LEGISLATIVE COUNCIL

Tuesday 30 October 2001

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

OMBUDSMAN'S REPORT

The PRESIDENT laid on the table the annual report of the Ombudsman for the year 2000-01.

PAPERS TABLED

The following papers were laid on the table:

By the Treasurer (Hon. R.I. Lucas)—

Reports, 2000-01—
- Adelaide Convention Centre
- Adelaide Entertainment Centre
- Department of Premier and Cabinet
- South Australian Government Captive Insurance Corporation
- South Australian Motor Sport Board—Independent Audit Report
- South Australian Tourism Commission

By the Minister for Industry and Trade (Hon. R.I. Lucas)—

Department of Industry and Trade—Report, 2000-01

By the Attorney-General (Hon. K.T. Griffin)—

Reports, 2000-01—
- Industrial and Commercial Premises Corporation
- Land Management Corporation
- South Australian Classification Council

Regulation under the following Act—
- Maritime Services (Access) Act 2000—Ardrossan

Information Industries Development Centre—Charter

By the Minister for Transport and Urban Planning (Hon. Diana Laidlaw)—

Reports, 2000-01—
- Animal Welfare Advisory Committee
- Commissioners of Charitable Funds
- South Australian Housing Trust
- Wilderness Protection Act 1992

Corporation By-laws—
- Marion—
  - No. 1—Permits and Penalties
  - No. 2—Signs
  - No. 3—Local Government Land
  - No. 4—Dogs
  - No. 5—Streets and Roads
- Port Adelaide Enfield—
  - No. 1—Permits, Offences, Penalties and Repeal
  - No. 2—Moveable Signs
  - No. 3—Local Government Land
  - No. 4—Roads
  - No. 5—Dogs
  - No. 6—Lodging Houses

Development Act 1993—Report on the Interim Operation of Salisbury East Policy Area Plan Amendment Report

By the Minister for Disability Services (Hon. R.D. Lawson)—

Department of Human Services—Report, 2000-01.

SELECT COMMITTEE ON CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (MISCELLANEOUS) AMENDMENT BILL (No. 2)

The Hon. K.T. GRIFFIN (Attorney-General): I bring up the report of the committee, together with minutes of proceedings and evidence, and move:

That the report be printed.

Motion carried.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (MISCELLANEOUS) AMENDMENT BILL (No. 2)

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

That the bill be not reprinted as amended by the select committee and the bill be recommitted to a committee of the whole Council on the next day of sitting.

Motion carried.

SOCIAL DEVELOPMENT COMMITTEE

The Hon. CAROLINE SCHAEFER: I bring up the report of the committee and move:

That the report be printed.

Motion carried.

SIGNIFICANT TREES

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to make a statement on the state's significant tree package.

Leave granted.

The Hon. DIANA LAIDLAW: I am pleased to advise that last night at the Royal—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: I am sure the Burnside council will appreciate this statement. I am pleased to advise that last night at the Royal Australian Planning Institute's awards for planning excellence, held in Canberra's National Convention Centre, the state government's significant urban tree package won the award for urban planning achievement. This award is recognised as Australia's most prestigious town and regional planning award. In presenting the award it was noted that the award jury was particularly impressed by the innovative and comprehensive nature of the package, as well as its obvious benefits to local communities throughout Adelaide.

In noting this award today, I wish to acknowledge and thank all honourable members in this place and the other place for their role in passing the legislation in April 2000, which provided the legal framework to stop the indiscriminate destruction of our most beautiful and significant trees in the Adelaide metropolitan area. It has been only with enormous goodwill by members of parliament and the wider community that the workable processes to protect significant trees have been established in this state. Certainly an instrumental role was played by the reference group established by the government in January 2000 to prepare a workable legislative package to protect significant trees.

This working party, chaired by the Hon. Bob Such, included representation from Planning SA, the Local Government Association, the Royal Australian Planning Institute, the Urban Development Institute of Australia, the Housing Industry Association, the National Environment Law

Association, the Conservation Council and the Department for Environment and Heritage. Overall the package is an excellent example of the government working across the community and our shared commitment to protecting the South Australian environment. It also shows how quickly new measures can be put into practice to address pressing issues like the protection of Adelaide's most significant native and exotic trees.

I take this opportunity to remind all members that, as required under the legislation, the provisions protecting significant trees will be reviewed next year, following the completion of plan amendment reports by those councils that have chosen to list significant trees under the 2.5 metre circumference benchmarks.

PALLIATIVE CARE

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table a ministerial statement issued today by the Hon. Dean Brown, Minister for Human Services, relating to palliative care, together with a report to parliament on palliative care in South Australia 2001.

Leave granted.

QUESTION TIME

FESTIVAL OF ARTS

The Hon. CAROLYN PICKLES (Leader of the Opposition): My questions, which are to the Minister for the Arts, regarding the 2002 Adelaide Festival, are as follows:

1. Did the minister approve the advertising campaign featuring Hitler as an artist, which is in direct conflict with the Premier and the community generally?

2. Have previous Festival advertising and publicity campaigns, including last Festival's Madonna poster—

The Hon. Diana Laidlaw: Last Festival's?

The Hon. CAROLYN PICKLES: Last Festival's.

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! I have called for order.

Members interjecting:

The PRESIDENT: Order! I have now called for order twice.

The Hon. CAROLYN PICKLES: —been scrutinised by the government's advertising committee as now demanded by the Premier? If not, why not, or is this a new process for the Festival?

3. What was the cost of the advertising campaign featuring Adolf Hitler?

The Hon. DIANA LAIDLAW (Minister for the Arts): I believe the first question was whether I approved it: no, and I have said that publicly before, and nor do I see it as my role to do so. I thank the Hon. Nick Xenophon for his astute remarks in relation to the Adelaide Festival and my role as minister, as I performed the role, like all ministers before me, with some respect for the sensitivity of political and government interference in the artistic programming of the Festival.

I would not change that practice, notwithstanding the urgings of the Labor Party and, in particular, Mr Rann and the Hon. Carolyn Pickles. I am not too sure what they envisage in terms of the degree to which they expect me to get involved in these artistic matters. I highlight that, in terms of the cost of the advertisement, it was paid for by Young and Rubicam as part of its support for the Festival (and it was produced by them with the assistance of others). Certainly, I would indicate that, as I have indicated previously, the message that Young and Rubicam wished to portray in terms of the arts being a force for good in our community is one that I strongly endorse. The delivery of the message was—and I have said this before—one that I disliked. It was misguided and that has been accepted. The board has withdrawn it. The advertisement was never shown publicly and no sponsorship from any company that had pledged sponsorship to the Festival has been threatened as part of the exercise.

I am not sure that that loss of sponsorship is something that Mr Rann was actively seeking as highlighted by the way in which he keeps talking about the Festival in the most negative terms on the most frequent occasions that he can. Just look at the *Sunday Mail* where, again, we see the opposition—and I say this—

An honourable member interjecting:

The Hon. DIANA LAIDLAW: I just ask members for some caution here because, before the Festival program has even been launched, here is the Leader of the Opposition, in terms of an internationally important event for this state, saying that the Festival was lurching towards disaster. The program has not even been launched: it is launched tomorrow and the leader does not even know what is in the program. I think that that is the most disgraceful—

Members interjecting:

The Hon. DIANA LAIDLAW: He wants to be minister for the arts. Well, I can say to the leader that the arts do not want to see that approach taken by anyone, particularly someone who sets himself up to be a minister for the arts but who is talking about our Festival lurching towards disaster. Those remarks follow on top of Mr Foley's statements last month when he said that the Festival is a disaster just waiting to happen. It is almost as if they want, by death wish, the Festival to fail. I certainly do not, nor does this government, nor do the sponsors, nor do taxpayers generally and, certainly, nor does the arts community Australia wide.

An error of judgment was made. The board withdrew the ad. It has never been shown. The General Manager, on behalf of the board, has indicated in writing to all the sponsors her apology for the offence caused and I echo that apology. In speaking to the chairman of the board and the general manager last night I indicated strongly that I regretted that the government had not, as the chief sponsor of this Festival, been invited with other private sector sponsors to view the ad on Friday morning. That has certainly been accepted by the board and management as a very poor oversight, and the government, in terms of Arts SA (or my representative), will be involved in all of that.

Members interjecting:

The Hon. DIANA LAIDLAW: Yes I did indicate, on behalf of all taxpayers and members of parliament, that I thought that that was poor practice and that the government should have been invited—

An honourable member interjecting:

The Hon. DIANA LAIDLAW: No, there will not be. Again, that is what you would wish to see—a disaster. That is not what we aim to achieve; we aim to achieve an outstanding Festival, in the fine tradition of the Festival in this state. I also informed—and this was readily agreed by the chairman and the general manager—that, in terms of checks and balances, the major advertising campaigns such as the one

that was proposed to start on Sunday and did so, albeit in a different form, should go before the Strategic Communications Unit of the government. The Premier has issued advise to all ministers today which, in part, indicates that arts statutory authorities (not just government agencies) will submit major advertising campaigns for oversight. The guidelines will expressly apply to arts statutory authorities.

As I said, the chairman and the general manager accept the wisdom of that approach. Not every advertisement that is to be lodged with the radio, television or print media in relation to programs and advertising of upcoming events will have to go through that committee, but the major broad-based generic advertising campaigns will. The chairman has agreed to that on behalf of the board, and so has the general manager in terms of best practice.

CLAYTON REPORT

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Attorney-General a question about the Clayton report.

Leave granted.

The Hon. P. HOLLOWAY: On instruction, a leading criminal barrister in Adelaide, Mr Michael Abbott QC, has prepared an opinion on the Clayton report for the opposition. In his written opinion to the state opposition, Mr Abbott QC says that there appears—

The Hon. A.J. Redford: Are you going to release the report?

The Hon. P. HOLLOWAY: Well, yes. I seek leave to table copies of Mr Abbott's opinion to the opposition.

Leave granted.

The Hon. P. HOLLOWAY: In his written opinion to the state opposition, Mr Abbott QC says that there appears to be a prima facie breach of section 27 of the Oaths Act by former CEO John Cambridge and former adviser to both the Premier and the Treasurer Alex Kennedy in their statutory declarations to the Cramond inquiry. Section 27 of the Oaths Act provides for a maximum gaol term not exceeding four years with hard labour. Mr Abbott said that, to make a conclusive opinion, it would be necessary to see all of the correspondence, documentary evidence and transcripts of evidence relied on by Mr Clayton QC in his report. My question to the Attorney-General is: will he ensure that all of the evidence gathered by the Clayton inquiry will be made available to the Director of Public Prosecutions for his thorough examination, and will the Attorney-General table in this Council a copy of the letter to the DPP asking him to examine the Clayton report?

The Hon. K.T. GRIFFIN (Attorney-General): I thought for a while that there might be a request to make all the evidence available to Mr Abbott, and the answer to that would be no. As the question did not go down that path, but rather focused on what was going to the DPP, I am pleased to be able to table the letter which I wrote to the DPP. I will read it into *Hansard* so that there can be no doubt about it. It was sent on 24 October 2001 and was addressed to Mr Paul Rofe QC, Director of Public Prosecutions, 7th floor, 45 Pirie Street, Adelaide SA 5000. I quote:

> Dear Director,
>
> Re: Second Software Centre Inquiry
>
> In the House of Assembly on Tuesday 23 October 2001 the following motion was passed, namely:
>
> 'That this House notes the report and findings of the 'Second Software Centre Inquiry' and calls on the government to refer the report to the Director of Public Prosecutions and take whatever other appropriate action that may be required to deal with all matters raised in the report.'
>
> I now refer the Second Software Centre Inquiry (copy attached) to you for your consideration—

that should read 'report'.

> Issues relating to that inquiry and report were the subject of a ministerial statement, questions and debate in both the Legislative Council and the House of Assembly on the 23 October 2001 and I refer you to the *Hansard* for the detail.
>
> I understand the Crown Solicitor holds all the papers relating to the Cramond and Clayton inquiries if you require them. I also note that the then Premier released publicly his submission to the Clayton inquiry. I also am aware that allegations against Ms Alex Kennedy have already been the subject of an Anti-corruption Branch investigation.
>
> If there is anything further you require please don't hesitate to let me know.
>
> Yours sincerely, Trevor Griffin, Attorney-General.

I seek leave to table the letter.

Leave granted.

The Hon. K.T. GRIFFIN: That answers, I think, quite briefly and directly the question raised by the Hon. Paul Holloway. So far as the report of Mr Abbott is concerned, quite obviously it started out as a stunt. It cannot go anywhere. Whilst there may be some assertion about a prima facie breach of the Oaths Act, the fact of the matter is that this issue has now gone, along with all the other issues that anyone else may wish to raise (and all are identified in the report), to the Director of Public Prosecutions for his consideration. We have done the bidding of the House of Assembly and, in those circumstances, I do not think that we can take the matter any further.

ABORIGINAL EMPLOYMENT AND TRAINING

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Aboriginal Affairs, a question about employment and training of Aboriginal people in metropolitan, regional and remote areas.

Leave granted.

The Hon. T.G. ROBERTS: I have raised in this Council on a number of occasions the rapid deterioration of Aboriginal people and their standard of living not only in this state but, from my experience, in other states also. In a lecture of 25 October, reported in the *Australian* of Monday 29 October, an Aboriginal leader, Noel Pearson, described the symptoms and the circumstances which Aboriginal people face in society today.

The Hon. Diana Laidlaw: It was an outstanding presentation.

The Hon. T.G. ROBERTS: The minister says that it was an outstanding presentation. I agree in part with the content when describing the symptoms, but I would not agree entirely with his corrective recipe for change within the total Aboriginal community.

Noel Pearson describes the rapid deterioration and breakdown of Aboriginal society in part, and I will quote from page 13 of the *Australian* of Monday 29 October. He posed the question:

> Why has a social breakdown accompanied this advancement in the formal rights of our people during the past 30 years, not the least the recognition and restoration of our homelands to our people?

He continued:

> But the combination of passive welfare dependence and the grog and drug epidemic will, if not checked, cause the final breakdown of our traditional social relationships and values. Of course, racism,

dispossession and trauma are the ultimate explanations for our precarious situation as a people. But the point is that they do not explain our recent, rapid and almost total social breakdown.

One of the problems that I believe could be remedied by state and federal governments is the building of employment, training and education opportunities into metropolitan, regional and remote regions, and I think that has support on both sides of the Council.

The only problem is that, when tenders are let and training programs put in place, particularly in regional and remote areas, given the isolation, the lack of trainers and the lack of facilities for training of Aboriginal people over periods of time any more than six months, it becomes a very difficult task. I suspect at a commonwealth and state level we do not give enough serious ongoing consideration to any employment opportunities that provide for anything more than just a cursory introduction to employment and training programs. CDEP is offering some training but again it is only touching the tip of the iceberg.

It is vital for Aboriginal people to be provided with the opportunity to gain experience for trades and employment training and it is critical to introduce training programs in professional and semi-professional service provision. My questions to the minister are in relation to the provision of service employment to Aboriginal people through state and commonwealth funded programs and they are:

1. Will the minister provide details on the number of traineeships and apprenticeships that have been offered to and taken up by Aboriginal people in both the public and private sectors over the last five years?

2. Of the government tenders offered to the private sector over the last five years involving Aboriginal communities, how many successful tenders have contracts which stipulate the number of Aboriginal people to be employed, in particular the number of young people in traineeships?

3. Of the successful government tenders taken up by the private sector, how many Aboriginal people have been taken on by the tenderers as an employee, trainee or apprentice?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I will refer those questions to both the Minister for Aboriginal Affairs and the Minister for Employment. I thank the honourable member for indicating in his introduction that both sides, and I suspect the Democrats and even Mr Xenophon, support training and education and further emphasis being placed in these areas for indigenous Australians. I can indicate that this is an area in which I have taken particular interest through Transport SA and our road projects. These include our first, and perhaps best, example—the Southern Expressway—in the engaging of Aboriginal people by specific contract for specific work, and also the Rural Arterial Roads Sealing program.

I recently saw work undertaken in that regard, and the Aboriginal involvement was particularly important as bones were discovered. When analysed they were found to be some 7 000 years old and that was a particularly interesting exercise for all concerned. Equally, the South Museum, with active government support, has a strong trainee program for indigenous people which is working very effectively in terms of the National Aboriginal Cultural Gallery. They are two examples, including Tandanya through the Arts portfolio.

I will seek answers to the detailed questions that the honourable member has asked and indicate that I share his concern about this issue. As to the speech by Mr Noel Pearson, I think it is one that everybody should read in full, as there is a lot of thought provoking comment and, at times, a most uncomfortable analysis of the issues. But it is probably a fair assessment of where we have come and where we should go. It also gives credit to political parties of all persuasions which, I think, is fairly balanced and certainly pricks the conscience. We all know that we need to do better.

MOUNT GAMBIER GOLD CUP CARNIVAL

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Workplace Relations a question about regional public holidays.

Leave granted.

The Hon. J.S.L. DAWKINS: I understand that the minister has received some representations in relation to regional areas of South Australia being allowed to substitute another day for the holiday known as Adelaide Cup Carnival and Volunteers Day. In particular, the Mount Gambier Racing Club has made a number of representations that a public holiday be declared in Mount Gambier during the club's Gold Cup carnival in June, in lieu of the Adelaide Cup holiday which is celebrated across the state.

In July 2001 the Mount Gambier city council passed a resolution supporting the proposal for a substituted public holiday for the Mount Gambier Gold Cup. Previously the proposal had received the support of the District Council of Grant, as well as the local chamber of commerce, the Trades and Labor Council and other regional bodies. I am aware that, in addition to representations made to the minister and to me, representations have been made to other members including my colleague the Hon. Angus Redford. What action has the minister taken in response to these representations?

The Hon. R.D. LAWSON (Minister for Workplace Relations): This is a matter which has been under discussion for some time. The Hon. Angus Redford, certainly on behalf of the Mount Gambier Racing Club, did raise the matter with me originally. Subsequently the matter was taken up by the member for Gordon, Mr McEwen, and I saw representatives of the racing club who made a very convincing case why in Mount Gambier there ought be flexibility to enable their racing carnival to enjoy the benefit of a holiday.

It is not often realised that, in Victoria, Melbourne Cup day is not a public holiday throughout that state. It is a public holiday officially only within the metropolitan area of Melbourne. Local regions do have opportunities under the legislation in that state to celebrate substitute holidays for the purposes of racing carnivals, local shows or other festivals and events. In the discussion paper, which I am circulating to all members of parliament, there is appended a list of the large number of holidays that exist in the state of Victoria. The system in Victoria seems to work reasonably well. However, Victoria is not the same as South Australia. Quite different considerations apply. I might also mention that in Western Australia there is an opportunity under the legislation in that state for regional areas to have substitute public holidays.

I mentioned the discussion paper which is being circulated to members and also to local government, tourism bodies and racing authorities throughout the state, seeking comments on this proposal. It is quite a difficult issue because, as has been pointed out in the debate which ensued in the Mount Gambier city council, there are quite a number of interests to be taken into account. Workers, businesses, tourism operators, schools and sporting bodies all have particular interests.

There are some statewide sporting carnivals that now occur on Adelaide Cup Carnival and Volunteers Day, as the

third Monday in May is now known. Before implementing a proposal of this kind, we would have to ensure that those statewide opportunities are not destroyed and that the opportunities for statewide activities are not diminished by fragmenting holidays. However, I have to say that the system does work well in Victoria and it can work in South Australia provided there is cooperation.

This is a proposal only for regional South Australia. I do not consider that there is any justification for, as it were, breaking up or segmenting metropolitan Adelaide or the immediate environs of the metropolitan area. However, those regions of the state further away than I would suggest—about 250 kilometres—might like to consider this proposal. It is envisaged that councils will have the prime responsibility for implementing, initiating and surveying local public opinion on any proposal of this kind. I urge members to study the discussion paper, encourage their constituents who might be interested to do likewise, and to submit any submissions they might like to make to Workplace Services in accordance with the terms of the discussion paper.

MAKE IT SAFE FALL PREVENTION PROGRAM

In reply to **Hon. IAN GILFILLAN** (17 May).

The Hon. R.D. LAWSON: In addition to the answer given on 17 May 2001, the following information is furnished:

The new program *Taking Steps Early Intervention Falls Prevention Program* will be the subject of comprehensive evaluation. During the development stage the focus will be on evaluating the process. During this time, the aim will be to refine the comprehensive assessment tool and ensure that the program is implemented as planned and is consistent in its application across regions. An evaluation of the outcomes is planned during the current financial year.

The performance of domiciliary care services is measured in a number of ways. In the South-East, as in all metropolitan and country locations, a very significant measure of success is the number of older people that domiciliary care successfully supported in their home, thereby delaying and, in many cases, avoiding the need for institutional care for these older people.

In recent months, the CME (Client Management Engine) evaluation system has been introduced across the South-East Region. This system allows for statistical reports to be readily produced from the detailed client data that is entered onto the system. Information pertaining to nature of services received, time spent with clients and cost of specific services/client episodes etc can be compiled for analysis.

In relation to the South East Limestone Falls Prevention Project, I am informed that the performance of the domiciliary care services has been a significant contributing factor to the success of this project. There are close links between the division of general practice project staff and domiciliary care physiotherapists and occupational therapists. Domiciliary Care staff perform home-based falls prevention assessments similar to the Taking Care Domiciliary Care assessments that have recently been introduced in the metropolitan areas of Adelaide. The performance of South-East Domiciliary Care Services in terms of accessibility to services (both falls prevention services and general services) is exemplary, with services operating in Mt Gambier, Naracoorte, Millicent, Kingston, Penola, Keith, Lucindale and Tatiara and with only short waiting periods between time of referral and delivery of service.

BUDGET HONESTY

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Treasurer a question about budget honesty during state elections.

Leave granted.

The Hon. M.J. ELLIOTT: It is a common excuse put forward by incoming governments that the previous government cooked the books. It occurred after the recent losses of the Western Australian and Northern Territory Liberal governments, as well as after the 1994 South Australian election. At that time the Treasurer accused the outgoing Labor government of misleading the people and public of South Australia about the true financial situation of the state. On 3 May 1994 *Hansard* reported that the Hon. Stephen Baker said:

> It places great pressure on all governments when overnight we find we have an asset base of $10 billion less than that which was previously provided by the former Treasurer in a budget situation where we expect some degree of accuracy.

It is an issue that has been picked up by the federal government in its charter of budget honesty. As part of the federal election campaign, the Howard government released an updated report on the federal economy, only recently released. This report showed a much smaller surplus than expected and many experts believe it is behind the modest election promises made by Labor and the Liberals.

Over previous months I called on the former Olsen government, and I now call on the Kerin government, to match its federal counterparts and make a similar commitment to budget honesty. To this time the only response from the Treasurer to the media has been through a spokesperson who avoided the issue by claiming that all Liberal promises had been fully funded. My questions are:

1. Will the Treasurer make a commitment to budget honesty along the lines of those made by the federal government and release an update on the state's economic situation, approved by the Auditor-General as accurate, within two weeks of a state election being called and, if not, why not?

2. Does the Treasurer agree that it is hypocritical to criticise opposition parties for not detailing the funding for their election promises while he refuses to instruct Treasury to release the very figures on which such promises could be based, and in all this recognising that the election may well be 10 months after the previous budget?

The Hon. R.I. LUCAS (Treasurer): As much as I do not like to say it, it is a bit rich for the leader of the Democrats to talk about hypocrisy and election commitments when I seem to recall him promising never to come back into this chamber when he stood for preselection in the electorate of Davenport. However, if the Democrats make a commitment and do not keep it, that does not really matter. If the leader of the Democrats wants to talk, I am happy to talk with him at any time about honesty and hypocrisy and indeed other issues.

