HOUSE OF ASSEMBLY

Thursday 25 March 1993

The SPEAKER (Hon. N.T. Peterson) took the Chair at 10.30 a.m. and read prayers.

SELECT COMMITTEE ON THE JUVENILE JUSTICE SYSTEM

The Hon. T.R. GROOM (Minister of Primary Industries): By leave, I bring up the second interim report of the committee and move:

That the report be received.

Motion carried.

OCCUPATIONAL HEALTH, SAFETY AND WELFARE (REGISTRATION FEES) AMENDMENT BILL

The Hon. R.J. GREGORY (Minister of Labour Relations and Occupational Health and Safety) obtained leave and introduced a Bill for an Act to amend the Occupational Health, Safety and Welfare Act 1986. Read a first time.

The Hon. R.J. GREGORY: I move:

That this Bill be now read a second time.

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

Leave granted.

The Occupational Health, Safety and Welfare Act has been in operation since 30 November 1987. The Act has successfully introduced a new approach for solving occupational health and safety problems in the workplace. The approach is based on employer and employee consultation at all levels. Employers and employees are strongly involved through their representatives on the Occupational Health and Safety Commission in establishing occupational health and safety policy, setting appropriate workplace standards and drawing up regulations and codes of practice. Employers and employees, through the workplace consultation systems encouraged by the Act, are directly involved in implementing health and safety systems and solving problems in their workplaces. The Department of Labour plays a vital role in providing support for workplaces to implement this new consultative approach.

Under section 67a of the Act employers are required to be registered. A periodical fee, known as the Employer Registration Fee, is payable for this registration. The revenue from this fee is used to meet part of the costs of the Occupational Health and Safety Commission and the Department of Labour. The registration fee is prescribed in the Occupational Health, Safety and Welfare (Registration of Employers) Regulations as a set percentage of the levy paid to WorkCover Corporation for workers compensation.

This approach to setting the level of the fee has led to some administrative problems. The provisions of this Bill establish a more effective system for setting the level of the registration fee.

The Government's success in reducing WorkCover levies has led to a situation where the revenue from the Employer Registration Fee is also being reduced. This has the potential to effect the level of services provided by the Occupational Health and Safety Commission and the Department of Labour. The tripartite Occupational Health and Safety Commission has recommended that the process for calculating the fee be modified. This Bill gives effect to that recommendation. The Bill proposes that the revenue to be raised by the Employer Registration Fee be prescribed rather than percentage of the WorkCover levy payable. WorkCover is delegated the task of determining the appropriate percentage of levy needed to raise the revenue.

Under the current system, the fee reflects each employer's potential use of occupational health and safety services. This is because it is based on the WorkCover levy which takes account of an employer's size, the industry risk and any bonus or penalty applied for claims performance.

The Bill sets principles which WorkCover must adopt when calculating the fee for individual employers. These principles continue the current approach of basing the fee on an individual employer's size, industry and occupational health and safety performance.

In the event that WorkCover sets the fee at a level which raises more than the prescribed revenue, the Bill requires WorkCover to carry this excess revenue over to the next financial year. This excess revenue will be deducted from the collection target when WorkCover calculates the level of the fee for the following year.

The changes proposed in this Bill will retain all the effective features of the current system and has the benefit of ensuring that an agreed amount of revenue will be raised by the fee. This will assist the Occupational Health and Safety Commission and the Department of Labour in planning.

At present the level of the fee is prescribed by regulation. The Bill sets the revenue to be collected and the principles used by WorkCover to calculate the level of the fee for individual employers. These provisions of the Bill can be changed by regulation. This approach has been taken to ensure that the new system is introduced in time to be implemented for the 1993-94 financial year. It is anticipated that in subsequent years the revenue to be collected by the fee will be prescribed by a regulation.

The Bill proposes that revenue from the fee in 1993-94 will be $3 349 000 which is the revenue target for 1992-93 plus a 1.7% increase. The increase is based on an estimate of the inflation between March 1992 and March 1993. This will maintain revenue in real terms.

It is important that revenue which supports the Government's occupational health and safety services be maintained in real terms. The services provided by the Occupational Health and Safety Commission and the Department of Labour have made a significant contribution to improving health and safety in South Australia's workplaces. This improvement in health and safety is not only making South Australia a better place in which to work and live, but is also reducing the costs to industry and society which result from work injuries and diseases. These cost reductions include all the hidden costs of injury and disease such as interruptions to production, the training of replacement labour and replacing damaged equipment as well as the more obvious costs of workers compensation levies. Maintaining revenue from the Employer Registration Fee will assist the Commission and the Department of Labour in continuing to support employers and employees in implementing a successful consultative approach to the prevention of work injury and disease.

In conclusion, the Government is of the view that this Bill will establish a more administratively effective system for setting the Employer Registration Fee and will ensure that revenue is maintained for the very important services provided by the

Occupational Health and Safety Commission and the Department of Labour.

The provisions of the Bill are as follows:

Clause 1: Short title

This clause provides for the short title of the measure.

Clause 2: Commencement

It is proposed that the measure come into operation on 1 July 1993.

Clause 3: Amendment of s. 67a—Registration of employees

This clause amends section 67a of the Act to provide that a fee payable by a registered person under this section will be set by the Workcover Corporation taking into account certain criteria, and the total amount that is to be raised by fees paid under this section for the particular financial year. The amount to be raised under this section for the 1993-94 financial year is set out in the legislation. The regulations will be able to prescribe the relevant amount for subsequent financial years. Any such amount will be made up of two components, one being an amount to be retained by Workcover to offset costs incurred by it in undertaking registrations and collecting fees under the provision, and the other being the amount that is to be paid to the Department of Labour. The Treasurer will continue to set guidelines relating to the making of payments by Workcover to the Department of Labour.

Mr INGERSON secured the adjournment of the debate.

GUARDIANSHIP AND ADMINISTRATION (MENTAL CAPACITY) BILL

In Committee.

(Continued from 24 March. Page 2632.)

Clauses 3 and 4 passed.

Clause 5—'Principles to be observed.'

Dr ARMITAGE: I move:

Page 3—

After line 21—Insert:

(aa) the welfare of the person must be regarded as the paramount consideration;

Line 22—Leave out '(and this will be the paramount consideration)'.

As it presently stands, the clause provides that paramount consideration must be given to what would be the wishes of the person if he or she were not mentally incapacitated. This will be particularly difficult to establish in some cases. It is the view of the Opposition and of large numbers of people within the community of the mentally incapacitated and their carers that potentially this will be open to abuse. It also, and perhaps more importantly, means that unreasonable or dangerous previous habits of the person cannot be taken into account in making determinations in relation to this clause. We believe that it is desirable to take out the words 'and this will be the paramount consideration', but in doing so we would seek to insert paragraph (aa) which provides that the welfare of the person, which is obviously of the greatest import in this whole Bill, must be regarded as the paramount consideration. It is the view of the Opposition that this focuses the attention of the principles to be observed without leading to potential down sides and dangers.

The Hon. M.J. EVANS: I regret that I must oppose this amendment on particularly strong philosophical grounds. As the member for Adelaide has said, it identifies the very heart of the nature of this Bill—whether it is to be decision making based on an arbitrary definition of what the best interests of the person concerned would have been, as determined by another person from their own criteria, or whether it is to be a substituted decision. In other words, because the person concerned—the protected person—is unable to make the decision for themselves some other person must make it, but should they make it on the basis of what that person would have done had they been able and conscious or should they make it on the grounds of what they think is the best decision to make for that person.

Very clearly, what the member for Adelaide is advocating is that the decision should be in the arbitrary best interests model, which is perfectly reasonable and certainly has formed the basis of much of our law in the past. The thinking that is reflected in this Bill and the thinking that I would advocate to the Committee is very much based on what the person would have done had they themselves been able to make the decision, in other words, substituted decision making. Given that that is the model that I would advocate we should adopt, I must ask the Committee to reject the amendment, because it would change the whole philosophical basis of this. This is about providing decisions for people which they would have made themselves. I am not suggesting the member for Adelaide is being paternalistic about this, but it is not his judgment or that of the administrator or the Guardianship Board that matters here; it is what the person would have done.

Even if in some arbitrary fashion we regard that as not the best decision for that person, they know what is best for them and we should try to follow that model. After all, that has been the substance of much of the criticism of the Guardianship Board, that it has imposed its judgment over the top of that of the protected person. Much of that criticism in the past has had a valid philosophical objection, which is why the Bill now shifts direction in the sense of saying that it is to be about the decision that that person would have made had they been able to make it for themselves.

Dr ARMITAGE: I understand what the Minister is saying, but I reiterate that it means that unreasonable or dangerous previous habits of the person cannot be taken into account. For instance, is the Minister suggesting that the decision maker for a mentally incapacitated person should allow that person to continue to hang glide if he had previously been an inveterate hang glider? I do not believe that is a reasonable decision to take in the interests of the person. However, I will be interested to hear what the Minister says.

Further, the Minister talked about philosophical viewpoints in relation to this amendment and I understand those, but he did not address the question that the wishes of the person may be particularly difficult to ascertain. Let us assume that is the case in a particular instance: what the Minister does is fall back on the opinion of the decision maker, so the Minister is quite happy, by dint of the legislation, to have the decision made in an arbitrary fashion in the interests of the person, if they are unobtainable, and I understand the

difficulties inherent in that. But I point out that, if they are unobtainable, the decision maker is able to make the decision. I would ask specifically: what about dangerous or unreasonable previous habits of the person, and why then does the decision maker under this legislation have the ultimate power anyway?

The Hon. M.J. EVANS. I would remind the member for Adelaide that only clause 5 (a) requires that consideration must be given to what would in the opinion of the decision maker be the wishes of the person in the matter. So it is consideration that must be given. It does not become the only requirement, so it is one element of the decision. It is only in so far as it is reasonably ascertainable so, if the opinion and the wishes of the protected person are not reasonably ascertainable, clearly you cannot take them into account. The Bill requires 'only so far as there is reasonably ascertainable evidence on which to base such an opinion' so, if you cannot obtain that evidence, clearly you fall back to the normal best interests position. That is always the fallback position. If there is no evidence as to what the protected person would have required or what their wishes would have been, you fall back to that best interests criterion. However, in the first place you should seek to ascertain that. Paragraph (d) provides:

> The decision or order made must be the one that is the least restrictive of the person's rights and personal autonomy as is consistent with his or her proper care and protection.

The last few words of that paragraph ensure that any bizarre or ludicrous activity is excluded because it must be consistent with the person's proper care and protection.

Dr ARMITAGE: The Minister mentioned bizarre or ludicrous habits. Hang gliding is perhaps neither bizarre nor ludicrous in some people's minds (although I happen to believe it might be), but I am sure there are many other instances of quite justifiable behaviour which for a mentally incapacitated person would in fact be dangerous. I think that must be taken into account.

Amendment negatived; clause passed.

Clause 6—'Establishment and constitution of the board.'

Dr ARMITAGE: Clause 6(6) provides:

> A member of a panel who has a personal interest or a direct or indirect pecuniary interest in a matter before the board is disqualified from participating in the hearing of the matter.

I understand that completely, and we support that proposition. Is a penalty contemplated in respect of panel members who do not declare such a pecuniary interest?

The Hon. M.J. EVANS: As the honourable member said, there is no penalty provision in the Bill, but one would assume that the Chairman would exclude the person from the decision making process.

Dr ARMITAGE: The point that I am making is that, unless the member of the panel declares it, the Chairman may not know that he or she has a direct or indirect pecuniary interest. I am suggesting that the person with an interest may well take action without that interest being declared, and the interest may come to light later. Whilst I understand that if all interests are laid out on the table the person is disqualified from making decisions—and, as I indicated, the Opposition is very supportive of that—I note that there is no mention of a penalty if the person does not declare that interest.

The Hon. M.J. EVANS: That is a reasonable point, and I will take it on board.

Clause passed.

Clauses 7 to 11 passed.

Clause 12—'Decisions of the board.'

Dr ARMITAGE: I move:

> Page 6, lines 16 and 17—Leave out 'it may refer a question of law' and insert 'any question of law that arises must be referred'.

Subclause (2) provides:

> Where the board is constituted of a panel member sitting alone, it may refer a question of law to the President or a Deputy President for decision...

The Opposition is very supportive of the position whereby a Deputy President or the President must determine any question of law. However, I do not believe that where the board is constituted of a panel member sitting alone it does not have to refer a question of law to the President or a Deputy President—the clause provides that a question of law 'may' be referred to the President or a Deputy President. We believe that, if it is valid for questions of law to be determined by the President or a Deputy President when the board is comprised of two or more members, it is quite appropriate for a board comprised of a single member to refer a question of law to the President or a Deputy President.

The Hon. M.J. EVANS: I accept the amendment.

Amendment carried; clause as amended passed.

Clause 13 passed.

Clause 14—'Powers and procedures of the board.'

Dr ARMITAGE: I move:

> Page 7—
>
> Line 6—Leave out 'misbehaves before the board,'.
>
> Line 7—Leave out 'interrupts' and insert 'disrupts'.
>
> Line 13—After 'board' insert 'or produces books, papers or documents to the board'.
>
> Lines 13 and 14—Leave out 'a witness' and insert 'he or she would have in that capacity'.

The first amendment provides that a person who misbehaves before the board is guilty of an offence. That might result in a trivialisation of the board process in that instance and, whilst we are extremely keen to see the board proceed in its meetings as expeditiously as possible, we do not believe that someone misbehaving before the board—with all the dilemmas of defining 'misbehaving'—ought to be guilty of an offence. We would seek to have those words removed, whilst the provision remains that anyone who wilfully insults the board or any member of the board or disrupts the proceedings of the board is guilty of an offence.

As to the second amendment, we are keen to ensure that people who appear before the board are subject to the usual common law privileges and so on against production of documents that are the subject of legal profession privilege, public interest immunity or whatever. Those common law sanctions are not present under clause 14(1)(c), because people may be expected to 'produce papers, documents or books' without appearing before the board, hence they would not have those protections.

The Hon. M.J. EVANS: I support the amendments.

Amendments carried.

Dr ARMITAGE: I move:

Page 8, lines 10 to 22—Leave out subclauses (10) and (11) and insert—

(10) No person may be present at any sitting of the board except—

(a) officers of or persons assisting the board;

(b) parties to the proceedings and any persons representing them in the proceedings;

(c) witnesses or persons making submissions, while giving evidence or making those submissions, or while permitted by the board to remain;

(d) the Public Advocate or his or her representative;

(e) any other person permitted by the board to be present.

This significant change would ensure that the hearings were closed rather than open, at the discretion of the board, because the board would permit any person other than a number of people mentioned in the amendment to be present. I propose this change because many of the inputs we have had in relation to this Bill over a protracted period have indicated that, for mentally incapacitated persons and their carers, an appearance before the board is a terrifying event, particularly given that many people have indicated that, in their view, it is held in a cold and austere atmosphere, with board members, to the consumers, appearing to have little experience of what the families are going through at the time.

As I indicated in my second reading contribution, it is my view that that is a perception rather than reality; nevertheless, for the consumers, that perception is extremely important. The Opposition believes that having closed hearings with the option of the board allowing relevant people to be present would be more likely to enhance goodwill towards this procedure from the mentally incapacitated and their carers and, indeed, towards the whole Bill, because appearances before the board form an important part of the process. We understand that the amendment changes the focus, but we believe it is definitely a change for the better for those who will be most affected by this Bill.

We wish to change the period within which a request can be made under clause 14(13) to within 12 months of the date of the board's decision, because we do not believe that a period of three months is long enough during an emotive time when other external decisions may apply. Most of the input relating to that time frame concerned the fact that one year was long enough without being too long, providing enough time for appeals to be made in the proper context. Clause 14 (6) (b)(ii) provides that a person who satisfies the board that he or she has a proper interest in the matter may be given a reasonable opportunity to make submissions to the board. The words 'proper interest' are not defined. Will the Minister comment on that?

The Hon. M.J. EVANS: Regarding attendance before the board, the amendment proposes an important change in the philosophical direction of the board. One of the problems in terms of the board's image, if I can use that expression, in the community concerns the fact that sometimes it is perceived as a closed and secretive group making an important decision about a person's life in the absence of any openness and accountability. It is an important philosophical issue to have the presumption that the proceedings of the board are open unless, for particular reasons and in relation to particular persons, they are closed. That does not mean to suggest that there will be large audiences at board hearings or that any proceedings can be published, because that is forbidden by later provisions of the Bill, but the reality is that the presumption of an open hearing will encourage much greater accountability and, in my view, trust in the board's activities and decisions.

Given the change in climate in our society about the way in which statutory authorities and quasi-judicial bodies work, it is more important that there should be a presumption of openness and accountability than that meetings will be closed. I think it is important, as the member for Adelaide has said, that the board should exercise significant sensitivity and discretion in respect of those whom it permits to remain at a hearing. Of course, the board will have to take into account the feelings and concerns of the protected person or the person about whom the order is to be made as well as relatives and family members. Quite clearly, it will be necessary to exclude people from those hearings in order to get individuals to present the full information that they might have in their possession, especially if they are concerned about other individuals or family members and any influence they might have on the way in which they give evidence. It is not an easy decision to make either way, because arguments can certainly be put forward about it.

In terms of openness, accountability and the appropriate public trust in the activities of the board, and given the fact that we must trust the board itself to act with discretion and sensitivity about the needs of the applicant and protected persons, it is appropriate that we should proceed as the Bill recommends to have that presumption of openness. Therefore, I oppose the amendment.

Amendment negatived.

Dr ARMITAGE: I move:

Page 8, line 29—Leave out 'three months' and insert 'one year'.

The Hon. M.J. EVANS: In reply to the member for Adelaide's earlier comment about seeking the reasons for the decision, three months is an adequate period. I appreciate that this is an emotional situation, but three months is a substantial period for people to get over any immediate concern that they may have and, if after a period of six to 12 months there is a residual concern and people still believe that an inappropriate decision has been made, it would be much better for them to seek a review of that decision rather than to start the process in a continued form of the earlier hearings.

It would be much more appropriate to start the mechanism again, have a review of the earlier decision, because after six to 12 months the person's situation will probably have changed anyway and it would be appropriate to review it in that way rather than seeking to start a fresh appeal, which is probably to some extent out of date anyway. I think three months is the more appropriate period. It is not that there is not an adequate opportunity for people to ask the board to reconsider and review the current circumstances of the protected person.

Amendment negatived; clause as amended passed.

Clauses 15 and 16 passed.

Clause 17—'The Registrar.'

Dr ARMITAGE: The Opposition was at pains during the second reading debate to stress the importance of our

belief that the board and the Public Advocate, and so on, should be seen to have no conflict of interest. I am distressed to see that the Registrar of the board will be a Public Service or Health Commission employee. Given, as we indicated last night, that many of the cases with which the board, Public Advocate, and so on, will be involved may well have many other tentacles into the Health Commission service provision network, I am distressed that there is potential for the Registrar's being perceived as being aligned with the present Health Commission provision of services.

I would like the Minister to comment on that, bearing in mind his comments last night that the Public Advocate will report directly to the Minister and that the office will be physically separated from the Health Commission building, and so on. Clearly, the overt show of independence is important and to have the Registrar as a Health Commission employee perhaps waters down that impression of independence.

The Hon. M.J. EVANS: The Registrar must be an employee of someone, of course, and in the context of Government service he or she must be a public servant, a Government Management employee or a Health Commission employee. Of course, in effect it is only a coincidence that the Health Commission is not part of the Government Management and Employment Act—the two Acts mirror each other in so far as employment conditions are concerned. I do not feel there is any particular conflict in that because the Registrar's physical location will be separate.

The decisions that the Registrar makes are not of any particular relevance in relation to the Health Commission: they are relatively routine decisions about reviewing administrators' accounts and listing matters for hearing, and so on. They would not have any bearing on Health Commission activities. It is simply a technical administrative matter as to where the payroll is generated and where the employment records are kept. I do not think it really can be seen as a conflict of interest situation.

Dr ARMITAGE: I fully accept everything the Minister has said. I reiterate: it is the perception by the community. The Minister will note that the clause provides:

> The Registrar will be a Public Service employee or a Health Commission employee.

I spoke specifically about the fact that the person may be a Health Commission employee. I fully understand that they will have to be employed somewhere. The Minister will undoubtedly recall from my riveting speech last night that I made the point that the Public Advocate in Victoria is in fact under the Attorney-General's Department. This is not a matter on which we have moved an amendment, so I am not expecting any dramatic change. I am merely saying I think there is the potential in the community for perceiving some degree of conflict.

The Hon. M.J. EVANS: I am not quite sure about this. The honourable member has spoken a lot about the Public Advocate, but this clause deals with the Registrar. I would not want the impression to be abroad that the Public Advocate was a Health Commission employee, because that is dealt with in an entirely separate clause, as the honourable member acknowledges.

Dr Armitage: It's a perception.

The Hon. M.J. EVANS: I understand the perception, but I must admit that in this case I do not think it is one that I really want to deal with.

Clause passed.

Progress reported; Committee to sit again.

JOINT COMMITTEE ON WORKCOVER

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

That the Joint Committee on WorkCover have leave to sit during the sittings of the House today.

Motion carried.

GUARDIANSHIP AND ADMINISTRATION (MENTAL CAPACITY) BILL

Adjourned debate in Committee (resumed on motion).

Clauses 18 to 20 passed.

Clause 21—'General functions of Public Advocate.'

Dr ARMITAGE: As I understand it, clause 21(g), theoretically, allows the Public Advocate to be assigned functions under any Act. It is the belief of the Opposition, and indeed the belief of many people who have made submissions to us in relation to this matter, that, whilst the functions for the Public Advocate under the Guardianship and Administration (Mental Capacity) Bill seem completely appropriate, perhaps in view of the input we have had it is inappropriate that such functions may be assigned to the Public Advocate by any Act.

The Hon. M.J. EVANS: Yes, I agree. I think it is true that the Bill will allow the Public Advocate to be assigned functions in relation to any other Act. Of course, they would naturally be Acts which were consistent with the broad functioning of the Public Advocate. The Minister of the day would not assign anything which fell outside that purview. I think it is just a catch-all provision designed to ensure that, if the Parliament adopts any other relevant legislation in the future, the option is there to ensure that the Public Advocate can perform something in relation to it. I really think that covers the purpose. There is no sinister agenda behind it.

Dr ARMITAGE: Far be it for the Minister to assume that I was looking for any sinister agenda. Given the Minister's agreement that the Acts under which functions may be assigned to the Public Advocate would have some general thrust or direction similar to the Guardianship and Administration (Mental Capacity) Bill, I am relaxed about that. I move:

Page 10, after line 26—Insert the following:

(da) to give support to and promote the interests of carers of mentally incapacitated persons;

I believe this is a particularly important amendment, in that the Public Advocate is a position which has met with approval within the community and certainly with the approval of people on this side of the Chamber. However, the whole of the mentally incapacitated community—and by that I mean not only the persons

themselves but also their carers—will in my view need the overview, if you like, of the Public Advocate. It is quite clear from the functions of the Public Advocate, as mentioned in the Bill, that there is no focus on the interests of carers. It is the view of the Opposition that the carers form a particularly important part of the whole community of interest, which this Bill is taking account of. As such, we would move that the Public Advocate be given a specific function of supporting and promoting the interests of carers of mentally incapacitated persons.

The Hon. M.J. EVANS: I certainly appreciate the sentiments expressed by the member for Adelaide, both last night in the early stages of this debate and now. They are shared by the Government. I have much pleasure in supporting the amendment.

The Hon. B.C. EASTICK: In relation to this clause, can I have the assurance of the Minister and/or his advisers that people in the community whose well-being is suspect by members of a family, but who have been kept from other members of the family for various reasons, will be considered and can be adequately examined for the purposes of the Guardianship Act? As I am sure the Minister will have been informed, and I am sure his advisers will tell him, there are known cases where the Guardianship Board has been frustrated in the past when taking advice or seeking information relative to a person who has become the rope between various members of a family. Whilst I do not seek legislation that puts such a person under extreme duress and pulls them from pillar to post, in the past there has been an expression of opinion that the Guardianship Board, even though it felt very clearly that there was a case to answer or there ought to have been a proper examination, sometimes based on knowledge of dubious or potentially dubious property transactions, has been denied that opportunity.

I would hope that, in the compilation of the Bill that is before us at the moment, that deficiency that members of the board have identified publicly or on the record of select committees of this House in another jurisdiction have been adequately attended to and that those fears and concerns of members of the family will be adequately addressed in the future.

The Hon. M.J. EVANS: The member for Light raises a valid and difficult area, and I know that he is aware of the circumstances under which these issues need to be addressed. I think that the member's attention is best drawn to clause 15 of the Bill, which provides a process by which a person can be taken into custody to be examined in relation to the processes of the board and the Bill. That is a very extreme process and one which can be exercised only on warrant. We expect it to be used as little as possible, but it is there for the reserve power situation to which the honourable member correctly draws attention. Any use of that power would have to be reported to Parliament as part of the annual report, so there are significant judicial and parliamentary safeguards to ensure that the power is not abused or overused. I think the case he presents to the Committee is valid, and the Bill certainly seeks to address those matters.

Amendment carried; clause as amended passed.

Clause 22—'Delegation by Public Advocate.'

Dr ARMITAGE: I merely take this opportunity to make the same observation I have made before: this Bill is about perceptions within the community of mentally incapacitated persons and their carers. Whilst we are fully supportive of the position of Public Advocate, we note that the Public Advocate under this clause may delegate powers to a Health Commission employee and, given the fact that, as I have indicated previously, many persons who may well be under guardianship orders and for whom the Public Advocate may be acting as a watchdog are already consumers of Health Commission services, we believe that is not necessarily an appropriate person to whom the Public Advocate ought to delegate powers or functions.

The Hon. M.J. EVANS: I understand the point the member is making, and I know that some concern has been expressed in the community, but it is also true to say that many of the groups who have an interest in this legislation and who were consulted as part of its initial drafting over some time have considered the matter and agreed that in many ways, when we look at the balance that is to be undertaken here in regard to the location of the Public Advocate, the way he or she reports to the Minister directly and the legislative provisions which safeguard their independence in the Bill, there is no particular harm in allowing the Public Advocate to delegate powers and functions to other employees who may have relevant and related jobs within the Public Service generally or the Health Commission in particular.

