LEGISLATIVE COUNCIL

Tuesday 3 November 1987

The PRESIDENT (Hon. Anne Levy) took the Chair at 2.20 p.m.

The Clerk (Mr C.H. Mertin) read prayers.

ASSENT TO BILLS

His Excellency the Governor, by message, intimated his assent to the following Bills:

Appropriation,
Business Franchise (Petroleum Products) Act Amendment,
Constitution Act Amendment,
Education Act Amendment,
Jurisdiction of Courts (Cross-vesting),
Planning Act Amendment (No. 2),
Real Property Act Amendment (No. 2),
Summary Offences Act Amendment,
Technical and Further Education Act Amendment.

DEATH of Mr W.P. McANANEY

The PRESIDENT: I draw to the attention of members the recent death of Mr W.P. McAnaney, the former member for the electorate of Stirling from 1963 to 1970 and for the electorate of Heysen from 1970 to 1975 in the House of Assembly. As President of the Council, I express the deepest sympathy of the Council to his wife and family in their sad bereavement, and I ask members to stand in silence as a tribute to his memory and lengthy public service.

QUESTION ON NOTICE

DEPARTMENT OF LANDS PREMISES

The Hon. R.I. LUCAS (on notice) asked the Minister of Health:

1. On what date was the decision taken for the Department of Lands to move into the Flinders Street Centre of the Education Department and did the Minister approve the decision?

2. What is the estimated cost of the transfer of the department?

3. What was the full-year cost of the rental paid by the Department of Lands at their old offices, and what is the estimated full-year cost of the rental to be paid at the new premises?

The Hon. J.R. CORNWALL: The replies are as follows:

1. *(a)* The relocation was approved by the Government Office Accommodation Committee on 11 November 1986.

As the department had no choice in the relocation (the lease with the Adelaide City Council expired on 31 July 1987 and was not renewed) negotiations were handled on a normal operational basis between this department and the Department of Housing and Construction with agreement at CEO level.

(b) yes.

2. $214 000.

3. *(a)* $125 000.

(b) $44 000.

PETITION: FIREARMS

A petition signed by 42 residents of South Australia praying that the Council would legislate to restrict the licensing of firearms and make illegal the possession or ownership of firearms by private individuals in the metropolitan area was presented by the Hon. I. Gilfillan.

Petition received.

PAPERS TABLED

The following papers were laid on the table:

By the Attorney-General (Hon. C.J. Sumner):

Pursuant to Statute—

Annual Reports, 1986-87
- Court Services Department;
- Department of Labour;
- South Australian Metropolitan Fire Service;

South Australian Housing Trust—Financial and Statutory Reports, 1986-87.

Rules of Court—Supreme Court—Supreme Court Act 1935—Companies Rules—Gazettes.

Acts Republication Act 1967—Industrial Conciliation and Arbitration Act 1972 and Industries Development Act 1941—Reprint—Schedules of Alterations.

Regulations under the following Acts—
- Classification of Publications Act 1974—Exemption;
- Criminal Law (Enforcement of Fines) Act 1987—Community Service Order;
- Occupational Health, Safety and Welfare Act 1986—
  - Power Driven Machinery;
  - Logging Industry;
  - Construction Safety;
  - Pesticides;
  - Proceedings;
  - General;
  - Industrial Safety;
  - Workplace Registration;
  - Rural Industry Machine Safety;
  - Health and Safety Representatives;
  - Work Related Accidents;
  - Commercial Safety.

By the Minister of Health (Hon. J.R. Cornwall):

Pursuant to Statute—

Coast Protection Board—Reports, 1983-84, 1984-85, 1985-86;

Committee Appointed to Examine and Report on Abortions Notified in S.A.—Report, 1986;

Reports, 1986-87—
- Chiropractors Board of South Australia;
- Office of the Commissioner for the Ageing;
- Engineering and Water Supply Department;
- Occupational Therapists Registration Board of S.A.
- Planning Act 1982—Crown Development Report by S.A. Planning Commission, Proposed Division of Land surrounding Martindale Hall.

Racing Act 1976—Rules of Trotting—Studmaster Registration and Fees.

Medical Practitioners Act 1983—Regulations—Practice Fees.

Department of Environment and Planning—Report, 1986-87 and Agency Annual Reports.

By the Minister of Tourism (Hon. Barbara Wiese):

Pursuant to Statute—

History Trust of South Australia—Report, 1986-87;

Non-government Schools Registration Board—Report, 1987;

South Australian Timber Corporation—Report, 1986-87;

Education Act 1972—Regulations—Registration Fee.

MINISTERIAL STATEMENT: ABORIGINAL HEALTH ORGANISATION

The Hon. J.R. CORNWALL (Minister of Health): I seek leave to make a statement.

Leave granted.

The Hon. J.R. CORNWALL: On 22 October 1987 I advised the Council that the South Australian Health Commission was canvassing options for change at the Aboriginal Health Organisation, including the reallocation of staff and resources. I explained why the dismantling of the AHO had been foreshadowed. The reasons include the changing role of the organisation over recent years and increasing concern about its failure to competently deal with health problems within Aboriginal communities. Members will recall that some of the problems were identified following a review of the management structures and processes of the AHO by the Department of Personnel and Industrial Relations. I have now received representations from a number of persons employed at the AHO who wished to register concerns about the organisation, its operation and its effectiveness. At a meeting with those staff members yesterday, I gave an undertaking to make a ministerial statement today. The purpose of this statement is to provide an update on the progress that has been made and to publicly acknowledge my support for the contribution to Aboriginal health of workers employed by the AHO.

The Department of Personnel and Industrial Relations report on the management structure and processes of the AHO lists a number of major concerns. These include the destructive effect on the coordination and improvement of service delivery from the high level of emotion, disagreement and competition for resources amongst those engaged in Aboriginal health. The report points out that the AHO is now minimally involved in service delivery and has proved unable to promote unity and a coordinated approach to problem solving. The Chairman of the South Australian Health Commission, Dr Bill McCoy, has personally visited the AHO to consult with management and staff.

In addition, following consultations with the Commonwealth, it has been agreed that a senior commission officer and a Commonwealth Government representative will make a joint strategy assessment of the AHO as a matter of urgency. As I have already informed the Council, other Aboriginal health services in South Australia have approached me to express dissatisfaction with the performance of the AHO and to seek a redistribution of resources in the best interests of Aboriginal communities. Consistent with our policy of consultation, Aboriginal communities will be involved in any redirection of the AHO together with any reallocation of staff and resources. In the light of the difficulties experienced in dealing with the AHO, particularly in management areas, I have delayed making appointments to the board. As a result, the membership of the former appointees lapsed on 24 October 1987.

It is not my intention to appoint a new board until other Aboriginal health services have been consulted and given an opportunity to make nominations for my consideration. I should point out that all the remaining members of the lapsed board were resident in Adelaide (although some, I understand, were residing in non-metropolitan areas at the time of their appointment). Clearly, we must ensure that health services outside the metropolitan area are directly represented on the new board. Accordingly, the Health Commission has convened a meeting for Thursday 6 November at which Aboriginal health services will be represented.

The Health Commission and the Commonwealth Department of Aboriginal Affairs will closely support the new board. To strengthen the management of the AHO during the development of the proposed strategy, the board will be offered the services of a seconded Health Commission officer for an interim term. If this offer is acceptable, it will resolve, at least temporarily, a major shortcoming which the lapsed board failed to address effectively. Despite a personal undertaking given to me, as Minister, by the former Chairman of the AHO, the position of Director has not been filled permanently. An organisation with a $1.6 million budget cannot be managed indefinitely by acting administrators, especially when that situation has persisted for several years.

Ms President, on Thursday 29 October, following a written request from Aboriginal health workers employed at the AHO, a Health Commission officer went to the organisation's Norwood offices. I am advised that between 15 and 20 persons attended this meeting. During the course of the meeting a number of serious criticisms of the management of AHO emerged. A list of complaints was drawn up and noted on a blackboard. This list was subsequently forwarded to my office with a written request, from Aboriginal health workers and other staff members, for a meeting with me. Details of their complaints that were raised can be dealt with appropriately by the joint Commonwealth/State stategy team.

As a result of that request, I met yesterday with 11 staff members of the AHO, including Aboriginal health workers, hospital liaison officers, nurses and health educators. A number of the criticisms made by the Aboriginal health workers at their meeting with the Health Commission officer last week were reinforced. These included allegations of victimisation, favouritism, threats of physical violence, lack of communication and inefficient utilisation of resources. In addition, I was able to reassure the staff that, contrary to statements attributed to the former Chairman of AHO at a recent staff meeting, there will certainly be very substantial changes in the next six months.

The staff members present were pleased to accept my reassurance which I indicated I would place on the record in the Parliament, as I am now doing. I also agreed to state unequivocally that my concerns about the problems of the AHO and the need to reallocate resources was in no way related to any doubt which I have concerning the ability or professionalism of the Aboriginal health workers, the Aboriginal hospital liaison officers, nurses or field staff. This public statement is made in response to the request, as outlined in the letter sent to my office, for me to set the record straight. That letter said, in part:

> We know that the Minister knows we are not to blame, but many people are laying the blame on us.

I do indeed know that the problems of the AHO cannot be blamed upon the health workers. The poor performance of the Aboriginal Health Organisation in recent years appears to be directly related to inefficient management and an ineffective board of management. The process of strategy development, community consultation and better utilisation of resources should be conducted by persons of goodwill and commitment to the interests of all Aboriginal people. I will do everything in my power to ensure that that occurs.

QUESTIONS

WAGE CLAIM

The Hon. M.B. CAMERON: I seek leave to make a short statement prior to directing to the Minister of Health a question on the subject of the 4 per cent increase in salaries.

Leave granted.

The Hon. M.B. CAMERON: Members would have read in newspapers of recent days and heard radio and television reports of the resolution of an industrial dispute involving

the State Government and the Federated Miscellaneous Workers Union, in regard to that union's claim for the 4 per cent second-tier wage increase. It appears that the union won its claim for the rise after the Government agreed to use a Victorian public sector health agreement as the model for settlement. The union has also claimed that the Government is no longer seeking the natural attrition of some 240 jobs as a costs offset in awarding the increase. It appears, therefore, that the Government must have obtained assurances from the union that the offsets would be produced from elsewhere.

On 22 October the Minister of Health told this Council that the Government was negotiating with the FMWU and had stipulated that there were areas in which savings could be made. I quote the Minister as follows:

> We are negotiating with the FMWU with regard to its employees, principally in the areas of cleaning and catering and in relation to porters and orderlies.

The Minister then went on to give an example which involved a stipulation that the Government wanted hospital cleaners to achieve a rate of 1 000 square feet of cleaning during a 1.2 hour period. He gave examples of hospitals that did not match that. The Minister pointed out that the rate had already been achieved at some public hospitals, even though the 1.2 hours rate was considerably greater than that of cleaning staff employed in private hospitals, but he conceded that staff at the Children's Hospital and Royal Adelaide Hospital still had some way to go in reaching that figure. The Minister stated:

> So there is room there, quite specifically, for a significant productivity increase.

The Minister was also adamant on that date that, to achieve reductions in the cleaning rates of 1.6 hours to 1.2 hours per 1 000 square feet, there would be need for some attrition of staff. I again quote the Minister from *Hansard* of 22 October when he stated:

> It is pretty obvious if you work on 1.2 hours per 1 000 square feet, instead of 1.4 or 1.6, then you will require fewer cleaners in the work force. It is pretty obvious that there would therefore be fewer cleaners at the end of a period.

My questions to the Minister are: what trade-offs have been obtained from the FMWU to enable the State Government to agree to grant the second-tier wage increase to the union in the areas outlined by the Minister, that is, in relation to cleaning staff, porters and domestics? If no agreement has been reached as yet, what will be the basis for that agreement? Will the Minister detail what he has in mind in terms of other areas of the hospital, one of which he has already given relating to the 1.2 hours per 1 000 square feet of cleaning? Has the union agreed to comply with the 1.2 hours per 1 000 square feet cleaning rate in all public hospitals? What reduction in the number of cleaning staff will the Government require from the union as a result of hospital cleaning being completed in a shorter time?

The Hon. J.R. CORNWALL: The Cabinet has supported in principle the basis of the Victorian settlement. The negotiations will continue in the Industrial Commission. If, as I expect, the Victorian precedent with regard to the members of the FMWU and the storemen and packers employed in the public hospitals system is followed, then I believe that, once an agreement has been reached within the Industrial Commission, the commission will supervise the implementation of that agreement. The parties will be recalled to the commission from time to time, as they are being recalled in Victoria, to report progress and to enable the Industrial Commission to assure itself that the terms of the settlement are being implemented.

The Hon. M.B. CAMERON: As a supplementary question, could the Minister indicate what disagreement has occurred between the storemen and packers and the Health Commission in relation to an agreement that the storemen and packers allege was to have been delivered to them, I think it was yesterday, and as a result of which they have now imposed work bans, as I understand it?

The Hon. J.R. CORNWALL: As so often happens, Mr Cameron does not understand correctly at all. There are no work bans at this time. The matters are being pursued in the commission. There was some sort of brief flurry yesterday when officials of the Storemen and Packers Union alleged that the commission or the DPIR (or both) had not delivered some sort of document or details precisely on the stroke of 3 o'clock. That was all something of a storm in a teacup and matters are proceeding as they ought to be before the arbitrator in the commission. They have gone to the umpire. I know that Mr Cameron may be more than a smidgin disappointed about that but, nevertheless, the way things look at present they are proceeding quite positively and quite satisfactorily.

SKAL CONGRESS

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Tourism a question about the SKAL conference.

Leave granted.

The Hon. L.H. DAVIS: Yesterday the world SKAL congress, a most prestigious gathering of travel agents, was officially opened at the Adelaide Festival Centre. This four-day congress provides many key travel agents from countries around the world with an excellent opportunity to see Adelaide and other visitor attactions in South Australia and interstate. However, I understand that yesterday at lunch time quite a few delegates to the SKAL conference walked along the North Terrace cultural precinct and were rather startled to discover that both the Art Gallery and the Museum were closed. As the Minister would be aware, the SKAL congress has quite a heavy agenda and the lunch time is one of the few opportunities for people to see Adelaide first hand.

I made inquiries and discovered that the Art Gallery and the Museum are closed because of industrial disputation: the Art Gallery is closed between 12 o'clock and 1 o'clock and the Museum is closed between 12 o'clock and 12.45 p.m. I understand that this disputation is continuing, and no time has been put on its ending: it is to continue into the foreseeable future. This industrial disputation is occurring because of the claim of certain unions which are pursuing a 4 per cent increase in wages. There is a notice on the door of the Museum indicating that it is closed due to industrial action and that the management apologises for any inconvenience that may be suffered. Obviously, this is a matter of some concern, certainly to the Opposition, and I raise this matter in the public interest because not only do we have the SKAL—

The PRESIDENT: Order! The honourable member received leave from the Council to ask a question relating to the SKAL conference.

The Hon. L.H. DAVIS: Right, that is what I am addressing.

The PRESIDENT: I hope that the honourable member can make his explanation relevant to the SKAL conference.

The Hon. L.H. DAVIS: Well, it is relevant to the SKAL conference, I would have thought, Madam President.

The PRESIDENT: It has not yet occurred to me how it is relevant to the SKAL conference.

The Hon. L.H. DAVIS: Madam President, I am referring to the fact that delegates to the SKAL conference peram-

bulating along North Terrace—Adelaide's cultural precinct—were unable to enter the Art Gallery and the Museum. I believe that is quite relevant to the question I am asking. I direct the following questions to the Minister:

1. Was the Minister and/or the Government aware of these impending bans on the Art Gallery and Museum and perhaps other cultural institutions on North Terrace and elsewhere in Adelaide before the SKAL conference commenced?

2. Was there any discussion with the unions before the SKAL conference commenced to impress on them the importance of this congress?

3. In view of the fact that the Grand Prix is shortly to be held, can the Minister assure the Council that the Government will make every effort to overcome the problem that is currently occurring with work bans in key institutions in the North Terrace cultural precinct?

The PRESIDENT: Order! The third question has nothing to do with the SKAL conference, which was the topic of the question.

The Hon. L.H. Davis: Madam President, I disagree.

The PRESIDENT: The honourable member sought leave to make an explanation.

The Hon. L.H. Davis: Whether she chooses to answer it is another matter.

The PRESIDENT: The honourable member sought leave to make an explanation before asking a question relating to the SKAL conference, so the questions must relate to the SKAL conference. If the honourable member wishes to ask a question about union bans, he can seek leave to make an explanation about union bans. But he sought leave to make an explanation before asking a question relating to the SKAL conference, so the questions must relate to the SKAL conference.

The Hon. L.H. DAVIS: With respect, Madam President, I simply cannot agree with that ruling.

The PRESIDENT: Is the honourable member moving dissent from my ruling?

The Hon. L.H. DAVIS: No, I am not; I am just making a point.

The PRESIDENT: I have made the point that the honourable member has sought leave to make an explanation before addressing a question to the Minister about the SKAL conference. When the honourable member sought leave he mentioned nothing at all about union bans, the Grand Prix or anything else—the question related to the SKAL conference. In those circumstances I feel that any question which does not relate to the SKAL conference is out of order.

The Hon. BARBARA WIESE: It occurs to me that it is drawing a rather long bow to talk about the SKAL conference and industrial bans in the one mouthful, and perhaps the honourable member's explanation might have been slightly more relevant to the questions. The questions relate very much to the portfolio responsibilities of my colleague the Minister of Labour, who is responsible on behalf of the South Australian Government for negotiating with the trade unions that are currently in dispute with the Government in relation to the 4 per cent wage issue. Members of those unions who are employed by the Art Gallery and the museum in consultation with their unions, as I understand it, have chosen to limit the work that they do in support of their claims.

As to whether the Minister was aware of the pending action of the employees of those two North Terrace institutions prior to action taking place, I cannot say. I was not aware of the action that was to be taken prior to the arrival of the SKAL delegates in South Australia. It is regrettable that institutions such as the Art Gallery and the museum, which are among our important tourist attractions, will not be open at certain hours of the day during the period that some of these prestigious visitors are in South Australia. I think we all appreciate that these things happen from time to time in one industry or another when there is an industrial dispute. It is one of those things which unfortunately we must live with in a democracy. While it may cause some inconvenience to people, these issues must run their course and employers and employees must negotiate their way through various problems that they might experience at any one time.

So while I certainly regret that some of the SKAL delegates will not be able to fulfil their wish to see the Art Gallery and the museum, it is one of those things that I think is unavoidable at this time. I do not know whether these matters will be resolved by Grand Prix time when there will be other visitors to this city. I am not the Minister responsible for the negotiations on these issues, but I know that the Minister of Labour is doing as much as he can to resolve these issues as quickly as he can and, if they are resolved by Grand Prix time, I for one will be delighted, as I am sure other members of the Government and the Opposition will be.

ADELAIDE REMAND CENTRE

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about the Adelaide Remand Centre.

Leave granted.

The Hon. K.T. GRIFFIN: There are growing numbers of complaints by members of the legal profession about problems of access to the new Adelaide Remand Centre to take instructions from their clients. I have raised this matter before but no satisfactory answers have been given. There are also problems for consultants such as psychiatrists gaining access at a convenient time to interview prisoners as part of the preparation of pre-sentence and other reports. The matter is of serious concern because it affects the ability of lawyers to represent their clients adequately, and creates considerable pressures for lawyers. It presents problems for other consultants in preparation of reports required by the courts.

Those who are in the Adelaide Remand Centre are on remand awaiting trial. They are innocent until proved guilty and every reasonable facility ought to be available to enable them adequately to instruct their lawyers and prepare and present their cases. With defendants on remand in the Adelaide Gaol, on the other hand, access is available to lawyers and other consultants easily on the same day of a request for access and at short notice. In the new Remand Centre, in a facility which is meant to be modern with all sorts of new technology, such access is impossible.

Appointments have to be made well in advance by lawyers to see their clients and by consultants. The general rule is a day's wait to get in. In urgent cases it may be possible to get in late in the day but special pressure has to be brought to bear to get such access. Two days wait from the request to see a defendant until gaining access is not uncommon. Frequently, the excuse is that a prisoner is not available because of 'activities' or lunch. But a busy criminal lawyer who finds a case is adjourned or completed early, having a previously unforeseen hour or two available, and seeking to visit a client in the Remand Centre to get instructions to best use that time and give good service to the client cannot get into the Remand Centre then because an appointment has not been made.

I am told that making defendants available at short notice to their lawyers and other consultants would not really present a problem for the staff because there are more than adequate staff to maintain security and push buttons. The difficulty in gaining access quickly to clients is a major headache. In some cases, it has been suggested to me that it has contributed to inadequate information about a prisoner on matters such as questions of parole being presented to court. My questions to the Attorney-General are as follows:

1. Does the Attorney-General agree that it is important for lawyers and other consultants to have access at short notice to their clients who are on remand in gaol?

2. What steps will the Attorney-General take to ensure that prisoners on remand are not prejudiced in the preparation of their cases as a result of the difficulties for their lawyers and others in gaining access to the new Remand Centre?

3. Will he see that access to the new Remand Centre for lawyers and consultants is made more flexible?

The Hon. C.J. SUMNER: I do not know whether the facts alleged by the honourable member are correct.

The Hon. K.T. Griffin: They are.

The Hon. C.J. SUMNER: You made the allegation, but I am not sure that that is necessarily—

The Hon. K.T. Griffin: The lawyers have all been talking about it.

The Hon. C.J. SUMNER: Criminal lawyers may have been talking about it, but they have not been talking to me about it and I have not been given any information indicating that there is a problem. In general terms, obviously lawyers should have access to their clients to deal with issues pre-trial, but that must also be measured against the practicability of doing it at the convenience of all parties concerned, including staff at the Adelaide Remand Centre. I will have inquiries made relating to the honourable member's question and bring down a reply.

ENFIELD COUNCIL

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Local Government a question about the Enfield council.

Leave granted.

The Hon. J.C. BURDETT: Recently, an issue was raised with the Minister concerning a certain Councillor Binka of the Corporation of the City of Enfield. A ratepayer who had a planning application before the council consulted Councillor Binka who advised the ratepayer, took some photographs and took some follow-up action. I am informed that Councillor Binka sought to charge the ratepayer $20 for professional services and also $10 each for two photographs which he took. I understand that these matters were brought to the attention of the Minister and she wrote to His Worship Mayor R.J. Norton. In her letter she said:

> The Crown Solicitor has examined the information provided and the Government's Investigations Officer has interviewed Mr [ratepayer's name]. On the basis of the information available the Crown Solicitor has advised that there appears to have been no breach of the Local Government Act or other legislation committed by Councillor Binka in his dealings with [ratepayer's name].

