LEGISLATIVE COUNCIL

Thursday 11 March 1999

The PRESIDENT (Hon. J.C. Irwin) took the Chair at 2.15 p.m. and read prayers.

NATIVE TITLE

A petition signed by three residents of South Australia concerning native title rights for indigenous South Australians, and praying that the Council does not proceed with legislation that, first, undermines or impairs the native title rights of Indigenous South Australians and, secondly, makes changes to native title unless there has been a genuine consultation process with all stakeholders, especially South Australia's indigenous communities, was presented by the Hon. J.S.L. Dawkins.

Petition received.

QUESTION TIME

ALICE SPRINGS TO DARWIN RAIL LINK

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Transport a question about the Alice Springs to Darwin railway.

Leave granted.

The Hon. CAROLYN PICKLES: The Commonwealth, South Australian and Northern Territory Governments have each committed $100 million to the construction of the railway. The Minister may be surprised to know that in the Northern Territory Parliament on 18 February the Northern Territory Minister for the Austral-Asia railway, Mr Barry Coulter, said that capital grants made towards the railway construction would be taxable. He said:

> . . . it's the Australian Taxation Office which has decided that the capital grant moneys are assessable income and it is their ruling that those moneys are therefore taxable.

The Opposition has been informed that this would mean that the Commonwealth would put in $100 million but get back $108 million in taxation. My questions to the Minister are:

1. Given the immense importance of the Alice Springs to Darwin railway to the future of Australia, is the Minister aware that the Federal Government plans to tax Government grants intended to encourage private investment in the railway?

2. Is the Minister aware that this means that the Commonwealth will actually take more in tax than it would have contributed to the project?

3. Will the Minister tell the Council what the South Australian Government is doing to ensure this vital national project receives the full benefit of the $300 million committed by the three Governments?

The Hon. DIANA LAIDLAW: It is an old story since this subject has been raised in the Northern Territory Parliament. I understand that the Premier answered a question on a related matter at the start of this session, and I would refer the honourable member to that matter and would highlight that the Premier has certainly raised this matter with the Prime Minister, and there have been negotiations with the Minister for Finance and the Minister for Transport. I also know that the Premier, as Minister responsible for this project in South Australia, is also in close discussion with the Australasian Rail Corporation Board, and there are some very positive ways in which this matter can be addressed. I acknowledge that it is an issue at the moment. The Federal Government—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: No, but it will not end up like that. The Federal Government is reluctant to make a special exemption to this project, and I can understand that reluctance. I believe that measures are under discussion which will see that the full value of the grant from the Federal Government is received for this project and applied to the project, but I am not in a position to confirm those arrangements at this moment.

MURRAY RIVER

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, Natural Resources and Regional Development, a question about the river fishery.

Leave granted.

The Hon. P. HOLLOWAY: In a press release on Tuesday 9 February the Minister for Primary Industries announced a new commercial fishing plan for the Murray River. He said that the changes will maintain viable and sustainable commercial businesses and that the plan is based on recommendations from the River Fishery Structural Adjustment Advisory Committee. The plan allows commercial fishers to take unlimited quantities of legal native fish, including callop, using up to 50 drum nets or 50 gill nets of up to 600 metres each in length from each commercial reach, extended to include adjacent backwaters and flood plains. My questions to the Minister are:

1. Did local district councils, the Bookmark Biosphere and Inland Waters Recreational Fishing Committee, which were members of the River Fishery Structural Adjustment Advisory Committee, state their opposition to the expanded commercial reaches and commercial use of gill nets?

2. Is scientific biological data available to support the commercial taking of unlimited quantities of native fish such as callop and Murray cod from commercial Murray River reaches that the Government has expanded to include adjacent backwaters and flood plains?

3. Has this scientific data been subject to peer review?

4. If the biological data is available, will the Minister provide it to the Parliament?

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

HOME PROTECTION

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister for Disability Services a question about independence and security in your home.

Leave granted.

The Hon. G. WEATHERILL: I have had people speak to me on several occasions about single old people living in their own homes, which is rather a concern to their families if anything were to happen to them. In many cases these people may leave the telephone off the hook and cause a lot of concern to the family, which has to run around there all the time, and so on. Recently a security device became available from Red Cross. It is worn around the neck and, if you need to contact emergency services, you have only to press a

button. I believe one such device beams a signal containing the relevant address off a satellite to the emergency service.

On several occasions these old people could be in the garden or whatever and have an accident and they have been able to press this button. The problem I have experienced since I have been doing research on this is that only one body seems to have this device, and I think it would be right and proper if the Minister's department could circulate this type of information to all members of Parliament so that they can get this information to people who are concerned about this issue of security in the home.

The Red Cross does put one out. The only other body of which I am aware is the ambulance service in South Australia, and I believe it will take perhaps another couple of months before they get on top of all the problems associated with their device. Will the Minister tell me whether there are other areas where elderly people might be able to obtain these devices a little more cheaply?

The Hon. R.D. LAWSON: I know of the honourable member's interest in matters concerning old people. It is true that a number of security devices or alarms are available, one he mentioned through the Red Cross. Quite a number of services offer these devices. They are widely advertised in newspapers circulating amongst the seniors' community, and I have seen notices relating to them in the journal of the Council for the Ageing, which is widely circulated in South Australia, and also in the RAA's *SA Motor* magazine.

It is an important part of public policy that we seek to encourage older people to live in their own homes. Devices of this kind provide security to people and facilitate their remaining in their own homes. It also provides peace of mind for family members.

The Home and Community Care Program (HACC), which is a joint Commonwealth-State program, does provide a number of separate programs for home assistance. I am not sure whether any of these devices are available through any of those publicly funded programs. However, if a device of this kind, the cost of which is not expensive but it does raise a monthly fee, depending upon the particular service provider, can be provided at a cost of a couple of hundred dollars a year, that is obviously a great deal less expensive than providing in-home or residential care. I will examine in greater detail the issue of security devices and their availability and cost and bring back a more detailed response to the honourable member's question as soon as I can.

PELICAN POINT POWER STATION

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Leader of the Government in the Council, the Hon. Robert Lucas, a question about the Pelican Point power station.

Leave granted.

The Hon. L.H. DAVIS: The Government has announced that a power station will be constructed at Pelican Point to be completed by the end of the year 2000. This power station is to be operated by the international energy company National Power. Over the past two weeks, members of the Legislative Council would have received several media releases from a group called Community Action for Pelican Point, which publicises itself under the acronym CAPP. In one of these releases, dated 27 February 1999, CAPP claims:

> Community Action for Pelican Point is a community based association of residents and business people who are concerned to see that the development potential of the vacant land at Pelican Point in South Australia is maximised.

It goes on to say:

> CAPP has called a public meeting to follow up the information session held in November last year, and the public meeting is going to be at 7 o'clock on 9 March at the LeFevre Community Centre.

The Hon. T.G. Cameron: Is that the meeting where they gave Robert Lucas a standing ovation?

The Hon. L.H. DAVIS: That, indeed, was the meeting. I understand that my colleague the Treasurer was present, along with Labor stalwarts. CAPP is totally committed to opposing the Pelican Point Power Station. A further media release of 5 March 1999 states:

> CAPP opposes the development of a power station that threatens the local environment and impacts upon existing residents.

In another release CAPP claims:

> A power station proposed for Port Adelaide's Pelican Point will jeopardise thousands of local jobs in one of the State's highest unemployment regions, according to a spokesman for Community Action for Pelican Point.

That spokesman in fact is a Mr Bruce Moffatt, who is billed as the convenor of the CAPP group. I have been contacted in recent days by a member of the Labor Party who claims that the convenor of CAPP is a member of the Labor Party. He is a member of the Semaphore sub-branch of the Labor Party—which I understand is the same sub-branch of which Mr Kevin Foley is a member.

Members interjecting:

The Hon. L.H. DAVIS: Members on both sides of the Chamber will remember that Mr Foley, while being supportive of Pelican Point on television and in radio interviews, in the electorate has been vocalising very strongly against it and, indeed, was one of the speakers at the recent meeting.

The Hon. R.R. Roberts: I've heard that he's a member of the Labor Party, too!

The Hon. L.H. DAVIS: I am glad that members of the Labor Party do occasionally recognise their own: I understand that is not always the case. Even more interesting was a media release on 1 March 1999 from the Construction, Forestry, Mining and Energy Union (the CFMEU), which also, for some reason, opposes the Pelican Point Power Station. The CFMEU is a well-known Left wing Labor operation. The President in the Construction and General Division is Ben Carslake and the Secretary is Martin O'Malley. It also has a Mining and Energy Division, of which Geoff Day is President and Graham Murray is Secretary. They are very active in the Semaphore Workers Club, which I understand is the Australian headquarters of the Socialist Party. So, it appears that there is a collaboration between the Labor Party, CAPP and the CFMEU.

Of even more interest is that the press release from the CFMEU and the press releases that I have from CAPP to me quite clearly seem to have come off the same typewriter. They have the same type face. I do not wish to—

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! Will the honourable member bring his explanation to a conclusion?

The Hon. L.H. DAVIS: I do not wish to make too much of that point, but my questions to the Treasurer on this important matter are:

1. Is the Treasurer aware of the apparent connection between the convenor of CAPP, Mr Bruce Moffatt, the Labor Party (of which he apparently is a member) and the CFMEU?

2. Did the Treasurer attend the meeting convened by CAPP in the LeFevre Community Centre earlier this week?

3. Will he advise what attitude Messrs Rann and Foley took on the development of Pelican Point?

The Hon. R.I. LUCAS: I am shocked to hear that the convenor of what I had been told was an independent community organisation—that is, if the information of the Hon. Mr Davis is true, and inevitably he is correct in relation to this—is, indeed, a member of Kevin Foley's Labor Party sub-branch.

The Hon. R.R. Roberts interjecting:

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: I'm not sure. As the Hon. Mr Roberts says, members of political Parties can involve themselves. But I am shocked to hear this. This is a stunning revelation to me that this independent community organisation may well be associated with Kevin Foley and the Labor Party in the way in which the Hon. Mr Davis has pointed out. If he was a member of the Labor Party I would have hoped that he might have at least made it known to me, an invited guest to his protest meeting, that he was wearing a couple of hats in terms of the organisation of the meeting.

As I have said, the answer to the question is that I was not aware of that information. I thank the honourable member for that information because it may well explain the vigorous response that I received when I entered the lion's den at LeFevre.

The Hon. T.G. Cameron interjecting:

The Hon. G. Weatherill interjecting:

The Hon. R.I. LUCAS: Well, it was a fascinating meeting. The Hon. Mr Cameron asked me to tell him all about it.

The Hon. Sandra Kanck interjecting:

The Hon. R.I. LUCAS: The Hon. Sandra Kanck was there. When I entered the meeting, it looked like the vote would be 500 to zero. I left the meeting with exactly the same feeling, but I outlasted the lot of them, because when I left there were about six remaining in the audience. They had their fill of me for two or three hours when they were able to verbally abuse, browbeat and attack me.

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: Well, so was I, but I outlasted virtually all of them with the exception of the ones packing up the chairs and the loud speakers.

The Hon. Sandra Kanck: It was the most superb example of masochism that I have seen in a long time.

The Hon. R.I. LUCAS: I thank the Hon. Sandra Kanck for that remark. I take it as a badge of honour that the honourable member interpreted it in that way. It was important that the Government be prepared to explain its position, although we knew that we were not going to change anyone's mind.

The Hon. Diana Laidlaw interjecting:

The Hon. R.I. LUCAS: Yes, it was my own. There was a vote at the end, and my hand was the only one that went up.

The Hon. Sandra Kanck interjecting:

The Hon. R.I. LUCAS: I did not see him down the back. I was wrong: there were two votes. The honourable member asks about the attitude adopted by the Hon. Mr Rann and Mr Foley. I think it is fair to say that, whatever their private innermost thoughts might have been, they sensed the mood of the meeting. As I indicated before, I did have the—

The Hon. L.H. Davis: Foley's thoughts last for only eight seconds.

The Hon. R.I. LUCAS: Exactly. I had the pleasure of a number of private meetings with Mr Foley about this issue early in the piece. Those discussions will forever stay secret. Whatever their innermost thoughts might have been—

The Hon. A.J. Redford: You should tell us about that.

The Hon. R.I. LUCAS: Never. Those private discussions will remain private. Whatever their innermost thoughts might have been, they sensed the mood of the meeting. I think it is fair to say that they were greeted with uproarious support.

The Hon. A.J. Redford: They weren't rude to you, were they?

The Hon. R.I. LUCAS: They were just a touch rude, not only to me but to the Liberal Party and the Government. I think the Liberals are a race of people: their parents, children, friends and relatives—indeed, I think anyone who knew a Liberal—were in bad odour on the evening. I got out most of my speech, but towards the end I erred when I happened to call the Hon. Mr Rann 'provincial and xenophobic'. I apologise to the Hon. Mr Xenophon for that. It is not a new adjective but an old one. That did not go down entirely well with the crowd and, when I said some unflattering things about the approach of the local member in that he says one thing in the electorate and another thing to the media, that was about the end of my time on the podium. I was a slow learner, but I sensed the mood of the meeting and decided that it was time for me to move to stage right and let the Hon. Sandra Kanck take over.

The Hon. L.H. Davis: What did Rann and Foley say about Pelican Point? Did they have any solutions?

The Hon. R.I. LUCAS: They basically said what the audience wanted to hear, that is, that they were right behind them. In fact, they were leading them and, if they did not want the power station at Pelican Point, too right: they were right there. Mr Rann said a few things about National Power, as he is wont to do about any company from outside Australia that wants to—

Members interjecting:

The Hon. R.I. LUCAS: I am not sure. I am not the best one to be guided on defamatory issues. I have to be very cautious, given my good friend Mr Xenophon over there. I am very careful about anything I say that starts with an X or anything else, so I was very cautious. They made it quite clear that they were opposing the location of the power plant at Pelican Point. The Hon. Mr Rann suggested that it might be built at Whyalla or Torrens Island, although a number of environmentalists were appalled at the notion of its being built at Torrens Island because of the environmental problems that already exist there. I think Mr Foley was prepared to see it built anywhere other than his own backyard; at least he was honest enough to concede that he lived two or three kilometres away.

The Hon. Carolyn Pickles: Toorak Gardens would be a good spot.

The Hon. R.I. LUCAS: No, he didn't suggest that. It is two or three kilometres away from Mr Foley's residence, but he said that he was representing the very strongly held views of his local constituents.

EDUCATION POLICY

The Hon. R.I. LUCAS (Treasurer): I seek leave to table a copy of a ministerial statement made in another place today by the Premier on the review of the Education and Children's Services Act.

Leave granted.

GEOTHERMAL ENERGY

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Attorney-General, representing the Minister for Primary Industries, Natural Resources and Regional Development, a question on geothermal energy.

Leave granted.

The Hon. SANDRA KANCK: My office has been contacted by Saracen Mineral Holdings Limited. That company is eager to evaluate the viability of establishing a geothermal electricity industry in South Australia. Geothermal electricity can be generated by pumping water into substrata rock beds at extremely high temperature. The very hot water is then returned to the surface via a second hole and used to drive a conventional steam turbine. At present the process of geothermal generation is not cost competitive with conventional means of generating electricity, but it is very clean energy producing no greenhouse gases. Furthermore, Saracen is hopeful that it has identified means of making this type of electricity generation economically viable.

