LEGISLATIVE COUNCIL

Wednesday 10 February 1993

The PRESIDENT (Hon. G.L. Bruce) took the Chair at 2.15 p.m. and read prayers.

LEGISLATIVE REVIEW COMMITTEE

The Hon. M.S. FELEPPA laid on the table the twenty-third report of the committee.

QUESTIONS

ABORIGINAL EDUCATION

The Hon. R.I. LUCAS: I seek leave to make an explanation prior to directing a question to the Minister representing the Minister of Education on the subject of Aboriginal education.

Leave granted.

The Hon. R.I. LUCAS: Last year the Education Department's Education Review Unit conducted a review of a range of schools in South Australia. The reviews focus on the schools' School Development Plan—the way the school is being operated—and identifies strengths and weaknesses in the schools' operations and provides recommendations as to improvements to be implemented to serve better the needs of students, staff and the department.

Last year the ERU reviewed about 160 schools, and reports for the majority of these reviews were available to the public through the Orphanage on Goodwood Road. However, six of the reviews conducted at Aboriginal schools in the Pitjantjatjara lands were for a short time publicly available and then withdrawn and listed as, 'Not available — recalled for present.'

When my office sought an explanation as to why these reports were no longer available, we were advised that the reviews had not been examined by the Pitjantjatjara Lands Council for its approval. I have since unsuccessfully tried to obtain copies of these reports for the six schools through freedom of information. I am concerned that these reports are still not available more than eight months after other school reviews have become public. My concern has been heightened by recent reports to me that substantial damage was caused to Indulkana Anangu School as well as an attempted arson attack late last year. Indulkana was one of the six schools for which review reports have not been released.

Some observers have commented to me that there is an absolute scandal in Aboriginal education in the Pitjantjatjara lands and that this Government is desperate to cover up the truth. Information provided to me from sources within the Education Department certainly back those claims. My questions are:

1. Can the Minister explain why the Education Department permits the Pitjantjatjara Lands Council to examine for such a lengthy period Education Review Unit reviews of its schools when such licence is not given to other schools and school councils, and is the Minister going to allow the reports to be amended after consideration by the Pitjantjatjara Lands Council?

2. Will the Minister release the original ERU reviews of the Pitjantjatjara lands schools and, if not, why not?

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

FREEDOM OF INFORMATION

The Hon. K .T. GRIFFIN: I seek leave to make an explanation prior to directing a question to the Attorney-General on the subject of freedom of information.

Leave granted.

The Hon. K.T. GRIFFIN: When the Attorney-General introduced the Freedom of Information Bill in February 1991 he said that one of the three major premises relating to a democratic society upon which the Bill was based was that a Government that is open to public scrutiny is more accountable to the people who elect it.

The Act has as one of its objects the extension, as far as possible, of the rights of the public to obtain access to information held by the Government. Parliament's intention is clearly expressed in the Act in section 3 that the Act should be interpreted and applied so as to further the objects of the Act and that administrative discretions ought to be exercised to facilitate and encourage the disclosure of information without infringing any right of privacy. My questions to the Attorney-General are:

1. With this goal of openness before the public, how does the Attorney-General justify the regulation promulgated just before Christmas to exempt the Senior Secondary Assessment Board of South Australia from the provisions of the Act and from the obligation of openness?

2. What criteria did the Government apply to determine eligibility for exemption from the Act and are these criteria to be applied in all other cases where exemption is sought?

3. What requests has the Government received for exemption from the Freedom of Information Act which requests have been refused?

The Hon. C.J. SUMNER: I will refer the final question to the appropriate Minister and bring back a reply. As to the first question, the honourable member may or may not know that I was on leave before Christmas and was not present when that particular decision was made. However, I do note that the Hon. Mr Lucas has given notice of a motion today to disallow the regulation and no doubt he will debate that today and the Government will respond to it in the usual way. I can only suggest that the honourable member await that response which will set out the reasons for the Government acting in this manner.

The Hon. K.T. GRIFFIN: Mr President, I ask a supplementary question. The Attorney-General has not responded to the second question about the criteria that the Government applied to determine eligibility for exemption from the Act and whether those criteria are to be applied in all other cases where exemption is sought. Will the Attorney answer that? Secondly, on the basis that he was not present at the Cabinet meeting which discussed the recommendation to exempt SSABSA, and

made the decision to do so, does that suggest that he does not in fact agree with the decision for exemption?

The Hon. C.J. SUMNER: Well, it does not suggest anything, because it cannot suggest anything. As the honourable member knows, even though I was not there, the principles of collective responsibility mean that I support the decision, whatever my private view of it might or might not have been had I been there. But my view on the matter at that time is purely hypothetical, because I was not there and therefore was not aware of the matter coming before Cabinet when it did, before Christmas.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: There are some subsequent matters to correct a problem of the regulations that were taken in January that I became aware of. However, the honourable member understands the principles of Cabinet Government in South Australia, principles of collective responsibility. As I have already indicated I was not present when the initial decision was made. I understand that it was a request from the board, from SSABSA, and that the Government was responding to that request. However, I can only say to the honourable member that, in response to the Hon. Mr Lucas's motion to disallow the regulations, the Government will respond and no doubt give its reasons for making the regulation, and it could well in that response go into the issues raised by the honourable member in his question.

GRAFFITI

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister of Transport Development a question about legal graffiti art.

Leave granted.

The Hon. DIANA LAIDLAW: Last Saturday night I accompanied Jason Noah, who describes himself as a reformed illegal graffiti artist, through the city to Glenelg and beyond to meet kids involved in so-called aerosol art, to see some of their work and to learn more about the culture of gangs and posses. I agreed to this arrangement after accompanying Transit Squad officers a few weeks earlier on a trip to Gawler and back. At that time I was furious to see that every single cloth seat on the new rail car commissioned by the Government one month earlier had been covered with black tags.

Also, I was disturbed to note the age of the children who were travelling unaccompanied on the train from Gawler towards the city at 10 p.m. As they were going to the city, heaven knows the time at which they would be travelling home. Jason Noah is determined to help young people known today as graffiti vandals to redirect their boredom, frustration and anger from the illegal activity in which they are involved at present into legal artistic endeavours.

He wants to do so as a business arrangement, unlike current schemes where Government agencies hand out materials for legal graffiti activity. To promote his plans, the Minister may be aware that he called a public meeting, which was attended by many community leaders. Since then, he has received expressions of interest from a number of business firms in the metropolitan area to paint legally the exterior of their premises. I understand that he has also received an order from a transport firm to paint its delivery vans.

By contrast, the STA has been sluggish in responding to Jason Noah's plans. Initial indications that the STA may be prepared to designate specific walls for the kids to begin their work legally have not been acted upon. The kids tell me that they are growing impatient with the STA's bureaucratic inertia and, in the meantime, are keen to continue their illegal work—at great expense to the STA, both financially and in terms of its public image.

As I believe that the STA has nothing to lose but everything to gain from cooperating with Jason Noah on his schemes, at least on a trial basis, I ask the Minister the following questions:

1. Will she investigate the reasons for the STA's failure to date to respond positively to Jason Noah's legal graffiti endeavours?

2. Will she encourage the STA to cooperate with Jason Noah's efforts to redirect the activities of young people currently involved in illegal graffiti activities?

The Hon. BARBARA WIESE: Jason Noah has also contacted my office about his proposal for involving young people in graffiti art on property that adjoins State Transport Authority property. I met Jason some years ago when he was involved with the Service to Youth Council and, when he spoke with my secretary within the past few days, he reminded her that he had met me many years ago when I was Minister of Youth Affairs, at a function to which I was invited at the Service to Youth Council.

He has explained quite fully the proposal that he put to the State Transport Authority and also expressed to me, through my staff, his frustration that decisions were not being made as quickly as he would like. I have asked that the matter be dealt with as expeditiously as possible within the State Transport Authority, and I suspect that one of the reasons why the response has not come as quickly as Jason might have expected initially is that Mr Brown, who is in charge of the State Transport Authority, has been away from the office for some couple of weeks. I believe that the approval required for this project needs his authority. I have asked that the matter be dealt with expeditiously. I understand that Mr Brown is now back on the job this week, so I hope that it will be possible to provide an answer on this project as soon as possible.

I agree with the Hon. Ms Laidlaw that if this project can marshall the creative energies of young people in our community to do something constructive, both for themselves and for the community at large, it is certainly something that should be supported. So, I hope that the State Transport Authority will give it expeditious consideration and, if the proposal is as has been suggested, that it can be approved. I might say, too, that the Government has given support to such projects in other areas, and I am aware that through the community arts grants program administered by my colleague, the Minister for the Arts and Cultural Heritage, a grant has been given to a group of people in the Salisbury area to provide training for young graffiti artists.

So, the Government has given support in the past to such programs which are harnessing the creative energies

of young people in our community, and if we are about to do so through this project I will be very pleased with that as well.

WOMEN, POLICY

The Hon. CAROLYN PICKLES: I seek leave to make a brief statement before directing a question to the Minister for the Status of Women on the question of Government boards and committees.

Leave granted.

The Hon. CAROLYN PICKLES: In the *Advertiser* of Friday 5 February 1993 an article appeared regarding an initiative that has been taken by the Minister for the Status of Women in regard to Government boards and committees. I was very disappointed to read in that article that it was not supported by the Opposition spokesperson, the Hon. Diana Laidlaw, who said in part that the Liberal Party supports the objective of increasing the number of women on public boards but holds reservations about any proposal to enforce an arbitrary quota system.

Interestingly enough, contained in that article the Mayor of Port Augusta, another well known woman in South Australia, Mrs Joy Baluch, said she was sceptical about the plan and that appointments should be made on the basis of relevant experience, skills and expertise and not on a person's sex. She went on to say that it will be interesting to see if women who get these appointments are those with street talents or a string of degrees. I am disappointed also to see those remarks by Mrs Baluch.

Will the Minister inform the Council what Labor has done for women in this State and clarify the Hon. Ms Laidlaw's error about the new policy?

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: I am delighted indeed to respond to this question and to make clear—

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: —to the honourable shadow Minister that it is not a question of having a quota system. There has never been any suggestion of quotas. She is the person who has raised this furphy. What Cabinet has done is endorse a policy that we have a target of achieving equal representation of women on Government boards so that Government boards and committees will reflect the population of this State. I think that to make interjections regarding women being 51 per cent of the population is fairly trivial and not worthy of the honourable member.

The target which the Government has set itself is to achieve equal representation of women on Government boards and committees by the end of the year 2000. Because that is long way ahead, the Government has set its targets in a staged fashion, the aim being to achieve 30 per cent by the end of 1994, 40 per cent by the end of 1996 and 50 per cent by the year 2000.

Members interjecting:

The Hon. ANNE LEVY: It is interesting that members are interjecting suggesting that the Labor Party will not be present—

Members interjecting:

The PRESIDENT: Order! The Council will come to order.

The Hon. ANNE LEVY: —to achieve these goals. I can only assume from their interjections that if by any mischance a Labor Government was not in office a Liberal Government would abandon these targets and not try to uphold them in any way. They seem to decry the targets, and thereby indicate that they themselves do not support them. That is very interesting indeed.

Members interjecting:

The PRESIDENT: Order! The Council will come to order.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! The Hon. Ms Laidlaw will have the opportunity to ask questions in the proper manner. The honourable Minister.

The Hon. ANNE LEVY: The Hon. Ms Pickles asked what the Government has done in this area and, despite the quite false interjections from the other side of the Chamber, I can indicate that the Government has done a great deal. If we examine the figures that have been published every year since 1986, we see that since 1986 the proportion of women—

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: —on Government boards and committees has risen from 17.5 per cent to very close to 25 per cent last year. In that intervening time there have been considerable advances, more so than have been achieved in other places. South Australia is not the only place that has set targets. Western Australia set itself a target of 40 per cent by the end of 1996. Now that the Government has changed it will be interesting to see whether that target is maintained or whether the new Liberal Government in Western Australia will abandon it.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: We are talking about a target.

Members interjecting:

The PRESIDENT: Order! The Council will come to order. The honourable Minister.

The Hon. ANNE LEVY: Certainly there have been considerable achievements by the Government in this area, but by setting targets in this way the Government is making clear that we are serious about this matter, that although we have made considerable progress we do not regard it as sufficient, and that we want to accelerate the rate of change in this regard. As part of this program, I announced the establishment of the register of women in our community so that they will be able to provide us with their interest in being considered for Government boards and committees. They will be able to indicate to us what their interests, skills and talents are. There is no suggestion and never has been, except in the mind of Mrs Baluch, that women would not be appointed on merit. The aim of the register will be to give us knowledge of the vast number of women in our community who have knowledge, talents and skills that are highly relevant to various Government boards and committees, and by means of the register we will be able to appoint on merit such people to Government boards and committees.

Since this announcement, there has been enormous enthusiasm amongst women in the community in this regard. A large number of women have rung my office and have even rung me at home wanting a registration form so that they can put their name forward. I have had to tell them that the form is still being trialled but will shortly be available having finally determined—

An honourable member interjecting:

The Hon. ANNE LEVY: Yes. You trial a form to make sure that it is asking the appropriate questions—

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: —and that it is user friendly.

The Hon. R.I. Lucas: No wonder you never do anything, if you are trialling the form.

The PRESIDENT: Order! Order!

Members interjecting:

The PRESIDENT: The Hon. Mr Lucas will come to order and so will the Hon. Mr Davis.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Davis will come to order. The honourable Minister.

The Hon. ANNE LEVY: Thank you, Mr President. I am indicating that we are trialling the form to make sure it is a user friendly form. There would be nothing worse than having a form which people found difficult—

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: —to fill in. We certainly hope that we will be able to have it printed and available. There is obviously interest. The shadow Minister herself has asked for forms, with which she and any other woman in the community will be supplied as soon as they are available. I also say that despite the carry-on by members opposite the initiative of this Government has won a great deal of praise right around Australia. I would suggest that if honourable members doubt this they read that well-known feminist newspaper *The Financial Review*—and I stress I was being ironic in my adjectival description of that paper—which yesterday commended this Government for the initiative it has taken. I know that a very large number of people in South Australia also support this important initiative.

DISTINGUISHED VISITOR

The PRESIDENT: Before calling on the next question, I would like to acknowledge the presence in the Gallery of the Hon. Alan Brown, MLA, the Minister of Public Transport in Victoria. I hope he has an enjoyable and enlightening stay in our State.

TANDANYA PROJECT

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage, representing the Minister of Environment and Land Management, a question about Tandanya and bushfire risk.

Leave granted.

The Hon. M.J. ELLIOTT: Over the last couple of months I have received considerable correspondence and phone calls in relation to Tandanya and bushfire risk. I have one fairly brief letter which covers a number of the concerns, and I will read that into the record. The letter states:

I wish to protest at the Kingscote Council's recent actions in regard to the proposed tourist development at Tandanya, adjacent to Flinders Chase National Park, Kangaroo Island. The South Australian Native Vegetation Council wrote to the local council last year expressing concern at the amount of native vegetation clearance that might be required at the Tandanya site. The developers, System One, plan to build a Stage One—267 bed—resort in an area of Sugar Gum woodland, a vegetation type which has only limited remnants on the island and indeed in the State. The Native Vegetation Council received no reply to their letter. Now we hear that the Kingscote Council who recently approved this development have approached the SA Government requesting that changes be made to the regulations in the Native Vegetation Act 1991 to accommodate the extensive clearance of native bush required at Tandanya to provide some degree of fire safety. As the CFS report to council in December 1992 states, the development '...is in an area of extreme fire hazard' with nearby roads 'unsuitable as escape routes from bushfires. No nearby area is suitable for fire refuge'.

That is the CFS speaking. The letter continues:

Is System One's assertion that only 5.4 per cent of this site will be cleared still true? I believe that changing an Act of Parliament to accommodate the Tandanya resort would be an outrage. A more suitable location must be found.

One other letter from which I will take just a few points came from the Conservation Council. It makes a couple of points. I will not read all of them, but just a few in relation to the Tandanya site. The Conservation Council states:

It lies right on the boundary of the Flinders Chase National Park that has a horrendous bushfire history from lightning strikes and other causes. Being on the south-eastern side of the park the site is particularly vulnerable to fire fronts from the north-west and south-west.

The site constitutes 45 hectares of thick scrub that is continuous with the vegetation in the park and no firebreak could be provided that would be adequate on days of severe fire danger.

The development proposes clusters of 'bungalows' nestling among the trees, multiplying many times the possibilities for fire entry.

Water adequate to operate a venture of the size proposed and to provide for emergencies has not been proven.

The above points are borne out and detailed in the reports from the various Government departments involved, including the CFS and NPWS.

South Australia has very strong legislation relating to native vegetation clearance and it comes into great conflict when developments are put into native vegetation—not just Tandanya, but others. Here we have a site of significant vegetation which has to be cleared because of the significant risk or significant risk is taken for the development and the people who use it. My questions are as follows:

1. What percentage of vegetation on the Tandanya site is to be cleared?

2. What total area of native vegetation is to be cleared or modified by the removal of understorey at the Tandanya site?

3. Has the Government received a request to alter regulations to the Native Vegetation Act or the Act itself?

4. Is the Government planning any changes to the Act or its regulations?

5. When will the Government get some commonsense and consider shifting it even a couple of hundred metres to the east, which will take it out of the bush?

The Hon. ANNE LEVY: I presume that the honourable member is referring to Tandanya on Kangaroo Island, not Tandanya in Grenfell Street which is unlikely to be affected by bushfires. In consequence, I will refer the honourable member's series of questions to my colleague in another place and bring back a reply.

DRINK DRIVING

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Attorney-General a question about drink driving.

Leave granted.

The Hon. L.H. DAVIS: ABC television's *7.30 Report* last night featured a story which involved the death of a young girl, Karen Batcheler, who was a passenger in a single vehicle accident on 22 March 1992. The driver of the car was a girlfriend who was injured in the accident and subsequently taken to Lyell McEwin Hospital. Pursuant to the provisions of the Road Traffic Act, doctors took a blood sample of the injured driver within the required time. It is alleged that the blood sample was .19. This is almost four times the legal limit of .05. The figure of .19 suggests that the driver of the vehicle in which Karen Batcheler was killed had in the hours immediately before the accident consumed between 15 and 25 drinks.

The Road Traffic Act, section 47i(7), requires the medical practitioner taking a blood sample to place it in approximately equal proportions in two separate containers, seal the containers and make one of the containers available to the police and 'must cause the other container to be delivered to, or retained on behalf of, the person from whom the sample of blood was taken'.

The facts in the Batcheler case, as outlined on the *7.30 Report,* suggest that when the injured driver was transferred from Lyell McEwin Hospital to Royal Adelaide Hospital her personal possessions, including the blood sample, were given to her boyfriend. It was alleged that this blood sample was later given to the mother of the injured driver. However, a wall of silence descended on the whereabouts of the blood sample and it appears that because the requirements of section 47i have not been properly complied with no prosecution is possible. I have also been advised that there have been several occasions involving hospitals in metropolitan Adelaide where prosecutions have not been possible because section 47 has not been observed.

I understand that the Director of Public Prosecutions is preparing a report for the Attorney-General on the Batcheler case. Clearly, it is a matter of some public interest because for more than a decade there has been a determined effort in South Australia to reduce the incidence and possible dreadful consequences of drink driving. The Attorney-General and I and a number of colleagues served on Legislative Council select committees in the early 1980s which recommended the introduction of random breath testing in South Australia. Clearly it is unacceptable to the community that a pedestrian, cyclist, passenger or driver could be the innocent and unwitting victim of a drunken driver but that no prosecution is possible because of a failure to adhere strictly to the requirements of legislation or some ambiguity in the legislation. My questions are:

1. Has the Attorney-General had the opportunity to be briefed on the facts of the Batcheler case and, if so, is he in a position to advise the Council as to whether any amendments to the Road Traffic Act are required to overcome the situation which appears to exist in the Batcheler case?

2. In addition to the possible amendments to the Road Traffic Act, does the Attorney-General believe there is a need for stricter guidelines to operate with respect to blood testing?

The Hon. C.J. SUMNER: The decision whether or not to prosecute in a matter such as this rests with the police or with the Director of Public Prosecutions. I am not aware of what decision has been taken in that regard, but I will seek a report and bring back a reply. As to whether any change is needed to the law, if it is correct that the DPP is preparing a report, I will examine that report and discuss it with other responsible Ministers in Government. If the Government determines that a change to the law is necessary, an announcement to that effect will be made and the honourable member will be advised.

STATE BANK

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer and the Minister of Emergency Services, a question about State Bank senior personnel.

Leave granted.

The Hon. J.F. STEFANI: I have been informed that on Saturday, 6 April 1991, a blue Ford sedan, registered number UZW 185, owned by the State Bank of South Australia, drove into the BP service station situated at 427 Goodwood Road, Westbourne Park. The driver of the vehicle was described as a white male of short to medium height and of thin build and with blonde hair. The passenger in the vehicle was also a male described as tall, thin and with dark hair. The driver of the vehicle filled the car with petrol to the value of approximately $50, threw the pump on the ground and drove off without paying for the petrol.

I am advised that State Bank executives are provided with Mobil charge cards for their petrol requirements and that the vehicle in question was allocated to an executive of the State Bank as part of his salary package. On 2 May 1991, Detective Vincent Shey of the Norwood police station contacted the State Bank of South Australia with the details which I have described. The aggrieved

proprietor of the BP service station at Westbourne Park has not received any explanation as to the reason why police charges were not pursued and he has not received payment for the petrol taken by the alleged owner of the vehicle, the State Bank. My questions are:

1. Will the Treasurer instruct the chief executive of the State Bank, Mr Ted Johnson, to obtain a full report into this matter and, once the report is prepared, will that report be made available to Parliament?

2. Will the Minister of Emergency Services refer this matter to the Commissioner of Police and obtain a report to be tabled in Parliament?

The Hon. C.J. SUMNER: I will refer those questions to the appropriate Minister and bring back a reply.

REGENCY PARK CENTRE

The Hon. BERNICE PFITZNER: I seek leave to make an explanation before asking the Minister representing the Minister of Health a question about the closure of the Regency Park Centre.

Leave granted.

The Hon. BERNICE PFITZNER: The Regency Park Centre, administered by the Crippled Children's Association, is and has been an excellent centre for children with mainly physical disabilities. A draft corporate plan was issued in August 1992, to be commented upon by October 1992. Some of these draft actions have now been implemented. The action plan is proposed to cover the period from this year to 1995.

It is observed by the parents that most of the services at present provided at the Regency Park Centre will be relocated except for the school. As such they do not have much confidence that the school will remain open (a parallel they draw with the Woodville Spastic Centre). The action plan in the corporate document sustains this perception of relocation of resources, and I quote in part:

Action 1 From 1 January 1993 the school transport will not be provided by the Crippled Children's Association for new enrolments.

Action 2 From January 1994 the Crippled Children's Association will not provide transport for any school children... Actually, this is now happening, a year early.

Action 4 The library at the Regency Park centre will merge in 1995 and will be off campus.

Action 5 The respite villas will close at the end of term 3, 1992.

Action 6 The medical respite facility will be transferred and by January 1993 it will be terminated.

Action 7 The Family Services Department will relocate to office premises in the community by July 1995 and maybe auspiced to another agency...

Action 10 The Crippled Children's Association will transfer the personal care and respite services to specialist accommodation in 1993.

Action 11 The Regency Computer Bureau will relocate to rented office premises in 1995.

Action 12 The equipment services will move to rented premises by January 1995.

We have, therefore, a litany of resources to be relocated from the Crippled Children's Association, and, further, in the minutes of a parents meeting in October 1992 it says in part:

Parents believe that they needed to be consulted if the closure of the school was an issue. It is reasonable to assume that the centre would not be kept open if resources etc. are being moved from the site...A parent commented that the Spastic Centre of South Australia's experience has been a downgrading of services.

The officials at the Regency Park Centre assure the parents that the centre will not close but with this list of actions the parents have no confidence in this reassurance. They also feel that they have not been sufficiently consulted. My questions are:

1. Why have the parents not been fully consulted?

2. With the relocation of the major services, how long will the centre remain open?

3. We understand the trend of 'deinstitutionalisation' and 'normalisation' for these disabled children: does the Government understand that to achieve excellence of the centre and incorporating this trend it will not be financially cheaper?

