will support it, as I have on previous occasions.

The Hon. R.R. ROBERTS: I am disappointed that I have not been able to persuade the Hon. Mr Elliott to come to our position. I certainly appreciate the fact that he has indicated his intention to accept the amendment as proposed by the Hon. Anne Levy. The numbers are obviously very clear, so the Opposition will support the Hon. Mr Elliott's amendment.

The Hon. Mr Roberts' amendment negatived; the Hon. Mr Elliott's amendment carried; the Hon. Ms Levy's amendment to the Hon. Mr Elliott's amendment carried; clause as amended passed.

Clause 6—'Conditions of membership.'

The Hon. M.J. ELLIOTT: I move:

Page 2, lines 30 and 31 and page 3, lines 1 to 3—Leave out paragraphs (b), (c) and (d) and insert—

(b) mental or physical incapacity to carry out duties of office satisfactorily; or

(c) neglect of duty; or

(d) dishonourable conduct.

The paragraphs I am seeking to insert, in effect, put back into the legislation provisions which existed in the original Workers Compensation and Rehabilitation Act in terms of how people may be removed from office. I had some concerns, in particular, about paragraph (d). I must say that in the light of recent events involving the TAB board, which occurred after I developed my concerns and after I had my amendment drafted, I am even more committed to this amendment than previously because I think it illustrates the very concerns that I had when having it drafted. No-one has demonstrated that there is any difficulty with the wording in the previous legislation, and I am simply seeking to maintain the status quo. I doubt that it will create a significant difficulty for anyone.

The Hon. K.T. GRIFFIN: I indicate support.

The Hon. R.R. ROBERTS: I support the amendment.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 3, line 8—Leave out paragraph (d) and insert—

(d) is found guilty of an offence against section 8 (disclosure of interest); or

This amendment is consequential on the debate on clause 8 relating to disclosure of interest. If a person has committed an offence in relation to a disclosure of interest, that in itself would be a reason for which a person would be asked to vacate their chair on the board.

The Hon. R.R. ROBERTS: The Opposition supports the amendment.

The Hon. K.T. GRIFFIN: I question the logic of that. If someone is convicted of fraud, an indictable offence, why should they not be removed from the board? If they are convicted of rape, murder or assault occasioning actual bodily harm, why should they not be removed from the board? It is a bizarre concept to have a convicted fraud on the board. I would be more comfortable if instead of deleting paragraph (d) it was left in and an additional paragraph was created.

The Hon. M.J. ELLIOTT: In the rush of things there has been an oversight. I sought to have the existing provision included. With leave, I seek to move my amendment in the following form:

Page 3, after paragraph (d)—Insert paragraph as follows:

(da) is found guilty of an offence against section 8 (disclosure of interest); or

Leave granted; amendment carried.

The Hon. R.R. ROBERTS: I move:

Page 3, after line 9—Insert:

(4) On the office of a member of the board becoming vacant, a person must be appointed to the vacant office within 21 days.

If an office of a member of the board becomes vacant, a person must be appointed to that vacant office within 21 days. This is similar to an amendment to be moved by the Hon. Mr Elliott. We have actually gone further than his proposal and specified that the position ought to be filled within 21 days. In doing so, we have taken into account that it allows for the Cabinet to meet and make a recommendation and for there to be enough time to go to the Governor for approval of the appointment. It also provides for replacements from the UTLC within the time frames in which it normally operates to allow these appointments to be filled. The logic behind that is that it is possible, with a series of resignations or unintended vacancies, that you could get a cumulative effect and the board would be reduced in size, thereby reducing the input and variance of ideas that make up the culture of WorkCover. I ask the Committee to support the amendment.

The Hon. M.J. ELLIOTT: I move:

Page 3, after line 9—Insert new subclause as follows:

(4) On the office of a member of the board becoming vacant, a person must be appointed, in accordance with this Act, to the vacant office.

This is a similar amendment to the one just moved, but I do not have the 21 day requirement. It seems to me self-evident that there is a requirement to fill a position quite quickly or else the clause is really redundant. It has no purpose in many senses. More importantly, we will have a board that does not have deputies, as does the current board. I imagine that the board would not like to think it was struggling to get a quorum. Having a vacancy for very long could create difficulties in relation to that alone. I think there is quite an imperative there already to fill that vacancy very quickly in any event. Further, this is not a representative board, as the old one was. I am not sure that the 21 days is necessary in any sense.