I really do not see that the risk that he is referring to is substantial enough to outweigh the benefits of having this position as part of an integrated Government service. I believe that, if an example occasionally arises in the future which an individual is concerned about, there are many mechanisms, not only in this Bill but also in terms of the Ombudsman, the Parliament, the media in general, the courts, the Guardianship Board and other areas whereby that could be raised. I really do not perceive that the risk to which he alludes is significant enough to warrant the remedy of totally segregating this person from all activity in relationships within the normal operations of the Public service.

Clause passed.

Clause 23 passed.

Clause 24—'Appointment of enduring guardian.'

Dr ARMITAGE: In speaking to this clause I wish to address the whole concept of an enduring guardian, and I merely signal the Opposition's support for this concept. During the second reading debate many examples were given by members on this side of the Chamber, but I am sure members on both sides would have experienced difficulties and dilemmas in their electorate offices regarding enduring guardianship applications. Many of the problems with which people believe they will be faced in later times—perhaps as mentally incapacitating diseases catch up with them—are of great import to people before their mental incapacity reaches the stage where they need the Guardianship Board. Accordingly, we believe that the ability for that person to appoint their own enduring guardian in whom they have confidence and trust and with whom they have discussed their affairs is quite a major step forward, and I merely speak to this

clause to indicate our support and offer our congratulations for that foresight.

The Hon. M.J. EVANS: I appreciate the support for this concept. As the honourable member says, it will address many of the concerns people have had; it allows them to take control of the situation themselves and it will be a comfort to many people in the community who have fears about the processes which otherwise would follow from the operation of this type of legislation, and I certainly commend the concept to the Committee.

Clause passed.

Clauses 25 and 26 passed.

Clause 27—'Investigation by Public Advocate.'

Dr ARMITAGE: The Public Advocate under this clause is given powers to investigate. I believe the Minister's second reading explanation begins by saying that this Bill creates the important position of the Public Advocate as a watchdog. On this side of the Chamber we have made great play as to how supportive we are of that position, particularly because it can be a watchdog. We believe that giving a watchdog power to investigate the affairs of the person for whom they are being a watchdog quite clearly creates a potential for misunderstanding and conflict, and we believe that it is inappropriate. Certainly, the Public Advocate would have considerable investigative and actionable powers under this clause, and I believe that the person who is being investigated by their own watchdog may well then lose confidence in that watchdog.

The Hon. M.J. EVANS: I will not repeat the previous arguments about this question of independence, but I do think it is worth indicating that the office is managed in this way in Victoria, and I believe it operates quite satisfactorily. At the end of the day, the only alternative is to set up numerous other separate agencies that each have a discrete and specific function, and I really do not believe that is a practical or effective way to proceed. Clearly, to some extent Parliament will rely on the good sense and equity of the Public Advocate to ensure that his or her officers do not allow themselves to be put in that conflict situation. The potential for conflict often arises in professional practice or in the Public Service in general, and it is managed in a practical way rather in a clumsy legislative way, because individuals within the office will ensure that, if they have previously investigated the case and there is a complaint about that, it will be referred to someone else. If someone is managing the investigation of the area, they will not be appointed as the guardian of last resort at the end of the day when the board so orders. So, it is quite easy to arrange matters in a practical way so that the conflict is avoided on a day-to-day basis.

I understand the nature of the risk raised by the honourable member. If it is avoided by quarantining each of the functions of the advocate into separate legislative agencies, all of which would ultimately report to the Minister of Health or the Attorney-General, at the end of the day they would come together under a single titular head anyway and, regardless of that, they would all be employed by the same employing authority. Given the nature of the Government service anyway, I think it is better to allow the office to manage its affairs to avoid the conflict, to take advantage of the many avenues of complaint should a consumer or client ever feel that a conflict has arisen and generally to trust the Public Advocate that he will perform his duties in a professional and diligent manner.

Given the experience in Victoria and in other areas of Government administration, that is a reasonable assumption to make in relation to an office such as the Public Advocate. This is an office that is working for people, on behalf of the public and people who have very difficult problems and need considerable assistance, and I believe that the kind of staff who will work in that area, the kinds of interests they will serve, will very much ensure the protection the honourable member seeks. I do not see any other practical mechanism for providing it.

Clause passed.

Clause 28—'Guardianship orders.'

Dr ARMITAGE: I move:

Page 14, lines 30 to 32—Leave out subclause (4).

Subclause (4) would indicate that the Public Advocate may be appointed as the guardian or one of the guardians of a person but only if the board considers that no other order under this section would be appropriate. Once again, dare I say it, I believe this leads to a potential loss of the independent watchdog role of the Public Advocate and, accordingly, the Opposition believes it would be better if the clause were omitted.

The Hon. M.J. EVANS: I must oppose this amendment. It is an extension of the discussion we have been having today, and there is no point in repeating that. It is perfectly reasonable that the Public Advocate should be appointed as guardian of last resort, if you like, and that would seem to be a reasonable measure in the context of the other discussions we have had earlier. To explain that further would only repeat the discussion we have had today.

Amendment negatived.

Dr ARMITAGE: I move:

Page 14—

Line 33—Leave out 'should not' and insert 'cannot'.

Lines 34 and 35—Leave out 'unless the board considers that good reason exists for doing so'.

It is the very strong conviction of the Opposition that a person who is caring for a protected person on a professional basis ought never to be allowed to be appointed as that person's guardian. Both these amendments would see that effected.

The Hon. M.J. EVANS: I accept the point that the honourable member makes. There are good reasons for initially considering a proposal such as is in the Bill before us, because there are some isolated circumstances in which it may be an option of last resort to have such a person appointed, but on reflection and taking into account the arguments the honourable member has advanced as well as those put during the consideration of the Consent to Medical and Palliative Care Bill, where the committee took evidence on a very similar topic, I think the arguments are indeed fairly compelling, and we will need to see what other options exist in those few cases where it is not otherwise possible to find a convenient guardian. So, I accept the amendments as moved.

Amendments carried; clause as amended passed.

Clauses 29 and 30 passed.

Clause 31—'Special powers to place and detain, etc., protected persons.'

Dr ARMITAGE: Subclause (3) has potential dilemmas for protected persons in that, whilst I certainly understand the intent of the subclause, there is quite possibly a situation whereby a protected person, for some other reason, may well require specific treatment and placement in an approved treatment centre for whatever period of time may well be appropriate. I take it that this subclause is to stop the supposed long-term placement or detention of a protected person in various facilities, but there may well be circumstances in which a short-term placement in these centres is in fact the most appropriate form of care for these protected persons, but that would then be precluded by this subclause, and I want the Minister to expand on that.

The Hon. M.J. EVANS: It is a difficult area. The situation is that, unless a person is otherwise mentally ill and that can be demonstrated in accordance with the provisions of the other Bill we have to consider this morning—the Mental Health Bill—there is no basis on which we would want to see them placed in such an institution. If they are subject to those provisions—if they are mentally ill and there are good reasons for requiring their treatment in an approved treatment centre under the Mental Health Act—they would be placed in that institution for whatever duration was appropriate under the provisions of that Act.

This subclause really must be read in the context of this Bill, which is dealing with protected persons so, unless they can be demonstrated also to be mentally ill, they should not be placed in an approved treatment centre. If they are, they would fall under the provisions of that Act as well and receive whatever treatment was appropriate in the circumstances.

Clause passed.

Clauses 32 and 33 passed.

Clause 34—'Administration orders.'

Dr ARMITAGE: Are there any specific qualifications that administrators of persons' estates may be expected to possess? Is it envisaged that at any stage protection might be offered to people's estates for errors of omission or commission from any natural person appointed as an administrator?

The Hon. M.J. EVANS: Some of the people who may be appointed as administrator are the Public Trustee and a trustee company under the Trustee Companies Act. Criteria exist to ensure that those persons are adequate and appropriate. I assume the honourable member's attention is drawn to subclause (2) (c), which refers to any natural person. That does allow the board considerable flexibility, but clause 49 of the Bill sets out certain criteria (a) to (f) as to what would be appropriate, and the board is empowered to review the work of an administrator and, under clause 43 (5), the board may allow or disallow an item of expenditure in relation to the administrator's work. Of course, if the administrator is not acting in good faith or without reasonable care, that item of expenditure can be disallowed.

I assume that the honourable member would not wish the board to be restricted in its appointment capacity, but he is right to draw attention to the need for those criteria, and I believe that those are set out in other parts of the Bill. Clause 38(1) provides:

(b) the administrator has the duties and obligations of and is accountable as a trustee in relation to the estate and the protected person.

When those provisions are combined, there is both adequate criteria and adequate protection and accountability for the trustee.

Clause passed.

Clauses 35 to 44 passed.

Clause 45—'Remuneration of professional administrators.'

Dr ARMITAGE: I move:

Page 23, after line 3—Insert the following:

(2a) Before fixing a high rate of remuneration in relation to the estate of a mentally incapacitated person, the board must consider any representations made by the Public Advocate on behalf of the mentally incapacitated person.

The board has the option, if it believes there is good reason, to fix a different rate of remuneration for the administrator. The position of Public Advocate, as created under this Bill, provides the ideal watchdog regarding representations to the board on behalf of the mentally incapacitated person for whom the Public Advocate is acting as watchdog. Accordingly, this amendment would see that effected.

The Hon. M.J. EVANS: I accept the amendment.

Amendment carried; clause as amended passed.

Clauses 46 to 59 passed.

Clause 60—'Prescribed treatment not to be carried out without board's consent.'

Dr ARMITAGE: I move:

Page 28, after line 12—Insert:

(4a) Before consenting to the carrying out of any prescribed treatment in relation to a person to whom this part applies, the board must allow such of the person's parents whose whereabouts are reasonably ascertainable a reasonable opportunity to make submissions to the board on the matter, but the board is not required to do so if the board is of the opinion that to do so would not be in the best interests of the mentally incapacitated person.

Clause 60(2)(b) refers to the board having to take note of a refusal made on behalf of a person or made by that person while capable of giving effective consent. Whilst I understand that the thrust of the Bill is to ensure that the will of the mentally incapacitated person is carried out in order to increase the person's dignity, I make the point that circumstances alter on a regular basis, whether or not the person is mentally incapacitated, and it is my view that the board may be hamstrung by this provision. Does the Minister believe that will never be the case?

The Hon. M.J. EVANS: I acknowledge the potential for the scenario outlined by the honourable member, but that provision is currently in the Act and no difficulties have been experienced to date. Certainly, one has the dilemma of the opinion of the protected person and their wishes as against what might subsequently turn out to be the case. The changing position with the effluxion of time is always a worry in these areas, but I would not want to rule out taking into account the prior wishes of the person. On the other hand, the board does need some limitations in discretion in this area. Experience to date has been satisfactory, and I think we can only continue to rely on that. If some greater difficulty emerges in the future it can be addressed, but at this stage it appears to

be the best balance in what is, as the honourable member correctly points out, a very difficult issue to resolve.

Dr ARMITAGE: The Minister must clearly realise that I am not moving an amendment to fix the problem. I understand how difficult it is, and I accept the Minister's acknowledgment of that difficulty. If something occurs later, we can fix it at that stage.

This amendment makes quite clear that the board must reasonably attempt to ascertain the opinion of the parents of the person and allow the parents to make submissions to the board on the matter, but that the board is not required to do so if it is of the opinion that it would not be in the best interests of the mentally incapacitated person. I emphasise that the amendment seeks to provide that parents will be consulted only where their whereabouts are reasonably ascertainable and they are given only a reasonable opportunity to make submissions to the board.

The Hon. M.J. EVANS: I must oppose the amendment. While the sentiments which the honourable member seeks to express in law are reasonable, the reality in this kind of case is that it is difficult to determine the relevance of parents in an individual case where the protected person may be of an advanced age. I think it is more appropriate to fall back on the provisions of clause 14 which require the board to give notice to any other persons whom the board believes have proper interest in the matter before the board. The board would then be required to give any other person to whom notice of the proceedings was given or who satisfies the board that he or she has a proper interest in the matter a reasonable opportunity to make submissions to the board.

So, I think the board is under an appropriate obligation under clause 14 where it would be relevant and appropriate in an individual circumstance. After all, each case will be different. It is better to give a discretion to the board, as the Committee has done already under clause 14, so that whoever is relevant in a given case—it may be the parents or other members of the family or friends of the protected person—is given the opportunity to make a submission; indeed, there is an obligation to give them notice if the board believes they have a proper interest. So, rather than having a highly specific provision which may not always be to advantage, I think it is better to have the more general provision under clause 14 which, while it gives the board substantial discretion, places on the board a specific obligation to advise those who have a proper interest in the matter. Therefore, I oppose the amendment.

Amendment negatived; clause passed.

Clause 61—'Board's consent must be in writing.'

Dr ARMITAGE: I move:

Page 28, lines 19 and 20—Leave out 'is conclusive evidence' and insert 'is, in the absence of proof to the contrary, proof.'

The Opposition believes that unless this amendment is carried the board could not alert others to any errors that might be made in drawing up a written consent. It seeks to insert a normal deeming provision by which a document purporting to record the consent of the board to medical treatment is to be taken as evidence of consent in the absence of any proof to the contrary.

The Hon. M.J. EVANS: I accept the amendment.

Amendment carried; clause as amended passed.

Clauses 62 to 64 passed.

Clause 65—'Appeal from decisions of the board.'

Dr ARMITAGE: I move:

Page 30—

Lines 21 to 25—Leave out paragraphs (f) and (g).

Lines 31 to 39—Leave out subclause (3).

Lines 40 to 41—Leave out 'an order of the board for or affirming the detention of a person or relating to the giving of consent to a sterilisation' and insert 'a decision, direction or order of the board (other than one made on an application for the board's consent to a termination of pregnancy)'.

The Opposition believes that the appeals procedure ought to be freed up and, indeed, that appeals ought to be by right and not by leave. The amendments are intended to make the appeal process easier rather than more difficult.

The Hon. M.J. EVANS: I oppose the amendments and the remaining consequential amendments to this clause. The avenues for appeal to the Administrative Appeals Court are appropriate, although in some cases they are slightly restricted. Paragraph (f), for example, makes it clear that there is an opportunity for appeal in relation to serious matters which may be the subject of a decision by the board, but in other cases the opportunity for appeal exists with the leave of the board or the court. Of course, the board and its resources make available to the protected person legal advice free of charge in order to prepare a case. With the high level of inappropriate appeals prevailing in the present system, I believe that that option of providing an automatic opportunity for the most serious matters but in all other cases of providing a filter mechanism of seeking the leave of the board or the court is appropriate, given that free legal advice as provided in that context adequately protects the rights of people without leading to high numbers of inappropriate appeals.

Amendments negatived; clause passed.

Clauses 66 to 77 passed.

Clause 78—'Duty to maintain confidentiality.'

Dr ARMITAGE: Why can information be divulged if required by the employer of the mentally incapacitated person?

The Hon. M.J. EVANS: I understand the question raised by the honourable member. This clause provides the opportunity for a person who is working for the board in the administration of the Act to divulge information—if authorised by law, which is obviously appropriate—or, in the case of the employer, it means telling other parts of the same institution what the circumstances of this person are. For example, it would be appropriate in relation to a mental health treatment facility, if a person were transferred there, for an employee of the board who had information relating to the treatment of that person, where that person may subsequently be retained under the Mental Health Act, to pass on information to his or her employer. I agree that the use of the word 'employer' conveys an inappropriate meaning here, but it means the employer in the sense of the Health Commission or a Government authority which may be responsible for other institutions which need to be advised of the circumstances of that protected person.

It does not convey 'employer' in the sense of the wider community and private employer: it relates to the employer. The employer is authorising the actual release of the information to some other part of the institution,

so it is not telling some other employer out in the community that that person is an employee of a private sector employer and they are not involved in this; it is the employer of the Guardianship Board officer who is involved in the decision.

Clause passed.

Remaining clauses (79 to 83) passed.

Schedule.

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

Page 38—

Line 14—Leave out *'(Mental Capacity)'*.

Line 20—Leave out *'(Mental Capacity)'*.

Line 25—Leave out *'(Mental Capacity)'*.

These amendments seek to leave out 'mental capacity' from the title and I will seek to amend the title shortly. Discussion has occurred within the parliamentary context about the Bill's title. It is important to ensure that the community has the right understanding of what the Bill is about and that the community has a positive impression of the work of the board. That would be assisted, especially now that persons are to be included within the definition in relation to physical illness or condition that renders the person unable to communicate his or her intentions as a result of the physical disability rather than a mental incapacity, if we amend the title to reflect that situation. The title will now simply be the 'Guardianship and Administration Bill', which conveys the right understanding to the community about the positive work of the board itself, rather than creating any misunderstanding that may flow from the present title. I commend to the Committee these amendments to the schedule.

Amendments carried; schedule as amended passed.

Clause 1—'Short title'—reconsidered.

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

Page 1, line 13—Leave out *'(Mental Capacity)'*.

I move this amendment for the same reasons put in support of the amendments to the schedule.

Amendment carried; clause as amended passed.

Long title.

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

Leave out 'with a mental incapacity' and insert 'unable to look after their own health, safety or welfare or to manage their own affairs'.

This amendment more appropriately explains the functions of the Bill, as the Committee has amended it.

Amendment carried; long title as amended passed.

Bill read a third time and passed.

MENTAL HEALTH BILL

Adjourned debate on second reading.

(Continued from 9 March. Page 2359.)

Dr ARMITAGE (Adelaide): This important Bill is part of the triumvirate of Bills in relation to the general thrust of increasing the dignity of people with mental illness via the Supported Residential Facilities Act that we passed last year, the Guardianship and Administration Bill that has just passed this House and now the Mental Health Bill. The actual function of the Bill is primarily to remove the guardianship considerations from the old Mental Health Act and to insert them in their own legislation, which has just been passed.

In doing so, that has added dignity, we believe, to the life and lifestyles of those people under guardianship orders. Importantly, with the formation of the Public Advocate and various other positions in that legislation, we believe that that is now a nice little package for those people under guardianship orders. Another function of this Bill is that it provides for a second period of 21 day detention orders, which recognises the practicality of the fact that people with mental illnesses often require longer periods of assessment than the first 21 day period. I speak with great emotion about this because I have seen it on a number of occasions where the period of assessment of all of the factors involved in mental illness is often a time consuming and particularly tortuous procedure.

It is the Opposition's view that the provision of a longer period of assessment is appropriate and reflects the realities of the difficulty of dealing with some of the diseases in the mental health area. The Opposition notes with great acclamation the removal of consent via the board for psycho surgery, reflecting worldwide trends. Again, I have seen some of the ravages of psycho surgery and they are frankly an indictment in many cases on the people who, in a gung ho fashion, carried out such surgery.

Equally, I would not want to be painted into the picture where I am necessarily decrying such psycho surgery. It has its place, but it should be done only with the full and informed consent of the people upon whom psycho surgery is to be performed. Consequently, the removal of that provision under this Bill is completely supported by us. We believe one of the most important provisions is that patients now are able and will be expected, following the passage of this Bill, to be transported by ambulance rather than by police car.

That is merely reflecting what many people have wanted for a long time. Indeed, it is common sense. It has not been the case before, but we fully support that particular action. Again, I speak from experience. At one stage a patient of mine was badly affected by one particular illness and a number of other factors. I recall this unfortunate woman with quite a severe mental illness arriving at the door of my establishment, having been dragged out of a restaurant where she was creating quite a disturbance. She was taken away by two police cars and five policemen. I thought that was totally inappropriate. Accordingly, the provision for ambulances to transfer patients to hospital rather than police cars is fully supported.

I wish to draw the attention of the House, as I did at considerable length last night, to the Minister's second reading explanation in relation to the previous legislation we discussed. He said that amendments to the Mental Health Act in 1985 provided for a number of consents to medical and dental procedures and that a review of that legislation in 1988 and 1989 identified the potential for the role of families and carers to be inappropriately restricted and under-valued. In addition, another review acknowledged the legitimacy of the family as the decision maker in the area of mental incapacity and mental illness. One of the amendments which we would like to see passed gives families credit for the work they do

and for their understanding of the illnesses that people suffer and the import of treatment carried out on family members. Many of the arguments in relation to this Bill have already been raised as part of this package of three Bills. As those arguments have been canvassed in the broader sense, I reserve further comment until we go into Committee.

The Hon. M.J. EVANS (Minister of Health, Family and Community Services): I appreciate the in principle support of the Opposition and the member for Adelaide in relation to this matter. I am sure the honourable member will raise a number of matters during the Committee stage. This legislation is complementary to the previous Bill, which retains for the Guardianship Board a significant continuing role in this area while making a number of improvements and clarifications to the law of mental health. It is a difficult area, as we all know, and one which will continue to present challenges to the health care system and to society as a whole. However, I believe that the legislative package before the House at the moment will allow us to deal with it in a much more sophisticated way. I certainly appreciate the support of members, and I commend the Bill to the House.

Bill read a second time.

In Committee.

Clauses 1 to 5 passed.

Clause 6—'Chief Adviser in Psychiatry.'

Dr ARMITAGE: I move:

Page 3—

Line 34—Leave out 'Psychiatry' and insert 'Mental Health.'

Line 36—Leave out 'Psychiatry' and insert 'Mental Health.'

Line 37—Leave out 'Psychiatry' and insert 'Mental Health.'

The heading of Division 2 is 'Chief Adviser in Psychiatry', which indicates that there will be a chief adviser in psychiatry. This person, according to the Minister's second reading explanation, will have no day-to-day administrative responsibilities and apparently will be free to speak on behalf of people who are mentally ill. The proposal is unquestionably welcomed on this side of the Committee, but it is our belief that the appointment ought to be broader to ensure that the Minister and the Health Commission can be advised in the whole area of mental illness and not be necessarily confined to the speciality of psychiatry, as this heading and clause seek to do.

The Hon. M.J. EVANS: I think there is some misunderstanding in terms of the requirements. The area of mental health, of course, is very broad. It covers a number of professions, including nursing, social work and psychology. There are important interactions with other agencies in the mental health area. Very importantly, of course, there are consumer and advocacy groups in the community that would all be subsumed under the title of 'mental health'. If we tried to appoint someone in a position such as this, they would not be able to respond to all of those diverse interest groups.

Psychiatry is one of the very essential components of any mental health service. It was felt desirable, given the specialist and professional nature of that one area, to include an adviser to the Minister and the commission within the legislation itself. However, it really is intended that the focus of this appointment—although not exclusively—should be on the area of psychiatry and that the person would be appropriately professionally qualified.

I think it is important that the general mental health area is represented by the various groups within it and by the Mental Health Services and the Health Commission in general as well as those community groups who are always seeking to bring an input and lobby to bear on the Minister in relation to matters under this Act. But the functions here are principally intended to focus on psychiatry. Rather than seek a very broad definition which would necessarily encompass too wide a field it is actually intended that this should be focused on the psychiatric area by an appropriately professionally qualified individual. Therefore, I would have to oppose the amendment as not reflecting the intention of the provision.

Amendments negatived; clause passed.

Clauses 7 to 9 passed.

Clause 10—'Particulars relating to admission of patients to approved treatment centres.'

Dr ARMITAGE: Will the Minister clarify what is meant by a person seeking information under this section having a 'proper interest'? Can he clarify what 'proper interest' may be? It would seem that clause 10 (2) may override freedom of information provisions which allow an exception for the provision of such information where the information may be harmful to the health of a person. Will the Minister explain?

The Hon. M.J. EVANS: The word 'proper' is a word which is frequently used in the law. To quote the expression: 'it is a very reasonable expression' and I am sure the honourable member and the Committee would be familiar with both those terms. I am sure that its use in this context is very reasonable and I really cannot see any way of further describing it. 'Proper' has its usual legal meaning in this context. Not being appropriately legally qualified, I certainly do not intend to give a text book definition of the word 'proper', but I assure the honourable member that it is not intended to have other than its usual definition.

Dr ARMITAGE: I seek clarification about the second point in relation to clause 10(2) where the director of an approved treatment centre must furnish the patient upon request free of charge a copy of any orders, certificates or authorisations upon which he or she was admitted, detained or treated. That would appear to override the freedom of information provisions which allow exception for the provision of such information where the information may be harmful to the health of a person.

The Hon. M.J. EVANS: I am sure that this specific provision would overrule any other more general provision in the law, but I do not see how one could deny a person who had been detained in this context copies of the orders which detained them. It seems fairly fundamental to me that if you require a copy of those orders, certificates or authorisations they are just the literal documents which ordered the detention under the Act. They do not constitute psychiatric reports or medical information on that patient which may be disadvantageous to them; they are the copies of the literal

orders, certificates or authorisations for detention. The honourable member may be reading more into those words than exists.

Clause passed.

Clauses 11 to 19 passed.

Clause 20—'Treatment orders for persons who refuse or fail to undergo treatment.'

Dr ARMITAGE: It is fair to say that subclause (1) has met with general approval because of the necessity for rejustification of treatment orders after 12 months, but there is also the very strongly made point that the onus in this new arrangement is on the applicant for a treatment order to reapply. A number of people have indicated to me their dilemmas and difficulties with this, particularly where a patient for his or her own reasons, affected by a mental illness, may be in a confrontationist mode and utilise this process for his or her own ends, indeed to the detriment of the patient in the long term and the family in the short term.

I refer to people who have a well-defined psychiatric or mental illness, they are on appropriate treatment, there has been no change in the condition of the illness or there is no required change in the treatment but it is important that the person continues to take that treatment. Will the Minister give a guarantee that the reauthorisation after the 12-month period will not necessarily be protracted, involved and traumatic to the families and the patients where there is a clear continuum of both the disease and the treatment?

The Hon. M.J. EVANS: It is just a reauthorisation of existing treatment. I can certainly give the assurance the honourable member seeks that an expedited procedure would be available.

Dr ARMITAGE: I thank the Minister for that. I move:

Page 8, lines 40 and 41—Leave out 'or by a medical practitioner' and insert ', a medical practitioner or a guardian or relative of the person the subject of the application'.