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

MANAGEMENT FEES

In reply to **Hon. I. GILFILLAN** (6 November).

The Hon. C.J. SUMNER: The Treasurer has provided the following response:

1. It is presumed that Mr Gilfillan refers to BCR Venture Management Pty Ltd in his question. The Enterprise Investments Trust is managed by BCR Venture Management Pty Ltd under the terms of the Management Agreement with the Trustee company, Enterprise Investments Limited.

BCR Venture Management is responsible for managing and monitoring the investment portfolio and identifying and evaluating new investment proposals. The management fees payable to BCR Venture Management Pty Ltd, as set out in the management agreement, are related to the net fund value which is directly related to the financial performance of investments made by the trust.

The annual management fees payable to the manager of the trust are related to CPI movements only to the extent that the minimum management fee payable is related to a base management fee, agreed at the time the trust was established and subsequent movements in the CPI. The base fee was established having regard to the level of costs incurred by the former Enterprise Investments (South Australia) Limited.

The financial performance of the trust since its formation in mid 1989 has been such that the annual management fee payable to the manager, as calculated using the formula included in the management agreement, has always been greater than the minimum fee. In addition to the management fee, an annual incentive fee becomes payable to the management company if the value of the trust exceeds a benchmark, as set out in the management agreement. No incentive fee was payable in respect of the 1991-92 financial year.

2. As clearly disclosed in the Enterprise Investments Trust annual reports, the fee structure is set out in a management agreement entered into between Enterprise Investments Limited and BCR Venture Management Pty Ltd. The fee structure was

negotiated jointly between SAFA and the Chairman of the Enterprise board at the time that trust was established.

3. The fees payable bear no relationship to the fees payable in other government or semi-government projects. The management fees payable to Enterprise are consistent with commercial standards applying in respect to the Australian venture and development capital industry.

4. The fees payable to BCR Venture Management Pty Ltd and BCR Financial Services Pty Ltd since the establishment of the Enterprise Investments Trust have been stated in the Trust's annual report since its establishment and are as follows:

Year ended	BCR Venture Management Pty Ltd	BCR Financial Services Pty Ltd
30 June 1992	$1 026 424	$34 931 (1)
30 June 1991	$966 574	$60 063 (2)
30 June 1990	$880 800	-

Notes:

(1) The fees paid to BCR Financial Services Pty Ltd in respect of the 1991-92 financial year consist of directors fees of $14 000 and payment for accounting services in relation to the Enterprise Investments Trust, Enterprise Investments Limited and Enterprise Securities limited of $20 931.

(2) The fees paid to BCR Financial Services Pty Ltd in respect of the 1990-91 financial year consist of directors fees and consulting fees from investee companies of $40 063 and payment for accounting services provided to Enterprise Investments Trust, Enterprise Investments Limited and Enterprise Securities Limited of $20 000.

5. The following additional facts should be put on record:

i. Mr Gilfillan states that 'Enterprise Investments Trust was formed in 1989 as a sole beneficiary for the South Australian Finance Authority ('SAFA'). This is incorrect. SAFA is the sole beneficiary of the Enterprise Investments Trust.

ii. Mr Gilfillan states that 'The trust was formed from a restructuring of a similar entity started in 1984 totally funded with Government funds.' Enterprise Investments (South Australia) Limited was formed in 1984 but was not totally funded with Government funds initially. That company had an initial funding base of $10.7 million, of which $10.6 million was raised via a public issue of convertible notes, ordinary shares and preference shares. The Treasurer of South Australia initially subscribed only $100 000 for 200 000 'A' class shares of 50 cents each. SAFA subsequently took over the Enterprise Group in 1988.

iii. Mr Gilfillan states that 'When the trust was first established, the State Government pledged more than $15 million to its start-up'. The State Government, via SAFA, subscribed a total of $28 million in capital when the trust was established in mid 1989.

iv. Mr Gilfillan states the trust's main role is 'to support and to be an equity partner in ventures seen to be for the greater good of South Australia'. Although the trust's investments have a South Australian emphasis, the trust operates on a commercial basis and is able to invest outside of the State.

v. Mr Gilfillan states that 'The company is managed by BCR Venture Management Pty Ltd and BCR Financial Services Pty Ltd.' As clearly stated in the 1990 and 1991 Annual Reports for the Enterprise Investments Trust, BCR Venture Management Pty Ltd is the manager of the trust.

vi. Mr Gilfillan states that 'The co-founders and directors of the management group are Dr Ron Bassett and David Ciracovitch, who are also directors of the trustee, Enterprise Investments Limited.' Mr David Ciracovitch is not and never has been a director of Enterprise Investments Limited.

vii. Mr Gilfillan states that Dr Bassett and Mr Ciracovitch 'are both directing the management company and directors of the board that is placing the money and making the investment'. As mentioned previously, Mr Ciracovitch is not and never has been a director of Enterprise Investments Limited. Dr Bassett is a director of Enterprise Investments Limited but is only one of seven directors on the board.

viii. Mr Gilfillan states that 'the fees, according to the notes, are 'influenced by the value of funds invested and movements in the CPI', but apparently not related in any way to performance'. As discussed in the answer to Mr Gilfillan's first questions that assumption is incorrect.

STUDENT ACCOMMODATION

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Education a question about boarding accommodation in country schools.

Leave granted.

The Hon. PETER DUNN: Several years ago accommodation blocks were provided for Port Augusta, Whyalla, Port Lincoln and Cleve. These were to be run by the school councils and they were to provide the house parents while they were under their care. A contract was written up for a period of four years, to 1994. Of the four places that I have noted only one of them has been successful and that has been at Cleve, and presently there are eight children in residence at two homes, five in one and three in another, both with house parents.

Recently, because of the unsuccessful operation of Port Lincoln, Port Augusta and Whyalla. They are just not working; there are no children in them. I am informed that the reason for that is that the school councils do not want the responsibility of providing those house parents. The Education Department has changed tack, although I do not often agree with that. Its principal idea is to engage YWCA personnel to provide managers and overseers for these houses. That will be a limited operation in that they will provide only the overseeing: the children themselves will need to wash, cook, make the beds and do the normal house chores.

It should be remembered that these children are aged probably from 14 to 16. In undertaking this change, the department will also withdraw the house parents from the Cleve area. They would be replaced by YWCA personnel under the operation that the YWCA has negotiated. The Cleve school, school council and parents do not believe that this will work. Parents have said that they would withdraw their children on the basis that they do not believe that they are old enough to be able to cook and to look after themselves.

I am told that the boarding house parents in Cleve are doing an excellent job for little reward. Each child pays approximately $70 per week to live in those houses, so income is very restricted. Bearing in mind the comments of the school council and the parents, my questions are as follows:

1. Will the Minister give this Council some idea of why there is to be a change at Cleve? My information is that the board of management is running well.

2. What are the Education Department's future plans when addressing accommodation requirements of country children?

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

TEACHERS

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister representing the Minister of Education a question about teacher staffing.

Leave granted.

The Hon. R.I. LUCAS: My office has been inundated with calls from angry parents and teachers in recent days concerning the Education Department's decision to remove teachers from schools after the school year has commenced, because of the school's declining student enrolments. In some cases the fall in school enrolments is only minimal. One example is Pimpala Primary School in the southern suburbs, which has 11 teachers and which, because of the decline of just six students, now has an enrolment of 264 students and, as a result, must lose one of its 11 teachers.

The removal of a teacher might not appear a drastic measure, but when students have been settled in at school for several weeks and classes throughout the entire school need to be reorganised as a consequence, the full import of the decision can be appreciated. The department seems oblivious of pleas from certain schools that they are subjected to fluctuating school enrolments throughout a school year and that, on past enrolment patterns, they will require extra staffing as student numbers grow later in the year.

My question to the Minister is: will she call for an immediate review of the implementation of the school staffing policy which is resulting in the removal of teachers from schools after a fall of a small number in student enrolments, especially if there is reasonable evidence that enrolments might grow again later in the year?

The Hon. ANNE LEVY: I will refer the question to my colleague in another place and bring back a reply.

STATE THEATRE COMPANY

The Hon. DIANA LAIDLAW: I have questions for the Minister for the Arts and Cultural Heritage. Following speculation over the past fortnight about the fate of the State Theatre Company, will the Minister confirm whether or not it is Government policy that the State Theatre Company remain a statutory authority or whether the Government would be prepared to see the management of the company absorbed by the Adelaide Festival Centre Trust? As speculation about the fate of the company appears to have been fuelled by various yet to be released reviews of both organisations, will the Minister advise why Justin McDonnell's review of the State Theatre Company which was commissioned by the board has not yet been released and when it will be?

Is it the Minister's intention to release publicly a report that has been prepared by a team of consultants headed by John Bastian to frame a business plan for the Adelaide Festival Centre Trust?

The Hon. ANNE LEVY: First, the calling in of Justin McDonnell as a consultant was done by the board of the State Theatre Company, which it was perfectly entitled to do. I understand that Mr McDonnell has prepared his report. I have not seen it. It is not a report to me: it is a report to the board of the State Theatre Company. What it does with it is its business. If the honourable member wishes it to make it public, I suggest that she make representation to it to do so. It is not a Government report. It is not a report to me: I do not have it.

I do not expect to have it. Obviously, I am interested in anything that State Theatre does. If the report proposes changes to State Theatre, I will be very interested as to what action State Theatre takes as a result, but I reiterate that it is not my report. If it were made available to me, I would certainly read it with great interest, but it is not my report. With regard to the other report to which the honourable member referred, I understand that it is not a report but the preparation of a business plan for the Festival Centre Trust.

The report is being undertaken by a consultancy firm with Tim Lebon in charge of the work, with an overseeing committee chaired by John Bastian, as indicated by the honourable member. As far as I am aware, that document has not been completed, and I would await its completion before passing any comment as to whether or not it should be made public. As I understand it, many commercial organisations prepare business plans but do not make them public, for obvious commercial reasons. However, I cannot comment on this case, because it is not yet completed.

With regard to the laughable suggestion that State Theatre will cease to exist and will be taken over by the Festival Centre Trust, I imagine that these are some ravings of Basil Arty. I know no other source for that rumour, and I can assure the honourable member that at this time there is certainly no plan to cease having State Theatre as a statutory body.

TREE PLANTING

In reply to **Hon. PETER DUNN** (26 November).

The Hon. ANNE LEVY: The Minister of Environment and Land Management has advised that the honourable member in his question referred to the statement by the previous Prime Minister, Mr Hawke, concerning the planting of 1 billion trees in Australia. He indicated in his question that this number of trees was to be planted before 1993.

The previous Prime Minister's statement on the environment published in July 1989 states that by the year 2000 the Government aims to have a billion more trees around Australia planted and growing'. So it appears that the honourable member has not studied the previous Prime Minister's environment statement in any detail. The honourable member should refer in particular to page 48 of the statement to get his facts right. This part of the statement refers to the establishment of a community tree planting program, financial assistance for community groups

and landholders to implement tree projects on farms and in towns and cities, and a natural regeneration and direct seeding program to establish trees in open areas of Australia.

In South Australia, work involved with the planting of trees, whether it be by tubestock through organisations such as Trees for Life, or direct seeding through the South Australian Branch of Greening Australia, has been extraordinarily successful. Furthermore, a massive amount of work has been undertaken through friends of parks groups providing for the re-establishment of native vegetation and planting of trees within our parks and reserves system. Therefore, in terms of the sensible parts of the honourable member's question, the greening of South Australia is being undertaken on an extensive and highly successful basis with several million trees and shrubs being planted and direct seeded per year. Fencing off selected areas from grazing is also allowing a natural regeneration to take place. The Minister looks forward to the honourable member asking his question again in 1999, so that an assessment can be made of the effectiveness of a decade of landcare.

CHEMICALS, HANDLING

In reply to **Hon. PETER DUNN** (11 November).

The Hon. C.J. SUMNER: The Minister of Emergency Services has provided the following response:

This incident occurred soon after 9.00am, on 22 August, 1992 when an IPEC truck with a mixed load rolled over blocking the highway, approximately l0km south of Arno Bay.

In accordance with the Memorandum of Understanding between the State Emergency Service, which sets out the responsibilities of each Service, the CFS Volunteer Brigades of Arno Bay and Cleve responded to the incident. Cleve Brigade is an accredited Dangerous Substance Brigade with members specially trained to deal with this type of incident.

A Portion of the load was identified as sodium nitrate in solid form. Among other hazards, this substance has the potential to release toxic smoke and fumes in a fire.

Information on the incident, available at CFS Headquarters, indicates that the attending Brigades were actively involved for some time in establishing the contents of the load and any potential effects to life or property as well as localising any likelihood of contamination.

The SA Police were at the scene diverting traffic around the blocked highway.

It was not until 11.15 that CFS firefighters in breathing apparatus were in a position where they could confidently and safely remove the damaged containers.

The completion of this process enabled the highway to be re-opened at 12.20pm.

The task of righting the truck, cleaning up the area and confirming it safe were completed by 3.38pm.

While it is acknowledged that lengthy incidents such as this keep Volunteers away from their jobs, the CFS has the responsibility to ensure that emergencies are handled safely and professionally without hazarding the lives of those CFS members at the scene.

As with many other incidents similar to this, South Australia relies heavily on the commitment and community spirit of dedicated CFS Volunteers to make safe potential emergencies ranging from floods, fires, chemical spills and vehicle accidents.
We are indebted to them.

I am advised by the Chief Officer of the CFS that every endeavour is made to minimise the Volunteer's time from work. However, as was the case in the incident referred to by the honourable member, it was not possible to reduce the time factor nor would it have been practical or appropriate to use untrained, unequipped persons, should they have been available to stand by or assist."

GLENELG FORESHORE DEVELOPMENT

In reply to **Hon. M.J. ELLIOTT** (24 November).

The Hon. ANNE LEVY: The Minister of Housing, Urban Development and Local Government Relations advises that the honourable member has based his question around two quite incorrect propositions. First, it is quite misleading to represent the value of the land to be given to the developer as $46 million. The Valuer-General has said that the land in its current form and with its current zoning is worth $750 000. However, both the Valuer-General and a professional valuation show the value of public land to be occupied by the residential development as between $3.5 million and $4 million.

Secondly, the Government is not intending to pay $4.6 million to the developer. The Government contribution of $4.6 million is towards stormwater management works in the Patawalonga. This includes work on a gross pollutant trap or similar structure(s) to be designed to remove both floating debris and suspended sediment. It also includes a contribution from the Government towards a seawater flushing system. The project in effect offers the potential for private sector investment funds to be made available to supplement Government expenditure in addressing current stormwater and sand management problems in the area. Documentation prepared by the Centre for Economic Studies has demonstrated that the project, if it proceeds, will have net positive economic benefits for the State. As such it should attract the support of all honourable members.

STATE BANK

The Hon. K.T. GRIFFIN: In the light of recent public speculation that the terms of reference of the Auditor-General's inquiry into the State Bank may be amended to allow the Auditor-General to produce interim reports, can the Attorney-General indicate whether or not the Government proposes any further amendment to allow such interim reports to be produced and published?

The Hon. C.J. SUMNER: The Auditor-General is due to report on 28 February. That date will not be met, and obviously the terms of reference will have to be amended to grant an extension. The time of the extension is something that has been discussed with the Auditor-General, and I would expect an announcement to be made about that in the next week or so.

As to an interim report, it may be that the Auditor-General can deliver an interim report in any event without the terms of reference being amended. However, I understand that his current intention is to produce a report on the State Bank first and then follow with a report relating to his other terms of reference, including Beneficial Finance and the external auditors.

TEACHERS

The Hon. R.I. LUCAS (Leader of the Opposition): I move:

1. That this Council condemns the Labor Government for its school staffing policies which have caused major problems for teachers, students and schools at the start of the 1993 school year.

2. Deplores the waste of teacher experience and expertise as a result of these policies.

3. Calls for an independent review of the current staffing policies of the Education Department.

The teacher staffing process for 1993 was absolutely chaotic. Hundreds of teachers were dumped out of schools, irrespective of how good these teachers might have been in their particular school and how well performed their students might have been over recent years. They were dumped under the Education Department and the Labor Government's 10 year limited placement policy. Hundreds of those teachers were then dumped into other schools and, in many cases, some of those teachers are still in the third and fourth week of first term, having to take relief lessons for other teachers who are away on sick leave, or for any other reason, from their particular school.

We have a situation where over a thousand teachers in our schools are teaching subjects outside their area of expertise. In some cases, we have the situation of teachers on a daily basis trying to keep a chapter ahead, if they are lucky, or perhaps a page ahead, if they are not quite so lucky, of their students in subjects with which they are unfamiliar, subjects for which they have not been trained, but subjects which the Minister of Education in South Australia and this Government say that they must teach.

Many hundreds of teachers over and above those 1 000 are not being used to their level of expertise within particular schools. For example, teachers trained to teach year 12 physics or year 12 biology might be teaching that subject but at a much lower level, perhaps only to years 8, 9 or 10. Last year and again this year we have had the situation of secondary trained teachers being dumped into primary schools and asked to take on an area of teaching for which they are not at all prepared. The whole reason for having teacher training institutions with courses divided into secondary, primary and junior primary is the acceptance by teacher training educators that it takes different skills to teach secondary students as opposed to primary or junior primary students. But this Government in recent years obviously has believed that it knows better than the teacher training educators throughout the nation and quite simply says, 'If we can't find a job for a secondary trained teacher, we'll dump that teacher into a primary school and tell the teacher to take primary aged students and, what the heck, it will only be the education of primary aged students that will suffer' as a result of the decisions that the Minister of Education and the Labor Government have taken in relation to teacher placement.

I intend to give some specific examples of the chaos that exists in our schools and the response from some teachers to that chaos, but the difficult situation that I have broadly outlined was inflamed by a Minister of Education who demonstrated how out of touch she was with the school community by the statements she made over the past two to three months; a Minister of Education who demonstrated what little knowledge she had of what really goes on in schools and what little thinking she had engaged in over the past months—even though she had been warned soon after taking on the portfolio late last year—on the important issues which confront schools and which should be confronted by a new South Australian Minister of Education.

In the end, we had the unedifying spectacle of a Minister of Education having to resort to personal abuse and bluster. As my mother said in one of her wiser statements, 'Personal abuse and bluster, son, are only an excuse for lack of intellect on any subject.'

The Hon. Anne Levy: Out of your own mouth.

The Hon. R.I. LUCAS: Not out of my mouth, out of the mouth of a very wise woman, my mother. One could apply those wise words to the unedifying spectacle of the Minister of Education who, in the past few weeks, when confronted with overwhelming evidence that all that she said was wrong and in the light of the little knowledge that she had of her own system, then resorted to personal abuse and bluster to try to bluff her way through the situation.

The Hon. T.G. Roberts: Did the Minister take your mother out to lunch?

The Hon. R.I. LUCAS: No. This happened a long time ago, and I can still remember. Finally, the Minister was forced to admit that in some respects she had got it wrong and from about the second and third week of January she started back-pedalling. I suspect that the Minister of Education is the only Minister in this Government who has more reverse gears than forward gears, given that she has been reversing so much in recent weeks decisions and statements that she has made in relation to the teacher placement process.

Let me now turn to some specific examples of the problems being inflicted upon schools in South Australia. The first warning of imminent disaster in schools was made at the end of December last year. Just before Christmas, I issued a press statement under the heading 'Labor's school staffing policies a disaster—500 teachers still without a school'. Without going into the detail of that statement, it was an early warning to the Minister of Education that as at December last year information supplied to me by her own department indicated major problems with the teacher staffing process for 1993. The information supplied to me at that stage was as a result of the incredulous response and reaction of some teachers and principals to personnel bulletin No. 36/92 which was issued to all schools in the first week of December and which stated:

> Today, December 4, was the published time line for notification of placements [for 1993].

That is when all teachers were told where they would be placed in 1993. The bulletin continues:

> We have met this time line.

That is an interesting statement. The bulletin then states:

> Principals (or their representatives) are reminded to ensure attendance at a placement meeting today and then model best personnel practice in passing on this information to staff. Country principals will receive 1993 teacher placement information by mail and can release it today. It is crucial that all teachers receive their information on the same day. All but a

few junior primary and primary teachers have been placed. A number of secondary teachers have still to be placed. During December and January placement packages will be carefully considered for these teachers.

That was a deliberate attempt to mislead hundreds if not thousands of teachers in our schools through that personnel document sent out by the department and approved by the Minister of Education, because at that time the Minister of Education and the department knew that at least 1 000 teachers were unplaced. At that stage, the information provided to me indicated that the number was at least 500 but, as a result of further discussions over the past few weeks, it is clear that the Minister of Education and the Education Department in December were engaged in a deliberate campaign of deceit and misinformation in respect of teachers, schools and parents about the teacher staffing exercise for 1993.

When I issued that statement later in December, we again had the response from the Minister of Education and two journalists from the *Advertiser* and ABC radio that there were only a few teachers who had not been placed and they did not really know what the Hon. Mr Lucas was on about, trying to beat up a story about a problem in our schools with staffing for 1993. Let me now list some of the problems that schools have been suffering.

At least two teachers of whom I am aware have already engaged legal advice and made threats to the Education Department about being forced by the department to teach in areas outside their area of expertise. Their argument and legal advice is based on the fact that they believe being forced by this Minister to teach outside their area of expertise may well cause damage to the quality of education delivered to students in their schools.

In one case, their legal advice related to provisions under the Occupational Health, Safety and Welfare Act because of the nature of the subject they were being forced to teach, and they believed that they might be placing their students at risk because they were being forced to teach in an area outside their area of expertise. In another case, whether it be bluff or bluster or the legal advice, a particular teacher, having served that legal advice on the staffing section of the Education Department, forced the department—

The Hon. Anne Levy: The mother didn't speak to the teacher and—

The Hon. R.I. LUCAS: Not that particular one but in this case it actually worked. The Education department's personnel section was forced to back off and to comply, at least partially, with the wishes of the teacher.

In recent weeks I have been contacted by another teacher (and this is not one of the teachers that has taken out legal advice) who is in a similar situation. I read briefly from the notes of the telephone conversation that my office had with this teacher. This teacher was teaching in a northern suburbs high school, a high school I might note that as of last year had to have its staff using two way radios during yard duty at lunchtime and recess time for security reasons for fear of physical assaults being inflicted upon teachers during morning recess and lunchtime. They needed to be in two-way contact with the staff room just in case they got into trouble. Again, that is in a system that the Minister of Education, with that smile on her face, blithely says has no discipline problems existing within schools in South Australia.

The teacher who teaches in that school was advised that early in January he was to be transferred to an inner western suburbs high school to teach art. The day after receiving that advice he attended the school's staffing meetings on the Thursday and Friday prior to the start of the school year. On the night that he attended that school staff development program he got a phone call from the department saying that he was now to go to another school in the western suburbs to teach year 11 technical studies for the first half year to fill in for a teacher on leave. I read from the telephone note of the conversation my office had with the teacher:

> The teacher is absolutely horrified at the prospect of having to teach technical studies, having no experience at all in teaching technical studies let alone at year 11 level, and is fearful of the possible physical risks to students in his charge when they use machines such as wood lathes or circular saws, etc. At a professional level he is concerned about his reputation should one of his students be injured. He claims he has been told clearly by the new school staff [in that western suburbs high school] that they do not need him at the school. The person going on leave also does not want that teacher to muck up his program because they know he has no experience in it but they have no say in the matter because the Education Department has told them 'You've got to have this art teacher to teach tech studies or else.' The teacher believes the placement will only exacerbate his existing stress that he is suffering as a result of other inappropriate appointments and discipline problems that he has suffered as a result of discipline problems with students in schools. He believes his appointment as a tech studies teacher is totally incomprehensible particularly given the large number of tech studies teachers either without places or placed at other schools but not teaching their speciality.

Mr Acting President, that is a pretty fair example of the sort of situation where teachers are being forced to teach subjects outside the area of their expertise but where that placement might well place their students at risk. It is because of cases such as that (and, as I said, I am not aware that that teacher has taken legal advice) that two teachers of whom I am aware have taken legal advice on this matter as to whether the Education Department can force them to teach in subjects outside their area of expertise.