I emphasise 'in his dealings with [the ratepayer]'. That advice, Madam President, in regard to the legality or otherwise of the dealings between the councillor and the ratepayer is readily accepted. However, I am also informed that the councillor seconded a motion on the acceptance of the ratepayer's planning application and otherwise took part in deliberations on the matter. The question arises whether he was in breach of section 147 (VIII) which prohibits a member from taking part in any discussion before council relating to any matter in which he is personally interested whether as principal or agent, or of section 755, which provides the penalties. This question was not addressed in the Minister's letter to the Mayor, and this question of conflict of interest was not referred to. The Minister's officers and the Crown Law officer may well have felt that this issue was not raised in the reference to them, but I understand that it was raised, at least to the Minister's department.

The question of conflict of interest does frequently arise, and any rulings or advice on the subject are valued by councillors and council officers. My question is: was the subject of conflict of interest in the meetings of the council, either under the above two sections or otherwise, considered by the Crown Solicitor and, if so, what was the substance of her advice on that issue?

The Hon. BARBARA WIESE: This issue has come to my attention, and I think it is a little more complicated than the honourable member has suggested, because the ratepayer who was originally involved with the allegations that were made against Councillor Binka concerning conflict of interest has subsequently denied that the alleged events occurred, and has indicated that he does not wish to play any further role whatsoever in this issue. He certainly has no intention of pursuing the matter in any way.

Also, Councillor Binka has denied any allegations that were made against him concerning his alleged involvement with the ratepayer, and denies that the events which were alleged to have occurred in fact did occur. However, when the issue was raised with me under the conflict of interest provisions of the Local Government Act, I had the matter referred to the Crown Solicitor for investigation. The opinion that I received from Crown Law indicated to me that there were no grounds upon which I should pursue the issue of conflict of interest.

As far as I recall, it was not just the allegations that were made against Councillor Binka but also the information relating to Councillor Binka's participation in council meetings which were the subject of investigation by Crown Law and upon which Crown law based the opinion to me. As the honourable member has indicated, I have subsequently written to the Mayor of Enfield advising him that there are no further grounds upon which I should pursue this matter.

The Hon. J.C. BURDETT: As a supplementary question, would the Minister ascertain whether in fact the Crown Solicitor addressed the subject of conflict of interest and whether that was part of the advice that was tendered to the Minister, and would she advise me of that?

The Hon. BARBARA WIESE: I will be happy to check the matter but, as I indicated, it is my recollection that those issues were addressed by Crown Law. To satisfy everyone that that is so, I will be happy to check that again and bring back further information for the Council.

SCRATCH TICKETS

The Hon. G.L. BRUCE: Has the Attorney-General an answer to the question I asked on 6 October on the subject of *News* bingo?

The Hon. C.J. SUMNER: The scratch bingo tickets in the *News* are part of a promotion by that paper entitled 'Grand Prix Scratch Card Game' which commenced on 5 October 1987. The *News* has previously conducted similar promotions, the most recent being the 'Giant Scratch Card Game' in July 1987. I have been advised by a spokesperson for the *News* that they are aware of the current situation of

persons not receiving cards when they purchase the newspaper. The spokesperson advised that the *News* is not in a position to accept responsibility for non-receipt of scratch tickets because of the number of people involved in distribution and sale of the newspaper. They will, however, if contacted by the consumer, forward a complimentary card and list of previous numbers advertised to the consumer as a matter of urgency.

The cards are inserted manually into the newspaper, and I am advised that this is the most effective system of ensuring that cards are inserted into all newspapers. There will, of course, be a percentage of newspapers which do not contain a card either through omission or from cards slipping out of the paper at the various stages of distribution and sale. It is not possible to isolate the point at which these cards disappear from the newspaper, and it is therefore difficult to place the responsibility on any particular individual or company.

ORGANOCHLORINE WASTES

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Local Government a question on the subject of organochlorine wastes.

Leave granted.

The Hon. M.J. ELLIOTT: I think that these questions quite properly go to the Minister of Local Government as the person in charge of the Waste Management Commission. I asked questions on 8 April concerning organochlorine wastes and, in particular, talked about the 15 tonnes of organochlorine wastes that needed to be disposed of each year in South Australia. Most of these wastes, I believe, were PCBs, and I understand that at that time, at least, we had been shipping the waste overseas. I believe that the recall of agricultural chemicals has dragged in about another 30 tonnes of liquid wastes and something like two tonnes of solid wastes.

The organochlorines are very stable substances, and a concern which has been brought to my attention relates to what happens if, when they are being stored in the metropolitan area or some other urban area, a fire occurs. The fact is that if those substances went up in smoke they would not break down, because of their stability, but would be even more dangerous than the Chernobyl type of situation, at least in the short term, in the metropolitan area. So, questions arise not only in relation to their storage but also regarding their intended disposal. I believe that the Minister of Agriculture was quoted as saying that he thought an incinerator ship might be brought to Australia, as has been done once before.

I understand that incinerator ships have been banned in the United States, and that the incinerator ship *Vulcanus* is having all sorts of problems at the moment in the North Sea due to the upset that has been caused by its use. I ask the Minister the following questions. First, will she assure this Council that organochlorines are not being stored in the metropolitan area or any other urban area? Secondly, with what other chemicals or materials are they being stored? Finally, will the Minister assure this Council that an incinerator ship will not be used to dispose of these wastes?

The Hon. BARBARA WIESE: I think that this is a multidisciplinary issue which is of concern to a number of Ministers in the State Government. With respect to the agricultural chemicals to which the honourable member has referred, the Minister of Agriculture and the Minister of Labour, as I understand it, are taking responsibility for the collection and disposal of those chemicals. I understand that the intention is to do as we have done in the past, that is, dispose of those chemicals by sending them by ship to, I think, the United Kingdom, although I would not be certain of that.

The future disposal of such chemicals is a matter which needs to be addressed, not only in South Australia but nationally. As some members would be aware, a number of suggestions have been made at one time or another, and numerous studies undertaken, to determine the appropriate way in which to deal with this problem. At one stage a suggestion was made to build an incinerator near Broken Hill which would take the waste from various parts of the eastern States where most of this type of waste is collected. By comparison, very little of this sort of waste is collected in South Australia. It was the view of the Minister for Environment and Planning at the time that the idea was being considered that it was not appropriate to transport such waste across the Murray Darling Basin. As a result of the objections by the Minister for Environment and Planning, and for other reasons, I understand that idea has now been dropped.

An idea was floated recently in Western Australia that an incinerator should be built somewhere in outback Western Australia to be used for that State's waste only. It was not the intention of the Western Australian Government to take waste from any other State. So, the discussions about this matter have been numerous and are ongoing, but nobody would suggest that no action should be taken. The most appropriate action must be determined to deal with not only South Australia's problems but also problems experienced by people in New South Wales and Victoria, in particular, because the most waste is collected in those States.

The Waste Management Commission, which is the pollution authority under my ministerial control, is interested in the matter and has taken part in many of the discussions and meetings that have occurred in the past couple of years in relation to this question. The commission is keen to assist in whatever way possible to find a solution to this question, but a number of difficult issues have to be overcome and until that happens we cannot say as a Government what our preferred position will be for the long-term disposal of these wastes. However, in the meantime it will be possible to continue the arrangement that has existed for some time whereby these wastes can be disposed of by transportation by ship to an incinerator in Europe.

As to the suggestion made by my colleague, the Minister of Agriculture, about bringing incinerator ships to South Australia, I am not sure whether he has been accurately reported, whether that is his view or whether it is a suggestion that he would like investigated by the appropriate authorities. I cannot give any assurances one way or the other with respect to that question, but if the Minister has raised this issue for serious investigation I think it deserves to be looked at in a serious way. If dangers exist to the South Australian community by such a method of waste disposal I am sure that, if it is considered desirable, that proposal will be rejected.

The Hon. M.J. ELLIOTT: I ask a supplementary question. As different Ministers are involved am I to infer that there are different stockpiles of these organic chlorines and are they in the metropolitan area?

The Hon. BARBARA WIESE: I do not know where the chemicals are stored but I will seek that information and bring back a report.

CHILDREN IN CARE

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Community Welfare a question about abuse of children in care.

Leave granted.

The Hon. DIANA LAIDLAW: As most honourable members know, the Department for Community Welfare arranges alternative family care, including foster care, for children whose parents or guardians are unwilling or unable to care for them. I have been increasingly made aware of the incidence of abuse of children in alternative or substitute care; this is becoming an increasing problem. It appears that an increasing number of children who have been victims of abuse or neglect within their own families are the subject of abuse or allegations of abuse in homes that are meant to provide a caring and safe environment.

In respect to the incidence of abuse of children in care I have ascertained that the Department for Community Welfare has become sufficiently concerned about this problem to warrant the establishment of an internal departmental review of the problems and procedures involved.

I ask the Minister, considering the serious nature of abuse and allegations of abuse of children in care and the implications for those children or their natural families, does he concede that it is more appropriate to have a high-powered investigation of this matter, which would include representatives of foster care workers and natural parents, rather than to limit those investigations to an internal departmental inquiry? If so, does the Minister consider that it is opportune that such an inquiry should look at other vexed issues in relation to foster care? He would be aware of them, but I name just a few: payments to foster parents; payments by natural parents for the upkeep of their children placed in foster care; authority for natural parents to choose care givers; and the rights and responsibilities of foster care workers and natural parents and foster care parents to clarify issues of access and matters of privacy.

As I indicated, the Minister would be aware that all of those matters are problems and decisions must be made at some stage in the near future. It could be that an inquiry into the abuse of children in care could also look at those matters. If the Minister does not agree that there is merit in establishing an external inquiry into foster care and related issues, will he explain why not, especially when one considers that the Minister was earlier prepared to initiate major investigations into adoption and children in need of care?

The Hon. J.R. CORNWALL: I hope that that was not an attempt to get a cheap headline.

The Hon. Diana Laidlaw: No, it was an expression of genuine concern.

The Hon. J.R. CORNWALL: In that case, I wonder why Ms Laidlaw did not produce any objective evidence. The whole tenor of the explanation and the thrust of the questions seemed to be based on a series of innuendoes.

Members interjecting:

The Hon. J.R. CORNWALL: In this case Ms Laidlaw has attempted to cast a slur on the hundreds of foster parents in this State who do a remarkable job. There are many hundreds of foster parents who, in the course of fostering—each of those foster families—take anything up to, or in excess of, a dozen or a score of children over a period of years.

They do a magnificent job, and I pay a tribute to them in this place. I think it is quite inappropriate for the Hon. Ms Laidlaw to cast a slur, by inference, on those very many hundreds of fine foster parents. The Hon. Ms Laidlaw talked about the serious nature of the abuse, without producing one scintilla of evidence, except the mention of an alleged internal inquiry and, on the strength of that, called for some wide-ranging public inquiry. I will not specifically comment on the questions and the way that they were phrased. However, what I will do (because it is far too important a matter to be bandied around in this Mickey Mouse House in that way) is that I will check out the alleged serious abuses with my Chief Executive Officer. I will then ensure that tomorrow, by way of ministerial statement, I will respond in a measured and responsible way to what I repeat were questions which tended to cast a slur on the many hundreds of very fine foster parents in this State.

The Hon. M.B. CAMERON: On a point of order, Ms President. Twice in recent times the Minister of Health has referred to this Chamber as a Mickey Mouse House. This House of Parliament is elected by the people of South Australia, and the honourable member is insulting not only this place but the people of South Australia. I would ask the Minister to desist from using that expression—and I think you should take some action, Ms President.

The PRESIDENT: I do not think there is a point of order.

FLINDERS CHASE NATIONAL PARK

The Hon. I. GILFILLAN: I seek leave to make a brief explantion before asking the Minister of Health, representing the Minister for Environment and Planning, a question relating to development on the Flinders Chase National Park.

Leave granted.

The Hon. I. GILFILLAN: On page 90 of the *Advertiser* of 31 October there appeared an advertisement entitled 'Rocky River development'. It went on as follows:

> The Government of South Australia intends offering for lease a site at Rocky River Flinders Chase National Park, Kangaroo Island. The site of approximately 150 hectares will be available for the development of visitor accommodation and associated facilities and services. Rocky River is the gateway to Flinders Chase National Park.

The article then goes on to describe this magnificent 73 000 hectare world famous national park. I am well aware, Ms President, that one cannot express an opinion while giving an explanation, but I was surprised to find that the advertisement indicated 'A brochure and further details are available from the Regional Manager . . .'. My questions to the Minister relate to what appears to be an advertisement for a commercial enterprise to be established in a national park on Kangaroo Island, and are as follows:

1. Does this constitute an alienation of dedicated national park to private enterprise?

2. Does this set a precedent of alienating an area of national park for private commercial investment?

3. Noting that a brochure and further details have been prepared, what process of consultation with the public and local governments of Kangaroo Island took place, and what is their attitude?

4. What consultation with the Conservation Council took place, and what is its attitude?

The Hon. J.R. CORNWALL: I will refer those questions to my colleague in another place and bring back the replies.

PERSONAL EXPLANATION: MINISTER'S REMARKS

The Hon. DIANA LAIDLAW: I seek leave to make a personal explanation.

Leave granted.

The Hon. DIANA LAIDLAW: Briefly, I wish to respond to some of the accusations levelled at me by the Minister of Community Welfare in response to a question that I asked out of genuine concern about the welfare of children in foster care. The Minister suggested that I was seeking a cheap headline and that I was endeavouring to cast a slur on the many thousands of foster parents in this State. Neither suggestion has any substance. I was asking those questions because foster parents, and also natural parents, have come to me and expressed their concern about abuse and allegations of abuse in foster care arrangements. They wished to have these matters investigated, because they do cast a slur, as the Minister suggested, on all child-care givers. It was not I who was casting a slur: I endeavoured to follow up their inquiries, and in doing so discovered that the Department for Community Welfare is undertaking an internal review. The Minister might not be aware of this, but the DCW certainly has an internal review in progress which is looking at this matter, because it, too, shares my concern about the allegations of abuse. The Minister may not know what is happening in his department, but I would say that if he did know he would not be levelling at me such allegations as seeking cheap headlines and of casting a slur. They are allegations made simply to deflect attention from a very important matter.

REPRODUCTIVE TECHNOLOGY BILL

Adjourned debate on second reading.

(Continued from 20 October. Page 1298.)

The Hon. CAROLYN PICKLES: As a member of the select committee which addressed the issue of reproductive technology, I indicate my support for this Bill. When I first considered the matter of reproductive technology and, in particular, *in vitro* fertilisation, I thought that it was an expensive, intrusive, painful and not particularly successful procedure. However, having read and heard a great deal of evidence, it became obvious that for some couples it was the last desperate attempt to conceive and deliver a child. I felt that I was unable to sit in judgment on whether or not people should choose this method to conceive.

Whether one likes it or not, we have now developed medical procedures to assist infertile couples, and with these new and radical techniques extremely different ethical problems have emerged. As the Minister has stated, we have let the genie out of the bottle, and we must now address ourselves to those problems where possible and not allow a situation to develop in South Australia as has occurred overseas and elsewhere in Australia.

The terms of reference of the select committee were very detailed and wide-ranging. The main thrust of the recommendations was that the ethical considerations would best be dealt with by a council on reproductive technology. This Bill establishes such a council and makes provision to regulate reproductive technology procedures. The composition of the select committee reflected a wide variety of views. The views of the members involved adequately reflected those of the community: they ranged from the Left to the Right of the political spectrum, from conservative to progressive and from atheist to committed Christian. It was, therefore, notable that the recommendations made by the committee were, in the main, unanimous, particularly in relation to the main object of the Bill, namely, the establishment of the Council on Reproductive Technology.

There are many areas that are considered to be contentious by the general community on which the committee agreed. For example, it was a unanimous recommendation that infertile couples should determine how surplus embryos are to be used, subject to ethical standards which the council would determine and, naturally, subject to any other legal constraints. The committee looked at ways in which this consent could be recorded and unanimously supported that it should be done by way of a consent to treatment form prior to the commencement of the treatment program and that it be reviewed annually and, further, that it follow the recommendation of the National Health and Medical Research Council in that frozen embryos not be maintained beyond 10 years.

Much debate has taken place on the freezing of ova. The select committee made a fundamental statement that, ethically, there is no difference between the freezing of ova and the freezing of sperm. It was the view of the committee that, if the freezing of ova be established as a clinical practice, the consent to treatment form should provide an infertile couple with the option of donating surplus ova to another infertile couple, but be inspected regularly by the licensing authority to ensure that the stored material is not being used inappropriately.

In the vexed area of research using embryos, there were differences of opinion, but the select committee unanimously agreed that the ethics of any proposed research project in South Australia involving embryos be examined by the proposed council. The select committee was unanimous that there is no basis for supporting the growth of an embryo *in vitro* beyond the point at which implantation takes place.

Reproductive technology is an extremely expensive procedure. However, I make the point that so are many life-saving and life-preserving medical procedures which we apply as a matter of course to people with heart and lung diseases many of whom have contributed to their own ill health by smoking or heavy drinking. Therefore, in my view, it is only fair to make reproductive technology available to those who wish to receive it, and not to disadvantage any people from entering the program because of their inability to pay.

Because reproductive technology is so expensive, intrusive and infrequently successful, the select committee believed that there should be ongoing counselling from the time that infertility is first suspected; that it should be undertaken by someone who is qualified and experienced, and that there is an urgent need to provide opportunities for infertile persons to obtain information about the medical, emotional, social and financial aspects of infertility and infertility treatment. It is a fact of life that many women and men live totally fulfilled and happy lives without children. Many of us whose children are adults continue to fulfil ourselves, grow as people and have successful and happy lives long after the fledglings have left the nest. There is indeed a life after children and there is a life without children. There is an urgent need right now to counsel women, in particular, about their ability to lead fulfilled lives, even if they are infertile, and to opt for childlessness as a happy alternative to intrusive and often unsuccessful treatment of infertility. While this Bill does not directly address itself to this area, the composition of the council should ensure that this question will be addressed.

The select committee also addressed itself to access to information, and maintenance of, records: this area is dealt with in the Bill. The select committee was unanimous in its view that it is in the interests of a relationship that the sharing of information be honest and open and that it is desirable for persons born following the use of reproductive

technology to be told by their parents that they were conceived with medical assistance.

Part III of the Bill refers to the licensing of the *in vitro* reproductive industry—a most important aspect of the Bill. The licensing requirements will ensure that the ethical position and policy adopted by the select committee will be maintained in practice. The enforcing and policing of this section of the Bill is a most serious concern, given the nature of ethical questions surrounding reproductive technology and the consequences, should malpractice occur. This section of the Bill ensures that control is exercised over the reproductive technology industry. I think it needs to be stated that the select committee unanimously opposed surrogacy. This area has attracted much media attention worldwide and all members shared the view that the community found this practice totally unacceptable. The Attorney-General has stated that this matter will be the subject of another Bill at a later stage.

On the question of the status of children born as a result of reproductive technology, it was agreed that the social parents of the child should be the legal parents and that donors of gametes should have no rights or obligations in relation to children resulting from their donation, as is provided in the Family Relationships Act. The Bill before this Council is a recognition of the complexities of the issue of reproductive technology and an acknowledgment by the select committee that these issues are so complex that they must be dealt with by the community. For this reason it was our view that ethical standards for reproductive technology should be established and kept under review. The first recommendation of the select committee was:

> A South Australian Council on Reproductive Technology be established by statute [which is dealt with by this Bill] to examine the broad ethical and social questions related to reproductive technology, to examine and propose standards, and to represent the public interest. There should be substantial lay representation on the council. Some members should have experience in the organisation and provision of relevant services. As far as possible, men and women should be equally represented on the council.

The composition of the council was very carefully canvassed to provide broad representation, and the 11 members will be as follows:

One shall be nominated by the Council of the University of Adelaide.

One shall be nominated by the Council of the Flinders University of South Australia.

One shall be nominated by the Royal Australian College of Obstetricians and Gynaecologists.

One shall be nominated by the Royal Australian College of General Practitioners.

One shall be nominated by the Heads of Churches in South Australia group.

One shall be nominated by the Law Society of South Australia.

Five shall be nominated by the Minister of Health.

In nominating five members of the council, the Minister of Health should have regard to the knowledge and experience of the first six members and to other knowledge and experience which the council may require. To the extent practicable, the general South Australian community should be represented on the council. Further, the Minister of Health should have regard to the desirability of nominating persons who may have knowledge and experience of health administration, infertility, non-medical services to infertile persons, child and family welfare services, and philosophy and ethics.

The select committee was of the view that a mandatory statutory requirement for such knowledge and experience was not necessary. The select committee recommended also that the function of the council should include: developing a code of practice for reproductive technology; advising those involved with reproductive technology on good practice in service provision and on research which it finds ethically acceptable; examining the ethical status of research projects involving human gametes and embryos and, where appropriate, approving same; examining the implications of reproductive technology for the children and their families, donors and their families, and society, and the questions of public policy arising from reproductive technology; offering advice to, and consulting with, the Government on specific issues as they arise; liaising with any Federal, State or Territory committee or authority concerned with reproductive technology; and providing information regularly to the community regarding reproductive technology.

Ms President, this Bill is a result of the recommendations of the select committee which, in the main, were unanimous. The establishment of the South Australian Council on Reproductive Technology will, I believe, ensure that the ethical, moral, social and medical aspects of this new technology will be carefully monitored and regulated. I support the Bill.

The Hon. J.C. BURDETT: I support the intent of this Bill, but in some respects I consider that it is an example of very bad legislative practice. This became apparent from the speeches made by the Hon. Martin Cameron and the Hon. Robert Ritson. The Bill leaves a lot of gaps that are to be filled in by a code of ethical practice to be formulated by the South Australian Council on Reproductive Technology in the form of regulations and this is provided in clause 10 of the Bill. I hasten to add that I commend the Minister on the composition of the council, which draws its members from the right places and which has a majority of non-ministerial appointments.

The Hon. Carolyn Pickles referred to this council and the areas whence it was drawn. My concern is that some of the major issues which arise (and my colleagues have identified them) are of such importance that they ought not to be delegated by the Parliament to another body but should be dealt with directly in the first instance by Parliament itself. This raises the fundamental question of when Parliament should delegate its legislative role to other bodies. The classic statement on this point is Jaffe, in 'An Essay on Delegation of Legislative Power' (1947, Columbia Law Review). He says:

> Power should be delegated where there is agreement that a task must be performed and it cannot be effectively performed by the Legislature without the assistance of a delegate or without an expenditure of time so great as to lead to the neglect of equally important business.

The four accepted situations which give rise to the need for delegated legislation are as follows: first, to save pressure on parliamentary time. That does not arise in this case. The matters that have been raised can easily be dealt with now. We may have to sit one or two late nights, but that is all. The second situation is where the legislation is too technical or too detailed to be suitable for parliamentary consideration, for example, the food regulations. An example given by Pearce in *Delegated Legislation* is the inclusion in the Weights and Measures (National Standards) Regulations 1968 (Commonwealth) of the definition of a second of time. It states:

> The second is the duration of 9 192 631 770 periods of the radiation corresponding to the transition between the two hyperfine levels of the ground state of caesium 133 atoms.