This would see that an application under subclause (1) could be made by the Public Advocate, a medical practitioner or a guardian or relative of the person the subject of the application. In moving this amendment, I am mindful of many of the instances which are well known in Australian public life at the moment. Probably the most well known are the experiences of Anne Deverson and the distressing story whereby she really was reaching out for help for her son and was unable to get that help. Much of the input I have received has related to this subclause. It is the very strong belief of the Opposition that guardians or relatives of the persons ought to be able to make an application for a treatment order.

The many stories presented to me indicate that nobody, other than someone living with these persons on a day-to-day, 24-hour-a-day basis, is able to understand what is actually going on with these people and in their minds and how their disease or illness is affecting them. We believe it is totally appropriate that those people who are best able to assess the effects of an illness on the person should be able, at least, to make an application under subclause (1).

The Hon. M.J. EVANS: I certainly accept and understand the very important role that the family and the carers play, but I think it is also vital to understand the nature of the process which is being undertaken here, and that is one where the person is receiving ongoing medical treatment. That is the proposal which is before the board in this context. If the family is unable to find a medical practitioner who will support that treatment, that means that the process would not go anywhere. The board can order something but, if a medical practitioner is not prepared to provide treatment, there is no significance in the process. I think we need to look at this in a broader context, given the new role of the Public Advocate, because an application for an order can be made by either a medical practitioner—and, of course, that is any medical practitioner—or the Public Advocate.

It is much better that the family should seek treatment through their normal medical channels and, if a doctor supports that, the medical practitioner will make the appropriate application and there will be no difficulty. If the family feels that their case is not being listened to, the role of the Public Advocate arises. Of course, they can present their views to the Public Advocate who, if he supports their position, will then apply to the board for the appropriate order. I certainly understand and accept the importance of the role of families and carers and those in the immediate environment, but I think in terms of how their role should progress in this, the board would certainly give them every opportunity to be present at any hearing that took place and to take their views into account.

It is vital that any treatment is supported by the medical practitioner involved or by the Public Advocate who, instead of seeking a board order, for example, could go directly to the treating authority in the appropriate mental health institution and seek reasons as to why they did not support the treatment requested by the family, for example. That kind of negotiation and reconciliation approach, I think, is far more effective than seeking a hearing before a quasi-judicial board.

The Committee divided on the amendment:

Ayes (19)—H. Allison, M.H. Armitage (teller), D.S. Baker, S.J. Baker, H. Becker, P.D. Blacker, M.K. Brindal, D.C. Brown, B.C. Eastick, G.M. Gunn, D.C. Kotz, I.P. Lewis, W.A. Matthew, E.J. Meier, J.W. Olsen, J.K.G. Oswald, R.B. Such, I.H. Venning and D.C. Wotton.

Noes (21)—M.J. Atkinson, J.C. Bannon, F.T. Blevins, G.J. Crafter, M.R. DeLaine, M.J. Evans (teller), R .J. Gregory, T.R. Groom, K.C. Hamilton, T.H. Hemmings, V.S. Heron, P. Holloway, D.J. Hopgood, C.F. Hutchison, J.H.C. Klunder, S.M. Lenehan, C.D.T. McKee, M.K. Mayes, N.T. Peterson, M.D. Rann and J.P. Trainer.

Pairs—Ayes—S.G. Evans and J.L. Cashmore. Noes—L.M.F. Arnold and J.A. Quirke.

Majority of 2 for the Noes.

Amendment thus negatived; clause passed.

The CHAIRMAN: Will members please take their seats. I rely for my authority on Standing Order 68, which provides that members should take their places immediately on entering the Chamber and that, while in the Chamber, members may not move within the Chamber in such a way as to detract from the decorum of the House or impede its proceedings. That is the

reason I am continually asking members to take their seats.

Clauses 21 to 28 passed.

Clause 29—'Board must give statement of appeal rights.'

Dr ARMITAGE: I move:

Page 15, line 10—Leave out 'should' and insert 'must'.

We believe that this amendment tightens up the clause. I am sure the intent of the clause is that, whatever people's native tongue or the language with which they are familiar, they ought to be provided with statements in that language. The clause provides that such a statement should be in the language with which the person is most familiar. We believe that, with the resources available to the State, this can be tightened up by substituting the word 'must' for 'should', and I am confident that that does nothing more than tighten what was originally intended.

The Hon. M.J. EVANS: That is appropriate and I accept the amendment.

Amendment carried; clause as amended passed.

Remaining clauses (30 to 37), schedule and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (FISHERIES) BILL

Returned from the Legislative Council with amendments.

SOUTH AUSTRALIAN HEAL COMMISSION (INCORPORATED HOSPITALS AND HEALTH CENTRES) AMENDMENT BILL

Returned from the Legislative Council without amendment.

EDUCATION (NON-GOVERNMENT SCHOOLS) AMENDMENT BILL

Returned from the Legislative Council without amendment.

WHISTLEBLOWERS PROTECTION BILL

Adjourned debate on second reading.

(Continued from 23 March. Page 2522.)

Mr S.J. BAKER (Deputy Leader of the Opposition): This is one of the more interesting pieces of legislation to come before the Parliament. It has an interesting history, as does the name of the Bill. I have been in this Parliament now for 10 years or so, and to have a Bill before the Parliament called the Whistleblowers Protection Bill is quite a startling transformation from the titles we were previously used to. 'Whistleblowers' is a commonly accepted term for those people who would wish to provide in a wider arena information about the activities of a company or an organisation where there have been problems, abuse, misuse of resources or a whole range of matters that have not been in the public interest. So, whistleblowers has grown up as terminology to describe those people who wish to disclose any information which those persons deem should be known to the public.

So, whilst it is a curious use of the English language, most people would recognise the specific nature of the Bill itself. Most people would also recognise that those people who have a public conscience and who wish to canvass matters of importance which have been kept behind locked doors and which should be canvassed in the public arena have been subjected to some unfortunate forms of redress and recriminations over a long period of time.

It was once said to me that a person should always do what he or she believes. That is true. However, a huge penalty can be incurred if that person does what he or she believes—even when that person is right, is doing something in the public interest and is doing so with the best motives. So, the legislation represents the first attempt—by this Government at least—to address the issue of how you encourage that person who believed that there had been transgressions, fraudulent activities or a misuse of power. If they are subject to confidentiality procedures or provisions, how can we ensure that the public or an authority which can take action is aware of the transgressions?

So, the background of the Bill is that the Attorney perhaps has reflected on events interstate and said, 'Well, look, South Australia really should be there; South Australia should be putting forward a piece of legislation to provide protection for those individuals who are acting with the highest motives, who have discovered that some grave injustices are being done, yet who previously would have had to reveal such injustices with considerable penalty.' So, in principle, the Bill has merit. We would all recognise that people do need to ensure that, whatever their occupation or interest, the actions of the people around them and, indeed, their own actions are beyond reproach.

Unfortunately, that is not the case. The facts of life are that, where there is power and money, there are abuses. We have seen the abuses that have been performed by this Government over a long period of time. We know that, when information has been provided to the Opposition about money being wasted or people misusing their position and power, or some other transgression, there has been a witch hunt. I have raised questions in this House previously, the source of which could only have been the public sector. Having raised those questions, I know that the ministerial has come down, saying 'Find the person who has provided the information and find them in a hurry. There is a leak in the system, and we do not want that leak to continue. The information is absolutely correct, we have done all these things wrong but do not let that person get away with giving any more information.'

So, it is a little hypocritical. Over the past 10 years a number of examples of corrupt practice or of misuse of power have been brought to the attention of this Parliament, and I would ask the Parliament to judge on how many occasions, after those abuses have been revealed by way of question, motion or contribution in

this House, and how soon after the event the dogs have been set loose. If the Government believes that whistleblowers should be protected, I find it a little hypocritical that its actions have not reflected that same desire over the past 10 years.

One of the problems we now must address is the way in which a person provides information, whether that is being done for the highest motives or for another agenda. So, there are some benefits and some obvious detriment that can be associated with this legislation. I can remember a piece of research that I was undertaking as a public servant that was done as an internal memo, in good faith. It was an accurate reflection of conditions at the time, yet someone who was working with me managed to get that piece of information into the public arena when it was strictly confidential. It did not involve any abuse, corruption, or money misappropriated or misused, yet someone who was a fellow traveller for the ALP decided that it would be to our political disadvantage if it became public knowledge, and that was the case.

There are many other examples where people's motives for doing particular things must be questioned. That is why it is a Bill that has to be viewed in light of what is feasible to assist people with genuine motives and concrete evidence to bring forward that information in such a way that that situation can be addressed. The Bill sets up a framework within which disclosure of information that exposes criminal activity, malfeasance, public danger and similar acts or omissions may be permitted and protected. It is a signal to people who see wrong being done to ensure that the proper authorities are alerted to that wrong on the understanding that it shall be without fear or favour; in other words, there shall be no recriminations because someone has done the right thing.

The principle is that a person may disclose public interest information in the manner that is described in the Bill. There are some constraints on how that information should be handled. For example, 'public interest information' is defined as information that tends to show that an adult person, not necessarily a public officer, or a body corporate, is or has been involved in an illegal activity, irregular and unauthorised use of public money or conduct that causes a substantial risk to public health or safety or to the environment, or that a public officer is guilty of impropriety, negligence or incompetence in or in relation to the performance of official duties.

The Bill is very broad, it addresses some key concerns, and that initiative should be applauded. We are talking about personal behaviour, safety, criminal offences, wastage, unauthorised use, negligence and incompetence. It covers a very wide area.

A 'public officer' is defined as including a person appointed to public office by the Governor, a member of Parliament, a person employed in the Public Service of the State, a member of the Police Force, any other officer or employee of the Crown or a member, officer or employee of an instrumentality of the Crown and associated bodies. It also includes a member or an employee of local government. Generally, the Bill catches most people in the public sector. It does not have the same breadth in relation to the private sector, and I shall allude to that later.

Where a person believes on reasonable grounds that certain information is true and the disclosure is made to a person to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure, the person making that disclosure is protected from legal action. There is a fall-back position under the Public Service rules, and in areas of high sensitivity we have confidentiality provisions. Those confidentiality provisions are there for obvious reasons. The fact is that a person can damage an organisation if he or she reveals certain information about it. For example, at a point where negotiations are sensitive, the market position of companies, individuals and Government departments and organisations can be affected. It is not in the best interests of the public that details be made available in the wider world at a point where they could damage legitimate negotiations.

There are areas of high sensitivity within the Commonwealth Government—in defence, for example—as members will recognise. Within the State Government there are areas of sensitivity which may relate to operations that are being undertaken in hospitals or to crucially important negotiations for the sale of an asset. Disclosure that an asset was to be sold might have a detrimental effect on the price. There are many reasons why people should keep information confidential until such time as it is deemed appropriate for it to be released in the public arena.

Whistleblowing should be viewed in the context of the sorts of activities that I have previously mentioned; that is, where there has been illegality, misuse or abuse of power, personal safety or the protection of Government money. Those are the kinds of areas that need to be addressed.

In talking about the appropriate authority to which information can be given, there are a number of authorities which are recognised and which have to be used. A person who is aggrieved by something happening around him or her cannot simply, as a whistleblower, rush off to the press and blow the whistle. Some procedures have to be followed, and that is absolutely appropriate.

When we are talking about an illegal activity where a criminal charge may be involved, obviously the Police Force is the appropriate authority. If we are addressing problems within the Police Force itself, we are talking about the Police Complaints Authority. Where we are talking about the abuse and misuse of public money, the Auditor-General is the most appropriate body to which information should flow. If it relates to an employee under the Government Management and Employment Act, if it is unconscionable behaviour on the part of a particular employee, then the Commissioner for Public Employment is the appropriate authority to which information should be provided. If a judge or magistrate is not acting appropriately, the Chief Justice is the appropriate authority to which information should be provided.

If we talk about people holding public office, other than those areas previously mentioned, the Ombudsman should be the person who is approached. Then, if we are talking about all other matters which do not have a ready home in relation to the material to be provided—we have already mentioned that illegal matters must be referred to

the Police Force—then obviously the first point of call is the responsible officer or the chief executive officer of the organisation concerned. As far as the Bill is constructed, if we are talking about fraud or corruption, the appropriate authority to approach would be the anti-corruption branch of the Police Force. The Act provides that the identity of the informer is to be kept confidential and victimisation is to be dealt with under the Equal Opportunity Act as if it were an act of victimisation under section 86 of that Act. Basically, it is a matter of discrimination.

This legislation does not extend to the private sector. There is a suggestion that the private sector needs it even more than the public sector and we have had many examples of where people have been brought to justice eventually and could have been brought to justice much sooner if whistleblowing legislation applied to the private sector as well. However, in the private sector we are talking about far more sensitive positions in the marketplace where the level of detriment is much higher should information become available. It is not only information that is correct and should be brought forward: it is information that can impede the progress or affect the market position of a particular firm.

So, the private sector issue really has to be thought through and perhaps we can see this legislation as it applies to the public sector, once all the wrinkles have been removed, being used to further extend the principle beyond the public sector. I read an article about three months ago and, although I cannot remember where it appeared, it suggested that the real whistleblowers are different types of people. There have been a number of people who have gone out into the public arena and made accusations, quite often accurate accusations, and then been sacked or suffered considerable damage as a result of going public on important issues. The fact that they were right on each occasion was satisfied but the ramifications were quite serious for those particular people.

It was interesting that the article concluded that those sorts of whistleblowers who go out and stand on the steps of Parliament House—they do not really do that, but they line up the press to tell the story—are quite often people who wish to seek publicity in their own right. This was the conclusion of the article, that they did not actually conform. The true whistleblower, who is willing to risk everything, does not necessarily conform to the profile of the people that we are talking about here. The reason the article drew this very strange conclusion (but on reflection it did have an element of truth to it) was no doubt that there are a number of mechanisms available already for people to bring matters to public attention.

As all members do, I receive phone calls each day about something that is happening within Government. Some days I might receive three or four. Some of it is accurate and some matters need a lot of checking; others cannot be pursued because there is no other satisfactory evidence which would back up the claims. Every day we receive information. Quite often the person at the other end of the phone will not tell you who they are for fear that they will suffer should their details become available.

It is clear that a person who feels aggrieved because something is going wrong in an organisation, whether it be the public sector or the private sector, has a means at his or her disposal already to have those issues canvassed in the wider arena. Those people that are really very smart and would wish to have the information out in the public domain will use other means than perhaps those that have been laid down within this Bill. Many of them are fearful for their futures and do not wish to be named; others do it for simple mischief. I hear some terrible stories about Ministers, departmental heads and various other people. I hear it about private companies from people who would wish to do those people harm. There is a whole range of information that comes to our attention as MPs, some of which is pursued in the Parliament, some of which is pursued on a one-to-one basis with the Chief Executive Officer of an organisation, whether it be private or public, and some of which has an element of truth but is really quite mischievous. It will be very difficult, I believe, when we are combining some element of truth and some element of mischief in the allegations.

The Australian Press Council Submission to the Electoral and Administrative Review Commission on Protection of Whistleblowers in September 1991 made a number of observations. This is the press council, mind you. They are the people who like as much information in the public domain as possible. It states:

> The council believes that the protection of whistleblowers should cover a wide range of wrongdoing and not be restricted to criminal conduct and corruption. The council believes that waste and inefficiency ought to be included and protected only in the public sector as a matter appropriate for protection. However, whistleblower protection in the private sector must reasonably be more limited than in the public sector, and should be restricted to criminal conduct and breaches of the law.

Alluding to the comments I made about mischief, the Press Council's submission noted the argument that some ill-informed or malcontent whistleblowers may abuse any such protection and harm the legitimate interests of other persons by wrongful allegations. It states:

> This could, of course, be the case. However, legislation for the protection of whistleblowers in other jurisdictions has been able to deal with these issues. The possibility of abusing any such protection or endangering the interests of others is not a sufficient reason to refuse any protection to whistleblowers.

I agree with that point. Irrespective of whether there are people who wish to do harm to other people and organisations, it is a fact of life that there are people who deserve protection, and there must be a way of increasing the capacity for people to bring forward matters of importance in a structured way with the expectation that some action will be taken. The Press Council's submission makes observations in relation to the types of complaints and the increased costs of protecting whistleblowers. It states:

> Such a worry seems unfounded in the light of the US experience which shows that such legislation need not necessarily open the floodgates to unnecessary complaints.

The US experience suggests that the saving as a result of whistleblowing and of bringing matters of wrongdoing to the attention of the public amounts to multi-millions of dollars. So the US experience suggests that whistleblowing has a net positive impact—and I agree

with that observation. Other observations noted in the Press Council's submission rely particularly on the US experience and the Queensland model. I note an extensive report of the Electoral and Administrative Review Commission on the protection of whistleblowers. Certain elements of that report have been thoroughly canvassed in another place as to how and why whistleblowing should occur and what safeguards are needed. Some of those suggestions have been reflected in this legislation; others have been left out, and I presume they will be the subject of further consideration.

There will always be the dilemma of whether information that is provided justifies the sort of protection that is the basis of this Act. The Act may require further modification to ensure an even balance between the rights of individuals and their responsibility to bring matters of corruption, etc., to the attention of the appropriate authorities, at least in the first instance, and perhaps a little later in the wider arena if they have not been acted upon. The issue of retaining that balance may need to be further addressed in terms of whether we are opening the doors too wide or whether we need further protective mechanisms to ensure that what we all desire actually occurs. The report notes:

> The role of the media in exposing corruption and impropriety in both the public and private sector and in seeking justice... demonstrates clearly that the media can be an effective means of defending the public interest.

The next question, which remains unanswered, is: if a person has correct information and a legitimate beef and has gone through the processes and asked one of the authorities previously mentioned to take action but no action has been taken, what further redress is available to that person? The report actively canvasses the possibility of the press being involved in a way which means that the Government sector cannot protect itself. I cite a number of examples. The correctional services system is extraordinary; it has its own protective mechanism. When I asked questions about correctional services, the answers used to be supplied by the people who committed the offences. This sort of thing simply cannot go on. The whistleblowers legislation does not necessarily address that matter, unless some of the matters we are discussing are absolutely illegal under the law.

Mr Ferguson: I'd like you to sit on the tribunal when we set it up.

Mr S.J. BAKER: Thank you very much. Further thought is required on this legislation. Matters will be raised in Committee. This Bill is an important measure, and it will be modified over a period. The Opposition supports the legislation.

Debate adjourned.

[Sitting suspended from 1 to 2 p.m.]

INFLUENZA

A petition signed by 328 residents of South Australia requesting that the House urge the Government to fund the vaccination of all children against influenza type B was presented by the Hon. M.J. Evans.

Petition received.

OPERATION HYGIENE

A petition signed by 985 residents of South Australia requesting that the House urge the Government to establish an inquiry into the investigation methods of Operation Hygiene was presented by Mr S.G. Evans.

Petition received.

ALDINGA POLICE STATION

A petition signed by 1 800 residents of South Australia requesting that the House urge the Government to establish a police station at Aldinga Beach was presented by Mr Matthew.

Petition received.

MURRAY-DARLING BASIN COMMISSION

The Hon. J.H.C. KLUNDER (Minister of Public Infrastructure): I seek leave to make a ministerial statement.

Leave granted.

The Hon. J.H.C. KLUNDER: Many members will be aware of the considerable amount of public comment, both negative and positive, which has been generated since the release last December of the Murray-Darling Basin Commission's draft River Murray Boating Management Discussion Paper. While the draft paper has focused attention on a range of important problems relating to boating on the river, I believe we need to be presented with some options before we consider firm recommendations. For this reason, I am pleased to advise the House that it is the intention of the commission to form a working group to review the large public response to the discussion paper. In my view, it is important that this working group has representatives from both the community and Government agencies.

The community needs to be directly involved in the formulation of a boating policy, and this review gives us an excellent opportunity for that to occur. With this in mind I have asked the South Australian Commissioners to ensure through the commission that community consultation is achieved. The working group may feel it desirable to revise the consultation process in the light of community comment already received. It is important that we have a reasonable period of consultation, probably at least six months. Once community feedback has been reviewed, some of the issues raised will be given detailed explanation by the Murray-Darling Basin Commission, while others will be referred to State or local authorities for their consideration.

QUESTION

GENTING GROUP

The Hon. DEAN BROWN (Leader of the Opposition): My question is directed to the Deputy Premier. How does the Government justify its approval of arrangements which are so generous to the Genting Group that they give the group a contract to the Adelaide Casino covering not 20 years, but up to 30 years, allowing the group to earn more than $2 million a year when it has only one employee in the Casino and its role is confined purely to one of advice only? In a report tabled in this House last October, the Casino Supervisory Authority revealed that the Genting Group stands to earn a further $40 million in management fees to the year 2006 under its contract with the Adelaide Casino. The authority also expresses the opinion that this 20-year contract—from the time the Casino opened in 1985—was for 'an unusually long time'.

However, I have now obtained information which shows Genting in fact has the right to extend this agreement by up to a further 10 years, that is, making it up to a 30-year contract. This is provided for in clause 8 of the agreement for technical assistance and management services for the Casino. This means Genting could earn, over the full period of its contract, well over $70 million for a role that now involves no more than one employee. I am also aware from other documentation the Opposition has seen that the Casino Supervisory Authority was concerned about fees payable to Genting even before the Casino opened.

In a letter dated 25 March 1985, which was sent to the former Premier, the authority revealed that Genting's agreement with the Casino provided for Genting to receive $250 000—that is before the Casino opened—and other quite substantial pre-opening expenses. In a private hearing on 12 March 1985 to consider the authority's concerns about the proposed agreement for Genting's involvement in the Casino, the then Chairman of the authority, Judge Marshall, stated:

They [Genting] appeared to be employed on very favourable financial terms, so it seems to us.

These are on terms which the former Premier approved under clause 6 of the Casino licence held by the Lotteries Commission, which required his written endorsement on any payments linked to Casino profits.

The Hon. FRANK BLEVINS: The explanation was so long that I have almost forgotten the question, so if I stray somewhat I make my apologies in advance. My understanding is that Genting has no contracts with the Government. I do not know of any; I may be wrong. If the Leader has some evidence to the contrary, I would be delighted to see it.

The Hon. Dean Brown interjecting:

The SPEAKER: Order!

The Hon. FRANK BLEVINS: My understanding is that Genting's contract is with the operators of the Casino, certainly not the Government. So, I hope that clears up that point. The report to which the Leader refers was commissioned by me after questions from members opposite. That report was tabled in the Parliament. The Casino Supervisory Authority, I understand, has subsequently had some discussions with Genting, or the operators of the Casino, and variations have been made to those agreements. As far as I am aware, those agreements—and I certainly had no involvement in 1985 or at any other date—were normal commercial agreements entered into between two parties. If the Leader believes that the Government should interfere in those agreements, that is a point of view he is entitled to hold. It is one that I would be very wary of holding. I suppose that on other occasions and in other circumstances the Leader would be opposed to Government intervention in any case. CSA has very wide powers. It does not require the Government to instruct it to do anything. CSA has the right to inquire into anything it wishes of its own volition.

There has been no correspondence to me from the Casino Supervisory Authority suggesting that it feels inhibited in any way with the power it has. Quite properly, in my view—and not only in my view, although it was my private members' Bill—CSA has quite wide powers. So, if the Casino Supervisory Authority had sufficient concern about any aspect of the Genting technical and management services agreement with the operators of the Casino, it could have done something about it. It could have at least discussed it with the parties. I am not suggesting it has not; I do not know—perhaps it did. However, in any event, it had the right to do so. I am still desperately trying to remember the question and I am not going very well. It was a long explanation.

An honourable member interjecting:

The Hon. FRANK BLEVINS: But that appears to me—and I have indications from members opposite—to have answered the question fully.

BARTON ROAD

Mr ATKINSON (Spence): Can the Minister of Environment and Land Management report to the House what progress the Surveyor-General has made in adjudicating the Adelaide City Council's application under the Roads (Opening and Closing) Act to close permanently Barton Road, North Adelaide?

The Hon. M.K. MAYES: I thank the member for Spence, I hope for the last time, for a question on this issue. I can inform the honourable member and the House that I have accepted the Surveyor-General's recommendation and decline to confirm the order to close Barton Road in the vicinity of the Barton Road/Mildred Road intersection, and where access from the western suburbs is provided via Park Terrace and Hawker Street. I am advised that the Surveyor-General has notified the council and other interested parties of that decision.

The Surveyor-General's recommendation is based on a number of considerations. First, the Surveyor-General has pointed out that the purpose of the Roads (Opening and Closing) Act 1991 is to provide a means of rationalising road and traffic needs and to dispose of old and unwanted roads. It is not, according to Crown Law advice, to be used as a device to implement traffic control measures. The Surveyor-General has assessed that the council's essential purpose in closing the road

was not to dispose of an unused road, but rather to control the passage of traffic through that part of North Adelaide. The Surveyor-General has pointed out that, with 995 petitions and objections to the road closure, there is ample evidence to indicate that there is strong public demand to use the road. Of equal weight is the perceived need to keep the road open as an STA bus route. The question immediately arises: if it is convenient and appropriate for the STA to use the road, why is it not equally appropriate for the general public to use the road as well?

The Surveyor-General has also pointed out that there is an inconsistency and a conflict in the intended use of the land if the closure was confirmed. The Surveyor-General has advised, once again supported by Crown Law opinion, that any future use of the land as a bus-way would be inconsistent with the intention of the council to seek to have it dedicated under the Crown Lands Act 1929 as parklands under the care, control and management of the council. I must say that it seems to me also to be totally inappropriate to have an area of land dedicated as parklands, over which a bus is free to travel.

I should point out to members that my decision to decline confirmation of the road process order in no way prevents the council from continuing to apply traffic treatment to that portion of Barton Road. That power is available to council through the Local Government Act. The power to overrule council in the application of traffic control devices rests with the Minister of Transport Development under section 18 of the Road Traffic Act. It is clear that this issue has inflamed passions on both sides, as evidenced by contributions in this Chamber by my colleague the member for Spence. I am sympathetic to his enthusiasm to protect the rights of his constituents in the western suburbs to have convenient access to North Adelaide and its amenities. I am equally aware of the right of residents of suburbs to have quiet and safe enjoyment of their neighbourhood.