It is untrue to suggest that the only comment that has been made by the Treasurer was through a spokesperson in the *Advertiser*. I will need to check the *Hansard* record, but I thought I was asked a question by the Hon. Mr Holloway or somebody in this chamber on this issue in relation to producing a report. Somebody or the Hon. Mr Holloway, or both. My memory might be failing me and perhaps the Hon. Mr Elliott is right and I am wrong, but I am happy—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: No, you said that the only comment I had made on the issue was through a spokesperson in the *Advertiser*.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: I am happy to do it again, but I am just saying that that is not my recollection. Either in this chamber or somewhere else I have certainly put on record that the government—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: I have just answered and am about to answer it. The Hon. Mr Elliott likes to make statements in his explanations and, if they happen to be inaccurate, he does not like them to be challenged. He is a

very sensitive soul. What I have said publicly and, I thought, in this chamber on previous occasions is that the government is releasing in January or February next year the half yearly update of the budget position. It has to be gazetted and publicly released, and it is available for everyone to see.

At the time, I said to the Hon. Mr Holloway—it is now coming back to me—that we do not have to table it in the Council, although we are happy to, because it is actually published in the *Gazette* and available for everyone to see. It is done every year in about February. Given that the election is intended to be in March, I would have thought that this suggestion from the Hon. Mr Elliott—that it will be some 10 months since the budget and therefore we need to update the figures—is hard to justify.

I am happy to check whether or not I have said this on the record in this chamber and, indeed, where else I have answered the question. Nevertheless, the answer remains the same. Every year we do an update, and it is available in January or February each year. It has to be gazetted. It is made available publicly and it shows the major changes in the budget between May and the six or seven month period after that before January or February. Probably the books are ruled off in about the end of November or December and then published in January or February.

I am very happy to reinforce the fact that an update of information will be made available, entirely consistent with the practice that we have established for quite some time and, therefore, there should not be a complaint from the Democrats or the Labor Party or anyone that they have not had updated information upon which they could do their costings if they wanted to.

The Hon. L.H. Davis: And they should release their costings. That would be more interesting.

Members interjecting:

The Hon. R.I. LUCAS: As we have been challenging for some time, it will be interesting to see from the whingeing, whining opposition that we have in South Australia not only its promises but, more importantly, the costing of those policy commitments. The third point that I make is that the Hon. Mr Elliott referred to problems in Western Australia after the election. If he did—and again I will check the *Hansard* record—in Western Australia the government actually released one of these charters of budget honesty, or something similar, during the election period.

In the first week of the election the then government released one of these documents that the Hon. Mr Elliott is asking for, and we still had the situation after the election whereby the newly elected government claimed that it did not have access to all the information. It would be useful, before the Hon. Mr Elliott comes into this chamber preaching hypocrisy, dishonesty and a variety of other things, if he would actually check the facts upon which he bases his questions.

The Hon. M.J. ELLIOTT: As a supplementary question, should an election be called prior to the mid-year budget being released, is the Treasurer prepared to make such a statement available, as has happened federally?

The Hon. R.I. LUCAS: I can assure the honourable member that there is no intention from the government to call an election prior to the end of the year. Should those circumstances arise, from the government's viewpoint we would be happy to update the budget information to the extent that we can. But that would probably be only a three month update.

It is pretty hard, in the first three months of a financial year, to place too much store on the progress of a 12-month budget at that stage; six months is probably about the minimum time to get any reasonable indication of the trends in terms of commitments and expenditure. But, certainly, from the government's viewpoint, we would put together what information we might be able to in terms of what government commitments have occurred in the first three months or so of the year, what additional information we might know about additional revenue items and some sort of early estimate.

It would have to be fairly rudimentary and, certainly, not to the same degree of specificity which we do, as a matter of course, at the six-month period and which we have regularly gazetted.

GAS SUPPLY

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Leader of the Government and the Treasurer (Hon. Robert Lucas) a question about gas supplies.

Leave granted.

The Hon. M.J. Elliott interjecting:

The Hon. L.H. DAVIS: I am pleased to see that the Hon. Mike Elliott does have a touch of humour about him; it does escape him sometimes. Members will recall that there have been some exciting onshore gas discoveries in the South-East of South Australia and, more recently, some major, very significant, gas discoveries offshore in the South-East of South Australia. Indeed, there have been proposals to tap into these offshore discoveries in the South-East and to build a pipeline into Adelaide to provide valuable additional options for the supply of energy into the Adelaide and South Australian market. Is the Leader of the Government in a position to advise the Council as to the current status of that proposed gas pipeline from the South-East into Adelaide?

The Hon. R.I. LUCAS (Treasurer): I am certainly in a position to give some general information. I am happy to take the honourable member's question, in terms of detail, on notice and see whether I can provide some further detail for him. Briefly, at this stage two consortia are bidding to build a pipeline from Victoria to South Australia. As members will know, the government went through an RFS (Request for Submission) process and, as a result, there was a nominated preferred bidder. That consortium is now known as the Seagas consortium which, essentially, is based on Australian National Power and Origin Energy. The people from SAMAG are associated with that particular consortium.

A second consortium comprises Duke Energy and GPU and those two groups are vying, I guess, with the other consortium to build this particular pipeline. Two separate routes are the subject of negotiation with land owners and landholders between Port Campbell in Victoria and Wasleys in South Australia. The project has attracted much interest, particularly in the South-East. Certainly, some local councils and local industry have expressed some public support for one of the routes proposed by one of the groups. There are certainly some differing views in the South-East as to which particular consortium ought to be successful.

Ultimately, it will be determined by the market. It is a commercial decision by commercial players in the market. From the government's viewpoint, the ideal world would be if the two groups could come together with one agreed pipeline route. We believe that through that process we would maximise the diameter of the pipe and from the state's viewpoint (both from the electricity industry viewpoint and the state's industrial development viewpoint) the bigger the

size of the pipe the better it will be for the state's future industrial development.

Now, at this stage, it does not appear prospective that the two groups are likely to come together. It would appear that, ultimately, it will be determined by the market. In terms of timelines, the latest information provided to me is that it is likely that we will see a decision by the end of the year, and certainly no later than in the first quarter of next year. By that stage, at least one consortium will have organised its financial capacity—and let me hasten to say that both groups claim that that will not be a problem from their particular group's viewpoint. The market will have shaken out the situation to the degree that one of them will be the likely survivor able to proceed to construction through the year 2002 and 2003, with an endline on construction at the end of 2003, and no later than the start of 2004. As I said, this is really an interested observer's view of the commercial market. As the Hon. Mr Davis would know better than anyone, it will be determined by those commercial players.

The Hon. P. HOLLOWAY: I have a supplementary question. Why did the government give preferred status to the Seagas pipeline, and exactly what benefit does preferred status endow on the SEA Gas project over the Duke Energy proposal?

The Hon. R.I. LUCAS: The government, having gone through the request for submission process at the time, made a decision that this particular consortium gave the best prospect of being able to deliver the pipeline within the timeframe that was required. There are other reasons as well but, essentially, there was a timeframe for the end of 2003, and the evaluation committee recommended that this particular consortium was the one that was most likely to be able to deliver the pipeline within the timeframe that we were discussing. I issued a public statement at that time and I said that no financial assistance would be provided to the particular groups. In the early stages, there was some discussion of a financial incentive but, as it has transpired, that has not been required. So, there is no financial assistance.

The government provides facilitation assistance in relation to planning and development, assisting with fast tracking—although that word is not included in the planning legislation—or the facilitation of the pipeline. However, in the public statement we said that this was non-exclusive and that we were prepared to provide similar facilitation assistance to other groups as, indeed, we have to the Duke GPU group. It has been provided with similar facilitation assistance and, in recent meetings with me and with the then Deputy Premier, it has acknowledged the value of that facilitation assistance.

CITIZENS' ADVICE BUREAU

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question on the Citizens' Advice Bureau.

Leave granted.

The Hon. CARMEL ZOLLO: Members may be aware that the Citizens' Advice Bureau began its service to the South Australian community in 1958. This free community information and visitor information service runs a telephone service, as well as face-to-face booths and information boards. It has supported nearly 80 000 face-to-face information access contacts in the past year alone. It offers many services such as legal advice, a tax help scheme and health information, in addition to general information and referral services.

The Citizens' Advice Bureau is an independent body that in the year 2000-2001 was made up of some 80 volunteers and 2.7 staff, with funding of approximately $167 000. The funding is as follows: indirect state government funding, via the State Libraries Board budget to the Adelaide City Council. This funding is matched dollar for dollar by the Adelaide City Council. In addition to this funding, state government agencies, together with the Adelaide City Council, have funded the Rundle Mall information booth to the tune of over $40 000.

In an era of information and data overload, the Citizens' Advice Bureau has adopted the slogan 'the human search engine' in recognition of the increasing divide between the information rich and the information poor. The Citizens' Advice Bureau is widely recognised for its volunteer service. Ironically, during the International Year of the Volunteer, it faces an uncertain future due to the withdrawal of all funding from the Adelaide City Council, including the government's contribution paid by the State Libraries Board.

As of 1 November, the Adelaide City Council will be running the Rundle Mall information service, and it has withdrawn its entire funding of over $80 000 from the CAB—not just the funds allocated for the Rundle Mall service. I am informed that the bureau has about two months before all its remaining funds extinguish, and it will cease to operate from its DaCosta Building office and the remaining City Cross information desk. The bureau has determined that it will be able to restructure, and it could provide its core service. This would include 1.5 paid staff and a total of 40 volunteers operating an information core centre base, office accommodation for its visiting specialists and a front counter contact point. My questions are:

1. Will the minister continue to fund this volunteer group independently of the Adelaide City Council, so as to continue its core services beyond the Rundle Mall information booth?
2. What action has the minister taken to ensure that the Citizens' Advice Bureau is not effectively wound up because of the decision of the Adelaide City Council?
3. Has the minister met with representatives of the bureau and, if not, does she commit to this place that she will do so as soon as possible?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): When I first learnt of the suggestion that the Adelaide City Council would withdraw funding, I wrote to the council and indicated my personal support for the activities undertaken by the Citizens' Advice Bureau. Clearly, my representations must have been taken into account, but were not effective. I regret that, because I have a high regard for the work undertaken by the Citizens' Advice Bureau. I am aware that the President, Mr Ian Bruce (whose wife is a former councillor on the Adelaide City Council), has written a letter to the State Library (a copy of which was sent to me) in order to clarify State Library funding, and the board has indicated that a prompt reply will be forthcoming.

In terms of the honourable member's question whether I, as minister, will fund core services, I indicate that the State Library Board is responsible for recommending grants to community information services and making its recommendation to me. So, the matter is being considered by the State Library Board, and that is appropriate. Overall, the board recently has let a consultancy to look at all funding provisions for community information services in South Australia and to assess what will be required as future funding in terms of

information services. I think that that is an important consultancy. I do not wish to see the Citizens' Advice Bureau, in this Year of Volunteers (or at any time), effectively wound up. I will consider with great care the advice that I receive from the State Library Board. I do not have that advice at this time, but I indicate that the board is dealing with the matter promptly.

I did not hear all the honourable member's explanation, but I think she acknowledged that, in addition to State Library Board recommendations for state government funds, further state government funds were provided through Tourism SA, and I think that is some $30 000 a year. I will undertake to inquire about the future of those funds following the Adelaide City Council's determination to de-fund what I regard as an important service.

ACCESS CABS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport questions regarding the South Australian Transport Subsidy Scheme.

Leave granted.

The Hon. T.G. CAMERON: My office has been contacted by Linda Norris of Hillcrest who recently contacted me regarding accessing the South Australian Transport Subsidy Scheme (SATSS). Ms Norris, who is completely blind, recently applied for membership of SATSS. The SATSS assessment officer advised Ms Norris she did not qualify under the current criteria. Currently, only those blind people who also have a physical disability which prevents them from using public transport are eligible for SATSS assistance. Ms Norris has told my office that she feels so unconfident using public transport that she is housebound if she cannot access private transport. My office received a letter from the minister in early September in which she stated:

> I have asked the PTB to undertake an examination of SATSS program [including]. . . an examination of the program as it impacts on people with vision impairment.

My questions to the minister are:

1. Has the PTB concluded its examination into the SATSS program, and in particular its impact on people with vision impairment, and, if so, what are its recommendations?

2. Will the government consider relaxing the guidelines to allow blind people to access the SATSS scheme?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): The transport subsidy scheme in South Australia was established on the basis of a physical disability, and it continues to operate with that criteria. Some $8 million is spent each year on this scheme and that figure is rising every year because of our aging population. It is a popular scheme in that sense and an important one in terms of the taxi and access cab industry. In terms of the blind pass, the honourable member may recall that last year I took to the transport ministers' conference a call for reciprocity of arrangements for public transport and concession cards. However, it did not gain acceptance from states generally, with particular resistance coming from New South Wales.

In the meantime I have asked the Passenger Transport Board, as the honourable member has acknowledged, to undertake an examination of the whole SATS Scheme, which is related to the taxi and access cab sector.

The PTB has concluded its examination and I have received the report. I have asked further questions and also requested the PTB to conclude a regional transport study, which it is undertaking and which embraces all passenger transport options in terms of route services, inter-city services and local services, and I received that interim report a week ago.

I would like the Passenger Transport Board to complete that study and look at those results, together with the transport subsidy scheme results, as I think we can look at some way of supporting the older people in our rural communities, particularly with accessing hospital services and the like. While they may have a physical disability and be eligible for a pass, they do not always have the transport available to assist them, so I wanted to look at the broad picture of access and the criteria that has been used since 1991 when this SATS Scheme was introduced, which is confined to physical disability.

Further, I wanted to determine whether we extend the criteria to people with other disabilities, including the vision impaired, and the definition of that. I have certainly received representations on those with an intellectual disability, and that is addressed in the report that has been presented to me by the PTB, but it will not be advanced until the PTB has completed its regional transport study.

I highlight to the honourable member—and he would be well aware of this—that any change to the criteria has major budget outcomes. If we look at other forms of disabilities, not only because of the number of people eligible but also the precedent in setting any additional disability, we will see that more and more want it. That may be justified, but all of it has a dollar implication, and that must be taken into account when we spend, as the honourable member appreciates, an enormous amount of money making our public transport system more broadly based, relevant and more accessible. It is how we balance the best use of state government funds to the broadest range of people.

TOBACCO SMOKE

The Hon. NICK XENOPHON: When will the Minister for Workplace Relations respond to the questions I put to him on 15 March 2001 with respect to the issue of environmental tobacco smoke and the health risks it posed to workers at the Adelaide casino and in gaming venues? Further, when will he follow up the implications of the Marlene Sharp decision of the New South Wales Supreme Court referred to in the minister's answer to my further question to him on 3 May 2001?

The Hon. R.D. LAWSON (Minister for Workplace Relations): As I indicated in response to the honourable member's question the day on which it was asked, I referred the substance of the question to the Minister for Government Enterprises who has ministerial responsibility for the WorkCover Corporation. I anticipate that I will shortly have the information which I sought, and I will certainly provide it to the honourable member and the Council.

LIQUOR LICENSING (REVIEWS AND APPEALS) AMENDMENT BILL

In committee.

(Continued from 25 October. Page 2487.)

Clause 1.

The Hon. CARMEL ZOLLO: Given that both the Hon. Sandra Kanck and the Hon. Angus Redford have had the opportunity to speak to both their amendments, I will take the opportunity at this stage to respond and indicate the opposition's attitude to the amendments. The Hon. Sandra Kanck talked about the introduction of poker machines into pubs and clubs and the demise of venues for live music. Understandably many proprietors are choosing the easy option of pokies income rather than the more risky income stream from live bands. She also raised the issue of advertising restrictions and the Adelaide City Council reactivating some existing older by-laws to restrict the practice of postering in Adelaide. For many local bands postering is of course the only means of advertising.

Both the Hon. Sandra Kanck and the Hon. Angus Redford also talked about the licensing conditions imposed by the Adelaide City Council on the east end, which have contributed to the slow demise of the industry. The Hon. Sandra Kanck also raised the important issue of lack of commercial radio support for bands. I indicate that the opposition will be supporting the amendments as filed by the Hon. Angus Redford. In his contribution he outlined the setting up of the working group, which he subsequently chaired, and the recommendations of that working group which are now reflected in his filed amendments.

I note in particular the set of 10 basic principles the working group agreed on, which the honourable member has read into *Hansard,* and his suggestion that they be used as explanations for the amendments. I compliment the minister for setting up the working party and for a number of other initiatives in relation to this issue and the Hon. Angus Redford for his chairing of the working party. As a community it is important for us to continue to support and promote live music. I have always believed—as indeed no doubt do all other members—that music is the international language that binds the world's many cultures. It is more than just entertainment: it is an artistic medium that can express the whole range of human emotions, with or without words, irrespective of the language spoken.

Live music in licensed entertainment venues has been part of our culture for centuries, but the past few years has been particularly difficult for this medium for a number of reasons. Without a doubt the introduction of poker machines has made the situation much worse. Over the past few years we have been experiencing the increasing difficulty of resolving disputes between residents and licensed premises, especially in the inner city precinct. In the eyes of some, the promotion of both city and inner city living has resulted in an incompatibility between residential areas and premises that offer live music. I agree that it is ridiculous for residents to move into the city itself, in particular, and then set about turning what is supposed to be a unique lifestyle into another eastern suburb of Adelaide.

The east end has lost a lot of its vibrancy because of such attitudes. One of the things I noticed when overseas a few years ago was, in many busy squares in any European city, the blend of residential, shopping and entertainment areas virtually on top of one another. It is certainly one of the charms of city living to have that mixture and accepting all that goes with the choice of that lifestyle. Co-existence is what gives life to a city and makes it vibrant.

The word 'choice' here is an important one because, when one chooses to live in a certain area and there is a pre-existing licensed premises that offers live music, one has to be prepared to accept that reality rather than set about to destroy the existing cultural identity of the area. My party is not a stranger to the Governor Hindmarsh Hotel: it is the venue of choice for very many functions for the party and Richard Tonkin is well respected. It is one of the venues that has been providing live music entertainment for as long as I can remember. I have some dear friends for whom the Gov is an important part of their social and cultural life and very many other people share their passion.

The Hon. Sandra Kanck is right in her comments that it is getting harder for people to promote their musical talents in our community. Those opportunities in radio are becoming scarce. The only opportunities other than Triple J and, I think, SBS are the community stations which obviously do not have as large an audience as the commercial stations. I know that Fresh FM is one of those stations that is prepared to showcase the talents of those seeking exposure. Unsigned artists are given the opportunity on a Saturday especially to showcase their talents. One of my children was fortunate recently in having his electronic dance music played a few times on a Saturday morning.

The commercial stations that have the large audiences are simply not promoting the way they used to. There is no obligation for them to do so and they are not prepared to take the risks involved. It becomes a catch 22 situation: the commercial radio stations will not take the risk because of lack of public exposure. That exposure in Adelaide can only come from regular gigs, which can attract a following and a fan base. It is an advantage for the major record companies to take on artists who have a following and have received good feedback. If we continue to remove the premises where people can play on a regular basis we also remove another venue for exposure for aspiring musicians.

The Hon. Angus Redford also talked briefly about submissions received from several interested parties, in particular the AHA and its suggestions in relation to first occupancy rights. I noted that the submission of the Leader of the Opposition suggested existing use rights of live music venues where developers or individuals are seeking to build residential accommodation and that they should only apply to existing live music venues and should not allow other hotels and clubs suddenly to introduce live music into established residential areas where it could cause annoyance to home buyers.

The leader also supported the use of noise mapping to designate areas which should be exempted from noise complaints from accommodation not yet built. He believes this would alert people considering buying or building a home near an established entertainment zone or establishment and allow them to make an informed decision before buying their property. The member for Spence, in whose electorate the Governor Hindmarsh Hotel is, also made a submission to the working party. He outlined his experience with constituent complaints about noise levels and advocated the disclosure statement to warn people of any distractions at the time of sale. The opposition agrees that patron behaviour should be treated differently and should be a separate issue from the provision of live music for the reason that it is not necessarily the live music patrons that are causing disturbances.

I notice the Hon. Angus Redford highlighted the fact that noise complaints is an issue that needs continuous monitoring. He talked about reading a document entitled 'Report of the Committee on Noise from Places of Public Entertainment' dated July 1983 and chaired by Mr Geoff Inglis.

The Hon. Carolyn Pickles interjecting:

The Hon. CARMEL ZOLLO: Mr Inglis later became Chair of the Environmental Protection Council, of which my husband was executive officer at the time. I was pleased earlier this year to catch up with Mr Inglis, who is now enjoying his retirement. We reminisced about a number of topical issues. Apart from the immediate action of introducing amendments to the Liquor Licensing Act, I note the cooperation and involvement of several agencies to achieve the desired outcome to resolve neighbour and noise conflicts associated with live music and licensed premises.

At this time I indicate opposition support for those changes that affect the Liquor Licensing Act, as tabled by the Hon. Angus Redford, which are to expand the objects of the act to acknowledge that licensed premises play an important role in furthering the interests of the live entertainment industry and to modify the noise complaint process to give greater protection to existing live entertainment venues in carrying out their lawful activities of providing live music. The amendments define six integrated factors, which must be taken into account by the Liquor Licensing Commissioner or the court in hearing and determining a complaint, ranging from the objects of the act and the length of time the licensed premises have been offering live entertainment to EPA noise guidelines and council plans for the future character of the area. We agree that it is important for all relevant factors to be considered.

The number of people who depend on live music for employment is substantial for the limited number of venues available to them. As already indicated, the young and students are also often very involved. I agree with the honourable member: artistic excellence and pursuit is used as a measure of achievement and prosperity in the life of people throughout history, and it would be a great loss if we as a community did not provide the right conditions and safeguards for the pursuit of live music in our time. To quote a much seen ad, certainly last Sunday, 'Art is the one thing that connects us all.'

The Hon. CAROLYN PICKLES: As the shadow Minister for the Arts, I make perfectly clear that I totally support live music entertainment venues. Having all my sons playing in bands in the past and at the present time, I much prefer that they play their music in hotels rather than at home, because it is a bit loud. I noted the submission from the AHA in which it talked about a sort of good neighbour policy, and I know that the Hon. Angus Redford referred to it in his contribution on this clause, in relation to patrons.

It is usually patrons leaving a live music venue and the considerable associated noise at such times that is the cause of complaint, rather than the music that goes on inside the hotel. I hope that the AHA will ask its members to police the patrons to ensure that this rather larrikinish behaviour does not continue. Quite frankly, that is what a lot of people complain to me about: being woken at 3 o'clock or 4 o'clock in the morning by people farewelling one another rather loudly and often under the influence.

The other issue that I think needs to be looked at in the context of some other legislation that is before us in another place is to do with the potential hearing loss of people who work in the industry. I am quite sure that all my sons have hearing loss from playing in their bands, to say nothing of their poor mother! But that is an issue that has to be taken into consideration at some stage in other legislation, for people working in the hotel industry need to have some kind of protection, as do the patrons.

The Hon. A.J. Redford interjecting:

The Hon. CAROLYN PICKLES: Some do, and some are very deaf. Sometimes people do and sometimes they do not. Quite often it becomes very difficult for patrons to recognise the decibel level within premises. I guess that that is not contained in this legislation: what we are looking at is a decibel level outside the premises that causes annoyance to neighbours. It has been a sensible process, and I commend the minister for setting up the working group. I believe that the amendment that we have will go some way towards alleviating the concerns of people.