As Pearce observes:

> It is difficult to think of the Parliament being able to discuss or amend this constructively.

Obviously, that does not apply in this case. While technical considerations can apply, there are major questions (as identified by my colleagues) of social and moral importance that can and ought to be dealt with by the Parliament. The third situation is where legislation deals with rapidly changing or uncertain situations, for example, situations that may arise between parliamentary sittings. That does not apply in this case. The fourth situation is legislative action in cases of emergency, for example, fire, flood, and so on. That does not arise here.

The matters that have been referred to by my colleagues relate to, first, growth beyond the egg stage going to beyond implantation stage. The questions involved, whatever our own view about them, are too important to be left to a code of ethics in the form of regulations. Secondly, there is the question of *in vitro* fertilisation being available only to married couples (and that matter was raised by the Hon. Martin Cameron), that is, to people who have been prepared to make a lifelong commitment to each other. This should give the best chance of a child being brought up in a stable relationship. The decision on this issue (and that is the point I am making) should be made by members of Parliament who are prepared to stand up and be counted and judged by their electors accordingly. It is not good enough for this decision to be made by a council, however commendable its appointees may be. It is not accountable to the electorate and the individual votes will not be known.

The question whether it should be a requirement that the couple in question prove infertility ought also to be addressed by the Parliament and not by the council. There is no reason why the decision should not be made by the Parliament. Thirdly, the question of a ban on non-therapeutic invasive experiments on an embryo ought to be decided by the legislators, members of Parliament in Parliament assembled. Fourthly, the question of total anonymity of the donor is also a matter for Parliament.

There may be very different views (and I am sure there are) about all of these issues, but they are social and moral issues, issues of great concern to the community and of special concern to the couples involved in the *in vitro* fertilisation procedure. There is no reason why these issues cannot be addressed by the Parliament itself; there is no reason why they should be left to what will be, as far as the electors are concerned, a largely anonymous, faceless body and people will not know how the votes went.

It is true, of course, that any code of ethics that is developed by the council and any changes thereto would be promulgated in the form of regulations and could be disallowed by Parliament, but they could not be amended by Parliament. In regard to matters other than those to which I have referred, I believe there is merit in the suggestion of the Hon. Martin Cameron that these regulations should not become law until they have been through the parliamentary process.

The issues I have raised do not comply with the criteria, to which I referred, for delegated legislation. They are important social and moral issues, issues important to the couples involved in the *in vitro* fertilisation program. They ought to be discussed in the Parliament before the Bill becomes law and not just as part of a disallowance debate. To fail to address these issues now would make a mockery of the parliamentary process. I believe the preferable course would be for the Government to withdraw the Bill, address these issues and bring the Bill back. However, as that is unlikely to happen—

The Hon. J.R. Cornwall interjecting:

The Hon. J.C. BURDETT: But they have not been addressed in the Bill. I will go through the matters to which I referred again if the Minister would like me to, but they have not been addressed in the Bill. The only way they could be addressed would be by the council in the form of a code of ethics which must be promulgated in the form of regulations. For those reasons, the preferable course would be for the Government to withdraw the Bill, address the issues and bring the Bill back. However, as that is unlikely to happen, I am prepared to support the Bill at the second reading stage so that these matters can be addressed in Committee. For those reasons, I support the second reading.

The Hon. DIANA LAIDLAW: I, too, support the second reading and take the opportunity to commend the members of the select committee for their deliberations in this matter, for I respect the fact that it is very emotional and demanding. I for one was most impressed that members of the committee were able to reach unanimity in so many decisions. That is a credit to the members of the select committee. I welcome this Bill which, as the second reading explanation notes, is essentially the legislative response to the select committee report as it relates to the health portfolio. Certainly, I look forward to the introduction of Bills by the Attorney-General relating to surrogacy contracts and family relationships. When I spoke on the Family Relationships Act Amendment Bill on 12 September 1984 I recorded my frustration that the Government was addressing only the limited question of the status of children born as a result of fertilisation procedures. It was my view at that time that the Family Relationships Bill required complementary legislation addressing the future direction of fertilisation programs.

Some months earlier the Governments of both New South Wales and Victoria had seen the wisdom of seeking to resolve the question of status and at the same time seeking to address the host of complex and controversial legal and ethical questions arising from the AID and IVF programs. Three years have passed since the family relationships legislation was debated with considerable vigour in this place. Finally, we have a Bill which seeks to implement controls over reproductive technology and to restrict in a variety of ways the use and availability of IVF techniques.

Rather reluctantly, I accept that scientific advances in the field of reproductive technology over the past two decades, and in particular in the past few years, have been so spectacular that today it is impossible to stop programs such as IVF. However, this fact does not restrict my wish or desire to see such programs curtailed. I harbour a very deep suspicion about the motivation of many of the doctors and scientists in respect of the creation of life, and I am most concerned about the current obsession with infertility.

In fact, I consider that many scientists and doctors, beyond what is often suggested as a matter of ego tripping, have a very vested interest in fuelling anxiety about infertility and/or reinforcing age-old social, cultural and religious influences about the role of women as mothers. Once the demand for children by means of reproductive technologies has been generated, scientists and doctors are more readily able to justify the use of available processes. In other words, scientists and doctors, by making reproductive technologies and techniques available, are able directly and indirectly to pressure couples, particularly women, to use them, thereby ensuring that when the demand increases they can justify the processes, irrespective of the fact that they are breaking the limits of accepted practice in the field of human reproduction.

I imagine that I could be accused of being excessively ultraconservative because of the views that I hold on this matter of reproduction technology as it relates to the status

of women. However, I am firmly of the view, and have been for many years, that decision making on this issue should not be confined solely to the interests of the child and that the child's interests be paramount. I consider that decisions about the availability and use of such technology must also be addressed in terms of the ramifications for women who are subject to the procedures or who may be in the future.

The repercussions for women of advances in reproductive technology are immense, and it is my wish to ensure that the alleged benefits far outweigh what I perceive to be a whole host of negatives. In fact, I admit that when I listened to the contribution of the Hon. Dr Ritson a fortnight ago, and in particular his suggestion 'that Parliament and the medical profession would not find acceptable the proposition that infertility was barely worthy of treatment', I could not help but speculate upon how this matter would have been addressed if at least half this Parliament comprised members who were women. It is my view that, if half this Parliament comprised members who were women, we would have addressed this matter many years before—before it reached a stage where it is difficult to control—and I certainly believe that we would have dealt with it in a markedly different way to the way in which we are dealing with it today.

The select committee recommended, and the Minister's second reading explanation noted, the desirability of providing 'that as far as possible men and women should be equally represented on the proposed South Australian Council on Reproductive Technology'. Such a specific provision is not included in the Bill, but clause 5 (3) *(c)* provides:

> In selecting nominees for appointment to the council, the Minister will endeavour to ensure that the council's membership is sufficiently representative of the general community.

Armed with this provision and with the knowledge of the select committee's recommendations, as well as the Government's intentions as outlined in the second reading explanation, I strongly hope that this Minister and subsequent Ministers will all seek to ensure that women are at least equally represented on this council. In fact, it would be my wish that by far the majority of members were women because this question is of such importance not only to the individual women involved but also to women in the community generally.

In this respect I note that at Federal level the Special Minister of State (Senator Susan Ryan) is endeavouring to ensure that women comprise at least half the members of the proposed National Council on Reproductive Technology. In this endeavour I certainly wish her the best of success. I am keen to comment briefly about the proposed national council mentioned by the Federal Special Minister of State. The structure and the terms of reference of that council are in the throes of being finalised by the Federal Special Minister of State and by the Federal Attorney-General (Mr Bowen). However, for some time it had been hoped that the council, together with other aspects of the Federal Government's response to bar ethical questions in relation to reproductive technologies, would be announced in the first week that Federal Parliament resumed in September, which is now some eight weeks ago.

The national council is to be established following an agreement reached in principle earlier this year between Federal and State Attorneys-General and Health Ministers. I understand that it is proposed that the national council examine the moral, social, legal and ethical implications of the latest reproductive technologies and advise Federal and State Governments accordingly. I also understand that it is likely that the Federal Government will adopt a system under which research institutions will be accredited by the national council before they can undertake research using human embryos. I understand that such a system would involve each experiment being submitted to the national council to be approved or rejected according to whether it fitted the guidelines. I also understand that it is envisaged that licences will be issued for a set time and under strict conditions with penalties including huge fines and gaol terms for scientists who breach the licence or code.

While States have primary responsibility for clinical medicine and biomedical research, in my view it is desirable that a national approach be adopted as far as practical to coordinate many of the fundamental issues relating to reproductive technology. A recent report on this subject by the Family Law Council emphasised:

> That the social, moral, legal and ethical questions involved in the area of reproductive technology are not confined within State boundaries. They are national issues which should be addressed at a national level.

Essentially, I agree with this line and note that the select committee report and the Bill seek to ensure that one of the functions of the proposed council is to liaise with any Federal, State or Territory committee or authority concerned with reproductive technology. However, its function should not distract us from the fact that there is every likelihood in Australia over the next few years that we will have eight high powered multi-member committees established across the country all looking at the same questions in respect of reproductive technology. I question the value and wisdom of such an exercise, as indeed I questioned the value and wisdom and wise use of resources back in 1984 when Senator Durack (I think) was the Federal Attorney-General and we saw in this country five inquiries being conducted at the same time, all examining the same issues of law, society and IVF.

To my mind that was an excessive waste of valuable resources in this country, and we could have responded to this problem with considerably more maturity—but it did not happen then. I hope that one of the benefits that we can see from the possibility of this high level council which is being proposed and the possible establishment of seven other committees across the country is that this will perhaps be the only way that we can keep clamps on reproductive technologies in this country.

If this is the case—that we need this committee and seven others in Australia—I believe that it is a very sad reflection on our priorities. I wish very strongly that the same level of commitment, energy, resources and talent were channelled into the causes and prevention of infertility as we are now channelling into the means to overcome infertility. The Hon. Mr Cameron made some reference to this matter when summing up his contribution to this second reading debate.

In relation to prevention, I was pleased to note that at a recent international conference on IVF at least one speaker, Dr Mary Anne Warren, a lecturer in philosophy at San Francisco State University (and it was interesting to note that Dr Warren was the only woman speaker at this conference) addressed this basic subject of prevention. I refer to a conference report of her contribution to this IVF conference, which states in part:

> In view of the increasing expenditure on infertility treatments, Dr Warren said it was surprising how little attention was given to prevention.
>
> 'The whole IVF discussion seems to proceed upon the assumption that infertility just falls from the sky, that it has nothing to do with particular behaviours and that little can be done to prevent it,' she said.
>
> She said her analysis did not provide grounds for stopping IVF programs but should be seen as an objection to the relative neglect of potentially more effective ways of finding solutions to female infertility.

'The problem with IVF is not so much that it is dangerous or demeaning to women but that, as a solution to the problem of female infertility, it is too little and too late. If, as a society, we were serious about solving that problem, then we would place less emphasis on expensive medical procedures which help only a few infertile women, and invest more in research and education aimed at identifying and altering the conditions that undermine women's reproductive health,' she said.

I note that the select committee made recommendations on this matter of infertility in recommendations 26 to 28, although I do not intend to read those into *Hansard* at this stage. I wish to briefly discuss the issue of access to information, which was raised by the Hon. Mr Cameron during his contribution. The select committee, I note, was divided in this respect. I believe that donors who so wish should be able to have their identities known if, at a later time, that is a child's wish. I understand that that is not the view of all my colleagues on this side, but nevertheless I maintain that view.

Over the past year it has been my happy and, at times, perhaps frustrating experience to be very involved in this whole issue of child sexual abuse. At the same time, my other major responsibility has been reforms to adoption policy and practices in South Australia. Much of the discussion that I have had with respect to adoption policies and practices has related to this very vexed issue of access to information. I am strongly of the view that an awareness and a knowledge of one's identity is important to one's individual dignity, integrity and well-being.

A proposed Bill dealing with this subject (9) which has been referred to a select committee, proposes that a person adopted under the current Act and in the future will have unqualified right of access to identifying information upon reaching the age of 18 years. Experiences encountered by adopted persons provide compelling reasons, in my view, for adoptions to be carried out with the knowledge that it will be possible for an adopted person, on reaching the age of 18 years, to obtain identifying information. The realisation that many adopted persons have a very strong urge to discover more about themselves has led to the practice in recent years of adoptive parents being required to inform their adopted child as early as they deem appropriate the truth about his or her status.

I note that the Select Committee on IVF in recommendation 45 agreed unanimously in this respect—and the Hon. Carolyn Pickles has made reference to the same—that children born as a result of reproduction techniques, particularly as a result of donated gametes, should be informed of those facts. I agree wholeheartedly with this provision, but then I find it impossible to accept that, if a person is to be advised that he or she has been born as a result of donor gametes, we should then move to prohibit from that person any identifying knowledge of his or her genetic parent or parents. I believe that such a proposition would be quite inhumane, especially as we are well aware of the traumas that many adopted persons have experienced when they are told that they are adopted but are not entitled to identifying information about their natural parent or parents.

I accept that there are differences in the processes of adoption and IVF. That has been put to me by members on this side of the Chamber, but I do not believe that there is any difference in the circumstances that would be encountered by a child in either situation—those circumstances being that they are aware of the situation of their birth and yet at the same time would be denied information that would help to identify the donor of the gametes.

I wish to speak briefly on two issues, the first of which is infertility. The select committee suggests that only persons who are infertile should have access to reproduction technologies or IVF techniques. I appreciate that this will restrict the number of people to whom the procedures are available, but I find it a most surprising recommendation, for it is totally at odds with all research and reports undertaken in recent years about infertility being an inappropriate criterion for determining whether people will make good parents and be able to provide a stable, loving and nurturing environment. As a result of this amendment infertility will be removed as a criterion for assessing the eligibility of parents for adoption and I find it surprising that infertility should be used to determine whether a person would make a good parent and thus be eligible for this program.

In relation to the term 'married couple', my view is at odds with many of my colleagues on this side of the Council. I notice that the select committee was divided on this question. I understand that the majority of the committee believed that the reproductive techniques should be made available to putative spouses. I believe that this program should not be restricted simply to married couples; however, I cannot accept that it should be allowed to *de facto* couples; if we are to have the procedures at all they should be allowed to couples who are using their own gametes. That is my view, but it is certainly not the view of others in my Party; therefore, I doubt that it is worth pursuing. I have some difficulty with the proposal to restrict the program solely to lawfully married couples if the gametes are their own and especially if they have to pay for this procedure at some stage in the future.

Returning to my underlying concerns in relation to IVF and reproductive technology, in my view we are focusing on the wrong perspective and too much attention is being paid to rehabilitative procedures. I think we should be focusing on prevention. I do not think in addressing reproductive technology that the correct emphasis is being placed on this whole matter. However, I do with some reluctance support the second reading of this Bill.

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

LANDLORD AND TENANT ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 7 October. Page 1020.)

The Hon. K.T. GRIFFIN: This Bill seeks to amend the Landlord and Tenant Act with respect to commercial tenancies. Since the Landlord and Tenant Commercial Tenancies Act came into operation the Government has received a number of submissions about the operation of the legislation. It is fairly well known that draft amending Bills have been circulating for something like the past year; none of them in the form in which this Bill now comes before us. Comment has been made by persons to whom I have referred this Bill that they were not aware of it being introduced, nor were they aware of the form of the draft and the first they heard of it was when they received it from me. I understand that some of those organisations have now referred comments on the Bill to the Department of Public and Consumer Affairs. One of the persons who made observations on the Bill to me said that he had made contact with the Department of Public and Consumer Affairs which had expressed surprise that the Bill was being introduced into Parliament because it thought it was being considered by Cabinet and was subject to further amendments. That person also said that some further regulations are to be proposed as soon as the Bill is approved in Parliament.

Those regulations will, of course, be of the utmost importance as they will further define the premises to which the Act will apply.

I want the Attorney-General to indicate in his reply, at this stage of the consideration of the Bill, the nature of the proposed recommendations. I know that in one of the draft pieces of legislation, which I saw fall off the back of a truck, the $60 000 annual rent, the maximum rent of commercial premises to which the legislation applies, was to be increased to something like $150 000. There was real concern about that sort of leap in the annual rental limit and the quite significant consequences which would flow from that type of regulatory change. So, I want the Attorney-General in his reply to give some indication as to what regulations are likely to be proposed if this Bill is passed.

The Bill seeks to do a number of things. It seeks to amend that part of the principal legislation which requires a landlord to insert in a commercial lease a statement advising the tenant of all payments other than rent, that is, outgoings; the nature of the payments and the amount or method of calculation of the payments. Apparently there has been a difficulty in the provision of that information at the commencement of a commercial tenancy period, particularly because of the difficulty in predicting what those amounts will be over the long period of a commercial tenancy. The Bill seeks to provide a procedure whereby landlords will be able to give estimates of operating expenses for accounting periods, which may be as long as 18 months, and within three months from the end of the relevant accounting period to provide an accurate statement of the expenses actually incurred.

There are two other amendments of interest: one is that the period within which security bonds can be lodged by landbrokers and solicitors is to be extended from seven days to 28 days. That is the period within which licensed land and business agents must lodge security bonds. That amendment is supported. The other amendment is that the Registrar of the commercial tribunal is to prepare an annual report which is to be tabled in Parliament. Again, that amendment is supported by the Opposition.

I turn now to the most significant changes relating to the recovery of administrative, management and other operating costs. Under the amendment, rent will be related only to the right to occupancy. There will be many other outgoings which may be the subject of some recovery procedure specified in the commercial tenancy agreement and governed by the provisions of the Bill when it becomes an Act.

One of the difficulties, I think, is that the accounting period is determined by the landlord, and it may be for a period of up to 18 months. The proposition has been put to me that there is no difficulty with the landlord determining what should be the appropriate accounting period but that it should not extend beyond a period of 12 months. I can see that there may be some wisdom in limiting it to a period of no more than 12 months, but I would like the Attorney-General to give some indication as to why the maximum time for the accounting period should be 18 months rather than 12 months.

A difficulty about the definition of 'shop premises' has been expressed to me. There has been a lot of criticism of the unsatisfactory paragraph *(b)* in the definition of 'shop premises', defined as:

> Business premises—*(a)* at which goods are sold to the public by retail, or *(b)* to which the public is invited with a view to negotiating for the supply of services.

Paragraph *(b)* has been the subject of criticism because there is no definition of 'services'. There is no definition of 'business premises', and there is no definition of 'goods'. In one of the submissions that I received in response to my circulating the Bill the comment was made that a house would not be business premises within the ordinary meaning of that term and that, therefore, this part of the Landlord and Tenant Act would not apply to a house that was let for use as a shop. The point was also made that that part of the Landlord and Tenant Act applies to premises at which goods are sold or to which the public is invited and that this must mean premises used for these purposes at the time when the tenancy agreement is entered into and that when the premises are vacant these criteria do not apply and the premises are not a shop within the definition. If a commercial tenancy agreement is entered into in respect of vacant premises the premises are not shop premises and the provision does not apply to the agreement.

The other comments made in respect of paragraph *(b)* indicate that there is a great deal of difficulty in guessing what paragraph *(b)* is intended to encompass. There are very few businesses to which the public is invited with a view to negotiating for the supply of services. The suggestion has been made that this would include places like a travel agency or a builder's office but would not cover numerous other businesses, for example, a barber's shop, unless it also sold articles, or a doctor's surgery or a solicitor's office. Services are rendered to the public at such places but they are not invited there to negotiate for the supply of services. The suggestion made to me was that the test of whether the provision applies to certain premises should be based on either the intended use of the premises as expressed in the agreement or the physical nature of the premises. I think that those comments are worth considering in the context of this current review of the Act.

In respect of the question of operating expenses, there really is some difficulty in determining what they may be. They are defined as meaning 'maintenance costs' which encompass the costs of 'operating, maintaining, repairing or renovating the premises, and providing, operating, maintaining, repairing or replacing plant or equipment associated with the premises'. It is not clear whether that relates to capital or structural change or replacement or whether it relates only to that repair, maintenance or renovation which might arise from the tenant's use of the plant or occupancy of the premises, that is, whether it arises from fair wear and tear. The Mixed Business Association raised the question of whether in relation to an old building that needs a new roof, which obviously had deteriorated over a long period of time, the operating expenses or maintenance costs extended to include the total cost of replacement of the roof, or whether only a proportion of the cost would apply, the cost being amortised over a long period of time. So, quite obviously there is concern about what may or may not be included in those costs referred to in clause 3 of the Bill.

In relation to the definition of 'shopping complex', it has been drawn to my attention that the Victorian legislation relates to five or more shop premises in the same building. Some concern has been expressed to me about the 'two or more' aspect of the definition, with two being the minimum. The Retail Traders Association raised this matter with me and expressed concern that the definition was too broad. It maintains that the identification of two or more shop premises appears to be an arbitrary figure with no legislative or commercial basis; further, that the proposed definition should be varied by requiring the inclusion of any adjacent land to also be under the same administration or control of the shops themselves. Reference was made to the definition in section 3 of the Victorian Act of a 'retail shopping centre' being a 'cluster of premises in which five or more retail

premises are located and all of which have a common head lessor'.

In relation to the matter of adjacent land, the Retail Traders Association fears that many of its smaller retail members will be confronted with the cost of developing or maintaining adjacent land which might be used as a car park for a small number of shops, which car park might be owned by some other persons, and in those circumstances there would be no limit on the extent of the cost of, say, putting a tarmac on the car park or of maintaining the car park which might not be the property of the lessor or the landlord of the shop premises. The question is: where does the recovery of cost start and end?

One person who made some observations to me said that they had the experience of the proprietors of a small shopping centre (the owner and his wife) going overseas to look at centres which were in the process of redevelopment because they thought that one day they may need to redevelop their own shopping centre. The whole of the cost was charged to the tenants. Perhaps one can draw a long bow and say that some part of that overseas cost could be charged to the tenants, but it is certainly drawing a long bow. In those circumstances it was not possible for the tenant to dispute the charge which had been made unless some lengthy proceedings were pursued and the tenant could not afford to do that. Again, that really highlights the question of what sort of costs are likely to be involved in recovery by the landlord from a tenant.

One of the major concerns with clause 10 (and I refer to proposed new section 62a) is the way in which it will operate. It is not clear in the statement to be given by the landlord to the tenant whether the operating expenses are a gross figure, or whether they are to be itemised in relation to the shopping complex or a particular tenancy. That certainly needs to be clarified.

I have received conflicting points of view: some suggest that it would be adequate to give an overall figure and others suggest that each of the operating expenses should be identified for the whole complex, with the proportion to be borne by the particular tenant being identified and the basis of that division also being identified. My view is that each of the expenses ought to be identified for the whole of the shopping complex or, if they relate only to a specific tenant, then in respect of that tenant. If the operating expenses that are sought to be recovered relate to the whole of the complex, it would seem that the proportion to be borne by the tenant ought to be identified and the basis for establishing that proportion also should be addressed in the statement.