It is very apparent that the proprietary right of the public over its roads is protected by the Roads (Opening and Closing) Act 1991, which clearly indicates that roads should not be closed unless it can be shown that they are not reasonably required as a road for public use in view of present and likely future needs in the area. The Surveyor-General has concluded that council has not demonstrated that conclusion, and I concur with his view. I would hope that, in view of the weight of public opinion in this matter, the council will now reconsider its decision and undertake a reassessment of how the rights of North Adelaide residents can be properly balanced with the equal rights of residents of the western suburbs.

GENTING GROUP

Mr S.J. BAKER (Deputy Leader of the Opposition): My question is directed to the Minister of Public Infrastructure. What allegations against two directors of the Genting Group involved in the management of the Adelaide Casino did he refer to the Police Commissioner in September 1989; did he subsequently act on police advice to seek information from Western Australian Government authorities; and, if not, why not? On 5 September 1989, the Minister referred to the Police Commissioner allegations made against two directors of Genting (South Australia) Pty Ltd, Mr Colin Au and Mr I.T. Lim.

In reply, Acting Commissioner Hurley advised the Minister of a sequence of events between 1987 and 1989 in which both the Casino Supervisory Authority and the Lotteries Commission had been denied access to information held by the Western Australian police, in part because this information was considered 'highly sensitive' and 'potentially embarrassing' to the former Western Australian Labor Government if released. Acting Commissioner Hurley recommended to the Minister that he should negotiate directly with the Western Australian Government authorities to obtain access to that information.

The Hon. J.H.C. KLUNDER: I thank the honourable member for his question but, of course, he is asking a question of me as Minister of Public Infrastructure which deals with the previous portfolio I held. The question is therefore probably out of order, and I seek your ruling on that in the first instance, Sir.

Members interjecting:

The SPEAKER: Order! The question of responsibility is normally defined by the capacity of the member in the House in their ministerial responsibility. As the Minister was at that time responsible for the action, I would rule the question in order.

The Hon. J.H.C. KLUNDER: Mr Speaker, I thought I should establish that point, first. The answer that the honourable member seeks I think was contained in a minute which the Minister of Emergency Services provided to the Deputy Premier during Question Time in this House yesterday and which indicated what the situation was, and I refer the honourable member back to that minute.

HOUSING INDUSTRY

Mr McKEE (Gilles): Will the Minister of Housing, Urban Development and Local Government Relations advise the House what are the prospects for the housing industry in South Australia in a post-nightmare (sorry, post-Fightback) environment? A number of weeks ago we heard in this House that, under the Fightback proposals, to which the Leader of the Opposition was a blood brother, house prices in South Australia were likely to soar by in excess of $3 000, creating a downturn in the housing industry and forcing marginal home buyers out of the market.

The Hon. G.J. CRAFTER: I am pleased that the honourable member has overcome his nightmare problems. To put them simply, the prospects in this State are excellent and, given Tuesday's announcement of a cut in official rates, I would have thought that, if anything, our worry in this State would be that the market will become too strong too quickly. The latest Indicative Planning Council Short Term Prospects report estimates that we will see a 5 per cent increase in the total number of dwelling commencements in South Australia for the year ended 1992-93, and that is clearly a very good result. South Australia has a very stable housing industry. Over the past five years our dwelling commitments have varied by more than 5 per cent on only one occasion, in 1989-90, when the starts went up

by 7 per cent. This means that builders, subcontractors and labourers benefit from regular, consistent work. It also means that home buyers, many of whom have young families and who are on moderate incomes, benefit from stable house prices.

With this sort of record it makes us wonder why the Housing Industry Association, which is meant to be representing these groups, is not campaigning in favour of current policies instead of against them. Perhaps this is also why the Opposition is so silent on this very key issue of housing policy. The latest Indicative Planning Council report specifically makes mention of HomeStart finance and the Government's regulation of the land market as, and I quote:

...major reasons why total residential building activity in South Australia has remained fairly stable throughout the recession.

When we compare this with States like New South Wales, where there have been fluctuations of 24 per cent in housing starts over the past six years and Victoria, where the market has moved up and down by some 39 per cent in the same period, I think that is clear evidence that we have the right balance in housing policy in South Australia where, I must say, the relationship between the Government and the private sector can provide for the planning for this sector of our local economy in the community interest.

GENTING GROUP

Mr S.J. BAKER (Deputy Leader of the Opposition): If the Deputy Premier claims the Government has nothing to hide over the appointment of the Genting Group to the Adelaide Casino, will he direct the Lotteries Commission to release for examination all documents it has relating to this appointment? The Opposition made a freedom of information application to the Lotteries Commission on 16 October 1992, seeking access to records showing how the appointment of Genting was made. We are particularly interested to find out how the Lotteries Commission sought to fulfil its obligations under the casino licence to ensure a full investigation of Genting's background before the Casino was opened.

In a letter that reached me today, the commission provided copies of eight documents from its files. Two are press statements, four are newspaper clippings and the remaining two are letters that tell me nothing about Genting's appointment. The commission rejected our application for all other documents on the ground that Genting and the Casino operator Aitco Pty Ltd have asked the commission not to release the information sought.

The Hon. FRANK BLEVINS: There are some rules about freedom of information, and I know that the member for Victoria has tested to the utmost the resources of some departments and organisations over the past few months. I understand that requests have been complied with to the nth degree; to the degree, in fact, that for the previous question that was asked of the Minister of Public Infrastructure the document with regard to the police dealings with the Western Australian police has already been made available to the member for Victoria. So, members opposite are asking questions in here to which they already have the answer. Nevertheless, that was a previous question and I will not pursue it.

The Hon. Dean Brown interjecting:

The SPEAKER: Order!

The Hon. Dean Brown interjecting:

The SPEAKER: Order! The Leader is out of order. The Deputy Premier.

The Hon. FRANK BLEVINS: Neither the Lotteries Commission nor anyone else has contacted me and said, 'This document might be a bit sensitive, do you want us to stop it?' I have certainly had no discussions with the Lotteries Commission along those lines at all.

Members interjecting:

The Hon. FRANK BLEVINS: Now that it has been raised, I will have discussions with the Lotteries Commission to see why it has not complied with the request from the member for Victoria. If the documents are commercial—

Members interjecting:

The Hon. FRANK BLEVINS: You just have to wait, because I am even better.

Members interjecting:

The Hon. FRANK BLEVINS: You just have to wait. If that is the claim, what I am prepared to do with the Lotteries Commission, provided that the police and CSA will cooperate, is to ask the police or CSA to look at those documents to see whether they have any bearing whatsoever on the question that has been asked by the member for Victoria or whether they are purely commercially confidential documents. I myself do not want to look at them. I had no knowledge of their existence, but I will ask the appropriate authorities to look at them, to see whether anything in them ought to be released. As members would know, my view on these things is that all matters that quite properly ought to be released should be. That is my starting point.

BARTON ROAD

Mr ATKINSON (Spence): Can the Minister representing the Minister of Transport Development say whether the Minister will use her powers under section 18 of the Road Traffic Act to forestall Adelaide City Council's now passing off the Barton Road closure as a traffic control device instead of a road closure and to prevent that council's now portraying the five-year-old Barton road closure as a temporary closure under section 359 of the Local Government Act?

The Hon. M.D. RANN: I will seek an urgent reply from my colleague the Minister of Transport Development.

HOSPITAL WAITING LISTS

Mrs KOTZ (Newland): Does the Minister of Health, Family and Community Services agree that the allocation of Federal funds to reduce waiting lists for public hospital surgery is an illusion and will have minimal impact on reducing waiting lists, which now contain nearly 10 000 prospective patients? I have been informed that the Federal money allocated to the Modbury Hospital will be sufficient to open 10 beds for four weeks, and have further been informed that this will

possibly have the effect of taking 180 people off the hospital's waiting list, leaving 800 still on it. However, since there have been 120 surgery cancellations in the past few weeks at Modbury Hospital, I am reliably informed that the additional Federal funds will do little more than reduce the number of cancellations in the immediate future and will do nothing to alleviate the long-term problems of those hundreds of people waiting for months—

An honourable member interjecting:

The SPEAKER: Order!

Mrs KOTZ: —to have—

Members interjecting:

The SPEAKER: Order!

Mrs KOTZ: —their painful conditions attended to.

The SPEAKER: Order! Before I call on the Minister, I point out that the honourable member has been here long enough to know the rules relating to questions. Members should not comment and they should not argue. The other point is that members may not speak over the Chair when it calls them to order.

The Hon. M.J. EVANS: Anyone who can stand in this place and suggest that millions of extra dollars from the Commonwealth Government as part of the Medicare agreement will not assist the needs of patients in this State is clearly not examining this matter in a factual or reasonable way. Millions of dollars from the Commonwealth Government will provide hundreds of extra patient operations. Stage 1 of those operations is occurring now and will provide some 700 additional procedures, many of which have already been undertaken in the period since this decision was announced. Tenders are being received from medical units now for stage 2 of that process and that will provide hundreds of additional operations over and above those which would normally be performed. I think we have to look at waiting list and booking list procedures across the board.

For example, 79 per cent of people admitted from booking lists at Adelaide's major metropolitan public hospitals in the six-month period July to December 1992 waited less than three months and 50 per cent waited less than one month. In that six-month period, nearly 80 per cent of people admitted from the booking lists at Adelaide's metropolitan hospitals waited less than three months, and half of them waited less than a month.

An honourable member: The rest died.

The Hon. M.J. EVANS: The rest died. That is absolutely absurd; it is absolute nonsense. I cannot believe that an honourable member would make that kind of proposition in this place.

An honourable member interjecting:

The SPEAKER: Order!

The Hon. M.J. EVANS: Clearly, any number of measures are taken, as part of the waiting list reduction strategy, that will have an enormous impact and benefit to patients in this State. The statistics that I have quoted certainly demonstrate that waiting periods are not quite what the honourable member would have us believe. That is not to say that there are not some patients who are waiting unacceptably long times in certain specialties and, indeed, measures must be, and are being, taken to address those areas. I do not back away from the fact that that is a very vital and important issue, which must be addressed.

An honourable member interjecting:

The Hon. M.J. EVANS: The honourable member, by way of an out of order interjection (as I am sure you would indicate, Mr Speaker), refers to the case of the surgery in the chair procedure. I would remind him and the House that, in fact, day surgery procedures are very important to the medical fraternity these days. They work extremely well for patients, and it was intended that the patient referred to by the member for Goyder yesterday be admitted as a day surgery patient. The fact that she was admitted as a day surgery patient seems perfectly reasonable to me. The procedure that was undertaken in relation to that patient is routinely dealt with at Modbury Hospital as a day surgery admission. If any patient suffers any complications after that, arrangements are in hand at a public hospital to adequately safeguard that patient's health. When the day surgery unit checked with that patient, she was advised that, if any further difficulties were encountered, she should refer them to her doctor. That is the normal, routine procedure for day surgery.

I would suggest that many patients, if not all, to whom I have spoken who have had day surgery procedures appreciate the speed and convenience with which those procedures are implemented by medical practitioners in our hospitals and, indeed, are very grateful for the convenience that that facility offers. I think we must keep this issue in perspective and, certainly, the absurd nonsense we have heard about what happened to the remainder of patients I hope this House will never hear again.

CLIPSAL POWERHOUSE

Mr ATKINSON (Spence): Will the Minister of Tourism confirm whether or not the Grand Prix Board, operator of the Hindmarsh Entertainment Centre, will oppose moves by the proprietors of the Clipsal Powerhouse to rezone their land to allow them to stage rock concerts and other special events? Constituents of mine who live at Woodville, Findon, Beverley and Devon Park have asked me what the Government thinks about the Clipsal Powerhouse at Beverley competing as a venue for concerts with the purpose built Entertainment Centre at Hindmarsh. Those who live near the Clipsal Powerhouse are worried about traffic volume and traffic noise generated by special events at the Powerhouse, such as the Moscow Circus. They are also worried about the noise that might be generated by rock music in a stadium designed for basketball.

The Hon. M.D. RANN: I do not pretend to be an expert on planning matters but, as I understand it, the original planning approvals provided for the Clipsal Powerhouse stadium to be used as a sporting venue only and not for staging rock and other concerts. I understand that the basis of this approval, according to the Grand Prix Board, which operates the Entertainment Centre, was that the stadium was not deemed to be a suitable venue for concerts. However, we have all seen the venue used to stage the Moscow Circus, and I understand that it will be used for the forthcoming Tom Jones concert. There is certainly no threat to that concert, despite speculation of a move to prevent it from proceeding—we are not that sort of people, and that is not unusual.

It is true that the Australian Formula One Grand Prix Board, through its legal advisers, has written to the South Australian Planning Commission requesting information as to why these events have been staged in the light of what the Grand Prix Board says would be against current planning approval for the Powerhouse. I am also advised that the Woodville City Council has put forward a supplementary development plan to change the planning status of the Clipsal Powerhouse, and that is what is causing the concerns of the honourable member's residents. I confirm that the Grand Prix Board is preparing a submission in relation to this application.

AMBULANCE INSURANCE

Mr SUCH (Fisher): What progress if any has been made by the Minister of Education, Employment and Training to arrange affordable ambulance cover for school children in this State, and does the increase of more than 400 per cent in ambulance cover for school students represent further evidence of the effect that the State Bank losses are having on Government subsidised instrumentalities and the taxpayer? As a result of increases in St John Ambulance fees, many school students will be without insurance cover in future unless the Government takes some action.

At the beginning of last year, the cost of ambulance cover was 45¢ per student, but this has now been increased to $2.30, forcing many schools to abandon such insurance. For one southern suburban school, the total increase amounted to an extra $1 000 and a decision was made to drop the insurance rather than reduce essential learning materials.

The Hon. S.M. LENEHAN: As I have indicated to the House, it was my intention to speak with the department in terms of its negotiating with St John Ambulance to look at a much more commonsense approach to this matter. To ask schools—in between the setting of budgets—to find an increase of the magnitude to which the honourable member refers is not appropriate, and I have made that clear publicly. I think it is important that the Education Department continue those discussions—I believe that it had its first meeting with St John Ambulance only last week—to ensure, as I understand it, that there could be either a phasing in period over a number of years or some other compromise position looked at.

I think it is appropriate to allow the two agencies—the Education Department and St John Ambulance—to undertake those negotiations. As soon as they are concluded, I will be pleased to give the honourable member the result. In the meantime, my advice to schools is that they should not rush out and make decisions either not to continue with their St John Ambulance cover or to seek some other form of cover or, indeed, not to have any cover at all, because it is important that school students have that form of cover. In many instances, schools have money within their school council budget to pay for ambulance cover.

Members interjecting:

The SPEAKER: Order!

The Hon. S.M. LENEHAN: It is important to allow the two organisations to have proper negotiations to sort this matter out, and I think that is exactly what will happen.

TAFE COURSES

Mr HERON (Peake): Can the Minister of Education, Employment and Training advise what arrangements have been made by the Department of Employment and Technical and Further Education to promote TAFE courses to school leavers and to advise students on how SACE results provide pathways to those courses?

The Hon. S.M. LENEHAN: I believe that there is some interest in the community in this matter, and I know that the honourable member has had some inquiries about it. This is an important issue and it is vital that students are able to consider course options offered by TAFE in addition to those offered by universities. In the past few years there has been a perception that the only course after secondary education was into a university. It belies the fact that there are—

Members interjecting:

The Hon. S.M. LENEHAN: It is not a matter that they cannot get in, as a member opposite interjects: that is not the point at issue. The point is that vocational education is critical to the economic development of this State. It is critical that young people have an opportunity, as they have through the wide range of TAFE courses and programs, to be able to develop trades, to be able to become qualified within a range of skill and vocational areas, not just through university education.

Members interjecting:

The SPEAKER: Order!

The Hon. S.M. LENEHAN: A very comprehensive program, including the distribution of publications, visits to schools by TAFE staff and seminars for school counsellors, has been developed to provide information to students in years 10, 11 and 12 on the range of TAFE courses. For example, students in 200 of our secondary schools received complementary copies of the 1993 TAFE handbook, and about 20 000 students received a copy of the TAFE brochure *Courses for Careers.*

In 1992 TAFE personnel visited over 100 secondary schools to speak to students and parents about career options. Secondary school counsellors from the State sector, the Catholic sector and independent schools have attended a series of seven seminars which provided them with the information and the professional development regarding TAFE courses.

DETAFE is also a principal sponsor of the program 'Unlocking Your Future', a project which is a joint venture between industry, unions, education agencies and the Government. The initiative by TAFE and SATAC—I am sure that members understand now that SATAC is involved in the allocation of places, and this is an important move forward—allows school leavers the opportunity to consider TAFE course options at the same time as they look at university courses, and a joint venture between TAFE and SSABSA has resulted in a booklet which will be distributed to all year 10, 11 and 12 students and which is entitled *SACE: A Guide to TAFE Entry Requirements and Cross Credit Arrangements.*

It is also important to add that as well as getting information to students, to give them a range of choices for post-secondary training and education, it is also important to increase the number of TAFE places in South Australia, and to that extent I will certainly be continuing with the positive working relationship I have had with the Hon. Kim Beazley, who has been reappointed Minister in this area. I will be making strong representations to Mr Beazley to ensure extra TAFE places in training and in education for South Australian students.

LIBRARIES

The Hon. H. ALLISON (Mount Gambier): My question is directed to the Premier. Will the State Bank losses further disadvantage—and greatly disadvantage—students and other regular users of the State library system through the imposition of further State budgetary funding cuts against libraries? I ask this question with your concurrence and that of the House, Mr Speaker, as disgraceful as the Deputy Premier may think it is. I am told that the State Library already has the most limited opening hours of any of the large State Libraries throughout Australia. I am also told that the State Library is now under increasing pressure from the amount of usage given to it by students whose own university and TAFE college libraries are suffering from limited hours of operation.

Members interjecting:

The Hon. H. ALLISON: The Minister is interjecting, but I am not going to respond—

The SPEAKER: Order! The honourable member will be out of order if he responds to interjections.

The Hon. H. ALLISON: I am informed that the University of South Australia will stop opening its libraries on weekends from 25 April, that the University of Adelaide has already cut out its reciprocal borrowing arrangements—important though they may be with other university libraries—as from 1 January 1993 (already in effect) and that TAFE college libraries are not open on weekends and are on average, I am told, the most poorly resourced libraries in Australia.

The Hon. LYNN ARNOLD: Mr Speaker—

Members interjecting:

The SPEAKER: Order! The member for Hayward is out of order.

The Hon. LYNN ARNOLD: The question was asked of me. Perhaps you do not really want me to answer it. This matter deals with a number of types of libraries, as the honourable member indicates in his question. It is of concern to me that the Barr-Smith Library at the University of Adelaide apparently has many fewer opening hours than other university libraries in other parts of the country. That is something that they themselves will have to address in their own budgeting arrangements.

The advice we have is that it is no worse funded than any other university. It is funded by the Commonwealth and it makes those decisions within its own allocation of funds; likewise, the University of South Australia. As to these Commonwealth funded responsibilities involving the access of students to libraries, it is something that those institutions have to address in terms of their budget deliberations with the Commonwealth; budget deliberations that I know receive intercessions from State Ministers, from the present Minister and previous Ministers in this matter, including myself some years ago.

As to TAFE libraries, the State Government has been keen to ensure that we do as much as possible to develop the TAFE library system and do that in a very cost efficient way. Some recent libraries have been joint libraries with local government and they are a very effective way of providing good access to library services in a cost efficient way to the community. As to the other matters referred to, the State Library is, of course, a reference library, but the other libraries are there for students to use on a more regular basis.

I was intrigued to note the statement of the Leader of the Opposition on 14 March, when interviewed on 5AA on a variety of matters and talking about what he would do, if he were given the chance to be Premier—if he had his druthers—to provide for a better budget in the State. One of the things he said, after a number of others, was:

> The third thing is to make sure that we provide Government services much more efficiently than we have in the past, because in this State we tend to spend more on trying to deliver those services than in some other States in Australia.

The Hon. Dean Brown interjecting:

The Hon. LYNN ARNOLD: Of course it is right; we heard you. I think I can recognise your voice when I hear it. He missed the point. If we look at the Grants Commission figures on what is being spent in each State and the national average figures, we acknowledge the point that we do spend more on a number of those services. We are not ashamed of that. The point that the Leader misses is that we do not spend more because we are more inefficient than the other States in terms of our education services; we do not spend more because we are more inefficient in the arts budgets and other budgets of Government: we just simply give a better quality of service.

The Leader says that we are more inefficient in education, but he has not looked at the pupil-teacher ratios, obviously. If he looks at those he will discover that we have much better pupil-teacher ratios than the average. What the Leader is saying he will do here is that he will take us down, that there will be more cuts to education and more cuts to any area of State Government activity above the national average. He would bring us down to the national average. That would mean that our calibre of services would go down.

One area where we are above the national average is that of the arts and cultural heritage, and those responsibilities for libraries come under that area. Yet, by his own words, he would tell us that we would go down to the national average. I do not know what the member for Mount Gambier is talking about, referring to these sorts of cuts concerning him, when his own Leader is indicating that that is one of the areas that will be in for the gun if the Leader of the Opposition becomes Premier of this State.

GENTING GROUP

The Hon. J.C. BANNON (Ross Smith): My question is directed to the Deputy Premier. Does he have any further information to give to the House on communications with the Western Australian police in relation to Genting and the Burswood Casino? A number of questions have been asked in this place over the past three days on this matter, but it appears that no further questions are to be asked, and that leaves a number of issues still unresolved.

The Hon. FRANK BLEVINS: I thank the member for Ross Smith for his question.

An honourable member interjecting:

The Hon. FRANK BLEVINS: Well, how is a man to get a question? I came in here today with a large amount of material to put before the House.

Members interjecting:

The Hon. FRANK BLEVINS: Where are the questions?

Members interjecting:

The Hon. FRANK BLEVINS: What happened to Genting, for goodness sake?

Members interjecting:

The SPEAKER: Order! The Deputy Premier.

The Hon. FRANK BLEVINS: Have a look at them today. They have been a dispirited lot. I do not know what is going on. However, the member for Ross Smith is absolutely correct and on the ball, because I have had some more information given to me today on this matter, which I believe the House ought to know about. If I cannot get questions about Genting from members opposite then obviously members on this side who have an interest—

Members interjecting:

The Hon. FRANK BLEVINS: I was diverted, Sir. The communication is to the Minister of Emergency Services and refers to the communication with the Western Australian police relating to Genting. Assistant Commissioner Watkins spoke to me today regarding communications with Western Australian police in 1987 in relation to a report on Genting and its involvement with the Burswood Property Trust and the Burswood Casino. The detail of formal communication is contained in a minute to the then Minister of Emergency Services in 1989, a copy of which is on file and a copy of which has been released to Mr Baker, MP, under freedom of information provisions.

However, Assistant Commissioner Watkins pointed out to me today that during discussions at that time with his counterpart in Western Australia—Assistant Commissioner Marshall—the issue of the relevance of the Western Australian report to South Australia was raised. Assistant Commissioner Watkins reports that Assistant Commissioner Marshall verbally indicated to him that the content of the report had no relevance to Genting's operations in South Australia and would be of no interest to the South Australian Police Department in that regard.

On the basis of that information and on the basis of the continued refusal by the Western Australian police to release the report to any third party, apart from the South Australian Police Department, it was decided that it was not appropriate to pursue the matter further. The South Australian police have contacted the Western Australian police, as the member for Victoria well knows. The Western Australian police have stated to our police that there is nothing in the report that would be of any interest to them regarding Genting in South Australia and its South Australian operations. Having discussed it with the Western Australian police, the Assistant Commissioner has decided there is nothing further to pursue. That decision is based on the advice of the Western Australian police. I cannot see just what more the police are expected to do. Or, on the basis of the information received from Western Australian—

Members interjecting:

The SPEAKER: Order!

The Hon. Dean Brown interjecting:

The SPEAKER: Order! I warn the Leader. Once the Chair has spoken to a member he or she can at least pay due respect and attention to the Chair. Day after day I have to speak to the Leader twice. I will not speak again. The Deputy Premier.

The Hon. FRANK BLEVINS: On the basis of that information from the Western Australian police, the South Australian police quite properly, in my view on the information that is available, say they are not interested; there is nothing there. Now, does the Opposition seriously suggest that after the communication between the two Assistant Commissioners somehow the Minister of Emergency Services ought to give an instruction to the police to go and investigate this matter further and lay the instruction before both Houses of Parliament? Obviously it is ridiculous. If the police in this State thought there was anything at all in the allegations or the Western Australian report, they would have been across the Nullarbor instantly.

Mr S.J. Baker interjecting:

The Hon. FRANK BLEVINS: The police do not have to ask the Lotteries 'Commission anything. If the police want to investigate crime in this State they are free to do so without any interference or by your leave from the Lotteries Commission.

Mr D.S. Baker interjecting:

The SPEAKER: The member for Victoria is out of order.

The Hon. FRANK BLEVINS: Why on earth would the police ask me?

Mr D.S. Baker interjecting:

The SPEAKER: I warn the member for Victoria.

The Hon. FRANK BLEVINS: Why would they? However, if they did I would say to the police, 'Go for your lives. Investigate anything you like.' That is what I would tell them. In fact, we have done so by legislation.

PUBLIC SECTOR RATIONALISATION

Mr BLACKER (Flinders): Can the Premier say whether he and/or his Cabinet have any overriding supervisory function in determining what impact and effects the scale-down of a single Government department or multiple departments will have on, in particular, small rural communities—and, for that matter, any rural community? In recent times the Department of Primary Industries has undertaken the ODR report and subsequent restructuring; the EW&S has conducted

workshops with a view to rationalisation and scale-down of its operational staff; the Department of Road Transport has recently announced changes at regional level; the Health Commission talks about restructuring every now and again, and no doubt other Government departments are considering doing likewise.

My constituents, and in particular local government bodies, are very concerned that there is no apparent liaison and assessment of the effect these changes will have on the community. Each scale-down by a department has a serious impact on the community. However, where two or more departments act simultaneously the provision of other support services is also placed in jeopardy. There is also the impact on schools, churches, sporting groups and other community organisations. If the Government does not have an overriding supervisory function over all departments, will the Premier consider putting in place procedures to ensure the minimum adverse impact on smaller rural communities where one or more Government departments undergo rationalisation within that same community?