It will not go all the way towards alleviating the concerns of either the hotel industry or those people who live in an existing area where there are some difficulties with noise from a hotel. Having said that, I have a question of the Hon. Angus Redford. What are we going to do about those hotels in the city that have already been forced to close because of the complaints from what I would call people who are unrealistic about the kinds of things that go on in the city?

Members interjecting:

The Hon. CAROLYN PICKLES: The issue here is that in the east end of Adelaide there were always live music venues that had existed for many years—

The Hon. T.G. Cameron: It's the fault of the Adelaide City Council.

The Hon. CAROLYN PICKLES: Yes, I agree, it probably is, for allowing these places to be built. But in the east end of Adelaide some very expensive residential apartments have been built and, suddenly, people move in thinking they are going to like the lively element of the city but they want it to end at 10 o'clock at night or when they want to go to bed, not when everyone else who has previously gone to these live entertainment areas in the city wants to go to bed.

Any of us who have had teenage children know that they have this extraordinary pattern of not going out until about 10 o'clock at night and partying, playing or whatever they do—one does not like to question it too closely—until the early hours or the late hours of the morning. This is a general pattern for young people at the weekend. Anyone who goes into the city will see that they are all going out and about at around 10 o'clock or 11 o'clock at night, and they want to go to their live music venues that play very late at night. I think the situation is probably a bit different within the suburbs, and certainly in some suburban areas.

Throughout Melbourne and Sydney, where you have a lot of suburbs where live music exists and has existed in quite a number of pubs, there does not seem to be a problem, but I acknowledge that it can be very irritating for residents to have uncouth behaviour once the public premises have closed. This is a sensible compromise. I want to see live music continue in South Australia: I think it has been very vibrant in the past although it has fluctuated from year to year.

We now have a bit of a resurgence of live music in lots of pubs, and it gives an opportunity for a lot of young players (and a lot of older players, too) to take part in an activity that is tremendous for them to take part in and terrific for others to listen to. It is not just young people who want to go to these venues: there are some that play jazz that I like to listen to. Sadly, the jazz playing venues have declined somewhat over the years, and there are other places that probably—

The Hon. A.J. Redford: It is coming back.

The Hon. CAROLYN PICKLES: I am not sure that modern jazz is really a goer much in Adelaide. It used too be very much a goer when I was a lot younger, and I used to

have a family association with someone who played for many years as a jazz musician. I think it is a terrific compromise. The working group has gone very well. It has been a very open working group that has sought submissions from a wide variety of people. As the Hon. Carmel Zollo indicated, the Leader of the Opposition put in a submission on behalf of the Labor Party and I think that his suggestions, as with other suggestions, have been taken up within the context of these amendments.

The Hon. NICK XENOPHON: I endorse the remarks of the Leader of the Opposition in relation to this issue and commend the work of the Hon. Angus Redford with respect to the live music working group and the initiative of the Minister for the Arts in bringing it about. Clearly, there has been a problem with live music in Adelaide. I should disclose at the outset that, in the course of my work as a member of parliament, I have represented and assisted constituents who have had issues with respect to hotels wanting to promote live music and also those who have had difficulty with noise in one particular case in the Adelaide Hills.

I have seen, from both sides of the fence, the various issues that must be grappled with. I believe in the agreed basic principles of the live music working group. It is a shining example of what happens when people get together to listen. The Hon. Angus Redford's work, as chair of this working group, is certainly to be commended. I had the opportunity to have discussions with the Hon. Angus Redford on more than one occasion to put across my point of view; and it appears to be the case that my concerns, as well as the concerns of many others, have been incorporated into this very comprehensive document.

I also pay tribute to the Hon. Sandra Kanck who has campaigned on this issue. I prefer the amendments of the Hon. Angus Redford. I believe that they provide a sensible solution, an appropriate balance and something that both gives hope to the live music industry and takes into account the concerns of residents. I can say that one of the less than satisfactory aspects of the current legislative regime with respect to dealing with noise complaints under the Licensing Act is that the conciliation process can be quite protracted. It can be less than satisfactory in terms of residents having matters heard in a timely manner.

The matter in which I was involved a number of months ago involving a hotel in the Adelaide Hills was the subject of informal remarks made by Mr Cramond who was sitting as an acting judge and who undertook the conciliation. Comments were made that the system did not do justice in terms of the timeliness of dealing with issues. That is not a criticism of the administration of the Office of Liquor and Gaming, but it does seem to be an inherent problem that, I believe, these amendments will go a long way in reforming. I also think it is important in the context of residents who have lived in an area for a number of years. Their local hotel has been a relatively quiet hotel and, suddenly, the noise is cranked up.

I think that those residents have some legitimate concerns in that prior to moving to that area there was a certain expectation of certain levels of noise. I believe that increased level of noise is something that ought to be taken into account with respect to the amenity of those who live in the area. The issue of live music is something that has been comprehensively dealt with in the working group's document. Without getting into a debate with any of my colleagues—including the Hon. Angus Redford—about the issue of poker machines, I will make a neutral comment and say that it is a fact that something like 500 hotels in the state have poker machines.

As a result of poker machines being in those venues there are fewer opportunities for live music. I am putting this as neutrally as possible because this solution, I think, is certainly a huge step in the right direction. However, it is more difficult for live bands to be heard—in more ways than one. I have a particular concern for those hotels that have elected not to have poker machines, and three shining examples are the Austral—

The ACTING CHAIRMAN (Hon. T. Crothers): I want the honourable member to look at clause 1 and speak to that. The honourable member is supposed to be speaking to—

The Hon. Carolyn Pickles interjecting:

The ACTING CHAIRMAN: It is very apparent that you are all having a go, but clause 1 provides:

This act must be—

The Hon. K.T. Griffin interjecting:

The ACTING CHAIRMAN: I am starting to get decimal deafness myself. Go on. I have been listening to too much prolixity. Carry on, the Hon. Mr Xenophon.

The Hon. NICK XENOPHON: Mr Acting Chairman, I hope that you are not accusing me of being prolix. A number of hotels in the state have elected not to have poker machines. A number of these hotels have elected to support the live music industry and three of a number of these hotels are the Governor Hindmarsh Hotel—Brian Tonkin and his family have done an outstanding job over the years; the Grace Emily Hotel has done an outstanding job in providing opportunities for new live music talent in this state; and, of course, Gosia Schild at the Austral Hotel, who has almost been a patron of live music in the support that she has given live music over many years.

I have had a number of discussions with Gosia Schild about how she lived with her neighbours. I understand that, a number of years ago, the Salvation Army had a particular problem with noise emanating from her premises in terms of live music during its services. It was simply a matter of sitting down with the Salvos and coming up with an amicable solution that suited both parties. That is an example of a publican who is aware of and sensitive to the needs of her neighbours. I am astounded at the application to build apartments right next to her hotel and the potential impact that will have on her premises. It is my understanding that these amendments will go a long way in dealing with that, and that is to be commended.

I also disclose, for the sake of completeness, that I have lived in the east end. My register of interests indicates that I own some properties—or, rather, the bank largely owns those properties—in the east end. I have had problems, as a resident, with respect to one particular venue in the east end but that venue seems to be an exception to the rule in that most venues—and the Austral in particular—have bent over backwards to be reasonable and to balance the concern of residents in the context of the way in which they have been operating for a number of years. However, I do have very serious concerns about the current proposed development.

Also, I note that the report refers to a hypothecated fund from gaming machine revenue to support live music. The minister, when she announced the formation of this working party in a ministerial statement, made reference to taking into account the primary source of revenue of a particular venue. I understood that whether a substantial proportion of revenue came from, for instance, gaming machines or from live music

would be taken into account. Clearly, my position is that, if a venue has elected not to rely on gaming machines (and the ancillary benefits that those bring) in terms of not imposing a wider social cost in the community, I would be urging the government and members to ensure that such a fund is weighted heavily in favour of those venues which do not have machines but which have live music as a primary source of revenue.

With those remarks, I look forward to the passage of the amendments moved by the Hon. Angus Redford which, I hope, will go some considerable way in assisting live music in this state.

The Hon. T.G. ROBERTS: I support the bill and congratulate the government on the way in which it has handled the issue. I suspect that it was the minister's way of keeping the Hon. Angus Redford out of mischief by giving him responsibility for the passage of the bill, but he has done a very good job in contacting all those stakeholders in the industry, both in regional areas and in the metropolitan areas. Unfortunately, encouraging the resurgence of live music did need some government intervention. Normally the music business itself and music as a form of art tend to have a life of their own.

Historically, it has been able to succeed without too much intervention from government but, unfortunately, in relation to planning laws and protecting live music something had to be done. Live music started to take a dive in the 1970s when disco music became very popular and, in some quarters, recorded music became far more popular than live bands. There was competition between the two forms but disco music within hotels became easier to set up.

It was a one-person operation, playing music mostly in a recorded form imported from overseas. Live bands were expensive. In most cases, they had four or five members in them and, in a lot of cases, hoteliers could not afford to pay the costs of the transport and to set up the venues required. Disco was much cheaper: it needed only a wooden dance floor and a record player. Now it is far more complicated. Electronic music is beginning to take over where disco music was being played. Disco music did have a creative arm attached to the music industry, because words, lyrics and music had to be written and people had to actually play the instruments to transfer those written chords into music itself, but with electronic music it is far simpler for people who now describe themselves as artists to create music from the work of other musicians. Therein lies an art form that is being perfected at the moment. However, transposing music does not provide the same encouragement for live music to exist and live and be played in live outlets to people who are actually at those venues.

Live music has had a chequered career. It has survived the ups and downs, and it is good to see that the pressure that is being applied by the planning laws in relation to crowding out live music venues in particular areas is being taken into account. The sensitivities of residents need to be taken into account and the noise managed. I think that the noise levels need to be managed with good planning laws and good council attention to where performances and residents are to mix.

I think that the two key issues are the noise levels inside the venues which impact on the staff, the musicians themselves and the audience and the management of the noise that escapes from the venues. These are the issues that need to be managed. Crowd control is also an issue, as are the patrons leaving the venues. Alcohol consumption and drug use are social issues that do not need to be addressed in any of these amendments or in the bill itself. They are matters of social importance, but they can be managed at a different level. I think that the bill and the amendments take all of those matters into account and, hopefully, when the bill is applied it will encourage the growth of live music in the community and that the industry will look at parliament and parliamentarians as having some interest in the outcomes and pay some tribute to those who have taken the time, effort and energy to make sure that live music does breathe.

The Hon. A.J. REDFORD: There was a question to which I will respond before moving my amendment. First, I thank the Hon. Carmel Zollo, the opposition and the Hon. Nick Xenophon for their comments of support. The Leader of the Opposition mentioned the issue of hearing loss and the issues of occupational health and safety. I think it is appropriate to deal with that in other legislation, as she indicated. I am pleased with her comment that she acknowledges the importance of balance in relation to this issue. I also acknowledge her comments about the fluctuations in live music, the highs and lows and, of course, the dizzy heights of the late 1960s and the 1970s when we had the Easybeats and Jimmy Barnes and the like at their peak. The influence of British migrants in the suburb of Elizabeth in relation to the vibrancy of music in the 1970s and 1980s should never be underestimated in this state and the extraordinary contribution that they made to the life of this state.

The Leader of the Opposition asked what is likely to happen and what will be the position, if this legislation goes through, of those venues that have had music and who stopped that music as a consequence of the current legislation and its impact. The best way that I can answer that is in two parts. First, there are those premises that have closed down, not because of any specific order from the court but because of conditions that have been imposed, whether by consent, as a consequence of the law as it was, or by some form of pressure. Quite obviously, if they believe that the legislation does assist them in that respect, then it is open to them to go back to the court and seek an amendment to their licence conditions. However, I suspect that one would expect that the licensing court would have required some action on the part of the licensed premises to address some of the issues that might have been raised through the earlier noise complaint process.

The second issue is those hotels that fall into that category that the Leader of the Opposition and the Hon. Nick Xenophon referred to and those problems that are peculiar to the east end. I suspect that when one looks at the east end issue—I did not cover this in much detail in my earlier contribution—it is, to some extent, intractable because of some pretty poor decisions that were made in the period between five and 12 years ago, when the whole issue of attracting residents into the east end first arose. Everybody acknowledges that it is quite clear that many of the residences that have been built in the east end did not put in state-of-the-art noise attenuation aids. Indeed, some deals were made.

We all recall the Bannon days when there was some difficulty in this community—and I am not making any political comment here—in getting any development up and, in order to attract the required investment from the Liberman Group and the like, some concessions were made in relation to planning and building requirements that would not, in normal circumstances, have been allowed. Therefore, many of the places in the east end are particularly susceptible to noise from venues. That is unfortunate.

The other issue, of course, is the rather absurd marketing approach of some of those people where they promised a Burnside style of living in the centre of the city and people almost came into that area under false pretences. One would think that people who could afford that sort of money would have had the wherewithal and the brains to work out that there was going to be a little bit of noise late at night.

Some of those issues are never going to be resolved. I will not name any of the developers or the owners, but there are some premises there which, from a noise perspective, are the equivalent of having been built out of cigarette paper, and the noise will just go into those premises. In some respects, that is why the fund and some flexibility may well address that over time, perhaps not by spending money on the residences but by spending money on the hotels. The critical issue, and I think this is very important in relation to the east end because it is an important part of our city, is that the people in that area have to learn to get on with each other. I will not get into the politics, but it is extraordinary. In terms of what the committee did, we spent a lot of time dealing with the internal politics of the east end—

The Hon. P. Holloway: You're game.

The Hon. A.J. REDFORD: Well, I poked my toe in the water and I can tell you that I have not put it back in there since. I think that the first thing that that community has to do is exactly what the Attorney and the Liquor Licensing Commissioner have suggested, and that is make themselves part of a licensed precinct committee where they can operate as a community and deal with each other. The Austral and all of those hotels, and the owners of the premises—and I will not get into the personalities here because it will only embarrass some people—have to sit down and start dealing with each other, because they need each other. One needs the other as much as anything. The Austral, in the normal course of events, should welcome another 600 or 700 potential customers living nearby, provided we have a regime where they can live together.

The Hon. Diana Laidlaw: And there is some goodwill exercised by them all.

The Hon. A.J. REDFORD: The minister makes a very pertinent interjection. And with goodwill, that can happen. The traders in the east end are being adversely affected, but the people living in the east end are starting to miss it and say, 'Hang on, what did we do?'

The Hon. Carolyn Pickles interjecting:

The Hon. A.J. REDFORD: Yes. To be fair, I have had a lengthy discussion with a former Premier, John Bannon, about this. He lives in that area, and he says he is really annoyed at his neighbours for complaining about the noise. In some respects, there were some people who did not say enough at the time in terms of protecting the interests of live music. With a decent precinct committee—

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: No, I have never had the opportunity. I have just not had that sort of wealth.

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: I dealt with that earlier in the sense that some of those properties—

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: Yes, and to be fair, that was a decision that was made in conjunction with consecutive state governments of different political persuasions. So, no-one on this particular issue can claim to be lilywhite.

Members interjecting:

The CHAIRMAN: Order!

The Hon. A.J. REDFORD: I accept what the honourable member says, but we are here now, today, and I think the only way we will be able to deal with that is if, as I say, everybody gets themselves involved in the east end precinct committees and works together in a process of goodwill, with the expenditure of some capital both on the premises that emit the noise and on those premises that receive it.

One example that really sticks out is the Austral Hotel and the beer garden. It is a very open beer garden, and I would have thought that, with a little bit of expenditure, you could enclose the bulk of the noise and at the same time create extra space that would be available to the patrons, not just for the six months of the year when the weather is warm but for an all year round experience. With good negotiations with the builders of the residences next door, with the goodwill of the council, who have always had a policy of encouraging mixed use development in that area, and with the goodwill of the venue provider themselves, there should be sufficient resources and capital able to be applied to enable everyone to live sensibly together. That is the critical issue.

If any one of those groups does not want to be sensible, I am not sure that you could pass any law that would make everybody live together in those circumstances. Maybe sometimes, as politicians, we will have to watch an area decline to the point where it is only then that people get sensible. I move:

Page 3, line 2—Leave out 'and Appeals' and insert:
, Appeals and Noise Complaints

I do not propose to make any contribution. It is self-evident.

Amendment carried; clause as amended passed.

Clause 2 passed.

New clause 2A.

The Hon. A.J. REDFORD: I move:

Page 3, after line 6—Insert new clause as follows:
Amendment of s.3—Objects of this act
2A. Section 3 of the principal act is amended—
(a) by inserting in paragraph (b) 'the live music industry,' before 'tourism';
(b) by inserting after its present contents (now to be designated as subsection (1)) the following subsection:
(2) In deciding any matter before it under this act, the licensing authority must have regard to the objects set out in subsection (1).

New clause inserted.

Clause 3.

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

Page 3, after line 11—Insert new paragraph as follows:
(ab) by inserting in subsection (1) '(which is not otherwise subject to review or appeal)' after 'the Commissioner's decision';

This amendment will insert a new paragraph into section 22. The effect of this is to make clear that, apart from the appeal to the Licensing Court, there is no other review or appeal from the Commissioner's decision on an application for a limited licence, that is, the bill would preserve the present review of such decisions rather than redirecting them to the Supreme Court. This was always the intention of the bill, and the amendment is added so as to avoid any possible argument that the bill leaves open the possibility of an appeal to the Supreme Court.

The Hon. CARMEL ZOLLO: I indicate that the opposition supports this amendment, which clarifies the mechanisms of appeal for a limited licence.

The Hon. NICK XENOPHON: Regarding the issue of appeal mechanisms, I note that, with respect to the Australian Hotels Association (and I think it is very rare for me to be in

agreement with the Australian Hotels Association), a concern has been expressed in terms of, in a sense, reducing access to the courts, or formalising the process by virtue of these amendments. There is a concern that parties involved in disputes would be more prone to cost orders, in the sense that, at the moment, it is largely a no cost jurisdiction if one deals with the Commissioner, as long as it is not a frivolous or vexatious matter—and, similarly if it goes before the Licensing Court judge. I am not sure whether the Attorney has seen the submissions of the Australian Hotels Association, but I share some of those concerns in the context of the issue of the changes to the appeal provisions.

The Hon. K.T. GRIFFIN: I have seen the concern expressed by the AHA—I think it came from its legal representatives. However, I interpreted it more to be the lawyers seeking to maintain the appeal process rather than any other concern. The majority of cases are resolved by the Liquor and Gaming Commissioner. I think that, over a period of a year, there was some analysis of the matters that went to the Supreme Court, and I think it was about four or five matters that ultimately went to the Supreme Court. The whole object of this legislation is to try to get a consistency of approach, so that those who seek to have a decision—

The Hon. T.G. Cameron: How do you do that by forcing appeals in the Supreme Court?

The Hon. K.T. GRIFFIN: Because now you have two possibilities. One can go to the Liquor and Gaming Commissioner, and then the review is by the Licensing Court; or one can go to the Licensing Court, and there is a review by the Supreme Court. The bulk of the matters that go to the Supreme Court come from the Licensing Court. We are endeavouring to try to get more of these conciliated, if at all possible, by the Liquor and Gaming Commissioner, but still allow the opportunity to go to the Supreme Court, if a party wishes to take it to that length. At the moment, it depends where you start the action as to whether or not you might ultimately end up in the Supreme Court, and there is an inconsistency of approach. We are trying to get some rational process that encourages people to go more to the administrative jurisdiction of the Liquor and Gaming Commissioner rather than going off to the Licensing Court.

The Hon. NICK XENOPHON: My involvement on a pro bono basis in this jurisdiction is that parties can elect to go to the Liquor and Gaming Commissioner for a hearing. Parties then have an automatic right of appeal to the Licensing Court judge, and that is the end of the matter; there is no further right of appeal—unless, of course, presumably, it is by judicial review, if it is a judicial issue or something such as that. In terms of how the jurisdiction currently works, if the Liquor and Gaming Commissioner does have a mechanism of conciliation, obviously, the conciliator is not the same Commissioner or Deputy Commissioner who hears it if it goes on hearing to the Liquor and Gaming Commissioner.

So, there is a mechanism of conciliation, and my concern—in terms of some of the disputes in which I have been involved on a pro bono basis, including applications, would not apply here to the Gaming Machines Act—is that it will expose groups of residents who have a bona fide dispute or concern to being thrust into a cost jurisdiction. Indeed, this is a concern that the hotels association has expressed in the context of its own members being subject to quite considerable costs if the matter proceeds by appeal to the Supreme Court. So, I can understand—and if Mr John Lewis, the General Manager of the hotels association, reads this he might fall off his chair that I am agreeing with him on something, I think, for the first—

The Hon. T.G. Cameron interjecting:

The Hon. NICK XENOPHON: That is right. The Hon. Terry Cameron makes a very good point. So, in terms of inconsistency of approach, with respect to how it works now in a practical sense—

The Hon. A.J. Redford interjecting:

The Hon. NICK XENOPHON: I will not be accepting a campaign donation from the Australian Hotels Association or from the industry, I can assure the Hon. Angus Redford of that. In terms of the issues, it seems that the system does not work too badly at the moment in that there is a choice as to whether parties go via the Commissioner and then on to the Licensing Court by way of appeal, or elect to go to the Licensing Court, or take another course of action. That is my concern.

My concern (and I can understand why the Attorney has gone down this path in terms of his concerns about consistency of approach) is that you may deny some parties from exercising their rights in the sense that the issue of costs will deter some parties ventilating these disputes fully. That is a very significant disincentive.

The Hon. T. CROTHERS: I have a notion that, no matter how good the intentions are, many of these matters will finish up in the Supreme Court. I well recall that the AHA, when there was a proliferation of licensed clubs, made a policy that it would take every applicant for a licence as far as it could up the court ladder. So, it makes it very expensive for the litigant who has first brought about the complaint or sought the licence when they find that they have to foot the bill right up to and including the Supreme Court. That is a tactic that I think should have been considered in respect of the matter that is before us now.

Under the old system matters were decided, in general terms, by the Commissioner, rather than even the Licensing Court judge or one of the magistrates who used to sit in the Licensing Court. I do not know who the judge is now in the Licensing Court, but in my day Judge Roy Grubb was the presiding officer, and there were a couple of magistrates. But now we have the Licensing Commissioner, which is much cheaper law than the sort of law that I envisage will emerge out of this, which is that the matter will go, almost without doubt, to the Supreme Court. The tactic behind that will be to make the cost for the litigants prohibitive, because a lot of these people will be working people, or middle class or lower middle class people, and it makes the cost—

The Hon. T.G. Cameron: How much does it cost to go to the Supreme Court these days?

The Hon. T. CROTHERS: I don't know: I haven't been there recently. I will let you know shortly. My view is that it will drive up litigation costs. People complaining about the decibel level of noise will, in my humble view, have to pay a fairly steep cost to have the matter litigated as opposed to the position now. Do not think that the AHA will not do it. It did it over the clubs, and it has even more cause now with this, as the Hon. Mr Cameron said. There are flats and home units going up everywhere in the metropolitan area.

As the Leader of the Opposition said, the east end was at one stage the place where live music had its nativity, when Eddie White owned the Tivoli Hotel and then went on down to the Governor Hindmarsh. But that was live music and again, as the Hon. Mr Terry Roberts said, the fact is that there is very little live music left. Most of the music now is taped music: the musicians' union fought an unsuccessful campaign

against that. You do still get a lot of live music in rural hotels, such as the Berri Hotel, the Renmark Hotel, the Port Lincoln Hotel, the Ceduna Hotel and even clubs at Murray Bridge. So, whilst this bill is based on all the good intentions in the world, it will indeed need to be revisited.