Further, there is some doubt whether the estimate of expenses is to be given in respect of an accounting period (which I think is the intention) or in respect of each accounting period, for the life of the tenancy. If the latter is the intention, it is likely to be impracticable because I do not think that anybody could give any reasonable estimate of the water rates, council rates or other expenses in three years time.

Within a period of three months after the expiration of the accounting period a statement of the expenses actually incurred must be given to the tenant and, again, the same questions arise: first, does it relate to the actual expenses in relation to the whole of the complex with the identified proportion of the particular tenant being expressed in the statement; or, secondly, does it relate to some other amount? The concern about this provision is that, if there is any excess of the estimate that has been paid in advance over the actual, then it should not be a matter for the tenant to make demand for repayment of the excess but, rather, it should be a matter of the landlord automatically being required to refund the excess, or to credit the excess against future liabilities if that has been agreed previously by the tenant with the landlord.

The point has been made that many tenants would feel that they were under a lot of pressure if they had to request specifically or demand of the landlord that any refund be repaid. The only other aspect of that is that, if the requirement for the tenant to make demand is to remain (which I do not support), then there is an inconsistency, because the statement of actual expenses is to be given within three months after the expiration of an accounting period, but the tenant is to make demand not more than three months after the expiration of the accounting period so, if the landlord were to give the statement on the last day of the three month period, there would be no opportunity for the tenant to make demand to have the excess refunded.

I draw attention to subsection (4) of proposed section 62a, because the figure 'a', which is part of the formula, is not defined. Further, there is no clear indication whether either the lesser or the greater of the amounts referred to in paragraphs *(a)* and *(b)* might be payable. Therefore, I think there is a basic drafting problem. Subsection (8) of proposed section 62a contains the following definition:

> 'operating expenses' does not include any such expenses determined according to the level of the tenant's consumption or the degree of the tenant's use.

That is probably meant to refer to gas, water, electricity, telephone and other such expenses, but it is not clear that it does, and I would like to have that clarified.

Further, will the Attorney-General consider a suggestion that that would be more appropriate in the definition of 'operating expenses' as contained in clause 3 of the Bill rather than being tucked away at the end of new section 62a? With respect to operating expenses, the rights of tenants to check the accuracy of the statement given by the landlord to the tenant are very much left up in the air. I have had it put to me (and I have some sympathy with this) that there should be some right for the tenant to gain access to such records as may be relevant against which the figures in the statement may be checked if that is felt necessary by a disgruntled tenant. I think that some statutory right of inspection would be an appropriate safeguard for the tenants when they come to check the expenditure on the actual statement against the records of the landlord. Perhaps that would be too cumbersome and it might be more appropriate, if there is some concern as to accuracy, to apply to the Commercial Tribunal to have such a statement checked or otherwise examined.

The other difficulty that has been drawn to my attention is that some substantial unforeseen amount may arise, for example, from the necessity to repair the premises shortly before a tenant assigns his or her tenancy. While I am not necessarily convinced that that is a problem, I would like the Attorney-General to consider the matter. The legislation contains a provision for the landlord to recover an amount payable by the tenant once the tenancy has come to an end, but even that is a difficult legal concept to define. Does the tenancy come to an end when the tenant vacates the premises having assigned them to an incoming tenant, or does the tenancy come to an end when the period of the tenancy has expired? Again, that is a matter that must be addressed in considering this overall question of the right to recover from a tenant unforeseen expenses.

I certainly support the need for full disclosure by landlords to tenants and, on the other hand, I believe that tenants must also pay reasonable costs of operating premises which could be the subject of a commercial tenancy. There must be some balance. The retail traders drew to my atten-

tion that there is a lot of concern around Australia about retail tenancies. In particular, the most recent report of the Prices Surveillance Authority, which was tabled in September this year in the Federal Parliament, drew attention to the fact that rents may be as high as 18 per cent of sales, thus having a significant bearing on retail prices. Complaints have been received by the Prices Surveillance Authority about retail pricing. That is really by way of a digression from the main issue of the Bill before us. There are a number of other matters that might well arise in Committee, but suffice to say that there are some problems with the drafting and the definitions, and I believe there must be a more detailed examination of the impact of the drafting on tenants as well as on landlords.

Only one other matter can be raised at this point and that is that today the Bannon Government was reported to have backed a union push for a landmark $25 a week pay rise with higher penalty rates and improved superannuation as a trade-off for extended shopping hours on Saturday afternoons. First, I deplore the Government's stand to support yet another pay increase. I suspect that the Government is hoping that small business in particular will not be able to pay and the Government can then argue that it supported extended shopping hours but the community, particularly the retail community, did not want it.

That is a ploy that the public at large, especially small business, will see through. However, it raises a very important issue. In relation to shopping centres, generally speaking, there is a requirement that shops must open during such hours and on such days as the shopping centre manager may require. Therefore, if there are extended shopping hours into Saturday afternoons, there will be a significant burden on small business people in keeping their shops open and there will be additional expense if they employ people. They will be required to do that under existing leases.

I would like the Government to consider how that problem is to be addressed and whether it is appropriate in the context of this Bill to have a provision enabling tenants, say, on Saturday afternoons or at other times which are not presently regarded as normal shopping hours, to say to the landlord, 'We are not able to operate because of the higher costs involved and, therefore, for that additional period beyond which we are presently open, we are entitled to close our shop without putting the tenancy at risk.'

As I said, at present many leases provide for opening according to the requirements of the shopping centre management, and I can understand the reason for that. There is not much point in having a shopping centre when only half the shops are open. However, on the other hand there must be some recognition of the problem of small business tenants. They must be given at least some flexibility as to when they will open if it involves extended trading hours beyond that which presently exist. Subject to those matters being resolved, the Opposition is prepared to support the second reading.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

LONG SERVICE LEAVE (BUILDING INDUSTRY) BILL

Adjourned debate on second reading.

(Continued from 20 October. Page 1310.)

The Hon. K.T. GRIFFIN: The Opposition is prepared to support the Bill, although somewhat cautiously, as did the Opposition in the House of Assembly. The shadow Minister in the other place (Mr Baker, the member for Mitcham) explored a number of the ramifications of the legislation. It is unique to Australia and provides a significant cost burden on the building industry, but it has been around for 10 years and the Opposition will not debate whether or not the legislation should be in place; that is now accepted. However, it is interesting to note that, in June 1987, 1 343 employers and 17 174 workers were registered with the scheme, compared with the 1986 figure of 15 044 registered workers. As at 30 June 1977, the fund amounted to $171 122 and it now stands at about $16.2 million. The levy on employers has been reduced in the last year or so from 2.5 per cent to 1.5 per cent.

That indicates on the one hand that there is quite obviously some downturn in the building area and on the other hand that employer contributions to this fund have been quite substantial. There is a large amount of money available at the present time for the payment of long service leave in this industry. It is interesting to note in this legislation that there is a definition of 'corresponding law', as follows:

> . . . a law of another State or of a Territory of the Commonwealth declared by regulation to be a corresponding law.

That is for the purpose of achieving some reciprocity. I raised this very question when we were debating amendments to the Long Service Leave Act about two weeks ago. On that occasion corresponding law was vague and no measure of reciprocity was necessarily envisaged. Amendments which I then proposed to provide a clearer definition of corresponding law were rejected by the Council, so it is curious that in this legislation we have a definition of 'corresponding law', but that is obviously not good enough for the Long Service Leave Act.

In respect of this legislation there is a discrepancy between what an employee can do when on long service leave compared with the position under the Long Service Leave Act. Under the Long Service Leave Act the Government's own provision in section 14 was that, if you were on long service leave, you could not engage in any other employment and it was an offence if you did. Under clause 18 of this Bill it is interesting that a building worker must not, while on long service leave, engage in employment as a building worker.

I think there is a basic inconsistency between this proposal and the provisions of the Long Service Leave Act. If it is good enough for any other worker not to be allowed to work during a period of long service leave, it is also not good enough for a building worker to work at building work or any other work during a period of long service leave.

In respect of clause 16 there appears to me to be some drafting difficulty, because subclause (2) provides that long service leave must be granted by the employer by whom the building worker is employed. Subclause (3) provides that the board must pay to the person on account of that leave an amount equal to a certain figure related to ordinary weekly pay. I think what is intended is that an employer grants the long service leave but does not pay for it, and the board pays the building worker the amount of any long service leave entitlement. It seems to me that that is not clear in the way in which it is drafted. It should be clear because on the one hand there should not be an obligation on an employer to pay long service leave as well as granting that leave and, on the other hand, the board also paying for long service leave. There is a hint of double dipping.

Clause 20 provides for the investment of money that is not immediately required for the purposes of the fund in such manner as the Treasurer may from time to time approve. I know that there is provision for loans to industrial organisations for the purpose of establishing or oper-

ating group training schemes for the building industry approved by the Industrial and Commercial Training Commission, but I would like to have some information as to where that money is presently invested and at what rate, and for what other purposes the money is used other than to pay out long service leave.

Clause 25 provides that, where an employer engages a building worker who works for the employer for three or more working days in any month and satisfies certain other criteria, the employer must within a month give written notice containing prescribed particulars to the board. It seems to me that the period of five or more working days in any month working for an employer in the building industry would be more appropriate.

The Hon. I. Gilfillan: Apparently nothing is prescribed in the current Act.

The Hon. K.T. GRIFFIN: I think that is right.

The Hon. I. Gilfillan: So there is no day—

The Hon. K.T. GRIFFIN: No, there is no period. It seems to me to be quite ridiculous to find that someone who works a mere three days as a building worker in a particular month should then attract all the benefits of this legislation and the employer attract all the responsibilities and liabilities. I would have thought that five days, which in most instances is a normal working week, would be a more appropriate period. So, the Opposition will propose an amendment to achieve that objective.

Clause 28 provides for a penalty for late payment, whereby an employer who fails to pay a contribution must pay the arrears increased by penalty interest at the prescribed rate, and the board may impose a fine of an amount not exceeding twice the amount assessed by the board. In addition to that, as I understand it, an offence is committed and there is a penalty that may be imposed by a court. This is a situation which is truly double jeopardy for an employer.

The Hon. I. Gilfillan: There would be the arrears plus a fine which is only twice the amount assessed. You say that there is an extra penalty, as well?

The Hon. K.T. GRIFFIN: Yes, because an offence is committed for which a person may be taken to court, as I understand it, because there is a breach of the Act. In those circumstances a person who pays penalty interest, and a fine not exceeding twice the amount assessed by the board, and who is exposed to a penalty being fixed by a court, is genuinely in a double jeopardy situation. It seems to me that there should be some remedy to that. If I am incorrect in my interpretation of that provision, we should ensure that there is an adequate right of review of the board's decision to fix such a fine.

Clause 37 provides that the board may, on the application of a person who is self-employed, extend to that person the benefits of the Act. I have some very real difficulty in comprehending the concept of a self-employed person getting long service leave (from whom, it is not clear) and participating in a fund such as that administered under this Act. In the other place the Minister indicated that the self-employed person would pay the contributions towards so-called long service leave. Nevertheless, I do not believe that this is an appropriate vehicle for giving benefits to a person who is self-employed. I will be proposing, therefore, to delete that clause. If this legislation is to apply to anything, it ought to be to those persons who are employees and not to those who are self-employed.

The only other matter to which I want to draw attention is clause 45, subclause (3) of which provides for the expiation of offences. We will talk about that in a broader context shortly in respect of another Bill. However, according to the second reading explanation, there is an intention to introduce expiation fees for breaches of clause 18 (1), for a worker engaging in other employment while on long service leave; of clause 18 (2), for an employer knowingly employing a worker currently on long service leave; and of clause 26, involving failure by employers to lodge returns monthly for workers.

The problem with the subclause is that the offences which are to be the subject of expiation fees are to be prescribed by regulation, so it could be any of many others which are referred to in this Bill and not just those referred to in the Minister's second reading explanation. I do have a concern about broadly allowing expiation fees to be set and for offences to be identified by regulation. If there are specific offences, let them be referred to specifically in the Bill as those offences which are to be the subject of expiation notices.

I will raise other matters during the Committee stage of the consideration of the Bill. Suffice to say that, in so far as the Bill is a reflection of current legislation and does modify the obligations placed on employers, reflected in experience which they have referred to the Minister, we are prepared to support the second reading of this Bill.

The Hon. I. GILFILLAN: My comments in the second reading debate will relate more or less to the issues raised by the Hon. Trevor Griffin, and I indicate that the Democrats in general support the intention of the Bill. I have some misgivings about the variation that this Bill appears to have with other long service leave legislation with which we have dealt, in apparently tolerating employment in other than building.

I will be very interested to hear whether the Government will substantiate the reason for the exemption for people employed in the building industry compared to those employed in other industries. It may be worth while reflecting on whether in the other legislation there is scope for a long-term alternative—albeit part-time—employment to be tolerated while that person is on long service leave from his principal employment. My understanding is that it is not.

Clause 20, to which the Hon. Trevor Griffin referred and which deals with the use of funds, caught my interest, in that the obligation on the Treasurer means that it is an open-ended decision as to where the funds can be placed. It seems to me that in the best interests of employers and employees the Treasurer ought to be under some obligation to place the money to the best advantage of the fund. I wonder whether the Government would consider accepting an amendment which would give that encouragement to the Treasurer not to use the fund for whatever happens to be the economic requirement at the time from the State's point of view, or in relation to whatever other incentives may exist, but that it always be a high priority that it is placed to the best advantage of the fund. That would cover security, of course, and return.

The double jeopardy in clause 28, as mentioned by the Hon. Trevor Griffin, is a proper question to raise. It may be explained as being an unnecessary fear from a misinterpretation of the wording of the Bill. However, it appears to me that the offence would leave an employer liable to pay the arrears plus the penalty interest, plus the fine—which could be up to twice the amount assessed—as well as the court-fixed fine. If that is the case, I believe that is too severe an imposition and it should be an either/or situation. If the offence is to be tried by a court, I do not believe that the board should have the power to add a fine to any penalty set by the court.

Clause 37, limiting entitlement to the period of employment, deals with the self-employed. I ask the Government

to indicate whether this clause allows a self-employed builder to move from the position of being an employee—and, therefore, without any challenge being accepted as a beneficiary of this Act—into receiving a continuing benefit from the Act by voluntarily asking to be permitted to make the contributions and continue as if he were still an employee.

As I understood it, the clause was intended to allow an employee who had been dismissed or whose employment had been terminated for some reason prior to the full 10 or seven-year period (whichever was required to make him eligible) still to continue to be accepted as a potential beneficiary in the fund; however, it would be *pro rata* to the amount of time spent as an employee. I would like that clarified. It seems to me that, if there is the option for a self-employed person to opt into this system, it is a rather queer distortion of the intention of the Bill to provide long service leave for employees.

I take the point that the Hon. Trevor Griffin made on clause 45. The Democrats have shared misgivings with the Hon. Mr Griffin many times on leaving issues to be prescribed by regulation. So, as the offences are spelt out in the balance of this Bill (in clauses 18 and 26 particularly), I suggest that, if the Government has other offences in mind, it should attempt to amend the Bill to embrace them and to identify in subclause (3) only those offences which are specifically identified in this Act, deleting this rather vague term 'prescribed offence'.

I wonder whether I can have the attention of the Hon. Mr Griffin to my final comment, which is that I misunderstood his original intention. I believe that he had a problem with the latter part of this subclause dealing with the amount, specified in the notice, that the board could set. He may be able to clarify the position so that we know where we are. In clause 45 (3) I have indicated some misgiving about the words 'prescribed offence'. I ask whether the honourable member has objections to the words 'amount specified', or whether he feels there should be something more specific.

The Hon. K.T. Griffin: There are two points: first, what are 'prescribed offences'—they ought to be specified—and secondly, the 'amount prescribed'. I see two problems.

The Hon. I. GILFILLAN: The honourable member has clarified for me that he also has some misgivings about the 'amount specified' (line 33) and, on the same basis of argument, he has some misgivings about the word 'prescribed'. I have gone through that. I have misgivings about this continuing unspecified content in line 33; however, I feel that those misgivings can be dealt with by amendment or explanation and I indicate that the Democrats support the second reading of the Bill.

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

EXPIATION OF OFFENCES BILL

Adjourned debate on second reading.

(Continued from 20 October. Page 1315.)

The Hon. K.T. GRIFFIN: This Bill, which relates to expiation fees—or, as they are more commonly known, on-the-spot fines—for some offences is really a bureaucratic camel drafted by a group of Government departments which obviously did not talk to each other about their requirements. In the last session of Parliament the Attorney-General introduced a Bill to give the Government a broad framework within which it could determine by regulation which offences should be the subject of an expiation fee or on-the-spot fine rather than a court summons; the amount for each expiation notice to be determined by regulation. We, on this side of the Council—and it was supported by the Australian Democrats—indicated that we had grave reservations about such a broad scheme and expressed our opposition to that Bill. The Opposition felt that if the Government brought back a Bill which set the framework for expiation fees, but with a schedule which identified specific offences, it would more sympathetically consider the Bill. The Government has, in fact, done that and I commend the Attorney-General for having acted upon the indication which was made in the last session, but, with respect, I cannot commend him for the schedule relating to offences under 12 diverse Acts of Parliament. I will deal with those shortly.

The problem with this Bill is not that the Opposition does not support expiation fees for some offences—it does. We introduced expiation fees with respect to traffic offences and were criticised by the then Opposition, which now occupies the Treasury benches, on the basis that it was a revenue-raising exercise when in fact it was nothing of the sort. Since that time the Government has happily added to the scheme and has increased the expiation fees payable under the traffic infringement notice scheme to keep pace with inflation. This is a clear indication that the Government now regards it as a revenue-raising measure.

The Hon. I. Gilfillan: It was brought in—

The Hon. K.T. GRIFFIN: It was not. There were 60 000 traffic offences which came before the courts in any one year when I was Attorney-General. From memory, 40 000 of those were cases in which there was no attendance of the defendant and the court merely fixed the penalty, added court costs, the notice of the fine which had been imposed by the court, plus costs, being sent to the defendant, and it had to be paid. A lot of court time was involved in that procedure, as well as a lot of police time, and there was a lot of administrative work which could not be justified; plus the fact that there were many people who, when detected committing a traffic offence, would have been happy to pay an expiation fee as they were with parking expiation fees, and not have to take the morning or day off work to attend court. A lot could be said for that scheme because it relieved pressure on the courts, the police and the whole administrative structure because of the sheer volume of summonses which were being handled by the courts for traffic offences. However, one has to be careful about extending that to offences where there is not a large volume of prosecutions and where, presently, there is not a large area of abuse of the law which results in matters being taken to court.

The Hon. I. Gilfillan: I think it is a little cynical to say that you did not realise it was going to be a revenue-raising exercise. What's good for the goose is good for the gander.

The Hon. K.T. GRIFFIN: If I could gain access to the relevant documents of the time it would be quite clear to the honourable member that it was based upon a desire to relieve pressure in the courts.

The Hon. I. Gilfillan: Isn't it the same this time?

The Hon. K.T. GRIFFIN: The honourable member misunderstands what I am saying. There is no indication that there is a large volume of prosecutions taken under the Boilers and Pressure Vessels Act, Commercial Motor Vehicles (Hours of Driving) Act, Dangerous Substances Act, Education Act, Enfield General Cemetery Act, Explosives Act, Financial Institutions Duty Act, Industrial Conciliation and Arbitration Act, Land Tax Act, Lifts and Cranes Act, Payroll Tax Act, Public and Environmental Health Act, South Australian Metropolitan Fire Service Act, Stamp

Duties Act, Tobacco Products Control Act, Unclaimed Moneys Act, Valuation of Land Act and West Terrace General Cemetery Act. If the Attorney-General would be so kind I would like him to provide during the course of this debate information about the numbers of offences that presently occur under those Acts and for which expiation fees are now sought to be fixed.

It is my guess that there is not a large number of offences presently occurring under the sections which are referred to in the schedule and that the volume is not such as to suggest that when expiation fees are introduced there will be a significant saving in court and administrative time by issuing an expiation notice rather than a summons; remembering that not all people who receive summonses decide to pay without going to court. A number of them go to court and some plead not guilty. The facility would still be available, but not all of them would immediately want to opt out of the court system. I want to gain an appreciation from the Attorney-General of how significant the saving in court time will be if this Bill is accepted as it is, compared with the number of offences which have been detected and prosecuted prior to this legislation passing Parliament. I think that we will all be surprised to see that this legislation will not relate to very many prosecutions.

There are a number of problems in the schedule itself. For example, some very serious matters are the subject of expiation fees; they relate to public safety. I understand that, under the Boilers and Pressure Vessels Act, the penalty for operating or using an unregistered boiler or pressure vessel is some $10 000. The expiation fee is $200. Regardless of what the maximum penalty is, to me it seems quite inappropriate to have an expiation fee relating to an offence involving public safety. I do not mind the imposition of an expiation fee in the case of a person failing to lodge a return or of acting without authority, but public safety and welfare is a different matter. I believe that all the offences under the Boilers and Pressure Vessels Act relate to public safety and that they ought not be the subject of expiation fees.

Under the Commercial Motor Vehicles (Hours of Driving) Act, if a person exceeds the stipulated hours of driving time it is likely that the public will be put at risk; I do not believe that an expiation fee ought to apply for such an offence. However, if a person fails to keep an authorised log book I see no problem with having an expiation fee for that. For certain criminal type offences, such as falsely representing that yours is the name in a log book when it is not, that is akin to fraud and I do not believe it ought to be the subject of an expiation fee.

Under the Dangerous Substances Act, refusing or failing to comply with a direction, which, again, might reflect very much on the question of public safety, ought not to be the subject of an expiation fee, but if a person acts without authority under that Act, it would be quite appropriate to have an expiation fee applicable. Under the Education Act, I think an expiation fee relating to the offence of insulting a teacher is inappropriate. It means that one could insult a teacher, pay the expiation fee of $150, thumb his nose at the teacher and consider that it was worth the $150. This, again, relates to public behaviour and social attitudes, and I would be very concerned about it being the subject of an expiation fee.

The Hon. I. Gilfillan: Is there not an age limit below which this does not apply?

The Hon. K.T. GRIFFIN: Under 16 years is the age, but this relates equally to parents and, as I understand it, this provision in the Education Act is more likely to apply to parents coming along and bouncing a teacher who has reprimanded their child. Certain matters of public safety are dealt with under the Explosives Act which, again, ought not to be the subject of an expiation fee. If a person mixes and uses amonium nitrate mixtures in breach of the regulations, why should an expiation fee apply for that? If one packs and labels explosives other than in accordance with the regulations, it seems to me to be quite inappropriate that an expiation fee should apply when the matter of public or consumer safety is involved and not just some procedural problem.

The Hon. I. Gilfillan: Which one are you talking about?

The Hon. K.T. GRIFFIN: Packing and labelling at the top of page 5 of the schedule—regulations 6.01 and 6.12.