The Hon. K.T. GRIFFIN: I support the amendment moved by the Hon. Mr Elliott. I think it is ludicrous to propose a 21 day limit on a vacancy. If someone dies, you are out there selecting a replacement before they are buried. The facts of life, even if it happened on a Thursday, are that you would not get it to the next Cabinet meeting, but it would be the subsequent meeting. It then goes to the Governor. It is an impossible deadline to meet.

The Hon. R.R. Roberts' amendment negatived; the Hon. M.J. Elliott's amendment carried; clause as amended passed.

Clauses 7 to 10 passed.

Clause 11—'Proceedings.'

The Hon. R.R. ROBERTS: I move:

Page 5, line 2—Leave out 'five' and insert 'six'.

This amendment is consequential on my expectation that the board will be increased from seven to nine. Because of the important nature of the deliberations of this board, it is our feeling that the quorum ought to be increased from five to six to reflect the increased number in the composition of the board. It is a simple amendment and I ask the Committee to agree.

The Hon. M.J. ELLIOTT: I indicate that this is an oversight. I certainly intended to increase it. The Government was proposing a quorum of five out of seven. A requirement for six out of nine is less onerous in any case. As long as the membership numbers nine, there should be no problems with this change to six.

The Hon. K.T. GRIFFIN: Ultimately, it will not make any difference if we oppose it or support it in terms of the numbers. I indicate that we certainly do not support it. We think five out of nine is the appropriate quorum to have. In most instances it is 50 per cent of the board.

The Hon. M.J. Elliott: You have five out of seven here.

The Hon. K.T. GRIFFIN: So what. I am telling you what we are doing on this one. We are going to stick with five. Five out of nine is an appropriate quorum to have.

Amendment carried.

The Hon. R.R. ROBERTS:I move:

Page 5, line 14—After 'notice' insert 'in writing'.

This amendment seeks only to make the provisions in paragraph (a) consistent with the provisions in paragraph (b). What we are saying is that a resolution of the board of which prior notice was given in writing to all members of the board will be taken as a decision of the board and a resolution of the board in which a majority of the members of the board expressed their concurrence in writing will be taken to be a decision of the board. It seems to me that, if we are expecting the answer in writing, the proposition ought to be in writing so there is no room for misunderstanding and inconsistency. I ask the Committee to support the amendment.

The Hon. K.T. GRIFFIN: It does not seem to make sense. It may be that there is a telephone hook up to discuss an issue, they resolve a particular form of resolution and a majority fax in a response. I would have thought that the notice in writing concept might be difficult to meet. I do not think it is necessary. The board ought to make its own decisions about how its notice will be given. My recollection is that this is much the same as other provisions in other statutes but I do not have the evidence in front of me. If this is carried, we will debate it at a conference. As I say, my recollection is that this is in much the same form as in other legislation where we provide for facsimile votes or other votes rather than attendance at board meetings.

The Hon. M.J. ELLIOTT: I am not supporting this amendment or the following consequential amendment. It appears to me that, since the board itself is to determine the procedures by which notice is given, it has to be something to the satisfaction of the board. I have doubts that the executives of organisations such as those that the Hon. Mr Roberts belongs to would insist upon notice in writing. I am sure there is some pro forma about how it is done.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: You are saying that notice has to be in writing.

The Hon. R.R. Roberts: Notice has to be given in writing before the resolution is made.

The Hon. M.J. ELLIOTT: What I am saying is that, since the board is controlling the procedures, the board should be able, among its membership, to determine what it finds acceptable in terms of proper notice. I do not see that there is any real problem with things as they stand.

The Hon. R.R. ROBERTS: There are bigger fish to fry than this one. Without being too pedantic about this issue, clearly the decision to include the provision that a decision of the board, having been consulted about a resolution, must be in writing has been made for a very clear reason: to ensure that there is no dispute about who wrote the resolution. The Attorney-General mentioned a tele-conference. When you are talking to six different people at the one time, you can get five different interpretations. I think it is a matter of consistency: if a resolution is put in writing, everyone has the same resolution and there can be no argument about it or claim of misinterpretation. We have consistently said that the answer must be in writing to avoid that sort of confusion; yet, we say that the question can be open to interpretation. I will not go to the wall on this, but it seems to me to be a matter of consistency.

The Hon. K.T. GRIFFIN: I to not think the amendments ought to be supported either, as I said earlier. The important thing is what is the resolution of the board. If notice has been given in accordance with the procedures determined by the members of the board—and they are in the best position to know how that notice should be given to their members—

The Hon. R.R. Roberts: But they insist on the answer in writing.