The Hon. K.T. GRIFFIN: The government's view is that this will not in fact result in more cases going to the Supreme Court.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: I said it is the government's view. It may be that the government's assessment is not proved to be correct, but at present there are about four or five matters a year, as I recollect, which go to the Supreme Court. In some other jurisdictions there is no judicial involvement at all. Victoria has dispensed with the need criterion. We did not go that far, but that is going to have to be visited at some stage because of competition policy. It is a restraint on competition. We have not grasped that nettle but the whole industry, and government, will have to face up to that eventually. In the 1997 act we reformed the process quite significantly, removed some of the anticompetitive constraints and freed up the system. Eventually, the need criterion will have to be addressed. It is primarily those sorts of issues that ultimately end up in the Supreme Court.

Members interjecting:

The Hon. K.T. GRIFFIN: The government's view is that the present system is anomalous. To amend it in the way in which we propose will mean that people have to make a choice, and with the same appellant decision maker, but it can go to either the Commissioner or the court. At the moment you can have a couple of bites of the cherry. You can go to the Commissioner, to the Licensing Court, or you can initiate something in the Licensing Court and go to the Supreme Court. We say there should be consistency of approach. That will compel more people to go to the cheaper, administrative option of the Commissioner and that is where the issues will be resolved—

An honourable member interjecting:

The Hon. K.T. GRIFFIN: Most likely, because more cases are now going to the Commissioner. More cases are being resolved by the Commissioner than ever before. It is a cheaper, administrative forum compared with going through the court process. We are trying to keep matters out of the court if at all possible.

The Hon. T.G. CAMERON: Like the Hon. Nick Xenophon and the Hon. Trevor Crothers, I have concerns about this clause of the bill. In the letter that was probably sent to all members by the AHA, it is stated:

> We believe the current system, whereby the Commissioner's decisions are reviewed by the Licensing Court, provides a quick and cost effective recourse to what has been an excellent 'appeal' process to date. In the case of less complex matters, the majority of applicants or objectors who elect to have the Commissioner hear the application do so in the knowledge that the Licensing Court will promptly review the decision if requested by either party.

It then goes on to say:

> However, a party to an application which is heard in the first instance by the Licensing Court can only appeal to the Supreme Court.

My concerns are that, with the changes that the government intends to introduce, anybody wishing to appeal now will have to go to the Supreme Court. It is my understanding that, when people refer a current matter to the Commissioner and then appeal or have the decision reviewed by the Licensing Court, in many instances people represent themselves. Applicants or appellants are going into the Licensing Court when they lodge their appeal and representing themselves. This may be something that we should support.

As I understand it, when this bill is passed and if you want to lodge an appeal after having gone to the Commissioner, you will be able to appeal only to the Supreme Court. I do not know, and perhaps the Attorney could answer this question: will you be allowed to represent yourself or your company on an appeal that is to be lodged with the Supreme Court?

The Hon. K.T. Griffin: Yes.

The Hon. T.G. CAMERON: If you choose not to represent yourself, what would be the cost of having solicitors represent you in the Supreme Court, and would those costs be any different from the costs of being represented in the Licensing Court?

The Hon. K.T. GRIFFIN: The answer to the first question is, 'Yes, you can represent yourself in the Supreme Court.'

Members interjecting:

The Hon. K.T. GRIFFIN: You do. We have some criminal matters currently before the Supreme Court—the matter of Grosser, unrepresented, which is going to be a three month trial, or thereabouts. My understanding is that there are not very many people who seek to represent themselves in the Licensing Court. There are many more who seek to represent themselves before the Liquor and Gaming Commissioner.

In terms of costs, I do not know what the length of a trial will be—and that determines the costs—but the costs ultimately, whether you are represented in the Supreme Court or in the Licensing Court, are generally the same unless, of course, you go for the high-powered QC. But a QC's costs in the Licensing Court, as I understand it, would be about the same as they would be if you were to go into the Supreme Court. The costs are not ordinarily determined according to the jurisdiction in which your lawyer appears, except of course in the Magistrates Court where there is a different scale of fees than for the District Court and the Supreme Court.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: Yes. A single judge. The Supreme Court has a mediation-conciliation process—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: I suppose it is always possible. We see some of the big hotels where—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: You have that now. The 'need' cases do not ordinarily go to the Commissioner. If you want to transfer a bottle shop licence or a retail liquor merchant's licence from one locality to another, you have to establish need. They go generally up to the Supreme Court ultimately, but we have had only about—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: You have the occasional case. We had one down Seaford way which went to the Supreme Court on the granting of a liquor licence. You have them in different localities where incumbent hotels will oppose the granting of a licence for a retail liquor merchant or a hotel.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: Not so much for licensed clubs. My recollection is that there is no need criterion for licensed clubs—there is for hotels and retail liquor merchants. In those circumstances those matters will generally go to the Supreme Court. A mere handful of those are actually contested—there are not huge numbers of them. Most are noise related cases and most are presently dealt with by the

Liquor and Gaming Commissioner and are the sorts of cases we would expect always now to go to the Liquor and Gaming Commissioner.

The Hon. A.J. REDFORD: To clear up a couple of things for the Hon. Trevor Crothers, section 17 of the act sets out the division of responsibilities between the commissioner and the judge. It says that the commissioner shall deal with all non-contested matters. If it is non-contested it is hardly likely to go on appeal. If no-one is contesting it there will be no-one to take it on appeal. It says 'all contested applications for a limited licence'. Limited licences are those licences for one-off events, for example, you might have a party where you will be selling alcohol or a fundraising function and they are generally given pretty simply and easily, provided you fall within the guidelines.

The Hon. T. Crothers interjecting:

The Hon. A.J. REDFORD: No, that does not happen. Clubs can buy their alcohol directly. That rule was changed five years ago.

The Hon. K.T. Griffin: In 1997.

The Hon. A.J. REDFORD: A lot of clubs still go to hotels because hotels provide them with a level of support that the brewery will not. I am involved in the Kingswood Sports and Social Club. If we run short of a keg because we have not ordered (we are not the best managers in the world, like a lot of clubs), because we buy it from the Cremorne Hotel, we find that they will look after us and deliver something down if we run short of glasses or have trouble tapping a keg. But I digress.

The second area of jurisdiction is where, if an application is contested, the commissioner has jurisdiction only in relation to conciliation. You do not appeal from a conciliation. Conciliation either leads to an agreement or, if there is no agreement and there is a failure, it goes to the judge.

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: Well, it does not because if you conciliate there is agreement, so there is no ground for appeal in those circumstances. You cannot appeal against a consent judgment. That deals with that one.

The other one, which can go directly from the Liquor Licensing Commissioner to the Supreme Court, is where a dispute arises, as set out in section 17(b)(ii), which provides:

> and the parties request the Commissioner to determine the application—the Commissioner must determine the application;

It is the parties that set in place the regime that enables the liquor licensing judge to be bypassed. If it is an unrepresented defendant or applicant in a matter before the licensing authority, and it goes to the commissioner for conciliation and the conciliation fails, then both parties have to agree for the commissioner to continue to make an actual definitive decision that might be appealable. If there is any concern on the part of a person that they might be losing a right to appeal to the liquor licensing judge, they will object to the commissioner hearing it, so it goes to the judge anyway. All this is doing, in those cases where a commissioner actually decides, is getting rid of a step in the appeal process and, ultimately, I would have thought as a consequence there would be a saving of costs because you do not need to go through the judge to get to the court. So that the Hon. Terry Cameron understands, in terms of where this applies—

The Hon. T.G. Cameron: I understand what you are doing.

The Hon. A.J. REDFORD: In terms of where this applies, it can apply only in relation to a limited licence or can apply only under section 17 if the parties agree. I am not sure why we are spending such an extraordinary amount of time on this.

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: In every other case the matter will be determined by the court. It is only in those very limited circumstances and in such circumstances 90 per cent of them would be because the parties agree to have this regime in place. I cannot see what the problem is.

The Hon. T.G. CAMERON: Politics can be somewhat ironic at times when you have the Hon. Nick Xenophon and I fighting for something that the AHA is asking the Australian Labor Party and the government to consider on its behalf and on behalf of its members. I think the AHA gave $50 000 to the Liberals and $50 000 to the Labor Party. I do not know how much Nick Xenophon got. I am not counting on getting very much from it at the next election.

The Hon. Carolyn Pickles: You're doing your best.

The Hon. Nick Xenophon: Zero.

The Hon. T.G. CAMERON: I am anticipating that we will get zero from it as well. I guess the AHA must have believed that it would get something for the $100 000 that it tipped into the coffers. To go back to its letter, I take on board what the Hon. Angus Redford said. The AHA is not convinced and has made a couple of points.

The Hon. A.J. Redford: Have they mentioned section 17 in their letter? No they haven't.

The Hon. T.G. CAMERON: No, it has not mentioned section 17, but I will go on to mention what it has said. One comment is:

> The licensing court has successfully encouraged parties to resolve issues during the review process—an approach that is not a feature of the Supreme Court. If the current appeal process is altered as proposed we have a concern that it would not be in the public interest and could be prejudicial to our members.

The AHA goes on to say in its letter that it has an advocacy section, and I suppose the Hon. Trevor Crothers would know a bit about that section. He has probably argued against it on numerous occasions over the years. The AHA has an advocacy section, and that section represented its members in the Licensing Court on reviews of the commissioner's decisions. I suppose the AHA will have to spend some of the $100 000 on legal fees for its members because, as it pointed out to me in its correspondence:

> It is very unlikely that those licensees would have sought leave to appeal to the Supreme Court if they were required to brief legal counsel to represent them in the Supreme Court due to the costs of obtaining legal counsel and the time it may take for the Supreme Court to hear the matter.
> This also creates problems if another party to the application lodges an appeal.

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: Why don't you belt up for a change and just listen, all right?

The CHAIRMAN: Order!

The Hon. A.J. Redford interjecting:

The CHAIRMAN: Order! They are very unhelpful, the interjections.

The Hon. T.G. CAMERON: We have the AHA, which acts like a union for its member hotels, arguing strongly against these measures on the basis that it does not believe that they are in the public interest; it believes that they could be prejudicial to its members; and it believes that it will not be able to continue to supply advice and legal representation through its advocacy section. It is concerned that licensees will not lodge appeals and also concerned about the costs of

obtaining legal counsel. I can understand that the Hon. Angus Redford would not be concerned at the hoteliers' concerns about the costs of obtaining legal counsel, but they are. I still do not know what it would cost.

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: Can you get rid of all your interjections at once?

The CHAIRMAN: Order!

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: Do you mind if I speak while you interject?

The CHAIRMAN: Order, the Hon. Mr Cameron!

The Hon. T.G. CAMERON: Well, you won't pull him up.

The CHAIRMAN: I am asking you to come to order.

The Hon. T.G. CAMERON: Do you want me to sit down?

The CHAIRMAN: You can go on with your contribution and not make comments across the floor; they must be through the chair. And it is much easier for *Hansard* to record what are sometimes serious questions if members wait until they get the call, stand on their feet, ask the question and get an answer.

The Hon. T.G. CAMERON: I guess I wouldn't have to respond to the interjections if he was called to order. That being the case, I will continue. The correspondence that I received from the AHA in one letter sets out about six or seven concerns that it has with this legislation. Have there been any negotiations between the Attorney-General and the AHA in relation to the concerns that were raised by it?

The Hon. K.T. GRIFFIN: I have a liquor licensing working group that meets on these sorts of issues. It has representatives of the Drug & Alcohol Services Council, the Aboriginal Drug & Alcohol Council, the AHA, the Liquor and Gaming Commissioner, the retail liquor merchants, the restaurateurs' association and SA wine and brandy producers. The only group out of the advisory committee that objected to this was the AHA. I can understand that it might have some concern about where—

The Hon. T.G. Cameron: Some concern?

The Hon. K.T. GRIFFIN: It has a different view from me and the rest of the liquor industry working group, and I think it is a misplaced view. I know that it has an advocacy section, but my understanding is that that advocacy section, when there is a matter before the Liquor Licensing Court, does not represent the AHA members on many occasions. Of course, the AHA and its members choose to be represented by lawyers in both the Licensing Court and the Supreme Court.

I will just give a few statistics. In the 12 months to 25 September 2001 there were about 109 applications that attracted community or resident objections; that is, where local residents or councils were involved in relation to amenity issues. Of those applications that were not conciliated, four were determined by the commissioner and five by the Licensing Court. Of those determined by the commissioner—that is, four of them—only one went to the court on review, and that was the Windmill Hotel at Prospect.

The Hon. A.J. Redford: One case.

The Hon. K.T. GRIFFIN: Yes, and they are the issues that have been raised, that is, the effect of the licence on local amenity, not just noise. Whilst I note the concerns that the AHA has raised, I believe that the concerns are misplaced. The information that we have been able to gather from the Liquor and Gaming Commissioner and the court indicates that there are not a large number of matters that go to the Licensing Court or ultimately to the Supreme Court. All I can say is that I have a strong view, on the evidence that we have been able to gather, that its concerns are misplaced.

We can agree to disagree on that and time will tell, but I can say that since the 1997 act came into operation the work of the Licensing Court has diminished dramatically. The resolution of issues has been undertaken more and more by the Liquor and Gaming Commissioner and the bulk of the cases are conciliated. I would have thought that (in the sorts of situations that we are talking about with the other amendments to this bill relating to live music), if we can conciliate a dispute, that is in the interests of the whole community, rather than running off to either the Licensing Court or the Supreme Court.

The Hon. T.G. CAMERON: The AHA has also expressed a concern that decisions of the commissioner will become final and that because of the costs etc. people will not appeal. Does the Attorney have a concern about that?

The Hon. K.T. GRIFFIN: There are some decisions of the commissioner that will continue to be the subject of review. The limited licence applications determined by the commissioner will still be reviewable by the Licensing Court, but all the other decisions made by the Liquor and Gaming Commissioner will be reviewable by the Supreme Court. On the basis of the experience so far, of the matters that ultimately go either to the Licensing Court from the commissioner or from the Licensing Court to the Supreme Court, there is a mere handful of matters that could go to the Supreme Court.

If a party wishes to go to the Licensing Court rather than to the commissioner, they can do that; or, if they prefer the relatively inexpensive process before the commissioner, they can do that, knowing that they can ultimately go to the Supreme Court if that is their choice. The emphasis is to try to conciliate matters and get an early resolution, and to get it cheaply in circumstances that do not involve members of the legal profession, only because of the issue of costs and because conciliation is better than confrontation.

The Hon. IAN GILFILLAN: As I signalled in my second reading contribution, the Democrats had serious concerns and shared the concerns of the Hotels Association. I think that the case has been argued exhaustively and very competently by the Hon. Terry Cameron and the Hon. Nick Xenophon, so I indicate that we will be opposing the amendment.

The committee divided on the amendment:

AYES (14)

Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T. (teller)	Holloway, P.
Laidlaw, D. V.	Lawson, R. D.
Lucas, R. I.	Pickles, C. A.
Redford, A. J.	Roberts, R. R.
Roberts, T. G.	Schaefer, C. V.
Sneath, R. K.	Stefani, J. F.

NOES (6)

Cameron, T. G. (teller)	Crothers, T.
Elliott, M. J.	Gilfillan, I.
Kanck, S. M.	Xenophon, N.

Majority of 8 for the ayes.

Amendment thus carried; clause as amended passed.

Clauses 4 and 5 passed.

New clauses 5A and 5B.

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

Page 3, after line 28—Insert new clauses as follows:

Amendment of S. 61—Removal of hotel licence or retail liquor merchant's licence

5A. Section 61 of the principal Act is amended by striking out from subsection (1) 'licence is to be removed,' and substituting 'the licence is to be removed, the removal of'.

Amendment of s. 77—General right of objection

5B. Section 77 of the principal Act is amended by striking out from subsection (5)(c) 'provide' and substituting 'adequately cater'.

This is to correct an error in the current drafting of section 61(1) noted by the Supreme Court in the case of Liquorland Australia and Hurley's Arkaba Hotel, the judgment of the Full Supreme Court handed down on 18 July 2001. It adds to the section the missing words, 'the removal of'. That is, the applicant for removal of a hotel licence must show the removal of the licence rather than the licence itself is necessary in order to provide for the needs of the public in that locality. This is obviously the meaning of the section. The words were simply omitted in drafting.

As to proposed clause 5B, this makes a minor alteration to the provisions relating to objection to an application. In the Liquorland case the court noted that the grounds of objection to a retail liquor merchant's licence in section 77(5)(c) failed to mirror the matters which the applicant must prove, that is, that the existing licensed premises in the locality do not adequately cater for the public demand for liquor for consumption off licensed premises and the licence or the removal is necessary to satisfy that demand. The amendment would repair this defect by deleting the word 'provide' and substituting 'adequately cater'. Clearly, it is the intention of the act that the objections to be taken relate to the criteria for the grant of the application.

The Hon. P. HOLLOWAY: The opposition supports the two new clauses.

New clauses inserted.

Clause 6.

The Hon. A.J. REDFORD: I move:

Page 3, line 30—After 'is amended' insert:

—

(a) by inserting after subsection (3) the following subsection:

(3a) If a complaint is lodged with the Commissioner under this section—

(a) the Commissioner must cause a copy of the complaint to be served on the licensee of the licensed premises to which the complaint relates no later than seven days after its lodgement; and

(b) no conciliation meeting or other hearing may be held on the complaint until the period of 14 days has elapsed from the day of that service.;

(b) by striking out from subsection (4) 'If a complaint is lodged with the Commissioner under this section' and substituting 'Unless either party to the proceedings on a complaint requests that the matter proceed direct to a hearing and the Commissioner is of the opinion that good reason exists for concurring with the request,';

(c)

The Hon. SANDRA KANCK: I move:

Page 3, line 30—After 'is amended' insert:

—

(a) by striking out from subsection (1) 'resides, works or worships in the vicinity of the licensed premises,' and substituting 'resides in the vicinity of the licensed premises, or works or worships on a regular basis in the vicinity of the licensed premises at a time when the activity, noise or behaviour is occurring,';

(b) by striking out from subsection (3)(a) 'reside, work or worship in the vicinity of the licensed premises' and substituting 'reside in the vicinity of the licensed premises, or who work or worship on a regular basis in the vicinity of the licensed premises at a time when the activity, noise or behaviour is occurring';

(c) by inserting after subsection (3) the following subsection:

(3a) If a complaint is lodged with the Commissioner under this section, no conciliation meeting or other hearing may be held on the complaint until the period of 28 days has elapsed from the day on which a copy of the complaint was served on the licensee by the complainant.;

(d) by striking out from subsection (4) 'If' and substituting 'Subject to subsection (4a) and (4b), if';

(e) by inserting after subsection (4) the following subsection:

(4a) The Commissioner may dismiss a complaint lodged under this section, without endeavouring to resolve the subject matter of the complaint, if satisfied that—

(a) the complaint has not been properly made under this section; or

(b) the complaint was frivolous or vexatious; or

(c) the subject matter of the complaint arose out of an isolated incident and was not sufficiently serious to warrant further action.

(4b) The Commissioner may, at the request of the complainant or the licensee, suspend proceedings under this section at any time to allow an opportunity for a settlement to be negotiated.;

(f)

I guess that we went through the preliminary skirmishes last Thursday. I know that, at that stage, the Attorney was hopeful that, as a consequence, if we did all the talking then we would be able to get around to the actual passage or otherwise of the amendments fairly quickly. I have noted the opposition's preference for the Hon. Angus Redford's amendment and, obviously, I am disappointed that is the case. I feel that my amendment is closer to what is needed. For instance, the sort of things which my amendment includes and which are missing in the Hon. Angus Redford's amendment are matters such as the capacity for the Liquor Licensing Commissioner to be able to dismiss a complaint.

That does not exist in the current act and it does not appear in the Hon. Angus Redford's amendment. I was looking for further clarification of this matter of people residing, working or worshipping in the vicinity, and to elaborate on that a little more so that people who really ought not be entitled would not be able to lay a complaint. I note that the Hon. Angus Redford's amendment makes some reference to this—

An honourable member interjecting:

The Hon. SANDRA KANCK: That is right, but it does not go as far as my amendment and, again, I think that is a pity. The Hon. Angus Redford has rejected what we were calling for in terms of the prior occupancy rights. I recognise what the honourable member said in his contribution about why he was not including prior occupancy rights but, nevertheless, on balance, I believe that such a provision would have been better under the circumstances, and it is certainly what the hoteliers in this city were looking for. Again, my amendment advocates backdating prior occupancy rights to the day of the rally (14 July) that was held on the steps of Parliament House.

Without the sorts of provisions that I have placed in my amendment, I think that, obviously, we are moving some way ahead with the Hon. Angus Redford's amendment but nowhere near as far as we would have been able to take things if the opposition had been prepared to support my amendment.

The Hon. DIANA LAIDLAW: This is the first occasion I have spoken about the live music issue in relation to this bill. Having ordered the working group to meet to determine a unanimous view about how to move forward with respect to live music and adjoining residential issues, I wanted to comment on this matter before us now. I think that it is very important, in addressing the Hon. Sandra Kanck's amend-

ment, to recognise that this amendment moved by the Hon. Angus Redford is one of a comprehensive package of measures and, in turn, the amendment is comprehensive in the way in which it deals with the noise issue from various angles with a number of options for the matter to be heard. I accept the sincerity of the Hon. Sandra Kanck in addressing this matter, but a lot of progress has been made by the working group in reaching a consensus approach—

The Hon. Sandra Kanck interjecting:

The Hon. DIANA LAIDLAW: This was always going to be a matter of compromise if we were going to find resolution to a very difficult issue, which is not only difficult in Adelaide in terms of live music and adjacent residential properties and tenancies but which is also an issue across Australia. It is also, as I indicated in my first ministerial statement relating to the setting up of the working group, not just a live music/adjoining owner issue: it happens in the peri-urban environment and it happens in any mixed use zones—any form of industry and residential mix. I took great heart and have applauded the manner in which the various interests on the working group reached a compromise, and it was a compromise.

However, it was a compromise rather like the significant urban trees issue where, because of the importance of the issue—and to reach a conclusion in the community's best interest—people did reach a compromise. When the community representatives had come to such a conclusion, the parliament was able to act with confidence that this was a package where there was goodwill, a lot of maturity and a strong intention to get on top of the issue and progress it. I believe that the same approach that was adopted in relation to significant urban trees is strongly reflected in this live music working party report.

The Hon. Sandra Kanck's amendment reflects only one issue rather than the diversity of all the issues that will have to be addressed to progress all the complex issues in the live music sector in residential uses. The amendment moved by the Hon. Sandra Kanck also reflects a position that was put by the AHA before it joined the working group and worked through the complexities of the issue. I think that we in this parliament can act with confidence on the amendment moved by the Hon. Angus Redford, recognising the diverse interests on the working group which reached this conclusion and which are reflected in the conclusion to the working group's report.

The government has acted promptly in encouraging the Hon. Angus Redford to move this amendment for the good of the industry. Also, I want to record formally my thanks to all members of the working group. The fact that they were able to reach a compromise in terms of a comprehensive package does give strength to me and the government in advancing some difficult issues across many agencies and sectors in the community.