The Hon. I. Gilfillan: You say that is okay?

The Hon. K.T. GRIFFIN: No, I do not. In my list of amendments on file I have identified a number of offences that I do not think ought to be the subject of an expiation fee, and I commend those to the Hon. Mr Gilfillan. I do not intend to deal with each of those items under the schedule, but I am simply picking ones out that highlight the points that I am trying to make. Under the Lifts and Cranes Act, constructing, altering or installing a crane, hoist or lift without approval, again, relates to a public safety matter, and I do not believe that an offence in this regard ought to be able to be expiated. If an offence occurs it should go to court. On the other hand, if a person fails to notify the Chief Inspector, it seems to me that that might not be so serious. Failure to give certain notices under the Pay-roll Tax Act could involve an offence that I would be happy to see expiated, because it does not relate to the question of public safety, and those same sorts of criteria could be applied to a number of other offences.

So, there is a problem in that regard, but there is also a problem of inconsistency between the various provisions of the schedule. For example, if a matter involving constructing, altering or installing a crane, hoist or lift goes to court a penalty of $10 000 can apply, but that can be expiated for $250. An offence involving discharge of waste under the Public and Environmental Health Act has the same maximum penalty of $10 000 but that may be expiated for a fee of $300. Failing to furnish a return, under the Financial Institutions Duty Act, which also attracts a $10 000 maximum penalty if it goes to court, can be expiated for $200. So, for those three offences a $10 000 maximum penalty applies—and there are others—and yet the expiation fees applicable are $200, $250 and $300. This is inconsistent. Further, quite disproportionate penalties have been fixed. Failure to lodge a return under the South Australian Metropolitan Fire Service Act carries a maximum penalty of only $200, if the matter goes to court, and yet that can be expiated for $50.

So, within the schedule there are grave inconsistencies between maximum penalties and the expiation fees. I suspect that what happened was that a minute went out to all Government departments asking them to send details to the Government of any offences that they wanted to make the subject of expiation fees. They probably all wanted to do this and so someone in the Department of Labour and Industry, for example, decided to take something under the Boilers and Pressure Vessels Act, with the other departments doing the same thing in relation to other legislation. They have all gone into the schedule without checking the relativity between the offences, the expiation fees and penalties, and without considering the significance of the offences to be the subject of expiation fees.

The other difficulty that I see with the whole matter of expiation fees is that in some instances, particularly in respect of those Bills under the responsibility of the Department of Labour and Industry, I understand that an inspector

might say that some little thing has to be fixed or that some minor thing must be done within 24 hours and that all will be okay. Unless a serious breach or a series of breaches has occurred a prosecution has never been launched, and I think this has engendered reasonable relationships between the department, the employers and others. However, this legislation will provide a means by which departments and inspectors can seek to raise revenue; instead of saying, 'We will be a bit lenient with you on this occasion because it is minor and we know you are going to fix it—and don't let it happen again,' they will in fact now say, 'Here is an expiation fee,' and they will go out and slap expiation notices on people without first giving them an opportunity to remedy minor breaches.

If it is a serious breach, it ought to go to court anyway so that the full weight of the law can be brought to bear on someone who has committed a serious breach. The concern is that this will provide an opportunity to administrators and inspectors to raise revenue without looking at the consequences of their actions along with the educational responsibilities that they have.

Under clause 3, the responsible statutory authority that has the responsibility for administering the expiation fees under particular Acts, in addition to being the Minister responsible for the administration of the Act, is also any other person or body to which the Minister has delegated his or her power to issue expiation notices in relation to expiable offences against that Act, and that can be anybody. I want to try to limit that to somebody who has a senior administrative responsibility within a Government department and not just any person—even an inspector—within a Government department. I seek to limit the power to delegate to the chief executive office of an administrative unit.

In clause 4 the expiation notice is in a form approved by the Minister, but I believe that there ought to be uniformity and the form ought to be prescribed by regulation rather than in a form that technically will not get any public airing but can be done by administrative documentation.

If the matter goes to court, I reiterate that there must be some relationship of the maximum penalty to the actual expiation fee and there should be consistency. Expiation fees should apply to minor and not to major offences. Further, they should not apply in circumstances where there is a risk to public safety. I want some information about the number of offences that have been committed and the prosecutions launched in respect of those offences that presently apply in the schedule.

The only two other points that need to be raised relate to matters that were mentioned in the other place. The first is the potential for graft, favouritism or patronage where, if any person within a Government department has the delegated responsibility to issue expiation notices, there may not necessarily be consistency in the application of the law. A particular employer or person who is obliged to comply with certain provisions of legislation may be picked off and prosecuted while another person who commits a similar offence may be given an expiation notice when no conviction is recorded. I would like some indication from the Attorney-General as to what sort of guidelines are likely to be applied for the administration of the legislation within particular departments and whether he will have any overall responsibility for those guidelines.

The second matter mentioned in the other place relates to the victims of crime levy where a $5 levy is to be applied in respect of all expiation notices whereas, if a matter went to court and it was a summary matter, it would be $20. Although the point made in the other place is correct technically, I am not sure that it will make much difference, and that was that the victims of crime levy will thereby be reduced if there is a significant use of expiation notices. I do not necessarily believe that that will be a major problem, because on present estimates I do not believe that a large number of offences will occur under the various sections referred to in the schedule. We will move to amend the Bill in a number of ways and those amendments are already on file. Subject to the satisfactory resolution of those matters we are prepared to support this Bill.

The Hon. I. GILFILLAN: I indicate the Democrats' support for the Bill: I believe it is a move in the right direction. I do not share the concern that the Hon. Trevor Griffin has about the logistics. It seems to me that any little bit will help. It seems to be quite acceptable to have those offences for which it is appropriate to have an expiation fee, even if the incidence is miniscule, dealt with in this Bill.

I agree with the Hon. Trevor Griffin that there seem to be some unacceptable inclusions in the schedule. I cannot say whether or not there are any omissions, but that is not particularly important at this stage. In relation to the question of abuses that would endanger the public or employees in workplaces, it may well be that the offence could be one against the Occupational Health, Safety and Welfare Act. In that case, a penalty would apply to this offence under that legislation. Perhaps the Government could set my mind at rest and confirm that an expiation fee under this Bill would not relieve an offending employer from culpability under the Occupational Health, Safety and Welfare Act.

The Hon. Trevor Griffin has some misgivings about the fact that this Bill could be misused as a revenue raiser. I think that the abuser pays principle is probably appropriate and there is no reason why money should not be raised from those who are offenders against this category of legislation. I have not had a chance to look in detail at the Hon. Trevor Griffin's amendments to the schedule, but by and large the points that he made in his second reading speech struck a sympathetic cord. Perhaps I do not have the same aversion to insulting a teacher as has the Hon. Trevor Griffin. Perhaps I have not been close enough to that occupation but, if there is no physical violence, $150 is probably a reasonable bargain. The Democrats support the principle of the Bill and we look forward to assessing the amendments placed on file by the Hon. Trevor Griffin. I support the second reading.

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

CHILDREN'S SERVICES ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 20 October. Page 1311.)

The Hon. R.I. LUCAS: This Bill directly affects the operations of about 143 children's service centres or kindergartens and they are the kindergartens that have dual incorporation under the Children's Services Act and the Associations Incorporation Act. In essence, the Bill retrospectively terminates to 1985 their incorporation under the Associations Incorporation Act. They would remain incorporated bodies under the Children's Services Act with that incorporation.

The Bill was introduced on Wednesday 14 October in another place. On that day I wrote to 50 kindergartens that would possibly be affected by this legislation. Those kin-

dergartens would have received my letter the following day—Thursday 15 October. That letter gave no indication of my view on the legislation but it expressed some concern that it appeared that there had been little consultation. It sought a response from those 50 kindergartens. The following week, on 21 October, I wrote to the remaining 80 kindergartens that were likely to be affected by this legislation and, having had the opportunity to discuss the matter with a number of kindergartens, I indicated my concern again about the lack of consultation. I stated that the Liberal Party and I as shadow spokesman in the area of education would oppose this legislation.

When the kindergartens received my letter on 15 October, that was the first knowledge directors and members of management committees of those kindergartens had of this legislation. Clearly, the level of consultation was appalling. First, the 143 kindergartens that were likely to be affected by this legislation had not been consulted at all. Secondly—an even more damning indictment on the Minister of Children's Services (Hon. G.J. Crafter)—the State-wide consultative committee of the Children's Services Office had not been consulted at all about the introduction of this legislation, and I am further advised that the whole network of regional consultative committees for the CSO was not consulted either. I am told that only three or four persons were consulted prior to the introduction of this legislation. I understand that the Chairman of the State-wide consultative committee of the CSO, a representative of the South Australian Institute of Teachers, and one other person were consulted.

A consultative mechanism was established under the CSO Act in 1985 which established regional consultative committees and a State-wide consultative committee, yet the Minister and the senior officers of the Children's Services Office chose not (and I use the words 'chose not' advisedly) to consult members of those consultative structures. I am advised that the Director, Mr Wright, and other senior officers attended many recent meetings of consultative committees and, clearly, opportunities were available for the Director to raise this matter with members of the consultative committees, but the Director and other senior officers of the CSO and the Minister chose not to take into their confidence members of the consultative structures of the CSO regarding the possible introduction of this legislation.

As I said, kindergartens started receiving letters from me on 15 October. A lot of concern was expressed by members of management committees and directors of kindergartens. On 16 October, the next day, a letter was sent by the Director of the Children's Services Office, Mr Wright, to those kindergartens that would be affected by this legislation. Those letters were not received by kindergartens until the following week—on either the Monday or the Tuesday (the 18th or the 19th). So it took almost one week after the introduction of the legislation into this Parliament before the Minister and the Children's Services Office made any token effort at all to advise directors and members of management committees about the legislation before the Parliament.

Sadly, this is not the first example of this Minister in relation to an appalling lack of consultation. I do not intend to trace the sad record of the Minister in relation to the lack of consultation, but suffice to say that the feeling in the education and children's services community is so strong that last year the peak parent body in South Australia, the South Australian Association of State School Organisations (SAASSO) felt compelled to write to the Premier complaining about the lack of consultation by the Minister of Education on a range of matters relating to education and children's services.

I understand that that letter instanced about 17 examples where SAASSO believed it had been ignored or had not been consulted properly by the Minister of Education on important matters in the fields of education and children's services. I understand that that is the first occasion when a body such as SAASSO has had to write to the Premier complaining about the actions of the Minister and instancing some 17 examples where there had been lack of consultation.

If that record that I have outlined was not bad enough, one only needs to look at the sad history of the dual incorporation of some kindergartens in South Australia over the past three years to see that the situation is even worse. Members who have been in this Chamber for some time will know that just prior to the 1985 State election—on 6 November 1985—Mr Ken MacPherson, Commissioner for Corporate Affairs in South Australia, lodged an obscure advertisement in the public notices section of the *Advertiser* which sought to wind up the incorporation of 50 kindergartens in South Australia. A political controversy immediately erupted and, if one recalls that it was just prior to the State election, one will be well aware of the immediate concentrating factor that that sort of issue can have on Governments and political Parties.

A Save the Kindergarten movement was established in November of that year to fight the proposed action by the Commissioner for Corporate Affairs, and to be fair I think that a part of that Save the Kindergarten movement revolved around concerns at that time about the operations of the Children's Services Office which had just been established and which had taken over a revered institution, the Kindergarten Union. There was a mixture of concerns in that Save the Kindergarten movement, but the principal catalyst was the move by the Commissioner for Corporate Affairs to wind up the incorporation under the Associations Incorporation Act of about 50 kindergartens in South Australia. Why the Commissioner did not seek to wind up the incorporation of all 133 kindergartens is beyond my powers of comprehension. I am not sure of the answer, but nevertheless the Save the Kindergarten movement was formed.

The Bannon Government was concerned, and immediately sought to go into damage control and to try to head off this burgeoning political controversy through the Save the Kindergarten movement. There were protest letters, eminent QCs in South Australia were consulted and letters were sent to all affected kindergartens. All the traditional paraphernalia of a protest movement was actioned very quickly and set in train with press coverage and media coverage of the Save the Kindergarten movement.

To head off the political controversy the Bannon Government came to an agreement with the Save the Kindergarten movement. That agreement was known then—and is still known now by those involved—as the 'Hester/Wright agreement'. It is a three page agreement signed jointly by Mr Brenton Wright representing the Government and the Children's Services Office and Mr Tom Hester, who was the representative of the Save the Kindergarten movement. I will not trace all parts of the agreement because, as I said, some of the concerns at that time related to the introduction of the Children's Services Office and the demise of the Kindergarten Union. However, the important feature that we need to look at is included on page 2, as follows:

> Should any change in relation to the Associations Incorporation Act be proposed in future, it will be fully discussed first with the centres concerned.

That is an unequivocal promise made by the Government as represented by Brenton Wright, Director of the Children's

Services Office. It is unequivocal in that it says that there will be full discussion with all the affected centres concerned with any possible changes prior to any future change in relation to the incorporation question under the Associations Incorporation Act. That document is dated 2 December 1985, just prior to the last State election, and it was circulated to all kindergartens concerned with this issue, and through that statement the Government managed to institute damage control over the issue. It headed off the Save the Kindergarten movement, which took no further public role or profile over this issue as it accepted the assurances given by the Government in 1985.

The introduction of this Bill without any consultation at all with any of the affected kindergartens is clearly a broken election promise by the Bannon Government and the Minister of Education. The Government and the Minister have sought to sneak this Bill through Parliament without the affected kindergartens either being consulted or in most cases even being aware that the legislation was before Parliament. We need to consider the alleged reasons for the introduction of this Bill. In my view and in the view of many kindergartens the Government has not thus far given any persuasive reason for the need for change encapsulated in this Bill. The second reading explanation of the Bill was a meagre contribution of one page in both Houses of Parliament, and only one paragraph of that one page seeks to justify in any way at all the need for the legislation. It states:

> In the opinion of the Crown Solicitor this apparent dual incorporation gives rise to some doubts and confusion and is also of concern to the Commissioner of Corporate Affairs. It is clearly cumbersome for preschool centres to be required to comply with the provisions of two different Acts with respect to their incorporated status.

The second justification of sorts, once again a one page letter which went out from Brenton Wright on 16 October, covers similar ground. Once again, there is only one paragraph in that one page letter which seeks to justify the need for change as a result of this legislation. It states:

> This amendment to the Children's Services Act is required to remedy an identified legal anomaly. It will resolve legal uncertainties and will simplify significantly the administrative requirements for those kindergartens which have been in this situation.

So we have one page in a second reading explanation and a one page letter, and there is one paragraph in each document addressing the need for change. The rest of the second reading explanation and the letter seek to argue why certain things will not occur if the legislation goes through.

In addressing legislation in this Chamber we must first be satisfied that there is a persuasive need for change in the first place and that there is a persuasive case to argue for the introduction of legislation in the first place. If it really will have little effect at all, one must have considerable doubt about the legislation on those grounds alone. I will look at the flimsy reasons given by the Government for this legislation, and they come in two general areas. The first relates to the cumbersome problems for preschool centres in complying with the provisions of two different Acts. I point out that the letter states that it will 'simplify significantly the administrative requirements'. I have spoken to a large number of kindergartens and their representatives in the past week or so, and not one of them has raised with me any concern at all about complying with the administrative arrangements under two separate Acts—not one of them. All have advised me that they have not complained through the consultative committee structure of the CSO about cumbersome administrative procedures—

The Hon. Barbara Wiese: Have you spoken to the centre that was fined for not producing the required reports?

The Hon. R.I. LUCAS: I do not know. If you can tell me its name, I will be happy to tell you whether or not I have spoken to it. So, not one of the 143 centres has raised with me significant administrative problems with respect to procedures under this legislation and the associations incorporation legislation. In addition, they have said that they are prepared to undertake additional administrative procedures because of what they see as protections by being incorporated under both Acts. So, they say that, if there is any small additional responsibility, they are prepared to wear it and to endure it because of what they see as protections through their present situation.

The second reason for the legislation, supposedly, is that there was a legal anomaly in being incorporated under two Acts. There is no mention from the Minister nor from the Director of Children's Services that trade unions and employer associations in South Australia are incorporated under two Acts, as well: under the Associations Incorporation Act and under the Industrial Conciliation and Arbitration Act. We do not see legislation from the Bannon Government seeking to terminate retrospectively the dual incorporations of trade unions in South Australia. There is no argument from the Bannon Government through legislation that there is a legal anomaly which must be resolved by legislation in this place to retrospectively terminate one of those incorporations—of course not! While there are some problems, which are readily conceded, with commonsense and a little bit of extra work trade unions and employer associations are prepared to undertake that additional responsibility for their own reasons in continuing with dual incorporation under two Acts.

Thanks to the Minister of Education, I was able to be briefed in part by officers of the Children's Services Office and an officer of the Crown Law Department in relation to this legislation. The officer from Crown Law outlined to me four possibilities in relation to resolving what he saw as the legal problems of dual incorporation, one of which is the alternative chosen by the Bannon Government in this legislation. The others were that dual incorporation could continue as for trade unions—one body and two legal identities—as long as it was outlined how that dual incorporation was to work. He accepted that that was an alternative, as long as ground rules were outlined by the Parliament to officers like himself and those of the Children's Services Office for dual incorporation to continue.

Also, there could be an alternative with two bodies and two legal identities co-existing. Finally, the body that was already incorporated under another Act perhaps should not be allowed to register under the CSO Act unless it dissolved its own separate incorporation in the first place. Given that all the bodies are registered, it appears that that option is no longer with us. Those alternatives were outlined to me by one of the Government's legal advisers. As I said, one of those has been included in this legislation. The other three were alternatives which could be considered by the Parliament and the CSO to resolve what this officer saw—and what, evidently, the Bannon Government sees—as a legal problem with respect to dual incorporation.

As I have indicated, the Opposition does not accept that that is a problem which needs to be resolved in this way, and we believe that there are alternative ways of meeting that situation. Neither I nor the Opposition accepts that a persuasive legal case has been made by the Bannon Government for the need for change in this area.

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

The Hon. R.I. LUCAS: As I was indicating before the adjournment, the Opposition does not accept that the Government or the CSO has made a persuasive case on legal or administrative difficulty grounds for this change in the

Bill. The overriding principles that guide our attitude towards the Bill can best be summarised as follows: first—and I have indicated this before—there should have been consultation with each of the 143 bodies that will be affected by the legislation and, secondly, the individual management committees of the kindergartens should be allowed to make the decisions as to whether they ought to wind up the incorporation under the Associations Incorporation Act.

The alternative view of the Liberal Party to having legislation such as this is that the officers of the Children's Services Office should have contacted, and can still contact, the individual management committees. The officers of the Children's Services Office can outline to those management committees the supposed or alleged legal anomalies and difficulties with respect to dual incorporation. If the management committees of the kindergartens are persuaded by the Children's Services Office to the validity of their argument then the management committees themselves can take their own action to wind up the incorporation under the Associations Incorporation Act. If there is a need to amend one or both of the constitutions to make them consistent, then again the individual management committees of the kindergartens can take that decision. It is not a difficult task; it is not an administratively cumbersome task, it is something that can easily be done by the management committees of the kindergartens. If the management committee, having listened to the arguments of the Children's Services Office, objects or is not persuaded to the view of the Children's Services Office, the management committees should be allowed to continue with dual incorporation in the same way as, as I have indicated before, trade union and employer associations are allowed to continue with dual incorporations in the industrial arena.

The overriding principle should be that management committees, given full information and consultation from the Children's Services Office, be allowed to make their own decisions with respect to dual incorporation. The Opposition, both here and publicly, has not argued strongly one way or the other with respect to the advantages of dual incorporation or sole incorporation. It argues that there should have been consultation and that the final decision should be that of the individual management committees. They and they alone should be the ones to make any decision to wind up their own incorporation under the Associations Incorporation Act.

In the past seven to 10 days I have been contacted, principally by telephone because of the shortage of time, but also by letter, by a number of kindergartens which put their views to me as the shadow Minister in order to have them raised in Parliament. Because of time I do not intend to go through all of them, but I want to refer to letters written by two of the kindergartens: one from the country and one from the metropolitan area. The first letter to which I refer is from the Millicent North Kindergarten Incorporated. I think the Hon. Terry Roberts would be interested in this one. It is a letter from Mr Doug MacLennan, the President of the Millicent North kindergarten committee and also the parent representative on the subregional and regional consultative committees of the Children's Services Office. The last paragraph of this letter states:

> If we become incorporated under the Children's Services Act we fear that we may have no control over the way in which our constitution may be changed and we are seeking legal advice in this matter. This committee would be pleased to provide to you or receive from you any information which will prevent this legislation from becoming law.

The letter also states:

> The parents of this region are already aware of the lack of cooperation from the CSO through our subregional meetings. In view of this, the committee and parents of this kindergarten have come to distrust any assurances given to us by the CSO and wish to register our objection to the proposed legislation.

The Salisbury kindergarten in the metropolitan area makes the following comments:

> In response to your letter, our management committee wishes to make the following comments:
>
> *(a)* We wish to register our concern that legislation to amend the existing Act should reach the first reading in the House without any significant attempt having been made to obtain views and comments from the community which we serve;
>
> *(b)* While having no formal legal opinion on the matter, we can see no particular necessity for sole incorporation for all kindergartens in South Australia—indeed it is our particular concern that, under such an arrangement, the Director could interfere with both the name and the objects of our existing constitution;
>
> *(c)* We are not convinced that the existing incorporation represents a legal anomaly.

In order to not prolong the debate I will not go through the other representations that I have received. I think it is fair to say that whilst there are a number of kindergartens and management committees which are staunchly opposed to this Bill, a good number of the kindergartens do not understand the legal import of what is before Parliament at the moment. They are concerned but they do not really know which way to go in relation to their own views on the Bill that is before us.

Madam President, as you will see from those two letters and the many other contacts that I have had, one of the major concerns of kindergartens is power over their constitution. Under the Children's Services Act, in particular section 43, the Director of the Children's Services Office has considerable powers to make amendments to the constitutions of kindergartens. He can, merely by notice in writing, direct a registered kindergarten to make any amendment to its constitution as specified in the notice. If a registered kindergarten fails to comply with that direction within a specified period the Director of the CSO can cancel the registration of that kindergarten. Equally, an amendment to a constitution of a registered kindergarten has no effect until submitted to, and approved by, the Director of the CSO.

Kindergartens which have contacted me believe that because of their separate or independent incorporation under the Associations Incorporation Act they have power over the constitution that they lodge with the Corporate Affairs Commission. The Director of the Children's Services Office cannot alter that constitution which is lodged with the Corporate Affairs Commission.