In pursuit of its commercial objectives, Saracen applied to PIRSA for two exploration licences covering sections of the Cooper Basin. The applications were lodged under the Mining Act because the areas concerned were vacant with respect to exploration and mining tenements under the Mining Act and already subject to blanket tenure under the Petroleum Act. The applications were rejected because geothermal energy did not fall under the current definition of 'minerals' as outlined under the Mining Act.

Saracen was informed that the applications would be processed under the Petroleum Act. As noted, the Cooper Basin partners already have blanket tenure of the region under the Petroleum Act, and the Act does not provide for a separation between geothermal energy and petroleum at tenement level. Hence, Saracen will be prevented from investigating the viability of Australia's most prospective geothermal region. The exploration of that capacity will be left to companies that may or may not have the interest, expertise and commitment to effectively explore the geothermal alternative.

It is also important to note that the Queensland Department of Mines and Energy accepted an application by Saracen for a tenement under its Mining Act and, in New South Wales, geothermal energy is deemed a mineral. Queensland and New South Wales are energy resource rich States, while South Australia is energy resource poor. The development of alternative sources of energy should be a priority for this State. Furthermore, Saracen intends to apply for Federal Government grants from the Australian Greenhouse Office to assist in its research but, unless there is a change of policy, these grant applications will be based on Saracen's Queensland tenements. It is in this State's interests to have our geothermal energy capacity evaluated. Saracen is eager to do just that. The department should be assisting Saracen—not obstructing it. Will the Minister direct PIRSA to classify geothermal energy as a mineral? If not, why not?

The Hon. K.T. GRIFFIN: I will refer the honourable member's question to my colleague in another place and bring back a reply.

OVERLAND TRAIN SERVICE

The Hon. J.F. STEFANI: I seek leave to make an explanation before asking the Minister for Transport and Urban Planning a question about the *Overland* train service.

Leave granted.

The Hon. J.F. STEFANI: An article which appeared in the *Sunday Mail* of 7 March 1999 dealt with the *Overland* train service. The *Overland* route between Adelaide and Melbourne has been operating for more than 100 years. In recent years, patronage on the *Overland* has been declining, resulting in operational losses. Has the South Australian Government taken any initiative to reverse the trend and improve the *Overland* train service to compete with road and air travel to Melbourne? If so, what are the initiatives and the estimated cost to the Government to effect improvements to the service?

The Hon. DIANA LAIDLAW: Fortunately, at no cost to the Government, there has been a major reinvestment to upgrade the rail cars and the railway line itself and to undertake new infrastructure. However, in terms of generating that investment by the private sector, we worked with the Federal Government to enable the sale of the interstate rail passenger services from Australian National to Great Southern Railway. Part of that sale deal was that GSR spend capital, something which, as the honourable member said, we had not seen from Australian National, when it was owned by the Federal Government, for many years.

So, $1.1 million has been spent on refurbishing the rail cars. In fact, if the honourable member or any other member wishes to see the outfitting of the rail cars, I have been told by GSR that there is an open day at Keswick this Sunday. People are invited to see the outfitted railway cars. That program is being undertaken in two parts. The first stage, the new soft fittings and furnishing, has been completed; and the rest will be completed by 1 May in terms of the club and coach class cars. I also highlight that this investment by GSR extends as far as GSR determining that it will spend $2 million on a new national call centre based in Adelaide for bookings that will open from May this year. That is a fantastic investment for a company that has it head office in Adelaide.

There will be jobs and updated facilities and investment. At no cost to the South Australian Government, $14 million was spent by the Federal and Victorian Governments on the upgrade of the line on the Victorian side of the border. GSR is very pleased about the fact that it believes it will now be able to compete effectively with air and bus in providing transport to Melbourne, because a trip that now takes some 12 to 14 hours will take 10½ hours. In terms of time, that is equivalent to a bus but, in terms of competition with air, the train is far more effective in price, while the refurbishment will see equal comfort. I thank the honourable member for his interest in South Australia and in investment and tourism promotion in this State.

COUNTRY SCHOOL STUDENTS

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer, representing the Minister for Education, Children's Services and Training, a question about assistance to country students.

Leave granted.

The Hon. R.R. ROBERTS: I attended consultations with Mr John Halsey, Executive Director of Country Education, in Port Pirie on Tuesday night. Prior to the meeting, I had received an approach from a constituent, a Mr Hardaker of Port Pirie, who is having some problems with the education of his second son. This matter was raised at the consultation organised by John Halsey. It was a very successful night and

it was well organised. It provided a good opportunity for people interested in education in Port Pirie.

Mr Hardaker's son, Mr Chad Hardaker, wants to pursue a career in accounting. He has gone through the usual system—and the Treasurer would probably know this better than most of us—and has been advised what courses he ought to take to enhance his opportunities and to assist him with his future university education. Briefly, he wanted to do a course called 'Information Technology', which is hardly new and unique in this day and age, and Economics because he was advised by the school and career counsellors that that would be helpful to him.

Unfortunately for Mr Hardaker, a letter from the John Pirie Secondary School advises that he could do his year 12 maths and legal studies but that SAS Information Technology is the only computing subject offered in 1999 and that economics is not available at the school in the senior years at all. That came as a surprise to me and to most people engaged in conversation with Mr Halsey at the consultation night.

My constituent had no other alternative, bearing in mind that he wants to give his son every opportunity in his future career, but to arrange for his son to live in Adelaide so that he can access these two courses. He has applied for some Government assistance. I have a letter from Centrelink which states that it cannot help Mr Hardaker with any assistance. The letter states:

> This Department is unable to pay you living away from home allowance as you are doing Year 12 in Adelaide and have chosen to bypass the local school—

that is a fairly loose definition—

> If the local area provides reasonable access to an appropriate Government school, then the young person would not be approved to live away from home. An appropriate Government school would be any that offers tuition in the student's grade or year. The following factors are not sufficient to approve living away from home rate. . . student chooses to move to optimise educational experience or to access the special electives not generally available.

I would have thought that we would try to encourage people to optimise their educational experience. One suspects that the community does not believe that Information Technology and Economics in today's society are 'special electives not generally available'. It was explained that, due to the contraction in numbers in country areas, the menu is often reduced. I also realise that the living away from home allowance is a Federal issue, but the policies and directions of the South Australian education system in providing facilities for students in country areas seem to conflict with the Federal system.

John Halsey did undertake to look at this in the context of all his consultations. However, the matter is somewhat urgent, because I believe that a number of other students are in the same predicament, where they cannot access the menu of subjects to enhance their educational opportunities later, so they are moving away. Clearly there needs to be some consultation. My question to the Minister for Education is: what steps is he taking to assist those students and isolated parents who choose to send students to Adelaide to do appropriate courses for career enhancement and pre-university studies?

The Hon. R.I. LUCAS: I am happy to refer the honourable member's question to the Minister and will bring back a reply. I say at the outset that this is a difficult issue. The member rightly points out that the living away from home allowance is a Commonwealth Government and departmental issue, but there is a relationship with the subject offerings at schools in rural and regional South Australia. I offer a note of caution to the honourable member, as many school communities in rural and regional South Australia argue the reverse position to the honourable member in the interests of protecting their country school communities.

As Minister for Education I found that many country school communities argued passionately against the sort of position the honourable member is putting, and they did so on the basis that, if the Commonwealth Government provides a formal policy that allows a large number of country students to move away from rural schools at taxpayers' expense, rural schools then lose student numbers and teachers and therefore they offer an even smaller range of subjects. You then enter a spiral as a result of a Commonwealth Government policy which might too freely allow students to move away from Port Pirie or other country areas to the city on the basis of saying that they want to do information technology, legal studies, accounting or economics—in fact, anything that is not English, maths or science.

I do not wish to classify subjects, but parents and communities say that they have an expectation that a certain range of subjects is the absolute minimum that any school should be able to offer. They also say that they would like to see this other range and, if the school is big enough, there might be a further range of subjects on offer.

The only note of caution I offer to the honourable member is that many country communities would oppose the position he is putting on the basis that it is a recipe for further weakening of country schools and country communities. I understand the position of the honourable member's constituent, Mr Hardaker. He and other parents who want the best for their child will want them to come to Adelaide and will want some Government assistance to do so. I am sure this will be part of the response from the Minister as there are two sides to this debate and discussion, which has been going on for years.

There has been slightly greater resolution in the past three or four years from the Commonwealth as to what it will and will not allow. The more difficult questions have been in relation to specialist schools as opposed to a subject like economics. I am not sure of the detail, but it is possible to stay at your local school and study economics through the open access college. Some students in metropolitan high schools study by open access college, as do some rural students, to add to the subjects they can do at their local school, and they may do economics through open access arrangements with the open access college. There are other options as well, which may or may not have been suitable—

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: He is able to do economics. He can do his other subjects at John Pirie and can do economics via open access from Port Pirie as an alternative. I do not know the circumstances of this case, but there are many students in country areas doing three or four subjects at their local school and one or two subjects or more via open access, where a specialist teacher in the subject is provided either through the open access college or through a clustering arrangement. The honourable member would be aware of Jamestown, Gladstone, Peterborough and Orroroo. You may have a specialist teacher at one school teaching mathematics at year 12 and he or she would be teaching subjects via open access to students in other areas through a clustering arrangement.

The department will use a number of options to try to deal with problems similar to that raised by the honourable member. Nevertheless, I will refer the honourable member's question to the Minister. Clearly Mr Halsey has considered the issue and may be in a position via the Minister to offer a more specific response in relation to Mr Hardaker's problems.

KNIVES

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the Attorney-General a question about police powers and the acquisition of knives.

Leave granted.

The Hon. IAN GILFILLAN: This morning on Radio National the Director of the Institute of Criminology stated that the percentage of knives involved in homicide has increased dramatically in Australia in the past five years. Last year this Parliament passed the Summary Offences (Offensive and Other Weapons) Act, which amended section 15 of the Summary Offences Act, which dealt mainly with persons carrying knives and other dangerous articles. As a result of the publicity this Act attracted, I received correspondence from persons who wish to see police given the power to take knives off the streets. I was not sure whether the new legislation would have that effect, so I requested an interpretation of the new provisions from the Attorney-General's Department and received a prompt reply from the Senior Legal Officer, Dianne Gray. Ms Gray assured me that under section 68 of the Summary Offences Act a police officer already had the power to:

> 'stop, search and detain. . . a person reasonably suspected of having on or about his or person,. . . an object, possession of which constitutes an offence.

I passed on this information to the Area Coordinator of Neighbourhood Watch for the Torrens Park-Lynton area, Mr Ron O'Brien, who had contacted me. In turn I received a reply from Tony Madigan of the Malvern Community Police Station. Mr Madigan informs me that Ms Gray's comments were tabled at the 16 February meeting of the local Neighbourhood Watch and that he had been asked to respond.

In essence, Mr Madigan states that section 68 of the Summary Offences Act does not give police the authority to search anyone suspected of carrying an ordinary knife. Carrying a knife is not unlawful if you have a lawful excuse. As Mr Madigan points out, the excuse does not have to be believable, just lawful. In other words, carrying a knife in a dark city alley at 3 a.m. is lawful if you say you have it in your possession to peel an apple and, if a knife carrier offers that excuse, apparently police are powerless to even search for a knife, let alone confiscate it.

Under section 15 the excuse is what makes carrying the knife lawful. This is a bizarre Catch-22 for both police and law-abiding South Australians. The police cannot search a person if the weapon carrying is lawful. They cannot tell whether it is lawful unless they ask the person whether they have an excuse, and there is not much point in asking a person whether they have an excuse for carrying a knife if you cannot first search them to find out whether they are carrying one. If a person is waving a knife around, obviously it will not be necessary to search them, but as Mr Madigan points out 'the onus is on the police to disprove the excuse'. So, if police cannot disprove the excuse, the knife carrying is lawful.

Admittedly the amendments carried last year set up a different regime with respect to special types of knives—those that are designated as either prohibited weapons or dangerous articles. Articles so classified may be confiscated because of what they are. However, this was already the case in respect of many such things, for example, flick knives and knuckle dusters. The 1998 amendments create an additional new offence—that of carrying a firearm, a 'dangerous article' or a 'prohibited weapon' if it is not done in a 'safe and secure manner'. However, this is another subsection that does not apply to ordinary knives.

According to the Act, ordinary knives are not classified as dangerous articles or prohibited weapons so, presumably, as long as the holder has a lawful excuse, most knives do not even need to be carried in a safe and secure manner. Despite the 1998 amendments, ordinary knives still may be carried in public with impunity. Police are powerless to search for and confiscate them because such a police search is likely to be beyond the authority of section 68. If a person carrying a knife has a fanciful though lawful excuse they may not even be searched and, of course, the knife therefore cannot be confiscated. Does the Attorney agree with my interpretation of how the law regarding knives currently applies? Does he consider the situation satisfactory in terms of keeping knives off the streets? Would he consider legislation to give police the authority to confiscate knives whenever police suspect ill intent and putting the onus upon the knife carrier to justify getting the weapon back?

The Hon. K.T. GRIFFIN: The way in which the honourable member raced through that did not give me an opportunity to think about all the issues he raised, so I am not prepared to answer the question at length on the run. I will need to look at it and analyse it, because a couple of the names that were mentioned are names of persons who have been fairly well-known for their promotion of incorrect views about the legislation relating to the possession of weapons, and Mr O'Brien is one of those.

The Hon. Ian Gilfillan: It was a police officer I quoted, not Mr O'Brien.

The Hon. K.T. GRIFFIN: Some of the police have a view that they do not have enough powers, but most of them believe that they do have enough power. As I said when we talked about the legislation last year, it is a matter of trying to find a balance. I must say that what the honourable member seems to be suggesting is a very surprising extension for an Australian Democrat; he seems to wish for an extension of police powers to enable them to stop at random and to search and confiscate. If the honourable member is suggesting that, then he ought to say so, but certainly that is my interpretation from his explanation and his questions as to what he might be leading to.

Certainly not many others in the Parliament would advocate that course of action. That means that the police make the decisions about what is a reasonable excuse and not the courts. The whole object of the way in which section 15 of the Summary Offences Act is drafted is to ensure that ultimately whether or not an excuse is lawful is a matter to be determined by the courts.

There is this nonsense being promulgated from time to time that someone who is out at midnight has a knife on them and, when the police ask, 'What do you have that for?', they reply, 'I'm going to peel an apple,' and there is no sign of an apple, the possession without lawful excuse therefore cannot be established. That is a nonsense. It is a very trite way of trying to undermine the operation of the current law.

If the honourable member wants to move to possession of a knife without reasonable excuse so that he puts the onus on the individual and the decision making power with police, let him say so, but I do not support that, and I do not think many would support it. If you use the concept of lawful excuse, you ultimately go to court. That is the place where the decision is taken about what is or is not a lawful excuse. I can tell you that, although this nonsense is being peddled that someone can change their excuses to satisfy the court and get off; someone can give a fanciful excuse and get off; or the police say, 'It's not worth prosecuting,' it is not true. That, too, is nonsense; it is absolute nonsense. It really denies the reality, because people are convicted of possession of weapons without lawful excuse where they give fanciful excuses, because the court takes into account what was or was not said at the time. The court also weighs up any change from the excuse which was given when the person might have been questioned to the point when that person gets to court.