It gives me confidence in advancing those issues, knowing that we had reached the pits, in some senses, because the issues had become so difficult. If we had had a minority-majority report from the working group, it would just have prolonged the conflicts that led to the working group being established in the first place and the issues being raised here. That is why I would be very keen to see the parliament support this, the first of the working group's recommendations, knowing that it is one of a package of recommendations. If we were to waver at this point, there would be little confidence among the working group members about the sincerity of the government or the parliament in dealing with the work that they undertook and the sensible compromises, over a range of issues, that they reached. It was give and take, without question, by many people who started off with fixed views but who were prepared to put some of those views aside to reach a consensus. That then puts pressure on us to perform in this parliament, and on me to perform across government.

Finally, in reinforcing those remarks that I have just made, I would like to recognise the statements made publicly by Mr Richard Tonkin from the Governor Hindmarsh Hotel, who indicated that it was his view that the working group's report and the government's response to it provided a package and a model that could be used across Australia for addressing these complex issues. There has never been one simple solution. The one simple solution, provided by the Hon. Sandra Kanck in this case, will not work without looking at a range of angles. I also believe that it is wrong to backdate it to the rally of 14 July believing that that will placate the AHA or anybody else. Their anger arose from planning decisions made before 14 July, so the Hon. Sandra Kanck's amendment would not even address those issues but it might give the appearance, by retrospectivity, that it would have some bearing on those decisions. That is not so.

I do not want to be party to giving the false impression of some form of retrospectivity that does not, in fact, address the planning approvals that gave rise to the rally and the working party report. Furthermore, any planning approval that has been given is lawful and I would not wish to see the parliament—not that the Hon. Sandra Kanck is suggesting it—overriding lawful planning approvals, whether we like them or not. That would bring a massive degree of uncertainty to our whole planning process which would be very unwise. The repercussions may be heard across Australia.

There is some inference in the amendments that the retrospectivity provided would ease the minds of the hoteliers who feel aggrieved by recent planning applications. The fact is that the amendments moved by the Hon. Sandra Kanck would provide no benefit to those aggrieved parties. We need a package of measures to address the issues in a comprehensive manner, and on a long-term basis. The amendments to be moved by the Hon. Angus Redford are the first part of a package to do just that.

The Hon. P. HOLLOWAY: I reiterate the opposition's position that we will be supporting the Hon. Angus Redford's package of measures in preference to those of the Hon. Sandra Kanck. I listened with interest to the minister's comments. I am sure that as minister for planning she would be well aware, as indeed most members of the lower house would be, of the problems that can occur in relation to noise within their electorates. I was a member of the other place for four years, and a large amount of my time in those years was spent in dealing with various issues caused by bad planning. I had very few complaints in relation to hotels but I had plenty about factories that were either noisy or emitting fumes. I know that there are a number of problems relating to the airport, not so much in connection with my state electorate but I previously worked for a federal member and came across many people who had such problems.

It is incredibly difficult to resolve some of these planning issues because such issues involve change all the time. For example, I can remember some complaints that I received in relation to a factory that was responsible for intermittent noise. The days it happened tended to be hot: the factory doors would be opened and the noise would come out early in the morning. I think they were loading potatoes in this

particular factory at 6 o'clock in the morning. On most days they would keep the doors closed, especially in winter, but in hot weather it was, naturally, unpleasant in the factory and they would—

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: Yes. You would negotiate a solution between the factory and the residents and that would work well for a while, but then someone would move on. You would have a new foreman or new workers and the issues would arise again. Anyone who has been through these sorts of problems knows how incredibly difficult they are and I do not think that we will ever have a legal system, or a set of laws in place, that could adequately deal with every situation. Every situation is different and that is why, in my view, there has to be considerable flexibility within the bill. That is essentially why the opposition and, I think, every member of the lower house in our caucus who has dealt with these matters has the view that there needs to be some flexibility with these matters. That is why we prefer the approach of the Hon. Angus Redford in relation to these matters. We have to try to set the ground rules that cover most cases, but there has to be flexibility within the system to allow for changes of situation. In our view, that is what the report of the working party has done and that is why most members of the Labor caucus, if not all of them, who have looked at this independently, support it.

The Hon. NICK XENOPHON: I support the amendments moved by the Hon. Angus Redford. Without repeating the remarks I made earlier, I think this is a good piece of legislation in what it should do for the live music industry. The Minister for the Arts has made reference to these amendments being part of an overall legislative package, and reference has also been made to a number of amendments with which I think the Attorney is involved. So my questions are directed to both the Attorney and the Minister for the Arts. Reference is made to the Land and Business (Sales and Conveyancing) Act being amended and to a live music fund being established in terms of any changes to the Development Act, as I understand it.

Can the Minister for the Arts indicate, first, when these other amendments will be moved by the government, given that we are coming very close to the end of a parliamentary session, with an election looming shortly thereafter—or within several months? Second, in terms of the live music fund, has any consideration been given to the extent of the funds available? In the ministerial statement of the Minister for the Arts of 4 July, when she established the working party chaired by the Hon. Angus Redford, she made some reference, in paragraph 3 of the brief of issues, to an exemption under the Environment Protection Act particularly for hotels and other venues where live music is a primary and regular activity, or more generally.

Clearly, the minister has taken into account that there are those venues where live music is a primary activity—and I am particularly concerned about those venues which have elected not to have poker machines and which have gone down the path of building up the live music component of what they offer to the community. Can the minister assure us that the criterion for such a fund will have particular emphasis on that, so we do not have a situation where a hotel which has as an ancillary activity live music, but which gains most of its revenue from poker machines, is not receiving an unfair slice or, in fact, any of these funds from poker machines, given the priorities for those hotels which do not have them, in terms of receiving assistance? Can the Minister for the Arts indicate when these other amendments will be put in place as part of the package, when the fund will be established, and the likely amount in that fund? Also, can the Attorney indicate when, as part of this very good package, the amendments to the Land and Business (Sales and Conveyancing) Act will be dealt with?

The Hon. DIANA LAIDLAW: A couple of weeks ago I issued a press release which provided quite a comprehensive response by the government to all the recommendations of the working group. With respect to business and consumer affairs legislation, the government has considered the recommendations in terms of properties purchased for residential use and also for tenants. I also have had further discussions with the Hon. Angus Redford about this matter. The EPA has agreed that it can update this information and, I believe, provide it on a web site of live music venues across the metropolitan area and also, potentially, in country areas. There is a number of ways in which to address this issue as part of a buyer beware statement, and the Attorney and I are discussing those matters.

My view is that one only needs to put on the Form 7, I think it is, an advice or an alert to the purchaser of the property or the tenant to refer to this EPA web site that is being prepared at the present time. My view is that that would be a sufficient alert to people. We have to be somewhat careful in this matter because of liability in terms of the information that is provided. What I often find surprising (from comments made to me) is that many people will come into the city during the day and will see a property in a mixed use zone, near a shopping centre—during an open inspection, for instance—but they never return to that property at night or at the weekend to find out what activity there is at other times, when they would generally be home. That is a very surprising practice, but it does happen. It might be a quiet day mid week, and people will see a house, decide that they like it and purchase it, and they do not understand what happens at night or on weekends. I think that that sort of advice has to be in terms of awareness of responsibility and not being taken by surprise. Buyer beware is something that we must think through in terms of the responsibilities of real estate agents and the like, but we must also be careful in terms of liabilities. Responsibility must be taken by the purchasers or the tenants. I think that this matter of buyer beware can be easily, simply and effectively addressed.

The Hon. T.G. Cameron: Most people buy their apartments off plan—

The Hon. DIANA LAIDLAW: I think that that is an even bigger issue, because they do not see the quality of the building work—

The Hon. T.G. Cameron: It often looks nothing like what they tell you in the plan, or the specifications.

The Hon. DIANA LAIDLAW: I know. I agree that that is also an issue. In terms of final signing off for occupancy, there can be a lot of disappointment and bitterness, when previously there was a lot of excitement with respect to the plans that someone saw, when the property does not live up to their expectations when it is built—and that is even before they live in it and the noise issues emerge.

In terms of the Live Music Fund (and I will not dwell on this, because the Attorney has other matters to address in relation to this bill), the extent of the fund was not addressed in the recommendations, and neither was the full criterion of how it would be assessed and applied. I have had lengthy discussions with the Hon. Angus Redford, and we have put together a plan that shortly will be considered by the govern-

ment. In the meantime, I will seek to table in this place a copy of the live music report and the government's response, and I will certainly provide a copy to the Hon. Nick Xenophon in an endeavour to satisfy his inquiries.

The Hon. T.G. CAMERON: In looking at the amendments standing in the name of the Hon. Angus Redford and the Hon. Sandra Kanck, I can find fault with both of them, I guess. Whilst I am initially attracted to some of the provisions set out in the Hon. Sandra Kanck's amendment, I cannot support the question of retrospectivity. One of the provisions set out in the Hon. Sandra Kanck's amendment that appeals to me is new subsection (e)(4a), which talks about the powers of the Commissioner to dismiss a complaint lodged under this section if it is frivolous, vexatious, etc. I note that that is not in the Hon. Angus Redford's amendment. I wonder whether the committee considered the question of individuals lodging complaints against a hotel, and how frequently they may be able to lodge a complaint. In other words, would a resident be able to harass a hotelier? I think that that is what the Hon. Sandra Kanck is on about with her amendment. We need to be very careful here that we are not—

The Hon. Carolyn Pickles interjecting:

The Hon. T.G. CAMERON: It is possible. But I do not know whether the Hon. Carolyn Pickles' interjection is appropriate, because I do not know that we will get hoteliers lodging complaints against residents for excessive noise. People are people and, if someone becomes annoyed with a hotelier, I am wondering what opportunity there is for them to use the Hon. Angus Redford's amendment, and what checks and balances are in it. It seems to me that the clause drafted by the Hon. Sandra Kanck gives the Commissioner the power to dismiss a complaint if he or she thought it was frivolous.

The Attorney might be able to answer this question—and I will get a shorter answer, I think, if I direct the question to the Attorney. That is saying something! How often can a person lodge a complaint? Under the amendment standing in the name of the Hon. Angus Redford, is it possible for a complainant to lodge a complaint against a hotelier and, a month later, the next door neighbour could go in and lodge one, and so on? I know that what we are trying to do here is to protect each other's interests, and it seems to me that that part of the Hon. Sandra Kanck's amendment provides some balance and some protection for the licensee against frivolous or vexatious complaints.

Why should a hotelier have to go through a one, two or three day hearing on a complaint if the commissioner had already deemed at the outset that it was frivolous or vexatious? The situation is not dissimilar to provisions in unfair dismissal legislation. Though such provisions are rarely used, the mere insertion of them provides a protection for various parties.

The Hon. K.T. GRIFFIN: I respond first to the Hon. Nick Xenophon's questions about the Land and Business (Sale and Conveyancing) Act and the issue of notification of the quasi-encumbrance. That is an issue arising out of the report of the committee and I have referred it to the Office of Consumer and Business Affairs. It is not a simple matter to amend regulations with the mere stroke of a pen. There has to be adequate notice given to practitioners, real estate agents, conveyancers and legal practitioners. There has to be consultation with those professional groups, and that is something we are now pursuing.

In relation to the matter raised by the Hon. Terry Cameron, the Hon. Angus Redford may wish to respond to the questions that relate to what happened in the committee. The government opposes this amendment because it would empower the commissioner to dismiss at the outset complaints which are not properly made, are frivolous or vexatious or do not warrant further action. Presumably, one of two things is contemplated—and the Hon. Sandra Kanck may wish to explore this: either the commissioner is expected to make a determination based on the written complaint as it is lodged or it is intended that there be some preliminary hearing to determine an application to dismiss a complaint. The difficulty is that the commissioner may not be in any position to make a fair assessment of the issue on the basis of the written complaint. So a preliminary hearing is really called for—

An honourable member interjecting:

The Hon. K.T. GRIFFIN: I think the process is very difficult. I understand the point the Hon. Terry Cameron is making, but ultimately frivolous and vexatious complaints are resolved fairly quickly in the conciliation process.

The Hon. Sandra Kanck: But if a neighbour keeps on doing it over and over again—

The Hon. K.T. GRIFFIN: If someone keeps doing it over and over again, it will ultimately be determined to be frivolous or vexatious. That power is already in the act, not specifically in relation, as I recollect, to frivolous or vexatious complaints, but if there is something that is repetitious then that is an issue which the commissioner is able to rule on. The Hon. Angus Redford might like to add to my comments.

The Hon. A.J. REDFORD: If I could just deal very quickly with that issue because it is before the committee. I will explain the process by which we got to this point rather than go down the path the Hon. Sandra Kanck suggests in her amendment. Paragraph (b) adds the words 'if a complaint is lodged with the commissioner under this section'. That is to be deleted and replaced with:

> Unless either party to the proceedings on a complaint requests that the matter proceed direct to a hearing and the Commissioner is of the opinion that good reason exists for concurring with the request—

Then it goes to conciliation. What we decided to do—and I am happy to spend some time going through all the discussion, because we spent a lot a time on this—was to give either one of the parties the right to say, 'We don't want to go to conciliation. You go directly to a hearing.' I know that the AHA, in the early stages of its submissions, was pretty keen on getting what it described as an early 'No', which is reflected in the Hon. Sandra Kanck's amendments.

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: When we had discussions on that—and the grounds that we discussed were similar to grounds that the Hon. Sandra Kanck put in—we called together a special meeting. We met on three separate occasions and the meeting involved the Liquor Licensing Commissioner, the AHA, which was represented by Michael Jeffries, the legal practitioners who are generally involved in this area and the legal practitioners who are generally briefed by the AHA. The lawyers explained to the AHA that, in effect, an early 'No' in the manner that the Hon. Sandra Kanck has set out will lead to more litigation, because the commissioner will have to afford parties natural justice before the commissioner can dismiss a complaint. In that respect, it will involve a hearing, which could lead to greater cost, and if they do not afford natural justice then they will take the commissioner directly to the Supreme Court for a failure to afford natural justice.

The second point I make is that we looked at the issue of frivolous and vexatious and we looked at how it works in other jurisdictions. In fact, it has no impact upon the activities of litigants at all and, in the last 40 years in South Australia, only two people have been declared a vexatious or frivolous litigant. If a person makes repeated complaints about the same noise, or if successive neighbours repeat the same complaints over and over again, then the commissioner has the right to send the matter straight to hearing, and that, as agreed to by the group, would focus people's minds onto dealing with that.

Members interjecting:

The Hon. A.J. REDFORD: No. The commissioner can reject the complaint after a hearing. But in terms of determining whether or not a complaint is frivolous, you have to go through the same process, incur the same cost and have the same level of uncertainty, because (and the honourable member rolls his eyes and shows his ignorance) you cannot sit there and say, 'On the paperwork I think this is frivolous.' The minute the commissioner does that he is in the Supreme Court on an application for mandamus because he has not afforded the parties natural justice. So it does not do anything in a practical sense. That was the advice that the committee received, not just from one quarter but from a range of quarters and, in the end, the AHA agreed with that.

The Hon. Sandra Kanck, notwithstanding her amendment, still leaves a subjective test in relation to determining whether or not a noise complaint has been made out. All she has done is added one particular factor to the decision-making process of the judge or the commissioner, as the case may be, and that factor is whether or not the activity, noise or behaviour that is complained about was something that the complainant ought reasonably to have been aware existed.

It does nothing and says nothing about deciding whether or not that would lead to an outcome of dismissing or accepting the complaint. It leads us back to the current position where the decision maker—the judge or commissioner—is still led to the inevitable conclusion, notwithstanding the Hon. Sandra Kanck's amendments, that, if that complaint is genuine, I have to uphold that complaint.

The committee had to grapple with the fact that there are occasions when people complain about noise in a very genuine sense, and the noise is something that adversely impacts upon their lives. Under the current law, that complaint must be upheld. Under my proposed amendments, following the compromise referred to by the Hon. Diana Laidlaw, there has to be an objective assessment as to whether or not that complaint is reasonable, having regard to a range of factors, not just the pre-existing activity.

The difficulty with the pre-existing activity is what happens if it changes ever so slightly? What happens if I am putting on jazz for a period of five years and I suddenly want to change that to rhythm and blues, or to Irish or folk? Does that fall within this definition of activity, noise or behaviour taking place prior to the complaint? It may well be that I am happy listening to folk music at 85 decibels and never complain about it, but if they decide to put on jazz, because I do not like jazz—and I am using that as an example because I do like jazz—I suddenly decide that I will complain. I go to the core and—

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: The honourable member might think that this is not a serious issue, but it is, and I have spent a considerable amount of time on it and I think it ought to be dealt with in a serious fashion.

The Hon. T.G. Cameron interjecting:

The CHAIRMAN: Order!

The Hon. A.J. REDFORD: I am sorry, I have lost my train of thought, so I will start again. On the basis of the Hon. Sandra Kanck's amendment, that might well be a different activity and therefore it is not taken into account. The Hon. Sandra Kanck's amendment does not take us anywhere in terms of how the complaint is to be dealt with by the decision maker, and that was the real difficulty with which the committee spent quite some considerable time grappling. That is why the committee decided to recommend that you take into account various factors in determining what is or is not reasonable in terms of the emission of noise.

There are far more important and significant issues than simply who was there first. If you want to get simplistic, we had a lot of farriers on Anzac Highway around the turn of the last century, and they are no longer relevant to a modern society. That is probably an extreme example, but they are the sorts of issues with which we had to grapple.

The Hon. K.T. GRIFFIN: I think the difficulty with making some specific provision for the commissioner to deal with frivolous or vexatious matters in the context of this particular amendment is that there will have to be a hearing before a hearing, and it seems to me that that really adds to the time and potential costs rather than dealing with it all in the one application and in the conciliation process. With respect to the court, there is a power for the court, where proceedings have been brought frivolously or vexatiously, or the right to object has been exercised frivolously or vexatiously, to actually award costs against the person who has taken that action. There is no similar provision in relation to the commissioner because the commissioner's jurisdiction is a 'no cost' jurisdiction. It is much less formal—

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: Even with unfair dismissal, but I will have to go back and look at that. I am not as familiar with that as I am with licensing. I cannot give you a commitment that there will be any change but, having raised the issue about frivolous and vexatious, from the time when the bill passes this chamber and is dealt with in the assembly, I will ensure that that issue is looked at. I will not guarantee that there will be an amendment to address it, but the reality of the situation is that the commissioner will have to have some sort of conciliation hearing or other hearing to deal with an argument that a complaint is frivolous or vexatious, and therefore building in something that enables the commissioner to specifically reject on the grounds of its being frivolous or vexatious may be unworkable or superfluous.

I am prepared to look at the issue and to get some information back to the honourable member about how that would work if it could be accommodated. I start from a position where, at first view, I do not think it is easily accommodated on the basis that the commissioner's responsibility is one exercise as a responsibility of conciliation and that, at the very early stage, could be resolved. If it is not resolved, the commissioner will have to make a determination. That is the best I can offer the honourable member. I am prepared to look at the issue and to get a response back before the issue is dealt with in the House of Assembly.

The Hon. T.G. CAMERON: I thank the Attorney for keeping an open mind on this subject and thank him for the undertaking to go back and look at the implications of frivolous or vexatious complaints. In the real world, when people want to complain about something like excessive

noise, they usually organise themselves into a group. I do not know whether this is something that the committee or the Hon. Angus Redford have overlooked, but in the real world people will organise themselves into a group and will prepare their plan or strategy as to how they will get a licensee or hotel to stop playing live music. If part of that process means that six people living in and around a hotel get out the act and look at it, the penny will drop fairly quickly—and this is something the Hon. Sandra Kanck to her credit has already anticipated. They will not all necessarily lodge an appeal. One person will lodge an appeal. If they do not get their way on that occasion, another one of the group—

The Hon. A.J. Redford: You obviously have not referred to the section.

The Hon. T.G. CAMERON: I have. I can refer you to the section you are talking about. You do not even have to tell me.

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: I would be better off ignoring him, wouldn't I Trevor—I will do that. I will just ignore him and continue with my contribution. Whatever the Hon. Angus might say—

The Hon. A.J. Redford: Look at the clause.

The Hon. T.G. CAMERON: I have looked at the clause. Whatever the Hon. Angus Redford might say, it is a fact of life that people will organise themselves into a group, and it will be that group that will attempt to deal with the problem at the hotel. It concerns me that they will be inventive enough to easily get around the subclause the Hon. Angus Redford has drafted. It does not go far enough and does not give the licensees sufficient protection against a group of people who are determined to put them out of business.

The Hon. Sandra Kanck's amendment negatived; the Hon. A.J. Redford's amendment carried.

The Hon. A.J. REDFORD: I move:

Page 4—

Line 1—Leave out 'resolved by conciliation' and insert: to be conciliated, or is not resolved by conciliation, as the case may be

Lines 6 to 9—Leave out subsection (6) and insert subsections as follows:

(6) In hearing and determining a complaint under this section, the Commissioner or the Court, as the case may be—

(a) must give the complainant, the licensee and any other person whom the Commissioner or the Court thinks fit to hear an opportunity to be heard; and

(b) must take into account—

(i) the period of time over which the activity, noise or behaviour complained about has been occurring and any significant change at any relevant time in the level or frequency at which is has occurred; and

(ii) the unreasonableness or otherwise of the activity, noise or behaviour complained about; and

(iii) the trading hours and character of the business carried out by the licensee on the licensed premises; and

(iv) the desired future character of the locality in which the licensed premises are situated as stated in any relevant Development Plan under the Development Act 1993; and

(v) whether or not any environment protection policy made under part 5 of the Environment Protection Act 1993, or guidelines published by the Environment Protection Authority under that Act, applicable to the provision of live music on the licensed premises have been complied with; and

(vi) any other matter that the Commissioner or the Court considers relevant.

(6a) On completing the hearing of the complaint the Commissioner or the Court, as the case may be, may—

(a) dismiss the complaint; or

(b) make an order against the licensee revolving the subject matter of the complaint.

Amendments carried.

The Hon. SANDRA KANCK: I will not move my last amendment on file. It was not consequential, but it required my earlier amendments for it to hang together. As I acknowledged at the beginning of the debate on this clause on which my amendments have been lost, I put on the record that, despite the loss of those amendments, the Democrats have been able to play an important role in pushing amendments along in respect of this legislation. I suspect that, if we had not made as much noise as we have on this issue over the past 12 to 18 months, things may not have come to this point. Although I am not entirely happy with the amendments that have just passed, nevertheless I accept them as an improvement on the present situation. I am pleased that we have something rather than nothing.

Clause as amended passed.

Remaining clauses (7 to 9), schedule and title passed.

Bill read a third time and passed.

RAIL TRANSPORT FACILITATION FUND BILL

Adjourned debate on second reading.

(Continued from 23 October. Page 2411.)

The Hon. SANDRA KANCK: The Australian Democrats support this bill, which establishes the rail facilitation fund. This fund will be the source of money for the development of South Australian's non-metropolitan rail system. The Democrats have long supported the transfer of freight haulage from road to rail. Such a move will have significant environmental and road safety benefits. The improvement and development of our existing network is essential to achieving that aim. Consequently the creation of a fund to achieve that aim attracts Democrat endorsement.

However, I must include a word of caution at this point. I note that a major source of funds will be the sale of existing railway land and assets. Before any land or assets are sold, their potential future use must be thoroughly assessed. We do not want to sell land or assets that could become part of the future revival of the state's rail network. Should anyone dismiss this possibility, I remind them that the sale of government land for the Mawson Lakes housing estate robbed this state of its best location for a freight transport interchange. Although I am indicating support for the bill, we must devise a way to raise the capital without throwing the baby out with the bath water.