He can, under section 43, order changes to any constitution lodged under the Children's Services Office Act, but he cannot alter a constitution that has been lodged with the Corporate Affairs Commission. I was advised by representatives of one of the more active kindergartens only this morning that the Director of the Children's Services Office, Mr Wright, indicated this week to those representatives involved that he believed that he had the power to order or make amendments and changes to the constitution lodged with the Corporate Affairs Commission. As I indicated just a moment ago, the legal advice available to the Liberal Party, and also that available to a number of kindergarten management committees is quite clear that the Director of the CSO does not have that authority, and those kindergarten management committees are therefore jealously guarding and fighting for the right to maintain their independence, as they see it, through their own constitution.

They believe that should the Director order changes to their CSO constitution, the fact that they retain some degree of arm's length independence through a separate incorpo-

ration and a separate constitution possibly would mean that the Director of the CSO would be more reluctant to take precipitate action in that regard. In particular, I believe that members in this Chamber ought to be aware of the situation of the nine affiliated kindergartens. A number of those have contacted me but, principally, it has been those run and operated by the Lutheran Church. I am advised that the church owns the property and the buildings on which the services of the kindergartens are offered. I am advised that, with the agreement of the CSO, they became affiliated kindergartens on the understanding that their constitutions would be protected and, in particular, that their right to hire and fire staff would be protected, rather than being directed by the Director of the Children's Services Office.

They have a particular Christian ethic that they want to see in their teachings in the children's services centres, and they believe that the power to hire and fire staff within their kindergartens is an important one for them to have in the delivery of their brand of education. As I have said, there was an agreement that they were able to hold on to that, and if this termination of incorporation goes ahead the question is, what remains of that commitment that was given by the Government and the CSO for those affiliated kindergartens to continue as they have done for many years in the past, and in relation to which they have been operating quite happily for the past couple of years? These kindergartens are concerned—and they have indicated this to me—that, if that incorporation is terminated, at some stage in the future they will lose those powers that they have retained by means of an understanding with the Children's Services Office.

Over the past few days the Minister and the Director of the Children's Services Office have made a number of verbal commitments to kindergartens, along the lines of, 'You have nothing to worry about; we would never take action to alter constitutions, even though we have the power to do so under section 43; you can lodge constitutions with us, and we can see no reason why we would reject any constitution that you might wish to lodge with us.' Assurances in that vein have been given verbally to representatives of the kindergarten management committees and directors. As we have seen in many other areas those sorts of commitments are not worth anything at all, even if put in writing. This was the case with the commitment given by Brenton Wright as the Director of the Children's Services Office in 1985 in the Hester-Wright agreement (and that was a written agreement to head off a political problem just prior to an election), where we see quite explicitly the Bannon Government, Minister Crafter and the Director of the Children's Services Office breaking that commitment given just two years ago in writing.

If commitments in writing are being broken in the space of two years I suggest to members here—and I have suggested this to representatives of the kindergartens in South Australia—that one cannot place too much store on the verbal commitments that are being given at the moment, such as 'Well, we really won't use that power even though we have it; there really will not be too much to worry about in respect of your present operations.' One need only consider what is happening in respect of one of the incorporated health units at Kalyra, under the Health Commission Act, with its own legislation.

The Hon. C.M. Hill: We have heard it all before.

The Hon. R.I. LUCAS: The Hon. Mr Hill is quite right. We can see there an instance of where the Government of the day, if necessary, can use the powers available to it in respect of, for example, the expenditure provisions, which the Minister incorporated recently, that all expenditure must be approved by an officer of the Health Commission. When there is a dispute between a health unit or an education unit and the Government, if the Government of the day has power available under the legislation it will, quite rightly, be able to use it. Kindergartens and the management committees of kindergartens ought to be aware of the fact that if the legislation exists—and I refer particularly to the provisions under section 43 of the Children's Services Act—the Government of the day at some future stage can quite rightly use those powers against the management committees of those kindergartens that might be in conflict with the Government.

In conclusion, I indicate that no persuasive reason has been given by the Government for the legislation. As I indicated earlier, in relation to any problem, no matter how small, there are alternative ways of meeting it. There should have been consultation between the Government, the Children's Services Office and the individual kindergartens. The overriding principle ought to be that a management committee should be able to make its own decision as to whether it winds up a separate incorporation or not. For those reasons, I urge members of the Council and in particular the Australian Democrats (because as with most other measures their votes will be crucial) to oppose this Bill.

The Hon. M.J. ELLIOTT: The Hon. Mr Lucas has covered much of the ground that I was going to cover, so I will not speak for as long as he did. I begin by referring to the letter that was written by Messrs Hester and Wright to the various kindergartens some two years ago, which promised the kindergartens that they would be consulted before any changes in their incorporation were made. Copies of that letter have been widely seen, the contents of which are generally known in the community. That promise was made and, as it turned out, a letter was written to kindergartens on the 16th of last month, only four days before the Bill was introduced in the Assembly. So much for the consultation promised by the CSO! It is about up to Government standard—perhaps on this occasion slightly better, but it is still abysmal.

The promised consultation did not occur, and regardless of how good the Bill is or is not, having regard to the level of concern expressed in this matter the very least that could be done at this time would be to delay the Bill for a couple of weeks so that the kindergartens can be consulted. If, as the Government claims, there are no problems, this would be the opportunity to convince the kindergartens that that is the case. The Bill is very simple: it requires that all children's services centres be incorporated under only one Act, namely, the Children's Services Act and that any kindergartens which at present have an incorporation under the Associations Incorporation Act will lose that incorporation.

What concerns the kindergartens are the legal ramifications of that move and, in particular, clause 43, which was referred to by the Hon. Mr Lucas and which provides that the Director can change the constitution of the kindergartens at a whim. Obviously, their great concern is that the change to the constitution could be such that the property of that kindergarten could revert to the hands of the Minister. The sort of thing they fear may occur relates to a town or a suburb where two kindergartens may be reasonably near each other and the Government may decide to rationalise. The kindergartens would have no say whatsoever in it. The constitutions would be changed, regardless of the wishes of the kindergarten committees and all the various people who have worked over the many years to build up the physical resources of those kindergartens. In many cases

the physical resources have been very reliant upon the local community. Regardless of the wishes of all those people, by having the constitution altered, the kindergarten could be closed down.

There may or may not be good cases for some kindergartens being closed, but this is part of a general trend at the moment where a Government does not wish to give the community any real say in what occurs. I will seek further legal advice on the ramifications of this change. For that reason I am talking to the Bill and at this stage I am not indicating whether or not I will support it. I, too, want a couple of weeks to look at the real ramifications of the Bill.

I must say that, on first examination, the reasons given by the Government for wanting this single incorporation have not been overpoweringly strong. It talked about legal ambiguity, but it has not been able to present a single case where this so-called legal ambiguity has caused any problems. The only problems that it has alluded to so far relate to one kindergarten which it claimed had been prosecuted for failing to fulfil some requirement of the Associations Incorporation Act, but there is indeed a very simple solution to that. The CSO as a matter of course should have sent out a circular to all kindergartens that carried that dual incorporation and asked the simple question, 'Have you fulfilled the following requirements of the Associations Incorporation Act?' By that action, we could be confident that the kindergartens would lodge all the required forms and that there would be no problems.

At this stage I believe that the kindergartens have a right to be consulted. A promise was given by the head of the Children's Services Office that that would occur and I will allow him to fulfil his obligation in that regard. I will use these next couple of weeks as an opportunity to further examine the ramifications of the change. Quite clearly the concerns that were raised in kindergartens when the original Children's Services Act was passed in 1985 was that standards of education would be under attack. I believe that some of them are fearful of this further power over the constitution of kindergartens whereby the sorts of services they may provide may be changed by alteration of the constitution. I must say, from what I have seen over the past two years as a result of one child having just finished kindergarten and the second one just commencing, I believe that kindergartens already are beginning to suffer educationally.

I had a close look at and I spoke to many people in kindergartens. There is no doubt that the CSO has not fulfilled its educational obligations, and I believe that there is a real chance that, as a result of the proposed change to the Act, the power of the kindergartens to insist that education remains a priority in them may be further undercut. I will vote that this matter not be further discussed for another two weeks.

The Hon. K.T. GRIFFIN: I support the comments made by my colleague the Hon. Robert Lucas, the shadow Minister, in respect of the legal consequences of the Bill. When I saw the Bill, I took great exception to it, because it smacked of potential expropriation and that was done without any consultation with the current incorporated bodies which may be children's services centres. I suppose that one of the difficulties with this is that a lot of people cannot comprehend that there can be dual incorporation. We have had it for many years with the Industrial Conciliation and Arbitration Act which contains a provision for the incorporation of associations. They come under the title of registered associations, and those associations may also be incorporated under the Associations Incorporation Act.

The current Associations Incorporation Act contains some limiting provisions with respect to that sort of dual incorporation, but it is not extensive. Under the Industrial Conciliation and Arbitration Act, when an association of employers or employees is registered, it then achieves corporate status and that runs in parallel with any other incorporation. While there may be a lot of confusion even within the association that is registered as well as incorporated, the fact is that legally there are two incorporations unless a particular statute that confers corporate status provides to the contrary.

In this instance, we are looking at a group of kindergartens (now called children's services centres) incorporated under the Associations Incorporation Act. They may have been incorporated many years ago, or they may hold real and personal property in the name of that incorporated body. They may also have applied to be registered under Division IV of this part of the Children's Services Act. When that occurs there is dual incorporation. When the registration occurs under section 42, that confers corporate status. It then makes that particular incorporated body as registered under the Children's Services Act liable to certain intrusion by the Director and its constitution may be amended by direction of the Director. An amendment to the constitution of a registered children's services centre has no effect until it is submitted to and approved by the Director.

Notwithstanding that, it has no application to the incorporation under the Associations Incorporation Act. Those powers of the Director relate only to a registered children's services centre. Even though it may start off that the constitution under the Associations Incorporation Act is produced with the application for registration under this Act and it may be registered under this Act with identical rules and constitution, later the Director can direct that the constitution be amended. Only that constitution that is registered as part of the registration process of the children's services centre is amended and the constitution under the Associations Incorporation Act remains. Notwithstanding the tandem incorporation, there are different rules and laws applying to it.

The Bill seeks to provide that a children's services centre that is registered under the Children's Services Act is a body corporate, but the sinister provision—incorporation by virtue of that subsection (4)—terminates incorporation under any other Act, and that is without any consultation with the body that may be incorporated regardless of its wishes. Of course, that in itself raises questions. At the Lands Titles Office, XYZ Incorporated, incorporated under the Associations Incorporation Act, may be the registered proprietor of land. There is no indication from the amending Bill as to what will happen to that land once the incorporation terminates. There is no provision for the property of the body incorporated under the Associations Incorporation Act to be vested in the new registered children's services centre. There is no provision to change the name on the title. What happens to it?

The Associations Incorporation Act constitution no longer exists; incorporation is defunct, but it still has property. Presumably the property is dealt with under the provisions of Associations Incorporation Act in relation to defunct societies, and I find that to be an extraordinary position. Notwithstanding that, I think it is sinister; it is intrusive for this Bill to seek to terminate any other incorporation without consultation. There may well be good reason for a body incorporated under the Associations Incorporation Act to retain its separate incorporation, to keep its property separate from the association registered under the Children's Services Act. It may be that that kindergarten is concerned

about what might happen in the future if the Director has the power to give directions to amend the constitutions. It could be that indirectly, through the back door, the property of that association will be forfeited to the Crown either in fact, or by executive act.

That is quite sinister, and I have some very grave concerns about it, because it tramples on the rights of separately incorporated bodies and it ignores the fact of incorporation. The whole object of the incorporation is to establish a separate legal entity and as a separate legal entity it is then subject to all of the laws which relate to that particular form of incorporation.

I have some experience with dual incorporation and there are associations which do wish to retain two forms of incorporation. That is partly for administrative purposes, partly to protect the property, and partly to keep some parts of its activities separate from the other. Of course, where there is a rather simple way of getting rid of, in this case, a registration of a children's services centre or, under the Industrial Conciliation and Arbitration Act, dissolving a body registered under that Act, then there is even more reason for an association to be concerned that its property is kept secure. Of course, the dual incorporation will require the bodies to comply with the procedural requirement of both sets of rules and constitution and both sets of laws which apply to them. But that is a small price for some of them to pay if they have peace of mind with respect to the security of their property and their administration.

The other difficulty under the Children's Services Act if registration is terminated or cancelled is where the kindergarten or association goes from there. If it has separate incorporation under the Associations Incorporation Act it can always fall back on that and it is still independent from the Government of the day, the Director of the day and the Minister of the day. A certain measure of security and confidence is engendered by that position. So, I believe that it is quite inappropriate to embark on a process of dissolving or cancelling incorporations under other legislation by the stroke of a parliamentary pen. It is being done without any provision for consultation, and I see it as something sinister. It cannot be done now.

The Director does not have power to override the provisions of the Associations Incorporation Act or the constitutions established for incorporated bodies under that Act even though, as I understand it, the Director has suggested at meetings that he has that power. It is not a power which the Director can lawfully exercise and, if there was an attempt to do so, I suggest that it would be illegal and would certainly be subject to challenge, and would not have the legal consequence of dissolving an incorporated association. So, there must be consultation if an incorporation is to be dissolved. It can be achieved now under the Associations Incorporation Act, but it requires a conscious act on the part of the members of such an association and cannot be achieved through the back door. For those reasons, I am not prepared to support this Bill.

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

PUBLIC EMPLOYEES HOUSING BILL

Adjourned debate on second reading.

(Continued from 21 October. Page 1399.)

The Hon. DIANA LAIDLAW: The Opposition supports this Bill, which is a short but important measure, and rather refreshingly, I suggest in terms of legislation today, it comprises six clauses only. Essentially, the Bill seeks to repeal the Teacher Housing Authority Act 1975 and thereby allow the Minister to provide housing to public employees through a single authority, namely, the Office of Government Employee Housing under the direction of the Minister of Housing and Construction.

The Bill has significant ramifications for the ability of the Government acting on behalf of the South Australian community to attract and maintain able, committed and skilled workers, often accompanied by their families, to country towns and far flung areas of the State. A large number of public employees are prepared to move periodically around South Australia to perform their duties as teachers, police officers or community welfare workers (to name just three) on the understanding that they will be provided with accommodation to meet their needs at a rental set at a modest rate.

These officers cannot be expected to find the capital necessary to invest in a permanent dwelling in each and every one of the communities that they are assigned to serve. For this reason we have established in this State the longstanding principle that Government employees required by the terms of their work to undertake specific tasks or be assigned to particular locations be provided with accommodation that is sufficiently comfortable, appropriate and affordable to ensure that they are not unduly disadvantaged by the nature of their work.

This principle is not in dispute in relation to this Bill. However, the management of Government housing stock has been a contentious issue for a number of years, and I will reflect on some of this history. On 27 August 1980 the Public Accounts Committee of this Parliament held an inquiry into the Teacher Housing Authority, and at that time it recommended as follows:

> The Government should investigate the possible advantages that would accrue if all Government owned employee houses were placed under the control of a single authority, as the PAC's preliminary investigation indicates that this would be an appropriate course of action.

In the following year, 1981, the Tonkin Liberal Government initiated a report on country housing for Government employees. In 1985 a working party was established by the present Government to investigate the basis for establishing a single Government employee housing program. Both the 1981 and 1985 reports raised concern over difficulties with the management of housing stock, including variable standards, poor control of vacancies, inconsistent rent policy and the lack of coordinated financial information. The Government subsequently responded to these issues with a decision to establish a single authority responsible for coordination and integration of the State's total Government employee housing program.

On 22 December last year the Minister of Housing and Construction announced the formation of an Office of Government Employee Housing. The *Advertiser* of the following day carried the following report:

> All South Australian Government employee housing will be brought under the control of a single body in a bid to improve efficiency and provide consistent standards. The move means such bodies as the South Australian Teacher Housing Authority will on 30 June [1987] be brought under the control of a new office within the Department of Housing and Construction.
>
> The Minister of Housing and Construction, Mr Hemmings, said yesterday the new Office of Government Employee Housing would absorb the housing functions of 17 departments from 1 July. The measure would benefit country-based public servants, and Government housing stock would be more efficiently managed with coordination of supply, better control of vacancies and consistent rents.
>
> 'State employees can expect a gradual improvement in housing maintenance, locational choice and consistency in rents and

standards, while better management will bring savings to the public,' Mr Hemmings said. Departments would remain responsible for the allocation of staff housing.

The statement from the Minister, which I have just read, notes that the Teacher Housing Authority would be disbanded and its responsibilities undertaken from 1 July this year by the Office of Government Employee Housing. Several months later, in November, we find that we are addressing this Bill to pursue the measure which the Minister announced would be accommodated by 30 June this year.

I note that in the other place when this Bill was debated the Minister provided no credible explanation for the reasons for the Government's tardiness in bringing forward this legislation. It is my view that the Government has been quite slack in this respect, and I note that, by contrast, it has found time to advertise the position of Director of Housing and Construction. That person's task will, in part, encompass responsibility for the Government employee housing program.

That position, which the Government advertised in September of this year, will have an annual salary of $54 038, and the closing date for applications was Wednesday 7 October. So, the Government has found time to call for applications for this job of Director, and the appointee will undertake responsibility for the Government employee housing program. I imagine that in the past month, since the applications closed on 7 October, people have been interviewing the appropriate officer for the appointment.

The Government and the Minister found time for all these actions but, perhaps by oversight or for some other more devious reason, the Government found no time to bring this enabling legislation before the Parliament to ensure that that Director could undertake the responsibilities referred to in the job specification. Considering the number of years during which this matter of the management of Government housing has been canvassed, coupled with the firm commitments of the Minister of Housing and Construction in December last year that the Teacher Housing Authority would be brought under the control of the Office of Government Employee Housing by 30 June, and the subsequent advertisement for Director of Housing within the Department of Housing and Construction, I find quite irresponsible the delay in bringing this Bill before Parliament.

The Hon. C.M. Hill: Hear, hear!

The Hon. DIANA LAIDLAW: I am very pleased to hear the strong support of the Hon. Mr Hill in this respect. By way of aside, it was my pleasure to work with him for a number of years when he was Minister of Housing, and I can assure members that, from the standards that he set in that office, actions such as this would not have been tolerated. But, this is not the only aspect of this whole matter of Government housing upon which I—and, I believe, all honourable members—could not help but be most critical of the performance of the Minister of Housing and Construction.

I read with great interest the debate in the other place. I was aghast that the Minister in the other place did not have a command of the basic details that are central to this Bill, and I will give just a few examples of what I believe is slack administrative oversight and command of the details of this measure. For instance, he was unable to name the number of Government departments involved. I would have thought that that was quite a basic issue for which the Minister should have answers, but that was not the case.

In his press release (to which I alluded earlier) the Minister indicated that the Government office would be absorbing the housing functions of 17 departments yet, during his summing up speech, he indicated that the Teacher Housing Authority was now dealing with more than 20 client departments. During the debate the lead speaker for the Opposition (Mr Becker) indicated that his office had phoned the Minister's office and had been provided with the names of 11 departments only, and I will name them for the record.

Those departments are Police, Engineering and Water Supply, Agriculture, Highways, Community Welfare, Environment and Planning, Correctional Services, Lands, Housing and Construction, Marine and Harbors, and Fisheries. The Minister indicated, as I said earlier, that 17 departments would be involved, so somewhere we have lost six. I am not sure whether they are Woods and Forests, Labour, Mines and Energy or Transport, but none of those has been alluded to in official statements by the Minister, so it is very difficult to know the ambit of this Bill.

As I said earlier, I would have considered that the Minister in charge of this legislation in the other place would have a command of such basic knowledge, especially when he had been considering this matter since prior to December last year. In addition to not knowing the number of departments, the Minister was unable to provide details of the housing stock within each of these departments. We are aware that in the Teacher Housing Authority about 1 200 houses are involved, but we have no idea as to the number of houses that are involved in the 11 departments which the Minister's office provided to Mr Becker, let alone in the 17 or, possibly, 20 departments to which the Minister referred during his second reading explanation. I am not sure whether the Minister was trying to be mischievous or whether he is simply ignorant of this matter, but I do not think that it is appropriate to bring such an important measure before this Parliament without having full command of such basic details.

In addition to being rather aghast at those matters to which I have just alluded, I must admit that I was also rather disgusted with the way in which the Minister in the other place sought to discredit the amendments that were moved by the Liberal Party to provide that the South Australian Housing Trust, not the Minister, through the Office of Government Employee Housing, would be responsible for providing housing accommodation for the benefit of public employees.

The Minister dismissed these amendments with claims that it was not in the trust's charter and that it was a conflict with the trust's role to be placing Government housing within the responsibility of the South Australian Housing Trust. He also claimed that the South Australian Housing Trust did not operate in outer country areas. Neither claim has any validity.

An honourable member: A lot of rubbish!

The Hon. DIANA LAIDLAW: They are a lot of rubbish, yet he was able to stand up as Minister responsible for this Bill and for housing and construction and make such unqualified claims in the other place in dismissing amendments that have the support of all Independent members and Opposition members in the other House.

On this matter of the trust's charter, it is important to note that it certainly would not be contrary to the charter of the South Australian Housing Trust or of the South Australian Housing Trust Act to make the trust responsible for Government employee housing. I do not know whether the Minister is not familiar with the Act with which he is charged but, if he is not, perhaps I could read out appropriate sections. Section 3 of the South Australian Housing Trust Act 1936-1973 which deals with the trust and its general powers, provides:

There shall be established a trust to be called the South Australian Housing Trust which shall be charged subject to and in

accordance with the directions of the Minister with the duty of administering this Act.

Section 3 *(a)* (1) reads:

In the exercise of the powers, functions, authorities and duties conferred upon the trust by or under this or any other Act the trust shall be subject to the direction and control of the Minister.

Subclause (2) states:

Where any direction given in pursuance of subsection (1) of this section adversely affects the accounts of the trust the Chairman shall notify the Minister and the amount of any loss occassioned by any such direction shall, if certified by the Attorney-General, be paid to the trust out of moneys to be provided by Parliament.

So that is the trust and its general powers. There is not, therefore, any substance in the Minister's claim that the transfer of Government housing responsibility to the trust would be outside the province of the Act or the charter for the trust. General powers for the trust are provided in section 20 of the Act: they are listed from *(a)* to *(j)*. It is not necessary for me to read each one of these into *Hansard*, but they deal generally with such matters as buying, selling, letting, hiring or disposing of real and personal property of any kind; building, altering, enlarging, repairing or improving houses; insuring property; paying bonuses or allowances to tenants; or broad claims, such as exercising any other power necessary and convenient to carry this Act into effect. There is nothing under the functions of the trust or the trust's general powers that would preclude the Opposition's proposed amendment that Government housing be the responsibility of the South Australian Housing Trust. As I said earlier in respect to the Minister's performance in the other place, I am not sure if he was simply being mischievous or ignorant, but the arguments he used against the Opposition's proposed amendment have no validity.