The Hon. K.T. GRIFFIN: They do not necessarily insist on a written answer.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: They insist on the resolution being in writing; that is fair enough. That is the normal procedure. I have not had time to research the provisions contained in other Acts, but I am sure that it is provided in relation to resolutions where there is not a formal meeting of the board that it be in writing. It may be that a telephone call might be the quickest way to do it: 'Can you give attention to this particular issue and fax your agreement?' That is fair enough;, it happens all the time. Big companies do it, small companies do it and partnerships do it. I think it is reasonable.

Amendment negatived.

The Hon. R.R. ROBERTS: I move:

Page 5, lines 14 and 15—Leave out 'in accordance with procedures determined by the board'.

This is already included in clause 8. It seemed a bit cumbersome, but I will not go to the wall over it.

Amendment negatived; clause as amended passed.

Progress reported; Committee to sit again.

RETIREMENT VILLAGES (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly with the following amendment:

Page 11, after line 9, insert new clause 15 as follows—

Insertion of schedule 3

15. The following schedule is inserted after schedule 2 of the principal Act:

SCHEDULE 3

PROCEEDINGS BEFORE THE TRIBUNAL

Application of schedule

1. Subject to any variation or exclusion prescribed by the regulations, this schedule applies to proceedings before the Tribunal under this Act.

Constitution of tribunal

2.(1) The Tribunal will, in respect of any proceedings, be constituted by one or more members of the Tribunal at the direction of the President of the Tribunal.

(2) The Tribunal must hear and determine proceedings under this Act wherever practicable within 14 days after they are instituted and, where that is not practicable, as expeditiously as possible.

Application to vary or set aside order

3.(1) A person who is or was a party to proceedings before the Tribunal may apply to the Tribunal for an order varying or setting aside an order, decision or direction made or given in those proceedings.

(2) An application under subclause (1) must be made within three months of the making or giving of the order, decision or direction.

Application to Tribunal

4.(1) An application under this Act to the Tribunal must—

(a) be made in writing and, if a form is prescribed by the regulations, comply with that form:

(b) contain the prescribed particulars (or such particulars as may be required by a prescribed form);

and

(c) be accompanied by the prescribed fee (if any).

(2) Before the Tribunal proceeds to hear an application it must first—

(a) give the applicant notice in writing setting out the time and place at which it will hear the application; and

(b) give to any other party—

(i) notice in writing setting out the time and place at which it will hear the application; and

(ii) such notice of the nature of the application as it thinks fit.

Proceedings of Tribunals

5.(1) For the purpose of any proceedings, the Tribunal may—

(a) by summons signed by a member, registrar or deputy registrar of the Tribunal, require the attendance before the Tribunal of any person;

(b) by summons signed by a member, registrar or deputy registrar of the Tribunal, require the production of books, papers or documents;

(c) inspect books, papers or documents produced before it, retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;

(d) require a person appearing before the Tribunal to make an oath or affirmation that he or she will truly answer any relevant questions put to him or her by the Tribunal or a person appearing before the Tribunal;

(e) require a person appearing before the Tribunal (whether he or she has been summoned to appear or not) to answer any relevant questions put to him or her by the Tribunal or a person appearing before the Tribunal.

(2) If a person—

(a) fails without reasonable excuse to comply with the requirements of a summons served on him or her under subclause (1);

(b) refuses or fails to comply with a requirement of the Tribunal under subclause (1);

(c) misbehaves before the Tribunal, wilfully insults the Tribunal or interrupts the proceedings of the Tribunal,

the person is guilty of an offence.

Penalty: Division 8 fine.

(3) In any proceedings the Tribunal may—

(a) hear the application in such manner as the Tribunal considers best suited to that purpose;

(b) decline to entertain the application if it considers that the application is frivolous or involves a trivial matter or amount;

(c) decline to entertain the application, or adjourn the hearing, until the fulfilment of conditions fixed by the Tribunal with a view to promoting the settlement or resolution of matters in dispute between the parties;

(d) proceed to hear and determine the application in the absence of a party;

(e) extend any period prescribed by or under this Act within which an application or other step in respect of proceedings must be made or taken (even if that period has expired);

(f) vary or set aside an order or decision where the Tribunal considers there are proper grounds for doing so;

(g) adjourn the hearing to a specified time or place or to a time and place to be fixed;

(h) allow the amendment of the application;

(i) hear the application jointly with another application;

(j) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusion of fact that it considers proper;

(k) adopt, as in its discretion it considers proper, any findings, decision or judgment of a court that may be relevant to the proceedings;

and

(l) generally give all such directions and do all such things as it thinks necessary or expedient in the proceedings.