The police certainly already have very wide powers. Our loitering legislation which gives wide-ranging powers to police to move on is the widest power of any in Australia. Recently, the New South Wales Parliament has enacted legislation which is similar, but South Australia's was until then the widest power given to police in Australia. We have wide-ranging powers to require people to give name and address, particularly in the circumstances where there is a reasonable suspicion that they may have committed an offence, be about to commit an offence or be committing an offence.

If the honourable member wants a situation where anybody can be stopped in the street regardless of their age or appearance and be asked their name and address and to turn out their pockets, let him say so. I do not agree with it. I would hope that there are not very many, if any, people in this Chamber who would agree with that, because it would tip the balance very much against the sort of balance we have at present, which carefully balances the public interest, the rights of the citizen and the powers of police.

I suppose this will be a constant debate. We have been fortunate in South Australia to avoid most of the unfortunate public debate that occurs in other jurisdictions about more police, more penalties, more people in gaol—tough, tough, tough. That was really established a number of years ago.

The Hon. T. Crothers: It almost smells of zero tolerance. It is as though someone has taken a leaf out of the New York book.

The Hon. K.T. GRIFFIN: We will not get onto talking about zero tolerance today; that might be for another day. In essence, I am saying that there has to be a balance. I am all in favour of giving police adequate powers. The fact that we have a Listening Devices Act Amendment Bill before us at present indicates that we are trying to do what is reasonable and sensible to give the police the necessary power to catch crooks and to bring them to justice but also to have safeguards in there against abuse, recognising that everybody is human and that people do err.

It is important to try to ensure that we maintain that balance between the individual's interests and rights, the police powers and the obligations we place on our police to enforce the law and to behave in a way which is appropriate in a civilised and democratic society and in the public interest.

MUSIC BUSINESS ADELAIDE

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for the Arts a question about Music Business Adelaide.

Leave granted.

The Hon. A.J. REDFORD: This morning I was delighted to have the opportunity to attend the media launch of Music Business Adelaide, which is to be held in Adelaide from 14 to 16 May this year. Music Business Adelaide was instigated in 1997 by Warwick Cheatle, Ministerial Consultant for Contemporary Music, with the endorsement of the Hon. Diana Laidlaw, Minister for the Arts, and supported by the South Australian Government and the South Australian music industry.

The aim of Music Business Adelaide is to fast-track the development of the South Australian music industry by providing the creators of the music and associated sectors with an opportunity to pitch their product and network with record and publishing companies, promoters, media and management.

Last year, I also attended Music Business Adelaide, and it achieved a fantastic response from music industry participants from around Australia. It was a really positive story from the perspective of South Australia. Indeed, this morning Doc Neeson from the Angels commented at the media launch that Music Business Adelaide and the contemporary music industry in general was reversing the trend of young people moving east and, indeed, substantial numbers of young people were moving west, and he laboured that point.

I had an opportunity to meet a young lawyer who had just come to Adelaide from the Eastern States with a significant client base, who is also here on the basis that this is where the action is happening. Not much has been said in the media about some of the positive aspects for business and associated activities arising from Music Business Adelaide. I say that without any criticism of the media: the industry media is constantly promoting the South Australian music industry. But it would be nice if the general public could see this as a positive story for South Australia. Will the Minister outline what programs will be available to participants in Music Business Adelaide, and who is likely to be attending this year?

The Hon. DIANA LAIDLAW: I would like to thank the honourable member for recognising the launch today, because it was one of the most positive events that I have attended for some time in terms of the endorsement of Adelaide and what is happening generally for young people. This is the third year in which Music Business Adelaide will be held. Warwick Cheatle, who is Contemporary Music Consultant to me, and so many people in the industry have been stunning in what they have achieved by firmly establishing Music Business Adelaide, a unique event in Australia, on our music calendar and industry calendar in South Australia. This is clearly recognised not only by Doc Neeson's coming back today but by the people from Victoria, Western Australia and elsewhere in the music industry who have indicated an interest and want to participate in Music Business Adelaide.

We will not accept them as young people in the industry, because this is for South Australians, to make sure that they get an advantage in their career to encourage their talent and realise their potential. Doc Neeson said today that when he and the Angels set out on their career they were like lambs sent to the slaughter. They had no ground base in management or in the legal side of the business; they were vulnerable

in terms of their recording contracts; and they were vulnerable in terms of their contracts for live performance. Music Business Adelaide, with the whole range of seminars and one-on-one sessions with excellent people who want to devote time to help, has been outstanding. I want to note briefly that Eric McCusker from Mondo Rock, Paul Grabowski (jazz), James Blundell, Dobe Newton, Matt Handley, Dave McCormack and Brian Cadd will all be here helping young South Australians to succeed.

CITIZENS' RIGHT OF REPLY

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That during the present session the Council make available to any person who believes that he or she has been adversely referred to during proceedings of the Legislative Council the following procedure for seeking to have a response incorporated into *Hansard*—

I. Any person who has been referred to in the Legislative Council by name, or in another way so as to be readily identified, may make a submission in writing to the President—

(a) claiming that he or she has been adversely affected in reputation or in respect of dealings or associations with others, or injured in profession, occupation or trade or in the holding of an office, or in respect of any financial credit or other status or that his or her privacy has been unreasonably invaded, and

(b) requesting that his or her response be incorporated into *Hansard*.

II. The President shall consider the submission as soon as practicable.

III. The President shall give notice of the submission to the member who referred in the Council to the person who has made the submission.

IV. In considering the submission, the President—

(a) may confer with the person who made the submission,

(b) may confer with any member,

but

(c) may not take any evidence,

(d) may not judge the truth of any statement made in the Council or the submission.

V. If the President is of the opinion that—

(a) the submission is trivial, frivolous, vexatious or offensive in character, or

(b) the submission is not made in good faith, or

(c) there is some other good reason not to grant the request to incorporate a response into Hansard,

the President shall refuse the request and inform the person who made it of that decision. The President shall not be obliged to inform any person or the Council of the reasons for that decision.

VI. Unless the President refuses the request on one or more of the grounds set out in paragraph V of this resolution, the President shall report to the Council that in opinion of the President the response in terms agreed between the President and the person making the request should be incorporated into *Hansard* and the response shall thereupon be incorporated into *Hansard*.

VII. A response—

(a) must be succinct and strictly relevant to the question in issue,

(b) must not contain anything offensive in character,

(c) must not contain any matter the publication of which would have the effect of—

(i) unreasonably adversely affecting or injuring a person, or unreasonably invading a person's privacy in the manner referred to in paragraph I of this resolution, or

(ii) unreasonably aggravating any adverse effect, injury or invasion of privacy suffered by any person, or

(iii) unreasonably aggravating any situation or circumstance,

and

(d) must not contain any matter the publication of which might prejudice—

(i) the investigation of any alleged criminal offence,

(ii) the fair trial of any current or pending criminal proceedings, or

(iii) any civil proceedings in any court or tribunal.

VIII. In this resolution 'person' includes a corporation of any type and an unincorporated association.

Yesterday I spoke at length on the second reading of the private member's Bill introduced by the Hon. Terry Cameron relating to the citizens' right of reply. At that stage I foreshadowed that I would be moving this motion, which would seek to create a sessional order dealing with the opportunity for a citizen who has been aggrieved to provide a response through the President. The alternative to legislation (which as I indicated yesterday we would not be supporting on this side of the Council) is a sessional order that we will have to renew on an annual basis at the commencement of each session. We will also need to consider on those occasions what its impact has been.

The sessional order will do the following. It will allow any person who claims that he or she has been adversely affected in a number of ways to request that a response be incorporated into *Hansard*. That request will be made to the President. The President is required to consider the request as soon as practicable, giving notice of the submission to the member who made the comments in the Council about the person who has made the submission to the President. The President can confer with the person who made the submission or with any member but, importantly, it is not a quasi-judicial proceeding; it is a proceeding entirely under the control of the President. In making a decision about the response, the President is not at liberty to judge the truth of any statement made in the Council or the truth of any submission. There are a number of ways in which the President may deal with this.

The first is that if the President is of the opinion that the submission is trivial, frivolous, vexatious or offensive in character or is not made in good faith, or there is some other good reason not to grant the request, then the President is to refuse the request and, obviously, inform the person who made the request of that decision. Unless the President refuses the request, the President is to report to the Council what the President's opinion might be and, when the report is made, if it is to incorporate, then the response will be incorporated in *Hansard*. Recognising that anything that is said in the Council or incorporated in the *Hansard* attracts absolute privilege, and that privilege is something that attracts normally only to members of a particular House, this response will have the protection of absolute privilege.

The response has to be succinct and strictly relevant to the question in issue. It must not contain anything offensive in character and must not contain material which, if published, would have the effect of unreasonably adversely affecting or injuring a person or unreasonably invading a person's privacy, unreasonably aggravating any adverse effect, injury or invasion of privacy suffered by any person, or unreasonably aggravating any situation or circumstance. In addition, it is not to contain any matter the publication of which might prejudice any investigations of criminal offences, the fair trial of any current or pending criminal proceedings or any civil proceedings in any court or tribunal. In the way in which the sessional order has been drafted, we also provide that a 'person' includes a corporation, whether it is an incorporated or an unincorporated association.

It is to be recognised that those who might be aggrieved as a result of something which might be said in one of the Houses of Parliament may have his or her response incorporated by other means, for example, by requesting a member other than the member who has made the comments which are the subject of any protest actually to read in comments or make other observations about the initial statements which are the subject of complaint. This provides a formal process.

As I said yesterday, this process is in place in a number of jurisdictions—not all, because there are differing views about the way in which parliamentary privilege ought to be available to those who are not members. In that context, I have taken the view that it is appropriate to move in this way. We can evaluate, test and modify it, or we can no longer proceed with it after several years of experience. I made the point yesterday that the Federal Senate has had such an order in place since 1988 and that just over 20 applications have been made since that time. The House of Representatives has had a procedure in place since 1997, and I think about three applications have been made for responses to be inserted in *Hansard* regarding statements made by members. So, it does not appear that the procedure is used extensively in those jurisdictions where it has been enacted as a sessional order.

The important thing to recognise is that in all jurisdictions where it has been incorporated not one has established a statutory right for the very strong reason that establishing a statutory right does not provide either the flexibility or the immunity from court intervention which a sessional order does. I hope members will support the proposed sessional order and that in respect of those matters which I have not adequately covered they will have regard to my second reading speech which was delivered yesterday on the Citizens' Right of Reply Bill.

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

LISTENING DEVICES (MISCELLANEOUS) AMENDMENT BILL

In Committee.

(Continued from 9 March. Page 854.)

Clauses 1 to 6 passed.

Clause 7.

The Hon. IAN GILFILLAN: I move:

Page 4—

Line 6—Leave out 'section is substituted' and insert: 'sections are substituted'

After line 20, new sections—Insert the following sections after new section 5:

Public Interest Advocate

5A. There will be a Public Interest Advocate.

Appointment of Public Interest Advocate

5B (1) The Governor may appoint a legal practitioner to be the Public Interest Advocate.

(2) Subject to this Act, the terms and conditions of appointment (including remuneration) of the Public Interest Advocate will be as determined by the Governor.

(3) The Governor may appoint a legal practitioner to be a deputy Public Interest Advocate.

(4) The following persons are not eligible to be appointed as the Public Interest Advocate or a deputy Public Interest Advocate:

(a) the Director of Public Prosecutions;

(b) a person assigned to work in the Office of the Director of Public Prosecutions;

(c) a member of the police force;

(d) an employee in the Public Service of the State.

Terms of office of Public Interest Advocate, etc.

5C. (1) The Public Interest Advocate will be appointed for a term of office of five years and, on the expiration of a term of office, is eligible for reappointment.

(2) The office of Public Interest Advocate becomes vacant if the Advocate—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by notice in writing to the Governor; or

(d) is removed from office by the Governor under subsection (3).

(3) The Governor may remove the Public Interest Advocate from office for—

(a) mental or physical incapacity to carry out official duties satisfactorily; or

(b) neglect of duty; or

(c) dishonourable conduct.

Function of Public Interest Advocate

5D. (1) The function of the Public Interest Advocate is to appear at the hearing of an application for the issue of a warrant under this Act to test the validity of the application and, for that purpose, to—

(a) present questions for the applicant to answer and examine or cross-examine a witness; and

(b) make submissions on the appropriateness of issuing the warrant.

(2) The Public Interest Advocate is not subject to the control or direction of any Minister or other person in the performance of the function of the Advocate.

Public Interest Advocate's annual report

5E. (1) The Public Interest Advocate must, as soon as practicable (but not later than two months) after each 30 June, give to the Minister a report on the activities of the Advocate (and any deputy) during the year ending on that 30 June.

(2) The report must not contain information—

(a) that discloses or may lead to the disclosure of the identity of any person who has been, is being, or is to be investigated; or

(b) that indicates a particular investigation has been. is being, or is to be conducted.

Public Interest Advocate must keep and deal with records in accordance with regulations

5F. The Public Interest Advocate must—

(a) keep as records—

(i) applications for warrants under this Act; and

(ii) affidavits verifying the grounds of applications for warrants; and

(iii) any warrants or duplicate warrants issued under this Act, provided to the Advocate under this Act; and

(b) control and manage access to those records; and

(c) destroy those records,

in accordance with the regulations.

Confidentiality

5G. (1) A person who is or was the Public Interest Advocate or a deputy Public Interest Advocate must not record, use or disclose information obtained under this Act that came to the person's knowledge because of the person's function under this Act.

Maximum penalty: $10 000 or imprisonment for 2 years.

(2) Subsection (1) does not apply to the recording, use or disclosure of information in the performance of his or her function under this Act.

(3) A person who is or was the Public Interest Advocate or a deputy Public Interest Advocate must not be compelled in any proceedings to disclose information obtained under this Act that came to the person's knowledge because of that person's function under the Act.

The amendments that I have on file may appear to be somewhat convoluted, but they have a simple intention. The first amendment seeks to establish a position of Public Interest Advocate, a matter on which I addressed comments during my second reading speech. The additional information that I want to share with the Committee is a further endorsement from Queensland where such a position is in place and

has been operating for some time. Today, I received a fax from Queensland of the Annual Report of the Public Interest Monitor delivered pursuant to the Criminal Justice Act. I have not had the chance to read it, but it is available for perusal by members and the public.

The other aspect which I think is important to share with the Committee is that there were some concerns that this could add to a level of bureaucracy and prove to be an expensive addition to the proper administration of this new legislation. I argue that that is not the case. Fortunately, the experience in Queensland gives us some confidence in being able to recommend that such a position will not be particularly expensive or onerous.

I think it is worth sharing some information obtained from a discussion between Mr Terry O'Gorman, President of the Australian Council for Civil Liberties, and my research assistant on Tuesday. The Queensland Public Interest Monitor, Richard Perry, is a barrister who has no practice in the criminal law area. This is seen as very important. He has previously advised the Queensland Police Union, which gives him some expertise in this area. The Public Interest Monitor needs to be a barrister of some experience. The way his role has been working in practice is that (now that the Act has been in force for about a year) the NCA, the Queensland Crime Commission, the Criminal Justice Commission and the Queensland Police are starting to contact him in advance of making an application.