I mentioned earlier that I worked with the Hon. Murray Hill when he was Minister of Housing. I recall at the time that Liberal policy was to change the emphasis of the Housing Trust and that we, the Liberal Government, wished to remove the Housing Trust from a program of building houses specifically for sale. That matter was dealt with by the Minister in conjunction with the Housing Trust board and the General Manager. It did not require amendments to the Act in this Council. Equally, it was deemed that the Emergency Housing Office be no longer simply a line under the Minister of Housing's budget but made a direct responsibility of the South Australian Housing Trust. Again, that was an administrative arrangement and did not require alteration to the Act. So, the Minister's suggestion that our amendment in this case would not only be contrary to the trust's charter or Act but would require an amendment to the Act is not valid.

The Liberal Party does not take issue with the need to bring all Government employee housing under the one umbrella. Indeed, we wholeheartedly support this goal. We do not consider that there is a need to establish a new office to be responsible especially when we are privileged in this State to have the South Australian Housing Trust. Last year the trust celebrated 50 years of operation in this State and its annual report, which was tabled today, highlights some of the achievements of the trust, not only over the past 50 years but within the last financial year ended 30 June 1987. I will name some of these. The introduction of the report notes that at the end of the year the trust had a total of 58 884 tenants; 182 000 South Australian households had been accommodated by the trust in its 50 year history, and, taking into account properties which have been sold by the trust, approximately one in five or 20 per cent of South Australian households now live in housing initially constructed for the trust. The trust's stock of housing is now worth approximately $3 000 million. The report goes on to highlight initiatives undertaken by the trust which are of benefit to private sector enterprises and notes, in addition, that a further 1 054 maintenance contractors worked on 304 729 maintenance job orders. There are many other highlights which I will not take the time of the Council to mention specifically, but I believe the report tabled today is worthy of consideration and reflection by all members, especially as this Bill is being debated.

I believe that, not only under the former Liberal Government but to a large extent under this Government, the Housing Trust is the envy of all other States in respect to housing authorities. It is certainly a credit to the General Manager, staff and board of the trust which have the expertise, ability and capacity to handle such a major operation in this State, but they also have, the Opposition considers, the capacity, ability and expertise to handle with confidence the task of managing housing for public employees.

I note also that in addition to the 41 126 rental stock owned by the trust, which is located in the central and outer metropolitan area, the trust manages 17 758 dwellings in country areas in this State. I place significant emphasis on this fact and I remind members of the Minister's comments in the other place in respect to the trust's capacity to operate in country and far-flung areas of the State. Of the trust's 58 884 houses, 30.15 per cent are in the country areas of South Australia. Since the establishment of the trust in 1938 it has constructed 108 132 units, of which 26 999 are located in the country as constructed, purchased or leased units.

I believe, as do my colleagues, that it is absolutely impossible to deny that the South Australian Housing Trust has the capacity and the expertise to take on the extra workload to ensure that Government housing in metropolitan and country areas alike is managed with competence by the trust as has been demonstrated in the past. It should also be noted that the trust undertakes negotiations for the bulk of accommodation arrangements in respect to housing public employees at the present time. So, in addition to its own extensive stock of country houses it also undertakes much of the work of the Teacher Housing Authority and other departments in locating staff in country areas. Therefore, essentially the South Australian Housing Trust is doing much of the job that the Liberal Party now seeks to confer on it by amendments which I shall move to this Bill during the Committee stage.

Also, I believe that the trust's excellent, long-standing record in the field of the provision and maintenance of housing is in marked contrast to the record of the Teacher Housing Authority, established in 1975. I believe that this should also suggest to honourable members that at this stage we should not set up a single authority within a Government department but that we should reinforce the already tried and proven work undertaken by the South Australian Housing Trust. We should work with those people in the field who have the confidence and ability in this area rather than establish a new single authority for this purpose.

At present, Government employees have the benefit of the Residential Tenancies Act in respect of rental arrangements for Government housing. This Act was amended in 1981 to bind the Crown in respect of the principal Act and also to include section 6 (2), which provides:

This Act does not apply to any residential tenancy agreement entered into by the South Australian Housing Trust, constituted under the South Australian Housing Trust Act 1936-1973.

The Opposition therefore respects the fact that, if Government employee housing was moved to the authority of the South Australian Housing Trust to maintain and administer, some beneficiaries of that housing amongst public employees would consider that they were losing some rights and benefits now enjoyed under the provisions of the Res-

idential Tenancies Act. Accordingly, the Opposition would be sympathetic towards considering measures that would exclude public employees from the exemption that the South Australian Housing Trust is now entitled to under the Residential Tenancies Act. This matter, like many of the issues in this Bill, can be discussed during the Committee stage. I indicate again that the Opposition supports the second reading.

The Hon. C.M. HILL: I shall speak only briefly to this measure. The Hon. Diana Laidlaw has covered all aspects of the Bill and she has done so exceedingly well. I understand the basis of the Government's introducing the Bill. One can understand what it is trying to do. For many years complaints have been made about the teacher housing and other public housing arrangements, particularly in country areas. It has been quite evident that something had to be done to improve the situation.

The management of housing, particularly public housing in country areas, is not an easy matter. One can understand the problems of distance and the many other aspects related to this matter. Nevertheless, some change had to be considered and new arrangements implemented. There were problems involving the general standards of existing houses and the state of repair of some houses. In some cases there was poor control in relation to vacancies and there were also questions regarding the incorrect positioning of some houses in country towns and considerable inconsistencies in regard to rents being paid by public servants and other officials from public instrumentalities. Hence, the need for change.

The Teacher Housing Authority has been exceedingly costly to run. Like many similar bodies, that instrumentality grew and grew and absorbed more and more funds in its administration. So, change had to come. This Bill represents what the Government intends to do about the matter. As has just been explained, a single authority will be provided, namely, a section of the Department of Housing and Construction, which the Government hopes will solve all the problems.

I argue that the Government is making a mistake in transferring this work to the Department of Housing and Construction and that this work should be given to the South Australian Housing Trust. The Department of Housing and Construction is a large and capable department, associated with the planning, supervision and construction of public works on behalf of client departments. For many years it has been a top-heavy department, with day labour resources and cumbersome numbers at various executive and managerial levels. I recognise the genuine efforts made in recent times to improve the general staff structure, and measures to help the department become more effective and efficient have been implemented. Indeed, I believe that the department is now running more smoothly and successfully than it was previously. I know that the Minister of Housing and Construction is making every effort to see that this improvement continues.

However, as yet the department is not the lean and efficient model that I would like to see it become. I suspect that the large day labour force and the desire of the Government and the Minister, as well as some bureaucrats, to maximise work to be done by the department and, by the same token, minimise contracts being handed out to the private sector, means that the department will not be as efficient as it should be in the foreseeable future. However, it is to this department that the Government proposes to give all this work of housing ownership, maintenance, construction and management, with a new section of the Department of Housing and Construction handling this work. In stark contrast to the Department of Housing and Construction is the South Australian Housing Trust, a specialist instrumentality dealing with the identified products that the Government proposes to transfer to the Department of Housing and Construction, namely, ownership, maintenance, construction and management of public employee housing.

Yet, for some reason unknown to me, the Government has bypassed the Housing Trust in this major transfer. As members of Parliament, we all know the record and performance of the South Australian Housing Trust in this State. I do not think that anyone in this Council would disagree with me when I say that the performance of the trust as a public housing authority has been excellent. As indicated by the Hon. Ms Laidlaw, I know the trust because it was once under my ministerial control; I have observed very closely its senior officers, its board and the general operational efficiency of the whole instrumentality.

Throughout the whole State this area of Government housing is no different from the public housing activity in which it is now involved, particularly in the country. As members know, the Housing Trust administers country housing in almost every country town of reasonable size in this State. Can the Government tell me why this Government housing scheme was not given to the trust? I am convinced that the activity would be managed far more efficiently and economically if it were given to the trust. I forecast now that the new section of the Department of Housing and Construction will grow rapidly into a large bureaucratic branch, cumbersome and expensive. If the experience and expertise of the trust were utilised, a great saving in money and resources would be achieved.

From this financial point of view, I believe that the State cannot afford to do anything else but to give the work to the specialist body, namely the trust. Therefore, I urge the Government to reconsider its intention as laid down in this Bill. I notice that amendments are on file and I hope that the Council fully considers them. They simply mean that the trust would take over the whole activity of Government employee housing and that activity would be in good hands. Experienced and capable officers with a proven record of administration in this area would do the job, and do it well. I support the change from the present arrangements—a change must be made. I do not, however, support the administration of this activity being taken over by a new section of the Department of Housing and Construction.

The Hon. M.J. ELLIOTT: I approach this Bill with some mixed feelings. The Bill is more negative than positive in its effects. It does only one thing: it abolishes the Teacher Housing Authority. In his second reading explanation, the Minister rather misleadingly said that the Government has decided to address these issues through the formation of a single authority. He is not forming any authority at all. Nothing in the Bill says that there will be an authority, so very early in his explanation he was very misleading to the Council. A little later he said that the Bill allows the Minister to provide housing to public employees. We do not need this Bill to allow the Minister to provide housing for public employees—that is a load of nonsense.

This Bill is a slightly dressed up abolition of the THA and it does nothing else. There is no other positive action—in fact, I would call it negative action—in the whole Bill. Teacher housing is something with which I am somewhat familiar, because I lived in it for 6½ years. I recall my first appointment when I arrived at Whyalla with a case full of clothing and on the day of my arrival they had nothing for me to go into. Eventually I managed to find board with a

little old lady, who was a very good landlady, but it was certainly not my preferred mode of living. I lived with her for about six months until eventually the Education Department found a share flat with a person with whom, once again, I was incompatible, but I took it. During my first year of teaching my private life really was greatly affected by the housing available.

The Hon. Diana Laidlaw: This was allocated by the Teacher Housing Authority?

The Hon. M.J. ELLIOTT: No, this was 1975 and that was the year that the THA was set up. I was probably one of the lucky ones in the sorts of things that I came across. A friend of mine was sent to another small country town and he lived in a tin shed for about six months. This was in 1975. The THA has made tremendous improvements since then. Within another two years I was one of the first people to live in one of the THA dog boxes which was a transportable home that it placed two to a block and it would put three single people into each transportable home. They wondered why the neighbours complained. The single teachers were placed in a house on this bare block which was often surrounded by gravel which it was thought improved the look of the place. In fact, married couples also were placed in similar sorts of facilities.

In the 12 years since its formation the THA has improved the standards of housing for teachers remarkably. We must recognise that largely teachers and other public employees who go to country areas do not go to a particular area or town because they want to but, rather, they are sent there as a condition of their employment. After some years their transfer may be to another place which once again is not of their choice.

Particularly in the earlier years, the Education Department lost many people because they found the living conditions intolerable. The department lost people who would have been extremely good employees. They were very good as teachers and in whatever jobs in they were involved, but they found the conditions in which they were asked to live intolerable. The position has improved.

The THA most certainly had its problems and at times it may have been inefficient, but it has done a tremendous job for teachers who have been sent to country areas. There are still problems, but there is no doubt that the position is improving. I am surprised that members of the Liberal Party, with their strong country background, have not been lobbied by some of the smaller country communities that are very aware of the problems of the teachers. One can go now to places such as East Murray and across Eyre Peninsula and look at the sorts of conditions in which teachers live.

Communities are very supportive of the supply of good housing, because they know that, without good housing, they will not get good teachers. The same situation would be true of other employees. I am not sure that I would be bothered if the Bill were amended to set up another Government authority which included all Government employees, but it does not do that. At this stage the Bill abolishes the Teacher Housing Authority and then allows the Minister, if he wants to (and he does not need this Bill to do it anyway) to supply housing to whatever Government employees to whom he decides to supply it. The Minister has no obligation at all to any Government employee to supply any housing.

This Bill does nothing other than to abolish the THA, but the Liberal Party has indicated that it will support this Bill which gives no guarantee to Government employees. I had hoped that Liberal members would look at it in a little more depth and talk to people in some of these smaller country communities not only to some of the people who need the housing, but also to others in the community who are also aware of the problems, and then reassess their position.

Some areas that should be addressed are not addressed in this Bill and I will move amendments to rectify that situation. The first area to which I refer is that I believe an advisory committee should be set up under this Bill. I would have preferred an authority, but at the very least an advisory committee should be set up which I suggest would comprise representatives from the Institute of Teachers, from the Police Association, from the PSA and from the UTLC. Those four groups would represent all Government employees who we hope would be housed under the Government's proposals. I think also that the advisory committee should include representatives from the major departments, because they are aware of the staffing difficulties that they have as a result of housing problems. Further, they can provide information as to housing requirements. I suggest that such a committee should be set up under this legislation.

The Minister says that he will do this under regulation, but on other occasions I have heard members of the Liberal Party say that they believe, wherever possible, things should be implemented through legislation rather than by regulation. If this Bill is passed, we would provide a blank cheque, with the Minister saying that he will set up this advisory committee, but he would not have any requirement to do it. I ask the Opposition and the Government to think seriously about incorporating some form of advisory committee within the Bill.

The second matter that I believe needs attention is rents. As the Bill is now drafted rents can be taken from pay. I remember things happening under the THA, and I am sure they will continue to occur with paperwork being what it is. For instance, a person shifts into a Government house and six weeks later the paperwork discovers that they have done that and they dock all of the owed rent out of one pay. That virtually wipes the pay out. I believe what should happen—and I will move an amendment along these lines—is that automatic deductions be made on the basis that if a pay period is a fortnight then a fortnightly rent deduction be made. If other money is owed then the way that is paid should be negotiated and not simply taken immediately out of the pay.

The third amendment relates to a matter already raised by the Hon. Ms Laidlaw—the question of the protection afforded by the Residential Tenancies Act. I believe that it is important for Government employees to receive what most other people in rental arrangements receive, namely, the protection of the Residential Tenancies Act. I am aware that it is of concern to the SAIT and the PSA that that should occur.

The Hon. Ms Laidlaw has said that she also intends to move an amendment whereby all of this housing would be placed under the Housing Trust. I am still balancing up the considerations of that move. Certainly, as the Bill is now drawn up, there is nothing to stop that happening without insisting upon it but, I believe, as I have said earlier, I think it is preferable for the legislation, as far as possible, to clearly say what should happen rather than leaving things extremely vague. I can see some negative results of the Housing Trust being solely responsible for Government employee housing. Whilst the Government employees and other people are living in houses their requirements are different and I would be somewhat fearful that perhaps the requirements of Government employees could be subsumed and forgotten if the Housing Trust had sole responsibility.

I think I would prefer an amendment along the lines that made clear that the Housing Trust should be responsible for the day-to-day maintenance and the like of the houses. I think it would make good economic sense for it to be responsible for general maintenance and upkeep of houses, but I think that the Minister still needs to have the final authority to insist that certain amounts of housing be dedicated to Government employees.

The Hon. Diana Laidlaw: You just said that the Bill doesn't provide for that, anyway.

The Hon. M.J. ELLIOTT: I said it does not, but at least the obligation should be clear in the way clause (4) (1) and (2) are structured, particularly with the setting up of an advisory committee. I think that the very presence within the legislation of an advisory committee makes it clear that there is an obligation, particularly when one looks at the composition of the advisory committee. The obligations that the Minister would have are made clear, in part, by the existence and composition of the committee itself.

With those words I ask the Liberal Party to look at those amendments carefully and to recognise that, in fact, this Bill does not do anything but abolish THA and perhaps we should be insisting that Government employees, particularly those sent to country areas, do need some protection, and I do not think this Bill offers them any at all.

The Hon. J.R. CORNWALL (Minister of Health): I thank members for their contributions, thoughtful and otherwise. I know that there are a number of issues on which the Hon. Mr Elliott still wishes to take advice and a number of organisations with whom he still wishes to consult. At the first available opportunity tomorrow morning (and I know that Ms Laidlaw is anxious to get on with the passage of this Bill, however it might emerge from this place), I think I also need to consult with and seek wise counsel from the Minister of Housing and Construction. I therefore seek leave to conclude my remarks later (since I do not have the numbers to go on).

Leave granted; debate adjourned.

LOCAL AND DISTRICT CRIMINAL COURTS ACT AMENDMENT BILL (No.2)

Adjourned debate on second reading.

(Continued from 20 October. Page 1311.)

The Hon. K.T. GRIFFIN: The Opposition supports the second reading of this Bill which is designed to increase the jurisdiction of the small claims court from $1 000 up to $2 000, and the upper jurisdictional limit of local courts of limited jurisdiction from $7 500 to $20 000. It is about five years since the upper jurisdictional limit of local courts of limited jurisdiction was fixed at $7 500, so it is appropriate to look at some increase. It is probably also appropriate to look at some increase for small claims courts, although I have always had some concern about the small claims jurisdiction, particularly in view of complaints which come through to me from constituents from time to time. Notwithstanding that, there is a concern that in an effort to keep down litigation costs the small claims jurisdiction is designed to enable a litigant to attend in person and present a case and have the issue resolved as inexpensively as possible.

However, the difficulty is that from time to time plaintiffs in particular are represented by individuals who are not legal practitioners but are somewhat more experienced in the ways of the court than the defendants. Defendants appearing in court are often quite inexperienced in the ways of the court and it is probable that their appearance in the local courts small claims jurisdiction is their first and only appearance in court, and they are somewhat bemused by the whole procedure. It is in those circumstances where you have unequal experience as between plaintiff and defendant that you tend to have more complaints from constituents. There are sometimes complaints about magistrates ruling with a rod of iron and not giving a litigant a chance to say his or her word. There is always the potential for injustice because in the small claims jurisdiction there is not the opportunity, nor the experience, to test and probe the cases of plaintiffs and defendants. Notwithstanding that, and somewhat cautiously, the Opposition accepts that an increase from $1 000 to $2 000 is something that must be tolerated.

With respect to local courts of limited jurisdiction, the figures provided by the Courts Services Department in support of the change suggest that of the approximately 1 500 claims listed in the district court civil jurisdiction in 1986 only 4 per cent actually came on for hearing. The waiting time from setting a matter down for trial until the actual trial date in the Adelaide local court of limited jurisdiction is presently 20 weeks, and in the district court it is 50 weeks. To some extent that period of 50 weeks has been aggravated by the change in jurisdiction of the Supreme Court, so there is a significant backlog of work in the civil jurisdiction of the district court.

The change proposed by the Bill will remove some matters from the district court and transfer them to the magistrates court. As I understand from the Attorney-General, the Deputy Chief Magistrate has indicated that magistrates can cope with the additional work without any significant detrimental consequences. The Law Society received a copy of the Bill from me and subsequently from the Attorney-General, and it wrote to both the Attorney-General and to me indicating that it supported the increase in the jurisdictional limit of the small claims jurisdiction but raising concerns about the quite significant increase in jurisdiction from $7 500 to $20 000 in local courts of limited jurisdiction.

The Law Society states that allowing for CPI increases over the past five years the limit should be about $12 000 rather than $20 000. It believes that an increase of that magnitude would be in line with the CPI movement and therefore would be appropriate. The Law Society is concerned about the volume of cases which might fall to be considered in the magistrates court as a result of the change, particularly when taken in conjunction with recent amendments to the Wrongs Act in December last year which had the effect of limiting the damages which could be recovered in some motor vehicle injury cases, particularly those involving whiplash and neck injury. The Law Society says that there could be a substantial increase in the volume of cases from that source and suggests that as a result of the two changes taken together the waiting times are likely to increase significantly.

I would be concerned if that occurred, because I think that 20 weeks is by far long enough and it should not get any worse than that. The Law Society also makes the point that in the district court the pretrial conference procedure and the pleadings which are required of parties assist in reducing the number of cases which get to trial. Pretrial conferences assist in settling a number of cases, and the Law Society expresses concern that they will not be available in the local court of limited jurisdiction and that that will prejudice the early resolution of cases. The absence of adequate pleadings is also a problem. The pleadings help to identify the cause of action and the defence. I would hope

that there could be some satisfactory development of pleadings in the local court without making it unduly complicated but in an attempt to limit the parameters of a case and assist in early resolution.

The Law Society also makes the point that the fee structure for the present local court of limited jurisdiction is quite inadequate, if it is be applied also to those cases up to $20 000. I would agree with that. I think one of the difficulties in the local court of limited jurisdiction is that, where greater levels of responsibility are required, the costs which may be awarded against a party or recovered from a client should reflect adequately the value of the work which is done.

Of course, it should be remembered that, without the system of pre-trial conferences, and even on the present scale of fees, if the matter does run to trial in the local court of limited jurisdiction rather than going to a pre-trial conference, as it would in the District Court, the costs to the litigant may well be higher in the Local Court than in the District Court. So, some attention needs to be given to pre-trial conference procedures and developing those in the local court of limited jurisdiction; some attention needs to be given to pleadings; and some attention needs to be given to the question of an adequate costs scale.

The Law Society draws attention to the fact that in New South Wales magistrates have jurisdiction up to $5 000 and District Court judges have jurisdiction up to $20 000. In this State, of course, District Court judges have very much wider jurisdiction than that. In Victoria, magistrates have jurisdictions up to $20 000 in non-personal injury matters, but only up to $5 000 in personal injury claims. In Queensland, magistrates have jurisdiction up to $5 000; the small claims jurisdiction is limited to $1 500; and District Court judges there have jurisdiction up to only $40 000. So, our magistrates will be given a fairly significant increase in jurisdiction which is way ahead of what has occurred in other States. That is not an argument against it, but it does reflect a significant change across Australia which is, in fact, occurring in this State.

So, there are some reservations about the increases, but the Opposition has taken the view that, if there are adequate rights of appeal (and I believe there are) and if attention can be given to the matters to which I have referred to ensure that every opportunity is taken to bring pressure to bear on the parties to settle matters, we should support this increase. I would like to know from the Attorney-General whether the Government has in mind any initiatives with respect to any of those matters to which I have referred.

The Hon. TREVOR CROTHERS secured the adjournment of the debate.

ABORIGINAL HERITAGE BILL

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

The Hon. J.R. CORNWALL (Minister of Health): I move:

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The aim of this Bill is to provide for the effective protection of Aboriginal heritage in South Australia.

Protection for Aboriginal heritage is currently afforded under the Aboriginal and Historic Relics Preservation Act 1965. This legislation is now outdated and its European relics component has been superseded by the South Australian Heritage Act 1978.

Equivalent Aboriginal heritage protection legislation is considered essential. In particular, the 1965 Act does not give adequate protection to all sites of significance to Aboriginal heritage. It gives no protection at all to sites of significance to Aboriginal people which are natural features of the landscape (unless formally declared to be a prohibited area or historic reserve); nor does it allow sufficient input by Aboriginal people.

In 1979 a new Act, the Aboriginal Heritage Act, was assented to by Parliament. It was not proclaimed, however, largely because of some perceived inadequacies in its provisions. When the Labor Party assumed office in late 1982 it brought with it a commitment to prepare and introduce a new piece of legislation, rather than an amended version of that passed in 1979. To this end, an extensive program of consultation with Aboriginal communities throughout South Australia has been undertaken. Consultation has also taken place with a range of Government and non-government interests in mining, pastoral and Aboriginal administration fields.