The Hon. LYNN ARNOLD: The short answer is, 'Yes, Cabinet does take into account the very issues that the honourable member has raised.' He has referred to a number of areas of improving Government efficiency. Certainly the ODR report has been designed to give a very cost effective way of delivering quality agricultural services to farmers in this State. It is the job of Government to do things as efficiently as possible and deliver the best quality service to people throughout South Australia. This Government has always had that viewpoint.

I think that if one actually looks at the cost *per capita* of delivering Government services one will find that in almost every case the cost is dearer to deliver that service to people living in country areas. That is quite rightly so, because to ensure they get access to a fair quality of service it will cost more to deliver that. Those figures, which are published from time to time about the *per capita* costs of students in schools throughout the State, clearly give evidence of that. There are quite marked differences in the amount spent per student in country areas compared to city areas. I have no problem with that, because that is the way that it should be and that is the kind of charter that this Government has believed in. I cite that as evidence of the fact that we do take into account the very points raised by the honourable member.

There is one other point that I think is worth noting, because Cabinet takes these matters into account. I am conscious of the fact that perhaps sometimes we do not have a proper understanding of all the ramifications. As a result of that, prior to the last State election I put a proposition to the then Premier, and he happily accepted it, that one of the commitments that we should make before the last election was that the human services subcommittee of Cabinet should receive periodic briefings from the South Australian Rural Affairs Council (SARAC) to give advice on what was happening in rural areas as a result of Government decisions. That commitment was fulfilled very rapidly after the last State election and a number of those periodic briefings have taken place. My Cabinet colleagues advise me that they very much appreciate the opportunity to hear first-hand from representatives of rural communities about a number of issues concerning the impact of Government decisions.

I could go on, but I do not want to because other members have questions to ask, but there are a number of areas where the sensitivity of this Government to rural areas is shown. The rate of petrol tax is another clear example of that; we have a much lower rate in zone 3 and a reduced rate in zone 2. That is again evidence of the extent of this Government's concern for people living in country areas. I come back to the short answer: yes, we are aware and do take those matters into account.

ENTERTAINMENT CENTRE

Mr ATKINSON (Spence): Mr Speaker—

Members interjecting:

The SPEAKER: Order! The member will resume his seat until the House comes to order.

Mr ATKINSON: Is the Minister of Tourism aware of a boycott of the Hindmarsh Entertainment Centre by promoters; and can he advise the House of the restraint of trade implications of such a boycott?

The Hon. M.D. RANN: I thank the member for his interest in this area. Certainly, back in January there was considerable noise in the media about a boycott by leading promoters of Australia of the Adelaide Entertainment Centre. As members will recall, the centre was opened in 1991 at a construction cost of about $45 million. Of course, it is true that some members opposite tried vigorously to oppose this development through the Public Works Standing Committee. However, at the time of its opening it was hailed by promoters as the best venue of its kind in Australia. Indeed, we have only to look through the files to see quotes from Michael Edgley and his organisation acknowledging the centre as the equal of any similar complex in the world, and in particular Europe. In fact, people kept saying that it was the best in Australia. The Entertainment Centre then, on the day that it was being hailed as the best in the world, contained corporate facilities and corporate boxes, of which the promoters were well aware because they were invited to view the plans.

The dispute currently is over who gets the revenue from the sale of those corporate boxes—the promoters or the taxpayers of South Australia who put up the money to build the Entertainment Centre. None of us saw the promoters coming forward with their hands up saying, 'We will put up some dollars as well.' On a number of occasions earlier this year promoters talked of boycotting the Entertainment Centre until such time as the Government agreed to return the income from the corporate boxes to the gross revenue of events so that it could be distributed to the promoters.

As I stated in response to that press coverage, particularly in the *Advertiser,* I was prepared to meet promoters to hear their concerns. I certainly did so in a somewhat interesting meeting at the Hyatt Hotel which was attended by representatives of Michael Edgley's organisation, Michael Coppel, representatives of Frontier and other smaller promoters, including Bob Lott. Just before then, the Trade Practices Commission approached the Australian Formula One Grand Prix Board for the names of the promoters and details of their threat to

boycott the Entertainment Centre, as it was felt that they may be in contravention of the Trade Practices Act. I have a letter here from the—

Mr Atkinson: Table it.

The Hon. M.D. RANN: Yes. I am happy to table the letter. I table the letter to Mal Hemerling from the Director of the Trade Practices Commission. Honourable members can rest assured that when I met with representatives of the promoters I told them that I was prepared to listen but make no deals. There was a bit of huff and puff from some of the promoters who said that a decision had to be made on their proposition before the Federal election. What did that have to do with it? Was it a commercial proposition, or was it a bit of politicking in order to try to gain some commercial advantage? Certainly, I passed that information on to the Trade Practices Commission.

Mr S.J. Baker interjecting:

The SPEAKER: Order! The Minister will resume his seat for a moment. The Deputy Leader made a comment about time. I point out to the Deputy Leader that his Leader had over three minutes to ask his original question. The Deputy Leader took over two minutes to ask a question. This question and answer is going into the third minute.

The Hon. M.D. RANN: In conclusion, I certainly believe that this can be worked out sensibly. I am prepared to meet with individual promoters, particularly those who are dinkum, to discuss the issue and work out a sensible solution, but my responsibility, of course, is to the taxpayers of this State.

UNLEY SHOPPING CENTRE

Mr BRINDAL (Hayward): Will the Premier repeat and endorse the words of his Minister of Environment and Land Management, Mr Mayes, who has described the redeveloped Unley Shopping Centre as 'an appalling abomination', when he, as Premier, opens the $11 million centre on Monday; and is he aware of what reasons his Minister, the member for the electorate of Unley, has for boycotting the opening? The member for Unley, the Minister of Environment and Land Management, was interviewed on 5AN on Tuesday 23 March. During the interview he called the new shopping centre at Unley 'ugly' and said 'it looked like the Berlin Wall' and, further, 'was an appalling abomination of a development'. Several people have since asked me whether these views are shared by the Premier and, if so, whether he will repeat these words at the opening.

The Hon. LYNN ARNOLD: The Minister, in his capacity as Minister and in his capacity as the member for Unley, fulfils his duty with great skill and dedication.

Members interjecting:

The Hon. LYNN ARNOLD: I am a bit surprised, Sir, that apparently a local member is not supposed to have views about matters happening in his or her electorate. I would have thought various members opposite would quickly rise to the occasion of having some views. I recall that, when we were in Opposition and members opposite were in Government, a former member opposite, long since thrown out of this place by the electorate, made some comments in his electorate on a matter. I asked the then Minister responsible a question about this matter, and the Minister quite rightly replied that this was a local member doing his job, looking after his electors' interests. That was quite appropriate. The member for Mount Gambier was the Minister at the time who took that kind of view.

There was a process of public discussion, decisions were made and now the centre has been developed and I am looking forward to opening it next Monday. I happen to believe that we live in a democracy and it is quite reasonable for people to have opinions about different things and to contribute in the debate process. I have no intention of attempting to silence members on my side, because that is not the way we operate, or to deny them the opportunity as local members to cast views about developments taking place within their electorate. When a development is being considered, I am quite happy for them to put their views on the record, representing both their constituents and their own personal view; in fact, I encourage it. Then, when a decision is made to proceed, the member is still entitled to have a view about whether or not they thought it was a good idea. They are also entitled to have a view about whether they like the look of it.

According to the honourable member, somehow or other the Minister has lost his right to have a view about the architecture or design of this shopping centre. I do not see why he should not have that right. Does that mean that all of us here are supposed to have a monolithic view about how buildings should be designed? That is absolutely ludicrous. I respect the fact that people have different views on that shopping centre and why it should happen.

I know that over time, as a local member, I have had my own views on some developments in my own area, and on some occasions decisions were made that went against the viewpoint that I was supporting. Some of those decisions would have been made in the State Government arena. I put forward my case as the local member, it was heard, a decision was made and I respected that decision, even though in some cases I regretted the decision that was made.

Mr Brindal interjecting:

The Hon. LYNN ARNOLD: It would have been nicer for it to be done in another way. The member for Hayward asks whether I made it public. I think if he looks back over the years in the *Messenger* Press and sees my role previously as the member for Salisbury, now the member for Ramsay, and, I can assure members, as member for Taylor in the future, he will find occasions when I speak on matters in my area. I have no shame in doing that, because my electors would expect me to do so.

As to the last matter, the Minister cannot attend the opening on Monday: he has indicated by apology that he is unable to attend. I see nothing wrong with that either. As the Minister of Environment and Land Management he has an active interest in matters concerning heritage week, as do other Ministers in this place, and he will be involved in some of those activities. I see nothing wrong with that either. This is a furphy of a question raised by the member for Hayward. I respect my colleague's rights in a democracy. It would be rather nice if members opposite had the same respect for a democratic society

and the rights of individuals to have views on different matters.

LEADER'S QUESTION

The Hon. DEAN BROWN (Leader of the Opposition): I seek leave to make a personal explanation.

Leave granted.

The Hon. DEAN BROWN: Mr Speaker, a moment ago you indicated to the House that my question took well over three minutes. The member for Chaffey was specifically looking at the clock at the time I sat down and recorded the fact that the clock was still showing 58 minutes to go for Question Time.

Members interjecting:

The SPEAKER: Order! The Leader will resume his seat and the House will come to order. When the member for Chaffey is the Speaker of this House, he can make decisions and keep check on time, and I will take notice in respect of that. If he disputes my ruling, there are procedures of this House that are available to him. My time is what I go by, and it was three minutes.

GRIEVANCE DEBATE

The SPEAKER: Order! The proposal before the Chair is that the House note grievances.

Mr GUNN (Eyre): I wish to raise the matter of the intransigent attitude of the South Australia Government towards financial assistance to the Imparja television station, which is so widely watched across the north of South Australia. In fact, it covers over 90 per cent of South Australia and provides an excellent second television channel to that vast area of South Australia, and therefore it is absolutely essential that this program—

The Hon. J.P. TRAINER: On a point of order, Mr Speaker, the member for Hayward is paying you a gross disrespect.

The SPEAKER: The member for Eyre.

Mr GUNN: It is absolutely essential that everything possible is done by Government, private advertisers and the community in general to ensure the continuation of the Imparja television programs, which are so popular and which have been so well received for the past five years, and that the station is supported so that it can expand its services and the range of programs it currently provides to that very large community.

It is interesting to note what was said during the public hearings that were conducted to determine who should be permitted to broadcast, as follows:

> During the course of the licence hearings evidence was tendered by the NT and SA Governments of their intention to contribute to the cost of the transponder hire and to purchase various telecommunication and related services from the successful licensee. It was clear that these contributions and purchase of capacity were crucial to the viability of the licensed service.
>
> Over the five years of operation of the Imparja service, no such contributions have been received from the South Australian Government, nor any substantial purchase of services. Both the WA and Queensland Governments have contributed to the satellite delivered remote television services in those States. To date the transponder costs have been largely met by contributions from the Federal Government...You will be aware that Imparja Television Pty Ltd is wholly owned by Aboriginal interests and does not seek to pay dividends to its shareholders. We believe your Party would support the view that we have gained wholehearted acceptance by our viewing public and that the continuance of the service is important not only to these viewers but also to Aboriginal aims to establish and operate successful business ventures [in the northern parts of South Australia].
>
> The contribution sought from the South Australian Government is in the region of $300 000 to $500 000 per annum. A significant portion of this contribution would be well justified as a 'fee for service' in the use of the television transmission to carry messages and information in the fields of education, health and related social services.

It goes on to say that, to that date, there had been no financial assistance from the South Australian Government. If one looks at the transcript of the proceedings that took place during the public hearings in relation to people applying for this licence, we see that it quotes at length what Mr Arnold had to say, as follows:

> Mr Arnold told the tribunal that his Government would provide a loan guarantee to Imparja for a renewable loan facility to the value of $1 million from the Commonwealth Development Bank or the State Bank of South Australia.

It goes on to say that the guarantee is conditional upon the station being viable and that it is related to the availability of the Commonwealth funding. The Commonwealth has been involved. This is not a large amount of money. In view of the fact that the State Government wasted about $60 million on a scrimber project and never produced one stick of wood, and it has spent thousands of millions of dollars in other areas with no tangible return to the long-suffering taxpayers, it is quite unconscionable and unwise that it has not met the obligations indicated by the Premier, Mr Arnold, in his evidence to the tribunal that heard the applications for licences. I therefore call upon him to make that contribution to honour the undertakings that were given by the State Government so as to assist this organisation in its desire to continue to provide this excellent service to the people in the northern parts of South Australia.

The people whom Imparja serves do not have access to the Entertainment Centre; they do not have public transport; and they are not having massive sporting facilities built for them. It is no good the Government's saying it does not have the money. It spent $40 million at the Entertainment Centre, which will run at a loss, it has just built a new velodrome at Gepps Cross—

The SPEAKER: Order! The honourable member's time has expired.

Mr GUNN: My constituents are entitled to a fair share of the cake.

The SPEAKER: Order! The member is out of order. When he is called to order he will resume his seat.

Mr ATKINSON (Spence): I rise not to grieve but to give thanks. My thanksgiving is for the Surveyor-General's decision to recommend the refusal of the Adelaide City Council's application to close Barton Road, North Adelaide. The Minister of Environment and

Land Management has, quite properly, approved the Surveyor-General's recommendation. In November 1987, the Adelaide City Council closed Barton Road without lawful warrant, leaving only a narrow lane from which all vehicles but STA buses were excluded. Council workers undertook extensive earthworks and roadworks to obliterate Barton Road, which had been part of Colonel Light's original street plan. It will cost about $100 000 to repair the road. Residents of Ovingham, Bowden, Brompton, West Hindmarsh, Flinders Park and other western suburbs were forced to take one of two lengthy detours to obtain access to Calvary Hospital, the Mary Potter Hospice, Red Cross, St Dominic's Priory School and St Lawrence's Church, just to name a few destinations in western North Adelaide.

In July 1990, on an appeal by traffic controversialist Gordon Howie against a fine for driving through the bus lane, Mr Justice Duggan, sitting as a single judge of the Supreme Court, ruled the closure unlawful and said motorists were free to use the bus lane through the closure. Since then I have been able to arrange the refund of more than $1 000 in fines levied on motorists by the Traffic Infringement Notice section of the Police Department. On 28 September 1992, almost five years after the original closure and more than two years after Mr Justice Duggan's judgment, the Adelaide City Council sought retrospective warrant for the closure by going through the proper procedure under the Roads (Opening and Closing) Act.

Council's application has now been refused by the Minister of Environment and Land Management on the recommendation of the Surveyor-General. To the 578 people who lodged written objections to the closure and to the 417 who petitioned against the closure—a record under the Act—I offer my congratulations: this is your victory. Our immediate task is to prevent Adelaide City Council's continuing the unlawful closure by two obvious ruses—and I hope the member for Hanson who seeks to represent people in west Hindmarsh and Flinders Park will take note of what I am saying.

The first ruse will be tried when the Adelaide City Council claims, as it will, that the Barton Road closure is not a road closure at all but a traffic control device. Council has a general permission from the Minister of Transport Development under section 18 of the Road Traffic Act to install traffic control devices. The second ruse, which will be tried when the city council next meets, will be to designate Barton Road a temporary closure under section 359 of the Local Government Act, despite the road having been closed for five years already. The Minister of Transport Development must act quickly to prevent these two methods being used by a council with a well-deserved reputation for arrogance and disregard for the rule of law.

Mr SUCH (Fisher): I would like to address the matter of library funding in this State, which encompasses several aspects. First, I refer to what is happening in our universities. I acknowledge that university funding is the responsibility of the Commonwealth Government but, nevertheless, I believe that we, as representatives of the people, have an obligation to highlight some of the things that are happening in that regard and the disadvantage being experienced by students, particularly at the University of Adelaide, which is a fine university, and at the University of South Australia, which is also a fine university. It has reached the stage where students are being seriously disadvantaged in terms of access, opening hours, availability—

The SPEAKER: Does the member for Napier have a point of order?

The Hon. T.H. HEMMINGS: No, Sir.

The SPEAKER: Then he will resume his seat.

Mr SUCH: —of materials and so on. The situation is even worse in respect of TAFE institutions. I acknowledge that some of the TAFE institutions share libraries with the local community, but other TAFE libraries, I understand, are the most poorly resourced of all TAFE libraries in Australia. In fact, one of our largest TAFE colleges is spending only .8 per cent of its total recurrent budget on library resources, and that is totally inadequate. TAFE colleges, soon to become institutes, require considerable upgrading of their library resources in terms not only of traditional or conventional books but also of the wider range of audio-visual material that is now available, particularly the technical materials necessary for upgrading and developing skills.

If we are to become the clever country, our students in particular, but also the wider community, must have access to well resourced libraries. Sadly, what we see is a deficiency not only in some of our universities and TAFE college libraries but also in our community libraries. I understand that the State Library is about to experience a further cutback in its funding. The problem is compounded because, with students in this State undertaking open learning modes, those students along with students doing their SACE studies, which involve research projects, are putting additional pressure on the State Library and also on council or local community libraries.

So, we have a very serious situation in respect of library facilities in this State, not only in the academic area of the universities and the TAFE colleges but also in the wider community, and this cannot continue. It has been said that we are the lucky country: I would suggest that, in respect of many of our libraries, the luck extends to being able to obtain a book or a seat, and I would challenge members to look for themselves at the present situation in many of our libraries. For example, in respect of the University of Adelaide, in 1988 there was a cut of $250 000; in 1991, a cut of almost that amount; in 1992, a cut of $425 000; and in 1993, a cut of $300 000.

One does not need to be very learned to realise that, if we keep cutting resources to a library by those sorts of amounts, there will come a time when the library cannot carry out its function. If we are to have universities of world standing, we must have libraries of comparable standing. There is no way in which we can have a centre of higher learning that does not have an adequate and comprehensive library system. We are fast reaching the stage in our universities and our TAFE colleges as well as in the wider community where that situation could well prevail.

I do not wish to be seen to be picking on the University of Adelaide or the University of South Australia but to acknowledge the real concerns of students. I attended the rally today at the University of

Adelaide where the students, I believe, acted in a responsible and reasonable manner to highlight their concerns about what has happened and is continuing to happen to the Barr Smith Library. I make a plea to university authorities, as well as to the Minister responsible for TAPE, that there be an urgent inquiry into the adequacy of resources in the libraries in all those areas, and I also plead with the Government to look closely at what is happening to the State Library, to ensure that that remains a central part of our cultural system.

Mr McKEE (Gilles): I wish to announce two RIP (rest in peace) notices today. The first is to announce the death of Liberal Party policy. On 13 March, the Australian people overwhelmingly buried all the policies of the Liberal Party—not just the GST but all the other draconian, nineteenth century policies that had the sole purpose of reducing the ordinary people of our society to nothing more than human chattels, of taking away their medical and health care and of robbing them of their human dignity. Those policies were recognised for what they were, and they were well and truly buried.

There was a typical baubles and beads campaign from the Liberal Party, which promised to reduce people's taxes and petrol taxes whilst, at the same time, reducing their wages, their working conditions, their health and welfare care and their general standard of living. The Liberal Party policy is dead. Its philosophy is still struggling for relevancy. There is still a heartbeat there, but I believe it is being kept alive by an intravenous drip—which brings to mind, who is the Leader of the Liberal Party today?

The second RIP notice I would like to announce today is the death of fair, balanced and unbiased political journalism in this State. During the last election, the *Advertiser* embarked on a most one-sided, biased and anti-Labor Party campaign, which can be compared only with *the News* anti-Labor campaign of 1979. In fact, the *News* was taken to the Press Council of Australia in 1979 by the Labor Party on charges of bias. The Press Council agreed with the submission by the Labor Party and ruled accordingly.

Further, the Labor Party embarked on a boycott of the *News* with great success, and some people have suggested that that boycott hastened the demise of the *News.* Is it a coincidence that the editorial team of the *News* in 1979, which was responsible for a proved biased campaign, is the same editorial team heading up the *Advertiser* today? Surprise, surprise!

An honourable member interjecting:

Mr McKEE: We will get to him later on. That is for another grievance debate. Last year this Parliament tried to introduce legislation to protect people in their personal grief from prying journalists acting under direction from their editors. We were inundated every day from every form of the press and electronic media with accusations that we were trying to introduce censorship. When a newspaper abrogates its responsibility to impart balanced and fair political information, those editors are openly, wantonly and knowingly practising censorship themselves. The great tragedy is that there is only one daily newspaper in this State. The public of South Australia have only one printed source to rely on for their political information, and it is biased.

Mr LEWIS (Murray-Mallee): The first matter that I want to address today is the question of an access road to some land that lies on the easterly side adjacent to the abutments to the Swanport Bridge and upstream of those abutments. I have mentioned this matter in this Chamber before. That land is landlocked, for all intents and purposes. I have explained the detail of it in previous grievance debates, but there is still no action. The Minister has gone into the bunker and slammed the door. She says, 'It is not my fault. It is not my problem.' I have news for her: if she does not come out, we will have to blast her out, and that is what we will do. The problem was caused by poor handling of the planning process—

Members interjecting:

The SPEAKER: Order!

Mr LEWIS: There is no question about that. The error is clearly that of the Department of Environment and Planning for allowing the subdivision to go through in the fashion in which it did when the land was purchased for the erection of the bridge and the carriageway of the South-East Freeway—cum highway—because it changes status on the other side of the river. That department has acknowledged the error and does not have the power to rectify it. The Lands Titles Office is also at fault, because it allowed the titles to be created without adequate or appropriate access, if any, to those titles. The Minister and the Department of Road Transport have the power to resolve the matter, but they refuse to do so as they say the error was not theirs in the making. Well, it was. They should not have sought to deceitfully acquire the land for the road without ensuring that they provided adequate access to it, full well knowing that it was of such limited type that it would ultimately be required for the purpose for which it is now to be applied, namely, for the development of facilities for the public to get access to the river. I think it is outrageous that the Minister simply says, 'I do not have to do anything about this, so I am not going to.' Her department created the problem. She is witless as well as gutless.

The second matter I have to draw to the attention of the House today is the cost of elections and the failure of the Commonwealth to honour the commitment it gave to the State about the positioning of polling booths throughout the area of which Murray-Mallee is currently a part—and readily will be at the next election—and which is covered by the electorate of Barker. It is a fact that the Electoral Commission budget for the 1993 Federal election was $50 million, but a further $16 million was needed to top it up, so far as we can determine. In addition to that, let me provide the factual information that the South Australian Office of the Australian Electoral Commission budgeted $2.47 million for the Federal poll in South Australia, and what we need to recognise about that is that there are some national costs formed directly by the national office of the AEC that are not included in that figure.

The budget for the seat of Barker was $230 000 bare without the overheads allocated to it. Without overheads, that is $2.75 per elector in that seat for each vote that

could have been cast and, adding overheads to it, it comes in at something like a dollar higher than that figure. Our Electoral Commissioner, Mr Andy Becker, is a responsible man, and he has sought to find ways in which democracy could still be provided to the people but at a price that was more affordable. In the 1989 election the number of registered electors was 19 977, so the budget per elector was $2.10.

The roll as at 11 February 1993 for the seat of Ridley comprises 21 300 electors, so it will be even less because we will not have to spend more. The thing that sticks in my craw and causes embarrassment to Mr Becker, and the thing that the people of South Australia ought to know about, is the abuse of the process which the Commonwealth has engaged in. It gave a commitment that it would not reopen booths that it agreed with the State Electoral Commissioner to close and that it would use mobile polling booths, and it failed to keep its side of the commitment. Now we have many angry and confused people who live right across the Mallee who do not know whether the polling booths will be open or closed come the next State election, and we will have to spend more of South Australian taxpayers' money to let them know that they will be closed, even though the Commonwealth opened them again on 13 March for that election. I think the Commonwealth ought to be a little more considerate and contrite after the event for having abused us and ignored the commitment that it made prior to that time that it would not leave those polls—

The SPEAKER: Order! Before calling the next speaker I raise again the matter of comments being made in debates. Although they are not necessarily unparliamentary, it is the responsibility of the Chair to uphold the dignity and decorum of the House. Some of the comments made at times in these debates do nothing to enhance the dignity and decorum of the House, and I ask all members to be careful in their choice of words in any debate. The member for Ross Smith.

The Hon. J.C. BANNON (Ross Smith): Earlier in his speech in this place the member for Spence referred to the Surveyor-General in a congratulatory fashion. If in the last century the Surveyor-General and his counterpart over the eastern border of the State had made a different decision, we could well not have the problem to which I am about to allude. The fact is that towards the end of the last century a certain Charles Rasp discovered one of the world's most amazing mineral lodes, a silver-lead lode of enormous value at a place which is now called Broken Hill. Broken Hill has delivered a huge amount of prosperity to this country and has employed thousands of people. A thriving city has been established around the exploitation of that mineral deposit, and that of course continues to this very day.

The mischance that I referred to was that Broken Hill just happened to be across the border from South Australia. In other words, instead of being a large provincial centre in the State of South Australia to which the State's resources and infrastructure could readily flow, Broken Hill has been throughout its life a remote inland town in the far west of New South Wales, a long way from Sydney and decision-making, and it has suffered accordingly. Broken Hill has been able to compensate itself in part by forging close links with South Australia. Obviously, the closest direct economic link was that of the transport of the ore to the smelters established at Port Pirie: Port Pirie has relied on Broken Hill, and Broken Hill has relied on Port Pirie in the mutual arrangement of adding value to a natural resource.

Broken Hill has benefited from many other connections with South Australia, and in all respects I think it is fair to say that over the years it has regarded itself as a South Australian city rather than a New South Wales city. Its residents have always seen South Australia as the place to come if they want to find a particular item. Many of them come to the hospitals in South Australia when particular procedures that are not available in their own city are required. Many of them holiday here; in fact, some members will recall the great holiday camps near Semaphore for the residents of Broken Hill.