If the Public Interest Monitor has concerns, he can and does negotiate on those concerns. The threat of being cross-examined on the application 'pulls them into line'. In respect of resource implications, the Public Interest Monitor is not a Public Service employee; he is a private barrister and merely bills the Government for the time he spends in his role as Public Interest Monitor. This is cheap: no bureaucracy is set up. He gets paid on a per case basis. In Queensland, there may be about 10 cases per week involving about five hours of the Public Interest Monitor's time at perhaps $250 an hour, which is the figure that Mr O'Gorman suggested, but that would be a very rough guess. The system does not seem to make him 'oppressively busy'.

Mr Richard Perry is of the view that most Supreme Court judges welcome the process and did not like the pre-existing system where applications were made *ex parte*: in other words, without this extra representation. So, some quite extensive wording will be added to the Bill to cover a position of Public Interest Advocate, which I recommend.

The Hon. K.T. GRIFFIN: I oppose all the amendments. I spent a little bit of time on this at the second reading reply stage, but the Government's very strong view is that the office of Public Interest Advocate is inappropriate. It will be largely ineffective in practice because the Public Interest Advocate is in the same position as the Supreme Court judge hearing the application. The advocate will only have access to the same information given to the Supreme Court judge hearing the application. The advocate will not have any intimate knowledge of what is involved in the investigation or of the conduct being investigated. The advocate, I suppose, will be able to examine or cross-examine a witness but the judge determining the matter also can do that.

The submissions that may be brought by the Public Interest Advocate are unlikely to be any different from the concerns and considerations also held by the judge. It does not seem to the Government that the office of Public Interest Advocate will add anything to the application process in a way that will benefit the person being investigated or the public. Quite obviously, the person being investigated cannot be informed of that and the Public Interest Advocate cannot do anything publicly on it.

There is a requirement in the legislation for the Police Complaints Authority to audit the application for warrants and the record of warrants, including the cancellation of warrants or by virtue of the expiry of time. So, there are a lot of steps in place to try to ensure that the applications for the listening device and any extensions of a listening device warrant are properly dealt with.

As I said at the second reading reply stage, we have a Supreme Court judge, who is charged with a public duty, who is certainly as well trained as any Public Interest Advocate ever will be, and who will have, I expect, a heightened sense of fairness because that person is a judge. To then slot in a Public Interest Advocate seems to be a move that will not achieve anything.

There have been 20 applications a year on average over the last seven years, so I was interested to note that the Hon. Mr Gilfillan indicated that this will not be a full-time position, although I think from the way it is drafted that is one construction which can be placed on the office. Whether or not it is full time or part time, it seems to me that there is no public benefit to be achieved by establishing this new office with some fairly important powers, but powers which are no different from those of a judge, except that the judge ultimately issues the warrant or issues the extension to any warrant. I am in no way convinced that there is any merit at all in this proposition.

The Hon. CAROLYN PICKLES: The Opposition was given a preview of the Hon. Mr Gilfillan's amendments, for which I thank him, and during the brief conference that I had with my colleague in the other place, the shadow Attorney-General, it is our intention to support this amendment. We believe that it does—

The Hon. K.T. Griffin: Support it?

The Hon. CAROLYN PICKLES: Support it. We believe that it gives some additional safeguard. There were some reservations when this Bill came before the Labor Party Caucus about the issue of privacy and what happens to citizens' rights. That point was raised by a number of our members. On balance, we believe that this is an amendment that is worthy of consideration.

The Hon. Mr Gilfillan has also given me some notes which he has read into *Hansard* about the operation of the Public Interest Monitor in Queensland and notes from the President of the Australian Council for Civil Liberties, Mr Terry O'Gorman, who talks in part about the operation of that position in Queensland and who stated that it does not have enormous budgetary implications, which would certainly be a consideration for us.

We believe that it adds some level of protection, particularly when looking at the installation of videos. I indicated in my second reading speech (and the Attorney answered my question adequately) that a level of concern was expressed. However, everyone makes mistakes, and this week we have seen a monumental mistake made by the police force in this State and by the Federal police force. It was an absolutely outrageous mistake, for which I understand the Federal Police Commissioner has apologised, but I understand that the State Commissioner has not yet apologised. Clearly, mistakes occur and people's privacy is at stake. We think that these amendments provide additional safeguards, so we support them.

The Hon. NICK XENOPHON: In relation to the Hon. Ian Gilfillan's amendments, I indicate that with some reservation I am inclined to support them. I believe that having a Public Interest Advocate in these circumstances will allow for a degree of monitoring that is not available in the current arrangements of the substantive Bill. I acknowledge the concerns of the Attorney but, on balance, I think that given the increase in powers under the Listening Devices Act that this Bill provides the amendments go some way to providing a monitoring role of those increased powers.

The Hon. T.G. CAMERON: I will not be supporting the amendments moved by the Hon. Ian Gilfillan. Whilst I have a great deal of sympathy with the honourable member's intent and I have a concern about the use of listening devices, I think that there are too many problems with the amendments that have been moved by the Democrats. I think that they are overly bureaucratic and I am concerned about what their cost might be. It is therefore not my intention to support them.

The Hon. IAN GILFILLAN: I thank the Hon. Terry Cameron for making his position clear. I hope that his position only embraces this amendment in respect of the Public Interest Advocate, because there are other amendments which are separate matters. In relation to some of the Attorney's comments earlier, I refer to the annual report of the Public Interest Monitor in Queensland, as follows:

> The creation of the position of monitor ought not in any way be construed as indicating or suggesting any particular criticism of or deficiency in the process of granting approvals for the use of listening devices prior to the passing of amendments to the Act.

The Hon. K.T. Griffin interjecting:

The Hon. IAN GILFILLAN: I ask the Attorney, as sometimes he chides me for not listening, to wait until I finish. The report continues:

> Any person familiar with the degree of scrutiny which the bench has traditionally given to similar *ex parte* applications involving significant impact upon the rights of the individual would readily appreciate that the intervention of the Office of the Public Interest Monitor will not in any sense improve the level of scrutiny given to such applications but, rather, provide a broader base upon which that scrutiny can be undertaken.

That is the point: there will be more public confidence in the proper use of this additional power that is being granted and a balancing of it. I go back to the earlier quote from the Queensland Monitor who said that most Supreme Court judges welcome the process. So, they appreciate having that extra contribution to make what must be at times a quite difficult decision to enable the police to ride roughshod—which quite often the request is—in terms of privacy and intrusion into private property. I hope the Committee will support the amendment.

The Hon. K.T. GRIFFIN: The honourable member himself, by referring to that quotation, really says it all in relation to why it is not necessary to have a Public Interest Advocate or a Public Interest Monitor. With respect to the conclusion that the honourable member has reached, in that it gives the community confidence, I would suggest that the community does not know about it, as the Public Interest Monitor is not permitted to discuss the issues which are raised in any application because of the very nature of the application.

The honourable member acknowledged that, in Queensland, where they might have had some special problems, the judges may have welcomed it; but I have no evidence of that. The acknowledgment is that the judges are rigorous in their review of *ex parte* applications. That is the point I have been making here. Although he did not quite use the term 'superfluous bureaucracy', the Hon. Terry Cameron certainly made reference to a bureaucratic approach. I would suggest that there is no further protection beyond that which is given in the Bill by having a Public Interest Advocate present.

The Hon. A.J. REDFORD: I recognise that, given the indications of support from the Opposition and the Hon. Nick Xenophon, this is likely to become part of the Bill as presented to the other place. Therefore, I have a couple of questions. In proposed new section 5D the function of the advocate is to present questions and make submissions. Then, under proposed new section 5G there is provision for confidentiality, as follows:

> . . . does not apply to the recording, use or disclosure of information in the performance of his or function under the Act.

What would occur if there were a review process in relation to the granting of a listening device? That can crop up in a range of circumstances. For example, if at the subsequent trial of an accused the accused challenged the legality of the issuing of the listening device because it was based on a false premise, can the accused call the Public Interest Advocate to give evidence? Does the Public Interest Advocate have any role in any appellant process? Has there been any suggestion in Queensland that that should occur?

The Hon. IAN GILFILLAN: Perhaps in a simple way I can refer the honourable member to proposed new section 5G(3), as follows:

> A person who is or was the Public Interest Advocate or a deputy Public Interest Advocate must not be compelled in any proceedings to disclose information obtained under this Act that came to the person's knowledge because of that person's function under the Act.

'To be compelled' still implies that that person has the right, if my interpretation of my amendment is accurate. In a way, I like the sensitivity of the way the honourable member has interpreted it as to whether that particular advocate would be likely to become a major player in subsequent legal proceedings. I do not have enough knowledge of the way it has worked in Queensland to say whether that has been invoked; I would suggest not.

In terms of whether it is a possibility in South Australia, from my rather *ad hoc* reading of my own amendment I would assume that, if the public advocate were persuaded that a dramatic denial of justice or abuse of justice was being perpetrated, he or she would not be prevented from taking the initiative. However, as I understand this, he or she could not be subpoenaed to give evidence. I hope that goes part of the way towards answering the honourable member.

There are a couple of matters I would like to address briefly. First, I respect that the Hon. Terry Cameron may not have heard me reading into *Hansard* the notes I received on Tuesday from Terry O'Gorman. The other point in relation to what the Attorney raised about this matter relates to the final sentence of some summaries of the Queensland Public Interest Monitor annual report, as follows:

> The very existence of an independent watch-dog with sufficient powers to monitor the use of warrants and compliance with the Act provides some guarantee that the rights of the public to privacy will not be infringed.

That is the key question and the only justification for us, where I am politically, to be so energetic in pushing that there is a separate re-enforcing and safeguard entity in the deliberation. Because we see that the police are entitled under certain circumstances to have the right to use state-of-the-art equipment, they should have the right to contravene what

would normally be regarded as the sanctity of private property and privacy generally; but it should not be given without there being really reliable and solid assurances that the human rights involved are protected as much as possible by the implementation of our legislation.

So, that is the reason why we believe that having this particular advocate in place will not be an onerous task. The number of requests are relatively modest. The cost, as exampled in Queensland, is relatively small. With an annual report to assure the Parliament and the public of the way the process is working, we will have much more confidence that there is minimal abuse of the power that we are authorising through this legislation for our police force to use.

The Hon. NICK XENOPHON: Following on from the comments made by the Hon. Terry Cameron in relation to the bureaucracy and the costs involved in setting up a Public Interest Monitor, which on balance I support, what does the Hon. Mr Gilfillan say the costs are in Queensland and does he consider we will be looking at a similar cost here? Also, can he foresee the role of the Public Interest Monitor being taken up by, for instance, the Ombudsman, as he would be the obvious person independent of the Public Service? The Ombudsman is a lawyer.

The Hon. IAN GILFILLAN: I note that the Queensland experience has been approximately 10 applications per week. I would be surprised if we do not have fewer than that for various reasons, one being the question of population.

The Hon. A.J. REDFORD: On average, it is 20 a year.

The Hon. IAN GILFILLAN: It will be considerably cheaper. I cannot guarantee that we will not have an increase in the number of applications. It would be naive to say that we will stand at a level of 20 per year in the years ahead. In the data given to me, for the 10 cases per week in Queensland (it sounds like they must be busy there as far as investigations go), it takes approximately five hours of the Public Interest Monitor's time per week at whatever that charge may be. It has been quoted here as $250 per hour, which I know from my own unfortunate experience is about the going rate for an average solicitor working out of a large legal company in Adelaide.

As to whether the Ombudsman or somebody operating under his jurisdiction or in his office could be asked to take on the role, it is clear from the legislation that the person should not be a public employee. In my own mind I feel that the Ombudsman can be described as not being a public employee, but I am open to persuasion about that. Examples are also given which indicate that it is an advantage to have someone who is familiar with the law, such as a barrister, for the purpose of cross-examination.

The Hon. A.J. REDFORD: I draw the attention of the Hon. Ian Gilfillan to the contribution made by the Attorney-General on Tuesday, in which he indicated that in a seven year period we have had 143 applications and there have been four refusals in that time. Does the honourable member have any figures on the Queensland experience in terms of the number of refusals as opposed to the number of applications?

The Hon. IAN GILFILLAN: I am afraid I do not have that information. We could follow that up and see whether we can get as much data from the Queensland experience as possible.

The Hon. T.G. CAMERON: Proposed new section 5A provides that there will be a Public Interest Advocate; proposed new section 5B(3) provides that the Governor may appoint a legal practitioner; and proposed new section 5B(1) provides that the Governor may appoint a legal practitioner. Does that mean that the Governor may not have to go ahead and appoint the Public Interest Advocate or does it mean that he may appoint a legal practitioner or someone who is not a legal practitioner? It seems that we are handballing it all over to him. He will appoint the person—it is not clear to me whether he must be a legal practitioner—and he will set the remuneration as well.

The Hon. IAN GILFILLAN: That is correct, and I understand that it is the convention of parliamentary language to use such words.

The Hon. T.G. CAMERON: Obviously the Hon. Ian Gilfillan has done a lot of work on this, but I wonder whether he has made any estimate of the likely cost of setting up a Public Interest Advocate. Can he give us any idea of what remuneration this person might receive? Does he have any estimate of the cost of setting up a Deputy Public Interest Advocate, preparing an annual report and the ancillary administrative services that will have to be supplied to this individual? I note from the Bill that quite extensive files will need to be maintained.

The Hon. IAN GILFILLAN: It is appropriate that the Public Interest Advocate keeps the files and records, but I would be surprised if an extensive amount of work would be involved. As a result of the current situation I will seek from the Queensland Monitor as much precise information as I can get. However, I assume that Mr O'Gorman has reasonably sound knowledge of the Queensland experience. There is a charge of $250 per hour for the barrister's time. From our estimate there are currently 20 applications per year in South Australia, as we heard from the Attorney. The experience in Queensland is that each application takes a maximum of one hour. So, if extra time is involved, as there would be in keeping the records, even if we doubled that, we will not get much more than 40 hours per year. I will seek to get a bargain by fixing the rate at $200 per hour, which makes a total cost of $8 000.

The Hon. K.T. GRIFFIN: I will not labour the point as ultimately it will be resolved, I would hope without this being in the Bill. I would go so far as to say that it is bizarre to have a Public Interest Advocate who can go along to the judge's chambers to the application for the issue of a warrant—drop everything we need a warrant—present questions for the applicant to answer, examine or cross-examine a witness and make submissions on the appropriateness of issuing a warrant. The judge is independent. The judge cannot be removed from office unless there is a resolution of both Houses of Parliament. He is totally independent of the Executive, yet you want to put someone who is appointed for five years there to ask the questions. I am not sure how or why that person will perform a particular task.

The judge has the job under our system currently, and under the Federal Telecommunications Interception Act, to be the independent determinant of when a warrant will or will not be issued, whether for the interception of telecommunications or for the placing of a listening device. It seems to be absolute nonsense to have someone in attendance who knows nothing about it. Presumably the police will not hand over files to give the Public Interest Advocate information upon which there can be questioning.

If that is what the honourable member has in mind, it worries me immensely that you will have someone else who will now have access to all the investigation files so that that person can ask the proper questions. It is bizarre. You are not trusting the judge—the independent judicial officer, a Supreme Court judge—to make the decision, and you are

expecting someone who, hopefully, would come without any knowledge of the application to ask the questions and make submissions on the appropriateness of issuing the warrant. If you intend that that person will have access to the investigation files, I can tell you that it will not work, and I tell you that the Bill will not pass.