Let me look at some other examples of the chaos that exists in our schools for this year. In one case a teacher resigned from the Education Department last year and, in the last week of January this year, received a letter announcing that he had been appointed to a school for term 1 of this year. A second example is of a teacher who was not only lucky enough to be appointed to one school but was in fact appointed to three schools for the start of the 1993 school year. The teacher's mother contacted me, as the teacher was too embarrassed to ring the shadow Minister of Education about this matter. The mother was so horrified at the incompetence, the ineptitude and the lack of knowledge being displayed by the Minister about what was going on in her department that she felt compelled to ring the shadow Minister to indicate the circumstances of this situation.

On 14 January this teacher received a letter appointing him to a southern suburbs high school. On the same day

(14 January) he received a phone call from an eastern suburbs high school saying that he had been appointed to that school and was required to turn up to the staff meeting on the Thursday and Friday prior to school starting. Finally, the principal of his old school, the western suburbs high school, rang him and told him that he was to disregard all other information which had been given to him and that he would stay at that school in the western suburbs and was required to be at staff meetings at that school for the Thursday and Friday prior to school starting. He had three appointments. Other teachers who had resigned had been appointed to particular schools. Another teacher who was on long service leave found to his horror that he had been appointed to a particular school.

The Hon. L.H. Davis: It gives new meaning to the phrase 'classless society'.

The Hon. R.I. LUCAS: I think that remark is worth while getting on the *Hansard* record by my responding to it. Another teacher was so frustrated that she rang the Keith Conlon program—and there are a good number who did but I recognise this particular teacher's tale of woe from a letter and a telephone contact that I had from her earlier in the week. This teacher had had 32 years experience in teaching in primary schools in South Australia. As at 20 January, just prior to the staff meetings on the 21st and 22nd, had still not been contacted by the Education Department staffing section as to where she should go the following day. She rang Keith Conlon that morning and said, 'I've had 32 years experience. I still haven't been told. I've been ringing staffing officers and they don't get back to me. I'm listening to the Minister of Education saying that everybody has been appointed and frankly she doesn't know what she is talking about. So what I am going to do tomorrow is to rock along to the nearest primary school for staff meetings in the morning and say, "Gidday, I'm a teacher with 32 years experience; can I sit in on your staff meetings this morning?"' That is what that teacher was going to do as of early the Wednesday morning.

Obviously someone within the Minister's office—I presume they do not do much else other than monitor the media; they certainly do not run the Education Department—must have been listening to Keith Conlon in the morning. At a quarter to five that afternoon, prior to the staff meetings next morning, that teacher received a telephone call from the staffing section of the Education Department, saying 'Well, look, we admit we don't know where to put you but, yes, we agree with what you said on Keith Conlon this morning. Go along to your nearest school and say "Gidday" to the teachers there, introduce yourself to the teachers, and we will see what we can do over the coming weeks.' That was at a quarter to five. The teacher had tea and then at a quarter to 10 that same night the teacher received a second call from the staffing section.

The Hon. R.J. Ritson: The Education Department is still working at a quarter to 10 at night?

The Hon. R.I. LUCAS: I make no criticism of the staffing section of the department, and I will refer to that in a minute because it is not their fault; it is the fault of the Minister of Education, the Labor Government and previous Ministers of Education that we are in the chaos that we are in at the moment. I might make criticisms of other sections of the Education Department bureaucracy, and have done so, but not the staffing section in relation to this. At a quarter to 10 that night the teacher received a phone call saying, 'Look, disregard what I said to you at a quarter to five; I have now found a placement for you for a year at a north eastern suburban primary school—a permanent against temporary placement. At the end of the year we will have to find you something else.'

That is what is known as a PAT within the Education Department, or some cynics might say a Patsy. At a quarter to ten the teacher thinks, 'At last I have a placement for tomorrow. I do not have to rock along to the nearest school. I will find out where this school is in the north-eastern suburbs and I will rock along there and introduce myself. I will say that I got a call at a quarter to ten last night. You might not know that you have got me, but here I am. What are you going to do with me?' But there was more. At a quarter past ten on the same night there was another phone call from the staffing section of the Education Department saying, 'Disregard everything else we have told you.' 'But you rang me only half an hour ago', said the teacher. The person on the phone said, 'Forget about that. We made a mistake.'

The Hon. L.H. Davis: Was that the same or a different person?

The Hon. R.I. LUCAS: It was the same teacher. That teacher was told, 'Forget what I have just told you. We made a mistake. All we can do for you at this stage is find an appointment at a school in the north-eastern suburbs for term 1 and after that we do not know where we will put you. But rock along there. You will be a temporary teacher.'

The Hon. L.H. Davis: Was it the same school?

The Hon. R.I. LUCAS: I am not sure whether it was the same school, but it was in the same area, the north-eastern suburbs. She could have used the same section of the Gregory's to find the new school and to introduce herself to the staff and the principal. The teacher was told, 'Rock along to the new school and introduce yourself. You will be there for only one term. You are on the next rung down. You are not a PAT—a permanent against temporary—you are a temporarily placed teacher. That means that if someone is on leave or sick you take the class. If you are not there, you will do the sort of tasks like looking after kids on excursions.' As my colleague the Hon. Legh Davis said, 'You will look after kids on the jungle gym or you will fill out index cards in the library or you have make work schemes in the school to fill in the time until we can find a placement for you.'

The Hon. R.J. Ritson: It sounds very professionally rewarding!

The Hon. R.I. LUCAS: Here is a teacher with 32 years professional teaching experience. She does not proclaim to be a high flier as some are and do, but she says, 'I am a teacher who has given loyal, long and worthy experience and expertise to the Education Department and the schools. I have believed in this system all of my teaching life and this is how the department and the Minister treat me. They treat me like dirt, they treat me like garbage, they dump me from school to school and they waste the 32 years of teaching experience and expertise that I have gathered and I am now not able to use for the benefit of the children.

The Hon. R.R. Roberts: What would you have done?

The Hon. R.I. LUCAS: I will get to that in a minute.

The Hon. R.R. Roberts: What would you have done in the circumstances?

The Hon. R.I. LUCAS: We were highlighting the problems in December.

The Hon. R.R. Roberts: What was the solution?

The Hon. R.I. LUCAS: Part of the solution was to acknowledge two years ago when you and your Party implemented the limited 10-year placement policy—

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: The Hon. Ron Roberts talks about the sacking of teachers. This Labor Government has removed 1 200 teachers from schools in the last few years, contrary to the promise that it made in 1989, and it has closed more than 50 schools. What says the Hon. Ron Roberts to the record of his own Government which has removed 1 200 teachers contrary to a specific election commitment—a broken promise—and more than 50 schools have been closed by the Labor Government with your support over the past few years. Whilst I welcome the odd intelligent interjection or two, let us not hear any humbug from the Hon. Ron Roberts about cuts in education.

The Hon. L.H. Davis: He is the royal highness of humbuggery.

The Hon. R.I. LUCAS: That is a very good interjection. If the Hon. Ron Roberts wants to talk about the Government's performance and divert me from this motion, which I do not want to do, I would be happy to do so under any other motion that he might care to move in this Chamber.

The ACTING PRESIDENT (The Hon. G.Weatherill): Let us not hear any more baiting in the debate.

The Hon. R.R. Roberts: He is being very provocative, Mr Acting President.

The Hon. L.H. Davis: It is a vicious, unpremeditated attack.

The Hon. R.I. LUCAS: Exactly. Unconscious as well. Let me give some further examples of the problems that we have in our schools. The first concerns a year 12 physics teacher whose students two years ago had a 100 per cent pass rate. Among his students there were five perfect scores of 20 out of 20 in year 12 physics examinations in 1991.

The Hon. R.R. Roberts: His students.

The Hon. R.I. LUCAS: His students were good, but so was the teacher. His record in 1992 at a different school, when he was dumped from that school and sent to another, again indicated an excellent pass rate for his students in physics at the year 12 physics examinations conducted by SSABSA. This teacher with this excellent record in teaching physics at year 12 has now been sent to a school where he will not be teaching year 12 physics and will only be taking classes up to year 10. He has been made a coordinator of a subject for which he has no experience at the senior secondary level. He has had experience at junior secondary level, but he has had no leadership experience at the senior secondary level. However, he has now been asked to be the coordinator or, in effect, the senior person in that particular subject at the new school even though he has had no experience of teaching it at years 11 and 12. He has had all this experience and the expertise of teaching year 12 physics, but he is not now being allowed to teach year 12 physics at that school.

Another example highlighting the absurdity of the policy concerns a teacher who wrote the year 12 PES biology course and also helped to write the practical manual that is now being used by 7 000 students of biology in South Australia, the Northern Territory and Malaysia. That teacher has now been moved to a school where he cannot even teach year 12 PES biology any more. This teacher has not only written the manuals for the course, but he was a supervising marker, a setting examiner and a convenor of the SSAESA biology committee in recent years. Now he will be asked to take subjects mainly teaching year 8 and 10 science, year 11 chemistry and he is doing the SAS biological science subject. There is another example concerning Mrs Gundula Howell, which was given in the paper. These are really only 3 or 4 examples of literally dozens of our best teachers at year 12 level who have demonstrated their competence over a long period being dumped from their schools. That is bad enough in itself if they are still good enough to teach at those schools, but what is worse is that we are not making use of their expertise at the new schools.

In some cases, for the old seniors as we knew them, because of an industrial agreement the seniors have a protection clause which says that they continue to be paid at the old senior salary level, which is about $5 000 a year higher than the highest paid teacher, even though they might not continue in what is now called the position of coordinator in particular schools. We have the ludicrous position not only of dumping certain teachers, our best teachers, and not using their talents in the new schools, but of the taxpayers of South Australia continuing to pay those teachers whose talents are being wasted at a level about $5 000 higher than the highest paid teacher on the teaching scale.

Mr President, I am sure you would agree, and all other taxpayers would agree, that if we are to have this industrial arrangement then we really ought to allow our best teachers to continue to teach in schools the subjects that they know best. Let us leave the physics teachers teaching physics and the biology teachers teaching biology rather than what seems to have been the vogue word of the 1980s—'multiskilling', I suppose. There is this notion within the Education Department: 'Well, this person is a physics teacher but we'll dump them into some other subject area and we will turn them into a teacher of some other particular subject'.

I refer briefly to a press statement I made in January which went under the heading 'What does a Labor Government ask a physics teacher to teach? The answer is, "Phys. ed., of course".' The Minister of Education, when that press statement was released, authorised statements to various sections of the media saying that there was no substance to this particular allegation, that there was no example of a physics teacher being asked to teach phys. ed. Well, I have news for the Minister of Education because I have in my office and in my files the name and telephone number of this particular physics teacher who comes from a country area, who was moved from one country school to another country school and who was asked to teach phys. ed., maths and science to

year 10 students at the new school. That teacher has subsequently, through further negotiation and discussion, been able to convince the department that he should not continue to teach phys. ed. and there has been a late change of heart by the Education Department in relation to that teacher.

Having given some specific examples, I want to now provide some evidence of the extent of the problem that we have in South Australia of inappropriate teacher placement. I firstly want to indicate that this is a problem which has existed for a good number of years. I remember soon after I became shadow Minister of Education highlighting in 1986 and 1987 this particular problem with the Education Department, and as a result of the controversy at the time a senior lecturer in the Department of Education at the University of Adelaide, Peter Moss, wrote an article for the *Advertiser,* and I shall quote several sections of that article, as follows:

I know of several metropolitan high schools with English departments of around 14 members where only four or five have the background and qualifications to do the job adequately. English, I know most about but other subjects, notably mathematics, are taught by underqualified people. Note that often these teachers are victims. They don't want to teach a subject in which they are neither competent nor confident, but 'higher' policy forces them to be a party to a kind of deception. The policy demands that people be removed but it makes no provision for the kind of teacher displaced. Since 'anyone can teach English', that subject has suffered particularly badly in the loss of skilled teachers. With a departmental staffing policy which is out of control to the extent that its implementation has lost touch with reality, there is no linkage between teacher abilities and knowledge on the one hand and the positions offered to teachers on the other. There are hundreds of teachers taking classroom duties in subjects about which they know little more than the students whom they teach. Dozens of teachers have reported to me quite bizarre placements—the qualified graduate English teacher offered a position teaching mathematics, a subject he had not studied since year 10 of his high school education.

A qualified English graduate required to teach French, which he had not studied, spoken or read since year 10 high school.

A qualified economics graduate offered a post in English, a subject he failed in his matriculation.

The tragi-comedy of errors seems to be endless.

That was a statement made by a senior academic at the University of Adelaide when we first raised this issue some six or seven years ago. He highlighted a series of examples of which he was aware of inappropriate or stupid placements within schools at that time.

I concede that in any system of 15 000 to 20 000 teachers one will always be able to find occasional examples of inappropriate placement, and the only statement the Minister has made in recent weeks with which I agree is that there is no perfect system of teacher placement. What we are saying is that there has to be a system better than the current one.

I would go so far as to say that almost any system could be better than the current one in South Australia. The sad thing is that this Government, this Minister and, more particularly, the previous Minister, have refused to acknowledge over a long period of time that we have a problem in our schools in South Australia in relation to teacher placement.

The extent of that problem has been highlighted by a national survey that the Australian Teachers Union published in January of this year. Under the heading of 'Teachers teaching outside their area of training', page 35 of that report states:

This was the first time this question was asked, and is primarily intended to provide base line data for future reference. The question of teacher supply and demand and the ability of Governments and universities to train people adequately, particularly in certain subject areas and age levels, may well emerge as an issue in the next few years. The survey revealed comparatively low numbers of teachers outside their area of training, but also emphasised how even low levels can impact on schools, with one quarter of primary and one sixth of secondary schools affected. There is clearly a problem in South Australia at both primary and secondary levels, and in the Northern Territory at primary level.

I seek leave to have incorporated in *Hansard* a purely statistical table indicating the relative performance of States in this area.

Leave granted.

TABLE 17
Teachers teaching outside their area of training, 1992

	NSW %	VIC %	QLD %	SA %	WA %	TAS %	NT %	ACT %	AUS %
Primary	2	3	2	5	4	3	8	1	3
Secondary	4	6	6	7	5	9	5	4	5
Schools with at least one teacher teaching outside area of training.									
Primary	19	29	14	43	31	32	44	20	25
Secondary	14	16	16	20	21	26	12	23	17

The Hon. R.I. LUCAS: This table shows that in 43 per cent of primary schools in South Australia there is at least one teacher teaching outside his or her area of training. That compares with a national figure of 25 per cent. So, 43 per cent of our primary schools have that problem. Twenty per cent of our secondary schools have the same problem, compared to only 17 per cent nationally. When we talk about the total percentage of teachers, we see that 7 per cent of our secondary teachers and 5 per cent of our primary teachers are teaching outside their area of expertise.

When we work that out, although 7 per cent and 5 per cent do not sound much, when we are talking about approximately 18 000 to 20 000 teachers it means that over 1 000 teachers in our schools are teaching outside their area of training. I emphasise that that does not take

into account the hundreds of teachers who may not be teaching up to their level of expertise, for example, the brilliant year 12 physics teacher not being required to teach year 12 physics but teaching year 10 science.

That is an indication of the breadth of the problem that exits in South Australia. It is not sufficient to say that we are no worse off than any other State, because that is not right. It is not sufficient to say that we are only just aware of this problem, because that is not right, either. As I have indicated, we and academics have been warning for years that we have this problem in our schools.

Finally, I turn to the inflammatory and unhelpful statements that the Minister of Education has been making on this issue. I do not intend to delay the proceedings of the Council by going through all those statements that the Minister has been making.

The Hon. Diana Laidlaw: She has been saying a lot.

The Hon. R.I. LUCAS: She has been saying a lot, but not making much sense, about being required to back-pedal at a great rate. I want to refer to two statements made by the Minister. The first was in the *Advertiser* in early January of this year, under the headline, 'Lenehan denies teacher placement chaos charge', and reads:

The State Government has denied claims that the system which places South Australia's 17 500 permanent teachers is in chaos.

I do not know how the Minister of Education could keep a straight face. Certainly, members of the Labor Party in the Legislative Council, who will remain nameless, are unable to keep a straight face, having heard that and having heard the litany of disaster and chaos that I have outlined to the Council this afternoon in relation to the teacher staffing policy. The article contains some paragraphs of reference to statements that I had made, and continues:

However, a spokeswoman for the Education Minister, Ms Lenehan, said last night the teacher placement process for 1993 was 'very much on schedule'—

The Hon. Diana Laidlaw: It was obviously meant to be a mess!

The Hon. R.I. LUCAS: As the Hon. Ms Laidlaw says, obviously, chaos was intended by the Minister of Education when she had the gall to release the statement in January that the teacher placement process was very much on schedule and the vast majority of the 17 500 permanent teachers needing posts had received notification of their schools by December last year. But the following is the statement that really inflamed teachers in South Australia. It read:

The spokeswoman said fewer than 200 secondary school teachers were still awaiting placement, while all primary and junior primary teachers had been placed.

As soon as that statement was printed by the *Advertiser,* the flow of calls which I had been receiving and which had been starting to go on the downward trend a bit increased and, for the next 48 hours, I had a steady stream of calls.

The Hon. T. G. Roberts interjecting:

The Hon. R.I. LUCAS: I was just about to ask the President to put in another line to cope with it. My member of staff, Ken Pearce, is suffering from a cauliflower ear as a result of the calls. What the Minister of Education was not called by those teachers, heaven only knows. The substance of what they were saying is that the Minister of Education did not know what she was talking about and, if she would like to answer the calls that they had been putting through to her office and to the department, they would be happy.

There were literally dozens of other people whom they knew and, as it turned out, there were hundreds throughout the system who, as of that date and that statement, had not been placed by the Education Department in any school for 1993. 'There are no major problems,' Ms Lenehan's spokeswoman said. 'The system is coping well with the number of placements that have to be made.'

Soon after that, we had the next extraordinary statement from the Minister when we highlighted the extent of the problem of over 1 000 teachers having to teach outside their area of expertise. The Australian Teachers Union survey was quoted as evidence of that, and we then had the extraordinary claim from the Minister of Education as follows:

A spokeswoman for Ms Lenehan said that no teachers had been ordered this year to teach subjects in which they did not have training. 'The Minister is not in a position to comment about the alleged findings of the survey, because she is waiting for a full report from her department,' the spokeswoman said.

Two weeks later, again, there was a flood of telephone calls from teachers saying that the Minister of Education was clearly out of touch and that there were hundreds of teachers in our system being forced to teach subjects outside their area of expertise. As a result of the outcry, for the latter part of December but, more particularly, through January when this was a raging issue in the media here in South Australia, the Minister was eventually forced at the end of January to concede, in effect, that the claims being made by the Liberal Party and by teachers were correct: that the system was in chaos; that the limited tenure placement policy was not working; and that the teacher placement policy also was not working.

The Minister was finally forced to back pedal, perhaps by a higher being within the Labor Government, and to order a form of review. The Minister at the moment, however, is insisting that that review be conducted by the very people who created the mess in the first place: the Institute of Teachers, the Education Department and the Labor Government. If there is to be a satisfactory resolution of this chaotic situation, it will be achieved only if an independent review is conducted of the teacher staffing process and, of course, the interested parties. Parties such as the Institute, the Government if need be, and obviously the Education Department were able to make a representation or submission to some independent person or persons who are detached enough to look at the true situation that exists in schools in relation to teacher placements.

For as long as the Minister of Education refuses to have that independent review, we can only assume that she is not serious in relation to trying to solve the problem that exists and that really the in-house review conducted with the Institute of Teachers is merely a public relations stunt to try to get the issue off the front page of the newspaper and out of the electronic media

until some time later in the year when other issues might be deemed by the media to be more important. I urge members to support the motion, and I look forward to the response from the Minister's representative in this Chamber.

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

HINDMARSH ISLAND BRIDGE

The Hon. DIANA LAIDLAW: I move:

That the Environment, Resources and Development Committee investigate and report on the decision by the State Government to fund a bridge from Goolwa to Hindmarsh Island (estimated to cost $6.4 million), and in particular—

1.Why funds have been allocated to this project ahead of other priorities as determined by the Department of Road Transport.

2. Why the Department of Premier and Cabinet has assumed responsibility for negotiating the financial details of the project, rather than the Department of Road Transport as is normal practice for road construction initiatives.

3. The details of the financing arrangements, including the long-term financial exposure for taxpayers of South Australia.

4. What benefits are to be derived by Binalong Pty Ltd from the building of the bridge, and the propriety of the Government's decision in conferring essentially private benefits at taxpayers' expense.

5. Why the timetable for calling tenders in August/September 1992, for work to commence in November 1992 and for work to be completed in November 1993, has not been met including the cost implications of the delay in commencing the project.

I move this motion at this time because the more one delves into this project the more one is forced to question why the Government is so enthusiastic to push ahead with it. The Government shows a strange sensitivity every time the bridge is mentioned, and there is an odd sense of urgency about the Government's actions in relation to this bridge which is out of step with its track record in relation to marina developments in this State in general—in fact, in relation to any development prospect in this State over the past 10 years.

The investigation that I seek is pertinent to each of the three broad areas encompassed by the committee's charter: environment, resources and development. Also, I note that when the joint standing committee was established last year it was generally understood that the committee would take over the work of the former Public Works Committee. That committee had the task of investigating and reporting on every—and it is worth while highlighting that point—State Government capital works project over the value of $2 million. However, this understanding by the Parliament at the time of debating that Bill has not turned out to be the reality.

Today, the Government is essentially able to proceed with any capital works project of any value without any formal checks or balances provided by this Parliament. This situation is unacceptable.

The Hon. T. G. Roberts interjecting:

The Hon. DIANA LAIDLAW: Well, it is automatic in every sense other than whether the Government has the funds to actually proceed with that development, but we do not have today the scrutiny afforded by anything equivalent to the former Public Works Committee. This situation is unacceptable and not in South Australia's best interests, particularly now when the State is facing a financial nightmare. As a general principle, all capital works projects over $2 million should be subject to parliamentary scrutiny. Now we have the situation where it is simply left to the whim of a Minister, the Parliament, or the committee itself to determine whether or not a project, particularly over the value of $2 million, will be referred to the standing committee or accepted by the committee as a reference.

The Government has many capital works projects on its agenda. Some are in the wish list category, such as the transport hub; others have been given the go ahead by Cabinet notwithstanding the fact that no money is available for the project to proceed, and in that category I place the Tonsley interchange. There are a rare few projects that have both Government backing plus a commitment of funds. The proposed bridge from Goolwa to Hindmarsh Island falls into this rare category, but with good justification the bridge project to Hindmarsh Island has been the subject of controversy since the Government endorsed it in October 1991 and announced on 6 October in that year that funds would be provided for this project to proceed.

It is fair to say that the bridge has been a source of controversy since well before Premier Bannon gave the green light to the development, with controversy ranging over essentially three areas: first, whether the bridge is necessary to meet current projected travel demand; secondly, whether the location of the bridge adjacent to the historic wharf precinct is desirable; and, thirdly, whether development on the island should be aggressively promoted due to ecological concerns associated with the Murray mouth and the wetlands. I believe that the terms of reference that I have proposed are sufficiently broad for the committee to investigate and report on all these matters. The environmental impact process of 1989 did not do so adequately. It was a truncated affair. EIS reports at the time acknowledged that the bridge would have an impact on the sensitive waterways and bird life of the area, but no environmental or tourism management plans were proposed then, nor have they been proposed since, to deal with the impact of increased access to the island, to the River Murray and to adjacent waterways.

Everyone associated with the bridge project—the Government, the local council and the developer—seemed content with the notion that any ecological or environmental impact could be dealt with later. They seemed content with the view that such impact could be dealt with as an afterthought or as a reaction to damage that might eventuate. This is reprehensible especially as so many people believe that this area should comprise part of an application for a world heritage listing.

Another specific matter that I believe must be explored by representatives of this Parliament is why Government funds have been allocated to the bridge project ahead of other priorities determined by the Department of Road

Transport. Around the State there are many road projects considered by local councils, local communities, business and even members themselves to be critical to a particular community. I know, for instance, that the Minister of Transport Development in her former role as Minister of Tourism was anxious to see the south coast road on Kangaroo Island sealed. One reason for this was because of the proposed Tandanya development at the end of that road, but she could not persuade her colleagues to make this pet project with a tourism venture at the end of it a priority for road funding.