Mr Ferguson interjecting:

The Hon. J.C. BANNON: Yes, Henley Beach and along the coast, and every summer thousands would come from Broken Hill to enjoy their holiday. There is still a great deal of that kind of connection in trade, relatives and friends and educational back-up in the Institute of Mines and so on. We heard the news recently that Broken Hill had suffered a further major blow with the reduction of its work force as changes take place in that city. The whole future of Broken Hill is in the balance, and I suggest that this is not just a problem for New South Wales.

Indeed, if it was left to New South Wales and the New South Wales Government nothing much would be done: Broken Hill will be allowed to slowly subside. It has been a great royalty cash card to that Government, but very little has been put back into it. It is in South Australia's interests and in Port Pirie's direct interests and in the interests of the State generally that Broken Hill be supported. I suggest there are many opportunities for our interaction with that city in terms of tourism, economic product exchange and servicing. Broken Hill's prosperity can aid South Australia's prosperity and *vice versa.*

I have spoken to the Minister of Business and Regional Development and Tourism to see whether Tourism SA and the Economic Development Authority could include Broken Hill and its potential in their plans. Of course, the Port Pirie Regional Development Authority has been working with them in some areas. This weekend, the St Patrick's Day fiesta in Broken Hill would be a very good opportunity for us to reaffirm our strong links with Broken Hill and our mutual assistance pact to ensure prosperity on both sides of the border. Broken Hill is one of our major provincial cities, and we would like to see it developed.

CLASSIFICATION OF PUBLICATIONS (FILM CLASSIFICATION) AMENDMENT BILL

Second reading.

The Hon. G.J. CRAFTER (Minister of Housing, Urban Development and Local Government Relations): I move:

That this Bill be now read a second time.

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

Leave granted.

This Bill makes amendments to the *Classification of Publications Act* which implement decisions made at the Council of Australian Governments meeting on 7 December 1992, when Premiers and Chief Ministers agreed to amend State and Territory classification legislation to implement a new "MA" classification by 1st May 1993.

The "MA" classification has been created in response to community concern that children under the age of 15 years have access to films in the "higher" end of the "M" classification. Research commissioned by the Office of Film and Literature Classification confirms that community concern about this issue is substantial.

Australian Governments have addressed this problem by agreeing to create the new "MA" classification to replace part of the existing "M" classification. Films (including videos) at the "lower" end of the existing classification will continue to be classified "M" and be recommended for viewing by persons 15 years and over. Films considered to be unsuitable for viewing by persons under 15 years will fall into the new 'MA" classification and may not be:

(a) sold, hired or delivered to persons under 15 years of age other than by a parent or guardian;

(b) exhibited to persons under 15 years of age unless they are accompanied by their parent or guardian.

This Bill conforms to model legislation agreed between the States and Territories.

Honourable Members should note that it is not necessary to make amendments to the *Classification of Films for Public Exhibition Act 1971* as Section 4(1)(e) of that Act allows for the new classification to be prescribed in the Regulations. Regulations to effect the necessary changes have been prepared and will be gazetted shortly so as to meet the 1st May 1993 national agreed commencement date.

Clause 1: Short title

Clause 1 is formal.

Clause 2: Commencement

Clause 2 provides for 1 May 1993 as the commencement date of the Bill.

Clause 3: Amendment of s. 4—Interpretation

Clause 3 inserts the definition of "NIA" film and provides that an "MA" film is a film classified as such by the Board.

Clause 4: Amendment of s. 13—Classification of publications

Clause 4 amends section 13 of the principal Act to provide that where the Board decides that a film depicts, expresses or otherwise deals with sex, violence or coarse language in a manner that makes it unsuitable for persons under the age of 15 years the Board must classify the film as an "MA" film.

Clause 5: Amendment of s.14a—Conditions applying to restricted publications

Clause 5 amends section 14a of the principal Act to provide that an "MA" film must not be sold or delivered to a person under the age of 15 otherwise than by a parent or guardian or a person acting with the authority of the parent or guardian.

Clause 6: Amendment of s. 18—Offences

Clause 6 is a consequential amendment as a result of the new "MA" classification.

Clause 7: Amendment of s. 20—Certain actions not to constitute offences

Clause 7 amends section 20 of the principal Act by removing an obsolete reference and substituting the correct reference.

Mr S.J. BAKER secured the adjournment of the debate.

EVIDENCE (MISCELLANEOUS) AMENDMENT BILL

Second reading.

The Hon. G.J. CRAFTER (Minister of Housing, Urban Development and Local Government Relations): I move:

That this Bill be now read a second time.

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

Leave granted.

This Bill contains miscellaneous amendments to the *Evidence Act 1929.*

Two of the amendments deal with the evidence of children. New section 12A makes it clear that where the evidence of a child has been given on oath, or assimilated to evidence given on oath, there is no rule of law or practice obliging a judge, in a criminal trial, to warn the jury that it is unsafe to convict on the uncorroborated evidence of the child.

Section 34i(5) provides that in proceedings in which a person is charged with a sexual offence the judge is not required by any rule of law or practice to warn the jury that it is unsafe to convict the accused on the uncorroborated evidence of the alleged victim of the offence.

The Supreme Court in R *v Puhuja* (No 1) (1988) 49 SASR 191 and R *v Do* (1990) 54 SASR 543 has interpreted this provision as not having any impact on the rule of law or practice that a judge must warn the jury that it would be dangerous to convict an accused on the uncorroborated evidence of a child.

This is unsatisfactory for two reasons. First, the premise that children of any age are inherently unreliable witnesses is old fashioned and unjustified. Second, the corroboration warning itself and the directions on what evidence is available to be used by the jury as corroboration is apt to confuse a jury which is properly directed on the onus of proof beyond reasonable doubt. Obviously, a jury should be given appropriate directions and warnings where the particular case calls for it. The law should be moving away from general warnings for certain categories of witnesses and towards warnings which are tailor-made for particular individuals whom the judge considers to be potentially unreliable.

The other provision touching on the evidence of children is an amendment to section 21. Section 21 provides that a close relative of a person charged with an offence is competent and compellable to give evidence for the prosecution in any proceedings in relation to the charge, but the prospective witness can apply to the court for an exemption from the obligation to give evidence. The court can exempt the prospective witness if it appears to the court that there is a substantial risk that the giving of the evidence would seriously harm the relationship between the prospective witness and there is insufficient justification for exposing the prospective witness to the risk.

The Supreme Court Judges in their 1991 Annual Report adumbrated that the procedure is inappropriate where the close relative is a young child or mentally impaired. The Judges recommended that the section be amended to give the court a

discretion to dispense with the section's requirements, wholly or in part, where by reason of the prospective witness's immaturity or impaired mental condition, the court considers it proper to do so. The section is amended as recommended by the Judges. Where a prospective witness is too immature or mentally impaired to understand the making of an application for exemption, the court should be able to assess itself the matter without the need for the prospective witness having to make an application.

Section 49(la) is amended to allow magistrates to grant orders to inspect and take copies of banking records. At present only judges of the Supreme and District Courts can make such orders. Giving magistrates this jurisdiction is consistent with the jurisdiction they have under the *Crimes (Confiscation of Profits) Act* 1986 and their increased jurisdiction following the courts restructuring. Under the *Crimes (Confiscation of Profits) Act,* magistrates have jurisdiction to issue a warrant to a member of the police force to search for documents which may quantify forfeitable property. There is a parallel between tracing funds subject to forfeiture and funds subject to misappropriation. The funds are often one and the same and the same documentation is required. Further, applications can be dealt much more quickly in the Magistrates Court and investigations are less likely to be frustrated by monies being removed or transferred while an application is pending.

Section 59e is amended to provide that courts can take evidence from a place outside the State by video link or any other form of telecommunication that the court thinks appropriate in the circumstances. The taking of evidence in this way has the potential to saving witnesses' time and the parties' expense. The amendment may not be strictly necessary, but it seems worthwhile to do it to save any arguments as to the courts' ability to take evidence in this way.

The Standing Committee of Attorneys-General has recently established a Working Party which is looking at the use of video equipment in courts with the aim of ensuring that the equipment used in the various courts throughout Australia is compatible.

Clause 7 inserts a new section 67c. This provision was foreshadowed in the Green Paper on Alternative Dispute Resolution which was released for public comment in July 1990. The section protects the confidentiality of private dispute resolution.

In the Green Paper it was pointed out that an assurance of confidentiality encourages private dispute resolution. It reassures disputants of the neutrality of the third party who is assisting in the resolution of the dispute and fosters an atmosphere of trust in which all parties are willing to explore issues openly and honestly so that potential for agreement is maximised.

As is pointed out in the Green Paper, the production of all relevant evidence enables litigation to be decided on the basis of a genuine attempt to find the facts and to ensure a fair trial. There is thus an important public interest in ensuring that as much relevant material as possible comes before the court.

The courts have, however, recognized that in some circumstances other interests outweigh the public interest and regard some potential evidence as privileged, i.e. a party or witness has a right to withhold from a court information which might assist it in ascertaining the facts in certain specified circumstances. Examples include the Crown being able to refuse to give evidence on the ground that it would be contrary to the public interest to do so and communications between a lawyer and a client being withheld if they were prepared for use in litigation.

Another of the categories of evidence which the courts recognize as privileged is evidence of settlement negotiations. The major justification for protecting the content of negotiations from disclosure is the public interest in encouraging settlement of disputes. The courts recognize the interests of parties in avoiding the cost and time of trial and that facilities presently available would be inadequate if there was any significant reduction in the number of cases settled.

While the content of negotiations are recognised by the courts as privileged, the precise reach of the law is uncertain. Uncertainties concerning the extent of the privilege have led to legislation both in South Australia and elsewhere. For example, section 95(7) of the *Equal Opportunity Act 1984* provides that anything said or done in the course of conciliation proceedings under the Act is not admissible in any proceedings. Section 18 of the *Family Law Act 1975* affords the same sort of protection to conferences with marriage guidance counsellors. In both NSW and Victoria, designated community mediation services have been afforded protection.

The Government believes that the law protecting the disclosure of settlement negotiations should be clear and ascertainable and that legislation is necessary. Those commentators on the Green Paper who touched on the point agreed with this approach. Similar conclusions had been reached by the Australian Law Reform Commission in its 1987 report on Evidence. The provision included in this Bill closely follows the provision included in the draft bill appended to the ALRC Report and the provision contained in the Commonwealth and NSW Evidence Bills which have been exposed for comment.

Minor amendments are made to the suppression order provisions. Recently the Sunday Mail published details of an alleged sexual offence given at a bail application. Section 71a(1) prohibits the publication of such information at a preliminary examination. The rationale for not permitting the publication of such evidence at a preliminary hearing applies equally to bail applications and the section is amended accordingly. The opportunity has been taken to amend the reference to "preliminary investigation" in the section to "preliminary examination" in accordance with the usage in the *Summary Procedure Act 1921*.

The opportunity has also been taken of transferring section 351 a of the *Criminal Law Consolidation Act* to the *Evidence Act.* This section prohibits the publication of the identity of an acquitted person where an application has been made for the reservation of a question of law arising at the trial. It is not particularly helpful for those advising media organisations that the section is located not in the *Evidence Act* with other like sections but is buried in the appeal sections of the *Criminal Law Consolidation Act.*

The penalty has been increased from $1 000 to $2 000 to bring it into line with penalties under the *Evidence Act.*

Clause 1: Short title

This clause is formal.

Clause 2: Commencement This clause is formal.

Clause 3: Insertion of s. 12a

This clause provides that there is no rule of law or practice obliging a judge, in a criminal trial, to warn the jury that it is unsafe to convict on the uncorroborated evidence of a child if the child gave evidence on oath or the child's unsworn evidence is assimilated to evidence given on oath under section 12(2).

Clause 4: Amendment of s. 21—Competence and compellability of witnesses

Proposed subsection (3a) is inserted to provide that if the prospective witness is a young child, or is mentally impaired, the court should consider whether to grant an exemption under subsection (3) even though no application for exemption has been made and may proceed to grant the exemption accordingly.

Clause 5: Amendment of s. 49—Power to order inspection of banking records, etc.

This amendment provides that Magistrates, as well as Supreme Court and District Court Judges, may grant orders to inspect and take copies of banking records.

Clause 6: Amendment of s. 59d—Interpretation

This clause amends the definitions of "authorized South Australian court" (in consequence of previous legislative changes to the court system in the State) and "foreign court".

Clause 7: Amendment of s. 59e—Taking of evidence outside the State

Proposed subsection (4) is inserted to provide that an authorized South Australian court may take evidence from a place outside the State by video link or any other form of telecommunication that the court thinks appropriate in the circumstances.

Clause 8: Insertion of section 67c

Proposed section 67c provides that, subject to this section, evidence of a communication made in connection with an attempt to negotiate the settlement of a civil dispute, or of a document prepared in connection with such an attempt, is not admissible in any civil or criminal proceedings. Such evidence is, however, admissible if—

- the parties to the dispute consent; or
- the substance of the evidence has been disclosed with the express or implied consent of the parties to the dispute; or
- the substance of the evidence has been partly disclosed with the express or implied consent of the parties to the dispute, and full disclosure of the evidence is reasonably necessary to enable a proper understanding of the other evidence that has already been adduced or to avoid unfairness to any of the parties to the dispute; or
- the communication or document included a statement to the effect that it was not to be treated as confidential; or
- the communication or document relates to an issue in dispute and the dispute, so far as it relates to that issue, has been settled or determined; or
- the evidence tends to contradict or to qualify evidence that has already been admitted about the course of an attempt to settle the dispute; or
- the making of the communication, or the preparation of the document, affects the rights of a party to the dispute; or
- the communication was made, or the document was prepared, in furtherance of the commission of a fraud or an offence, the doing of an act that renders a person liable to a civil penalty or the abuse of a statutory power.

Proposed subsection (1) does not apply to parts of a document that do not concern attempts to negotiate a settlement of a dispute, if it would not be misleading to adduce evidence of only those parts of the document.

Clause 9: Amendment of s. 71a—Restriction on reporting proceedings relating to sexual offences

The amendment adds to the categories that previously created an offence to publish certain evidence relating to sexual offences by making it an offence to publish any evidence given in, or report of, related proceedings in which the accused person is involved after the accused person is charged but before the conclusion of the preliminary examination, without the consent of the accused person.

Clause 10: Insertion of section 71c

Proposed section 71c provides that where an application has been made for the reservation of a question of law arising at the trial of a person who was tried on information and acquitted, a person must not publish, by newspaper, radio or television, any report, statement or representation in relation to the application or any consequent proceedings—

- by which the identity of the acquitted person is revealed; or
- from which the identity of the acquitted person might reasonably be inferred,

without the consent of the acquitted person. (Penalty: two thousand dollars.)

In this proposed section, the definition of a newspaper excludes a publication consisting solely or primarily of the reported judgments or decisions of a court or courts or a publication of a technical nature designed primarily for use by legal practitioners.

Schedule

Section 35la of the *Criminal Law Consolidation Act 1935* is repealed in consequence of the amendments to the *Evidence Act 1929* proposed in this Bill.

Mr S.J. BAKER secured the adjournment of the debate.

ROAD TRAFFIC (MISCELLANEOUS) AMENDMENT BILL

Second reading.

The Hon. G.J. CRAFTER (Minister of Housing, Urban Development and Local Government Relations): I move:

That this Bill be now read a second time.

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

Leave granted.

This Bill deals with four separate issues:

- Definition of "Tandem Axle Group" and "Tri-axle Group"
- Police directions to drivers
- General provisions as to signals, signs and marks
- Use of Rear Vision Devices

Sections of the *Road Traffic Act* contain definitions for both "Tandem Axle Group" and "Tri-axle Group". In particular "Tri-axle Group" is defined to mean a group of three equally spaced axles each of which is more than one metre but less than 3.2 metres from other axles in the group. Difficulty has been encountered with the requirement in this definition that the axles be equally spaced. Since commencing enforcement of the legislation, particularly when determining the mass carried on that group of axles, tri-axles have been measured with space differences ranging between .01 metres to .25 metres. In other words the axles within the group are not equally spaced and therefore do not conform to the definition. As the definition is absolute, it is likely that cases involving prosecution of drivers with vehicles carrying excess mass could be lost due to a technicality. Advice from the Crown Solicitor is that the definition be amended to overcome this anomaly. In addition, the opportunity is being sought to change this definition and that of "**Tandem Axle Group**" to conform with those contained within Australian Design Rules in the interests of uniformity. The wording is changed without affecting the meaning.

Section 41 of the Act provides the police with powers to give directions to drivers of vehicles and pedestrians for the safe and

efficient movement of traffic on the road. In an appeal in the Supreme Court, it was held that section 41 does not apply where at the time the direction is given the driver is not in the vehicle. To be effective, section 41 of the Act needs an amendment to provide police with the necessary authority to regulate and control traffic as circumstances dictate. The opportunity has been taken to amend a similar provision in section 33 of the Act which relates to the closure of roads for the purpose of conducting a sporting or like event on a road.

Section 76 of the Act relates to drivers and the general requirement that they comply with the instructions on a traffic signal or sign. At present there is no general provision requiring pedestrians to comply with traffic signals or signs. Only where there is a specific provision in the Act, (e.g. in relation to the duties of pedestrians at traffic lights) are pedestrians required to obey instructions. This amendment will overcome this anomaly.

Section 137 of the Act requires every motor vehicle to be equipped with mirrors by means of which the driver may obtain a clear view of traffic to the rear and to the sides of the vehicle. Section 102 requires the driver to be in such a position that by means of a rear vision mirror or mirrors a clear reflected view of the approach of any vehicle about to overtake the vehicle can be obtained. Due to the construction of some types of commercial vehicles, in particular waste management trucks and long distance coaches, it is not always possible for the driver by means of mirrors alone to have a clear view to the rear and to the sides. The same applies to some vehicles carrying wide loads. In order to improve all-round vision and thereby safety, some of these vehicles have been fitted with closed circuit television systems (CCTVs). The Act makes no provision for a CCTV and the regulations ban the use of television receivers by drivers. Australian Design Rules make provision for the use of television receivers and visual display units in vehicles to add to the driver's vision. The Crown Solicitor has given advice that amendments to the Act and regulations are necessary to provide for the fitting of CCTVs in vehicles.

Although these amendments are not considered to be complex in application, they are nevertheless essential for the efficient administration of the *Road Traffic Act.*

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement on a day to be fixed by proclamation.

Clause 3: Amendment of s. 5—Interpretation

This clause amends section 5 of the principal Act, the interpretation section. It substitutes new definitions of "**tandem axle group**" and "**tri-axle group**".

Clause 4: Amendment of s. 33—Road closing and exemptions for road events

This clause amends section 33 of the principal Act. Section 33 (7) empowers the police to give such reasonable directions to the driver of a vehicle or to persons walking on a road as are necessary for the safe and efficient conduct of a road event. This amendment empowers the police to also give such directions to the owner, or person apparently in charge of or with care or custody of, a vehicle on a road, or to a person who appears to have left a vehicle standing on a road (whether the vehicle is unattended or not).

The amendment also provides that where a direction is given to a person who appears to have charge of a vehicle or to have left a vehicle standing on a road, that person will not be guilty of an offence of failing to comply with the direction if it is proved that he or she did not in fact have charge of the vehicle or leave it standing on the road.

Clause 5: Amendment of s. 41—Directions for regulation of traffic

This clause amends section 41 of the principal Act. Section 41 (1) empowers the police to give such reasonable directions to the driver of a vehicle or to persons walking on a road as are necessary for the safe and efficient regulation of traffic on the road, or for clearing vehicles and persons from a closed road or for the purpose of ascertaining whether an offence against the *Road Traffic Act* has been committed. This amendment gives the police the additional power to give such directions to the owner, or person apparently in charge of or with care or custody of, a vehicle on a road, or to a person who appears to have left a vehicle standing on a road (whether the vehicle is unattended or not).

The amendment also provides that if a direction is given to a person who appears to have charge of a vehicle or to have left a vehicle standing on a road, that person will not be guilty of an offence of failing to comply with the direction if it is proved that he or she did not in fact have charge of the vehicle or leave it standing on the road.

Clause 6: Amendment of s. 76—General provision as to signals, signs and marks

This clause amends section 76 of the principal Act. Section 76 (2) requires a driver to comply with any instructions indicated by a traffic signal or traffic sign lawfully erected or placed on or near a road.

This amendment substitutes a new subsection (2) that makes it clear that it is only instructions that are applicable to the driver that have to be complied with.

This amendment also inserts new subsection (2a), which provides that a pedestrian must comply with any instructions applicable to the pedestrian that are indicated by a traffic signal or traffic sign lawfully erected or placed on or near a road.

Clause 7: Amendment of s. 102—Driving position

This clause amends section 102 of the principal Act. Section 102 provides that a person must not drive a motor vehicle if the person is in such a position that he or she cannot by means of a rear vision mirror attached to the vehicle obtain a clear reflected view of the approach of any vehicle about to overtake the vehicle. This amendment provides that the view can be obtained by a rear vision mirror or by a prescribed device and requires the view to be indirect rather than "reflected".

Clause 8: Substitution of s. 137

This clause repeals section 137 of the principal Act and substitutes new section 137. Section 137 currently provides that every motor vehicle must be equipped in accordance with the regulations with a mirror or mirrors by means of which the driver can obtain a clear view of traffic to the rear and to the sides of the vehicle. New section 137 requires a motor vehicle to be equipped in accordance with the regulations with mirrors—or with other prescribed devices—by means of which the driver can obtain a clear view of traffic to the rear and sides of the vehicle.

Clause 9: Amendment of s. 141—Width of vehicles

This clause amends section 141 of the principal Act. Section 141 specifies that vehicles must not exceed 2.5 metres in width. In subsection (4) it provides that in determining the width of a vehicle a rear vision mirror that projects no more than a prescribed distance from the sides of the vehicle is not to be taken into account. This amendment also exempts prescribed devices for providing a view of traffic to the rear or sides of the vehicle from being taken into account in determining the width

of a vehicle (provided that they project no more than a prescribed distance).

Clause 10: Amendment of s. 176—Regulations

This clause amends section 176 of the principal Act, the regulation making power, by repealing subsection *(1)(1a)* and substituting new subsection *(1)(1a).* Subsection (1)(1a) currently empowers the Governor to make regulations prescribing requirements with which a television receiver installed in a motor vehicle must comply and prohibiting the driving of a motor vehicle in which a receiver is installed unless the requirements are complied with. This amendment extends this regulation making power to all vehicles, or to any class of vehicles, and permits the regulation of the operation (as well as installation) of receivers.

Mr INGERSON secured the adjournment of the debate.

GOVERNMENT MANAGEMENT AND EMPLOYMENT (MISCELLANEOUS) AMENDMENT BILL

Consideration in Committee of the Legislative Council's amendments:

Page 4, lines 15 and 16 (clause 7)—Leave out 'for a term exceeding 2 years' and insert 'on that basis'.

Page 4, lines 20 to 24 (clause 7)—Leave out all words in these lines.

Page 5, lines 33 and 34 (clause 8)—Leave out all words in these lines and insert the following:-

(i) the position is below a prescribed classification level;'.

Page 6, lines 22 to 25 (clause 8)—Leave out all words in these lines.

Page 7—

Line 8 (clause 9)—Leave out 'three years (or such longer period' and insert '12 months (or such longer period not exceeding 3 years'.

Lines 22 to 24 (clause 10)—Leave out all words in these lines and insert the following:-

(a) by striking out subsection (2) and substituting the following subsections:

(2) An appeal against a nomination may only be made on one or more of the following grounds:

(a) that the employee nominated is not eligible for re-assignment to the position;

(b) that the selection processes leading to the nomination were not properly directed towards and based on assessment of the respective merits of the applicants;

(c) that the selection processes were affected by nepotism or patronage;

or

(d) that there was some other serious irregularity in the selection processes resulting from non-observance of principles or procedures governing selection processes under this Act,

and may not be made merely on the basis that the Tribunal should redetermine the respective merits of the appellant and the employee nominated.

(2a) The Tribunal may, if of the opinion that an appeal is frivolous or vexatious, decline to entertain the appeal.;

(ab) by striking out from subsection (3) 'irregularity in the selection processes leading to the nomination' and substituting 'serious irregularity in the selection processes leading to the nomination such that it would be unreasonable for the nomination to stand'.

(ac) by striking out subsection (6);'.

Page 14—

Line 13 (clause 17)—Leave out 'A' and insert 'Subject to subsection (8), a'.

(clause 17)—After line 14 insert new subclause as follows:

(8) a decision that remuneration be withheld from a person suspended under this section may be the subject of an application for review to the Promotion and Grievance Appeals Tribunal.

Page 15—Lines 18 and 19 (clause 19)—Leave out 'the same salary as, or a higher salary than' and insert 'a salary not less than but not substantially more than'.

Page 18—

Lines 13 to 26 (clause 23)—Leave out paragraph (i) and insert new paragraphs as follow:

(i) any officer or employee appointed by the Minister under the Education Act 1972;

(j) any officer or employee appointed by the Minister under the Technical and Further Education Act 1976;

(k) subject to a proclamation under Division I of Part III

(i) any officer or employee who is renumerated solely by fees, allowances or commission;

(ii) any employee who is remunerated at hourly, daily, weekly or piece-work rates of payment (other than a person appointed under Part III on a casual basis);

(iii) any other officer or employee who is excluded by or under any other Act from the Public Service or whose terms and conditions of appointment are to be determined by the Governor, a Minister, or any person or body other than the Commissioner;.

Lines 30-33 (clause 24)—Leave out all words in these lines.

Page 19 (clause 25)—After line 33 insert the following:

'and

(g) by inserting in clause 9(2) "by reference to the rate of remuneration applying to the employee's position during the period of the leave and the extent to which the employee's effective service was part-time or on a casual basis" after "Commissioner".'

The Hon. R.J. GREGORY: I move:

That the Legislative Council's amendments be agreed to.

Mr INGERSON: The Opposition congratulates the Government on coming to this very wise decision and obviously supports the amendments.

Motion carried.

WHISTLEBLOWERS PROTECTION BILL

Adjourned debate on second reading.

(Continued from 23 March. Page 2522.)