The Hon. IAN GILFILLAN: The thing that seems to be lower in priority in the Attorney's approach to this than in mine is: what important aspect of the extension of the police powers is being granted by the warrant through the scope of this new legislation? The hearing, according to the Queensland experience, is an informal rather than a formal process and, if no independent person is in attendance, the whole of the discussion and termination is between two people—the Supreme Court judge and the police officer who is applying for the warrant. It may well be that it is a different Supreme Court judge in several of the instances through the year, so there would not necessarily be a consistency of person who is involved. With the Public Interest Advocate, there would be a person, but I do not believe there is any intention that that person would have access to files and the investigative data. However, that person is in a position to make an assessment of the justification of this warrant and to contribute his or her view to the Supreme Court judge who has the final determination.

The Hon. T.G. CAMERON: I pose a question to the Hon. Ian Gilfillan as I get pulled one way or the other on this debate. The Attorney-General asked the question (and it struck a bit of a chord with me): why would a Supreme Court judge not look at this matter in an independent fashion? I hear the honourable member's argument about consistency. I am not sure that it would not be a good thing to have different people handling these applications. In other words, I am not so sure that it is a good idea to have one person doing it for five years.

The Hon. IAN GILFILLAN: I do not want any implication that I am suggesting that the Supreme Court would not be independent. There has never been a hint of that in my advocacy of this. It may have been the Attorney's interpretation, but it is certainly not founded on any opinion that I have. However, a Supreme Court judge or a person with this responsibility in other circumstances would quite often seek counsel to assist in coming to the decision that he or she is asked to make. What is at risk here is that it is seen as a confrontation between the Public Interest Advocate and the Supreme Court judge who will issue or not issue a warrant or put qualifications on it.

If we have a person who has had an experience of several applications and has been part of the discussion and the thinking behind it, the Supreme Court judge may well (and the Queensland experience supports this) welcome having someone who has previously had experience to be able to make some recommendations or suggestions about the matter, not only putting up the position of privacy if he or she believes that the privacy is at risk of being overridden. The determination will be made by the Supreme Court judge. I have confidence in the Supreme Court judge. My measure will enable the Supreme Court judge to make the determination more quickly, and better based, and the public will have the assurance that a person who has been specifically appointed to add a safeguard, particularly from the privacy aspects of the use of these warrants, is there and able to contribute to that aspect of it in the hearings.

The CHAIRMAN: An honourable member should not be receiving information from the gallery in document form. If you want to do that, there are other ways to do it, without its directly being handed to you as a member.

The Committee divided on the amendment:

AYES (9)

Crothers, T.	Elliott, M. J.
Gilfillan, I. (teller)	Holloway, P.
Kanck, S. M.	Pickles, C. A.
Weatherill, G.	Xenophon, N.
Zollo, C.	

NOES (8)

Cameron, T. G.	Davis, L. H.
Dawkins, J. S. L.	Griffin, K. T. (teller)
Laidlaw, D. V.	Lawson, R. D.
Schaefer, C. V.	Stefani, J. F.

PAIR(S)

Roberts, R. R.	Lucas, R. I.
Roberts, T. G.	Redford, A. J.

Majority of 1 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 8.

The Hon. IAN GILFILLAN: I move:

Page 4, after line 29—Insert the following paragraph:

(ab) by striking out from subsection (2) 'matter' twice occurring and substituting, in each case, 'serious offence';

As indicated previously in my second reading contribution, it has been my conviction that the Bill previously drafted enabled these extraordinary powers of the police to be applied and granted for virtually any level of offence. Therefore, I have sought in this amendment to restrict it to what are defined as 'serious offences'. I have had some conversation with the Hon. Nick Xenophon, who pointed out to me that that in itself may be too narrow a definition. If I turn to the Bill, it really is a question of interpretation beyond my knowledge of the law. 'Serious offence' is defined as meaning any of the following offences when under the law of the State or the law of the Commonwealth, or another State or a Territory of the Commonwealth:

(a) murder or an offence equivalent to murder; or
(b) kidnapping or an offence equivalent to kidnapping.

I am not clear what other offences would be described as equivalent to murder or equivalent to kidnapping, so when I was asked whether it would involve other more sophisticated offences not described quite simply as murder or kidnapping or, as in (c), an offence involving a drug or substance of a kind regulated under part V of the Controlled Substances Act, I was not able to answer definitively, I am afraid. However, I still feel that the amendment is important so that this measure will apply only for serious offences. I ask for support for my amendment

The Hon. K.T. GRIFFIN: The amendment is strongly opposed. It will severely emasculate the Bill and the principal Act and is totally unacceptable to the Government. It will severely hamper the ability of the police and the National Crime Authority to effectively investigate serious criminal activity, and if the amendment is adopted the police and the NCA will be able to seek a warrant to use a listening device or a warrant to install a surveillance device only when the investigation relates to murder, kidnap or certain drug offences. Forget corruption issues: you will not be able to install a listening device or surveillance device for corruption. The amendment that is being moved is substantially more restrictive than the Telecommunications (Interception) Act and, as I understand it, all interstate listening devices legislation.

I come back to the point that I made when I replied at the second reading stage. Contrary to what some people believe, the Bill does not alter the current position in relation to the offences for which a warrant may be obtained. The current Act does not restrict the offences for which the police may apply for a warrant. The Bill will still provide that a Supreme Court judge must take into account a number of factors, including the gravity of the criminal conduct being investigated, when considering whether there are reasonable grounds for issuing a warrant, whether or not the amendment is carried. But the protection for citizens, if the amendment is not carried, is that the gravity of the criminal conduct being investigated will be considered when the judge is considering whether or not to issue the warrant.

I just cannot believe that the Opposition, the Australian Democrats and the Independents can be so blind to the reality of this as to want to restrict the availability of listening devices, which includes video surveillance devices and tracking devices, so that it only applies to murder, kidnap or certain drug offences.

The Hon. Nick Xenophon: I have never said I was supporting this amendment. You are assuming I am supporting this amendment.

The Hon. K.T. GRIFFIN: I am sorry, I take it back. I had presumed it from the murmur around the Chamber. If the Hon. Mr Xenophon and the Hon. Mr Cameron are not going to support the amendment, I will be delighted. I withdraw my remarks made in anticipation of the contrary position and apologise if I have mistakenly imputed to them an intention to move in a particular direction if in fact I am wrong. So far as the Opposition members are concerned, if they support it I will be extremely disappointed.

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: If I have now been able to persuade the Leader of the Opposition that she should not support it, that would be marvellous.

The Hon. IAN GILFILLAN: We were advised that this amendment was in many ways parallelling what is in the Commonwealth Telecommunications (Interception) Act, and it was on that advice that I took some comfort that this was going to be soundly based. In some ways—and I hope that this is not too much of a diversion—this really emphasises the value of this Chamber as a discussion and committee Chamber. It is not a bad reflection of the way in which a Parliament and committee should work. We are responding to the Attorney's pressure to deal with this Bill as fast as we can.

The Hon. K.T. Griffin: It's been here for four months.

The Hon. IAN GILFILLAN: I would ask the Attorney to cease parroting the four month stuff, because the Government is dilatory in handling material. In fact, it is worse—material has been not handled for many months. That is an irrelevancy, but the fact is—

The Hon. K.T. Griffin: Because you only concluded your speech on the Firearms Bill three weeks ago. Do not use that as an example, because it is not a good example.

The Hon. IAN GILFILLAN: I'm not! I never mentioned the Firearms Bill.

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

The Hon. IAN GILFILLAN: Yes, I would have thought that I would be protected from my own Firearms Bill! I and everyone including the Opposition members have regarded this as a matter that should be thought about seriously. It may mean that there ought to be a rewording so that there is a distinction between indictable and non-indictable offences, because the wording of the current Bill leaves it totally open to the police seeking the warrant on any offence. This is not just my judgment: this is the judgment of the Law Society and of others who have looked at it. That may have been an oversight of the draftspeople.

The Hon. K.T. Griffin: It has been the law for 27 years.

The Hon. IAN GILFILLAN: That does not mean that we do not need to look at it and revise it. That is definitely not relevant to whether or not we deal with it. It may well be worth our while to go past this amendment so that there can be some other consultation on it, if that is appropriate, and we can revisit it later on. I know the procedures are possible: we go back and open up this particular clause again, and I could seek leave to move my amendment in a reworded form, or someone else could move it. I am in your hands on that: I would appreciate the Chair's enabling us to defer the debate on my amendment.

The Hon. NICK XENOPHON: I do not support the Hon. Ian Gilfillan's amendment, despite what the Attorney first thought.

An honourable member interjecting:

The Hon. NICK XENOPHON: Yes. It is probably not unreasonable that he jumps to conclusions, given my voting record.

The Hon. Diana Laidlaw interjecting:

The Hon. NICK XENOPHON: Yes, given my voting record.

The Hon. Diana Laidlaw interjecting:

The Hon. NICK XENOPHON: Well, I don't know about fresh. I do not support the amendment, even though I understand that the Hon. Ian Gilfillan is concerned to reduce the scope of the Bill, which I acknowledge is unduly restrictive. I agree wholeheartedly with the Attorney in that respect, but I see some merit in the underlying reasoning in the Hon. Ian Gilfillan's approach that the Bill ought not apply to all offences.

I note that in the Summary Procedure Act there is a distinction between summary offences and minor and major indictable offences. It is my view that if summary offences are excluded and the Bill applies simply to minor and major indictable offences, that would not unduly restrict the scope of the Act. I propose to move an amendment shortly after obtaining advice from Parliamentary Counsel with respect to the Hon. Ian Gilfillan's amendment.

The Hon. CAROLYN PICKLES: The Opposition is somewhat confused by these amendments flying around in the ether. The Opposition only received a copy of the Hon. Mr Gilfillan's amendments fairly late yesterday, and, listening to the Attorney, it is moving towards his position. However, I would like to have a look at the proposed amendments of the Hon. Mr Xenophon.

Progress reported; Committee to sit again.

LIVESTOCK (COMMENCEMENT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 March. Page 905.)

The Hon. P. HOLLOWAY: This Bill seeks to defer the date upon which certain parts of the Livestock Act 1997 come into operation. The Livestock Bill was passed by this Parliament early in 1997 and assented to on 20 March 1997.

The PRESIDENT: Order! I ask the Hon. Mr Gilfillan to go either into or out of the gallery to confer with a member of his staff.

The Hon. P. HOLLOWAY: Section 7(5) of the Acts Interpretation Act provides:

> An Act or a provision of an Act passed after the commencement of this subsection that is to be brought into operation by proclamation will be taken to come into operation on the second anniversary of the date on which the Act was assented to by, or on behalf of, the Crown unless brought into operation before that second anniversary.

Under this provision, all parts of the Livestock Act 1997 will come into operation on 20 March 1999. The only difficulty with that, we are told, is that a number of regulations that will apply to certain parts of the Livestock Act have not yet been completed. There are good reasons for this, which I will mention in a moment. Essentially, all this simple Bill does is remove or exempt the Livestock Act, or certain parts of it, from the provisions of the Acts Interpretation Act so that the implementation of those parts will be delayed beyond 20 March.

The parts of the Livestock Bill which need to be delayed in this manner relate to the Apiaries Act 1931, the Brands Act 1933, and the Branding of Pigs Act 1964. If this simple Bill is passed, those Acts and their associated regulations will remain in force after 20 March. The reason this is necessary is so that the new regulations under the Livestock Act can be properly considered and consultation can take place with the affected industries so that the regulations can be brought into operation shortly. It is my understanding that, in any case, these new regulations would have to be completed by next year or the year after, whenever the competition policy requirements come in. So, I think we can reasonably expect that we will have these regulations shortly.

With reference to the Apiaries Act, I understand that there is an industry consultative paper and that a ministerial task force has been looking at disease control strategies. Due to the complex nature of this issue, the task force reported later than expected. That is why these regulations are not yet in place.

Regarding the Brands Act, I understand that, currently, there are some new developments in Victoria which are leading the national scheme for livestock identification. New microchip technology, which greatly improves and facilitates livestock identification, has been developed in recent years. The improvements in this area have been great even in just the two years since the Livestock Act was first introduced. I understand that that is what has delayed the implementation of the regulations which would bring this new technology into play.

The Opposition accepts that those are very sound reasons for why we should agree to the Bill before us. It will simply extend the operation of the old Acts until these new regulations can be developed in consultation with the industry. We always believe that we are more likely to get better regulation and legislation if we have proper consultation with the industry. So, we are pleased to assist in allowing that to happen. Not only will we support this Bill, but we have agreed for it to be brought on within such a short period of time so that it can come into force before 20 March. We support the Bill.

The Hon. J.S.L. DAWKINS: I wish to make a brief contribution to the debate on this Bill. I thank the Deputy Leader of the Opposition for his support for and understanding of the need for this legislation to go through today. As the Deputy Leader mentioned, the current provisions of the Livestock Act 1997 provide for the commencement of the provisions relating to apiaries and brands as at 20 March this year. This Bill will ensure that the Apiaries Act 1931, The Brands Act 1933 and the Branding of Pigs Act 1964 continue to regulate apiaries and brands whilst new regulations are developed in partnership with those relative industries.

The regulations necessary to underpin the brands changed significantly following the move to a national livestock identification scheme through the ARMCANZ Conference of Ministers for Agriculture and Primary Industries. I will make a few comments in relation to my experience with brands and tattoos.

The Hon. P. Holloway interjecting:

The Hon. J.S.L. DAWKINS: I have not had my ears pierced and I do not have any intention of having that done. I do not know that I want to be branded, either.

Members interjecting:

The Hon. J.S.L. DAWKINS: I will ignore those comments. The importance of identification of livestock should not be understated. I have had a lot of experience in having to brand stock after shearing and also in relation to stud stock, having to do what was never a very pleasant job, namely, tattooing the ears and, in some cases, both ears of sheep. They do not altogether like it so it was not one of the easiest jobs that we had to do.

The Hon. Caroline Schaefer: I used to do the pigs, and they don't like it.

The Hon. J.S.L. DAWKINS: As the Hon. Caroline Schaefer reminds me, I had a little bit of experience in tattooing pigs, and they like it even less than sheep, and they are a bit harder to hang onto. If I can return to the importance of branding, I must say that from the early days of the running of sheep and other stock in this country, farmers and graziers were very proud of their brands, because that was an identification that in many cases was recognised right around the State. Many stock agents could identify that a certain brand belonged to Arthur Whyte from Kimba or a particular breeder or company—a little like some of the brands that are used on wool bales.

Recently, while looking for something else in my files at home, I came across something of which my father was very proud and which he passed down to me, and that was a certificate of registration of sheep brand or brand and tattoo mark, under the fourteenth schedule of the Brands Act 1933 which we have referred to in this legislation. It was for the Central Brands District. It was made out in the name of my father on 5 November 1935. The fee was 10 shillings, which was a reasonably significant sum in those days. It was something of which he was very proud, and I was very proud to take that brand over from him in about 1987.

We had two brands in the family and I was pleased to take that one because it was a blue brand on the top of the shoulder. The other one we had was on the near rib and, when you were branding sheep with that one, you finished up with most of it on your trouser leg. The one on top of the shoulder was very easy to use, unless the sheep was particularly skinny.

The Hon. T.G. Cameron: That wouldn't have applied to your sheep.