From time to time, there are, of course, other road projects, whether or not they are related to tourism ventures, which many members in this place have been advocating for many years. However, the Department of Road Transport maintains a priority list for allocating road funds based on a set of well defined and well researched criteria. We may not agree with the conclusions that the department has reached, but it is fearfully hard to get the Department of Road Transport to re-order this priority list. Yet, here we have a case in relation to Hindmarsh Island where the former Premier himself was prepared to intervene and declare that this project would be a priority and that it would jump the queue even though it did not appear to have ever been featured on the Department of Road Transport's schedule of proposed works.

In this context, it should be noted that even the developer of the Goolwa marina project, Binalong Pty Ltd, conceded in its draft EIS submission issued for public comment in November 1989 that:

> Replacement of the Hindmarsh Island ferry by a bridge cannot be justified when viewed from a 'whole river' perspective. There are many other crossings currently serviced by ferries which would take priority on the basis of vehicle numbers and inconvenience to South Australian motorists.

The EIS submission goes on to say that where one could distinguish this proposed bridge to Hindmarsh Island is that island residents had no other alternative means of travel to the island. Residents do have an adequate means of travel at present, and that is the ferry. There are many who argue—and I am sympathetic to such arguments—that we should address the operation of a second ferry to augment demand placed on the current ferry at peak seasons in the year.

In late 1989, the proponent, Binalong Pty Ltd, had no wish to finance and build the bridge to Hindmarsh Island. Rather, Binalong argued that upgrading the ferry service would maintain an adequate level of service for several years following the commencement of the proposed development. At that stage, the proposed development included stage 1, the blocks of land for which have been on the market for some time, followed by stage 2. So, it was Binalong's view that the ferry service could be maintained to provide an adequate level of service for several years to come in respect of stage 1 and 2 of its proposed development, but for some reason the bridge has gained a life of its own. Faced with Binalong's marina development, the Government appears to have decided that access to the island was a key issue and, in turn, Binalong seems to have decided that it had the capacity to offer to build a bridge as part of its development proposal.

Apparently, the Government in turn embraced this idea, because it saw an opportunity to rid itself of the recurrent costs associated with operating and maintaining a ferry (approximately $375 000 per annum), while the local council was won over by the lure of further development opportunities on the island, and, therefore, more rates from residents and associated small businesses in the town. So, in short, in early 1990 Binalong Pty Ltd, the Government and the Goolwa-Port Elliott council saw that they had much to gain or to save from Binalong building the bridge, and the project proceeded with some urgency. For some reason, the project has continued to proceed apace notwithstanding increasing evidence that Binalong was encountering severe financial problems and had no hope in hell of financing and building the bridge as earlier proposed. By October 1991 the Government must have known that Binalong Pty Ltd was defaulting in paying contractors and subcontractors who had been engaged to work on the marina site.

The bills in respect to Binalong and the contractors and subcontractors engaged by Binalong in one instance amounted to hundreds of thousands of dollars. Certainly this sad state of affairs was being openly canvassed on the South Coast, from Victor Harbor to Goolwa and beyond, but perhaps the former Premier and his colleagues were as deaf to Binalong's problems as they proved to be deaf to the alarm bells of the State Bank's problems.

Nevertheless, on 6 October 1991 the then Premier, Mr Bannon, when launching Stage One of the, marina development, announced that the Government was prepared to commit $3 million or half the estimated cost of the $6 million bridge or whatever was the lesser sum to build this bridge. He later admitted in the other place on 9 October that the actual final detailed studies of the bridge had not been completed. Later again he was forced to concede that the Government had agreed to fund the entire cost, not half the cost of the bridge up front and then to seek payments from Binalong and possibly from other developers.

There has been much speculation by South Australian taxpayers since they found in October 1991 that they were now funding the full cost of a bridge, which earlier the developer, Binalong Pty Limited, had offered to build as part of its development proposal on Hindmarsh Island. Beneficial Finance's name keeps rearing its ugly head, as does that of the State Bank and Pacific Partnership. Today we know that the Westpac Bank is the major financier of the marina development and that the former Premier, Mr Bannon, has held discussions with Westpac about the future of the project, a step which many observers of Government have suggested to me is most unusual. I have to concede that it is rare for a Premier and a Treasurer to take such a personal interest in such matters.

It is appropriate that the turnaround in the status of the bridge to Hindmarsh Island from a private sector initiative to a publicly funded project be the subject of an investigation by the Joint Standing Committee on Environment, Resources and Development. It is also reasonable for the committee to investigate why Treasury has now agreed to provide special loan funds for this project, rather than fund the bridge through the Department of Road Transport's annual road funding

allocation; and why the Department of the Premier and Cabinet has assumed the responsibility for negotiating the financial details of the project, rather than the Department of Road Transport, as is normal practice for all other road construction initiatives.

Certainly when questions were asked by Liberal members during the Estimates Committee last September I was intrigued to note how both the then Minister of Transport, the Hon. Mr Blevins, and the most senior officers within the Department of Road Transport were keen to distance themselves from the bridge. When asked why the tenders had not been called in August/September, as had originally been proposed, they were unable to provide such information, and they did not know when the tenders would be called, although November was suggested as a possible date. Quite honestly when one rereads the questions and answers of the Estimates Committee last September it is apparent that the Minister and the most senior officers in the Department of Road Transport did not have any clue as to what was going on, even though the Minister and the Department of Road Transport have been the ones now charged with managing this project.

I would add that they still do not seem to have any idea of what is going on because the officer in the Department of the Premier and Cabinet who is now in charge of negotiating a financial package has been having extraordinary difficulty working out how the Government of South Australia and the taxpayers of South Australia will ever recoup half the cost of the bridge, let alone the interest on the loan the Government must take out to build the bridge in the first place.

It is understood that the Government now sees no hope of gaining half the cost of the bridge from the proponent, Binalong Pty Limited. The Government is now proposing that all developments on the island be levied as either an up-front payment when the land is sold or by some means through council rates. Assuming that the cost of the bridge does not escalate above the estimated cost of $6.4 million, and the start-up delays alone must be having some impact on this estimate of cost, I understand a levy of $5 000 per block is being mooted.

It is not clear however on what basis this figure of $5 000 has been determined. Does it make allowance for cost escalations? Cost escalations in a project of this nature may well be likely because I have spoken to a number of engineers who report to me that similar projects interstate that they have been involved in had certainly cost a great deal more than the cost projected for this bridge to Hindmarsh Island. Does the figure of $5 000 cover the Government's interest bill on the loan that the Government must take out to fund the entire cost up front of this bridge? Also, has the figure been calculated on the basis that the Government wants to recoup half the cost of the bridge over a five, 10 or 15 year period? Over what period does the Government require the third parties to pay back their share, and will the levy be increased over time if the Government does not get its money back within the specific period?

It is important that all these questions be investigated by the Parliament. Certainly the Premier to date has not been prepared to answer my questions on all the above matters that were asked in this place on 28 October last year. We are entitled to know what is the long-term financial exposure for taxpayers if the Government agrees to finally go ahead with this controversial project, and we are entitled to know what benefits are to be derived by Binalong from the building of the bridge. There seems to be no doubt that in this long saga the Government's decision to build the bridge confers essentially private benefits at taxpayers' expense upon the financially troubled Binalong Pty Limited.

I earlier indicated that for some reason, which I cannot pinpoint, the bridge has gained a life of its own and an urgency that does not seem to make sense in terms of the Government's track record in supporting development proposals in this State. I would argue that there is no urgency for the bridge to go ahead. The agenda has changed since the bridge was first proposed as the only means to address, or at least in the Government's mind, the access problems arising from the proposed development on Hindmarsh Island. No longer is the proponent of the marina development, Binalong Pty Limited, able to fund any part of the bridge let alone its full cost, as was the original idea.

The market has changed. Even in the best of times in South Australia beachside resorts are historically slow in terms of land sales because we do have a low population base and there is a wide choice of sites available to purchase. We are now in a recession and it is a buyer's market. The imposition of a substantial levy of $5 000 or more will not help to promote sales of land in future developments on the island. In fact, in relation to land sales at the marina PRD Realty has openly acknowledged that over January it was able to sell land in Stage One of the development, not because of the prospect of the bridge but because the price was now right. What the proponent's financiers and PRD Realty have determined is that, in order to move land in Binalong's Marina Development Stage One, prices had to drop and in recent months they have done this in order to meet competition in other areas.

The new price does not incorporate the proposed levy, nor is it proposed that a levy would be imposed on sales in stage 1 in the future if the bridge does proceed. I reinforce the fact that land is not being sold because people are encouraged by the prospect of the bridge. According to PDR Realty, land has not been difficult to move in the past because there has been no bridge. The fact is that the land was priced badly and highly compared to competition in the area and beyond. Now the price has dropped, the land is selling, and it has little to do with the bridge.

The agenda and the market have changed since the Government embraced the bridge to Hindmarsh Island. Over the same period, the economic fortunes of the State have also changed. We all know about the critical shortage of State funds. We saw the Government defer its 1989 election promise to build a proposed extension to the Art Gallery of South Australia some two years ago. The Government is having difficulty in maintaining schools to a proper condition, in dealing with E&WS infrastructure and it is closing hospital beds. There is no urgent need to build the bridge, but there is an urgent need to get this State's finances in order and to concentrate on maintaining the existing infrastructure.

I earnestly believe that for all the reasons that I have outlined—social, economic, environmental and

tourism—it is inappropriate at this time to go ahead with the proposed bridge to Hindmarsh Island until the need for the bridge is reconsidered and until the environmental and tourism management strategies are in place. We must be confident that this so-called bridge to nowhere does not turn out to be a white elephant which exposes the taxpayers to further financial burdens that no-one can afford.

The Hon. M.J. Elliott: The bridge at Port Pirie.

The Hon. DIANA LAIDLAW: There is a bridge to nowhere at Port Pirie, and we appear to be embarking on another bridge to nowhere. I believe that before we repeat the mistake of Port Pirie we should have a second and more thorough look at this proposed bridge to Hindmarsh Island. Therefore, I urge honourable members to support this motion. It will provide an avenue for the proposed bridge to be reconsidered and for alternatives to be explored. I believe that there are viable alternatives to current and projected access possibilities to the island. I also believe that this motion will provide honourable members with an opportunity to seek answers to many of the unanswered questions relating to the Government's interest in this development and its enthusiasm to proceed with it. This development does not seem to be warranted by the facts.

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

PARLIAMENTARY REMUNERATION (NO PAY RISE) AMENDMENT BILL

The Hon. M.J. ELLIOTT obtained leave and introduced a Bill for an Act to amend the Parliamentary Remuneration Act 1990. Read a first time.

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

That this Bill be now read a second time.

My Bill does a simple thing: it cancels out the pay rise which is to come to members of the South Australian Parliament on 1 March. The pay rise is unnecessary and, in the present economic climate, inappropriate and unwelcome.

In 1990 this Parliament voted to link our salaries to those of our colleagues in the Federal Parliament. Their salary increases are determined by the Commonwealth's public servants' pay rises. This most recent rise is partly the result of the Industrial Relations Commission last year giving Federal MPs and public servants a 4.9 per cent 'productivity' pay rise. I shall not debate whether or not our Federal colleagues or public servants deserve that rise. That was a matter determined by the wisdom of the IRC. What I will debate is whether members of this Parliament morally can, or even should, accept the flow-on rise.

Under the South Australian Parliamentary Remuneration Act 1990, our base salaries are set at $1 000 less than the Commonwealth basic salary. I have always believed that differential to be ridiculously low and that it should have been far greater. The number of people we represent and the distances we travel, apart from perhaps a few country members, are nowhere close to those of Federal members.

Over the past 18 months we have had a series of pay rises to bring us to that point. They were in January 1992 a rise of $9 106, in July 1992 $5 000 and in December 1992 $1 320. On a quick calculation, that is already an increase of $15 400, and that is just the basic salary.

Those rises, and the 2 per cent which was announced in December to come into effect in March, understandably got people's backs up. In a State where supposedly Government-controlled bodies have lost billions of dollars and around 12 per cent of the work force has no job, I can understand the vicious backlash which has greeted this last announcement. It is unwelcome and unnecessary.

I know that the majority of members of this Parliament agree with me if their comments to the *Sunday Mail,* published on 20 December 1992, are anything to go by. Under the headline, 'What our 69 MPs will do with their pay rise', the Premier said he would 'continue to press Mr Keating to scrap the proposed salary increases.' That was supported by many of his colleagues. That effort has obviously not been successful because nothing has been heard of it since then.

Some 23 MPs are quoted as saying that they support the Premier's attempts and do not believe they would get it so are making no plans for the money. Another 19 said they were embarrassed about it or thought it inappropriate and would give it to charity. None said how much or where the donations would go. I tend to think that the Attorney-General was perhaps the most honest respondent, saying he would keep the money himself. Eight other MPs said they would use it in their electorates or to employ someone.

I will not take up time repeating any of the comments. They are on the public record for everyone to refer back to. They do, though, indicate sizeable support for a move such as mine which would stop the pay rise.

It is not good enough to wash our hands and shake our heads and say things like, 'Look what the terrible Industrial Relations Commission has done.' Abrogating responsibility is unfortunately something that the community sometimes expects from politicians.

It is not beyond the power of this Parliament to reject this pay rise. My amendment is directed only to this pay rise at this time. We passed the legislation which linked our salaries to those of our Federal colleagues and we voted to be given only $1 000 less than them. When I say 'we', I mean collectively. Certainly there were voices of dissent to that move.

The Hon. I. Gilfillan: Particularly the Democrats.

The Hon. M.J. ELLIOTT: Particularly the Democrats. It is therefore in our power to change that differential. If we change it to $1 960, we effectively cancel out the March pay rise so no one has to be embarrassed about it. It could also send to the community the message that we are not all the money-grabbing layabouts they seem to think we are. It would show that we are concerned about the finances of the State and more importantly that we do care about the unemployed and others on very low salaries in the current economic circumstances. I urge members of the Council to support the Bill.

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

SOCIAL DEVELOPMENT COMMITTEE

Adjourned debate on motion of Hon. Carolyn Pickles:

That the first report of the Social Development Committee on social implications of population change in South Australia be noted.

(Continued from 25 November. Page 990.)

The Hon. CAROLYN PICKLES: I thank honourable members for their contributions on the tabling of this report some time before we rose for the break over Christmas. As indicated by honourable members, the Committee has worked well together on the first report and I hope that it augurs well for the future of the Committee, and every indication is that that is the case. The Committee has written to Ministers asking for their comments on some of the aspects. Those comments are coming in and committee members will find those of particular interest.

I do not wish to make any further comments except to say that this is the first report of the new parliamentary committee. In particular I welcome this system. It is something I have wanted to see—the continuance of the committee system in the Parliament, and particularly the way that Legislative Council members work in this Chamber lends itself well to working in the committee system. There are joint committees. I think that has been a good idea. Perhaps in the future we might like to look at some specific committees of the Legislative Council, which I personally have no objection to. I think that is an excellent idea, as it works that way in the Federal Parliament and I think it could work in this State Parliament.

Motion carried.

FOREIGN OWNERSHIP OF LAND REGISTER BILL

Adjourned debate on second reading.

(Continued from 25 November. Page 991.)

The Hon. I. GILFILLAN: I rise briefly to conclude the remarks that I made when I introduced the Bill last year. I know what a busy and distracting time it is over Christmas and New Year and I would not be surprised to find that members have not had an opportunity to look in detail at the Bill. To recap, it is a Bill to establish an accessible record of what is to be defined as foreign ownership of land, and to a large extent it is based on a Bill which the West Australian Government intended to introduce. With the result of the election last weekend I cannot say what its future will be in Western Australia, but I repeat that the Democrats' incentive for introducing the legislation is not specifically to reduce or prohibit foreign investment, but relates to knowledge which we believe the people of Australia are entitled to freely and readily, namely, who from overseas, foreign based, actually owns land in Australia. Often, of course, that land is part of the assets of a corporation. I want to make it plain, however, that in the Bill that is before the Council there is an exclusion for a mining tenement and mineral deposits, but it is our express intention that they should be covered, so that not only land for other and general purposes but also for mining should be identified if it is in what is described as foreign ownership.

I specifically will raise a couple of definitions so that the Council has some idea of what will be the embrace of foreign ownership. Clause 3 of the Bill defines 'associate' in relation to a foreign entity, and there are several headings, which I will not go through as they are very simply identified. Paragraph (m) defines 'corporation' as follows:

(i) on the last accounting day of which, the foreign entity was able to control the prescribed proportion of the voting power of the corporation; or

(ii) on the last accounting day of which, the foreign entity held not less than 50 per cent in number or nominal value of the issued shares of the corporation, or those issued shares were held on behalf of the foreign entity; or

(iii) in respect of the most recent year of income of which not less than 50 per cent in value of the dividends of the corporation were paid or credited to the foreign entity, or those dividends were applied for the benefit of the foreign entity;

'Prescribed proportion' is defined on page 5 of my draft Bill as meaning:

(a) for a foreign entity, or a foreign entity with one or more associates, 15 per cent or more;

(b) for a group of foreign entities, or a group of foreign entities with one or more associates, 40 per cent or more;

For the identification of 'foreign ownership' to come under the purview of this legislation, it embraces entities that are relatively low in percentage form (15 per cent, as I have just indicated) but, because of the structures that are available in corporate entities, that 15 per cent may establish a controlling interest in a company. If this is successful in its current form, the actual register will see a listing that is quite thorough in identifying where foreign ownership of land occurs, even if it is to an extent camouflaged in part of a corporate structure.

One area that is probably a little more contentious than others is where an Australian citizen has lived away from Australia for a large amount of time. Clause 3(2) of the Bill defines a person as a foreign individual as follows:

(a) an Australian citizen who, at a particular time, has been in Australia for less than 100 days in the three years immediately before that time; or

(b) a person who is not an Australian citizen and whose continued presence in Australia is subject to a legal limitation as to time or would, if the person were present in Australia, be subject to a legal limitation as to time; or

(c) a person who is not an Australian citizen and is not domiciled in Australia.

Obviously, for paragraphs (b) and (c) there is little ground for contention. However, I have been involved in discussion regarding whether 100 days of residence in the three years immediately prior to a particular time is too restrictive in relation to identifying an Australian citizen as a foreign individual for the purposes of this Bill. But it is important to fulfil the real intention of this Bill that there be scope to identify someone who is holding Australian citizenship but who virtually chooses to live as a resident and who, for all intents and

purposes, is a citizen of a foreign country with no more substantial ties with Australia than a foreigner.

I am prepared to look at a variation on the quantum of time that would trigger off an Australian citizen's being identified as a foreign individual for the purposes of foreign land ownership, and it may well be either less than 100 days in the previous three years or one could make it 100 days in, say, up to five years. That is a subject that could be talked through.

The rest of the Bill goes into some detail about how the register will keep the information and more of the technical detail of how to establish whether the Bill has been complied with and the penalties, although I do not intend to go through that—

I repeat that one of the main aims is that not only a Government department but also the public can have access to this information and, therefore, it is my intention that the Bill will allow unfettered access to the information. However, I think it is reasonable that there be some search fee so that one does not have a lot of unnecessary work imposed on the land register to provide the information to anyone who happens to have some curiosity about it at any time. There should be some form of cost recovery.

There is an awareness right across the country that we must know who owns Australia. It has been remarkable that within Australia there has been the ability for overseas ownership of land to take place without there being any discoverable knowledge of that, and this is long overdue. When the register is in place any further decisions, if any, may be made. I want to identify, however, that this Bill does not seek to limit: it is purely to have the information available so that we Australians can be aware to what extent foreign ownership has applied to land and then, as a community, can decide on that information what to do about it, if anything.

I believe that this Bill is similar to moves that are being made in Queensland and, certainly, in Tasmania. As I said before, a Bill very similar to mine was introduced in Western Australia, so we would be part of an Australia wide movement to introduce such legislation. I commend the Bill to the Council.

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

MAGISTRATES COURT ACT

Order of the Day, Private Business, No. 8: Hon. M.S. Feleppa to move:

That the rules of court made under the Magistrates Court Act 1991 concerning Civil Jurisdiction (General), made on 6 July 1992 and laid on the table of this Council on 6 August 1992, be disallowed.

The Hon. M.S. FELEPPA: I move:

That this Order of the Day be discharged.

Motion carried.

LEGAL PRACTITIONERS (REFORM) AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Legal Practitioners Act 1981. Read a first time.

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

That this Bill be now read a second time.

It seeks to implement a number of the recommendations of the White Paper on the Legal Profession and to make various miscellaneous amendments to the Legal Practitioners Act 1981.

There has been considerable debate in the community over the last decade in relation to the high cost of justice and the consequent lack of access to legal services. The matter has been the subject of a number of inquiries, both at a State and Federal level.

The Senate Standing Committee on Legal and Constitutional Affairs has produced a number of discussion papers on the topic and the Trade Practices Commission is examining restrictive practices within the profession. The Victorian Law Reform Commission (before its abolition) reported on the matter and the New South Wales Law Society has held a 'Summit on Accessible Justice' to discuss access to justice.

The Government has always been committed to increasing community access to justice. The issue was first examined in the Green Paper on the Legal Profession which was released for public discussion in October 1990. A number of considered submissions were received in response to the Green Paper in particular from the Law Society of South Australia and the South Australian Bar Association Inc. The Government considered the responses and then released the White Paper which indicated a policy position on many of the matters raised in the Green Paper.

The Government recognises that reform of the legal profession will not on its own resolve all the problems of the cost of justice. It is aware, however, that it is important to ensure that the structure of the profession does not inhibit obtaining legal representation at the lowest possible cost. It is necessary to make sure that as many anti-competitive and restrictive practices of the profession as possible are removed. The Law Society in South Australia has already acted in a number of areas. In 1985, the 'two-counsel' rule, that is the rule that a Queen's Counsel must always be briefed to appear in company with a junior counsel, was removed from the Professional Conduct Rules of the legal profession by the Law Society. Similarly, the 'two-thirds' rule, whereby a junior barrister briefed with a Queen's Counsel is automatically entitled to two thirds of the fee paid to the Queen's Counsel was also removed.

The Government has made a number of moves to increase community access to justice, including:

- the Courts package - these Acts establish an appropriate legislative framework within which the judiciary can most effectively deliver justice, including expansion of the jurisdiction of the small claims court and expanding the range of remedies available to Magistrates;
- support with the Law Society for a Litigation Assistance Fund - a contingency legal aid scheme which will open up the legal system to certain litigants;

- support for community legal centres;
- alternative dispute resolution - new amendments will ensure the confidentiality of settlement negotiations;
- *Crown Proceedings Act 1992* - this puts the Crown in the same position as an ordinary citizen.

The Law Society of South Australia has been supportive of many of the recommendations of the White Paper and is alert to the need to modernise many of its structures. The Law Society has recently changed its Professional Conduct Rules to allow for increased advertising by practitioners by abolishing the prohibitions on advertising. The Government welcomes these changes as it is clear that the more practitioners advertise skills and fees, the more information is available to the public. The Professional Conduct Rules have also been amended to incorporate a new rule requiring a practitioner to communicate effectively and promptly with his or her clients and provide written advice as to the estimated costs. The practitioner is also required to provide a review as to the costs and disbursements, on request by the client. The Rules relating to Queen's Counsel have also been amended to remove the assumption, unless the contrary is stated, that junior counsel will be briefed with a QC and that a QC should not charge fees below an accepted minima.

The Law Society has also agreed to include a new Professional Conduct Rule which explicitly states that certain restrictive practices, which apply in the eastern States, do not operate in South Australia. These restrictive practices include having a barrister and solicitor present at all conferences and hearings, not allowing a barrister to attend at the premises of a solicitor, not allowing barristers to appear with advocates who are not members of the Bar and requiring barristers to use approved clerks and chambers. This will have the effect of avoiding those traditional practices which unnecessarily drive up the cost of legal services. The White Paper recommended, among other things, that Queen's Counsel should be able to remain in firms, all restrictive practices of the separate Bar should be prohibited and that clients should be provided with increased information in relation to costs and to the progress of their matter. The White Paper also recommended an amendment to section 6 of the *Legal Practitioners Act 1981,* which currently provides that the Supreme Court may, on the application of the Law Society, divide legal practitioners into barristers and solicitors. The Bill replaces the existing section with a positive statement as to the fused nature of the profession in South Australia.