(4) In any proceedings the Tribunal is not bound by the rules of evidence but may inform itself on any matter relating to the proceedings in such manner as it thinks fit.

Presentation of cases before Tribunal

6. (1) Except as provided in this clause, a party to proceedings before the Tribunal under this Act must present his or her own case and not be represented or assisted in the presentation of the case by another person.

(2) A party to proceedings before the Tribunal may be represented by an agent or assisted by an agent in the presentation of his or her case if the Tribunal is satisfied that—

(a) the party is unable to appear personally or conduct the proceedings properly himself or herself;

and

(b) no other party will be unfairly disadvantaged by the fact that the agent is allowed so to act.

(3) All or any of the parties to any proceedings before the Tribunal may be represented by legal practitioners—

(a) if all the parties agree and the Tribunal is satisfied that any party who is not so represented will not be unfairly disadvantaged;

(b) if one of the parties is a legally qualified person;

(c) if the proceedings involve an amount which exceeds $50 000 or such other amount as is prescribed instead by regulation;

or

(d) if the Tribunal gives leave for such representation.

(4) If a party applies for leave permitting representation by a legal practitioner under subclause (3)*(d)*, it must be granted if the Tribunal is satisfied—

(a) that the granting of leave is likely to reduce costs or shorten the proceedings;

or

(b) that the applicant would, if leave were not granted, be unfairly disadvantaged.

(5) This clause does not prevent—

(a) a body corporate from being represented by an officer or employee of the body corporate (not being a legally qualified person) authorised to conduct the proceedings on its behalf (whether or not he or she is remunerated by the body corporate for representing it in the proceedings);

or

(b) a person from acting as an interpreter for a party provided that his or her fee does not exceed an amount fixed by the Tribunal at the hearing.

(6) A person must not demand or receive any fee or reward for representing or assisting a party to proceedings before the Tribunal unless—

(a) the person is a legal practitioner;

or

(b) where the party is a body corporate, the person is an officer or employee of the body corporate representing it under subclause (5).

Penalty: Division 9 fine.

(7) In this clause—

"agent" means a person who is not a legally qualified person;

"legally qualified person" means a legal practitioner, an articled law clerk, or a person who holds or has held legal qualifications under the laws of this State or any other place.

Settlement of proceedings

7.(1) If before or during the hearing of any proceedings it appears to the Tribunal either from the nature of the case or from the attitude of the parties that there is a reasonable possibility of matters in dispute between the parties being settled by conciliation, the person constituting the Tribunal may—

(a) interview the parties in private (either with or without any person who may be representing any of them or assisting any of them in the presentation of his or her case);

and

(b) endeavour to bring about a settlement of the proceedings on terms that are fair to all parties.

(2) Nothing said or done in the course of an attempt to settle proceedings under this clause may subsequently be given in evidence in proceedings before the Tribunal except by consent of all parties to the proceedings.

(3) The member of the Tribunal who attempts to settle proceedings under this clause is not disqualified from hearing or continuing to hear any proceedings in the matter.

(4) Where proceedings are settled under this clause, the Tribunal may embody the terms of the settlement in an order or direction of the Tribunal.

Costs

8. In proceedings under this Act the Tribunal must not award costs unless—

(a) all parties to the proceedings were represented by legal practitioners;

or

(b) the Tribunal is of the opinion that there are special circumstances justifying the award of costs.

Reservation of question of law

9.(1) The Tribunal may reserve a question of law for the decision of the Supreme Court, whose decision will be certified to and binding on the Tribunal.

(2) Any costs arising from the reservation of a question under this clause, including costs incurred by the parties to the proceedings, must be paid out of the General Revenue of the State and this Act, without any further appropriation, is sufficient authority for such payment.

Consideration in Committee.

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

That the House of Assembly's amendment be agreed to.

This amendment relates to the money clause that has been inserted by the House of Assembly particularly in relation to the issue of costs. Although it is a large schedule, it had only one aspect that was a money provision, so it had to be inserted by the House of Assembly.

The Hon. ANNE LEVY: Is this exactly the schedule which appeared in erased type in the Bill before us? I ask this only because it has just landed on my desk, and I have not had time to check it.

The Hon. K.T. GRIFFIN: It is exactly the same.

Motion carried.

LIMITATION OF ACTIONS (RECOVERY OF TAXES AND SUBSTANTIVE LAW) AMENDMENT BILL

Returned from the House of Assembly with amendments.

ADJOURNMENT

At 11.56 p.m. the Council adjourned until Thursday 21 April at 11 a.m.