The Hon. J.S.L. DAWKINS: It depended on the season.

The Hon. T.G. Cameron: Nice big fat sheep on your property.

The Hon. J.S.L. DAWKINS: Yes. I know that the Hon. Caroline Schaefer has also indicated the pride of her

father, a former President of this place, in the brand that he had for his stock and the fact that he was able to acquire his father's brand and that it went down through the family. Certainly, there was a lot of pride in the way those brands were used as a means of identification of stock. In the days when I was showing and selling stud sheep, we were very proud about the way in which tattoos were marked in the ears of the livestock.

I do not know a lot about the apiary industry other than that over the years certain apiarists have used part of our property to put their bees on for periods of time, and I suppose I have had a bit of honey from those people at different stages in my life. I do not profess to know anything about their industry. However, the members of that industry are currently considering recommendations on future strategy for disease control, which was developed last year by the ministerial apiary industry task force. The new regulations will be developed after this consultative process has been completed.

I support this Bill. It may not seem of great import to some people in our community today but it is important to provide some certainty for some important sections of our primary industry sector. It will allow the new regulations to be developed in partnership with industry, and it is very important that the participants in those industries have some ownership. I have pleasure in supporting the Bill.

The Hon. T.G. CAMERON: The Government has recently committed to the introduction of a national livestock identification scheme for the livestock industries of the State. The regulations dealing with apiaries and livestock brands were expected to commence before the end of March 1999, when the Livestock Act 1997 was enacted. The regulations to underpin brands changed significantly following a move to a national livestock identification scheme through ARMCANZ.

The Bill before the Council will ensure that the Apiaries Act 1931, the Brands Act 1933 and the Branding of Pigs Act 1964 will continue to regulate apiaries and brands while new regulations are developed in partnership with industry. I fully support the concept of consultation and developing these regulations in consultation and partnership with the industry.

The apiary industry is currently considering recommendations in a future disease control strategy developed by a ministerial task force. This Bill essentially maintains the existing arrangements with branding. I am informed that due to the complex nature of this issue the task force reported later than expected. This Bill will allow the new regulations to be developed in partnership with industry and ensure the continuation of regulation of the brands for apiary and livestock industries. Basically, it is an extension of the life of the current Act.

My office contacted the Farmers Federation, which strongly supports the Bill and expressed real concern and disappointment if it did not pass because it could create a lot of consequential problems. SA First supports the legislation.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indications of support.

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

LISTENING DEVICES (MISCELLANEOUS) AMENDMENT BILL

In Committee (resumed on motion.)

(Continued from page 924.)

Clause 8.

The Hon. IAN GILFILLAN: I seek leave to withdraw my amendment regarding serious offences.

Leave granted.

The Hon. IAN GILFILLAN: I think it appropriate to put these remarks into this context. First, I feel more relaxed about withdrawing the previous amendment on the basis that we have been successful in getting the Public Interest Advocate in place. Secondly, I have been persuaded by the Attorney's contribution to the argument and by the Hon. Nick Xenophon's spelling out of some of the complications of what was my intention. With that behind us, I move:

Page 4, after line 34—Insert the following subsection:

(4a) The applicant for a warrant must, as soon as practicable after being notified of the time and place of the hearing of the application—

(a) notify the Public Interest Advocate of the time and place of the hearing; and

(b) provide the Public Interest Advocate with a copy of the application and affidavit verifying the grounds of the application,

so as to enable the Public Interest Advocate to carry out the Advocate's function under this Act.

This amendment is consequential on the earlier Public Interest Advocate amendment.

The Hon. K.T. GRIFFIN: I support this amendment because it is consequential on the amendments carried in relation to the office of the Public Interest Advocate.

Amendment carried.

The Hon. IAN GILFILLAN: I move:

Page 5, after line 2—Insert the following paragraph:

(aa) the extent to which the privacy of a person would be likely to be interfered with by use of the type of device to which the warrant relates; and

In the Democrats' view, this is a very significant amendment. I am pleased to recognise the support that has been implied to me from the Opposition on this. It replaces in the Act what has been left out of 'the emphasis on the privacy of a person likely to be interfered with by use of the type of device to which the warrant relates'. It may be relevant to remind the Committee of what I mentioned earlier in my second reading contribution. On 4 January this year the *Advertiser* editorial made the following point:

Police or any other agency must never have free rein to eavesdrop or worse on citizens. The right of privacy may have been sapped by technology but it remains a right. As technology advances, upholding that right seems to be as much a judicial function as ensuring a fair trial and ignoring executive pressure. The legislation will doubtless be examined in detail when State Parliament resumes next month. We would expect nothing less and would hope that any civil libertarians in the legislature take a suitably critical stance.

That is what this very simple amendment does. It reassures both Parliament and the public that the judge assessing the merits of the case of the warrant must take into account the privacy of the person who, as I quote from my own amendment, 'would be likely to be interfered with by use of the type of device to which the warrant relates'.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. I did deal with this issue at some length in the second reading reply. One has to look at proposed new section 6(6), which provides:

A judge may issue a warrant if satisfied that there are in the circumstances of the case reasonable grounds for issuing the warrant.

So, the judge has to be satisfied that there are those reasonable grounds, remembering that this is a warrant for the installation of the device and that it is not in respect of the way in which the information collected will be used. The way in which the information is used is a matter for the court. Frequently, a lot of material that is received from telephone interception or listening device installation is just not used in the court process because it is not relevant to the case. We have to be careful to distinguish in our own minds that this is about authority to install the device. It is not about whether or not the information gathered is admissible or is to be used or what the quality of that material may be in relation to the investigation and ultimate charge that may be laid.

In saying that and saying also that the judge must have reasonable grounds for issuing the warrant, the judge has to take into account the gravity of the criminal conduct to which the investigation relates, the significance to the investigation of the information sought to be obtained, the likely effectiveness of the use of the listening or surveillance device in obtaining the information sought, the availability of alternative means of obtaining information, any other warrants under this Act applied for or issued in relation to the same matter, and any other matter that the judge considers to be relevant.

It is a well recognised principle of statutory interpretation that legislation which authorises intrusion into an individual's property and privacy will be strictly construed. There is evidence of that in the fact that there are some applications which are rejected. Privacy is a factor which a judge will take into consideration, but the privacy question is not so much related to the installation of the device but to the use to which one puts the information that is gathered. That is ultimately for the court processes: it is not a matter for the judge to determine in identifying whether or not a warrant ought to be granted.

The Hon. NICK XENOPHON: I would be grateful if the Attorney could elaborate on his explanation to this extent: from my discussions with the Hon. Ian Gilfillan I understand that this paragraph that the Hon. Ian Gilfillan seeks to insert was in the Act itself. Effectively, the Attorney wants to remove a section of the Act.

The Hon. K.T. GRIFFIN: The theme of the legislation is that for a listening device you still need a warrant which grants authority both to install and to use. For a video surveillance device a warrant will be required not to use but to install, because at the moment it is not illegal to undertake video surveillance from a public location—the police already do that. As I explained when I introduced the Bill, law enforcement officers presently have the authority to undertake video surveillance from either private property in respect of which they have permission to be present or from public property such as roads, parks, public buildings and so on.

When we looked at extending this legislation to authorise law enforcement officers to apply for a warrant to be able to install a video surveillance device on private property, we were concerned to try to avoid the risk that, by applying the requirement of being concerned about privacy, it would have an indirect bearing on the surveillance from public property or from property in respect of which approval had been given by the owner to install the device. It is an important issue as we do not want to constrain the operative rights of police to undertake their surveillance from public or other property in respect of which they have authority to undertake that surveillance by imposing a constraint about the installation which might impact upon what they can do lawfully at the moment.

So, there is a distinction between listening devices and video surveillance devices and there is a distinction between what the warrant allows for listening devices on the one hand and video surveillance devices on the other. In the context of all the matters the judge has to take into account, it is my understanding that the requirement to be satisfied upon reasonable grounds is the overriding determinant as to whether or not the warrant will be issued.

The Hon. NICK XENOPHON: Further to the Attorney's explanation, he is indicating a dichotomy between the installation and use of a listening device. I understand the Attorney's concern is that the installation not be unduly fettered in the context of having privacy considerations—

The Hon. K.T. Griffin: That's right.

The Hon. NICK XENOPHON: The Attorney indicates that that is the case. Surely in the context of the clause that the Hon. Ian Gilfillan is seeking to insert, taking into account whether the privacy of the person would be likely to be interfered with by the use of the type of device to which the warrant relates, if we are looking to the issue of installation clearly that would not be a significant factor. Its weight would be diminished, but it would still be a factor to be taken into account. Given the wording of the Hon. Ian Gilfillan's amendment, which refers to use, if the Attorney's concern is with respect to installation, the fact that the Hon. Ian Gilfillan's amendment refers to 'use' as distinct from 'installation' should go some way to ameliorating the Attorney's concerns.

The Hon. K.T. GRIFFIN: There is a difficulty with the amendment and it is that, although the amendment relates to use, you have to read it so that, in the context in which 'use' is referred to, it is the extent to which the privacy of a person would be likely to be interfered with by the use of the type of device to which the warrant relates. So, in terms of video surveillance you are broadening the issues which will impinge upon the judge's determination because, although the warrant is applied for on the basis that the device will be installed (and thereafter what comes out of the use of it is a matter for the courts), this does extend the issues which the judge is required to have regard to in relation to video surveillance devices and the issue of privacy, even though the warrant relates to installation.

The Hon. NICK XENOPHON: I thank the Attorney for his explanation but, as I understand the current legislation (section 6(6)(b)(i), which relates to the issue of a warrant—and I understand that it does not relate to installation), the proposed amendment of the Hon. Ian Gilfillan mirrors that wording precisely. Given that subsection (6) refers to a number of factors that the judge must take into account, including the gravity of the criminal conduct, the significance of the investigation, the likely effectiveness of the use of a listening or surveillance device, the availability of alternative means of obtaining the information, any other warrants and any other matter the judge considers relevant, surely the amendment proposed by the Hon. Ian Gilfillan is simply another factor to be taken into account that could not possibly unduly fetter the exercise of the judge's discretion. It simply reflects the existing wording of the Act, notwithstanding the dichotomy between installation and usage. I would have thought that it would necessarily be read down, given the wording of the amendment and given the Attorney's concern with respect to usage.

The Hon. K.T. Griffin interjecting:

The Hon. NICK XENOPHON: I am referring to section 6(6)(b)(i), which provides:

. . . a judge may issue a warrant under the section if satisfied. . .

(b) the issue of the warrant is justified, having regard to—

(i) the extent to which the privacy of any person would be likely to be interfered with by use of a listening device pursuant to the warrant.

It goes on to mention the gravity of the criminal conduct and a whole range of other factors that mirror the amendment.

The Hon. CAROLYN PICKLES: We are not convinced by the Attorney that this would unduly flatter the judge, so we believe that on balance we should support this in this Chamber. The Attorney is opposing it vehemently. Let us see how it comes out of the other House and, if necessary, it can be sorted out in a conference. On balance, I think that we would prefer to have it in.

The Hon. T.G. CAMERON: I will not be supporting the amendment.

The Hon. K.T. GRIFFIN: Obviously, this matter will go to a conference, but it may be possible to limit it to listening devices rather than to video surveillance and tracking devices. For all the reasons that I have indicated, it was deemed appropriate in terms of drafting to take out the provision. It was taken out very largely because of the issue of surveillance devices and tracking devices being included, for the reasons that I have indicated. If we have another look at it on the basis that it appears that there will be support for it, it may be possible to leave that reference in but to limit it to listening devices, which would then reflect the provisions of the existing Act but would not compromise the issue of warrants in relation to surveillance devices and tracking devices. I continue to indicate my opposition to the amendment but indicate that if I lose the vote, as it appears that I will, then it is an issue that will certainly be the subject of further consideration.

The Hon. IAN GILFILLAN: As occasionally occurs, the Attorney is gracious in defeat. But he does reflect what has been a constructive aspect of this debate. There is no reason why we cannot revisit this. As far as I am concerned, it is not a closed book when we reach the point of moving amendments. I certainly would be prepared to look intently at what the Attorney raises as a difficulty, but I do not intend to sit back and let any emphasis on privacy be diminished through the lack of proper amendment to the Bill. I appreciate what appears to be majority support and indicate that I am prepared to discuss it and look further at it farther down the track.

Amendment carried; clause as amended passed.

Clause 9.

The Hon. IAN GILFILLAN: I move:

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

(h) the applicant must, as soon as practicable after the issue of the warrant, forward to the Public Interest Advocate a copy of the application, the affidavit verifying the grounds of the application and the warrant.

This is consequential on an earlier amendment.

The Hon. K.T. GRIFFIN: We do not oppose this.

Amendment carried.

The Hon. IAN GILFILLAN: I move:

Page 8, lines 27 to 29—Leave out paragraph (h) and insert the following paragraph:

(h) the applicant must, as soon as practicable after the issue of the warrant—

(i) forward to the judge an affidavit verifying the facts referred to in paragraph (c) and a copy of the duplicate warrant; and

(ii) forward to the Public Interest Advocate a copy of the affidavit verifying the grounds of the application and the duplicate warrant.

This amendment is also consequential. It includes in the wording the public interest advocate aspect of what is already in the Bill.

Amendment carried.

The Hon. IAN GILFILLAN: I move:

Page 8, after line 6, new section—Insert the following section after the new section 6AB:

6ABA. (1) If—

(a) a listening device is used in contravention of section 4; or

(b) a condition or limitation contained in a warrant authorising use of a listening device is not complied with,

information derived from the use of the device will be inadmissible as evidence against a person charged with an offence unless the court is satisfied that the interests of justice require the admission of the information as evidence despite that illegality.

(2) If—

(a) any premises, vehicle or thing is entered or interfered with for the purposes of installing, using, maintaining or retrieving a surveillance device and a warrant should have, but had not, been obtained to authorise the entry or interference; or

(b) a condition or limitation contained in a warrant authorising such entry or interference is not complied with,

information derived from the use of the device will be inadmissible as evidence against a person charged with an offence unless the court is satisfied that the interests of justice require the admission of the information as evidence despite that illegality.

This amendment is to emphasise quite clearly that evidence obtained illegally is inadmissible in court except under extraordinary circumstances. The last paragraph of my amendment provides that information derived from the use of the device will be inadmissible as evidence against a person charged with an offence, unless the court is satisfied that the interests of justice require the admission of the information as evidence despite that illegality. That paragraph indicates that it is not a total blanket exclusion of evidence that may have been derived illegally, although I do not want to indicate any tolerance on my part that the police should take this as an invitation that they can acquire evidence in whatever manner they see fit, even illegally, with the presumption that they will be able to use it to their advantage in court.

The message should clearly be that, if it is illegally obtained, it will be inadmissible. But I bring to the attention of members in Committee that the final paragraph does allow that for that very rare, I hope, occasion on which the court feels that, in the interests of justice, that information could be admitted.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. The amendment is based on existing section 74E of the Summary Offences Act, which deals with the admissibility of evidence obtained in contravention of section 74D of the Summary Offences Act. Section 74D enacts comprehensive procedures for recording police interviews. The section was enacted to reduce the potential for forced confessions or claims of forced confessions, and it has to be recognised that the law surrounding confessions has traditionally been a special area. I submit to the Committee that the

use of listening devices or surveillance devices can be contrasted in one essential respect.