Definition of Sites and Objects

The Bill provides blanket protection to all sites and objects of significance to Aboriginal heritage, but offsets this by providing for ministerial exemptions in certain areas where certain activities are justified. The alternative approach to this is to provide strong but selective protection to particularly important sites or objects. Whilst superficially attractive this latter (selective) approach is all but impractical because of the huge number of sites and objects throughout the State. It would be enormously expensive and time-consuming to try to identify, document and register (for protective purposes) all important sites and objects. Significant sites and objects would undoubtedly be destroyed or damaged through the course of this exercise, simply because they had not, up to that point, been identified and registered. The provision of blanket protection to all sites and objects of significance avoids this difficulty, whilst acknowledging the fact that not all sites and objects warrant ongoing protection. Regulations will be able to provide that particular sites or objects or classes of sites or objects come within or are excluded from the definitions of Aboriginal site and Aboriginal object for the purposes of the Bill.

Archives and Register/Information

Known information on Aboriginal heritage will be stored in central and local archives. A Register of Sites and Objects will be contained in the central archives which will include records of sites and objects determined by the Minister to be sites or objects of significance to Aboriginal heritage. In legal proceedings the Minister's determination will be taken as final.

Aboriginal Tradition

A proportion of information relating to Aboriginal heritage is sacred or secret and its dissemination would be contrary to Aboriginal tradition. As a result it is an offence under the Bill to divulge information about any Aboriginal site, object or remains or about Aboriginal tradition contrary to Aboriginal tradition. Furthermore, access to information contained in the archives and on the Register will generally be subject to the approval of traditional owners.

Consultation

Advice on the significance of sites and objects and how these should be protected will be provided to the Minister by Aboriginal people. The Bill establishes the Aboriginal Heritage Committee comprised entirely of Aboriginal people to represent the interests of all Aboriginal people in

advising the Government on the development of means for preserving their heritage. This is in accordance with the wishes of Aboriginal people who made it clear during the Bill's development that they wanted to have a major input into decisions on preserving their heritage. They wished this input to be at the local level, but saw value in a coordinating central committee to consider matters of State-wide significance. Consequently, the Bill provides that the Minister must, before contemplating certain action under the legislation, consult with Aboriginal traditional owners of a site or object as well as any relevant Aboriginal organisation and the Aboriginal Heritage Committee.

The Minister and/or the committee may also seek advice from other people. Government archaeologists, anthropologists and historians will coordinate advice on the scientific or historical significance of sites and objects, since, in some cases, these may not be of interest to Aboriginal people. Alternatively, subcommittees to the committee will be established if necessary to facilitate communication with, for example, mining and pastoral interests.

Determination

People proposing to undertake a development that may result in damage to an Aboriginal site or object, may, if they choose, seek a determination from the Minister as to whether Aboriginal sites or objects are involved. The Minister must then provide sufficient information of any relevant entry on the Register of Sites and Objects and any site or object that should be placed on the Register to enable a developer to avoid damaging the site or object. However, the Minister must not disclose the exact location of the site or object if such disclosure is considered to be detrimental to the preservation of the site or object or contrary to Aboriginal tradition.

A consequential amendment to the Planning Act 1982 is made to ensure that a determination is sought in relation to prescribed areas or activities (by regulation under the Planning Act). For example, it may be considered desirable that all subdivision proposals or all development proposals in a particular hundred (in which an Aboriginal site is known to occur) be submitted to the Minister responsible for Aboriginal heritage for a determination. The alternative approach of establishing the Register of Sites and Objects as a 'public' file (as for the Register of State Heritage Items under the Heritage Act 1978) is not acceptable in view of potential vandalism and/or access to sacred or secret information contrary to Aboriginal tradition.

Excavation

The Bill also provides that the authority of the Minister must be obtained (and the Minister must consult with Aboriginal people and/or the committee) to undertake excavation in relation to an Aboriginal site. Alternatively, the Minister, having given reasonable notice to the owner and occupier of land, may authorise entry to such land to establish the existence of sites, objects or remains. The Minister is required to make good any damage done to the land by such a process.

Restricted Access

In some circumstances the Minister may consider it necessary, for the protection of Aboriginal heritage, to restrict or prohibit access or activities in relation to a site, object or remains (but not including private collections of objects). The approval of the Governor will be required for directions restricting or prohibiting access. Providing that the circumstances are not urgent, the Minister is required to give the owner or occupier of the land eight weeks notice of the proposed restrictions. Notice to the general public regarding the restrictions may be by notice published in the *Gazette*, notice published in a newspaper, by the erection of signs, or by a combination of these.

In urgent situations inspectors may also similarly restrict access to or activities in or in relation to particular areas or objects. Unless the Minister remakes an inspector's directions they will lapse after 10 working days.

Care of Objects

Portable Aboriginal objects that have been removed from their original resting place are also protected under the Bill. People in possession of such an object as part of a public or private collection must take care of that object. Furthermore, provision is made for the Minister to have control over the disposal of Aboriginal objects where such disposal may be contrary to Aboriginal traditional interests (for example, the sale of tjuringas) or result in the removal interstate of objects of significance to South Australia.

Acquisition and Custody

The Bill enables the Minister to compulsorily acquire land, an Aboriginal object or an Aboriginal record where appropriate for the protection or preservation of Aboriginal heritage. It also enables the Minister (after consultation) to place land or an Aboriginal object or record that is in the Minister's possession in the custody of an Aboriginal person or organisation or to deal with the land, object or record in any other manner.

Access by Aboriginal People to Private Land

Nothing in the Bill prevents Aboriginal people from doing anything in relation to sites, objects or remains in accordance with Aboriginal tradition. The Bill also provides for access by Aboriginal people, subject to ministerial approval and consultation with owner and occupier, to sites of significance located on private land. Aboriginal people wish to have access to particular sites to carry out traditional activities, to revisit former camping and burial areas, and to educate their children. Such rights are already provided in the north of the State through relevant provisions in the Pastoral Act.

Fund

An Aboriginal Heritage Fund will be established to facilitate the protection and preservation of Aboriginal heritage. It may be used, among other things, to acquire land where protective measures are inadequate or inappropriate, to fund research, or to make payments to a landholder subject to a Heritage Agreement regarding the ongoing management of a site.

The Bill is the outcome of much detailed discussion and consultation with Aboriginal people and other interests particularly related to mining or pastoral interests. While full consensus has not been achieved, the Bill represents a balanced and workable piece of legislation that will provide more effective protection for Aboriginal heritage in South Australia. At the same time, the Bill ensures that there will be minimum disruption to land users, particularly in the north of the State, by assisting with the identification of sites and objects that require certain action subject to the Act.

Clauses 1 and 2 are formal.

Clause 3 is an interpretation provision. To be within the scope of the measure an 'Aboriginal object' or 'Aboriginal site' must be of significance according to Aboriginal tradition or of significance to Aboriginal archaeology, anthropology or history. Regulations can declare objects or sites or objects or sites of a class to be included or excluded from the definition.

'Aboriginal tradition' is defined as traditions, observances, customs or beliefs of the people who inhabited Australia before European colonisation and includes traditions,

observances, customs and beliefs that have evolved or developed from that tradition since European colonisation.

Land subject to a mining tenement is brought within the meaning of 'private land' and 'owner' of private land is defined to include the holder of the mining tenement. The measure provides that in certain circumstances such persons must be consulted.

A 'traditional owner' of an Aboriginal site or object is defined as an Aboriginal person who has, in accordance with Aboriginal tradition, social, economic or spiritual affiliations with, and responsibilities for, the site or object.

Clause 4 provides that the Crown is bound by the measure.

Part II of the measure deals with the administration of the Act. It provides for the functions of the Minister; the establishment of an Aboriginal Heritage Committee; the keeping of Aboriginal heritage archives; the manner in which the Minister is to make determinations and give authorisations under the measure; the appointment of inspectors and their powers; and the administration of a South Australian Aboriginal heritage fund.

Clause 5 lists the functions of the Minister under the measure. These include: to take measures for the protection and preservation of Aboriginal sites, objects and remains; to conduct, direct or assist searches for Aboriginal sites or objects; and to conduct, direct or assist research into the Aboriginal heritage. The Minister is required to consider any relevant recommendations of the Aboriginal Heritage Committee (established under clause 7).

Clause 6 enables the Minister to delegate powers under the measure, other than the power to authorise the commencement of proceedings for an offence.

Clause 7 provides for the establishment of the Aboriginal Heritage Committee. The Minister is to appoint Aboriginal persons to the committee to represent the interests of Aboriginal people in the protection and preservation of the Aboriginal heritage. The number of persons appointed to the committee is at the discretion of the Minister. The Minister must, as far as is possible, appoint equal members of men and women to the committee.

Clause 8 lists the functions of the Aboriginal Heritage Committee. The committee is an advisory committee to the Minister. It can advise on its own initiative or at the request of the Minister with respect to entries in the central archives on the Aboriginal heritage (set up under clause 9); measures that should be taken to protect and preserve Aboriginal sites, objects or remains; the appointment of inspectors; and any other matter related to the administration or operation of this Act or to the protection and preservation of the Aboriginal heritage.

Clause 9 provides that the Minister must keep central archives of information relating to the Aboriginal heritage. Part of the central archives is to be known as the 'Register of Aboriginal Sites and Objects'. Entries in this part are limited to descriptions of sites and objects determined by the Minister to be Aboriginal sites or objects.

The clause also provides that the Minister may assist Aboriginal organisations to establish local archives of information relating to the Aboriginal heritage.

Clause 10 provides for the confidentiality of the central and local archives. The approval of traditional owners or, in certain circumstances, the Aboriginal Heritage Committee (in the case of the central archives) or the organisation keeping the archives (in the case of local archives) must be obtained before information relating to an Aboriginal site or object is made available from the archives. The traditional owners, the committee or the organisation keeping local archives may stipulate conditions on which the information is to be made available. The clause makes it an offence to breach such conditions and the maximum penalty provided is a $10 000 fine or imprisonment for six months.

Clause 11 is an evidentiary provision. It provides that in any legal proceedings the presence of an entry in the Register of Aboriginal Sites and Objects constitutes conclusive proof that the site or object to which the entry relates is an Aboriginal site or object.

In addition, a determination by the Minister that a site or object should not be entered in that Register constitutes conclusive proof that the site or object is not an Aboriginal site or object. This does not apply if the determination has been subsequently reversed.

Clause 12 provides a system for the Minister to make determinations of whether a site or object is an Aboriginal site or object.

A person who proposes to take action in relation to a particular object that may constitute an offence against the measure if it is an Aboriginal object may apply to the Minister under the clause. If the object is entered in the Register of Aboriginal Sites and Objects, the applicant will be so notified. If it is not entered in the Register, the Minister is required to determine whether it should be entered and must give the applicant written notice of the determination.

A person who proposes to take action in relation to a particular area that may constitute an offence against the measure if the area is, or is part of or includes, an Aboriginal site or if an Aboriginal object is located in the area, may also apply to the Minister under the clause. The Minister is required to determine whether any entries should be made in the Register in respect of the area and give the applicant written notice of the location of each Aboriginal site or object in the area that is entered in the Register or that the Minister determines should be so entered. The Minister is required not to disclose the exact location of a site or object if this would be likely to be detrimental to its protection or preservation or in contravention of Aboriginal tradition.

The Minister is empowered to require an applicant to provide information in connection with an application or to engage a suitable expert to do so. Such a requirement must be made within 20 working days of the Minister receiving the application. If the Minister does require information to be so provided, the Minister must determine the application within 30 working days of receiving that information.

The Minister may refuse to entertain an application if the area or object is insufficiently identified, the application is not genuine or the Minister does not have the resources to determine the application.

Clause 13 provides that before the Minister makes a determination under the measure, gives an authorisation under the measure or before a regulation relating to the definitions of Aboriginal sites or objects is made the Minister must take all reasonable steps to consult with the Aboriginal Heritage Committee, any Aboriginal organisation that, in the opinion of the Minister, has a particular interest in the matter, and any traditional owners or other Aboriginal persons who, in the opinion of the Minister, have a particular interest in the matter.

The clause does not apply to determinations under clause 24 (8) relating to whether remains are Aboriginal remains or to authorisations by the Minister of entry into a restricted area by officials or of entry to land by Aboriginal persons.

Clause 14 empowers the Minister to impose conditions on an authorisation.

Clause 15 provides for the appointment of inspectors by the Minister. It enables the Minister to limit the area in

which the inspector may act; restrict the powers of an inspector; or authorise an inspector to give directions for the protection and preservation of a particular Aboriginal site or object.

Clause 16 requires the Minister to provide a person appointed an inspector with a certificate of appointment. The certificate is to be produced at the request of a person in relation to whom the inspector has exercised or intends to exercise powers.

Clause 17 sets out the powers of inspectors. These include power to enter land to inspect an Aboriginal site or object or a site or object that the inspector has reason to believe is an Aboriginal site or object; and power to seize and retain an Aboriginal object where the inspector has reason to suspect that an offence has been or is about to be committed in relation to the object or anything that affords evidence of an offence against the measure.

The clause also provides that where an inspector is authorised to give directions in relation to a particular Aboriginal site or object, the inspector may give instructions aimed at averting harm to the site or object to any person visiting the site or in the immediate vicinity of the site or object.

Clause 18 provides for offences with respect to hindering or obstructing inspectors or failing to comply with a requirement or instruction given by inspectors. The maximum penalty provided is a $2 000 fine or imprisonment for three months.

Clause 19 provides that the Minister must establish the South Australian Aboriginal Heritage Fund. The fund is to consist of money given for the purpose by the Commonwealth Government, money appropriated by Parliament, income from investment of the fund (at the Treasurer's discretion), and any other money received by the Minister for the purposes of the measure. The clause provides that the fund may be applied in acquiring land or Aboriginal objects or records; in grants or loans to persons undertaking research related to the Aboriginal heritage; in making payments under a heritage agreement entered into by the Minister under the South Australian Heritage Act 1978; in the administration of the measure; and for other purposes related to the protection and preservation of the Aboriginal heritage.

Part III of the measure contains specific provisions for the protection and preservation of the Aboriginal heritage. It deals with the discovery of and search for Aboriginal sites, objects or remains; the prevention of damage to Aboriginal sites, objects or remains; the control of the sale of, and other dealings with, Aboriginal objects; the acquisition and custody of Aboriginal sites, objects and records; and the protection of Aboriginal tradition.

Clause 20 requires an owner or occupier of private land, or an employee or agent of such an owner or occupier, who discovers any Aboriginal site, object or remains on that land to report the discovery to the Minister. The maximum penalty for failure to so report is, in the case of a body corporate, a fine of $50 000 and, in any other case, a fine of $10 000 or imprisonment for six months. The Minister may direct the person making a report to take immediate action for the protection or preservation of Aboriginal remains. The maximum penalty provided for failure to comply is a fine of $2 000 or imprisonment for three months.

Clause 21 makes it an offence for a person to excavate land for the purpose of uncovering any Aboriginal site, object or remains without the authorisation of the Minister. The maximum penalty provided is, in the case of a body corporate, a fine of $50 000, and, in any other case, a fine of $10 000 or imprisonment for six months.

Clause 22 empowers the Minister to authorise a person to enter land, search for any Aboriginal site, object or remains and to excavate the land. If any objects or remains are found they may be taken into the Minister's possession for the purpose of protecting and preserving them. The authorised person must, before entering the land, give reasonable notice to the owner and occupier (if any) of the land. The Minister is required to make good any damage done to the land. An offence of hindering such an authorised person is provided with a maximum penalty of a fine of $2 000 or imprisonment for three months.

Clause 23 makes it an offence to damage, disturb or interfere with any Aboriginal site, object or remains without the authorisation of the Minister. The maximum penalty provided is, in the case of a body corporate, a fine of $50 000 and, in any other case, a fine of $10 000 or imprisonment for six months.

Clause 24 empowers the Minister to give directions prohibiting or restricting access to or activities in or in relation to an area surrounding any Aboriginal site, object or remains. Directions that prohibit or restrict access can only be made with the approval of the Governor. The directions may be limited in their application to particular persons or they may be of general application. The Minister is required to take reasonable steps to give not less than eight weeks written notice of the proposed directions to the owner and any occupier of private land affected by the directions, the Aboriginal Heritage Committee, Aboriginal organisations with a particular interest in the matter and a representative of any traditional owners or other Aboriginal persons with a particular interest in the matter. If the Minister considers that urgent action is necessary, the Minister may give directions without such prior notice but, in that event, must take reasonable steps to give such notice as soon as reasonably practicable after the giving of the directions.

If directions are given in relation to a site or object not entered in the Register of Aboriginal Sites and Objects, the Minister must determine whether to make such an entry. If the Minister determines not to make an entry the directions must be revoked.

The Minister must give due consideration to representations made by any person with respect to the directions. Where land in relation to which directions apply is sold, the vendor must inform the Minister.

Clause 25 gives an inspector similar powers to give directions but only where the inspector is satisfied that urgent action is necessary. The inspector must forthwith report the giving of any directions to the Minister. The directions lapse after 10 working days or earlier if revoked by the Minister.

Clause 26 makes it an offence to contravene or refuse or fail to comply with the Minister's or an inspector's directions under clause 24 or 25 without reasonable excuse. The maximum penalty provided is, in the case of a body corporate, a fine of $50 000 and, in any other case, a fine of $10 000 or imprisonment for six months.

Clause 27 exempts certain persons acting in official capacities and persons acting in emergencies from compliance with directions under clause 24 or 25.

Clause 28 requires a person who owns or possesses an Aboriginal object as part of a public or private collection to take reasonable measures to protect it. Failure to do so is an offence for which the maximum penalty is, in the case of a body corporate, $50 000 and, in any other case, $10 000 or imprisonment for six months.

Clause 29 makes it an offence to sell or dispose of an Aboriginal object or to remove an Aboriginal object from the State without the authorisation of the Minister. The

Minister must observe the requirements of the regulations in determining whether to give such an authorisation.

The maximum penalty provided for the offence is, in the case of a body corporate, a fine of $50 000 and, in any other case, a fine of $10 000 or imprisonment for six months.

Clause 30 empowers the Minister to compulsorily acquire land for the purposes of protecting or preserving an Aboriginal site, object or remains.

Clause 31 empowers the Minister to purchase or to compulsorily acquire an Aboriginal object or record. An Aboriginal record is defined in the interpretation provision as a record of information that must, in accordance with Aboriginal tradition, be kept secret from a person or group of persons. A record is in turn widely defined. If a price cannot be agreed the Land and Valuation Court must value the object.

Clause 32 empowers the Minister to require a person who has the possession of an Aboriginal object or record or an object or record that the Minister has reason to believe may be an Aboriginal object or record to surrender the object or record for the purpose of determining whether it is an Aboriginal object or record, examination and entry in the central or local archives, consideration of acquisition of the object or record or research related to the object. The object or record may be kept for a maximum of three months.

Failure to comply with a requirement to surrender an object or record is an offence for which the maximum penalty is a fine of $2 000 or imprisonment for three months.

Clause 33 provides that if an owner of an Aboriginal object is found guilty of an offence in relation to that object, the court may order that the object be forfeited to the Crown.

Clause 34 enables the Minister to place land or an Aboriginal object or record that has been acquired or come into the possession of the Minister (other than by surrender of the object or record under clause 32) in the custody of an Aboriginal person or organisation, or to otherwise deal with the land, object or record, subject to such conditions as the Minister determines.

Clause 35 makes it an offence to divulge, contrary to Aboriginal tradition, information about any Aboriginal site, object or remains or about Aboriginal tradition, without the authorisation of the Minister. The maximum penalty provided is a fine of $10 000 or imprisonment for six months.

Clause 36 empowers the Minister to authorise an Aboriginal person or group of Aboriginal persons to enter any land (including private land) for the purpose of gaining access to any Aboriginal site, object or remains. The owner and occupier (if any) of the land must be given a reasonable opportunity to make representations on whether and on what conditions the authorisation should be given. An offence of hindering or obstructing a person acting pursuant to such an authorisation is provided, with a maximum penalty of a fine of $2 000 or imprisonment for three months.

Clause 37 states that nothing in the measure prevents Aboriginal people from doing anything in relation to any Aboriginal site, object or remains, in accordance with Aboriginal tradition.

Part V of the measure contains miscellaneous provisions.

Clause 38 makes it an offence to damage or interfere with a sign erected pursuant to the measure. The maximum penalty provided is a fine of $1 000.

Clause 39 provides for service of notice or documents required or authorised to be given under the measure to be personal or by post.

Clause 40 provides immunity from liability for persons engaged in the administration or enforcement of the measure. A liability that would lie against such a person lies instead against the Crown.

Clause 41 provides that where an employee or agent acting in the course of his or her employment or agency is guilty of an offence, the employer or principal is also guilty of an offence.

Clause 42 provides that where a body corporate is guilty of an offence, each member of the governing body is also guilty of an offence.

Clause 43 provides that only the traditional owners may question the validity of an act or determination of the Minister where the Minister has failed to consult or obtain the permission of those owners as required by the measure.

Clause 44 is an evidentiary provision.

Clause 45 provides that offences against the measure are summary offences.

Clause 46 provides that proceedings for an offence against the measure can only be commenced on the authorisation of the Minister. If the Minister so authorises, a prosecution may be commenced at a time later than six months after the date on which the offence is alleged to have been committed.

Clause 48 gives the Governor general regulation-making power and enables regulations to prescribe penalties not exceeding $2 000 for contravention of or non-compliance with a regulation.

Schedule 1 provides for the repeal of the Aboriginal and Historic Relics Preservation Act 1965 and the Aboriginal Heritage Act 1979.

Schedule 2 makes consequential amendments to the Mining Act 1971, the Planning Act 1982, and the South Australian Heritage Act 1978.

The amendments to the Mining Act 1971 require the Minister responsible for that Act to consider the effect on Aboriginal sites or objects before issuing a mining tenement.

The amendments to the Planning Act 1982 require applications for planning authorisations in respect of developments of a prescribed kind or in a prescribed area to be referred by the planning authority to the Minister responsible for the administration of this measure. The planning authorisation must not be granted until the planning authority has had regard to any representations of the Minister. If the planning authority is a council, the planning authorisation may only be granted with the concurrence of the Planning Commission. The commission is required, in turn, to have regard to any representations of the Minister.

The amendment to the South Australian Heritage Act 1978 enables the Minister responsible for the administration of this measure to enter into heritage agreements with owners of land on which an Aboriginal site or object or Aboriginal remains are situated.

Schedule 3 consists of a transitional provision. It provides that where an area was a prohibited area or historic reserve under the Aboriginal and Historic Relics Preservation Act 1965, immediately before the commencement of the measure, directions may be given under clause 24 in relation to that area without the need to comply with the consultation procedures set out in subclause (3) of that clause.

The Hon. M.B. CAMERON secured the adjournment of the debate.

ADJOURNMENT

At 9.30 p.m. the Council adjourned until Wednesday 4 November at 2.15 p.m.