This Bill gives effect to many of the recommendations in the White Paper that required legislative change. The Bill includes an amendment to section 6 of the Act which replaces the current wording of the section with a positive statement as to the fusion of the legal profession in South Australia. The amendment, however, allows for the voluntary establishment of a separate Bar. The amendment to this section also will allow a Queen's Counsel to choose how he or she wishes to practice. A Queen's Counsel will be able to remain in a firm of solicitors if he or she so wishes.

The White Paper also examined the current system of challenging of bills of costs (i.e. taxation) and recommended a new system of review of legal bills which would provide a quick, cheap resolution to a dispute over costs. After examination of the issues the White Paper recommended that the Legal Practitioners Complaints Committee be expanded to incorporate a cost review function. The Bill provides that, if a complaint of overcharging is made against a legal practitioner, the committee must, unless it is of the view that the complaint is frivolous or vexatious, investigate the complaint. The committee is empowered to request details from the legal practitioner in its consideration of the matter and may recommend a reduction in the bill of legal costs or refund at the end of the investigation. The existing system of taxation is preserved should the client wish to pursue that avenue.

The White Paper raised the issue of contingency fees and recommended the removal of all common law restrictions on champertous contracts. The White Paper advocated a limited system of contingency fees. A significant measure of support for this recommendation has been received from the Law Society and the profession. Accordingly, the Bill amends section 42 of the Act allowing for an agreement between client and practitioner for payment of a contingency fee. As yet negotiations between the Government and the Law Society are still proceeding as to the percentage of the 'uplift' which a practitioner will be able to charge in the event of a successful outcome.

The Law Society has proposed an uplift of 100 per cent of the fees which the practitioner would ordinarily charge and the Government is considering this matter at present. It is to be hoped that agreement will be reached in the near future on this point. If agreement cannot be reached, the Bill provides for the conditions of contingency fees to be set by regulation. The Government is concerned not to introduce a system of contingency fees such as exists in the U.S.A. and which it is alleged has contributed to an excessively litigious society with consequent cost to industry and the public. The Government therefore rejects any contingency fees system based on the lawyer receiving an agreed proportion of the damages awarded.

The Bill also contains amendments to the provisions of the Act to impose annual reporting requirements for the Complaints Committee and the Disciplinary Tribunal. The annual reports must detail the nature of the matters subject to investigation and information as to case management and the number of incomplete matters outstanding at the end of the financial year. Provision is also made for the Attorney-General to require further information. Such a provision is also included in the Courts Administration Bill 1992 and the Public Corporations Bill 1992. These provisions reflect the new spirit of Ministerial accountability, openness and cooperation implicit in recent legislation such as the Freedom of Information Act. The new regime better allows the public interest to be served. Such annual reports must be laid before both Houses of Parliament.

An amendment has also been made to require the Tribunal to hear matters in public or, if a matter is heard in private, to ensure summaries are available for public inspection. While the Law Society has amended its Professional Conduct Rules to ensure that restrictive practices do not apply, it is the Bar Association which

must consider the restrictive rule that a barrister must only accept instructions from a solicitor.

The Bar Association is considering amending its Rules to allow membership to those who take instructions direct but only from certain professional groups. The Government would prefer to see the Bar Association permitting its members to take instructions direct from the lay public in certain circumstances, e.g. the provision of advice for which the client had all the necessary papers but referral of the matter to a solicitor when it became necessary to deposit money in a trust fund or issue proceedings. The Government welcomes the Bar Association's consideration of this matter, a decision on which will be made during debate on this Bill. While the Government welcomes the relaxation of this rule, it would like to see direct instruction of barristers from members of the public subject to the above conditions become the rule in the future. The Government would ideally like to see a situation in which practitioners could practice according to their choice in any of the following ways:

(a) as a solicitor only;

(b) as a solicitor and barrister;

(c) as a barrister prepared to accept instructions for advice in certain circumstances direct from the public or other defined professionals on behalf of other clients;

(d) as a barrister who was not prepared to be so instructed.

The Law Society is currently examining the possibility of a separate category of professional indemnity insurance for barristers who wish to accept instructions directly from clients in the limited circumstances outlined above. Even if the Bar Association does not change its rules to allow membership to such barristers, such a move by the Law Society will allow a barrister to accept instructions direct and avoid the insurance premiums normally required of a solicitor.

The White Paper recommended that an amendment be made to the Act to make a barrister liable for negligence in the performance of his or her professional duties.

The controversial issue of barrister's immunity from suit was considered by the High Court in *Giannarelli v Wraith* in 1988. The Court upheld the common law immunity of a barrister in respect of work done in court or out of court which leads to a decision affecting the conduct of the case on the following basis:

(a) the public has an interest in the advocate's overriding duty to the Court to exercise an independent judgment in the case so that his role transcends that of mere agent for his client;

(b) decisions made by a court should not be exposed to collateral attack by negligence actions against advocates, such that finality of litigation would be prejudiced and public confidence in the administration of justice (especially criminal justice) diminished.

The argument has also been put, in response to the White Paper recommendation, that a South Australian barrister would be open to greater liability than an inter-state barrister. Further, there is a concern that removal of the immunity will lead to a lengthening of the litigious process and a consequent rise in the cost of legal services. The Government has made it clear that it is committed to speedier and cheaper access to legal services and still supports the principle of removing the advocate's immunity. However, at present, the matter of advocates' immunity is under review both by the Trade Practices Commission and the Senate Cost of Justice Inquiry. In light of the concerns expressed, the Government is prepared to review the matter when these bodies have reported. Accordingly this proposal is not included in the Bill at this time.

The other issue that has been canvassed recently is the appointment of Queen's Counsel. The South Australian Government supports the abolition of Queen's Counsel but believes that this should occur if possible on an Australia-wide basis. The situation is that a majority of Heads of Government recently supported the proposal. New South Wales and the Northern Territory definitely intend to proceed. However at the recent meeting of Attorneys-General it seems that most other States and Territories will not follow them. The position in Western Australia is unclear because of the election. Accordingly the Government reaffirms its view that the Queen's Counsel should no longer be appointed but will monitor developments around Australia before introducing legislation. If they were only abolished in South Australia then the local profession may be disadvantaged as Queen's Counsel from other States could practice here. I should say, Mr President, it would be open to the Government at any time to decide not to recommend the appointments of Queens Counsel even if there was no legislation to that effect.

The South Australian legal profession has generally been receptive to proposals to increase access to the courts. Before the current legal aid system was introduced in the 1970s, it ran a voluntary legal aid scheme for many decades. It has now made a number of changes to its professional conduct rules to remove unnecessarily restrictive practices. The fused profession in South Australia avoids most of the problems of restrictive practices which follow from the divided profession in the eastern States. With the changes in this Bill, those already made by the Law Society and those being contemplated by the Bar Association, South Australia will have in place a model for the structure of the legal profession around Australia, a model which provides the maximum flexibility for members of the legal profession to practice as they choose, for the public to have the maximum range of choice of legal practitioners to suit their needs and a competitive environment for legal services where the cost of legal representation is not forced up by the existence of professional rules of conduct which are anti competitive.

Many of the miscellaneous provisions in the Bill have arisen as a result of a request by the Law Society of South Australia to amend the Act to reflect changes in the way the legal profession operates.

An example of this is the amendment to section 60 of the Act which disallows a claim on the Legal Practitioners Guarantee Fund for a fiduciary or professional default outside the State unless it occurs in the course of, or incidentally to, legal work arising from instructions given in this State.

The Law Society has expressed concern at the current wording of section 60 as there are South Australian practitioners who are members of national partnerships or are part of firms who have casual ties with interstate practices. The Law Society has raised the possibility of a

successful claim on the South Australian Guarantee Fund as a result of a default in another State which exceeds the professional indemnity insurance limit in that State. If a South Australian practitioner is a member of the interstate firm in which the default has occurred, there may be a liability on the practitioner in South Australia to meet some of the loss. The amendment seeks to address this concern.

There are several amendments to the Act which are necessary as a result of matters which have been considered by the Legal Practitioners Complaints Committee.

A practitioner who came before the Legal Practitioners Complaints Committee subsequently issued proceedings in the Supreme Court claiming damages for negligence. The committee was joined to the action as one of the defendants. The current provisions of section 57 of the Act do not allow for the legal fees of members of the committee to be paid in these circumstances. An ex-gratia payment was made to solicitors acting for the committee to cover legal costs. Accordingly, an amendment has been made to the Act to allow for the legal costs of members of the committee to be paid from the Guarantee Fund in relation to any action against the member arising from an honest act or omission in the performance or purported performance of a duty imposed by or under the Act.

This amendment has been extended to also provide similar cover for any person exercising powers or functions under Division V of Part III of the Act.

An amendment has also been made to section 37 and section 73 of the Act to expand the duty of confidentiality imposed by both those sections to allow the divulging of certain information by the Legal Practitioners Complaints committee to a member of the State, Territory or Commonwealth police force or to an authority with powers of criminal investigation to which a matter has been referred by the Attorney-General. The amendment also allows for information to be provided to a court. This amendment arose as a result of an investigation into the trust account of a certain practitioner. The committee suspected that a criminal offence may have been committed and referred the matter to the Attorney-General pursuant to section 77(4). However, authorities investigating the matter were unable to seek further information from members of the committee due to the existing confidentiality provisions in the Act.

There are a number of other 'housekeeping' amendments in the Bill requested by the Law Society, including an amendment to section 35 regarding obtaining information for the purposes of an audit or examination and an amendment to section 53 to overcome some difficulties practitioners have experienced in calculating the amount of the deposit to be paid into the combined trust account. I seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

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

Clause 3: Substitution of s.6

Presently section 6 of the principal Act empowers the Supreme Court, on application by the Law Society, to divide legal practitioners into two classes, barristers and solicitors, and to make such rules as the Court considers necessary to give effect to the division.

Section 6: Fusion of the legal profession

Proposed section 6 makes the following provisions:

Subsection (1) declares that it is Parliament's intention that the legal profession should continue to be a fused profession of barristers and solicitors.

Subsection (2) makes it clear that the voluntary establishment of a separate bar is not inconsistent with that intention, nor is it inconsistent with that intention for legal practitioners to voluntarily confine themselves to practice as solicitors.

Subsection (3) declares that an undertaking by a legal practitioner to practise solely as a barrister or solely as a solicitor is contrary to public policy and makes such an undertaking void. The provision does not apply in relation to an undertaking contained in or implied by a contract or professional engagement to provide legal services of a particular kind for or on behalf of another person.

Subsection (4) provides that despite the section, an association of legal practitioners may be lawfully constituted on the basis that membership is confined to legal practitioners who practise solely in a particular field of legal practice or in a particular way.

Subsection (5) provides that no contractual or other requirement may be lawfully imposed on a legal practitioner to join an association of legal practitioners.

Clause 4: Amendment of s. 21—Entitlement to practise.

Section 21 of the principal Act prohibits a person from practising the profession of the law or holding out as doing so unless the person is admitted as a barrister and solicitor of the Supreme Court and holds a current practising certificate.

Proposed subsection (4) provides that for the purposes of that prohibition, an employed legal practitioner who provides legal advice, or legal services of a kind mentioned in subsection (2), for or on behalf of his or her employer or clients of his or her employer practises the profession of the law.

Clause 5: Amendment of s. 35—Obtaining information for purposes of audit or examination

Section 35 of the principal Act requires the manager or principal officer of a bank with which a legal practitioner has deposited any money to disclose, on request by an approved auditor or inspector, every account (including deposit slips, cancelled cheques and so on) to the auditor or inspector and to permit the auditor or inspector to make a copy of any such account.

Proposed subsection (3) requires the manager of a financial institution with which a legal practitioner or firm of legal practitioners has deposited or invested money, on being required to do so by an approved auditor or inspector employed to make an audit or examination, to—

- provide full details of the deposit or investment and of any dealings with the money deposited or invested; and
- provide copies of accounts and other documentary material in the institution's possession relevant to the deposit or investment.

'Financial institution' is defined to mean a bank, building society, credit union, insurance company or other body that

carries on a business involving the acceptance of money on depositor by way of investment.

Clause 6: Amendment of s. 37—Confidentiality

Section 37 of the principal Act—

• prohibits an approved auditor or inspector employed or appointed to make an audit or examination of the accounts of a legal practitioner for the purposes of the Division from communicating any matter of which he or she is informed or which comes to his or her knowledge in the course of the audit or examination to any person except in the course of the report or as is otherwise permitted or required by or under the Act; and

• prohibits the Law Society or any of its officers or employees from divulging information contained in a report furnished to the Society under the Division except for the purpose of confidential consideration of the report by the Council of the Society or in the performance of a duty.

Proposed subsection (4) permits the Law Society, an officer or employee of the Society, or an auditor or inspector to divulge information arising out of an audit or inspection—

• to a member of the police force of a State or Territory, or of the Commonwealth, investigating a matter, referred for police investigation by the Attorney-General, to which the information is relevant; or

• to an authority, or a member or officer of an authority, vested by the law of the State or the Commonwealth with powers of criminal investigation, to which the Attorney-General has referred for investigation a matter to which the information is relevant; or

• to a court in which criminal proceedings arising from matters subject to the audit or examination have been brought.

Clause 7: Amendment of s. 42—Costs

Section 42 of the principal Act permits a legal practitioner to make an agreement in writing with a client for the payment of a specified amount by way of legal costs, or of legal costs in accordance with a specified scale.

Proposed subsection (6) retains these provisions and also permits a legal practitioner, subject to any limitations imposed by the Law Society's professional conduct rules or by the regulations, to make an agreement with a client for the payment of a contingency fee to be calculated on a basis set out in the agreement on fulfilment of a condition stated in the agreement.

Clause 8: Amendment of s. 52—Professional indemnity insurance scheme

Section 52 of the principal Act provides for a scheme providing professional indemnity insurance for the benefit of legal practitioners to be established by the Law Society with the approval of the Attorney-General, to be promulgated in the form of regulations and to be binding from its promulgation on the Society, legal practitioners covered by the scheme and the insurers and other persons to whom the scheme applies.

The effect of the proposed subsection (3) is to make the scheme binding without the need for it to be promulgated in statutory form.

Proposed subsection (4) requires the Society to keep a copy of the scheme and of any amendment to it available for inspection at its public offices and, on request for a copy of the scheme or amendment and payment of a reasonable fee fixed by the Society, to provide such a copy.

Clause 9: Amendment of s. 53—Duty to deposit trust money in combined trust account

Proposed subsection (1) imposes an obligation on a legal practitioner to deposit in the combined trust account, within 14 days after 31 May and within 14 days after 30 November in each year, the appropriate amount of trust money held in the practitioner's trust account.

Proposed subsection (1a) sets out the formula for calculating the appropriate amount. Proposed subsection (2) provides that the combined trust account is a composite account consisting of separate accounts established by the Law Society at each approved bank.

Proposed subsection (4)—

• permits a legal practitioner to withhold money from a deposit into the combined trust account if the money is necessary to meet an immediate claim on the practitioner's trust account or to establish or maintain a reasonable balance in the account sufficient to meet claims reasonably expected in the ordinary course of legal practice in the near future and the practitioner has given written notice to the Law Society on or before the day by which a deposit is required to be made; and

• provides that a legal practitioner is obliged to make a deposit into the combined trust account in relation to a particular period of six months if the lowest aggregate referred to in subsection (1a) was, during that period, less than $1,000 (or some other sum fixed by regulation). Proposed subsection (7) provides that for the purposes of the section, where a legal practitioner establishes a trust account and has at that time no other trust account, the balance of the account during the first month after its establishment is to be ignored.

Proposed subsection (8) makes a legal practitioner who fails to make the appropriate deposit by the last date for payment personally liable to pay the Society, for the credit of the statutory interest account, interest on the outstanding amount at the prescribed rate for the period of the default unless the practitioner makes the deposit within 7 days of the due date.

Proposed subsection (9) permits a legal practitioner to withdraw money held on his or her account in the combined trust account only if the withdrawal is necessary to meet an immediate claim on the practitioner's trust account or to establish a reasonable balance in the trust account sufficient to meet claims reasonably expected in the ordinary course of legal practice in the near future. Proposed subsection (10) provides that if a legal practitioner withholds or withdraws money from the combined trust account under the section, the auditor must in his or her report for the relevant year express an opinion on whether that withholding or withdrawal was justified and if the amount exceeds the amount that could, in the auditor's opinion, be reasonably justified, on the amount of the excess.

Proposed subsection (11) provides that if the withholding or withdrawal is not justified or exceeds an amount that could be reasonably justified, the legal practitioner is personally liable to pay the Society, for the credit of the statutory interest account, to interest on the amount withheld or withdrawn or on the excess amount, from the date of the withholding or withdrawal until the amount on deposit in the combined trust account is restored to the level required by the section.

Proposed subsection (12) empowers the Society, for any proper reason, to remit in whole or in part interest payable under subsection (8).

Proposed subsection (13) empowers the Society to approve a bank for the purposes of the section if satisfied that the bank is prepared to pay a reasonable rate of interest on money deposited in the combined trust account.

Proposed subsection (14) provides that if the Society revokes an approval under subsection (13), the combined trust account must be transferred to a bank that continues as an approved bank.

Clause 10: Repeal of s. 54

This clause repeals section 54 of the principal Act which requires the Law Society to invest money deposited with it by a legal practitioner pursuant to Division I of Part IV of the Act in a bank that is prepared to pay interest on such money at or above a rate of interest determined by the Society.

Clause 11: Amendment of s. 56—Statutory interest account

Section 56 of the principal Act requires the Law Society to pay into the statutory interest account all income and accretions realised from the investment of money from the combined trust account.

Proposed subsection (2) requires the Society to pay into the statutory interest account only the interest earned from deposits in the combined trust account.

Clause 12: Amendment of s. 57—Guarantee fund

Section 57 of the principal Act allows money in the legal practitioners' guarantee fund to be applied for certain purposes.

This clause amends subsection (4) to authorise payment out of the guarantee fund of the legal costs payable by—

- a member of the Legal Practitioners Complaints Committee in relation to any action against the member arising from an honest act or omission on the part of the member in the performance of a duty imposed by or under the Act; or
- any person in relation to any action arising from an honest act or omission on the part of that person in the exercise or purported exercise on the part of that person of powers or functions conferred by or under Division V of Part III or Part VI of the Act or delegated by the committee.

Clause 13: Amendment of s. 60—Claims

Section 60 of the principal Act allows a person who suffers loss as a result of a fiduciary or professional default to lodge with the Law Society a compensation claim under Part V of the Act if there is no reasonable prospect of recovering the full amount otherwise than in accordance with Part V.

This clause amends subsection (4) to allow a claim for compensation for loss suffered as the result of a fiduciary or professional default occurring outside South Australia in the course of or incidentally to, legal work arising from instructions given in this State, to be met from the guarantee fund.

Clause 14: Insertion of s. 67a

This clause inserts section 67a into the principal Act.

Section 67a: Annual Report

Proposed subsection (1) requires the Law Society, on or before 31 October in each year, to report to the Attorney-General on the administration of Part V of the Act during the preceding financial year.

Proposed subsection (2) requires the report to state the amount of the payments from the guarantee .fund during the financial year and the nature of the claims in respect of which payments were made.

Proposed subsection (3) requires the Attorney-General to table a report under the section in both Houses of Parliament within 12 sitting days of receiving it.

Clause 15: Amendment of s. 6—Establishment of Legal Practitioners Complaints Committee

Section 68 of the principal Act established the Legal Practitioners Complaints Committee.

This clause strikes out subsection (4) to remove the requirement that a legal practitioner hold a current practising certificate to be eligible for appointment as a member of the committee.

Clause 16: Amendment of s. 73—Confidentiality Section 73 of the principal Act prohibits a member of the committee or a person employed or engaged on work related to the affairs of the committee from divulging information that comes to his or her knowledge by virtue of that office or position except—

- in the course of carrying out the duties of that office or position; or
- as may be authorised by or under the Act; or
- to the Council of the Law Society; or
- to the Attorney-General; or
- to a committee or person to whom the Council of the Society has delegated its power to appoint an inspector pursuant to Division V of Part III of the Act; or
- to an inspector appointed pursuant to that Division.

This clause amends subsection (2) to enable information to be divulged—

- in evidence before a court in which criminal proceedings arising from matters subject to a report of the committee have been brought; or
- to a member of the police force of a State or Territory, or of the Commonwealth, investigating a matter subject to a report of the committee, referred for police investigation by the Attorney-General, to which the information is relevant; or
- to an authority, or a member or officer of an authority, vested by the law of the State or the Commonwealth with powers of criminal investigation, to which the Attorney-General has referred for investigation a matter subject to a report of the committee to which the information is relevant.

Clause 17: Amendment of s. 74—Functions of the committee. Section 74 of the principal Act empowers the committee to receive, consider and investigate complaints of unprofessional conduct against legal practitioners.

This clause amends subsection (1) to empower the committee to also receive, consider and investigate complaints of Overcharging by legal practitioners.

Clause 18: Insertion of heading. This clause inserts a heading before section 76 of the principal Act.

Clause 19: Amendment of s. 76—Investigations by committee This clause inserts in section 76 of the principal Act a definition of 'financial institution' (the same as that inserted by clause S for the purposes of section 35) and makes certain other consequential amendments.

Clause 20: Insertion of s. 77a

This clause inserts section s. 77a into the principal Act. Section 77a: Investigation of allegation of overcharging Proposed subsection (1) requires the committee to investigate a complaint of overcharging by a legal practitioner unless the committee is of the opinion that the complaint is frivolous or vexatious.

Proposed subsection (2) empowers the committee to require a complainant to pay a reasonable fee, fixed by the committee, for investigation of the complaint and to decline to proceed with the investigation until the fee is paid.

Proposed subsection (3) empowers the committee, for the purpose of an investigation, to require the legal practitioner to make a detailed report to the committee on the work carried out for the complainant and require the production of documentary material relating to that work.

Proposed subsection (4) requires a legal practitioner to comply with a requirement under subsection (3). The maximum penalty for non-compliance is a division 6 fine ($4,000) or division 6 imprisonment (1 year).

Proposed subsection (5) requires the committee, at the conclusion of the investigation, to report to the complainant and the legal practitioner on the results of the investigation; and empowers the committee, at the conclusion of the investigation,

to recommend that the legal practitioner reduce a charge or refund an amount to the claimant.

Clause 21: Amendment of s. 78—Establishment of the Tribunal. Section 78 of the principal Act established the Legal Practitioners Disciplinary Tribunal.

This clause increases the membership of the Disciplinary Tribunal from 12 to 15 and removes the requirement that a legal practitioner hold a current practising certificate to be eligible for appointment as a member of the Tribunal.

Clause 22: Amendment of s. 79—Conditions of membership. Section 79 of the principal Act deals with the term and conditions of appointment of members of the Tribunal.

This clause removes the prohibition on a person being appointed as a member of the Tribunal for a term expiring after the day on which the person reaches the age of 70 years.

Clause 23: Insertion of s. 84a

This clause inserts section 84a into the principal Act. Section 84a: Proceedings to be generally in public. Proposed subsection (1) requires an inquiry under Part VI of the Act to be held in public.

Proposed subsection (2) empowers the Tribunal to order that an inquiry or part of an inquiry be conducted in private if the Tribunal is satisfied that the interests of justice so require.

Proposed subsection (3) requires the Tribunal to prepare a summary of proceedings of an inquiry to be held in private containing such information as may be disclosed consistently with the interests of justice.

Proposed subsection (4) requires a copy of any such summary to be made available on request at the Tribunal's public office for inspection by any interested member of the public.

Clause 24: Insertion of Division VII.

This clause inserts Division VII, consisting of section 90a, into the principal Act. Section 90a: Annual Reports. Proposed subsection (1) requires the committee and the Tribunal, on or before 31 October in each year, to each prepare and present to the Attorney-General and the Chief Justice a report on their proceedings for the last financial year.

Proposed subsection (2) requires a report to contain—

- a statement of the nature of the matters subject to investigation or inquiry; and
- information as to case management, and the number of uncompleted matters outstanding at the end of the financial year; and
- such other information as the Attorney-General may require. Proposed subsection (3) requires the Attorney-General to table a report under the section in both Houses of Parliament within 12 sitting days of receiving it.