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I thank members for their support. The Hon. Terry Cameron has indicated that he will not speak on this bill but supports the measure, and I thank him for that. In terms of the potential use of land, I can guarantee the honourable member that that is taken into account. The land is owned by the government, in terms of the railway corridors, and the use of the land has been very carefully looked at and assessed in every instance and with rail operators.

The Hon. Sandra Kanck interjecting:

The Hon. DIANA LAIDLAW: Not necessarily in each instance, but in terms of Islington, where Prospect council wants to put in wetlands and a housing estate, I have flatly said no. While that land may be ideal for either of those purposes—or for Bunnings, which wants a major commercial

development—I have said 'No, that is for rail-related purposes.'

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

[Sitting suspended from 5.59 to 7.45 p.m.]

CORONERS BILL

In committee.

(Continued from 25 October. Page 2491.)

Clause 3.

The Hon. IAN GILFILLAN: I move:

Page 5, after line 8—Insert:

'putative spouse' of a dead person means—

(a) a person who was, as at the date of death, a putative spouse of the dead person within the meaning of the Family Relationships Act 1975, whether or not a declaration of the relationship has been made under that act; or

(b) a person of the same sex who was, as at the date of death, cohabiting with the person in a relationship that had the distinguishing characteristics of a relationship between a married couple (except for the characteristic of being of a different sex and other characteristics arising from that characteristic) and—

(i) he or she had so cohabited with that person continuously for a period of five years immediately preceding that date; or

(ii) he or she had during the period of six years immediately preceding that date so cohabited with that person for periods aggregating not less than five years;

This amendment provides a definition of 'putative spouse'. I do not think that I need to explain it further than that.

The Hon. CAROLYN PICKLES: This clause relates to further amendments to new clauses 22A and 22B. In other circumstances I would support the sentiments contained in the amendment but, because we are not supporting the other elements of the Hon. Ian Gilfillan's amendments in this area of putative spouse, we will not be supporting this amendment.

The Hon. K.T. GRIFFIN: The government opposes the amendment. I have already put the government's argument in opposition to the amendment when we were dealing with the earlier clauses in committee. Essentially, this amendment relates to appeals against post-mortems and exhumations. It is not necessary and, in fact, introducing such an appeal mechanism will, generally speaking, be likely to compromise the public interest. I have already indicated that the wishes of the next of kin are taken into consideration but they are not a paramount consideration or the determining consideration: they are relevant considerations carrying significant weight with the Coroner in the Coroner's assessing whether or not there should be a post-mortem.

In any event, whilst it is a narrow right for next of kin to go to court, they can seek judicial review by the Supreme Court, by the state Coroner or the Coroner's Court. For the variety of reasons I have already expressed, it is not something that the government is prepared to embrace.

Amendment negatived.

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

Page 5, line 29—Leave out 'the subject of a treatment order within the meaning of' and insert

a patient in an approved treatment centre under

At present, in some circumstances, the deaths of persons who voluntarily admit themselves for treatment under Division 1 of Part 3 of the Mental Health Act 1993, as opposed to those who are detained under Division 2 of Part 3 or who receive treatment pursuant to a treatment order made under Division 4 of the act, would not be included in the definition of 'reportable death'. The government's amendment to clause 3(f)(iii) of the bill will clarify that the definition of 'reportable death' includes the deaths of all persons accommodated in approved treatment facilities under the Mental Health Act.

The Hon. CAROLYN PICKLES: The opposition supports the amendment.

Amendment carried.

The Hon. IAN GILFILLAN: I move:

Page 6, after line 10—Insert:

'senior next of kin' of a dead person means—

(a) if the person had, as at the date of death, a spouse or putative spouse—the spouse or putative spouse;

(b) if the spouse or putative spouse is not available or the person did not have, as at the date of death, a spouse or putative spouse—an adult child of the person;

(c) if a spouse, putative spouse or adult child of the person is not available—a parent of the person;

(d) if a spouse, putative spouse, adult child or parent of the person is not available—an adult sibling of the person;

(e) if a spouse, putative spouse, adult child, parent or adult sibling of the person is not available—an executor named in the will of the person or some other person who was, immediately before the death of the person, the personal representative of the person;

As the debate is clearly indicating, we have argued the substantial point of this at some length so there is no point in repeating it just because it is another day. However, the Democrats still hold the view quite strongly that the thrust of the series of amendments to give effect to the recommendation of the royal commission into black deaths in custody should be implemented, and this is part of that package. With that context, I leave the matter to the committee to decide. My understanding is that this is not related to the deaths in custody issue. It is related to appeals against the Coroner's decision and on that basis we have already—

The Hon. Ian Gilfillan interjecting:

The Hon. K.T. GRIFFIN: You are defending the principle; that is fine—but it follows on from the amendment of the Hon. Mr Gilfillan that we have just defeated. As I say, it is unrelated to the deaths in custody issue as far as I can see. I confirm my opposition to it.

The Hon. CAROLYN PICKLES: We oppose this amendment. Like the government, I do not believe that it does refer to the deaths in custody issue.

Amendment negatived; clause as amended passed.

Clause 4.

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

Page 7, lines 6 and 7—Leave out 'Legal practitioner of at least five years' standing' and insert

stipendiary magistrate

This relates to the appointment of the state Coroner. Clause 4 of the bill sets down the terms on which the state Coroner is to be appointed. These are that the state Coroner must be a legal practitioner of at least five years standing, that he or she is to be appointed by the Governor on terms and conditions determined by the Governor and that he or she is to be paid a salary and allowances determined by the remuneration tribunal. In practice, the state Coroner is appointed for a fixed term (it is currently 10 years) and holds the appointment as a stipendiary magistrate under the Magistrate's Act 1983.

The government amendments to clause 4 of the bill will give statutory recognition to the terms on which the state Coroner is currently appointed. Specifically, the following amendments are made to clause 4: subclause 4(iii) is amended to provide that a person is not eligible for appoint-

ment as the state Coroner unless that person is a stipendiary magistrate. I should say that that really gives the Coroner a security of tenure, which I reflected in appointing Mr Chivell as a magistrate some years ago. Under the Magistrates Act, of course, a person who is a magistrate cannot be removed unless a particular process is followed, which process is particularly difficult and involves the approval of the Supreme Court.

The amendments further amend subclause 4(iv), paragraph (a) to fix the term of appointment at seven years. A seven-year term was considered appropriate for appointment to a specialist court. The last part is a new clause 4(iv), paragraph (ab) which is inserted to enable the state Coroner to be reappointed.

That package will, in fact, give the sort of security of tenure which is basically a reflection of the current term, except that the current term is 10 years and this is seven years. The DPP is appointed for seven years; appointments to the Youth Court were for five years and that has recently been amended. This does not apply to the incumbent who has the protection of being a magistrate. I would have thought that that was all that was needed.

I note that the Hon. Mr Gilfillan has an amendment on file in relation to this. I can indicate in advance that I will not be supporting that because I think it goes over the top in entrenching the position of Coroner. To suggest that a person cannot be suspended or removed from the office of state Coroner except on an address from both houses of parliament praying for the person's suspension or removal is, I would suggest, just over the top. That is reserved for judges of the District Court and the Supreme Court, the Ombudsman and the Auditor-General, although not, as far as I can recollect, the Police Complaints Authority. Unless the Hon. Mr Gilfillan has some other rationale for this, I must confess that I know of no reason for us to entrench this sort of hurdle in respect of a coroner. Coroner is an appointment to a specialist court investigating as a judicial officer. The sorts of protections which my amendments build into the bill, I would suggest, are more than adequate to address any concerns about removal of a coroner.

The Hon. CAROLYN PICKLES: The opposition supports the government amendments. We think they are sensible and they bring the position of Coroner into line with other appointments. In relation to the Hon. Ian Gilfillan's amendment, which he has on file, I would point out that this has only just been circulated. The opposition has not really had time to look at this in detail but I would indicate that we do not support this. It does seem to be, as the Attorney has said, over the top and unnecessary and it would certainly not be warranted. I think the opposition has every confidence in the present Coroner and I understand that the government does too. This does not seem to be warranted. There is no reason to bring this forward and unless the Hon. Mr Gilfillan can convince us otherwise—well, even if he can—we will oppose it, and if it is a good argument we may consider it in another place.

The Hon. IAN GILFILLAN: It is interesting that I have had extensive debate on my amendment and I have not actually moved it or spoken to it. Mr Chairman, is it appropriate for me to move the amendment standing in my name?

The CHAIRMAN: I understand that the Attorney-General's amendment is lines 6 and 7 and yours is line 9.

The Hon. IAN GILFILLAN: As the two previous speakers have spoken to it, I am happy to talk to it and then you can give me an indication when it is appropriate for me to move it. The Attorney-General's amendment to lines 6 and 7 seems to be unexceptional and I do not intend to oppose that. The major issue here is the actual tenure of the Coroner and the status of the position of the Coroner. We have accepted as a parliament that there are judicial appointments—and the Attorney went through others, the Ombudsman, etc—where there is a tenure which extends without having a specific timeframe built into it.

Our view is that the same status should be bestowed upon the Coroner and, therefore, my amendment is to achieve just that. Quite clearly, as both the Attorney and the Leader of the Opposition indicated, they do not accept, on the face reading of my amendment, that they would support it. The philosophical discussion is again raised as to whether a person appointed to such a position should be vulnerable to a determination at the end of a period of time and to the risk of either appointment or non appointment being dependent on whether the person has found favour with the government of the day. It is a very hazardous situation and it is one that I have opposed strenuously in various areas in the public sector, and no less so on this position.

Mr Chairman, when you signal to me that it is appropriate to move my amendment, I will do so. I do not intend to speak to it again, because the matter has been virtually debated by the Attorney, the Leader of the Opposition and me at this stage. But I have indicated the reason why it will be appropriate for me to move it when you indicate that it is the right time.

The Hon. CAROLYN PICKLES: My understanding, as the Attorney indicated, is that the tenure of the present incumbent is not affected by this amendment, because he has tenure. It is from whenever he ceases to be the Coroner that it is then effective with respect to a new coroner. His tenure is not affected at all by the Attorney's amendment.

The Hon. K.T. GRIFFIN: What the Leader of the Opposition says is a correct reflection of the current position. The present incumbent has a 10 year term. His security of tenure is protected. He can, in fact, be renewed under the new provisions, but his present term is not affected. The Coroner has no judicial power, that is—

The Hon. Ian Gilfillan interjecting:

The Hon. K.T. GRIFFIN: The Coroner's Court does not make a decision to direct, determine disputes or otherwise. It is very largely an investigative office. The Coroner used to be a member of the executive government but we have gradually gone through a transition to establish the Coroner's Court and, for the first time, it will be established as a court of record. But it does not determine disputes, as do the mainstream courts; it does not convict or acquit. It is investigatory. He can make a finding of cause of death and he can make recommendations—and we will have a chance to debate those provisions a little later, anyway. It is not like protecting a Supreme Court judge or a District Court judge. Even under the Magistrates Act, magistrates can be dismissed, but there is a very complicated procedure.

The incumbent Coroner cannot be dismissed. New coroners cannot be dismissed unless, in both instances, as magistrates, they are subject to the disciplinary processes of the Magistrates Act. As far as I am aware, since the Magistrates Act has been enacted, no magistrate has been subject to disciplinary proceedings. And the Supreme Court—the Chief Justice—is involved. It is very much in the hands of the court. There is no threat to the office of the Coroner from the bill as proposed to be amended by me and, certainly, there is

nothing that would warrant the high level of protection being provided in the Hon. Mr Gilfillan's amendment.

Amendment carried.

The CHAIRMAN: The next indicated amendments are from the Attorney-General and the Hon. Mr Gilfillan. The Hon. Mr Gilfillan asked me to indicate when it is the right time for him to move his amendment: now is the right time.

The Hon. IAN GILFILLAN: I move:

Page 7, line 9—Leave out paragraph (a).

Amendment carried.

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

Page 7, line 9—After 'term' insert:
of 7 years

Amendment carried.

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

Page 7, after line 9—Insert the following new paragraph:
(ab) is, on the expiration of a term of office, eligible for reappointment; and

Amendment carried.

The Hon. IAN GILFILLAN: I move:

Page 7, after line 10—Insert:

(5) A person ceases to hold office as State Coroner if the person—

(a) resigns from that office; or

(b) ceases to be a stipendiary magistrate; or

(c) is removed from that office in accordance with subsection (6).

(6) A person cannot be suspended or removed from the office of State Coroner except on an address from both houses of parliament praying for the person's suspension or removal.

Amendment negatived; clause as amended passed.

Clauses 5 to 22 passed.

New clause 22A.

The Hon. IAN GILFILLAN: I move:

Page 13, after line 21—Insert:

Objections to post-mortem examinations

22A.(1) If the senior next of kin of a person whose death has been reported to the State Coroner has requested the State Coroner that no post-mortem examination of the body of the dead person be performed but the State Coroner or the Coroner's Court forms the opinion that such an examination is necessary, the State Coroner must immediately give written notice of the decision to the senior next of kin.

(2) The senior next of kin may, within 48 hours after being served such a notice, apply to the Supreme Court for an order preventing the performance of the post-mortem examination and the Supreme Court may, if satisfied that it is proper to do so in all the circumstances, make such an order.

(3) If an application is made under subsection (2), the post-mortem examination cannot be performed unless and until the application is dismissed or withdrawn.

(4) However, despite subsection (2) and (3) and any order of the Supreme Court, if the State Coroner or the Coroner's Court (as the case may be) is of the opinion that it is, in all the circumstances, necessary that the post-mortem examination be performed without delay, the State Coroner or the Coroner's Court may give directions to that effect and the post-mortem examination may be performed accordingly.

This is a fairly significant amendment. It does reflect, as I have previously argued twice, recommendations of the royal commission into black deaths in custody, and it carries the support and recommendation of the Law Society, and those who have had discussions with me about translating the findings of that royal commission into legislation have urged support for proposed new clauses 22A and 22B, which are amendments giving the immediate family notice with respect to a person whose death has been reported.

Incidentally, as I indicated before, the legislation is not specific to black deaths in custody, and quite rightly so. It spreads over the whole population. However, the impetus for this to be brought forward at this time, many years after it was first urged, is, to a large part, in a belated response to the pleadings and the recommendations with respect to the findings of that royal commission.

The Hon. K.T. GRIFFIN: I oppose the amendment. I must confess that I did not understand that these two clauses related to the Royal Commission Into Aboriginal Deaths In Custody. These proposed new clauses are about objections to post-mortem examinations. My understanding is that Aboriginal people would not object to a post-mortem where there is an Aboriginal death in custody, because an inquest is something that they very much want. The focus for an Aboriginal death in custody is on trying to get the facts and also some recommendations to try to prevent it from happening again. Having dealt with the principal issue earlier in the debate, I merely confirm that the government does not agree that these two proposed new clauses should be supported, because they are not in the public interest.

The Hon. NICK XENOPHON: I indicate that I support the Hon. Ian Gilfillan's position on this amendment. I note the position of the Law Society—I have disclosed on numerous occasions that I am a member of the Law Society of South Australia. That does not mean I necessarily agree with them on all issues but in this case the points made by the Law Society with respect to post-mortem examinations are valid. My concern is that the recommendations made by the Royal Commission into Aboriginal Deaths in Custody have not been acted upon to the fullest extent. Various state governments, including this one, have made a number of bona fide endeavours to improve the position; that has been the case to this point. This particular amendment is a step in the right direction and I support it. My concern is that if we do not pass this amendment, the very important recommendations made by the royal commission will be watered down.

The Hon. CAROLYN PICKLES: The opposition indicates its opposition to new clauses 22A and 22B. The Hon. Mr Gilfillan has made it very clear that not only does this apply to the report on Aboriginal deaths in custody, but it is a general application for all exhumations and all post-mortems. It opens up the issue too widely. The opposition is sympathetic to the views of the Aboriginal people in relation to these issues and we will support, because they are much more confined, the later amendments which specifically deal with sections 13, 14, 16 and 17 of the Royal Commission into Aboriginal Deaths in Custody. This amendment is much too broad. We would be willing to have further discussions with the Aboriginal community on this issue but I think, as does the Attorney, that there is a potential problem in allowing the general community to oppose post-mortem examinations or exhumation as provided for in these clauses.

The Hon. K.T. GRIFFIN: I am a bit puzzled about some of these observations because these amendments do not relate to any recommendation of the Royal Commission into Aboriginal Deaths in Custody. What the Law Society wanted was to implement recommendations 13 to 17 of the royal commission. I have some difficulties with that and we will debate each of those amendments when they come up. They also want to provide the next of kin with the right to appeal to the Supreme Court. In their covering letter they make some observation to the effect that such a right 'will show some sensitivity to Aboriginal people'. But it has nothing to do with the recommendations of the royal commission. Subsequent amendments deal with recommendations 13 to 17. Let's not confuse the issue.

These amendments about rights of appeal by next of kin in respect of post-mortems is not something which arises from the royal commission. They are amendments which we will deal with later. The government has got some very strong views on those, as we have on the amendments before us. The amendments before us have effectively been defeated by the votes on two earlier amendments proposed by the Hon. Mr Gilfillan which were related to this particular issue.

The committee divided on the new clause:

AYES (4)

Elliott, M. J.	Gilfillan, I. (teller)
Kanck, S. M.	Xenophon, N.

NOES (13)

Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T. (teller)	Holloway, P.
Laidlaw, D. V.	Lawson, R. D.
Pickles, C. A.	Redford, A. J.
Roberts, R. R.	Roberts, T. G.
Schaefer, C. V.	Sneath, R. K.
Stefani, J. F.	

Majority of 9 for the noes.

New clause thus negatived.

New clause 22B.

The Hon. IAN GILFILLAN: I move:

22 B. (1) Before an exhumation warrant issued by the State Coroner or the Coroner's Court is executed in relation to a dead person, the State Coroner must give written notice to the dead person's senior next of kin of the proposal to execute the warrant.

(2) The senior next of kin may, within 48 hours after being served such a notice, apply to the Supreme Court for an order preventing the execution of the exhumation warrant and the Supreme Court may, if satisfied that it is proper to do so in all the circumstances, make such an order.

(3) If an application is made under subsection (2), the exhumation warrant cannot be executed unless and until the application is dismissed or withdrawn.

(4) However, despite subsections (2) and (3) and any order of the Supreme Court, if the State Coroner or the Coroner's Court (as the case may be) is of the opinion that it is, in all the circumstances, necessary that the exhumation warrant be executed without delay, the State Coroner or the Coroner's Court may give directions to that effect and the warrant may be executed accordingly.

I wish to acknowledge that the Attorney is correct: the specific substance of new clauses 22A and 22B does not reflect precisely identified recommendations of the royal commission. I believe, however, that the spirit of the royal commission, regarding sensitivity to, in particular, Aborigines and their relationship with family, but not exclusively to them, is properly expressed in both these amendments, but I do put on the record that I acknowledge that the Attorney is correct. They, in themselves, are not specific translations of recommendations 13 through 17 of the royal commission.

New clause negatived.

Clauses 23 and 24 passed.

Clause 25.

The Hon. IAN GILFILLAN: I am just absorbing the fact that these amendments are totally separate from earlier amendments, so they do stand in their own right. I move:

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Line 5—Leave out 'may' and insert:

must, unless of the opinion that it is not warranted in the circumstances,

After line 7—Insert:

(2a) A recommendation may be made under subsection (2) despite the fact that it relates to a matter that was not material to the event the subject of the inquest.

Lines 10 and 11—Leave out subclause (4) and insert:

(4) The Court must, as soon as practicable after the completion of the inquest, forward a copy of its findings and recommendations (if any)—

(a) to the Attorney-General; and

(b) in the case of an inquest into a death in custody, to—

(i) any other Minister (whether in this jurisdiction or some other jurisdiction) responsible for the administration of the Act or law under which the deceased was being detained, apprehended or held at the relevant time; and

(ii) each person who appeared personally or by counsel at the inquest; and

(iii) any other person who, in the opinion of the Court, has a sufficient interest in the matter.

(5) If the findings on an inquest into a death in custody include recommendations made by the Court, the Attorney-General must, within 6 months after receiving a copy of the findings and recommendations—

(a) cause a report to be laid before each House of Parliament giving details of any action taken or proposed to be taken by any Minister or other agency or instrumentality of the Crown in consequence of those recommendations; and

(b) forward a copy of the report to the Court.

I believe that these amendments actually follow in some detail the recommendations from royal commission in so far as the Coroner's recommendations are to be more directly presented to the Attorney. From the committee's viewpoint it is probably worth while getting an indication as to whether we will be engaged in an exhaustive debate on these. These may find favour with the committee. I have argued the basis of them in previous contributions to the debate on the bill. I urge the committee to support them.

The Hon. K.T. GRIFFIN: I hope I am able to persuade the opposition that it should not support this, although I suspect my plea will fall on deaf ears. The government opposes the amendment. It purports to implement recommendation 13 of the royal commission. Clause 25(2) of the bill provides that the Coroner's Court may add to its findings any recommendation that might, in the opinion of the court, prevent or reduce the likelihood of a recurrence of an event similar to the event that was the subject of the inquest. This amendment, for reasons which are not clear, replaces the court's discretion to issue recommendations where it thinks appropriate, with a requirement that the court issue recommendations, unless it is of the opinion that it is not warranted.

It is the government's view that it is inappropriate that a court should be required to make recommendations, unless there are identifiable reasons for not doing so. This could lead to the court being forced to publicly defend its decision not to make recommendations and this would undermine the integrity and independence of the coronial system. I should say that, if the opposition is seeking to rely upon the recommendation of the royal commission, this amendment is not—and I stress 'not'—consistent with the recommendations of the royal commission. Whilst the Hon. Mr Gilfillan argues that it is, it is not consistent with the recommendations of the royal commission.

There is a subsequent amendment to clause 25 and I will deal with that one as well. Before I go on to the next amendment—and it is important to have this on the record; I would hope that we will be able to have this debate in a deadlocked conference, or the opposition may be persuaded to reconsider in light of the facts—recommendation 13 of the royal commission says that a coroner inquiring into a death in custody be required to make findings as to the matters which the Coroner is required to investigate and to make such recommendations as are deemed appropriate, with a view to preventing further custodial deaths. The Coroner should be

empowered further to make such recommendations on other matters as he or she deems appropriate. They are all related to empowering the Coroner to make findings and recommendations.

It is a rather curious device that the honourable member should employ in his amendment to actually require the Coroner to make recommendations—rather than just empowering the Coroner to make recommendations—unless there is good reason not to. It is all topsy turvey. I will oppose that amendment.

The next one I also oppose. As I said earlier, a new subclause 2(a) will empower the Coroner's Court to issue a recommendation, despite the fact that it relates to a matter that was not material to the event that was the subject of the inquest. It is the government's view that recommendation 13 is, to the extent appropriate, already addressed by clause 25(2) of the bill. Clause 25(2) provides that the Coroner's Court may add to its findings any recommendations that might, in the opinion of the court, prevent or reduce the likelihood of, or a recurrence of, an event similar to the event that was the subject of the inquest. It is difficult to imagine a situation where the court, in the course of giving its findings on a death in custody, could make recommendations based on the evidence presented at the inquest aimed at preventing deaths in custody that did not fall within the confines of 'an event similar to the event that was the subject of the inquest'. If a court attempted to do so, the government believes there could be no proper basis for making such a recommendation.