Mr BECKER (Hanson): I endorse the remarks of the Deputy Leader. This legislation has been a long time in coming. On 28 September 1991, in an *Advertiser* article headed 'Informers to be protected', the report quoted the Attorney-General as follows:

The State Government plans to introduce whistleblowing legislation to protect informants as part of a new anti fraud

strategy within the public sector. Announcing the Government's public sector fraud policy yesterday the Attorney-General, Mr Sumner, said although there had been no major examples of public sector fraud recently it was still a matter of concern.

The article by Jenny Brinkworth goes on:

The whistleblower legislation is still being examined but it is intended to allow public servants to inform the Government, police or media if they believe something is wrong in their department without fear of losing their jobs.

The report goes on:

The new policy would be coordinated by the public sector fraud coordinating committee, comprising representatives of the Auditor-General, Treasury, Attorney-General and Police Departments. Areas considered most susceptible to fraud include the collection of moneys, payment of benefits such as welfare and health, procurement of equipment such as computer systems through contract arrangements and other processes, disposal of major items of equipment and machinery, payment of grants and concessions and the exercise of discretions, such as planning controls and granting of licences.

In the *IPA Review,* volume 45, No. 4, 1992, Eric Horne, a former Victorian police officer, wrote an interesting article, headed 'Blowing the police whistle', in which he referred to activities within the Victoria police, and stated:

What makes up a whistleblower? According to Norman Bowie's *Business Ethics,* the whistleblower should:

* act from moral motives aimed at preventing unnecessary harm to others;
* have exhausted all internal procedures before going outside the organisation;
* possess a real weight of real evidence sufficient to establish a reasonable case;
* be aware that his actions may destroy his existing career and jeopardise future job prospects;
* not act for purely malicious or selfish reasons.

In his article, Horne goes on to state:

It was with considerable interest that I read Chief Commissioner Kel Glare's message to the Victorian police in the October 1992 edition of *Police Life.* His subject is 'whistleblowing'. Very correctly he affirms that whistleblowers are 'special and courageous people'. He urges policemen to 'understand, appreciate and support their actions'. His message is very commendable and in keeping with his determined efforts to keep the Victorian police free of corruption. His statement that police who do not approve of whistleblowing are 'thankfully few' may well be true, but police who will openly support a whistleblower are, on the other hand, regrettably also few. In all my 37 years of policing, from constable to chief inspector, I had difficulty in identifying even one genuine whistleblower. There were, of course, police who informed on their colleagues with a view to obtaining an indemnity against prosecution for their own misdeeds.

The Queensland Fitzgerald Report (1989) made the following observation:

Honest public officials are the major potential source of the information needed to reduce public maladministration and corruption. They will continue to be unwilling to come forward until they are confident that they will not be prejudiced.

I now refer to an extract from the Report of the Royal Commission into Commercial Activities of Government and Other Matters, Part 2, Western Australia, 1992, as follows:

The vital prerequisites for a whistleblowing scheme are:

(a) that it be credible so that officials and others not only feel that they can use it with confidence but also can expect that their disclosures will receive proper consideration and investigation;

(b) that it is purposive in the sense that the procedures it establishes will facilitate the correction of maladministration and misconduct where found to exist; and

(c) that it provides reassurance both to the public and to the persons who use it. Consistently with the preservation of confidentiality in relation to operational matters, there should be appropriate reporting to Parliament. The public is entitled to know that where allegations have been made they have been properly investigated and, if substantiated, remedial action taken. Persons using it are entitled to expect that they will be protected from reprisal...

All the way through my parliamentary career I have taken the opportunity to insist that there should be greater accountability of Government. That attitude was reinforced by Don Dunstan when he was Premier. He always believed in the openness and accountability of Government. Dunstan never shirked from that responsibility and so it was with pleasure, even though I had some doubts at the time, that I saw the Public Accounts Committee formed. I never thought I would be put on that committee, because it was David Brookman and I who voted against it originally.

However, having been on that committee for, I believe, the longest time of any member of Parliament in Australia, and having been Chairman for three years, from 1979 to 1982, I can understand why there needs to be the legislative protection for public servants who wish to inform the appropriate bodies about maladministration. I also know the price one pays for revealing fraud, waste and mismanagement in Government operations. It is a high price to pay.

Two officers have served the Public Accounts Committee extremely well in South Australia. The first was the Secretary of the PAC, Brian Wood, who was never really recognised for his efforts and for the contribution he made to openness and accountability in Government. Brian Wood knew that there was something wrong with the administration of the E&WS Department. He believed that it was sloppy and that there needed to be tighter management and better controls in certain areas of the operation of the department, where he worked as an accountant or had extensive knowledge of that department. The PAC investigated that department.

Wood was never given a reasonable classification within the Public Service and, when we finally suggested that he had been in the PAC secretariat long enough and should go back into the Public Service—I always believed that the PAC should be a training ground for members of the Auditor-General's staff and/or Government accountants or officers who would have a stint of a couple of years with the committee and then go back to their departments where they could make a worthwhile contribution to accountability and better management of the State's financial resources—Wood commenced the Deregulation Unit. However, I believe that he was even frustrated in his efforts there and finally resigned from the Public Service. That was a great loss, because South Australia lost a courageous public servant.

Bob Ritchie, who followed Wood as the next Secretary of the PAC, again was not given the recognition that he deserved, albeit for the shorter time that he was with the committee, because Ritchie did try hard. These anecdotes give an example of what is needed to support the functions of Parliament in seeking greater accountability: we have to provide legislation to protect those who are prepared to come forward and say, 'This is not right. I have complained to my superior officers, I have complained within the bureaucracy where I am employed but no-one takes any notice.'

Over the years I have received many complaints from senior public servants who have tried to buck the system and warn those above them that something was wrong, but they get so frustrated. When they come to me they provide only part of the information because they are not game enough to provide it all. They know of the witch hunts undertaken by Governments—it does not matter whether it be Labor or Liberal Governments—because they know what goes on to find the source of that information. Until now, one has not always had the full facts, but whistleblowers cloud the facts so that someone will start asking questions so that they get a movement into what is going on.

I can quote a few recent examples—in fact, one only this week where I asked a question in relation to the State Bank. If we had had whistleblowing legislation five years ago, just think what we could have saved the taxpayers. It was in 1987 that I started questioning Marcus Clark. It cost me a job in shadow Cabinet, because I was doing that against the wishes of my Leader. I started questioning the bank well before then. I started questioning and advising the Premier, I think, in 1990. I advised him months before the collapse of the State Bank. I also spoke to the Premier in front of Marcus Clark on the issue. The Premier said in this House that he thought I was just repeating a rumour. A senior officer in Beneficial Finance was advising me what was happening. His fear was that what happened to the Bank of Adelaide would happen to the State Bank. He did not want that to happen. He said, 'Use every means you can to advise the Premier, to alert him to get someone from Treasury to go into the State Bank and ferret out what is occurring.' He named names and described some of the schemes that were occurring.

Nothing surprises us today—in fact, I think even the Deputy Premier believes them to some degree—about the allegations of some of the activities that went on in the State Bank, and more so in Beneficial and probably the United Bank—which was the United Building Society—and other subsidiaries. I do not believe the board ever really fully knew what was going on. Nor do I believe that some of the senior management knew what was going on. It was tucked away down there in the middle management, where some of the staff just had a free hand to do what they liked.

Had we had this whistleblowing legislation and the means to protect those who could disclose exactly what was going on and be more accurate in the information they gave us, I am quite sure we could have stopped a lot of these operations and grandiose entrepreneurial schemes that were encouraged by the bank up to at least 12 months or probably two or three years before they happened. The warning signs were there. The moment the State Bank lent $50 million to finance a shopping centre in Geelong, and the moment that Marcus Clark's company borrowed $50 million to greenmail Holmes A'Court and Elders in the dealing of BHP shares the warning signs were that something was going astray.

An honourable member interjecting:

Mr BECKER: They may have, but it does not matter. Equiticorp Tasman lost money, and I understand that that $50 million loan to buy those shares to try to stop those two people was never repaid. It was repaid by swapping over a loan portfolio that was almost useless. My friend in Sydney had to handle that loan portfolio and wrote off millions and millions of dollars of worthless loans over a period of time. That is only one example. We can look at Government motor vehicles. It has now become a bit of a joke that I am always asking questions about Government motor vehicles. The leads I get about those motor vehicles come from within the Public Service: the public servants tell me what is going on. The other day I asked a question about a housing cooperative. Tragically, someone has embezzled $63 000. It took a lead from within the organisation to ferret out whether everything was right within the system. I well remember in the select committee that I expressed concerns in relation to internal audit, banking arrangements and whatever. I understand that this person was the only signatory to the accounts and got away with $63 000. We could have stopped that.

Whistleblowing legislation is, in my opinion, the most worthwhile form of protection within an organisation we can have. For some unknown reason the Public Service, the Auditor-General's Department and so on, and particularly Treasury, bucked the ideas and suggestions I made years ago in relation to internal audits. The internal auditor in a bank goes around and checks all the small details, and also dots the Is and crosses the Ts. In fact, the internal audit represented the first alert point if there was anything wrong in the branch or section of the bank in which I worked. It nipped in the bud any possibility of fraud. We continuously set up ways and means and schemes to find out how one could defraud a bank so we could bring in systems to prevent fraud.

The same thing should happen in the Public Service. The Government handles something like $5 billion, and Government departments now handle tens of millions of dollars. The systems that are incorporated and the pressure that is put on public servants as a result of the continual cutbacks in staff are creating a situation where over-worked, or over-tired staff, short of appropriate supervision, will take short cuts, make errors or simply defraud the State.

I can understand the reason for the article in the *Public Service Review* of August 1990. It is headed 'Whistleblowers versus GOD.' 'GOD' stands for Government of the day—that is very clever. The article states:

> A perennial subject is that of public servants unofficially leaking or announcing to the media controversial information they consider is in the public's interest to know. In exposing what they believe is negligence, malpractice or corruption, they are blowing the whistle on the Government of the Day (GOD)...This article is about those public servants who risk, in some cases, recrimination and retribution, by deciding to go

public with complaints about Government policies they believe are wrong and are, or will be, harmful to the community.

The article continues:

Politicians themselves have become expert in using leaks for political advantage. And unions would have difficulty operating without a constant flow of leaks from members. But most leaks are usually ill-founded rumours or are relatively innocuous. However, it is another thing when Governments are exposed to ridicule by allegations made public by one of their employees about something believed to be particularly corrupt. They don't like it.

It is a courageous Government that brings in whistleblowing legislation. However, at the same time, we still have to be very mindful that the allegations have to be credible, they have to have substance and one has to be able to check them out. That is why the article in the *IPA Review* by Eric Horne is most appropriate, because he cites the cases of those who were courageous, as follows:

In Australia, the most well-known act of whistleblowing, albeit unsuccessful, was that of the Queensland Commissioner of Police [Ray Whitrod, who is a constituent of mine and I know him very well]. Recognising the existence of widespread systematic corruption on the Queensland Police, he chose to resign rather than accept the Government's promotion of the corrupt Terence Lewis to the rank of Assistant Commissioner. Noteworthy also is the case of Sergeant Philip Arantz of the New South Wales Police. In 1972 he correctly informed the *Sydney Morning Herald* that Commissioner Norman Allan had falsified police crime statistics. After considerable harassment from the police bureaucracy Arantz was wrongfully dismissed from the force [and that was in 1972]. Not until 1985, 13 years later, was he given compensation for his courageous action. A condition applied to the compensation, that 'he not further discuss the issue'.

That is the whole tragedy. I hope this legislation ensures that that never happens again, and that it makes it easy for those who suspect fraud to carry out the terms and conditions of clause 3 of the Bill, as follows:

The public disclosure of information, which is confidential or thought to be confidential but which exposes criminal activity, malfeasance, public danger and the like is commonly called whistleblowing.

I commend the legislation to the House. As I said, I hope that we will not be inundated—and I do not think we will be—by all sorts of information coming out of Government departments. I believe it gives some hope and it goes further to reinforce what we should all truly and rightly believe, and that is open government and greater accountability of Government.

The Hon. G.J. CRAFTER (Minister of Housing, Urban Development and Local Government Relations): I thank honourable members opposite for their contributions to this debate and indeed for their indications of support for this Government measure. It is novel legislation. Similar legislation is not enacted in any other jurisdiction in this country. Obviously, there will be considerable interest in its application and its progress, although in a number of other States draft legislation has been circulated and one can expect that similar legislation will be enacted in the near future.

In areas like this there is a need for the maximum degree of uniformity possible, so this legislation will need to be kept under review and, where possible, we will need to move in unison with other States when the time comes to amend it. The Government is grateful for the many constructive suggestions that were received during the discussion stages of this legislation from a large number of people in the community, and of course from all of the major political Parties.

The next phase following the enactment of this legislation will be a public education program, beginning with a trial program involving the Public Service Association in South Australia, the Attorney-General's Department and the Commissioner for Public Employment. It is true that everyone seems to agree that this is a very positive step forward and that it picks up the recommendations made in a number of key reports and reviews, more particularly the Fitzgerald royal commission in Queensland, which I think is a high water mark in an analysis of the deficiencies of Government and public administration in the Westminster system, and more recently the Western Australian royal commission which once again analysed very carefully when there is a breakdown in public administration and in Government ethics.

Of course, we benefit from the quite vast experience of the United States legislature's activity in this area over a long period. Indeed, the expression 'whistleblower' comes from the United States. The Deputy Leader of the Opposition, in his contribution, I think was quite correct in saying that it is very much a matter of balance. It is quite crucial that we try to aim for that balance in this legislation and give people that expression of their right to free speech while maintaining confidence in Government, particularly where there are sensitive matters, economic implications, implications of a personal nature and so on, where Government is involved in many and varied activities which affect people's lives, their economic status and general well-being. We need to strike that balance with this legislation. We believe that this is the best that can be provided at this time, but of course we will need to review that in the light of the experiences that follow.

The member for Hanson is correct: whistleblowing is a common practice now, and we will not see much more of it. Whether this Bill is enacted or not, maybe there will not be problems, but I think one can also anticipate that there are people who are waiting for the protections provided in legislation like this in order to express their concerns to the designated authorities. I think we can be assured that this measure has been the subject of extensive consultation. The general view is that we have a very good starting point on which to embark upon this course of legislative action. I think all honourable members would agree that the legislation comes in a form that obviously can be improved upon in the light of further experience, so we need to keep an open mind on it.

I would also add to the points made by previous speakers in this debate. Consideration also needs to be given to the application of the protections provided in this legislation to the non-Government sector. We are all aware, and many people are quite painfully aware, of the lack of opportunities for persons working in small and large corporations to raise their concerns, which would provide protection not only for shareholders of

corporations, but also for the general public. Matters that relate to public safety and criminal activity and so on apply equally, of course, to the non-Government sector as well as to the Government sector. Often the recourse there is even more devastating than that which honourable members have explained in the public sector, where there is diminished scope for people to exercise their rights and obtain protection. People in the non-Government sector are quite often dealt with, in my experience, very unfairly when they raise matters in good conscience and take a courageous stand. They find that their career path comes to a halt very suddenly or other drastic action is taken. So, in this sense the Government is taking a lead. It is setting a new set of values in our community, and we can only hope that they are picked up in time by those in the non-Government sector. I commend this measure to all members.

Bill read a second time. In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. H. ALLISON: Can the Minister advise whether the day upon which this legislation will come into operation, as fixed by proclamation, will be prospective or retrospective? I am aware of one case, which is still *sub judice,* and therefore I cannot give names or the substance of the matter to members of the Committee. It has been going on for some 12 months and it involves a civil action by a policeman who was accused of a form of corruption by a civilian. No protection has been offered to this person. The Crown Solicitor has admitted that the case is very difficult and that, while there are continuing attempts by the Commissioner to refuse access to documents which are in the hands of the police, ultimately it may be that that refusal will be overcome simply by court application for the documents to be presented.

That is only one case, but in submitting to the Attorney-General that there were difficulties in such issues, I also drew attention to the fact that Operation Noah has for some considerable time been a great whistleblowing operation, yet it is feasible that police officers or others could take civil action against the whistleblowers who have been involved in Operation Noah over the years. Is any retrospectivity intended in the proclamation, or is it simply prospective from the date of proclamation; and, if there is no retrospectivity, has the gravity of the matter really been considered, because it is quite possible that people who have cooperated with the police in the past, with the best of intention, are still vulnerable to civil action?

The Hon. G.J. CRAFTER: It is not intended that this matter have retrospective application. It will apply to notifications that take place after the time of proclamation. Of course, the conduct or activity that is the subject of the disclosure could occur prior to proclamation. The actual act of disclosure must take place following proclamation.

Clause passed.

Clause 3 passed.

Clause 4—'Interpretation.'

The Hon. G.J. CRAFTER: I move:

Page 2, lines 22 to 25—Leave out subclause (2) and insert the following subclause:

(2) The question whether a public officer—

(a) is or has been involved in—

(i) an irregular and unauthorised use of public money; or

(ii) substantial mismanagement of public resources; or

(b) is guilty of maladministration in or in relation to the performance of official functions,

is to be determined with due regard to relevant statutory provisions and administrative instructions and directions.

This amendment removes subclause (2) and replaces it with a new subclause. The object of the original subclause was to ensure that, when making a qualitative judgment about whether a public officer has engaged in wrongdoing sufficient to amount , to public interest information under the Bill, due regard was given to the legal and administrative environment in which he or she worked and which may have influenced a decision or course of action. The objective has not changed. When the Opposition successfully moved an amendment in another place to add 'substantial mismanagement of public resources' to the list of public interest information, it became necessary, if the scheme of the Bill was to be consistent, to make a consequential amendment to this subclause so it applied to the new category. The object of this amendment is simply to do that.

Amendment carried.

Mr S.J. BAKER: Regarding the definition of 'public interest information', why does maladministration no longer include incompetence? When the Bill was originally put forward, the three criteria of maladministration were impropriety, negligence or incompetence. It no longer includes incompetence, and I would have thought that was a very important facet of whistleblowing.

The Hon. G.J. CRAFTER: This matter was clarified during the period of public consultation when there was concern that the use of the expression 'incompetence' was simply too broad and that the legislation should be targeted to the effects of incompetence, so it was reworded to provide that essential focus.

Mr S.J. BAKER: Public officers have been referred to: how far do the instrumentalities of the Crown extend? I am referring to paragraph (f). Does that apply to any organisation in which the Crown has an interest? Does it extend as widely as the new Public Finance and Audit Bill goes? What is the definitional boundary of 'public officer'?

The Hon. G.J. CRAFTER: The agency or instrumentality must be of the Crown, not one in which the Crown has an interest.

Clause as amended passed.

Clause 5—'Immunity for appropriate disclosures of public interest information.'

Mr S.J. BAKER: This clause is of considerable interest, because it talks about the appropriate disclosure of public interest information. For the benefit of the Committee, I would like clarified the rights of a person, after going through those proper procedures and then finding that those procedures have failed, to take that matter into the public arena.

The Hon. G.J. CRAFTER: I think the honourable member can be reassured that, if a person who wishes to make a disclosure goes through the appropriate steps provided in the legislation, and if the steps that he or she

takes continue to result in dead ends, it may well be that the appropriate form of disclosure is to go to the media or to take some other form of action, but one must go through the steps that are provided.

Mr S.J. BAKER: I note there is no provision in the Bill for this to occur, and I seek clarification from the Minister. I would presume that, because it is left unstated, a person who has knowledge of corruption or misuse of public money, who has gone through the proper procedures and who has taken the matter to the police, if the matter is not properly investigated and that is ascertained and if that person then goes to the media, according to my reading of this Bill, the person enjoys no protection whatsoever. I would appreciate clarification.

The Hon. G.J. CRAFTER: Subclause (4) provides for the deeming of various places where a person who wishes to make a disclosure can do so, but that is not an exclusive list and, indeed, in the circumstances that the honourable member has described, a person might have gone down a different route, or indeed all of them, and found, as hard as it is to believe, that none of those provided for the actual disclosure. In the confidence of that person, that matter would be duly investigated and dealt with. Therefore, we go back to subclause (3), which provides that a disclosure is taken to have been made to a person to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure, if it is made to an appropriate authority. So, I think there is the opportunity for the person in those circumstances to go off to some other source, having completed all the other requirements under the legislation, to then make that disclosure.

Mr S.J. BAKER: I simply make the point, but I will not pursue it, that the legislation does not provide for that procedure. The clause provides 'if it is made to an appropriate authority'. We do not want people rushing out to the media: we want them to follow due process. That is important. If they do not follow due process, they run the risks that they run right at this moment. It is not clear and I think it is deliberately vague. I guess we will see some interesting cases in the future where somebody does take that step to report an offence then finds that, despite his best efforts, that matter has not been satisfied; that person will become angry and take the matter into the public arena. I do not believe that this Act covers that contingency. However, we will see it by case, and we are looking forward to moving further amendments in future.

The Hon. G.J. CRAFTER: Something should be said about this. Obviously, there are circumstances in which people want to act without recourse to the appropriate processes. The last thing they want is for their complaint to be properly investigated. They want to go straight to the media; they want to gain the publicity to achieve their own objectives. In fact, quite often they use members of Parliament for those purposes, something against which we all have to protect our own reputations and that of this place. That is why the legislation is constructed in this way.

I did not read the whole of subclause (3), but the part that I did not read I thought would have clarified it substantially for the honourable member, because it provides:

...(but this is not intended to suggest that an appropriate authority is the only person to whom a disclosure of public interest information may be reasonably and appropriately made).

It is clear from that subclause that there is the opportunity to go to persons and places other than those that are deemed in subclause (4).

Clause passed.

Clause 6—'Informant to assist with official investigation.'

Mr S.J. BAKER: Referring to the matter previously raised, does this Bill therefore impose a *de facto* responsibility on members of Parliament to go through the appropriate channels?

The Hon. G.J. CRAFTER: Yes, I would have thought that the prudent member would have made appropriate investigations and taken advantage of the sources which are available to a member of Parliament but which are not available to other persons in the community. There is the added advantage a member of Parliament has that parliamentary privilege is vested in the Parliament. That is why members of the public, public servants and others seek out members of Parliament, because they know that they can speak in the public interest without fear of recourse in this place and, as I said in answer to a previous question, a prudent member of Parliament checks out the information that is given and uses it always, hopefully in the overall public interest. But I should have thought that the prudent member of Parliament would want to enter into a process similar to that expressed here, to make sure that all the proper checks and balances occurred.

Mr S.J. BAKER: I want to make sure that parliamentary privilege is not in any way affected. I do not wish members or Ministers of this House to say, 'Under the whistleblowers legislation, you should have talked to the Commissioner of Police'. It is absolutely inappropriate on many occasions. I would not believe that the Minister should insist, 'You should have talked to the Chief Executive Officer of the department' It would be absolutely inappropriate. I want to make quite clear that, if that construction is put on this Bill, it will be rejected overwhelmingly by this House.

The Hon. G.J. CRAFTER: It is clear that there is not any effect on parliamentary privilege, but I would say that it would save the police coming down here regularly to talk to members of Parliament about matters they have raised in the House if they actually talked to the police in the first instance and clarified some of the matters raised and then raised them in the House, if that were the appropriate course of action or, indeed, allowed the police to take whatever action was appropriate, then, perhaps, raising it in this place at an appropriate time.

Clause passed.

Clauses 7 and 8 passed.

New clause 8A—'Obligations of Government agencies.'

Mr S.J. BAKER: I move:

After clause 8 insert new clause as follows:

8A. (1) A Government agency must make appropriate administrative arrangements for receiving, and dealing with, disclosures of public interest information.

(2) A Government agency must make adequate provision for the counselling of employees who make, or propose, to

make, disclosures of public interest information and for the protection of such employees from acts of victimisation.

(3) A Government agency must, in each annual report, state the number and nature of disclosures made under this Act relating to the agency in the period to which the report relates and the action taken by the agency in consequence of those disclosures.

This amendment requires Government agencies to set up a mechanism for hearing legitimate complaints about the operations of a department or the way in which people conduct their affairs within that department. That does not mean, as the Attorney would suggest, that we are to have a whole new bureaucracy set up to hear complaints about the department. What it does mean is that the department is prepared, if a complaint comes forward, to use appropriate people who can take five minutes off from their normal duties to investigate complaints of a legitimate nature.

Whilst the Attorney misconstrued the intent of the amendment in another place, the fact is that, unless we put this in place and require Government departments to act seriously, the Government department itself or Chief Executive Officer or the Police Commissioner can always say, 'We will get around to it when we can', 'We did not have sufficient resources available', 'There was no designated person to take up this particular issue' or, 'I was unsure as to who should take it up, given the sensitivity of the matter.' There can be a thousand excuses why a matter is not pursued. That is why this amendment is being moved, in order to say to Government departments, authorities and agencies, 'You have a responsibility. It may be that the 2IC of the department is designated as the person to whom the referral of those complaints should take place in normal circumstances, if that person is not affected in the complaint itself'.

The Hon. G.J. CRAFTER: These amendments were canvassed in another place. We oppose these rather vague concepts being put into the Bill, because it really is interference in the proper administration of the Public Service. It is really quite inappropriate, we believe, to impose such a vague obligation on senior administrators in various agencies—the Chief Justice, for example, or the Ombudsman, and so on. It is not clear what the words 'inappropriate administrative arrangements' would require or what would happen if the arrangements put in place were not appropriate. So, there could be frustration rather than assistance to the proper application of this legislation. It applies only to Government agencies and not to the private sector or local government, and in that sense it is really quite unfair and discriminatory.

With respect to the other subclauses, we do not think it right to place an obligation on all Government agencies in this broad and general way. In general terms, arrangements of this kind are a matter of the proper administration of the general Public Service and not just each particular agency. What would be the consequences if an agency did not make adequate provision? Why is this obligation imposed only on Government agencies, etc.? The Government appreciates what the amendment is trying to get at, but the issues are more difficult and complex, it is believed, than can be properly addressed by an amendment in this form.