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

EVIDENCE (VULNERABLE WITNESSES) AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Evidence Act 1929. Read a first time.

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

That this Bill be now read a second time.

It seeks to amend the *Evidence Act 1929* in accordance with the recommendations made in the White Paper on the Courtroom Environment and Vulnerable Witnesses.

The Government has been concerned for some time about the sexual abuse of children and the necessity of obtaining relevant evidence from children in the courtroom in relation to such offences.

In 1984 the South Australian Task Force on Child Sexual Abuse was established to identify problems associated with the existing law on child sexual abuse and to examine aspects of service to sexually abused children and their families.

Following the report of the Task Force in 1986, a number of legislative and administrative reforms were implemented with the aim of facilitating evidence from the child witness.

In 1989 a Select Committee of the Legislative Council was established to consider a number of issues concerning children. The Committee, among other things, recommended that screens and video and audio equipment be made use of in courtrooms, a matter which has been examined since then by my Department and the Child Protection Council.

Clearly, there are strong arguments for and against the use of screens and audio-visual links. Society has to balance the right of the accused to be tried in the traditional manner against the interest of society in ensuring that relevant evidence is presented in court.

It has been difficult until this time to make any proper assessment of the effect of the use of screens and audio-video links. Some other States have enacted legislative change to allow for the taking of evidence of children and other vulnerable witnesses via audio-visual link or using screens or one-way mirrors. As many of these reforms are still in embryonic form, assessment has been difficult.

However, the Australian Law Reform Commission and the ACT Magistrates Court have been conducting an evaluation project to investigate whether closed-circuit television reduces the harm to child witnesses and assists in the 'ascertainment of the facts' without unfairly interfering with the rights of the accused to a fair trial. Further, changes introduced in the United Kingdom which allow a child to give evidence via closed-circuit television from a room adjacent to the court have been analysed in a report for the British Home Office.

From the studies undertaken in England and in the ACT, it appears that many children suffer less stress and provide better evidence if able to utilise the closed-circuit television system in court.

The white paper on the Courtroom Environment and Vulnerable Witnesses was prepared to examine all the issues and conflicting views on this topic in order to promote discussion in the community.

The paper made a number of 'recommendations including legislative amendment to provide the court with a series of options for the taking of evidence from children or vulnerable witnesses. A 'vulnerable witness' has been defined to include the young and the elderly, the intellectually handicapped, alleged victims of sex-related offences and others who are at some special disadvantage because of their circumstances.

The Government is concerned that victims of crime be able to provide evidence in the best possible manner. This Bill is a step in that direction.

I commend this Bill to members.

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

Leave granted.

Explanation of Clauses

Clause 1: Short title—This clause is formal.

Clause 2: Commencement—This clause provides for commencement of the measure on a day to be fixed by proclamation.

Clause 3: Insertion of s. 13—Protection of witnesses—This clause inserts new section 13 into the principal Act.

Proposed subsection (1) provides that a court should order special arrangements to be made for the taking of evidence from a witness if it is practicable and desirable to do so to protect the witness from embarrassment or distress, to protect the witness from being intimidated by the atmosphere of a courtroom or for any other proper reason.

Proposed subsection (2) sets out examples of the kinds of orders that a court may make. These include—

- an order that evidence be given outside the courtroom and transmitted to the courtroom by closed circuit television;
- an order that a screen, partition or one-way glass be placed to obscure the witness's view of a party to whom the evidence relates or some other person;
- an order that the witness be accompanied by a relative or friend for the purpose of providing emotional support.

Proposed subsection (3) provides that if on a jury trial a court makes special arrangements for the taking the evidence of a witness, the judge must warn the jury not to draw from that fact any inference adverse to the defendant and not to allow special arrangements to influence the weight to be given to the evidence.

Proposed subsection (4) empowers a court to make, vary or revoke an order under the section on the court's own initiative or on the application of a party or witness.

Proposed subsection (5) provides that if evidence is to be given in criminal proceedings by a vulnerable witness, the court should before taking the evidence determine whether an order should be made under the section.

Proposed subsection (6) defines 'vulnerable witness' as—

- a witness under 16 or over 75 years of age; or
- a witness who suffers from an intellectual handicap; or
- a witness who is the alleged victim of a sexual offence to which the proceedings relate; or
- a witness who is, in the opinion of the court, at some special disadvantage because of the circumstances of the case, or the circumstances of the witness.

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

PUBLIC CORPORATIONS BILL

Adjourned debate on second reading.

(Continued from 9 February. Page 1147.)

The Hon. L.H. DAVIS: This detailed 50-page legislation seeks to close the gate on Government businesses after the financial horses have bolted. Legislative flat is no substitute for financial acumen, competent management and ethical behaviour. This Government, in a decade of mismanaging Government enterprises, has shown no financial acumen, no competent management and it has certainly not sanctioned ethical behaviour. My public tirades over the past 12 months on subjects such as Scrimber, State Bank and SGIC demonstrate a stream of failed projects costing taxpayers in South Australia billions of dollars. The gate has been closed too late and those financial horses of Government have bolted. We now have financial carcases of Government businesses rotting in a paddock. I find the stench and the manner in which some of those losses have been incurred and the ethical behaviour associated with some of the business enterprises overpowering and distasteful.

In WA Inc we have seen massive corruption. That was reflected in the vote last Saturday when the Carmen Lawrence Labor Government sang its last song and a Liberal Government was installed after a decade of corruption in the west. Whilst we have not at this stage any evidence of corruption in a criminal sense in South Australia, I think we should keep our powder dry because there is a jury still out in the form of the royal commission and the Auditor-General investigating matters relating to the State Bank of South Australia.

The Attorney-General, as my colleague the Hon. Trevor Griffin said in his very detailed contribution to this debate, has sought to rewrite history over the past decade. For the Attorney-General even to begin to suggest that everything would have been all right at the State Bank of South Australia if this legislation were in place is, of course, an absolute furphy. If we take the logic of the Attorney-General, we could equally argue that we would not have lost $380 million in the past two years with SGIC, that there would not have been a loss of $60 million for Scrimber over the past five years, that $17 million would not have been lost on the Graymouth fiasco or, as my colleague the Hon. Julian Stefani mentioned, the farce at Marineland would have been averted.

I want to start at the beginning and nail this Government on one of the things that I think stands out. This Government has fallen short in enforcing standards of behaviour in the Government corporate sector. That argument has gone unchallenged over the past 12 months. We have not only seen the excesses of the State Bank of South Australia exposed, but we have seen some of the shameful behaviour which has occurred at SGIC and also in association with the Scrimber project.

Last October—just four months ago—the Attorney-General proudly unveiled his code of conduct for public employees. This code, issued by the Government Management Board, spelt out the ethical conduct expected of public employees under the Government Management Employment Act. This code included the following quotation:

> The public expects and has a right to demand that public employees maintain a high standard of ethical conduct. It means putting public interest before self interest.

There were a number of examples of what was deemed to be unacceptable behaviour: patronage, nepotism, using one's position to further one's own interests or the interests of friends and relatives. It was unacceptable to hire friends or relatives for a position without calling the position. Under the heading, 'Your official position is a position of public trust', the code stated:

Do not compromise the public good by seeking private gain. You must not use your official position to seek or obtain any financial or other advantage for yourself.

That was the code of conduct spelt out in the little red book issued by the Attorney-General last October. That code of conduct has been given further weight in the very extensive duties for directors, amongst other things, in this Bill. I want the Attorney-General to be honest with this place and to say, 'Do not the standards set down in this Public Corporations Bill suggest that there have been people in high places in South Australia whose behaviour should be tracked and recorded as unacceptable under the code of conduct issued by the Government and under the Public Corporations Bill?'

The fact is that not one public servant or employee or director of a statutory authority in South Australia has to my knowledge been seen to be behaving unethically or been guilty of nepotism or of a conflict of duty and interest. There has not been one in this miserable decade under Labor. I ask honourable members to reconsider the overwhelming facts in the case of Mr Vin Kean, the recently retired Chairman of SGIC.

He was the man who in the weeks preceding his retirement in September 1992 said, 'When I retire I am going to publicly dump on the politicians and other public figures who have taken issue with my behaviour. I am not going to stand for this nonsense. I am not going to be victimised.' We have not heard from Mr Vin Kean since he ceased being Chairman of SGIC. It was alleged that he was moving to take up residency in Tasmania because he could not stomach living in South Australia any more. The challenge remains to Mr Vin Kean to dump on the politicians and public figures that he believes have acted improperly in the execution of their office.

But I am more concerned about the behaviour that has been accepted by this Government that has been the feature of Mr Vin Kean's chairmanship of SGIC. The case for nepotism is overwhelming. I gave to the Council last year the extraordinary and bizarre example of the Terrace Hotel where not one, not two, but three relatives of Mr Vin Kean were employed, remembering that Mr Vin Kean was not only the Chairman of SGIC but also the Chairman of Bouvet Pty Limited, the SGIC subsidiary which oversaw the operations of the Terrace Hotel. That hotel, bought from Ansett by SGIC in 1988, was extensively refurbished during 1988 and 1989, and opened in 1989. Two people, Mr and Mrs Fisher, who had leased the lobby shop at the Gateway Hotel and who had been promised verbally and in writing that they could re-lease the shop when it opened after the refurbishment, were passed over in favour of someone else, and that person was Mr Vin Kean's daughter.

Secondly, when there were some problems in the bathrooms of the Terrace Hotel shortly after the opening, the son of Mr Vin Kean, Mr Chris Kean, was called in to do the repair job. It was a quick repair job and in the lamentably weak answer that I received from the Government, over 10 weeks after I had asked the question and on the very last day of the sitting last year, 26 November 1992, it was said:

It was discovered during Grand Prix week 1989, immediately after the opening of the hotel, that 29 rooms had defective plumbing. As this was a design problem, it was up to the hotel to arrange repairs. As the work had to be done quickly, the General Manager of the hotel, Mr Robert Arnold, went to someone he knew. He asked Mr Christopher Kean, whom he knew to possess a builder's licence, to have a look at the problem and recommend a suitable plumber.

The plumber was called in to fix the problem and did the repairs under the supervision of the Terrace's maintenance manager. Christopher Kean assisted with the plumbing work. The total payment made to Christopher Kean, the plumber, and for materials, was approximately $940 per room (total approximately $24 000).

Of course, why would the Government drop that answer on the very last day, along with dozens of other answers? Was it because this was an open Government with nothing to hide? Of course not. They were trying to bury what was a scungy, slimy little episode. A third example which is equally bizarre is that Mr Vin Kean's son-in-law, without any previous experience, suddenly became the assistant chauffeur for the Terrace Hotel's Rolls Royce.

The Hon. G. Weatherill: Very talented family.

The Hon. L.H. DAVIS: A very talented family, Mr Weatherill. Obviously not even the left of the Labor Party can organise things as well as this. Of course it is well worth remembering that that Rolls Royce was bought by the Terrace Hotel from Mr Vin Kean's own company, given that he is the agent for Rolls Royce in South Australia.

The Rolls Royce was bought without tender: a 1986 Rolls Royce bought at full tote odds of $275 000 when, in fact, reputable people around Australia experienced and knowledgeable in Rolls Royce prices said that the Terrace paid at least $25 000 over the odds. And this Government has the gall to say that nothing should be done about it! I asked the question on 10 September and received a reply buried into the last day of Parliament on 26 November, over 2 1/2 months later. It says something about the issue, does it not, that it takes 2 1/2 months to answer some simple questions.

It shows a Government that is gutless, that has no ethics, standards or morality; it has an acceptance of immorality. I find it appalling that this Government has done nothing about this issue. What did the answer to my question say? I had asked whether the Government condoned the blatant nepotism that occurred at the Terrace Hotel, and the answer was, 'The Government does not condone nepotism.' What does that mean? Does it mean that the Government does not condone nepotism on this occasion or is it a general principle? After all, in October last year the Government put out a code of conduct that says that nepotism is not on: 'We do not condone it; it is a breach if it happens.' And what has the Government done about it? Not one thing.

And the Labor Party wonders why it is on the skids in South Australia! There is one very good reason why. The very Party that is alleged to stand up against corruption and conniving in big business has gone weak and wobbly at the knees. It condones anything. The musical *Anything Goes* has nothing on the Labor Party in South Australia!

The Hon. G. Weatherill: Is it good? I haven't seen it.

The Hon. L.H. DAVIS: It has a lot of high kicking and, of course, the Labor Party is right into high kick-

ing—and a few kickbacks, I suggest, as well. So, we have the remarkable saga of Mr Vin Kean and the Terrace Hotel: old news, but still news in view of this legislation. I challenge the Attorney-General in his reply to the second reading debate to take those matters head on, because I have not forgotten them and it is my intention that, if the Government does not move on this matter, I will consider the option of an inquiry in the Parliament into these matters.

The other point that comes across very obviously when we address this matter of standards is the property dealings that Mr Vin Kean has had: the fact that the only time SGIC ever lent 100 per cent on any loan was to Mr Vin Kean when he obtained a $20 million loan to allow the construction of No. 1 Anzac Highway to proceed. It was six times greater than any loan SGIC had ever made before or has made since. It was a property development in a new precinct with no head tenant, no tenant whatsoever. The terms of the loan were not condoned by any major financial institution to which I spoke. It was a term outside regular commercial practice, but it was a loan that was okayed by the Government. A Government of morality or ethics condoning nepotism—goodness me!

Those facts are incontrovertible. If that were not enough, we had the remarkable story of No. 1 Port Wakefield Road. Mr Vin Kean bought this property from JRA in December 1988 for $1.4 million. It was empty, and he put it on the market. It could not be sold, so it went up for auction. SGIC had a property subcommittee meeting—not a board meeting, just two or three people, Mr Vin Kean absenting himself, of course. It was not on the agenda, although it was by the time the meeting was over. Yes, SGIC would bid for an empty building, great idea, and would pay $1.8 million for it. That made $400 000 profit for Mr Vin Kean and, five years later, the building is still empty. What terrific commercial behaviour!

It was a very smart business deal for SGIC, a building on which they have lost hundreds of thousands of dollars, yet its Chairman was $400 000 richer within the space of a few weeks. That is the behaviour that this Government has said is okay, and after the financial horses have bolted it has the gall to introduce the most comprehensive, draconian and far-reaching piece of legislation that any State of Australia has yet seen. It is a Government of schizophrenia, a Government of make believe, where Alice in Wonderland would run a long last.

Let us look at some of the comments that the Hon. Attorney-General made during his second reading explanation. He referred to the need for the Government to seek clear objectives, priorities and performance criteria for its statutory authorities, and these objectives must be defined and understood so that boards of management can get on with the job of managing while also accepting responsibility for the performance of the statutory authority. If that had occurred in the case of the Scrimber operation in Mount Gambier, we would not have lost $60 million. There is no point in having legislation wonderfully written in beautifully crafted language, if you do not have the smarts to work with it. This Government lacks the smarts.

The Government might have changed the captains on the deck, but there is still no-one in the Cabinet with any financial acumen. They would not even know what an abacus was. They could not read a balance sheet, nor would they understand a profit and loss account. That is why they allowed a fitter and turner to be in charge of building arguably the most high risk timber technology the world has seen in the 1980s, the Scrimber plant.

When I went to America and Canada last year, people knew all about the Scrimber plant. It has been an object of bemusement for them for years: a technology that had been discarded by MacMillan and Bloedel a decade earlier was still being persevered with by Government enterprise in South Australia. It was a source of much bemusement, particularly given that the pilot plant clearly was fixed to create a product in very artificial circumstances and not in a commercial environment, and to persist with the development of a product that quite clearly was not commercially viable.

It is not a matter of the Opposition's having the benefit of hindsight in this case, because almost 5 1/2 years ago, in August/September 1987, I first drew attention to the problems associated with the Scrimber project. We had the Government saying, 'Well, of course, legislation will fix all these problems in the future.' But legislation will not fix anything if you do not have the smarts. And this Labor Party certainly does not even know how to spell that word.

The Attorney-General went on in the second reading explanation to say that the recently completed study of the South Australian economy conducted by consultants A.D. Little underlined the fact that the problems in the South Australian economy are not just problems associated with the recession; there is the need for major structural changes. But the Attorney-General is smart enough not to mention one other fundamental point that stands out like a beacon in the A.D. Little report; that is, that the Government in South Australia lacks a business culture.

The South Australian Government lacks a business culture, and you cannot write that in legislation, either. This Government also lacks management skills. I am appalled at the quality and standard of some of the people in charge of major commercial projects. It is shameful to see the quality and leadership that is lacking in some of the key financial enterprises in South Australia, even as we speak. It is scary.

I come from the financial sector and I have some experience in dealing with national and international companies. I am not unaware in these matters, but this Government, quite clearly, is all at sea in matters financial, and this has shown in the State budgets of recent years at the cost of the taxpayers of South Australia. Then, of course, we have some more glib statements:

> The Government acknowledges the need for its public trading enterprises to achieve standards of productivity and service equivalent to world best to help ensure that South Australia is competitive.

It persists with the belief that public trading enterprises can do it as well as the private sector. That is a fundamental, philosophical difference. I will not labour that point any more, but it is very obvious that this Government still believes that Scrimbers, Marinelands and Clothing Corporations are the way to go.

I remind members opposite that in this rapidly changing world Russia is leading South Australia in privatisation. I also remind members opposite that in this rapidly changing world South Australia trails all other States of Australia in privatisation, and the Australian States generally trail all other countries in the world in privatisation.

This Government is still locked in with shibboleths and dogma that have been preached at Trades Hall, with those sad little banners fighting against change, not believing in anything but resisting change. Then, we had some further verbal glibness from the Attorney-General when he said:

> It is necessary to implement a balanced system which encourages, and indeed requires, high standards of performance while strengthening accountability to the Government, and ultimately to Parliament.

If one shuts one's eyes one can imagine Jim Hacker saying that. You can imagine Jim Hacker saying it on a re-run of 'Yes Minister'. Lovely crafted staff. I mean, Sir Humphrey has done well here. What he says is certainly very true, but the glibness of the message should not obscure the shortfall in performance of this Government over the past decade.

Then we have some more lovely, very fancy words, written quite lyrically in parts—uncharacteristic of this Government—as follows:

> The Public Corporations Bill is designed to overarch the legislation—

nice word that: 'overarch'—

> establishing each authority and will put in place a consistent—

it reminds me of the Goolwa bridge; it is the same sort of public business decision which the Government has made there, as my colleague, the Hon. Diana Laidlaw, has mentioned so forcefully this afternoon—

> framework of duties, responsibilities and relationships between each authority and the Government.

Then, we come to the nub of it from the Attorney-General, as follows:

> The Public Corporations Bill is predicated on the belief that if the Government is to accept final accountability for the functioning of its public trading enterprises then the Government must have authority to control and direct these authorities subject to safeguards to ensure that this power is not used inappropriately.

Well, damn it all. Has not the Government always had the final accountability for the function of its public trading enterprises? If it has not had it, who has? We have been through the farce of trying to establish who has been responsible for SGIC's $380 million loss. We have a $30 million royal commission seeking to establish, even as we speak, what the truth is about the State Bank. The jury is still out on Scrimber but, although I am opposed to capital punishment, I can see a few good heads that could be put in a noose when it comes to those three enterprises.

The Bill emphasises the need for strong boards of public companies. That is absolutely true, but the Government has had the opportunity during the past decade and it has fallen lamentably short. During the critical period of the SGIC, the then Treasurer (John Bannon) left one position on the five person board vacant for 12 months. That is the emphasis the Government placed on responsibility and accountability in those days.

When it comes to having gender balance, which we heard about so proudly from the Minister for the Arts and Cultural Heritage today, I find it extraordinary that on the SGIC, State Bank and Scrimber boards, which have a total of 25 members, there was one woman. Perhaps if there had been more women a bit of sense would have been knocked into the rest. Who knows? This is extraordinary stuff from the Minister this afternoon, but when she looks at the really big ones where the runs have not been on the board and she talks about gender balance—goodness me! The second reading explanation states:

> Remuneration practices will be reviewed to ensure that whilst board fees adequately reflect the new accountabilities, directors are precluded from accepting fees for service on the boards.

It talks about remuneration practices. Here is more rhetoric from the embattled Attorney-General. Let me cite an example. SGIC's Denis Gerschwitz, the General Manager who presided over the biggest financial loss of any State owned insurance company in Australia's corporate history, in 1991 managed to receive a 35 per cent increase in his annual salary package from $170 000 to $230 000. That was in a year when the SGIC lost only $91 million. It begs the question of how much would his salary have increased if SGIC had made a profit.

This Government, knowing last year that it was introducing a Public Corporations Bill and that remuneration practices would be reviewed—hopefully they were practising what they were preaching then because they had had enough stick from us at least to be aware of the problem—installed Mr Malcolm Jones, a person with no insurance background to my knowledge, as the new General Manager of SGIC_ What was his salary? It was 230 000 big ones. That left a lot of people in SGIC frothing at the mouth. They could not believe it, particularly because the middle ranked financial executives of SGIC, who had put out all the fires created by the leadership team in SGIC, had not had an increase in their salary, not even in accordance with the CPI, for the preceding three years. So, the Government said, '$230 000 is a nice round sum, let's go for it.' Obviously, there was no review—an extraordinary situation. At that time, major corporate salaries around Australia were being reviewed downwards.

We are in tough times. I should tell the Attorney-General that because he may not have noticed, but we are now in tough times and we have the ironic situation that in South Australia there are senior public servants on higher salary packages than their counterparts in the private sector, and they have the added benefit of a very generous superannuation scheme. I have always argued consistently that there is a strong case for good salaries for top people in the public sector, particularly in areas of competitive pressure with the private sector to recruit top people, for instance, in computing or financial investment advice. Salaries sometimes have to be on the higher side rather than the lower side if you are to get good people. However, what appals me about this Bannon/Arnold Government is that there are quite a few people out there who simply are not worthy of the money they are picking up in their salary package every month.

This Government refers in the second reading explanation to remuneration packages being reviewed, but to

date there has been no evidence of that. I guess they have had so many problems, so many fires to put out, that the words will come first and they will start looking at the problem later. The second reading explanation states:

A handbook of practice and conduct will be prepared for directors, particularly new directors, explaining their obligations, relationships with Government and what represents 'best practice' for boards of this type.

Hopefully, that code of conduct that I read in October last year is what we are talking about. Is there going to be another 'wordfest' of what is required? This is an extraordinary Government. It seems to have done it once and it is going to do it again. The second reading explanation states further:

In accordance with currently accepted standards of best practice, boards will be required to establish an audit committee to focus on the financial and management practices of each corporation and to ensure that adequate internal audit systems are in place.

That is an admission of omissions in the past, is it not? If there had been an audit committee for Scrimber a lot of those problems would not have occurred.

The Hon. J.F. Stefani: Or the bank.

The Hon. L.H. DAVIS: And the State Bank and SGIC. Of course, again we do not need legislation to know what a system is. If this Government philosophically is committed to running a business enterprise, then it must run it on a proper basis. As I said before, we see things being put in place for the first time after all the damage has been done. It is a bit like ordering the fire truck after the place has been destroyed by a bushfire. That is what this legislation is. As my colleague, the Hon. Trevor Griffin said, this is extraordinarily draconian legislation.

The Bill provides a comprehensive framework of duties for directors of public corporations, and my colleague has discussed that matter at length. As the Attorney-General says, directors of public corporations must operate according to higher standards of ethic and probity both as regards their own conduct and that of the corporation. I challenge the Attorney to take me head on in the case of Mr Vin Kean. If he believes that that sort of standard is acceptable to this Government, I want to say there is a very big point of difference, and I believe that the community to a person would be on the side of the Liberal Party in this matter.

The Bill requires ministerial approval of any transaction between a director and a public corporation of which he is a board member, and disclosure should be in the corporation's annual report. Again, many of these disclosures came to light not because they were contained in annual reports. In the case of Mr Vin Kean and the SGIC they certainly were not brought out by the Government rooting around or by any audit committee or concern about probity or nepotism on the Government's part. How did they come to light? They came to light through the Opposition's probing, persistence and publicity.

