LEGISLATIVE COUNCIL

Tuesday 9 March 1993

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

ASSENT TO BILLS

Her Excellency the Governor, by message, intimated her assent to the following Bills:

Mining (Precious Stones Field Ballots) Amendment,

Motor Vehicles (Wrecked or Written Off Vehicles) Amendment,

Statutes Amendment (Motor Vehicles and Wrongs).

PAPERS TABLED

The following papers were laid on the table:

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

Industrial Relations Advisory Council—Report, 1992.

Financial Institutions Duty Act 1983—Regulations—Credit Unions—Non-application.

Industrial Relations (SA) Act 1972—Proceedings Rules 1972.

By the Minister for the Arts and Cultural Heritage (Hon. Anne Levy)—

Valuation of Land Act 1971—Regulations.

Corporation of the City of Happy Valley—By-laws—

No. 5—Garbage.

No. 10—Repeal of by-laws

Corporation By-laws—City of Port Pirie—

No. 1—Permits and penalties.

No. 2—taxis.

STATE BANK

The Hon. C.J. SUMNER (Attorney-General): I bring up the second report of the Royal Commission into the State Bank of South Australia and move that it be authorised to be published.

Motion carried.

The Hon. C.J. SUMNER: I seek leave to make a ministerial statement on the subject of the State bank.

Leave granted.

The Hon. C.J. SUMNER: The following is a ministerial statement given by the Hon. Lynn Arnold, MP, Premier of South Australia, in another place today, as follows:

Mr Speaker, this second report of the Royal Commission into the State Bank of South Australia is a major step in the process of providing a detailed analysis of the circumstances surrounding the financial problems of the State Bank. This report makes it clear that the bank's former board, its former Chief Executive Officer, Mr Tim Marcus Clark, and the former management overwhelmingly bear the responsibility for the bank's losses. This report is a condemnation of the actions of Mr Clark, other senior officers of the bank, and the bank's former board. It details failings by management and the board that were wide-ranging, ongoing and inexcusable. It shows that Mr Clark recklessly pursued a course that led to the bank's downfall, and that the board acquiesced in that action.

Mr Speaker, when I tabled the first report of the Royal Commission on November 17 last year I made it clear that the Government accepted its share of the responsibility for the problems experienced by the bank. I acknowledged that there had been an unsatisfactory level of communication and cooperation between the bank and the various arms of Government, within Government and between the Reserve Bank of Australia and the Government.

In so far as the Commissioner's first report was critical of the relationship between the Government and the bank, the proper conventions of Government have been met and discharged by the resignation of the former Premier and Treasurer as the responsible Minister. The Government does not resile from an acceptance of its role in the bank's problems, notwithstanding the fact that the Commissioner acknowledges that the Government was misled by the bank about its true financial position.

However, this report makes it clear that those failings of the Government were secondary to the massive failings of the people entrusted with, and well remunerated for, direct responsibility for the bank's operations. And I repeat that the Royal Commissioner has identified no failing that can be attributed to the whole of Government, and no corruption or impropriety by the Government or its employees. Mr Speaker, this report contains the Royal Commission's findings under its second and third terms of reference, dealing with the appropriate relationship between the bank and the Government, and the role and performance of the former bank board. There should be no doubt about the task with which the former board of the bank was charged. The State Bank of South Australia Act 1983 requires the board to administer the bank in accordance with accepted principles of financial management on behalf of the people of South Australia and for their benefit. With respect to the board, the Royal Commissioner concludes that:

> ... by its passive and acquiescent approach from the earliest days of the bank's history, the board failed to exert the influence and provide the guidance which a board properly in control of the destiny of the bank ought to have provided.

He adds that:

> ... the conclusion is irresistible that there was a significant failure in the proper discharge of its (the board's) statutory responsibility to 'govern' the affairs of the bank.

The Commissioner has found that the board, among other failings:

- Exhibited a "significant lack of due diligence" in its control and management of the bank's affairs.
- Abdicated its responsibility to assess proposals by the management of the bank.
- Had reason in the material provided to it to recognise that the bank's lending processes were 'superficial and deficient.'
- Meekly capitulated to the management of the bank, in particular Mr Clark.
- Showed little or no interest in the basic planning of the bank.
- Displayed an incautious attitude to lending approvals.