Unlike with confessions, the issue is not whether the evidence is false, induced or could be subject to claims of its being false. Generally, the question is whether the evidence was obtained by taking illegal or improper steps. That is a very important distinction. The Government's view, as I indicated at the second reading stage, is that the well-recognised principles set down in the case of *Bunning v Cross* deal more than adequately with the admissibility of evidence obtained illegally or by improper activity. I remind members of the principles in *Bunning v Cross* that, when considering whether to admit evidence obtained illegally, a trial judge must balance the apparent conflict between the desirable goal of bringing the wrongdoer to conviction and the undesirable effect of a court approval or even encouragement being given to the unlawful conduct.

The principles by which there is discretion to admit or exclude evidence obtained by illegal means are well settled, but they must in the Government's view be left to the discretion of the trial judge to be exercised on the facts of each individual case. In relation to listening devices, I am not aware of difficulties that have occurred in relying on the decision in *Bunning v Cross* to determine admissibility of evidence obtained by the use of a listening device in the 27 years that the Listening Devices Act has been in operation. When something is working well why begin to codify it? That opens it up to perhaps a different sort of scrutiny involving legal issues and challenges all because we have moved away from reliance upon what is effectively the common law.

The Hon. NICK XENOPHON: I ask the Attorney to elaborate on that. Did he say that in the past 27 years there have been no cases?

The Hon. K.T. GRIFFIN: No, I did not. I said that I was not aware of any cases where there had been difficulties. There may well have been cases. From time to time, cases may come up where evidence is declared inadmissible for one reason or another. When I say that I am not aware, it is only because no-one has drawn my attention to particular problems which I can recollect about the way in which this has been administered.

I remind members that, under the provisions of the Listening Devices Act, the Attorney-General of the day is required to receive from the Police Commissioner particulars of all warrants which are issued or cancelled, or have expired. I do receive that information; I do not receive information about warrants which have been applied for but refused. There is no good reason for that sort of information to be received.

If there is a case of special importance where the evidence has been ruled inadmissible because it has been improperly obtained, that can happen for a variety of reasons, but I cannot recollect—certainly within the period in which I have been Attorney-General—a case where evidence obtained as a result of the use of a listening device has been ruled inadmissible. If that becomes a key issue for the honourable member, all that I can do is make some more direct inquiries and obtain that information, which I would then undertake to provide to him before the Bill is finalised in Parliament.

The Hon. NICK XENOPHON: From a brief discussion that I have just had with the Hon. Ian Gilfillan, I understand that the Law Society has some concerns that there are no parameters regarding the admissibility of illegally obtained evidence. Is the Attorney aware of the Law Society's concerns, and does he consider that the rule in *Bunning v Cross* (the common law position) adequately addresses the legitimate concerns of the Hon. Ian Gilfillan?

The Hon. K.T. GRIFFIN: I am aware of the Law Society's concerns. I do not think they are well founded, but the Law Society is entitled to that view. Within the legal profession there are competing views, not necessarily just between defence and prosecution lawyers, about where you should draw the line. My advice is that the rules set down in *Bunning v Cross* work properly and do not create problems. The principles are well established. Ultimately, it comes down to a trial judge making a judgment in the context of a particular case about whether because of its weight the evidence is admissible.

The Hon. IAN GILFILLAN: When I moved my amendment, I think indicated that I believed it was flexible enough not to exclude occasions when there are sound reasons for using illegally acquired evidence. Unless there is a section in the Act which makes this clear, we are working on the presumption that evidence obtained illegally is inadmissible.

I see no danger in spelling out in the Act that, if the evidence is acquired by illegally placing a listening device, the expectation should be that that evidence will be inadmissible. It will then be up to the court. If there are particular overriding reasons, under those rare circumstances that evidence can be admissible. So, it is not a total veto. I believe that my amendment puts the right signal into the legislation.

The Hon. K.T. GRIFFIN: I am advised that what is provided in the proposed amendment is stricter than *Bunning v Cross*. What is in the amendment relates to confessions, not to obtaining evidence merely by observation. Ultimately, the admissibility of that evidence will be determined by the court. I come back to the point that, as far as I am aware, it has worked well enough for 27 years. Why change it? You have a good system operating, the courts are working with it. Why introduce what is, in effect, a stricter test which is developed from an admissibility of confessions issue and which is applied to something that is totally different?

The Hon. A.J. REDFORD: I will make one comment about this, and that is that I am not sure—and no-one can be—what the effect of this will be or how a court will look at this section. It might say that, obviously, it must be different from *Bunning v Cross* and try to read something into it which none of us intend. The *Bunning v Cross* principles have been well developed and applied over many years. As the Attorney said, I am concerned that we might bring in some new notion or principle that will create a whole new plethora of cases that might lead to a whole new branch of the criminal law that is different from *Bunning v Cross*.

One great thing about *Bunning v Cross* is that it is applied almost universally irrespective of the nature of the evidence that is given. Anyone who walks into a court who has any experience in this area knows what it means and what it is. There might be some debate about how it is to be applied. That will always occur in the criminal courts where some judges take a tougher line than others. I do not think I am giving away any secrets by saying that.

However, if this amendment is inserted, the Full Court will probably devote itself to a series of cases in an attempt to decide how this is different from *Bunning v Cross*, because there will be a school of thought that Parliament obviously wanted this in for a reason, that it was not happy with what was happening with *Bunning v Cross* and how it was being applied, and the judges will try to interpret something different. I could not predict from reading this amendment

whether a court might be more inclined to exclude or accept the evidence.

We are not really giving the courts any policy direction with the words of this provision, but they may well try to find one that we might have to come back and fix later. If the honourable member can cite some examples of cases in which *Bunning v Cross* has not worked, that is fine, let us visit those cases, but I am not sure that anything has been indicated to the contrary.

In response to my questions regarding the discretion of a trial judge to admit evidence relating to section 4 and section 7 defences, the Attorney referred to a number of cases. With due respect to the drafter of this clause and the honourable member—and I have some sympathy for the fact that he is trying to protect ordinary people and ensure compliance with the law—I am not sure how it would apply in a case involving the admissibility of a conversation which was not recorded by any authority but which was recorded privately.

For example, I might be in breach of section 4 but I might not come within the defence of section 7. I will just explain that to members who have puzzled looks on their faces. Section 4 provides that listening devices are not allowable but section 7 states that, if a person is prosecuted for having a listening device, certain defences are available, one of which is if a person has a lawful reason or excuse for having such a device. That is used commonly in the private context. As I said in my second reading speech, a lot of people walk around with tape recorders in their pockets now.

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: The honourable member says that some people keep them in drawers of desks. I look forward to a further contribution on that one day.

The Hon. T.G. Cameron: Just check the top right-hand drawer of any desk in—

The Hon. A.J. REDFORD: The honourable member refers to another potential example. I am not sure how this clause would apply to that circumstance. Would that be excluded in relation to the discretion under section 7? I dare say that one day a judge will decide whether it does or does not, and another judge might say that the section 7 defence is not made out so it was an unlawful use of a listening device. The case of *T v The Medical Board*, referred to by the Attorney-General in his response to me, is just such a case: that it was an unlawful use of a listening device. However, it was admitted in the exercise of their discretion. I suspect a court would say that section 6ABA applies in that case, but a court might well say that section 6ABA deals only with section 4, not section 7, so it decided to go back to *Bunning v Cross* principles in relation to that. I am not sure that we need to flirt with the law.

There is another issue that I want to raise, and technically I should perhaps have raised it earlier in the debate. However, with the disjointed way in which we are dealing with this matter in Committee I got called away.

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: I am glad the honourable member shares that concern. If I am ever in trouble, I have got one. It has been raised with me that another way to protect the wrongful or unlawful use of these devices would be to require a higher threshold of having a reasonable cause to suspect, and I know that we have dealt with clause 8. That has been suggested to me by a couple of criminal lawyers. I must say, though, that—

The Hon. T.G. Cameron interjecting:

The Hon. K.T. Griffin: Issue a warrant on reasonable grounds.

The Hon. A.J. REDFORD: That is different from a reasonable cause to suspect that a crime is being committed, with due respect to the Attorney. I note that this follows the same model as we used in the police undercover legislation, and Parliament looked at that very closely. It was an issue that was raised with me, and I feel a duty to raise it. I understand that approach was adopted in section 52 of the Controlled Substances Act. I may well have answered my own question, but I need to fulfil my responsibility in raising the issue.

The Hon. T.G. CAMERON: I thank the Hon. Angus Redford for his contribution, because it clarified my thinking on this issue a little bit. To be honest, I am not quite sure precisely of the principles of the court case to which the Attorney-General referred, that is, *Bunning v Cross*. The comment which the Hon. Angus Redford made and which weighed on my mind was that he could not tell whether or not the Gilfillan amendment would be more or less tight than the principles outlined in the *Bunning v Cross* case. That causes me some concern because, by all reports, the Hon. Angus Redford is an experienced lawyer, certainly far more experienced than I am, so if he cannot tell, I am not sure how I am going to tell.

I therefore direct my question to the Attorney-General. Is he able to throw any light on this? If we do not know where we are going with this, we had better not move at all; we had better stay with *Bunning v Cross*. Otherwise, we might be taking a course of action that could make it easier for criminals to have evidence thrown out of court. Can the Attorney-General comment on that matter? Would the Hon. Ian Gilfillan's amendment make it easier or tougher for criminals to have evidence not admitted?

The Hon. K.T. GRIFFIN: I am happy to try to answer that, even though this is the Hon. Mr Gilfillan's amendment. I come back to the point that I made earlier, that is, that the Hon. Mr Gilfillan's amendment is a direct lift of the provisions in the Summary Offences Act that deal with confessions. Those provisions have been interpreted by the courts more strictly than other areas of evidence.

The Hon. Angus Redford is correct. I suspect that the enactment of this clause would open the way for even more challenges in the courts to determine what it really means when it is set against the principles of *Bunning v Cross*. The concern is that this amendment, by virtue of the way in which it has been construed by the courts so far in relation to confessions, would be regarded more strictly than the principles under *Bunning v Cross*. So, those sorts of issues would arise.

It is because the provision is lifted from that area of the law which deals with confessions, and have been interpreted fairly strictly and translated across to a totally different area. By that I mean the way in which evidence is obtained, not whether or not a confession has been beaten out of somebody, but that facts have been obtained by observation through video surveillance, through audio listening devices or tracking devices. The concern is that courts would then have to apply the stricter standards set under the provisions of the Summary Offences Act, as they apply to confessions, to the listening devices, surveillance devices and tracking devices area more strictly than the principles of *Bunning v Cross* which, as I said earlier, have been applicable for whatever period *Bunning v Cross* has been in effect as a decision of the court, principles which are generally fairly well interpreted.

The Hon. CAROLYN PICKLES: We now have three legal viewpoints and—

The Hon. A.J. Redford interjecting:

The Hon. CAROLYN PICKLES: Sure. This was an issue in part that the Opposition queried during the second reading debate by way of a question to the Attorney, who raised the principles of *Bunning v Cross* in his second reading reply. It is my intention to support the amendment at this stage and further pursue it in a conference.

The Hon. NICK XENOPHON: After listening to the arguments of the Hon. Ian Gilfillan, the Attorney and others who have contributed to the debate on this clause, I indicate that I will not support the Hon. Ian Gilfillan's amendment. It is fairly finely balanced, but I do see a distinction in section 74E of the Summary Offences Act, which talks about the admissibility of evidence of an interview. I see an interview context as being quite discrete from the circumstances here of admissibility in the context of a listening or surveillance device.

I do have a great deal of faith in the common law and in the fact that the common law does have a degree of flexibility that can look at individual cases. If there is evidence of illegality, that is certainly a factor which can be taken into account and which can be the subject of argument as to whether or not it is admissible. For those reasons, with some reluctance, I cannot support the amendment.

The Hon. IAN GILFILLAN: I have appreciated the constructive discussion and debate on this amendment. I am not a practising lawyer or a qualified lawyer, but I do try to be a legislator. To rely on common law in a matter which has been emphasised by the Law Society and which has been recognised in an area that is a quite substantial extension of police powers and capacities to extract evidence, it is an advantage to have it clearly spelt out in statute law. It would be a pity if we do not have in the eventual Act a clear indication so that there can be no misunderstanding that, if the legal acquisition of evidence is flaunted, there would be an expectation that that evidence will not be admitted. If there is any confusion in that respect, there will be the scope for abuse of the privacy by misuse of these powers by the police.

The Hon. A.J. Redford: Isn't the public interest going to look after all that?

The Hon. IAN GILFILLAN: There are obviously quite detailed refinements on the discussion, but my simple approach to it is that it is important that the legislation has the clear message that we as legislators want to put it out to the public and those in the public who are acting to obey this law. That is why I have strong support for including this amendment in the Act, recognising that the contributions of both the Hon. Angus Redford and the Hon. Nick Xenophon have indicated that there is evidence in the practice of law which should set our minds at rest.

I acknowledge the Attorney—he has been saying that for some time. I recognise that, and I acknowledge that they speak from more intimate, first-hand knowledge than I. However, I am in the position of being a simple member of the public and, if I can see quite clearly in an Act of Parliament that evidence illegally acquired will not be admissible in court, that is a pretty simple message that I understand and appreciate.

Members interjecting:

The Hon. IAN GILFILLAN: I am not going to acknowledge one of those interjections. I gather from the Committee that I may lose on the voices, in which case I will not divide.

The Hon. T.G. CAMERON: I indicate my opposition to the amendment.

Amendment negatived; clause as amended passed.

Clause 10.

The Hon. IAN GILFILLAN: I move:

Page 11—
Line 8—Leave out 'following paragraph' and insert: following paragraphs
After line 14—Insert the following paragraph:
(d) the information furnished to the Minister by the Public Interest Advocate in relation to the year ending on the previous 30 June.

These amendments are consequential.

Amendments carried; clause as amended passed.

Clause 11.

The Hon. IAN GILFILLAN: I move:

Page 11, line 19—Insert the following subsection before the current contents of new section 6C (now to be designated as subsection (2) of new section 6C):

(1) The Commissioner of Police and the National Crime Authority must—

(a) keep as records a copy of—

(i) each application for a warrant under this Act; and

(ii) each affidavit verifying the grounds of an application for a warrant; and

(iii) each warrant issued under this Act; and

(b) control and manage access to those records,

in accordance with the regulations.

This amendment relates to keeping records, the application of a warrant under this Act and the affidavit. My understanding of the Bill is that the requirement to keep records does not oblige the Police Commissioner to keep a record of the affidavit verifying the grounds of the application. I believe that this amendment is effective in making sure that a full, and what I regard as an appropriate, record of the applications will be kept.

The Hon. K.T. GRIFFIN: I just cannot understand the rationale for it. If the honourable member had some knowledge of what happens in the courts, he would know that courts keep records of every application and all the documents and papers relating to particular applications, whether they are for telecommunications interception warrants, listening device warrant applications, or just the general civil or criminal cases. So, the records are there; they are always kept.

I must confess that I just cannot understand why this is a necessary obligation upon the police and the National Crime Authority because, ultimately, I would have thought that, if anybody wanted to audit (and the Police Complaints Authority is required to do that in relation to the police), we would find very quickly whether or not there was a problem with the record keeping at least on the part of the police. But, more particularly, the information is already available in the courts.