The Hon. R.R. *Roberts interjecting:*

The Hon. L.H. DAVIS: The Hon. Ron Roberts is getting upset about it, and I think he should be. Finally, the Bill specifies that there will be 'criminal penalties in circumstances where a director is culpably negligent' and 'a regime of routine monitoring of public corporation performance will be put in place in order to ensure that the Government has early advice of potential problems.' That is in addition to the work of the Auditor-General. There are certainly some good measures in this legislation, but my colleague, the Hon. Trevor Griffin, has highlighted many of the defects.

This is a Committee Bill. My plea is that the Attorney-General, cognisant of the fact that the State Bank Royal Commission has yet to report and may well make comments which are pertinent to this legislation, should allow the legislation to lay on the table. I think it is also appropriate to allow this legislation to remain on the table until the Auditor-General's report is made public later this month. With those comments, Mr President, I support the second reading.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

[Sitting suspended from 5.57 to 7.45 p.m.]

STATUTES AMENDMENT (MOTOR VEHICLES AND WRONGS) BILL

Adjourned debate on second reading.

(Continued from 9 February. Page 1152.)

The Hon. C.J. SUMNER (Attorney-General): The Government welcomes the support indicated by the Opposition for the second reading of this Bill. The Hon. Mr Griffin has asked for my response in relation to the new warranty which provides that a person who is insured warrants that he or she will not intentionally or recklessly drive the vehicle, or do or omit to do anything in relation to the vehicle, so as to cause the death of, or bodily injury to, another person or damage to the property of another person.

I propose to move an amendment to this warranty which will insert the words 'intentionally or recklessly' after vehicle. This will have the effect of further clarifying the provision. SGIC has in the past indemnified drivers who have deliberately used motor vehicles to injure other persons.

Although such persons may be prosecuted in the criminal courts, it seems incongruous that they are able to avoid the civil consequences of their actions. This amendment deals with intentional or reckless driving of a vehicle so as to cause death or bodily injury to another person or damage to the property of that person.

The amendment takes this a further logical step by dealing with intentional or reckless actions or omissions in relation to the vehicle which cases the death of or bodily injury to another person or their property. This part of the amendment contemplates acts which are intended to cause injury to another but which do not arise as a result of the driving of the vehicle. For example, a person may use a car to cause intentional injury to another, for example, opening the door into their pathway or failing to secure the handbrake so that the vehicle rolls down a hill and injures another.

It is a logical extension of the policy of making a person responsible for the civil consequences of his or her intentional or reckless behaviour while driving a car,

that he or she be also made responsible for such behaviour which involves a car but not driving of a vehicle. The Government concedes that instances of the latter would be unusual and quite rare but should be a part of such an amendment.

The Hon. Mr Griffin has also raised the matter of increases in the excess recoverable by SGIC where the insured person is more than 25 % liable for the accident and in increases in the medical expenses provision for a person claiming damages for non-economic loss. These figures were both independently assessed by the Treasury Department and increased in line with the Consumer Price Index from September 1986 until March 1992. The figures included in the Bill were those recommended by Treasury.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Interpretation.'

The Hon. K.T. GRIFFIN: I want to raise only one question of interpretation which I am sorry I did not raise at an earlier stage. I remember back in 1986 one of the examples that was used to justify the change was a Supreme Court case where a person, who was unloading a truck, had dropped a drum on his foot and suffered injury and had made a claim against the compulsory third party bodily insurance insurer. That was regarded to be an unreasonable reliance upon that insurance. The amended definition in clause 4 suggests that a person who is working on a truck in similar circumstances might find that he or she is injured but now comes within the definition of 'passenger'. Is that an issue that has been considered? If it has not I do not want to push it at this stage but merely raise it for noting.

The Hon. C.J. SUMNER: Parliamentary Counsel is not here but I will take that point up with him and if an amendment is needed some clarification should be able to be done when the Bill is in another place.

Clause passed.

Clauses 5 to 11 passed.

Clause 12—'Amendment of section 124a—Recovery by the insurer.'

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

Page 4, lines 16 to 18—Leave out paragraph (aa) and insert—

(aa) by driving a motor vehicle, or doing or omitting to do anything in relation to a motor vehicle, with the intention of causing the death of, or bodily injury to, a person or damage to another's property, or with reckless indifference as to whether such death, bodily injury or damage results.

Following upon my raising of the issue yesterday and then examining a proposed amendment by the Attorney-General, it suggested to me that there needed to be even more significant redrafting to make clear that the Bill was applying to the driving of a motor vehicle or the doing or omitting to do anything in relation to a motor vehicle with the intention of causing the death of or bodily injury to a person or damage to another's property or with reckless indifference as to whether such death, bodily injury or damage results. I think that equates more to the criminal offence to which this civil liability issue is complementary. It relates the intent to the consequences and not just to the question of the driving. My amendment clarifies what is intended and we will not have the prospect of some argument about the original drafting as to whether driving which inadvertently or accidentally causes the death of or bodily injury to another person is the act that the Bill seeks to cover.

The Hon. C.J. SUMNER: The amendment is a clarification of the amendment that I had on file and it is acceptable to the Government.

Amendment carried; clause as amended passed.

Clauses 13 to 16 passed.

Clause 17—'Amendment of fourth schedule—Policy of Insurance.'

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

Page 5, lines 1 to 3—Leave out paragraph (a) and insert—

(a) drive the vehicle, or do or omit to do anything in relation to the vehicle, with the intention of causing the death of, or bodily injury to, a person or damage to another's property or with reckless indifference as to whether such death, bodily injury or damage results.

This is similar to the amendment which has just been carried and reflects the same sort of redrafting to clarify the proposition in the Bill.

The Hon. C.J. SUMNER: The amendment is accepted.

Amendment carried; clause as amended passed.

Clause 18—'Amendment of section 35a—Motor accidents.'

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

Page 6, after line 8—Insert paragraph as follows:

(ba) by striking out from subsection (5)(b) 'stationary vehicle' and substituting 'vehicle whether in motion or stationary.'

This is consequential to the amendments that we have just made.

Amendment carried; clause as amended passed.

Clause 19 and title passed.

Bill read a third time and passed.

ROAD TRAFFIC (PEDAL CYCLES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 9 February. Page 1155.)

The Hon. I. GILFILLAN: The Democrats support this Bill. Many of the measures are clearly commendable in their intention to facilitate the use of the roads for bicycle use. I do not intend to go through the Bill bit by bit as that has already been done. However, there are a few matters on which I would like to comment and ask the Minister in closing the debate to respond to or perhaps explain to me.

Clause 7 leads cyclists and those who are interested in cycling to the question of what is appropriate or legal for a bicycle on a thoroughfare where there is a stream of motor vehicle traffic. For example, if the stream of traffic has stopped at a set of lights, is it legal for a bicycle to move up between the near side of the vehicle and the footpath, which is often quite a narrow access? From personal experience I can say that it is occasionally hazardous from the inadvertent opening of doors or the injudicious movement of the car closer to the kerb than had been foreseen.

However, everyone who has observed cycle and motor vehicle traffic will realise that it is a common practice. As it is a common practice, it is virtually impossible to

stop cyclists using that way of catching up. In some ways, one of the advantages of cycling is being able to creep up that extra distance and it poses little or no complication or hazard with the normal flow of traffic. Will the Minister give a clear indication whether in the Act or the impact of any amendment in this Bill that procedure by cyclists to use the space between the normal motor vehicle stream and the footpath as a bikeway lane in which they can pass stationary or slower moving motor vehicles is legal?

The next matter I would like to comment on concerns clause 13, which states:

> The following section is inserted after section 65 of the principal Act: Giving way when leaving footpath or bikeway
>
> 65a. The driver of a vehicle about to enter, or entering, a carriageway from a footpath or bikeway must give way to any vehicle on the carriageway.

That mandatory give way is rather insensitive to the circumstances that do occur now and could occur more in the future where you have quite substantial bikeways with reasonable flow of traffic which does expect to have a continuing flow, but it is intersected by what could be relatively minor motor vehicle carriageways, and it would be better and more considerate of the cycling traffic if the giveway for carriageways were signposted.

There should be an appropriate sign so that there is no indecision or uncertainty as far as cyclists are concerned that they should give way. It has the advantage of allowing for certain circumstances where the cycling traffic would be able to have a freeway and cause the motor vehicle traffic to give way, and it would also serve as a caution to cyclists that there is a motor vehicle roadway coming up. So for both of those reasons I would ask the Minister to comment about this. I have asked for Parliamentary Counsel to look at drafting amendments so that what I have just outlined can be put to the House by way of an amendment. I now refer to the box turn—

Members interjecting:

The Hon. I. GILFILLAN: No black box. There is a certain amount of cycling ignorance coming from the back bench of the Liberals here. Obviously they are not familiar with the box turn on two-wheel pedal push vehicles. It is a safer procedure for cyclists to make a right turn and it is on the style of the old wide turn that we used to have in Adelaide before we had the short right-hand turn, and in fact the wide right hand turn is still part of the turning procedure in some of the city streets in Melbourne—

Members interjecting:

The Hon. I. GILFILLAN: Swanson Street. I think we have some budding cycling enthusiasts here. They are rivetted at what I am saying about box turns. I think the idea of a box turn could actually get them back on bikes—particularly the Hon Legh Davis, the Hon Legh Davis who has an inordinate interest in boxes of all sorts and sizes. The procedure has been used, but illegally, for a cyclist to keep to the left-hand side when intending to turn right, and then wait for the traffic to move at right angles to the original line of the cyclist's direction, and then go with that. Well, this Bill supposedly is attempting to legitimise that procedure, but I am not sure that I understand how this is described in the Bill, whether in fact it actually does work that way. Maybe in closing the debate the Minister could depart from normal procedure and actually illustrate, in the centre of the Chamber, a box turn, because I think if she actually did it, following this script—

Members interjecting:

The Hon. I. GILFILLAN: I think we could ask for some honourable members to be volunteer motor vehicles, and we could have one or two volunteer cyclists. It might be a bit difficult for *Hansard* to get it down in detail, but we would cooperate. However, joking aside, I think that anyone attempting to interpret from the wording of this Bill what the hell they are meant to do in approaching a right-hand turn would have some difficulty, as it does defy description. I think it will lead to chaos on the roads.

There are various aspects of confusion about it, but one in particular that I would emphasise is what flows from clause 15(2)(d), which provides:

> the rider is not, in making a box right turn in accordance with this section, bound to comply with instructions indicated by a traffic signal operating at the intersection or junction for the purpose of regulating right turns other than box right turns.

I would be pleased to receive any explanation from anyone as to what that means. One interpretation is that cyclists are not bound by what the lights say. In other words, the cyclist can go across in the face of a red light. Either that provision releases all cycling traffic from obeying the traffic lights, provided that they can say that they are doing a box turn, or I misunderstand this clause. I invite the Minister to enlighten me when she closes this debate. It actually leads to quite a significant point: that a push bike does not activate weight activated traffic lights changes.

Members interjecting:

The Hon. I. GILFILLAN: They are not activated by push bikes. I suggest that anyone who would like to test it goes and tries it. But it is a dilemma, particularly when there is not much traffic travelling in a similar direction to that of the cyclist and there is no way they can get a legal crossing because the lights will just lock in place. They may change if people are lucky, but it tends to lead cyclists to go across when they realise that the lights are not going to change. Does this clause that I have just read out pick up this dilemma that cyclists experience and, if that is the case, is the Minister aware of the problem? If she is aware of the problem, what solution can be forthcoming?

Members interjecting:

The Hon. I. GILFILLAN: That is right, but I have other friends who ride bikes, as I do myself.

The Hon. Peter Dunn interjecting:

The Hon. I. GILFILLAN: Yes. Incidentally, a ride to work day is coming up on, I think, 16 March.

The Hon. Diana Laidlaw: The Hon. Mr Dunn is already entered. I have entered him.

The PRESIDENT: Order!

The Hon. I. GILFILLAN: That is splendid. I am sorry, Mr President: I was lured into a little promotion. Are you going to ride your bike in on that day, Sir?

The PRESIDENT: I do not have one.

Members interjecting:

The PRESIDENT: Order! The Council will come to order. The Hon. Mr Gilfillan.

The Hon. I. GILFILLAN: I am not too sure that the Council is going to come to order: it seems to have got totally out of hand at the thought. I should like to read the note that was given to me from the Australian Conservation Foundation (Mark Parnell, in particular) regarding these non-responsive traffic signals. It reads as follows:

One of the most important aspects of cycling law that needs to be reformed is in relation to demand responsive traffic lights. These signals are triggered by magnetic coils [we suspect] buried in the road pavement just before the stop line. Most of these traffic detection devices are not sensitive enough to detect the presence of a bicycle on the road. This leaves cyclists with three alternatives:

(a) Ignore the traffic light and proceed across the intersection against the red light when it is safe to do so.

(b) Wait for a car to come along from behind and trigger the lights in your favour—could be a long wait.

(c) Dismount and cross the intersection as a pedestrian.

I might point out that that pedestrian would either be crossing against the red light as a pedestrian or moving away from the intersection to cross legally. The quote continues:

Most cyclists would opt for the first option. Whilst here is some legal precedent for the idea that if a signal is not controlling traffic properly, then it doesn't have to be obeyed, this situation could be clarified in the legislation to make it clear that, in situations where traffic signals do not detect bicycles, the cyclist is entitled to cross against the signal when it is safe to do so.

It is not as easy as that. It is a serious matter. If the cyclist was involved in an accident in that situation, who would be at fault, apart from the serious risk? But it is the actual legal fault that ought to be determined.

There is one final matter in relation to the practicality of this Bill. There is growing use of lightweight trailers, often towed on a couple of the wheels of the bicycle itself, being used to carry children or goods. Has the Minister or the department considered the legality of this attachment, and does she believe as I do that it is to be encouraged? If it is to be encouraged, there should be some regulation regarding the length and breadth of these trailer attachments.

In conclusion, I look forward to the Committee stage of this Bill. The Democrats believe that as a matter of urgency we should push for an increase in properly designed bikeways. I welcome this Bill. It opens the debate and the interest in it.

The Hon. Diana Laidlaw interjecting:

The Hon. I. GILFILLAN: I think that bicycle lanes and bikeways are both desirable. Bikeways, because they are virtually dedicated to cycle and pedestrian traffic away from vehicular traffic, are really the only way to encourage many people to ride bicycles. The problem with bikeways on mixed use carriageways is that, however nicely they are lined, there is no protective barrier and it is still very much a hazard, both imagined and real, in having the shared cycle and vehicular traffic, and for us to look for—

The Hon. R.I. Lucas: And parents worry about their children.

The Hon. I. GILFILLAN: I can quite understand that. I really think that it is totally unrealistic for us in Adelaide to expect a lot of people to commute on bicycles until we can offer safe tracks, bikeways or dedicated cycle lanes, if that is an achievable goal, so that people can ride in a relaxed and safe way. I indicate my support for the Bill and hope that some explanations and possible amendments will eventuate in a more improved version at the end of the day.

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

MEMBERS OF PARLIAMENT (REGISTER OF INTERESTS) (RETURNS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 November. Page 1068.)

The Hon. K.T. GRIFFIN: From the outset I indicate that I will be seeking leave to conclude my remarks, because I wrote to the Attorney-General on 26 January asking for some information which I do not so far appear to have received. The information I sought from the Attorney-General was the copy of any report, advice or other documentation in which the registrars under the principal Act and the former Solicitor-General (Mr Malcolm Gray QC) identified what were referred to in the second reading explanation as deficiencies.

If those concerns are the basis upon which this Bill is brought before us, it seems to me appropriate that we do have access to their observations in order to make a judgment as to whether the basis for their observations is accurate and reasonable. So, before I complete my contribution on this Bill I believe it is reasonable to have access to that information.

One really must seriously question whether anything useful has been obtained from the registration of interests legislation. Ministers are in a position of influence where conflicts of interest do matter. Chairpersons of parliamentary committees are in a very strong position to influence governmental decisions and, of course, to significantly influence the conduct of the parliamentary committees, the sorts of questions that might be asked, the sorts of issues that might be raised and the sorts of witnesses who may be called.

Members of Parliament who are not Ministers, or for that matter chairpersons of committees, really do not exercise a discretion other than in the context of voting on resolutions or Bills or perhaps raising questions of Ministers in the House. When they vote on legislation they generally do so as Party members, whether members of either of the two major Parties or of the minority Party, the Australian Democrats. I suppose the exception is Independents.

When Parties make their decision on legislation, whilst on this side of the Council liberty is given to individual members to express a point of view on a Bill and even to disagree with our Party's decision and to vote contrary to that decision, provided certain procedures have been followed, the majority decision in relation to a Bill is made by the members of the parliamentary Party.

Bills are generally introduced by Government, by Ministers. There is, of course, the occasion where private members' Bills are introduced, perhaps to deal with poker machines or with death and dying, but in the

main legislation is introduced by Government. Whilst private members' Bills occasionally gain majority support in both Houses, that is the exception rather than the rule.

However, when Bills are under consideration certainly pecuniary interests of a member must be disclosed in both Houses under the respective Standing Orders of those Houses. So, I would suggest that in that context the capacity of ordinary members of Parliament to influence decisions, and to do so improperly, is minimal. Senior public servants on the other hand, whether in Government departments or statutory corporations or other agencies, have a significantly increased capacity to influence decisions, whether it be in relation to Government policy, whether it be in relation to contracts or taking some other action within the bureaucracy, because they are advising Ministers.

A very strong view is expressed in a number of reports that senior public servants ought to disclose their interests, not necessarily publicly but in an internal register so that their interests can be taken into consideration in respect of the matters on which they both advise Ministers and implement decisions.

From what I have read of the findings of the WA Inc. royal commission, the focus was on Ministers; it was not on backbenchers but on Ministers. Mr Burke is on charges at the moment from the time when he was Premier; Mr Parker is the subject of prosecution and Mr Dowding is the subject of some criticism. Throughout that royal commission the focus was on the behaviour of Executive Government as well as those in the private sector who sought favours. It is interesting to note that those favours were granted by Ministers—not by backbenchers but by Ministers—and there does not seem to be any indication of influence being brought to bear by backbenchers on Ministers or on public servants to act in a particular way which was partial to the interests of persons or bodies in the private sector.

In the WA Inc. inquiry, public servants and ministerial advisers were the subject of examination and not backbenchers. In the Tricontinental inquiry in Victoria, it was not the behaviour of Ministers or even backbenchers that was under scrutiny but the behaviour of Government or semi-governmental agency officials. In the Fitzgerald inquiry, the focus was on corruption in the Police Force and the Public Service and the corruption of Ministers. Action was taken against police and Ministers, members of the Executive Government rather than other members of Parliament. I suggest that in each of those cases, the WA Inc. inquiry, Tricontinental—although that is peripheral to the issue of the declaration of the interests of members of Parliament—and the Fitzgerald inquiry, no publicly accessible register of interests would have been able to foresee the conflicts which arose and the influence which was exerted.

From my reading of the reports in Queensland and Western Australia, it seems to me that there were elaborate attempts to cover up which no declaration of interests and no publicly accessible register of interests could have disclosed, nor could those registers have drawn attention to the corrupt behaviour that occurred in both instances. So, looking at the Fitzgerald inquiry in Queensland and the WA Inc. inquiry in Western Australia one has to question seriously and objectively whether a register of interests such as that which is in place in South Australia and which this Bill seeks to extend could have prevented the behaviour of Ministers and public officials which subsequently was disclosed.

Whilst the Attorney-General in his second reading explanation says that the Act has, generally speaking, operated well, I would like to question him on the criteria he uses to determine that it has operated well. What does that mean? Members of Parliament have certainly honoured their statutory obligations and have disclosed interests in accordance with the Act. In fact, some members go further than their obligations under the Act, and that has been acknowledged by the Attorney-General. So, to the extent that it has been complied with, it has operated well, but I suggest that we need something more than just compliance by members with their statutory obligation to determine whether or not this system has operated well. The criteria for making that judgment have not been identified, and I call upon the Attorney-General to make clear the basis upon which he reaches that judgment.

It is my experience, and I suggest the experience of most members of Parliament, that whilst they may examine the register from time to time there has been very little occasion upon which the information in the register has been drawn upon. There has been no attempt, as far as I know, to go behind the information which has been disclosed to determine whether there is any other information which has not been disclosed. In relation to the inquiry involving the Hon. Barbara Wiese, there were issues of conflict of interest, and the register was peripherally relevant to that, but in the findings by Mr Worthington the register played little or no part. If one is to assess the way in which the register has been used in South Australia since it came into force in the early 1980s, I do not think one can really make a judgment that it has operated well in the sense that it has deterred members from taking a particular course of action or that they have taken a particular course of action notwithstanding the provisions in the register or that behaviour has been identified which is improper in the normal understanding of that description.

I suggest that the register of interests has not played any significant role in keeping members of Parliament honest in South Australia, and whilst it may satisfy the political desires of some members to have this information disclosed it really has not created embarrassment. The public have rarely referred to it; even the media have rarely referred to it in any way which will cause embarrassment to members. The media have not used it in a way which has identified improper behaviour, conflict of interest or such things. Quite properly, when members are speaking on a Bill in which they have an interest—not necessarily a pecuniary interest—they have disclosed that interest in accordance with the Standing Orders which only refer to pecuniary interests.

On the basis of what the Attorney-General tells us from time to time Ministers disclose interests to the Premier and have not participated in decisions in which they have a pecuniary interest. That is the way it ought to be. I am not suggesting that Ministers ought to put a great deal more information on the public record but we have got to recognise that they make the decisions where conflicts are likely to arise, and not back-benchers. I

seriously question the rationale for the principal Act and for the amending legislation and that rationale is questioned in other jurisdictions. I know there is some anxiety in some parts of Australia to introduce registers of interest, but I would suggest—

The Hon. R.R. Roberts: John Hewson thinks it's a good idea.

The Hon. K.T. GRIFFIN: He is entitled to that point of view; I do not criticise him for that. If you look at the experience, Victoria had it before anybody else under a Liberal Government. South Australia has a register of interest. However, in those States where there has been experience of a register of interest there is no objective evidence that it has made a significant contribution to an enhanced sense of propriety on the part of Government or on the part of Ministers.

Those issues which have been the subject of public comment and criticism involving Governments, have been discovered by other means and have largely been irrelevant to the register of interest declarations, which are tabled publicly. I should say that whether it is with the principal Act or even if it is amended by this legislation before us one has to seriously question the lengths to which members should be required to go to put on the public record their interest at a particular time and certain benefits which they have received. You may have somebody who is trading on the share market and they do it on a day by day basis but that is irrelevant to the register of interest. The day of the return, that is 30 June in each year, or the date of the primary return, whichever applies, is the relevant date to determine your property interests. What trading you have undertaken on the stock exchange before that is quite irrelevant; it is what you hold at the date upon which the return is made. It is irrelevant to that determination of interest. It may be that on that basis when there is a particularly important piece of legislation before the House, which does involve a company in which a member is trading shares, that interest might need to be disclosed under the pecuniary interest legislation but it is quite easy to avoid it because it takes you some time to check the share register and to identify that on a particular date a person actually held shares. But that is peripheral, I would suggest, to the consideration of this Bill.

The other important fact is that if a member wants to avoid the obligations of this Act it does not matter how far you go in trying to set down the legal framework within which you are required to disclose interest; you can always find a way around it. I am not suggesting that members would do it but anyone who was corrupt in the Parliament, anyone who wanted to act with impropriety, would be able to do it and would be able to cover up that interest.

The Hon. Diana Laidlaw: You wouldn't even need to be corrupt to do it.

The Hon. K.T. GRIFFIN: No, not even corrupt but you can avoid it. Even with the Bill which is before us where the Government is seeking to extend the obligation of disclosure to proprietary companies in which a member holds an interest that does not go far enough. You can have a subsidiary of a subsidiary of a subsidiary and you can put it off three or four companies down the track or you can put it into a trust. I am not saying that you should do it but I am saying you can do it if you want to because no matter how much you try to tighten the noose people will always find a way around it if they want to.

The Hon. Carolyn Pickles: Members of Parliament surely would not want to do that?

The Hon. K.T. GRIFFIN: I am not suggesting they would. What I am trying to do is to illustrate that however wide one casts the net in disclosure legislation it will never cover every possibility and you have to make a judgment objectively, putting aside political interests in the matter; you have to make a decision about how far you want to go in requiring disclosure of interest or whether ultimately you rely upon the member to disclose an interest and to take the honourable course in disclosing it and standing back from any decision which might relate to it. That does not always happen but no register of interest would have saved Queensland from the Fitzgerald inquiry and the corruption there, nor would it have served the interests of Western Australia in relation to WA Inc. because there was influence applied, there was patronage delivered and there was no way that disclosure legislation would have identified that sort of corruption.