The government is also concerned that this amendment will create the potential for abuse of the coronial system by encouraging parties to seek to broaden the arguments presented at an inquest in order to encourage the court to make recommendations which might suit their cause but which may not be relevant to the event which is the subject of the inquest. That deals with that recommendation. There is another amendment in relation to clause 25 and I will deal with that when the honourable member moves that one.

The Hon. CAROLYN PICKLES: The opposition indicates its support for the Hon. Ian Gilfillan's amendments in relation to Aboriginal deaths in custody. The Attorney has put some views forward, in particular in relation to recommendation 13. He has already indicated that this bill has to go to another place. If the shadow attorney-general in another place is persuaded by the arguments of the government, the opposition may wish to move its own amendments. At this point we are supporting the recommendations. The Hon. Ian Gilfillan's amendments are not just confined to Aboriginal deaths in custody because they are all deaths in custody. To that extent, will the Attorney report on how many deaths in custody there have been in South Australia in the past 12 months or two years?

The Hon. K.T. GRIFFIN: It is a very small number. My advice is that it was four. All I can do is undertake to get that information and provide it before the debate in the House of Assembly.

The Hon. CAROLYN PICKLES: I thank the Attorney for that and ask him whether he could also indicate how many of them might have been the subject of a coronial inquiry.

The Hon. K.T. GRIFFIN: I will do it for every death in custody.

The Hon. CAROLYN PICKLES: And how many might have been Aboriginal deaths in custody.

The Hon. K.T. GRIFFIN: I will get the breakdown. The definition of a death in custody is very broad and includes hot pursuit. Deaths in custody include police, deaths in cells or during an operation, when the person who dies—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: Yes, I think that is right. I will get the definition and the details of the numbers, but it also includes hot pursuit. If there is a car chase and a person who is being chased dies in the car chase, that is regarded as a death in custody. So, it is very broad. Some of those deaths are Aboriginal but, as I said, I do not think the numbers are very large and it is very difficult to know how some of those can actually be prevented. There are, of course, some deaths in custody that occur (whether Aboriginal or non-Aboriginal persons) where the overall health is the significant factor.

Heart disease and a whole range of illnesses precipitate death, and the stress of being arrested and being taken to prison might trigger it. Maybe it would have happened whether it was in custody or otherwise. But all the deaths in custody are the subject of a coronial inquiry. I will get the details and make them available before we debate this in the lower house.

The Hon. CAROLYN PICKLES: I thank the Attorney for that advice. It is useful to know exactly the circumstances of the deaths in custody so that we can make a more balanced assessment, but at this point we will continue to support the Hon. Ian Gilfillan's amendments.

The Hon. K.T. GRIFFIN: What I had overlooked is that there is a definition of death in custody in clause 3 of the bill, which really reflects what I was indicating as the breadth of the definition. That, of course, determines the jurisdiction of the Coroner in relation to a death in custody, but that does not alter the fact that I will get the information about numbers and the division between Aboriginal and non-Aboriginal deaths in custody and make it available to the honourable member.

The Hon. CAROLYN PICKLES: I thank the Attorney, because I think it is important to make an assessment of how many of them are Aboriginal deaths in custody and under what circumstances. I was not aware that it included people involved in a police chase (and these are becoming more prevalent, as I understand). In any case, the Attorney thinks that it is a very small number.

The Hon. NICK XENOPHON: I support the Hon. Ian Gilfillan's amendments. In relation to the Attorney's amendment, the Attorney is correct in saying that the deaths in custody royal commission finding does not require that it be a mandatory reporting, that it is one of giving the power to the Coroner. Obviously, that has been done in the government's bill, but I prefer the Hon. Ian Gilfillan's amendment because it puts an onus on the Coroner to make recommendations.

The Hon. K.T. Griffin: It requires him to make recommendations unless he thinks that there are good reasons not to.

The Hon. NICK XENOPHON: Yes, and that is where the argument is, although the Hon. Ian Gilfillan's amendment does ameliorate it by saying 'unless of the opinion that it is not warranted in the circumstances.' There could be circumstances, for instance, where a death has occurred in similar circumstances and the Coroner's findings are, 'I have reported on this previously: I have made a finding on this previously,' in terms of remedial action, for instance, and why he is not preparing a report from scratch.

I would have thought that the Hon. Ian Gilfillan's amendment deals with that. In terms of the recommendation that, 'despite the fact that it relates to a matter that was not

material to the event the subject of the inquest', I note the Attorney's point that this could invite the parties to open it up. My understanding, although I will stand corrected by the Attorney, is that there is a criterion of relevance—

The Hon. K.T. Griffin: Not in the amendments. They remove that issue of relevance in the amendments.

The Hon. NICK XENOPHON: My understanding is that, in terms of the coronial inquiry itself, if parties start talking about totally extraneous matters relating to the death—in other words, not related to the death—then I imagine that the Coroner could pull up those parties with respect to any extraneous matters being dealt with. I appreciate the Attorney's amendments, but I prefer the Hon. Ian Gilfillan's. We are talking about a most grave event, a death in custody, and, unfortunately, Aboriginal Australians are disproportionately represented in those statistics.

That is why having a requirement on the Coroner to make recommendations, I thought, may go somewhat beyond the royal commission's finding 13. But I regard it as an appropriate amendment, given that this is still a problem, that deaths in custody are still something that are a blight on our community and our prison system.

The Hon. K.T. GRIFFIN: The issue of relevance is important, because the second amendment sets out to allow the Coroner's Court to make a recommendation under subsection (2), despite the fact that it relates to a matter that was not material to the event the subject of the inquest. With respect, that takes all the constraints off a Coroner, but it also encourages a party to actually test the limits, to bring in extraneous material, to endeavour to get the Coroner to make recommendations on something that is not relevant to the event that is the subject of the inquest.

With respect, it really is a nonsense. All that I can say is that this recommendation of the royal commission was looked at by the Liberal government soon after we came to office, but it was obviously looked at by the Labor government, by my predecessor, and no action was taken to implement it because, in the South Australian context, in the context of our Coroner's legislation, it is not either necessary or appropriate.

The recommendations of the royal commission have been largely implemented in South Australia, but we are not going to implement all the recommendations regardless of their merit, regardless of their effect in South Australia. And we have made that point to COAG and other forums where it has been relevant to report on the implementation.

There is nothing to say that the royal commission was right a hundred per cent of the time. It was not, and it did not necessarily take into account all of the variances between jurisdictions of existing practice and legislation. So all that I can say in relation to these amendments is that the first is really turning the responsibility of the Coroner on its head, and the second opens up a Pandora's box to a wide range of potential recommendations and practices by parties which I think are undesirable.

Of course, it is all very well to say that the Coroner can ultimately control this but, if you get some emotional parties before the Coroner and the Coroner says, 'You can't ask that question, you can't go down that path,' it is going to be very difficult for a Coroner to withstand the reaction to that. Whilst our current Coroner does I think deal appropriately, delicately, sensitively, with coronial inquests, this will open up additional opportunities, create further pressures. They are the reasons why I feel very strongly that these amendments are inappropriate and should not be supported.

The Hon. IAN GILFILLAN: It looks as though we do have to open up the debate a bit. In my second reading contribution I actually summarised the effects of recommendations 13 to 17, and I said, first:

> . . . permit the Coroner after making recommendation on a death in custody to make recommendation on other matters as he or she deems appropriate.

It seems to me as though the Attorney has got a paranoia that something absolutely devastating to the state of South Australia would come from outfield by a Coroner making a recommendation which has no mandatory effect. Apparently he sees in those dangerous words something which is so potentially corruptive of the state that he does not want the Coroner to have the freedom to make a recommendation in this report which may not be directly material to the incident that he is investigating. The second point was:

> . . . require the Coroner to send copies of his or her findings and recommendations to all parties who appeared at the inquest and to the relevant minister; require each relevant agency or department to respond to the relevant minister within three months; require any minister receiving such response to provide a copy to the Coroner and all parties who appeared at the inquest; require the Coroner to report annually to the parliament on deaths in custody generally and on the findings, recommendations and responses made under these proposed amendments.

As I said in my second reading contribution, the then minister for aboriginal affairs, Dr Armitage, made comments on these five recommendations and they were—and I admit these are abbreviated summaries:

> First—under consideration; second—does not require legislative change; third—has not been adopted; fourth—is a discretionary matter for the State Coroner; and fifth—should not be done.

We have not had any decrease in deaths in custody. It is an average of 4.7 deaths a year in custody—and obviously you do not have a .7, but taking it for our records it is five deaths in custody, and it is five deaths too many. I do not see any frightening ogre in these amendments and in extending the power and responsibilities of the Coroner to report and for people to receive the report and to respond to it. We either care about the five deaths in custody or we do not. It will not cost the state a cent more. It is going to take very little extra time and it actually has a chance of doing something to reduce the deaths in custody, and it responds, to a large extent, to recommendations 13 to 17 of the royal commission.

The Hon. K.T. GRIFFIN: It is a pity that the Hon. Mr Gilfillan could not maintain a rational approach to this. We all care about any death in custody, whether it is Aboriginal or non-Aboriginal, but merely implementing the remaining recommendations of the royal commission into Aboriginal deaths in custody will not change the position. Those recommendations which will have an impact are recommendations about the way in which Aboriginal people are dealt with in custody and, ultimately, they are about health, culture, advantage or disadvantage, as the case may be, and dealing with the underlying social issues. I am not paranoid about what the Coroner can and cannot do. I just think if you are going to have an office of Coroner and you define the limits of the Coroner's authority, then it is ridiculous to be out there promoting that the Coroner can do anything, and that is what one of these things does. The Coroner can do anything.

The Hon. Ian Gilfillan interjecting:

The Hon. K.T. GRIFFIN: The Coroner can make any recommendation, even unrelated to the event. The role of a Coroner is to investigate a particular event, whether it is a death in custody, a fire, a road accident, or otherwise.

The Hon. Ian Gilfillan interjecting:

The Hon. K.T. GRIFFIN: If he makes recommendations totally unrelated to the event which is the subject of inquiry it seems to me that one is giving the Coroner a very broad ranging power, putting at risk the capacity to narrowly confine the inquiry into all the activities surrounding that particular event and the circumstances of the event, and broadening it out to a limit we know not where it will end. That is the point I am making. I think the response of the Hon. Dr Armitage when he was minister was quite appropriate. As I have said before, most of the recommendations of the royal commission have been implemented, and those that have not are not relevant to South Australia or the government does not feel that they will have any bearing on preventing deaths in custody.

The Hon. NICK XENOPHON: I do not doubt the Hon. Ian Gilfillan's passion and commitment to reduce deaths in custody, and it would be fair to say that everyone here wants to reduce deaths in custody. It is not a criticism of the Hon. Ian Gilfillan at all; it is just that we are trying to work out the best way of dealing with it. I maintain my strong support for the amendment to clause 25, page 15, line 5, so that the Coroner must report, because I think it is appropriate that, in dealing with a death, there is an onus on the Coroner, save for the exception, the out, that the Hon. Ian Gilfillan gives in his amendment, to make recommendations that could in some way ultimately lead to a reduction in deaths. The Attorney, though, does make a number of points with respect to the second amendment of the Hon. Ian Gilfillan.

When I discussed this matter with a representative of the Law Society, its position was that if the Coroner in the course of an inquiry made an observation, I think to pick up on the Hon. Ian Gilfillan's language, then the Coroner should not be circumscribed in making a recommendation, even if it was an observation that was in a way incidental to the death, even though it was not the cause of the death, in which case the Coroner should not be constrained in making a recommendation.

My question to the Attorney is, in terms of the current position and the position with respect to the government's amendments: if the Coroner makes an observation on a death in custody where, for example, a prisoner may have died as a result of a hanging but the Coroner has made observations that there were pipes from which the prisoner did not hang himself or herself but which pose a danger to future prisoners, then in that circumstance would the Coroner be constrained in making an incidental finding to that effect? That is my understanding of the intent of the Hon. Ian Gilfillan's amendment.

My question regarding the intent of the Hon. Ian Gilfillan's second amendment with respect to subclause (2a) is that, if the Coroner makes an observation in the course of a coronial inquiry as to the cause of death of a prisoner, for instance (and this example was put to me by a Law Society representative), if a prisoner died as a result of hanging but hanging over, say, a particular part of the prison structure, but if the Coroner observed that there were some pipes from which a hanging could also take place, is the Coroner constrained from making a finding about that?

In other words, if the prisoner died as a result of—and I know that this is a little macabre but I think that this is the reality—hanging from a particular part of the structure, a rafter, or whatever, but there were also some overhead pipes that could have afforded an opportunity for that prisoner or other prisoners to hang themselves, is the Coroner constrained in making a finding about that, notwithstanding that that was not the cause of death? That is my understanding. Obviously, the Hon. Ian Gilfillan will correct me with respect to his intention in moving this amendment.

The Hon. K.T. GRIFFIN: I draw the honourable member's attention to clause 25(2), which provides:

> The [Coroner's] Court may add to its findings any recommendation that might, in the opinion of the court, prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the inquest.

So, if there is one hanging point, which has been the point from which the prisoner hanged himself or herself and there are other hanging points that might be identified, it is my view that that is clearly within subclause (2) of clause 25. The other point one must recognise is that this bill is not just about deaths in custody: this bill is about fires; it is about truck drivers; it is about road accidents; and it is about other deaths, including homicide.

The amendment seeks to broaden the range of authority of the Coroner. I suppose that, if there is a death in custody, one possibility (without being alarmist about it) is that the Coroner may feel obliged to have something akin to a royal commission into the prison system every time such a death in custody comes to his attention because he is empowered to make recommendations more broadly than just dealing with the event that is the subject of the inquiry.

The Hon. NICK XENOPHON: I thank the Attorney for his answer. Flowing on from that answer, is the Attorney of the opinion that subclause (2a) could potentially lead to a judicial review application being made given that it has that broader power? Has that been considered? Has the Attorney received advice on that or does he have a view with respect to that? It could mean that this clause could lead to an expansion of any potential judicial review of a party involved in a coronial inquest.

The Hon. K.T. GRIFFIN: I think there is a potential for judicial review. I have already said that, as it stands, the bill would allow a next of kin on judicial review to challenge the decision of the Coroner to have an inquest. Of course, judicial review is a fairly limited remedy, but I would suggest that if, for example, you have a trucking company where there has been a severe road accident, where the inquiry is into that accident and the Coroner decides that he wants to look at something that might be unrelated to the trucking company, it may be that, in those circumstances, there is an attempt to restrain him to focus only on the particular event.

The Hon. NICK XENOPHON: I now see the Attorney's arguments much more clearly, but the Hon. Ian Gilfillan has asked the question: what harm would this particular clause do? I think that part of the answer might be that it could open up a coronial inquest to endless judicial review. I think there is a risk there. I can also understand the Hon. Ian Gilfillan's intention—which is a very good one—to try to minimise the incidence of these or similar events occurring again. To what extent, other than the issue of judicial review, perhaps, does the Attorney say that this clause will be harmful in terms of the Coroner's functions and the exercise of his powers?

The Hon. K.T. GRIFFIN: I thought I had dealt with that, because I think the risk is that persons who appear and who are represented at coronial inquiries may be tempted to get an expansion of the inquiry by bringing in matters that are not directly relevant—maybe that are not even indirectly relevant—because this will mean that relevance is irrelevant to the recommendations the Coroner can make. I see it having the potential to cause inquests to go off at different tangents

that are not central to the key issue, and also to make it more difficult for a Coroner to control the direction of the inquest, which should be focused upon the event, that is, the death in custody, the road accident or whatever.

They are the risks that I see in that second amendment. It is unique, in my experience, that we seek to give to a body, such as a coroner's court, the power to make recommendations on something that is not relevant to the matter before it. We know that, in some cases, judges do make comment in judgments about things that are not directly relevant to the decision—we call that obiter dicta. But we do not allow judges to go off on frolics of their own because courts of appeal will bring them back to the central issue with which they are required to deal. I think there are some real risks in this and I think that it is undesirable to give to a body, such as the Coroner's Court, this extraordinarily wide charter when the justification for it is has just not been made out.

The Hon. NICK XENOPHON: I am not sure whether the Hon. Ian Gilfillan has moved both amendments.

The Hon. Ian Gilfillan interjecting:

The Hon. NICK XENOPHON: We are taking them separately; that is fine. I indicate that, given the Attorney's reservations, particularly with respect to subclause (2a), I will support the government's position, notwithstanding that I commend the Hon. Ian Gilfillan for raising this issue. I believe that the Hon. Ian Gilfillan's concerns are dealt with and that his intent is fulfilled by virtue of the government's bill with respect to subclause (2), allowing for the Coroner to make a finding if there is an event similar to the event that was the subject of the inquest. I believe that that provides a great deal of protection in terms of the Hon. Ian Gilfillan's concerns.

The committee divided on the Hon. Ian Gilfillan's amendment to page 15, line 5:

AYES (9)

Elliott, M. J.	Gilfillan, I. (teller)
Holloway, P.	Kanck, S. M.
Pickles, C. A.	Roberts, R. R.
Roberts, T. G.	Sneath, R. K.
Xenophon, N.	

NOES (8)

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

PAIR(S)

Zollo, C.	Lucas, R. I.

Majority of 1 for the ayes.

Amendment thus carried.

The committee divided on the Hon. Ian Gilfillan's amendment, after line 7 to insert subclause (2a):

AYES (8)

Elliott, M. J.	Gilfillan, I. (teller)
Holloway, P.	Kanck, S. M.
Pickles, C. A.	Roberts, R. R.
Roberts, T. G.	Sneath, R. K.

NOES (9)

Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T. (teller)	Laidlaw, D. V.
Lawson, R. D.	Redford, A. J.
Schaefer, C. V.	Stefani, J. F.
Xenophon, N.	

PAIR(S)

Zollo, C.	Lucas, R. I.

Majority of 1 for the noes.

Amendment thus negatived.

The CHAIRMAN: The committee will now debate the Hon. Ian Gilfillan's amendment to page 15, lines 10 and 11.

The Hon. K.T. GRIFFIN: I think there are two issues here, and I like to think that we can take them separately. The first new subclause (4) relates to the provision of copies of findings and recommendations. We oppose it on the basis that it is simply not necessary. It purports to implement recommendation 14 of the royal commission.

Recommendation 14 states that copies of the findings and recommendations of the Coroner shall be provided by the Coroner's office to all parties who appeared at the inquest, to the Attorney-General, to the Minister for Justice of the state or territory in which the inquest was conducted, to the minister of the Crown with responsibility for the relevant custodial agency or department and to such other persons as the Coroner deems appropriate. That happens now. In addition, copies of the findings and recommendations are posted on the Courts Administration Authority web site.

The State Coroner, as a matter of practice, sends copies of his findings and recommendations to all parties who appeared or who were represented at the inquest, including the head of any government agency involved. Where any minister is the subject of any recommendation, a copy of the court's findings goes to that minister. It is unnecessary to put a mandatory requirement in the act, when there is no evidence that the disclosure is not going to occur and there is ample evidence that it is occurring, that this information is now available. In fact, anybody who wants to go to the Courts Administration Authority web site will find the findings and recommendations of the Coroner. They are not covered up: they are there for everybody to see. The second amendment is that the Attorney-General table a report on recommendations of the Coroner's Court.

The Hon. Carolyn Pickles: Doesn't that happen now?

The Hon. K.T. GRIFFIN: No, it does not. This applies only to an inquest into a death in custody which includes recommendations made by the court. It requires the Attorney-General, within six months of receiving a copy of the findings and recommendations, to cause a report to be laid before each house of parliament giving details of any action taken or proposed to be taken by any minister or other agency or instrumentality of the Crown in consequence of those recommendations and to forward a copy of the report to the court.

There are two aspects of that. The first is that the Attorney-General will be given the responsibility to police other agencies of government and to try to identify the way in which the recommendations might have been dealt with by another agency.

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: Yes, I am talking about new subclause (5). The recommendations are sent to all relevant persons. They are publicly available. The onus should not be on the Attorney-General to undertake a policing function. Secondly, I cannot understand why the action taken on the recommendations should be forwarded to the court. Maybe that is relevant to another amendment, which seeks to give to the Coroner a similar sort of policing power, but it is the government's very strong view that that is not the role of the Coroner. The Coroner's role finishes when the inquest findings and recommendations are made. It is not the responsibility of the Coroner to report to the parliament.

The state Courts Administration Authority tables a report. The judges of the Supreme Court, of their own volition, table a report in the parliament—it is a report of the judges. The District Court and the Magistrates Court do not do any such thing. All the statistics about court cases in the Courts Administration Authority and the Coroner's Court are reported. However, it just seems to the government that it is both unnecessary and unwise to require the Attorney-General to police the action on the recommendations and also to require the court to undertake a similar sort of function and to report to the parliament.

The Hon. CAROLYN PICKLES: The opposition supports the amendment. My only query to the Hon. Mr Gilfillan is whether six months is enough time to allow for the Attorney-General to undertake all those functions contained in the amendment. At the present time, the Coroner does not report to the parliament for any reason whatsoever, and given that we are only talking about a limited number of cases in the year and given that these amendments have been prompted by the Aboriginal deaths in custody report, then presumably the Coroner would have no intrinsic objection to alerting the parliament to any difficulties with an Aboriginal death in custody. Is there any mechanism for the Coroner to do that now?

The Hon. K.T. GRIFFIN: It is not necessary for the Coroner to do it because the Coroner's findings and recommendations are public. They are on the Courts Administration Authority web site. I just do not see the relevance of telling the parliament what is already in the public arena, unless it is designed to make life easier for members of parliament to gain access to information, but they can already get all the information on the Courts Administration Authority web site. There is no point in requiring the Coroner to report and, in any event, it is my view that it is inconsistent with the role of the Coroner's Court as such to require the Coroner to provide an annual report.

There is plenty of attention given to findings and recommendations of the Coroner, and government agencies take different periods to implement recommendations. They may decide, as they have in the past, that the Coroner is wrong: he did not understand the way in which an agency operated and may have misinterpreted what had happened. There are some occasions where a minister has disagreed with the way in which the Coroner has interpreted the events. I just think that, because agencies respond in different ways to the Coroner's findings, it is a bit rich to be putting the onus on the Attorney-General, who just happens to be responsible for the court and not for the agencies of government that actually come under investigation, and to require the Attorney-General of the day to set up some bureaucratic structure which requires monitoring of what other agencies are doing. It is an inappropriate function for the Attorney-General and does not serve any useful purpose.

The Hon. NICK XENOPHON: I indicate my support for the amendments of the Hon. Ian Gilfillan with respect to subclauses (4) and (5). With respect to subclause (4), whilst it is true, as the Attorney points out, that these findings would be in the public arena, I think that this amendment makes a symbolic as well as a practical point. By forwarding the findings to the category of persons referred to, it highlights, accentuates and, in a way, brings the fact to a greater degree of attention. It is not inappropriate. It mirrors one of the findings of the deaths in custody royal commission. With respect to proposed new subclause (5), I have some reservations regarding the time frame of six months, but I support the principles set out in that amendment. For those reasons, I support the Hon. Ian Gilfillan's two amendments.

The Hon. IAN GILFILLAN: There is already on record argument to support the amendments, and I do not intend to extend those. One thing about having the committee stage with the Attorney is that any amendment that does not come from the government is certainly put through a trial by fire, which is a good exercise.

The Hon. K.T. Griffin interjecting:

The Hon. IAN GILFILLAN: Yes, but I think you may find that, on reflection, there are points on the other side. The beauty of the Hon. Mr Xenophon is that he listens; in fact, it may be well be that he listens too well. I will not take up the time of the committee and go through the argument for it again. I am glad to hear that it will be supported and that it will be successful. I do not think that the six months in question is particularly onerous when one realises that it is only the causing of a report. This is not a requirement for the actual actions to have taken place. Let us hope some will have taken place. It is purely a question of causing a report and forwarding a copy of the report to the courts.