This amendment will not achieve the ends desired by it. With respect to subclause (3), an agency may not know that any disclosure has been made which relates to it. What then? As I said earlier, the expectation is that whistleblowers will largely go outside the agency. In that case, it is inappropriate that the agency do anything about it, for it would be the subject of action taken by another investigative body. So, it will report no action even if it does know. Further, the agency may be required to disclose the existence and nature of information prematurely, and that will have the possible effect of prejudicing an investigation. How is the agency to know whether a disclosure has been made under this Act? That may be a matter of dispute and, again, why is this sort of obligation not to be imposed upon others, such as local government and the private sector. So, it is for those reasons that the Government opposes the amendment.

New clause negatived.

Clause 9—'Victimisation.'

The Hon. G.J. CRAFTER: I move:

Page 4—

Line 28—Leave out 'bring proceedings' and substitute 'lodge a complaint'.

Line 29—Leave out 'brings proceedings' and substitute 'lodges a complaint'.

The Bill was amended in another place so that the whistleblower allegedly victimised by reasons of a disclosure has the alternative of bringing an action in tort in the ordinary courts, and the Government accepted that amendment. However, while the intention of the amendment was clearly to the effect that a person allegedly victimised can take one option or the other—that is, tort or equal opportunity—subsequent reflection showed that there might be some ambiguity in the actual wording. This amendment is designed to make the original intention of the amendment as clear as possible.

Amendments carried; clause as amended passed.

Clause 10—'Offence to make false disclosure'.

The Hon. G.J. CRAFTER: I move:

Page 5, line 7—Leave out 'Imprisonment for 2 years' and substitute 'Division 5 fine or division 5 imprisonment'.

It was pointed out in another place that the proposed offence of making false disclosures provided only for a sentence of imprisonment and not a fine. The fine alternative exists under the Sentencing Act, but it was generally agreed that the appropriate divisional fine should be inserted, and the amendment simply does that.

Amendment carried; clause as amended passed.

Remaining clauses (11 and 12) and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (FISHERIES) BILL

Consideration in Committee of the Legislative Council's amendments:

No. 1. Page 1, Long Title—Leave out—', the Fisheries (Gulf St Vincent Prawn Fishery Rationalisation) Act 1987'.

No. 2. Page 9, lines 4 and 5 (clause 25)—Leave out the clause.

No. 3. Page 9, lines 6 and 7 (clause 26)—Leave out the clause.

No. 4. Page 9, lines 8 to 36 and page 10, lines 1 to 17 (clause 27)—Leave out the clause.

The Hon. T.R. GROOM: I move:

That the Legislative Council's amendments be disagreed to.

The provisions of the original Bill that went to the Legislative Council are simply commonsense. There are deficiencies with regard to the way in which the current debt operates in this industry, and the amendments to the Act which the Legislative Council have rejected provide a more equitable arrangement. Incoming licence holders can take over any surcharge debt. It enables people who hold licences to leave the industry with incoming transferees having the ability to take over the surcharge. The present rationalisation Act is deficient in that it is not possible to vary the payments made. If some licence holders want to increase payment there is no scope to extend the term or vary the payments whatsoever. I suspect that part of the motivation of the interest groups for resisting the amendments that were put forward is the hope that at some time in the future the debt can be avoided.

That would not be a proper position to adopt if that is the motive of some people who are opposed to that clause. There is a legitimate debt in relation to this industry, and it needs to be dealt with equitably and fairly. There are existing deficiencies, and the industry needs to operate in a more equitable way. One other reason put forward by the Legislative Council involved a Federal court decision in relation to the Northern Territory. Crown law advice is that that decision has no application at all and does not impinge upon these provisions whatsoever.

Mr D.S. BAKER: The Upper House included these amendments for a particular reason, and I think the appropriate way to deal with this matter would be to have a conference of both Houses so that the Upper House can explain its reasons more adequately.

Mr BLACKER: I concur totally with what the member for Victoria has said, and I agree with the Minister that it must be an equitable system. If anyone is of the view that the debt will be avoided at some later date, I think they are wrong. Many people have done the right thing in accordance with the law at the time and made their just payments in the due time, in many cases under extreme difficulty, but if those people have worked under such difficulties and honoured their undertaking I do not think there is any ground for those who do not honour their undertaking to get away with it. After all, they entered into a contract on that basis in the original stance. So, if the legislation does go to a conference it would be the best thing for all concerned.

Motion carried.

LEGAL PRACTITIONERS (REFORM) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 March. Page 2457.)

Mr S.J. BAKER (Deputy Leader of the Opposition): The Legal Practitioners (Reform) Bill is somewhat of a misnomer, but we will grapple with that inconsistency. The Opposition generally supports the Bill but with some reservations about particular provisions contained therein. There appears to be some belief by the Attorney-General that what he does emanates from God, and that the changes he is making to the system will suddenly bring about radical reform, when in fact this so-called reform Bill achieves very little. In fact, it is debatable whether it actually conforms to the laudable explanation provided in the second reading explanation, as follows:

The Government has always been committed to increasing community access to justice.

I cannot find anything in this provision which supports that end—I am willing to be convinced, but I suspect I will stand to be convinced. A number of provisions in the Bill have, I believe, emanated from the Attorney's dislike for the position of Queen's Counsel. The Attorney has made it abundantly clear in the wider world that the position of Queen's Counsel is an anachronism and that it should be dispensed with. There is a little of the Attorney's dislike for the position in this Bill. I am not one of those people who want to hang onto old vestiges in any way, but in terms of how we recognise merit and excellence within the system, if the Attorney-General wishes to proceed down the line of another name or another form of recognition, that can be debated at the appropriate time. However, because of the angst of the legal community about the possibility of losing the position of Queen's Counsel, we now have some strange amendments that take us one step along that path but not the whole way.

As I said, there are some strange changes being made to the law in relation to legal practitioners. As an outside observer of the system, I note the care and diligence paid to legal Bills in another place and the amount of time that is spent on them, particularly when they affect legal practitioners—and that is all to the good. One of the interesting aspects is that this Bill, in part, changes the legislative wording in relation to our understanding of how the profession operates in South Australia. It seems that a conclusion is drawn that because of the New South Wales experience we need to make certain statements within this Act which cement the position that is currently understood. I am not of that belief. I understand that tradition is probably the greatest teacher of all and sets a precedent; it is only legislation that messes it up. We have seen that on many occasions in the common law.

Now we have put in place in this Legal Practitioners Act some strange additions, which suggest that the legal profession is fused. The Bill provides:

...the legal profession should continue to be a fused profession of barristers and solicitors.

What absolute hogwash. The understanding is that barristers and solicitors go through the same training, go to the bar in the same fashion and have the same rights and privileges. It has never been suggested that there is a separateness about them which may exist in New South Wales but which certainly is not purported to exist in South Australia. So the Bill contains a bit of claptrap. For example, I note that in New South Wales there are bar examinations as opposed to examinations for solicitors: so there is a separation of the barrister and solicitor role. In South Australia legal practitioners are governed by one piece of legislation—somewhat different

from the situation that prevails in New South Wales. So, we are not too sure how much of this Bill is taking us forward and how much is signalling future change.

In relation to Queen's Counsel, the Chief Justice requires those who are so appointed to give an undertaking that after appointment they will not practise as solicitors or in a partnership of barristers and solicitors. Queen's Counsel, as are all legal practitioners, are officers of the Supreme Court and have a duty to the court which can override even the duty to the client—a very important distinction. So, QCs are not normally members of a partnership of legal practitioners, although occasionally they do have a silk on board. The reason for this is that the undertaking required by the Chief Justice is designed to ensure that Queen's Counsel are available to all and not the limited clientele of a particular legal firm with whom otherwise the QC may be associated. So, the distinctions that are starting to be made in the Bill do not stand up to scrutiny.

The Government published a green paper followed by a white paper on the legal profession. In the middle of January the Attorney forwarded a copy of the draft Bill to the Law Society and expected the society to respond within two days. He did not really have any confidence in his own capacity to convince the Law Society of the merits of this piece of legislation. There has been some discussion with the profession since that time and since the Bill was produced in the Parliament, and that has generally been constructive, and there has been some change of heart on some issues. We do have a current distinction between barristers and solicitors, but the Bill proposes to express an intention to the Parliament that the legal profession should continue to be fused.

The second major reform—I will call it a reform but it is not really of that ilk—is that contingency fees are proposed which will allow a legal practitioner to agree with the client to charge legal fees only if the case is successful, with statutory permission to charge fees up to 100 per cent in excess of the fee otherwise permitted to be charged. The proposition does not include a share in the award of damages. The Bill provides for an annual report to be lodged by the Law Society with the Attorney-General and laid on the table of both Houses of Parliament. It establishes an additional mechanism by which complaints of overcharging can be reviewed. Such review is to be made by the Legal Practitioners Complaints Committee, which is then a middle step for a client, rather than going immediately to the Supreme Court for taxation of the solicitor's bill.

The Bill provides for annual reports of the Legal Practitioners Complaints Committee and the Legal Practitioners Disciplinary Committee to be provided and tabled in the Parliament each year. It also provides that the disciplinary tribunal will be required to hear matters in public or, if they are heard in private, to provide summaries available for public inspection. There are powers in the disciplinary tribunal akin to those in the Supreme Court. Those powers are essential if the hearings are to be in the open. The Bill contains a number of other tidying up amendments.

There are some concerns about the Bill. I have already dealt with the concerns of the legal profession about the direction in which the current Attorney-General is heading, and those matters have been canvassed by such eminent authorities as the Chief Justice of the State, the Law Society and a number of other worthy contenders in the legal battlefield. Concern is also expressed by insurance companies, and I guess there would be concern from other areas, about the application of contingency fees. My understanding is that there was going to be a canvassing of the proposition of 'share in the rewards if you are successful and go broke if you are not', but that has not surfaced. I will be interested when that debate is pursued at a later date. Some changes are to be made, including one or two changes of significance, and these have been extensively debated.

The Attorney likes to think that he is leading the nation, but experience would indicate otherwise. We know that when he went through all the reforms that have occurred in South Australia most of them were a fairly long time ago and most of them resulted from initiatives taken elsewhere. As an observer of the legal system, I find little joy in dealing with this Bill, which will not result in any overwhelming changes. There are one or two areas of possible concern but, in the circumstances, the Opposition gives its lukewarm support for the measure.

The Hon. G.J. CRAFTER (Minister of Housing, Urban Development and Local Government Relations): I thank the Opposition for its indication of lukewarm support for the measure. However, obviously there is some confusion and inconsistency in Conservative Party and Government ranks across this nation. The honourable member was somewhat rambling in his explanation of the Opposition's position about the status and role of silks in the legal profession.

The Premier of New South Wales has made some clear and unequivocal statements about wanting to abolish altogether the status of QCs in the form that we know them, although no legislation has materialised of course to do that. Clearly, the reforms that are contained in this measure are part of the ongoing responsibility that we have as a Government to ensure that the legal profession does serve the community effectively and play its role in the administration of justice in our State.

For example, the role that QCs play is an emerging role and the current restrictions that have been placed on QCs has been found to be contrary to the wellbeing of the community. The criticisms that the honourable member made in his second reading speech are, I think, not the whole side of the story. In fact, the ability to bring people into senior status within the profession often comes about as a result of their involvement in particular types of legal practices and, not to allow that to occur and continue, would be harmful and contrary to the best interests of the community at large and to the growth and status of the legal profession.

We have to move to a system where there is greater specialisation and public understanding, acknowledgment and ease of access to that specialisation. We see that well established in the medical profession and in other professions, architecture, and so on. To date that has not occurred in the legal profession, but I think we see that in the beginnings of this Bill, which is the first of its type in Australia. A number of other States, particularly New South Wales and Victoria, are taking a great interest in it and it is anticipated that they will pick up a

number of issues in this measure when they carry out similar reforms in their States.

This legislation has not arisen as a result of any whim of the Attorney-General. It has come out of the green and white paper process; it has been the subject of thorough discussion and consultation within the legal profession, within the broader community and other interested groups, certainly within Government and our courts and judicial system. It contains reforms which, in company with other matters like the reform of the courts legislation and the Litigation Assistance Fund, should work to increase community access to justice.

The honourable member dismisses these measures but I believe that the system of contingency fees, for a quick, cheap resolution of fee disputes between client and practitioner to be resolved by the Legal Practitioners Complaints Committee and for the opening of deliberations of the committee and the Legal Practitioners Disciplinary Tribunal to public scrutiny, are just three measures that will allow for greater access and openness in our legal system and confidence in it. At the same time, it provides the opportunity for more people to have their disputes satisfactorily resolved.

It also contains a number of miscellaneous amendments requested by the legal profession itself through the Law Society and by judges. The Law Society supports reforms in the Bill and has made a number of amendments to the professional conduct rules which arose from the white paper process, that is, for increased information to be provided to the client about fees and about the progress of matters and, secondly, a rule that the restrictive practices of the bar, which apply in the eastern States, do not operate in South Australia; for example, a barrister not attending the premises of a solicitor, and having a barrister and solicitor present at all conferences with a client. These are costly and time-consuming practices that add further to the cost burden on clients and ultimately on the community at large. They serve to deter people from taking legal proceedings and sadly not getting access to the courts and ultimately to justice in their particular situations.

Matters are left unresolved and cause harm and discord in our community and a loss of confidence in our system of justice. The Bar Association of South Australia is considering an amendment to its rules to offer membership to those who take instructions direct from certain professional groups. The Government would like to see this membership extended to barristers who take instructions direct from members of the lay public in circumstances where the issue of proceedings or the handling of trust moneys, for example, was not necessary. The matter of reform of the legal profession has been examined by a number of other bodies around the country. For example, the Trade Practices Commission's outstanding Committee on Constitutional and Legal Affairs is looking at a number of these issues from a national perspective. This measure takes up some of the issues already raised by those committees, but also will guide us in further reform of the legal profession. In conclusion, this is the first Bill in Australia to enact changes and proposals which have been under consideration for some time. However, our reform process will obviously not stop with this: it will continue in the months and years to come.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Fusion of the legal profession.'

Mr S.J. BAKER: I move:

Page 1, lines 17 and 18—Leave out subsection (1).

This is a matter of principle. First, we do not believe that any Bill should contain the words 'it is Parliament's intention'. It is the first time I have seen this little gem. The provision also attempts to establish a position that is already established within the legislation under section 15 and under the traditional method of operation in South Australia. There is no doubt that this package is designed to do what the Attorney wants it to do in the longer term. This does not assist the parliamentary process. It does not, in principle, coincide with what the Liberal Opposition would wish. It does not coincide with what I believe is in the best interests of the long suffering community.

The Hon. G.J. CRAFTER: The amendment is opposed. I seek clarification. Are we dealing with lines 17 and 18 or all lines which relate to this amendment?

Mr S.J. BAKER: Consistent with the instructions that I have, we are treating each one as a separate principle and we are opposing each. Each involves a different principle.

The Hon. G.J. CRAFTER: The first amendment is opposed. The amendment seeks to remove new section 6, which makes it clear that the legal profession in South Australia is a fused profession. It is the Government's view, as expressed in both the green paper and the white paper, that section 6 of the Act should remove the ability of the Supreme Court to divide the profession and state that the profession of South Australia is fused, and it is the intention that it remain fused. The amendment makes it clear that a fused profession does not prevent the establishment of a separate bar. That is the situation that we have in South Australia at the present time. The provision enables an individual to practice as he or she wishes in South Australia. That may be as solicitor or as a barrister in firms or on their own as a barrister who takes instructions direct from a client, but not a member of the Bar Association, or as a barrister in the traditional manner.

Mr S.J. BAKER: I really do make the point that this is mere baggage for the Attorney's particular pleasure. It does not assist the legislation or the understanding of how the profession operates in this State. Section 15 of the Act makes it quite clear how the profession operates. It is not under contest and should not be under contest and, therefore, what we see here is absolutely unnecessary. By repealing section 6, it remains quite clear that practitioners are admitted as barristers or solicitors and not as one or the other. We do not believe it is appropriate to go down the track proposed here.

Amendment negatived.

Mr S.J. BAKER: I move:

Page 1, lines 19 to 21—Leave out subsection (2).

Again, there are better ways of handling the situation. We believe that the existing measure is quite adequate. Under the circumstances, we believe it can be better addressed without setting up a new mechanism and changing the recognition of the roles that we perceive are appropriate for the legal profession in this State.

Amendment negatived.

Mr S.J. BAKER: I move:

Page 1, lines 22 to 26—Leave out subsection (3).

This new subsection is a confusion, and that is why I move that it be deleted. It provides:

(3) An undertaking by a legal practitioner to practise solely as a barrister or to practise solely as a solicitor is contrary to public policy and void (but this subsection does not extend to an undertaking contained in or implied by a contract or professional engagement to provide legal services of a particular kind for or on behalf of another person).

I have read the debate and I have my own views on a number of matters which do not necessarily coincide with the views expressed elsewhere. However, it seems very strange to me because, if a person calls himself or herself a barrister or a solicitor, that does not in any way restrict that person. I cannot understand what the Attorney is attempting to do. I read the explanation—and it is very long. My colleague the Hon. Trevor Griffin went into it at some length as well. The way this is worded—and I can only go by what is written here—it says that no-one can declare themselves to be a barrister and solely to be a barrister, that is, work out of chambers. In addition, no-one can declare themselves to be a solicitor and solely to be a solicitor. My simple reading suggests that it does not make a great deal of sense and I cannot understand the need for the amendment. I will not go through the protracted debate that went on in another place, but I believe that it is another piece of unnecessary baggage.

Amendment negatived.

Mr S.J. BAKER: I move:

Page 1, lines 27 to 29—Leave out subsection (4).

This new subsection provides:

Despite this section, an association of legal practitioners may be legally constituted on the basis that membership is confined to legal practitioners who practise solely in a particular field of legal practice or in a particular way.

It is saying one can have a firm of barristers or a firm of solicitors and that is lawful, but the principle that barristers are barristers and solicitors are solicitors is null and void. Again, I just believe there is a lack of consistency in the approach adopted. I oppose the clause.

Amendment negatived; clause passed.

New clause 3A—'Recognition of freedom of choice with regard to field of professional practice.'

Mr S.J. BAKER: I move:

Page 2, after clause 3—Insert new clause as follows:

Insertion of ss.6a and 6b

3A. The following sections are inserted in the principal Act after section 6:

Recognition of freedom of choice with regard to field of professional practice

6a. (1) The Parliament recognises the right of legal practitioners to choose the field of law in which they will practise.

(2) The Parliament consequently recognises the right of those legal practitioners who desire to practise solely as barristers to form a separate bar.

Recognition of freedom of association

6b. The Parliament recognises the right of legal practitioners to form themselves into associations in which membership is open to legal practitioners generally or is confined to practitioners of a particular class.

This is a lost cause and a lost clause. The amendment fixes up the difficulties which are more perceived than real. The proposed new clause sounds very sensible. It says it all and it says it simply without the baggage that has been put in by the Attorney. However, since we have now gone past clause 3, it is far more difficult for this proposed new clause to stand in its own right. I merely make the point, and I do not expect a response from the Attorney, because it is more or less consequential on those matters previously canvassed, that there was a better way of doing it. The Attorney chose not to go down that path. He is again using his own discretion, if you like, but it is motivated by things other than the public good.

New clause negatived. Clause 4 passed.

Clause 5—'Conditions as to training, etc., to be imposed on issue of new practising certificates.'

The Hon. G.J. CRAFTER: I move:

Page 2—

Lines 29 to 33 and page 3, lines 1 to 4—Leave out subsection (3) and insert—

(3) If a person to whom a practising certificate was issued subject to conditions under subsection (1) fails to satisfy the Board of Examiners, in accordance with the rules, of compliance with the conditions, the Board may determine—

(a) that further conditions are to be imposed;

or

(b) that the practising certificate is to be cancelled, or is not to be renewed, and no new practising certificate is to be issued to the previous holder of the certificate until stipulated conditions have been complied with,

(and, subject to any order of the Supreme Court to the contrary, a determination under this subsection takes effect on a date fixed by the Board).

Line 6—Leave out 'under the rules' and insert 'under this section, or the rules'.

The amendments come about as a result of representations the judges of the Supreme Court made to the Government. They deal with the conditions as to training to be imposed on the issue of new practising certificates. The judges have requested that, for the sake of convenience and ease of administration, where a person fails to comply with conditions imposed, the board of examiners and not the Supreme Court, as in the Bill, exercises the powers in the Bill.

Mr S.J. BAKER: The amendments appear sensible, depending on instructions, and it appears to be an appropriate change.

Amendments carried; clause as amended passed.

Clause 6 passed.

Clause 7—'Obtaining information for purposes of audit for examination.'

Mr S.J. BAKER: I seek some clarification of clause 7 in respect of costs. Even though I have read the material that is available, I am still confused. If a client goes to a solicitor with a case that they want pursued in the courts, the solicitor can take that case on the basis that, if the case is won, the solicitor can get double the normal fee, but if it is lost the solicitor gets no fee. Can that be clarified?

The Hon. G.J. CRAFTER: I think we are dealing with clause 9, not clause 7, but I am quite prepared to assist the honourable member in that regard.

Negotiations are currently under way with the Law Society about this matter of the fees that are appropriate in the contingency situation. The figure of 100 per cent of the Supreme Court scale has been used as the basis for those discussions, but that has not been resolved. It is intended that, when this matter is resolved, they will be incorporated in the professional practice rules of the profession.

Mr S.J. BAKER: I seek a further point of clarification. Did I get it right in terms of 'the winner takes all'? If a solicitor agrees to take a case on a success basis, and the matter is settled out of court or before the court in favour of the solicitor's client, does the solicitor receive a double fee? On the other hand, if the solicitor is not successful in negotiating an out-of-court settlement, or in winning the case, does he receive nothing?

The Hon. G.J. CRAFTER: Fundamentally, whilst the figures have not yet been resolved, that is the practice that applies in other jurisdictions. The choice is whether a client is able to get their case to court or not, or they are able at least to front up to their opponent on an equal basis, that is, with a chance of getting it to court. A practitioner who wants to conduct his or her practice in that way can construct their practice so that they take account of the number of matters that they deal with in hits way. It is not necessary to say that they will get no reward for their services should they lose the case, although that may be the agreement that they reach with their client. Indeed, I think some practitioners would probably already be in that situation, where clients simply do not have any money. Usually they would get at least their disbursements paid, but in some other cases they may get a minimal payment if they should lose the matter. Of course, their ability to take an amount greater than the normal fee, should they win, allows them then to take on more cases of this type in order to construct the viability of their practice.

Mr S.J. BAKER: I thank the Minister. The Minister's explanation indicates that my thoughts were right. From an outside observer's point of view it appears that a lot of civil cases are settled out of court. Under those circumstances, I would think that perhaps the insurance industry has some cause for concern, given that on balance in most cases there are some rights and some wrongs. I do not know how we divide up a winning case and a losing case under those circumstances. If someone on a murder charge is found not guilty, it is simple, but when another charge is found, or a compromise is reached with an out of court settlement, I do not know what success means under those circumstances. As a lay person, I guess I will have to wait and see what happens.

The Hon. G.J. CRAFTER: The insurance industry has made representations to the Government on this measure and supports the introduction of contingency fee arrangements. Clearly, it is its belief that it is very much in its interests to see justice prevail in the community, particularly in this area of civil actions where otherwise matters are left to the imbalance of a system where the client with the assets and the wherewithal to take proceedings can crush the other party that simply does not have the resources to take on these matters. We get a distortion of activity in the marketplace and unfair advantage being taken, and often that has an impact on the insurance industry; therefore, the loss spreading that occurs eventually falls back on the insurance industry in a negative way. So, clearly it is in the interests of the marketplace and the insurance component of that marketplace to see as many people as possible take their actions through and have them properly adjudicated by the courts.

Clause passed.

Clauses 8 to 19 passed.

Clause 20—'Insertion of heading.'

Mr S.J. BAKER: I am not sure whether this is a step forward, but I will take the opinion of those people who practise in the profession. A number of cases have been brought to my attention where there has been overcharging—in fact, there has been deliberate fraud. On each occasion I have suggested to the person concerned that they have the matter taxed. I have not missed on one case yet where I have looked at the accounts and deemed that overcharging has occurred. So, from that point of view, at least for the people who have seen me, that process of taxing has been a very important fall-back position. I am not sure that this intermediate position is appropriate. I do perceive that it can have some benefits; most lawyers operate fairly and diligently and do not blow out their bills, although, as in all professions, there is overcharging.

In my early days I referred a number of complaints to the committee which were never really proceeded with and which were quite serious complaints about malpractice. One or two of those individuals are behind bars or have been discredited in the process, but no action was taken by the complaints committee at the time. It was said, 'Look, it is really a matter that is outside our jurisdiction; we really do not want to take it any further.' Given that background, I am not sure whether this is an appropriate method of giving people some justice or capacity for justice if they really believe they have been overcharged. In certain cases, I think it is quite clear that, when solicitors give their bills, they do not itemise their accounts. I have had one solicitor who took a year to give an itemised account. One of the people I was dealing with kept a notation of all the contact points, and this account was an absolute fiction.

I am not sure in my own mind whether we should not ensure absolutely that every client gets a full and detailed account in the first place, immediately after a case is finished. I think that would be a most efficient method whereby people could check off the dates they had contact with their solicitors. It does not happen. The bill comes forward and they get a gross bill for $20 000 or $30 000, and somebody says, 'I would like to know what the details of that are', and then, six months later, out comes the itemised account. It is simply not good enough.

I believe that, if a person is seeing a solicitor, barrister, QC or whoever, immediately the case is finished an itemised account should be provided, showing the time that was spent, the occasion of the contact and the charge that was made for it. In those circumstances, one can argue principally about whether the charge for that service, whether it be for five minutes, 20 minutes or half an hour, is appropriate. It is never easy but it is even harder when some of these accounts do not come out until well after the event and the memory of the preceding contacts has long faded. I think there are ways

and means of overcoming the problems, but I am left in the hands of people more experienced than I. I have reservations, but we will see what happens in practice.

The Hon. G.J. CRAFTER: Following the white paper process, the Law Society put into place a professional practice rule about the provision of much greater information to clients, particularly with respect to costs.

Clause passed.

Remaining clauses (21 to 26) and title passed.

Bill read a third time and passed.

ADJOURNMENT

At 5.28 p.m. the House adjourned until Tuesday 30 March at 2 p.m.