The WA Inc. inquiry, in part 2 of its report into the commercial activities of government and other matters, makes some observations about disclosure of interest legislation. In a chapter numbered 4.8 it deals with register of interest. In paragraph 4.8.2 it states:

> There are a number of measures now in use, both in Australia and elsewhere which are designed to provide that reassurance.

That is reassurance that the public interest has not been sacrificed to other interests. It continues:

> The first and perhaps most obvious is to prevent an official from getting into a position of conflict. This can be achieved in a variety of ways, the most common of which are:
>
> (a) not assigning to an official duties which will give rise to conflicts, given his or her known personal or other interests; and
>
> (b) by prohibiting an official from having, and by requiring the divestment of, personal interests, and particularly pecuniary interests, which will give rise to foreseeable conflicts, given the duties of the office.

Paragraph 4.8.3 states:

> These particular measures are not always available in particular cases. In any event, they are suited only to those situations where particular conflicts are predictable. Other measures include those which facilitate the proper resolution of conflicts when they occur. These are:
>
> (a) the appropriate disclosure of the fact that the official has a personal interest in a matter; and
>
> (b) if necessary, the disqualification of the official from participation in that matter.

And then paragraph 4.8.5 states:

> For members of Parliament and public officials whose positions carry significant levels of public responsibility and discretion, including ministers, members and senior executive officers of statutory authorities and senior public servants, it is being recognised in many parts of the world as well as in this country that an important step to enable any of the measures we have noted above to be put into effect is to oblige such officials to make a declaration in writing of at least their pecuniary interests. In the case of members of Parliament, that declaration is generally publicly available. In other cases it is an 'in-house' matter. The additional and salutary purpose of registers is to

sensitise officials to the importance both of avoiding, and, where they are inescapable, of disclosing, conflicts or potential conflicts of interest.

I focus particularly on the point that the whole object of disclosure is to sensitise officials to the importance of avoiding a conflict of interest. That report goes on to refer to the fact that in Western Australia there has not yet been a commitment to registers of interest of either public or in-house variety. In paragraph 4.8.6, it states:

Registers naturally raise questions of some sensitivity. The nature of the interests that should be disclosed, their extension beyond officials to spousal interests, the weight to be given privacy concerns are matters upon which opinions can differ.

Then they refer to the Bowen committee's report on public duty and private interest, to which I will refer in a moment, and the Electoral and Administrative Review Committee's report in Queensland on a review of guidelines for the declaration of registrable interests of elected representatives of the Parliament of Queensland.

Whilst raising the issue of potential conflicts and discussing the issue of registers, they do not reach a conclusion as to whether it is desirable or not to have a publicly accessible register and they referred their decision to the Commission on Government which they recommended should be established, but they say that a register of members' interests has public reassurance as one of its primary purposes. In paragraph 4.8.11 they say:

The one matter to which we would draw specific attention is that of the registration of spousal and dependants' interests. Compelling arguments can be raised in favour of such registration on integrity grounds and against it on privacy grounds. If registration is to occur, consideration should be given to the compromise procedure of non-public registration of these interests. This approach, we understand, has been taken in Queensland.

They believe that issue ought to be considered publicly in Western Australia and the people ought to have some input to the Commission on Government before final decisions are taken on that issue and that the politicisation of that issue, I suggest, should not occur so that there can be a relatively objective assessment of the issue.

I was able to gain access to the Bowen Committee Report on Public Duty and Private Interest, a committee of inquiry which reported in 1979. It comprised the Hon. Sir Nigel Bowen, Sir Cecil Looker and Sir Edward Cain, prominent Australians who looked comprehensively at the issue of public duty and private interest in so far as it related not only to members of Parliament but to senior public officials.

They explored the alternatives, the arguments for and against a register, and then they identified the committee's assessment. I think it would be helpful to the Council if I were to read some extracts from that report into the *Hansard* with a view to completing a fairly detailed consideration of the principles relating to the disclosure of interests. I then want to deal with aspects of the Bill.

In paragraph 6.49 the Bowen committee says:

The committee is of the view that, in much of the public debate on the disclosure of interests, there has been confusion between declaration and registration. As a consequence, in the public mind, the advantages of registration have been over valued and the benefits of declaration not sufficiently appreciated. It is not sufficiently recognised, as the Strauss Committee did in relation to members of Parliament, that a general register is directed to the contingency that an interest might affect officeholders' actions. The proper practice should be aimed at revealing an interest when it does so.

In paragraph 6.50 they say:

A second cause of confusion in the debate is a failure to relate a mischief to the proposed cure. Where a matter involving an officerholder has given rise to public concern, it has sometimes been asserted that, had a system of registration of officeholders' interests been in operation, the mischief would not have occurred or at least would have been more readily foreseen. Such an assertion is, however, often open to question. Frequently, the mischief has not been associated with what would ordinarily be a registrable interest; even if it had been registrable, an officeholder bent on perpetrating the mischief would most likely have evaded registration of the interest involved.

That is the point that I was making earlier. In Queensland and Western Australia no register of interest, even if publicly accessible, would have focused upon the corruption, the influence, the maladministration which occurred in that State. In paragraph 6.51 they say:

The arguments for and against the institution of a system of registration of private interests show many weaknesses. The committee finds itself convinced by neither. It has therefore been forced to a position where it has had to decide its attitude towards registration on the basis of personal judgment, by individual assessment of the relative strengths of the claims of public accountability and personal privacy. On such matters of judgment, the committee makes no claim to a monopoly of wisdom.

In paragraph 6.52 they say:

In forming its judgment it has been influenced by two particular considerations. One is the belief it developed during the course of its deliberations that, however tightly the specifications for a register might be drawn, it would be impossible to list all private interests which could give rise to conflict situations; in consequence, in many of these situations an officeholder and the public which he serves would need to rely on the Code of Conduct with its provision for *ad hoc* disclosure of interest for reassurance rather than upon any list of interests that may have been set down in a register. The other consideration is the longer term consequences for officeholders' privacy which the committee can foresee.

In paragraph 6.53 they say:

The committee has given careful consideration to the arguments for registration, but it is not convinced that they outweigh those against it. It believes that, if registers of pecuniary interests of officeholders are instituted, the first step has been taken on a slippery slope that is likely to lead to a much wider system of disclosure and unjustified invasions of privacy than its first proponents contemplated.

That is what we are facing with this Bill: that it is on the slippery slope. I continue with the Bowen committee's observations:

The deficiencies of a limited register would be quickly exposed by media probing and by the opportunities for political advantage that might be derived from allegations suggesting particular conflicts of interest not disclosed by the register. Restricted access to disclosed information, if that were the procedure adopted, would come under attack, as it did in the United States during the 1970s. Unless provision was made for

the public to have access to the information in the register, registration would be likely to become immediately unacceptable. Once the discrediting process started, the alternatives would be to leave the existing rules, accept that they were imperfect and did not cover all possible conflict situations, or else begin 'tightening up' by extending the interests to be disclosed and opening the register to public scrutiny. If the first course were followed, the supposed symbolic value of a register would dissipate; if the second, privacy would suffer.

In paragraph 6.55 the committee says:

The committee has therefore found itself in substantial agreement with the position reached by the Salmon Committee in the United Kingdom, which said: 'In our view, registers of interests can do little more than present a general picture of a person's background against which his attitude to the issues of the day can be assessed. They can also, we accept, have a part to play in isolating specific interests from an individual's participation in official business and in keeping people with improper interests out of public life, but too much should not be built on this. The main sanction against specific conflicts of interest must be disclosure at the relevant time, and a register cannot perform this function.

An individual who was determined to exploit public office for his own ends would probably be able to find ways round any registration requirements that were not of such complexity that they would be generally unacceptable and unenforceable. Apart from any consideration, registers can be expected to cover only major continuing interests; it would be impracticable to require the registration of each and every business transaction. It has concluded that there is insufficient justification at present to introduce a system of compulsory registration of Commonwealth officeholders' interests.

There are other observations in that report which make quite interesting reading, but basically what that report is indicating is that there are severe doubts as to whether the register of interests, publicly accessible, can give to the public the necessary information upon which conflicts of interest in all continuing matters in which, particularly members, might have an interest can be guaranteed. It is consistent with the view that I have expressed; that seeking to widen the scope of the principal Act is really not going to achieve much more than providing a great deal more work for some members of Parliament—perhaps not much more for others, and possibly more on this side of the Council than the other. But I would suggest that, whilst there may be some political motivation on the part of some members opposite to seek access to more information, in the long term it is not going to enhance the administration of Government or the operation of Parliament.

The obligations imposed by the Bill are significantly more onerous than under the principal Act and one must ask what good purpose will be served by that. The Attorney-General in his second reading speech tends to play down the scope of the legislation. He says:

These amendments tighten up the situations in which members are required to disclose connections with entities with which members have connections of a financial nature.

He refers then to deficiencies identified by the former Solicitor-General, Malcolm Gray QC, but he makes the curious remark (and I am not in a position to make a judgment on it without seeing the advice given by Mr Gray) that these are minor deficiencies identified by the former Solicitor-General. The Attorney-General then goes on to say:

Minor amendments are made to the definition section.

The Attorney-General goes on to talk about the definition of 'spouse' and that is a relatively minor amendment. He also refers to a minor amendment to the definition of 'financial benefit', but he does not seek to have regard to quite significant amendments in relation to the definition of 'gift', the definition of 'a person related to a member' and the definition of 'an investor', and those are definitions included in clause 3 which have significant ramifications and could by no means be regarded as minor amendments. The first issue relates to the returns. No longer will a member be able merely to update a return following a primary return. Each return must contain full details of all matters required to be disclosed. That will mean additional work for all members of Parliament and will mean considerable repetition.

The Attorney-General says that the reason for that is that there has been some misunderstanding on the part of members as to whether they should answer in one way or another certain questions in the ordinary return. I suggest to the Attorney-General that the way to overcome that is merely to redraft the form to put the issue beyond doubt. That is quite a simple procedure, and I would suggest, for the sake of all members, that there is an advantage in merely being able to refer to past returns and identify only the changes that have occurred. I suggest that is a proper way to go: maintain the *status quo* but, in fact, change the form to make the issue clearer.

Section 4(2)(a) of the principal Act requires a member to disclose the income source of a financial benefit received by the member or a member of his or her family. A member of his or her family is a spouse (including a putative spouse, even though under the amendment it provides that there is not necessarily a declaration made as to that status under the Family Relationships Act) and a child under 18 years who normally resides with the member.

A financial benefit is any remuneration, fee or other sum exceeding $500 received by the person in respect of a contract of service entered into or a paid office held by the person or the total of all remuneration fees or other pecuniary sums received by the person in respect of a trade, profession, business or vocation engaged in by the person where that total exceeds $500.

An income source is the person or body of persons with whom the person entered into a contract of service and any trade, vocation, business or profession engaged in by the person.

The Bill seeks to extend the requirement of disclosure to a proprietary company in which the member or a member of the member's family is a shareholder, and to extend it also to a trustee of a trust other than a testamentary trust of which the member or a member of the member's family is a beneficiary. This means that, even if the spouse of the member is a minority shareholder in a proprietary company, the member is required to disclose the income source of the company.

What is curious about that is that, even if there is just one share out of 100 held by the spouse or the member and there is no potential to control the operation of the company, the interest must be declared in the register,

even though it may not be possible to obtain all the information relevant to the question being asked under the legislation.

It seems to me that, if we are to persist with the disclosure of interests of proprietary companies, we must surely relate that to a proprietary company in which the member or the spouse or a member of the member's family has a controlling interest.

At least, with the element of control, there is an ability to obtain information, whereas a minority shareholder under the Corporations Law has limited access to information of a proprietary company or, for that matter, a public company. In respect of a trust, if, for example, a child of the member, where the child is under 18 years of age, is a beneficiary of a trust over which the member has no control, under the Bill the member is required to disclose particulars of an income source of the trust. Remember that it involves not only the disclosure of a contract of service or any paid office but also any trade, vocation, business or profession engaged in by the person.

So, 'business' has very wide connotations, and it is quite likely that all the business of the company or the trust will not be within the knowledge of the member and will not be able to be obtained by the member. In respect of a trust I make a passing reference to the fact that, whilst under the principal Act it was not required of members who were trustees of testamentary trusts that they disclose information about the trust, it appears that this Bill now requires disclosure of that information. It does not matter whether the testamentary trust is one arising out of the death of a relative or of a stranger or, in the case of some, of a client.

It seems to me that one ought to examine carefully whether what are in fact private affairs of a testamentary trust ought to be disclosable to the public only because one of the trustees may be a member of Parliament. I think that any member of the Parliament is always at risk of being named, even without that member's knowledge, as a trustee of a deceased estate. Those of us who practise in the law will have, perhaps, hundreds of former clients who have named us as trustees. We may have forgotten about them, but all chickens come home to roost eventually and it may be that, merely by virtue of the death of an ordinary citizen naming a member as trustee, the business of that trust will therefore be disclosable.

I ask the Attorney-General to give consideration to that issue, because I think there is that balance between the need to disclose, on the one hand, and the need to maintain privacy, on the other. Under the principal Act presently that privacy is respected. I will be seeking in relation to the amendment to section 4(2)(a) to limit the information to the income source of financial benefits where the member or a member of his or her family has a controlling interest in the company or trust.

Section 4(2)(d) of the principal Act requires particulars of any gift of or above the amount or value of $500 received by the member or a member of his or her family to be disclosed, unless that gift was from a person other than a person related by blood or marriage to the member. Any gift now made to the member or a person related to the member is disclosable, but I should point out that that now extends to a proprietary company in which a member or a member of the member's family is a shareholder, or a trust of which the member or a member of the member's family is a beneficiary.

I want to make two points about that: one about that extension of the definition and the other about the definition of 'gift'. The first is that I think it is unreasonable to require a member to obtain information about gifts in those circumstances identified in the amending legislation from a company in which that member may not have a controlling interest or any interest or a trust. It may be that because there is not a controlling interest or the capacity to control, the company or trust says it is not prepared to disclose information.

The member is in breach if the information is not disclosed, even though she or he may have used best endeavours to obtain that information. Even if the member does have a controlling interest, it might not be possible to obtain the information because if the company carries on a business there may be, in the course of trading, gifts made or benefits conferred which maybe are not commercial but, nevertheless, are part of the trade-offs that sales representatives might offer to a company in return for trying a particular product.

I do not believe it is reasonable to require, first of all, the member, particularly without a controlling interest, or even with a controlling interest, to be able to identify all of those sorts of gifts where they do not impinge upon the responsibilities of the member. It may be that there is a manager of the business who has the day to day responsibility, and any member who is in that position—being a shareholder—quite obviously will not have time to conduct the day to day business of the company.

Of course, that means that there is a potential for a member to be inadvertently in breach of the Act and then to face the very harsh penalties which may be imposed under this legislation. To do so would be detrimental to that person publicly. It will mean that the base motives will be imputed rather than the inadvertence which he or she professes.

The other arm of that problem relates to the definition of 'gift'. For the first time there is to be such a definition, as follows:

> It includes any transfer of value, however effected, that is not made for adequate consideration or in the course of an ordinary commercial transaction but does not include a testamentary disposition.

It is a transfer of value. That does not mean that property has to be transferred. It can, for example, be a lottery ticket, I would suggest. If one buys a lottery ticket and wins a prize, one must disclose it. One does not have to do so at the moment, because that is not a gift, but under the definition I would suggest it is. It is a transfer of value. It is not made for adequate consideration and it is not in the course of an ordinary commercial transaction.

What does 'adequate consideration mean'? What does 'ordinary commercial transaction' mean? If it is a commercial transaction, what distinguishes one commercial transaction from another to make one ordinary and one not? The transfer of value means, I would suggest, anything which is a benefit. Let me give just a few examples.

If a member has a friend with a holiday shack and the member is offered the use of that holiday shack for free for a couple of weeks, it is quite likely that that will exceed $500 in value. Under the definition of 'gift' that will have to be disclosed. It may be that a friend has made this offer and that it has no relationship to a member's duties other than that the member might be worn out as a result of ministerial duties and the friend has taken sympathy upon him or her and has made the shack available.

It may be that a friend (not a member) of the Hon. Peter Dunn who flies an aeroplane in the north is going to an Aboriginal community and says to me—or even to the Hon. Peter Dunn—'I know you would like to have a look at this area, come along for the ride.' It may well be that that ride is worth more than $500, and it would have to be disclosed. A farmer might borrow a neighbour's tractor or header, and the value of that might be more than $500. As we know, all farmers work together and support each other, but the very fact that there has been this loan for no reward or consideration means that it would have to be disclosed as a gift under the definition of 'gift'.

The Hon. Anne Levy: What's the matter with that?

The Hon. K.T. GRIFFIN: It is unrelated to the member's political responsibilities. In relation to the use of a friend's shack, a ride in a private aeroplane, or some other benefit made available by a very close friend, not a blood relative, the Minister will have to remember to keep a record so that they can be disclosed at the end of the return period. I suggest that that is an unreasonable imposition, because it is complicated and also because it is unrelated to whether or not there is a conflict of interest.

Section 4(2)(e) requires the disclosure of details of any real property in respect of which the member or a member of his or her family has had the use. The Bill proposes to extend that to any property, real or personal, and also not only to the member and the member's family but to a company in which the member has shares or a trust of which the member or a member of the member's family is a beneficiary, and that includes, for the purpose of the definition, trustee. If it is extended to personal property of which the member has had use during the whole or a substantial part of the return period, there is a question as to what is a substantial part of the return period. Does that mean for more than six months of the return period, for one month or for two months? There is no indication as to what the word 'substantial' means. So, members will again have to keep note of each occasion where they had the use of any property.

I had a friend who went to Canberra, and that friend had a number of paintings. Because he was moving to rented accommodation, he wanted to leave them in safe keeping, so quite prudently he left them with me. I had the use of those paintings on display in my home for a year or so merely to help out my friend, and those paintings were worth much more than $500. I would have to disclose that. I must ask whether that is a reasonable extension of the legislation.

The Hon. Anne Levy: They weren't gifts.

The Hon. K.T. GRIFFIN: No, but I am now talking about having the use of property.

The Hon. Anne Levy: What's the matter with declaring it?

The Hon. K.T. GRIFFIN: What is the point of declaring it? I am trying to illustrate that I do not see any point. If the Minister has some reason why this should be disclosed that has escaped me, let her put that on the record, but I am saying that it will require amendment. The point I made earlier when I was talking about the broad issue—and the Minister was busily reading something else—is that it only becomes obvious when everyone has scoured through the register on each occasion when there is a Bill before the Parliament or a question to determine whether or not it is relevant, but the use of paintings owned by a friend is not going to influence a member's vote on public legislation. I think we have to have a good reason for enacting this wide legislation before we go helter skelter into it.

The Hon. Anne Levy: It would be very relevant if you became Minister for the Arts.

The Hon. K.T. GRIFFIN: Maybe it would, but that is a different issue. As a Minister you are required to disclose your potential conflicts of interest to the Premier. You do not have to, but if you do not you are stupid and if you do, it is there. You cannot tell me that having in your home $2 000 worth of your friend's paintings while you are looking after them is in any way going to be relevant to the way in which you exercise your discretion as a Minister. It is not.

The Hon. Anne Levy: It might be if you are handing out grants. It could be taken as bribery in order to get a grant. I am not saying it would be, but it could be construed in that way.

The Hon. K.T. GRIFFIN: If that occurred, the Opposition would find that out quickly enough without having to worry about scouring registers of interests. I want to go off on something of a tangent for a moment.

The Hon. Anne Levy: How would you know what I have got in my home?

The Hon. K.T. GRIFFIN: I am not asking you what you have in your home and I do not care.

The Hon. Anne Levy: But you said that you would find out.

The Hon. K.T. GRIFFIN: If you conferred patronage improperly, that would be found out eventually. Look at what happened in Queensland and Western Australia. Let me not be distracted. I want to make one other observation in relation to the extension of the definition of 'member'. If the definition is to be extended to a proprietary company in which the member or a member of the member's family is a shareholder, because that includes minority interests—it may even be one share out of 100, 1 000 or 10 000—why not seriously consider other areas of disclosure, for example, where a member is a member of a trade union or of a charitable organisation.

The Hon. Anne Levy: They are covered now.

The Hon. K.T. GRIFFIN: The Minister does not understand the point I am making. The point I am making is that, although you do not have to disclose your membership, you have to disclose any offices which you hold in organisations. Obviously the Minister has not looked at this. What this Bill requires a member to do is to disclose, not just the shareholding, but all of the interests of a company in which the member has a share,

all those interests which, if they were held by the member, would have to be disclosed. So, you are taking it one step further from the member, even if the member does not have control of the company. What I am saying is, 'All right, extend that to membership. Not office holding but membership in an organisation whether it be a trade union or any other organisation, charitable or otherwise.' There is a similarity between the two situations—both minority interests, no capacity to control. Why should the member have to be required to disclose one but not the other? It may be that as we progress with this we will be persuaded that we should extend rather than to limit the interest which is to be disclosed.

The Hon. Anne Levy: Why would you have to disclose membership of any political organisation?

The Hon. K.T. GRIFFIN: You do not have to disclose membership.

The Hon. Anne Levy: Of political organisations?

The Hon. K.T. GRIFFIN: You are admitting that the trade unions are political and you have—

The Hon. Anne Levy: I disclosed Amnesty, which is political. I disclose all sorts of organisations which are political with a small 'p'.

The Hon. K.T. GRIFFIN: It is a question of interpretation; that will be the continuing problem. As the net gets wider, the obligations upon members will be wider, so there will be the potential for inadvertent breach of the Act. That is the concern: as you broaden the net—I am not sure for what purpose—the greater is the prospect of inadvertent contravention. There are other areas in the amendments to section 4, that seek to require the disclosure of particular interests of proprietary companies, and in each instance the same issue arises and that is the question of control. If there is no capacity to control and no effective control of either a trust or a company, one has to question why should the obligation be placed on the member to disclose interest of bodies over which he or she has no control. Certainly disclosure of the shareholding is appropriate but not, I would suggest, the other areas which I have explored at some length.

Obviously the same will apply to paragraphs (c), (d), (e) and (1) of section 4(3) where minority interests, which do not have the capacity to control, do not give the member the sort of access to information which is required to be disclosed by this legislation. Then there is a requirement for members to disclose not only their indebtedness but the names of those who have borrowed money from them and the names of companies with which they might have a deposit in excess of $5 000. There is no explanation as to how that is likely to create situations of conflict and one does have to express reservation about that provision.

The only other point I want to make at this stage is that there is reference to figures in the principal Act of $500 that was set in 1983. There is another amount of $5 000 relating to indebtedness that has been there since 1983. Quite obviously money value has depreciated dramatically. I have not had an opportunity to do the CPI calculations but what I would suggest is that the Council ought to consider increasing the figure to some amount which is comparable in value to the $500 of 1983. It may be in fact $1 000.

The Bill does have some very wide-ranging ramifications, most of which I have referred to. We will be allowing the Bill to pass the second reading and we will be raising a number of issues in Committee. For the moment, in the light of my earlier statements, I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

STATUTES AMENDMENT (CHIEF INSPECTOR) BILL

Adjourned debate on second reading.

(Continued from 26 November. Page 1109.)

The Hon. J.F. STEFANI: I will be brief. The Liberal Opposition supports this legislation, which seeks to confer the ultimate authority and responsibility to the Director of the Department of Labour, thus replacing the existing reference to the Chief Inspector in the various Acts dealing with occupational health and safety. The Bill also confers power to the Director to enable the delegation of specific responsibilities to appropriate officers within the Department of Labour. The changes to the current legislation reflect and recognise that a Director or Chief Executive Officer is charged with the administrative control of a particular department. Further, the legislation seeks to amend the membership of the Mining Occupational Health and Safety Committee following the transfer of regulation of occupational health and safety in the mining and petroleum industries from the Department of Mines and Energy to the Department of Labour. The Liberal Opposition supports the Bill.

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

ADJOURNMENT

At 9.30 pm the Council adjourned until Thursday 11 February at 2.15 pm.