The Hon. K.T. GRIFFIN: I disagree. I can see that the numbers are against me, and we have had a couple of divisions. If I lose on the voices, I do not intend to divide. However, we will take up the matter again in the House of Assembly. It is not acceptable to the government, and it is inappropriate to require the Attorney-General to report on what is happening in other government agencies with respect to the findings of the Coroner.

Amendment carried; clause as amended passed.

Clauses 26 to 38 passed.

New clause 38A.

The Hon. IAN GILFILLAN: I move:

Annual report

38A. (1) The State Coroner must, on or before 31 October in each year, make a report to the Attorney-General on the administration of the Coroner's Court and the provision of coronial services under this act during the previous financial year.

(2) The report must include all recommendations made by the Coroner's Court under section 25 during that financial year.

(3) The Attorney-General must, within 12 sitting days after receiving a report under this section, cause copies of the report to be laid before both Houses of parliament.

This is one of those matters that has been discussed previously. It requires the Coroner to make an annual report to the Attorney-General on the administration of the Coroner's Court and the provision of coronial services under this act during the previous financial year. The report must include all recommendations made by the Coroner's Court under section 25 during that financial year, and the Attorney-General must, within 12 sitting days after receiving a report under this section, cause copies of the report to be laid before both houses of parliament.

The Hon. K.T. GRIFFIN: I oppose the new clause. As I have indicated, findings and recommendations of the Coroner are already publicly available, widely circulated and are posted on the Courts Administration Authority web site. To suggest that one court out of a number should actually make a report in my view is inappropriate. This is one occasion where we may well divide on the principle.

The Hon. CAROLYN PICKLES: The opposition supports the new clause.

The Hon. NICK XENOPHON: I support the Hon. Ian Gilfillan's new clause.

The committee divided on the new clause:

AYES (8)

Elliott, M. J.	Gilfillan, I. (teller)
Kanck, S. M.	Pickles, C. A.
Roberts, R. R.	Roberts, T. G.
Sneath, R. K.	Xenophon, N.

NOES (7)

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)

Holloway, P.	Redford, A. J.
Zollo, C.	Lucas, R. I.

Majority of 1 for the ayes.

New clause thus inserted.

Remaining clauses (39 to 43) passed.

Schedule 1.

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

Page 22, line 6—Insert:

(A1) Nothing in this Act affects the term of appointment of the person holding office as state Coroner as at the commencement of this act.

The amendment is consequential to the amendments to clause 4 concerning the appointment of the state Coroner.

Amendment carried; schedule as amended passed.

Remaining schedules (2 and 3) and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT AND REPEAL (STARR-BOWKETT SOCIETIES) BILL

Adjourned debate on second reading.

(Continued from 23 October. Page 2410.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The opposition supports the bill. This bill repeals the Starr-Bowkett Societies Act 1975 and amends the Fair Trading Act 1987. The Attorney-General has described a Starr-Bowkett Society as a type of building society that causes or permits an applicant for loans to ballot for precedence or in any way make the granting of a loan dependent upon any chance or lot. The amendment to the Fair Trading act will prohibit anyone trading or carrying on business as a Starr-Bowkett Society in South Australia, including balloting for loans. The maximum penalty for contravention of the prohibition is $5 000. New South Wales is the only state that permits balloting for loans, and provisions in the bill will accommodate this fact. The opposition supports the bill.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indications of support for the bill and the expeditious way in which it has been dealt with.

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

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

Adjourned debate on second reading.

(Continued from 3 October. Page 2352.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The opposition supports the bill, which is quite clear and simple in its intention. It seeks to amend a number of acts, the first being the Administration and Probate Act. This act is amended to require that only Australian assets should be disclosed in accordance with the requirements of the act where the deceased's last domicile was not Australia and where the deceased was not a resident of Australia at the time of death. The Criminal Law Consolidation Act is amended to insert a regulation making power into the act to enable the Governor to make such regulations as are deemed necessary. There are two technical amendments also, which correct previous drafting errors and omissions.

The Criminal Law (Sentencing) Act is amended to seek to address anomalies that arise where a person who has been given a community service order cannot comply with it because they have obtained paid work. The courts then have two options: to revoke the order or to impose a fine not exceeding the maximum fine that may be imposed for the offence in respect of the order. Difficulties arise where the same amount of money may be owed by person A and person B but there is a significant difference in the fines due to the nature of their original offence. The act will be amended to enable the court to impose a maximum fine, reflecting all the offences of the original penalty.

The Evidence Act is amended to make changes to oaths and affirmations and, secondly, to address the anomaly regarding the form and admissibility of proof of convictions in the District Court. The Partnerships Act is amended to seek to protect business partners, such as partners in a law firm, from liability where another partner in the business has committed a wrongful act as a result of the latter's directorship of a body corporate. This provision applies in circumstances where the wrongful partner has received agreement from other partners to be such a director.

The Public Assemblies Act is amended to seek to make the Minister for Justice, as opposed to the present Minister for Environment and Heritage, the appropriate authority under this act. This was originally the Chief Secretary position that is no longer relevant. I guess it may have gone back to the days when the Hon. Don Simmons was both the Chief Secretary and the Minister for Environment. I am not too sure about that detail, but it may well be. It goes back a long way and this bill now brings it up to date.

The Real Property Act is amended to replace the reference to the Chief Secretary with the Attorney-General. In relation to the Summary Offences Act, this amendment deals with procedures for intimate and intrusive searches of detainees by police, including the videotaping of such procedures. This amendment provides the power to make regulations prescribing penalties not exceeding $2 500 for breach of a regulation.

Under the Trustee Act, this amends the fixed amount of the value of a trust property from $250 000 to $300 000. The amendment to the Trustee Companies Act reflects the name change from National Mutual Trustees Limited to Perpetual Trustees Consolidated Limited. The amendment to the Workers Liens Act clarifies the jurisdiction of the courts under the act and makes other changes as a result of the replacement of the former local courts with a new Magistrates and District Court. The opposition supports the bill.

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

STATUTES AMENDMENT (STALKING) BILL

The House of Assembly agreed to the bill without any amendment.

UNCLAIMED SUPERANNUATION BENEFITS (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to the bill with the amendment indicated by the following schedule, to which amendment the House of Assembly desires the concurrence of the Legislative Council:

Page 4, after line 17—insert new clause 7 as follows—

7. Section 7 of the principal act is amended—
   (a) by striking out from subsection (1)(b) 'Part 22 of';
   (b) by inserting after 'the Commonwealth Act' in subsection (1)(b) 'and Part 22 of the Superannuation Industry (Supervision) Act 1993 of the commonwealth';
   (c) by striking out from subsection (1)(b) 'trustee' and substituting 'superannuation provider';
   (d) by striking out from subsection (2) 'trustee', first occurring and substituting 'superannuation provider,';
   (e) by striking out from subsection (2) 'trustee' second and third occurring and substituting, in each case, 'provider'.

Consideration in committee.

The Hon. K.T. GRIFFIN: On behalf of my colleague the Treasurer, I move:

That the House of Assembly's amendment be agreed to.

I understand that this was a money clause in erased type when the bill was introduced into this Council which has now been inserted into the bill by the House of Assembly. It is necessary for the implementation of the legislation that this clause be supported by the Legislative Council.

Motion carried.

VICTIMS OF CRIME BILL

The House of Assembly agreed to the bill with the amendments indicated by the following schedule, to which amendments the House of Assembly desires the concurrence of the Legislative Council:

No. 1. Clause 20, page 15, line 26—Before 'the amount' insert: if the numerical value so assigned is 3 or less, no award will be made for non-financial loss but, if the numerical value exceeds 3,

No. 2. Page 24, after line 2—Insert new clause 30 as follows:

Victims of Crime Fund

30. (1) The Fund previously known as the Criminal Injuries Compensation Fund continues in existence as the Victims of Crime Fund.

(2) The Fund consists of—
   (a) the money provided by Parliament for the purposes of the Fund; and
   (b) any amounts paid into the Fund under subsection (3); and
   (c) any amounts recovered by way of levy under this Part; and
   (d) any amounts recovered by the Attorney-General under this Act; and
   (e) any money paid into the Fund under any other Act.

(3) In each financial year, the prescribed proportion of the aggregate amount paid into General Revenue by way of fines will be paid into the Fund.

(4) A payment made by the Attorney-General under this Act will be debited to the Fund.

(5) A deficiency in the Fund will be met from the Consolidated Account.

No. 3. Page 24, after line 25—Insert new clause 32 as follows:

Imposition of levy

32. (1) A levy is imposed for the purpose of providing a source of revenue for the Fund.

(2) Subject to subsection (3) and any exceptions prescribed by the regulations, the levy is imposed on—
   (a) all persons convicted of offences after the commencement of this section (whether the offence was committed before or after the commencement of this section); and
   (b) all persons who expiate offences under expiation notices issued after the commencement of this section.

(3) A levy is not imposed on a person convicted of an offence if the person has paid the levy under an expiation notice issued for the same offence.

(4) The amount of the levy is to be fixed by regulation.

(5) The amount of the levy may vary according to any one or more of the following factors;
   (a) the nature of the offence;
   (b) whether the offence is a summary or an indictable offence;
   (c) whether or not the offence is expiated;
   (d) whether or not the offender is an adult;
   (e) variations in the consumer price index.

(6) If a levy is payable under this section by a person who expiates an offence—
   (a) the amount of the levy must be shown on the expiation notice; and
   (b) despite any other law, the offence will not be regarded as expiated, an no immunity from prosecution will arise, unless the levy has been paid.

(7) If a levy is payable under this section by a person who is convicted of an offence—
   (a) the amount of the levy must be shown in—
      (i) any formal record of the conviction and sentence; and
      (ii) any notice of the conviction and sentence given to the defendant; and
      (iii) any warrant of commitment issued for the imprisonment of the defendant for the offence; and
   (b) the court may not, at the time of convicting or sentencing the defendant for the offence, reduce the levy or exonerate the defendant from liability to pay it; and
   (c) the levy is recoverable under the Criminal Law (Sentencing) Act 1988.

(8) Despite any other provision of this section, the Governor may remit a levy, or a part of a levy, payable by a person under this section.

No. 4. Clause 35, page 26, after line 17—Insert:

(3) However, a delegation cannot be made under this section of the Attorney-General's power to decline to satisfy an order for statutory compensation (or for statutory compensation and costs) or to reduce the payment to be made under such an order[1].

[1]See section 27(2).

RETIREMENT VILLAGES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 October. Page 2349.)

The Hon. P. HOLLOWAY: I indicate that the opposition will support the second reading of the bill. However, I will be moving an amendment during committee, and I will have more to say about that in a moment. The Retirement Villages Act, and the measures pertaining thereto, have been of some importance for some years now. The original Retirement Villages Act was introduced in 1987. I remember that, shortly after I had been elected to the parliament in another place, one of the first bills on which I made a contribution (indeed, on 28 March 1990) was the Retirement Villages Act.

I was well aware that, at that stage, there were many problems pertaining to the operation of certain retirement villages. I just looked over that speech I made some 11½ years ago, in which I stated:

> The operation of retirement villages is a matter of growing importance as our population ages and, of course, as the number of villages grow. Some of these villages are very profitable. I think there is a real risk that some less than scrupulous operators will be attracted into the industry.

Unfortunately, that was the case. I think that one should say that the majority of retirement villages, both those in the commercial sector (the for profit sector) and those in the not for profit sector do operate very well. They have provided a significant improvement of quality of life to the residents of

those villages. However, ever since the first villages were established there have been some problems relating to the operation of just a few of those villages. As I said, the original act was introduced back in 1987 and the amendments to which I spoke shortly after I was elected to this parliament were a second phase of that reform to retirement villages legislation.

On that occasion we added what was called a form 6 statement to try to improve communication with prospective residents of retirement villages so that they could understand what they were getting into. Also, at that time, we placed some greater requirements upon village operators to ensure that they would be more up-front with the residents of their villages. However, some problems have persisted. Some of those problems to which I referred back in 1990 still exist to this day. Indeed, the most important issue then is still the centre of the issue that is before us today, some 11 or 12 years later.

Specifically, this bill came about as a result of a discussion paper that was released in January 2000. The paper was released by the Office for the Ageing and it dealt specifically with regulations under the Retirement Villages Act 1987 to ensure that villages continued to meet the needs of the community. The discussion paper was released in response to representations from consumer bodies, retirement village operators and individual consumers. The introduction of the discussion paper encapsulates its purpose with the following point:

> Regulation of the retirement village industry essentially operates to encourage transparency in the contractual relationship between a resident and a provider of retirement village accommodation and services. Hence, any regulation should continue to have as an objective the clarification of the rights, obligations and relative risk for residents and the administering authorities, whilst promoting the legitimate business interests of the proprietor.
>
> This transparency should occur not only at the time of entering a contract, but also during the period of residency and when the resident vacates their accommodation for whatever reason.

Many of the issues identified in that discussion paper make up this bill, which the opposition supports. I will talk more about some of the particular measures later.

There are something like 300 separate retirement villages in this state and I am not certain about the number of residents—some people have talked about 12 000 or 15 000, whereas others have talked about 20 000; another figure I have seen is 30 000. Perhaps the minister might care to tell us later exactly how many residents there are in those 300 separate retirement villages. However, the number is certainly considerable.

These retirement villages work on a loan or licence agreement. So, in other words, the residents at a retirement village effectively pay for a licence to live in those villages. On vacation of the unit—which may be due to death, or residents moving into another form of accommodation, such as hostel accommodation or nursing home accommodation—the residents generally receive about 75 to 80 per cent of the premium that they paid originally on the unit when the unit is re-licensed. At present, residents continue to pay a maintenance fee, which is usually around $50 per week, or $250 per month, until the unit is re-licensed by the operator.

This is the major issue before us in this bill and it is the issue that has been at the centre of contention to the residents of retirement villages ever since retirement villages became a common form of accommodation for retired people.

This bill caps the time for payment of the maintenance fee at six months after vacation of a unit. In other words, if a person leaves the accommodation for whatever reason, the administrator of the retirement village will continue to require payment of the maintenance fee up until the unit is re-let or for six months. When I was a local member some years ago, there was one instance where a unit had not been re-licensed by the operator of the retirement village for 20 months. The estate of the person who had lived there or the family of the person who had moved out were required to pay this maintenance fee for 20 months before the unit was re-licensed.

This bill seeks to put a cap of six months on that payment. In other words, whereas residents in that village might be required to pay this maintenance fee for six months, after that time, even if the unit had not been re-licensed, the operators of the retirement village could no longer require that fee to be paid and they would be required to refund the premium. This matter has been of great concern to residents of retirement villages for some years now.

At this point, I would like to read a letter from the South Australian Retirement Village Residents Association (SARVA). The letter, which was sent to all members of the Legislative Council and refers specifically to this matter, states:

> A bill to amend the Retirement Villages Act 1987 and the Residential Tenancies Act 1995 will shortly be placed before members of the Legislative Council for their attention.
>
> These proposed amendments are the result of many months of consultation and discussion with the RV Advisory Committee—

that is, the Retirement Village Advisory Committee—

> SARVRA—

which is the South Australian Retirement Villages Residents Association—

> residents and representatives of the industry, and would result in positive changes for residents, for which we are grateful.
>
> However, the most significant change to the existing act is in the proposed amendment—

and this refers to the draft bill amendment to section 9A of the principal act—

> which, in effect, proposes the capping of the time a resident will be required to pay ongoing maintenance charges after leaving the village. This is a matter that has been the cause of great hardship over the years for people moving out of a retirement village, and is probably the most common reason for people not moving into a village in the first place.
>
> We at SARVRA are therefore dismayed to learn from the draft that the implementation of the proposed amendment will not, in fact, benefit residents on existing contracts and will only apply to contracts signed after the date on which the amendments are proclaimed. Not only will this discriminate against residents with existing contracts, but it will also put them at a disadvantage when relicensing of units takes place.

I interpose that that would obviously mean that, if someone at a retirement village signed a contract after the date that this new bill is proclaimed, the unit would have to be relicensed within six months or the administrators of the village could no longer expect those people to pay the maintenance fee. But, if someone signed up prior to this bill being proclaimed, then, of course, under the terms of many of the contracts in retirement villages, the administrators would be able to keep receiving the maintenance fee, even though the people had left the village at the same time.

So put yourself in that position. Which unit would the administrators seek to re-let first? Obviously, they would seek to relicense the unit to which the new amendment would apply, in other words, the one for which they would no longer be able to receive the maintenance fee after six months unless it was relicensed. I think that explains the point that is being made, that it would put residents under existing contracts at

a disadvantage. I return to the letter from Mrs Joan Stone, who is the president of SARVRA:

> The minister's media release dated 21 June 2001 stated that 'Residents in retirement villages will have greater protection and increased rights under changes to be made by the state government to the retirement villages legislation.' This statement would now appear to apply only to future residents and not the some 30 000 already living in retirement villages where the 'capping' of maintenance fees is concerned.
>
> We are urging your support for a suggestion we have put to the minister that the proposed amendment to section 9A be worded 'to apply as from 1 July 2003 to all contracts'. We consider this would give administering authorities sufficient time to organise their financial affairs to meet their obligation and would give residents with existing contracts some confidence that the government does indeed have their interests at heart.

The letter then concludes with an invitation to provide more information. I think that letter fairly clearly sums up the position of the Retirement Villages Residents Association and, I suggest, the views of most residents. Certainly, that was a view that was strongly made to me 12 years ago by residents of retirement villages and I am not surprised, since nothing has happened in that time, that those residents would still wish to see something done about this today.

While we certainly welcome the government's move to make this prospective change, so that all new contracts would have a cap on the time on which maintenance fees could be charged, we believe that we must also do something about existing tenants. Certainly, we could not make that apply immediately, as there needs to be some time for transitional provisions. The amendment that is being circulated by the opposition will establish, in addition to the requirement in the bill, the requirement that all contracts after 1 July 2003 will have a six month time limit.

If a resident under a current contract leaves their retirement home prior to 1 July 2003, then as of that date the six month limit will also apply to them. Administering authorities can apply to a tribunal for a change to these rules if they believe that there is unduly harsh treatment. I would emphasise that under the minister's bill there is a provision for the administering authorities to apply to the tribunal for relief from the prospective change. Under our amendment that would also apply to those residents who had signed contracts prior to this bill being proclaimed. That is the key issue in the bill, and that is how the opposition intends to address that matter.

I will briefly go through a number of other measures contained in the bill. The second change is that the bill introduces a requirement that statements and balance sheets should be audited by a suitably qualified person. It is remarkable that at present there is no universal requirement that financial statements, which are required to be presented to residents, have to be audited. I know that is a very important matter for those residents. Certainly, in the retirement village that I was aware of in my former electorate, the secretary was a retired accountant and those people who moved into that village took a very keen interest in the financial affairs of their village, and it was a great source of annoyance to them that they could not get the sort of information that they believed—and I would believe—they are entitled to get.

The next change that the bill introduces is a provision which allows a resident or a residents' committee to require the delivery of interim financial statements. The cost of preparing such statements will be with the person or committee making the request. Again, that allows these residents to be properly acquainted with the affairs of their retirement village. After all, they put up most of the money for these particular retirement villages. They are the people who live in them and make them a place in which it is desirable to live and, if they believe that they should have access to this sort of information, I agree with them and so does the opposition. So we will certainly support this measure in the bill. The fourth change is that the bill also addresses a number of definitional and minor administrative matters, and other amendments, to bring the legislation in line with other legislative or administrative changes. Fifthly, it is intended to amend the regulations made under the act to incorporate a number of changes, but I will not go through those now.

I compliment the minister on providing the draft regulations. When acts are introduced into the parliament and where these acts are enabling bills and need to be accompanied by comprehensive regulations, it is always good parliamentary practice for those regulations to be provided at the same time. I compliment the minister on this occasion for making available to my colleague in another place not only the bill, as drafted, but also the regulations that would apply under the act. I think that is good practice. It is a great pity that we do not see more of it when there is new legislation being introduced, because often the regulations will be just as important in achieving the purposes of the bill as the bill itself. So I compliment the minister on that.

I do not think I need to say anything further at this stage. I just summarise the opposition's approach to this bill by saying that we certainly welcome these changes that have arisen from a long period of consultation, not just with the discussion paper of January 2000 but with a number of discussion papers and consultations with retirement village residents over the past decade and a half.

Certainly, we welcome the positive changes that have come forward, and with the amendment we believe that we can address what to most residents of retirement villages is the key problem that they face and the key anomaly that they see within the current act. We look forward to the committee stage of this bill when we can discuss the amendments further.

The Hon. IAN GILFILLAN: I indicate Democrat support for the second reading of the bill. The bill is a result of a review involving wide consultation amongst the sector and, in large part, is supported by us. I have received a number of letters relating to this bill from the South Australian Retirement Village Residents Association Inc. and from retirement village residents. The concerns raised relate specifically to clause 7 of the bill, which amends section 9A of the principal act.

This provision will place a cap on the time a resident may be required to pay ongoing maintenance charges after leaving a village. This is a long time coming and of significant benefit to future retirement village residents. However, it offers no solace to residents who are currently living in retirement villages. I refer to a letter from Mrs Joan Stone, President of the South Australian Retirement Village Residents Association Inc. in relation to the bill. I note, as my colleague the Hon. Paul Holloway mentioned in his contribution, that this is a widespread letter. In part, the letter states:

> . . . the most significant change to the existing Act is in the proposed Amendment on Page 4 of the Draft, No. 7 Section 9A of the Principal Act, which in effect proposes the capping of the time a resident will be required to pay ongoing maintenance charges after leaving the Village. This is a matter that has been the cause of great hardship over the years for people moving out of a retirement village,

and is probably the most common reason for people not moving into a village in the first place.

We at SARVRA are therefore dismayed to learn from the Draft that the implementation of the proposed Amendment will not in fact benefit residents on existing Contracts and will only apply to Contracts signed after the date on which the Amendments are proclaimed. Not only will this discriminate against residents with existing contracts, but it will also put them at a disadvantage when re-licensing of units takes place.

My advice is that some 30 000 people live in the 300 retirement villages in South Australia, which was a figure touted by the Hon. Paul Holloway but he was unsure of its authenticity. All I can say is that that is my best advice.

They deserve the benefits encapsulated in this bill, and I would expect that the minister in concluding the second reading stage will address this particular issue. I will be putting on file amendments which will seek to overcome that, and I would expect that it will be of very similar nature to the amendments that will be moved by the opposition. I indicate that we support the bill. It contains a lot of substantially good improvements on the current situation, and I look forward (perhaps with the total consensus of this chamber) to correcting what I believe to be an oversight.

I agree with the observation made by the Hon. Paul Holloway that there will be a very embarrassing and perhaps distressing anomaly when you have licensees and retirees living side by side who may be in different situations as far as the expectation of costs when they vacate their units, and I do not believe that to be a situation that is necessary. I do not think that the providers of the retirement villages, whether for profit or not for profit, will be looking to exploit this situation. I am hopeful that we will be able to amend the bill so that there will be no distress arising from that anomaly. With those comments, I repeat that we support the second reading and we look forward to a fruitful committee stage.

The Hon. L.H. DAVIS secured the adjournment of the debate.

ADJOURNMENT

At 10.15 p.m. the Council adjourned until Wednesday 31 October at 2.15 p.m.