The Hon. NICK XENOPHON: As I understand it, the police are required under the Act to keep a copy of the warrants. What difficulty could there be simply to ensure that the file is complete in terms of having the affidavit and the application as part of it? I would have thought that it is not an onerous or unreasonable provision that the Hon. Ian Gilfillan is seeking.

The Hon. K.T. GRIFFIN: There are a couple of issues. First, I doubt whether we can actually bind the National Crime Authority, but I have not really applied my mind to that. More particularly—

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: My understanding is that the process at the moment is—

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: Well, they comply with our laws, but I do not know whether you can compel a Commonwealth instrumentality to do it. But that is to one side. The process at the moment is that the records are kept by the courts. If, after three years, the matter is not current, the warrants are returned to the police and the police keep the records. I am told that they have not culled any yet, but there will come a stage where they will need to cull the records. If they are 20-year-old warrants you have to ask, 'What is the point of keeping 20-year-old warrants?' This does not recognise the desirability of ultimately getting rid of a lot of those very old records. At the moment it can be done administratively, but I am told that the police keep all these records and the courts keep them if the matter is still current after three years and, if it is not current, the records go back to the police and the police retain them. While they have not culled them up to the present time, ultimately they may have to.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment. It does not seem to be an onerous provision. Given the indicated advice of the Attorney previously, I cannot see why he has such opposition to it.

The Hon. T.G. CAMERON: As I see this clause, the application will need to be kept, the affidavit will need to be kept and the warrant will need to be kept. Will the Hon. Mr Gilfillan confirm that point?

The Hon. IAN GILFILLAN: The Bill before us requires the retention of the warrant, and the other details are spelt out in subclause (2). I am not intending to alter that but to require the Commissioner to keep a copy of the affidavit verifying the grounds of the application for a warrant. The Law Society put this paragraph to me in asking that this amendment be forwarded:

> The Law Society supports the requirement to set up and maintain a register of warrants.

That is in the Bill. It continues—

> However, the current Bill as drafted contains no provision to include or retain the warrant or the application and the affidavit in support of it. The retention and preservation by the Commissioner of the warrant, the application and any supporting affidavit should be a fundamental requirement for the Register of Warrants under clause 6A(c), otherwise it is quite possible for no record to be maintained of any of these documents, with the potential to cause great problems should their issue ever come into question or need to be justified. Any confidentiality concerns by investigating officers should be allayed by the knowledge that, if sensitive contents are sought by subpoena, they can always be resisted in an appropriate case by a claim of public interest immunity.

As other speakers have said, I do not see it as a particularly onerous addition for the Commissioner to be required to keep copies of the affidavits.

The Hon. T.G. CAMERON: I can follow the Hon. Ian Gilfillan's reasoning in relation to the warrant and in relation to the application for a warrant, but it is my understanding that the affidavit that would set out or verify the grounds of the application for a warrant could contain a great deal of sensitive information—information held by the police force and, I would suspect, the lawyer acting for the defendant, the lawyers acting for the Crown, the Supreme Court judge and the Public Interest Advocate, if that is what we end up with.

I am concerned about this question of the affidavit. First, there is the sensitivity of the information. I wonder whether under the Hon. Ian Gilfillan's model he could let me know who will end up keeping a copy of the affidavit because, the way I see it, the Public Interest Advocate would have a copy, as would the police force, the National Crime Authority, the judge and both lawyers. Even though I may see the rest of the amendment his way, I am concerned about the sensitive information in the affidavits. I would be concerned if we had half a dozen copies of this sensitive material floating around. We are all aware of the lengths to which criminal organisations will go to get access to secret police files. I would have thought that we would want to restrict the number of affidavits lying around and tighten up who might have access to them. Could the honourable member clarify that for me?

The Hon. IAN GILFILLAN: The effect of my amendment would be purely to ensure that the Police Commissioner would be required to keep a copy of the affidavit. That is not a particularly wide or dangerous exposure of confidential material and seems reasonable. I am advised that the NCA keeps that material as a matter of course anyway. As the Attorney observed earlier, our legislation probably has no more than advisory or request impact on the NCA.

The Hon. K.T. GRIFFIN: If we think about it logically we have to say that if there is a court case the information will have to be retained anyway because, if you have gathered information from a listening device, video surveillance or tracking device, if you are to prove your case the prosecution will need that material because there may well be a challenge to the validity or admissibility of the evidence and, going back before that, the basis upon which the evidence was authorised to be obtained. If there is not going to be a prosecution, you have to ask why you want to keep the information. It is not so much the warrant but the information that is gathered.

With telecommunications interception, you may have weeks of surveillance and might just get bits here and there or you may get nothing. What is the point in keeping an affidavit which, as the Hon. Terry Cameron suggests, might have some damaging assertions in it, when the matter is never going to go before a court? That is the practice at the moment. Ultimately you have to cull some records. The Operations Intelligence Branch of SA Police has a regular culling program under the supervision of the Independent Auditor, and ultimately one will have to make some decisions about the material you keep and that which you do not keep. I would have thought that this is unduly restrictive because it prevents you from making those proper decisions.

The Hon. IAN GILFILLAN: I am taking that as a question to me.

The Hon. K.T. Griffin: No, it is a comment.

The Hon. IAN GILFILLAN: The question is, 'Why keep the material?' There is a failure to observe a major intention in the way we are framing this legislation. I go back to privacy and the proper use of these facilities that will be made available through warrants to the police. It is to keep for a reasonable period of time the evidence of justification for or the refusal of the application for the warrants in very well and tightly controlled circumstances. Later, in some part of the legislation there is an allowance for the eventual destruction of the records after a period of time. It is not an indefinite retention of material.

In my view it is not so much a matter of keeping material so that prosecutions can or cannot take place but so that we as the public can be reassured that this process, which is on the extreme edge of police powers using the ultimate in technology (which we have supported; we are pleased for that to happen), is a further step in the safeguarding and we can be reassured that it is not being abused and we can refer back to the data if need be to have reassurance of that.

The Hon. CAROLYN PICKLES: As I have indicated over and over again, we have cooperated with the Government in processing this Bill this afternoon. We have had this rather large group of amendments for only a day and have not had time to consider adequately the full implications of this. Frankly I find this quite unsatisfactory; I would have preferred to have more time. If the Attorney wishes to proceed with this, I will support the amendment to allow it to go to a conference and we will consider it again in another place.

The Hon. NICK XENOPHON: I support the Hon. Ian Gilfillan's amendment to the extent of keeping a copy of the record of the application for a warrant and for each warrant but not for subclause (2), for the reason that the courts will keep a record of this, and the Public Interest Advocate will also presumably keep records of this as a matter of course. I can see the concerns of the Attorney. On balance, given that the courts will, of necessity, have to keep a record of this application and the affidavit, that should allay any concern I have, which forms the basis of the Hon. Ian Gilfillan's amendment. I indicate that I support the Hon. Ian Gilfillan's amendment, save for subparagraph (ii). I seek a direction from the Chair: can I do that?

The CHAIRMAN: Yes, it can be put in two parts. The Hon. Mr Xenophon has asked whether the amendment can be put in two parts. The first amendment is to insert proposed new subsection (1)(a)(i). The second amendment is to insert proposed new subsections (1)(a)(ii) and (1)(a)(iii).

The Hon. T. CROTHERS: I oppose the Hon. Mr Xenophon's amendment for the same reason that my Leader gave when she said that, because of the lack of time to look at the amendments of the Hon. Ian Gilfillan, she would support the Gilfillan amendment so that it could go to conference in order for a determination to be made then, because the conference will have more time to consider the matter. I understand your ruling, Mr President, but if someone wishes to amend an amendment they should, with due courtesy to the members of this Committee, place that on file. That has not been done. Only the Hon. Mr Xenophon knows why that is so.

The CHAIRMAN: The question has been put in such a way that the Committee can retain the first part of the amendment and then have the option of opposing the rest of it. The words are the same: there is no difference.

The Hon. T. CROTHERS: But he wants to take it out. That is why I am opposing his amendment, because he is amending the amendment that we are supporting. That is why I am opposed to the Hon. Mr Xenophon's amendment. He has no amendment to the Gilfillan amendment on file. There may be a number of very valid reasons for that. The reason my Leader put forward in respect of supporting the totality of the Gilfillan amendment is even more justified in this instance, given that we have had even less time to look at the Xenophon amendment.

I am aware of your ruling, Mr President. However, if someone wants to come in here and address a Bill in such a way that they are going to move an amendment to amendments already on file, it is absolutely a must for them to place their amendment to the amendment on file so that we can at least have a look at it instead of doing it at the 11th hour or on the 38th of the 39 steps. I must oppose the amendment on the basis that, whilst it can be done, it does not follow the custom and practice of the manner of dealing with amendments by placing them on the file of this Chamber.

The CHAIRMAN: I will put the question: that proposed new subsection (1)(a)(i) stand as part of the Bill.

Amendment carried.

The CHAIRMAN: We turn now to proposed new subsection (1)(a)(ii).

The Hon. NICK XENOPHON: I want it removed.

The CHAIRMAN: Then the question is that proposed new subsection (1)(a)(ii) stand as part of the Bill.

The Committee divided on the amendment:

AYES (7)

Crothers, T.	Gilfillan, I.(teller)
Holloway, P.	Kanck, S. M.
Pickles, C. A.	Weatherill, G.
Zollo, C.	

NOES (8)

Cameron, T. G.	Dawkins, J. S. L.
Griffin, K. T. (teller)	Laidlaw, D. V.
Lawson, R. D.	Schaefer, C. V.
Stefani, J. F.	Xenophon, N.

PAIR(S)

Roberts, T. G.	Redford, A. J.
Roberts, R. R.	Lucas, R. I.
Elliott, M. J.	Davis, L. H.

Majority of 1 for the Noes.

The CHAIRMAN: Subparagraph (ii) is now struck out. The question now is that the remainder of the amendment of the Hon. Mr Gilfillan be agreed to, namely, (1)(a)(iii) and (1)(b) and the words 'in accordance with the regulations'.

Remainder of Hon. I. Gilfillan's amendment carried; clause as amended passed.

Clause 12 passed.

Clause 13.

The Hon. IAN GILFILLAN: I move:

Page 14, lines 25 to 28—Leave out this clause and insert the following clause:

Substitution of s. 8

13. Section 8 of the principal Act is repealed and the following section is substituted:

Possession, etc., of declared listening or tracking device

8. (1) The Minister may by notice in the *Gazette* declare that this section applies to a listening or tracking device, or a listening or tracking device of a class or kind specified in the notice.

(2) The Minister may by further notice revoke or amend any such declaration.

(3) A person must not, without the consent of the Minister, have in his or her possession. custody or control a declared listening or tracking device.

Maximum penalty: $10 000 or imprisonment for 2 years.

(4) The consent of the Minister under subsection (3)—

(a) may be expressed to relate to the possession, custody or control of a listening or tracking device, or to a listening or tracking device of a class or kind; and

(b) may be expressed to apply to persons of a specified class; and

(c) may be expressed to be subject to such conditions, limitations or restrictions as the Minister considers necessary or expedient.

(5) The Minister may at any time revoke a consent under this section and, on revocation, the consent ceases to have effect.

(6) For the purposes of this section, having the possession, custody or control of a listening or tracking device in contravention of a condition, limitation or restriction imposed by the Minister will be taken to be having the possession, custody or control of that device without the consent of the Minister.

(7) The Minister may by instrument in writing delegate any of his or her powers under this section to a Chief

Executive as defined in the Public Sector Management Act 1995.

(8) A delegation under subsection (7) may be revoked at will by the Minister and does not prevent the exercise of any power by the Minister.

This is a measure to include a listening or tracking device with 'surveillance equipment'. I am concerned that if we do not include tracking devices in this clause of the Bill there will not be the same surveillance and supervision of the use of what is becoming increasingly sophisticated technology. I believe it improves the responsibility of the legislation. I urge members to support my amendment.

The Hon. K.T. GRIFFIN: I oppose the amendment. I have indicated previously that some listening devices have been declared under the Act, because such devices do not have general lawful usage. Generally, the purpose of these declared listening devices is to record, overhear or monitor private conversations to which the person is not a party. That is an offence under the Listening Devices Act. It is not an offence to use a tracking device. What is unlawful is the intrusion upon private property to install such a device. This Bill seeks to give authority for the installation of such a device.

Consequently, it is anomalous to declare tracking devices on the basis that they do not have general legal usage. In addition, there is no evidence to suggest that certain classes of tracking devices are readily available and being used inappropriately. Members may remember that in my second reading reply I identified the fact that since 1985 certain classes of listening device have been declared under the Act. Such devices include: electronic stethoscopes, directive type microphones, a sight laser 3DA complete mobile laser listening system, or laser listening systems of other descriptions. So, I see no point in the amendment.

The Hon. T.G. CAMERON: I support the Hon. Ian Gilfillan's amendment.

The Hon. NICK XENOPHON: I support the Hon. Ian Gilfillan's amendment for the reasons he has given.

Clause negatived; new clause inserted.

Clause 14.

The Hon. IAN GILFILLAN: I move:

Page 15, line 2—After 'listening' insert 'or tracking'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 15.

The Hon. IAN GILFILLAN: I move:

Page 16, after line 6—Insert new paragraph:

(ba) relating to the control and management of records to be kept under this Act, including access to and the destruction of those records; and

Amendment carried; clause as amended passed.

Clause 16 passed.

Schedule.

The Hon. IAN GILFILLAN: I move:

Page 17, lines 12 to 26 (statute law revision amendments to section 8)—Leave out these lines.

Amendment carried; schedule as amended passed.

Title passed.

Bill read a third time and passed.

CONSTITUTION (CITIZENSHIP) AMENDMENT BILL

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

STATUTES AMENDMENT (SENTENCING—MISCELLANEOUS) BILL

Returned from the House of Assembly without amendment.

ECONOMIC DEVELOPMENT BOARDS

The Hon. A.J. REDFORD: I seek leave to make a personal explanation about my being misrepresented yesterday by the member for Gordon on the topic of Economic Development Boards.

Leave granted.

The Hon. A.J. REDFORD: Yesterday, the member for Gordon suggested that the South-East Economic Development Board had been the subject of very unfair criticism from a member of his own Party, and I understand that he was referring to me. My personal explanation is this: I asked a series of questions without any comment concerning the South-East Economic Development Board on Thursday 18 February 1999, and it appears at page 722 of *Hansard*. I also made a comment to the media where I stated:

Unfortunately, unless the process of distributing funds is more open, we are going to get more questions about the role of those boards and who the funds are being distributed to.

They are the only public comments that I have made in relation to Economic Development Boards or the South-East Economic Development Board. I have not made any public criticism, let alone unfair criticism, of the South-East Economic Development Board. I suggest that the member for Gordon should go back over the Privileges Committee report into the conduct of Graham Ingerson tabled in another place on 21 July 1998 and take his own advice from his contribution made in the House of Assembly on 21 July 1998 when he was talking about the standards of the Parliament. I suggest that he carefully check what is or is not said before he goes into Parliament and accuses me of doing things that I simply have not done. I hope that the member for Gordon will take more trouble and care in the future and, indeed, will take a leaf out of my book and apologise on the basis that he has been caught out.

ADJOURNMENT

At 6.20 p.m. the Council adjourned until Tuesday 23 March at 2.15 p.m.