The Commissioner says it is impossible to reconcile some of the board decisions with a conscientious and industrious board applying itself diligently to its tasks. Despite some criticism of the selection and composition of the board, he concludes that:

It did not require a greater level of skill or experience than the board possessed for the board to discern for itself long before mid-1989 and certainly by 1987, and despite the contrary assertions of management, that there were grave deficiencies in the capacity of management to plan and manage the operations of the bank; (and that) the bank's lending policies and asset quality must be unsatisfactory.

He further says that:

... the board, with such commercial attributes as it possessed, had ample reason in the material provided to it to recognise that the (bank's) lending processes were both superficial and deficient.

Mr Speaker, I turn now to Mr Clark, who the Commissioner concludes 'failed in the discharge of some of his important responsibilities as Chief Executive Officer'. The Commissioner characterises Mr Clark, while persuasive, as arrogant, not sufficiently astute and as displaying blind and unrealistic confidence and optimism. He says Mr Clark encouraged a culture in the early days of the bank that lending should be undertaken without appropriate protective procedures and policies. He says that:

The failure or inability of Mr Clark to put in place, through the board, appropriate lending policies and procedures casts a very heavy responsibility upon him.

He also says that:

Mr Clark's responsibility to properly manage the affairs of the bank with due regard to section 15 of the Act was a critical responsibility which was not adequately discharged.

The Commissioner says that management of the bank under the direction and control of Mr Clark was largely responsible for the bank's inadequate lending policies, inadequate loan management, and unrewarding and ill-managed territorial expansion. He rejects Mr Clark's attempts before the Royal Commission to justify his action. He says that:

It ill becomes Mr Clark to criticise the board of which he was himself a member as inept, and to highlight its failings and shortcomings, nor can he be permitted to concede by inference that he should have been more rigorously supervised and controlled without conceding that it was his management strategy that sowed and nurtured the seeds of disaster. At the end of the day, it is difficult to escape the conclusion that it suited him to have the passive and compliant board which he publicly extolled and which he was so anxious to retain.

This report further confirms that the former Treasurer was correct in saying he felt 'let down' by the people in whom he placed trust and confidence. In examining the appropriate relationship between the bank and the Government, the Commissioner acknowledges that the Government and the new bank board have already put in place appropriate new arrangements. The Commissioner notes with approval that:

Long before the publication of the first report of the Commission, and without the aid of Parliament and legislative change, the parties have themselves devised and implemented arrangements which go a long way towards redressing the defects in the previous relationship.

He specifically refers to the bank's revised mission statement and a document addressing arrangements between the bank, Treasury and the Reserve Bank of Australia for prudential surveillance and monitoring of the performance of the bank. The Commissioner endorses the arrangements 'without reservation.' He has, however, recommended 24 specific amendments to the State Bank Act. These recommendations assume continued Government ownership of the bank. As honourable members would be aware, I recently announced that, on the basis of an agreement I had reached with the Prime Minister and conditional upon receiving a fair market price, I would recommend to Cabinet sale of the bank.

Sale of the bank would place it into the commercial and regulatory environment of the private banking industry and outside the specific relationship between the bank and the Government as the single shareholder. The Commissioner's recommendations for legislative change may therefore be overtaken by the sale process. Despite this, the Government believes it is appropriate to respond to these recommendations, given that the sale process is likely to be lengthy. The Government agrees in principle with all of the Commissioner's recommendations. Indeed, many have been accommodated by the changes the Government already has introduced.

It will be noted that the Commissioner has made no recommendation for a Ministerial power of direction over the bank. He says he is unable to conclude that past experience and losses alone call for the control involved in a power of direction, and that the existing arrangements between the bank and the Government suggest that such control is not necessary. The Government differs from this view. It stands by its belief that if a Minister is ultimately to be accountable there must be a power of direction. The Commissioner acknowledges that the process of the 'birth of the bank' focused on a strong desire for the bank to operate as an independent commercial entity while maintaining a meaningful role as a State Bank. The dual, and in some respects competing, objectives were, to use the Commissioner's term, 'approved' by the Opposition.

That desire for independence was reflected in the principles embodied in the legislative framework, including the principle that the bank should operate in conditions as comparable as practicable with those in the private sector. It is now apparent that the proper balance was not struck between commercial independence and the obligation upon the bank, by virtue of its public ownership.

The legislation was tragically skewed in favour of commercial independence at the expense of accountability. The Commissioner points to the current high level of communication and cooperation between the Government and the bank as evidence of the fact that Government can effectively monitor, supervise and, when necessary, guide the bank's affairs without legislative change. The Government does not share that charitable view. It must be remembered that the communication and cooperation we currently enjoy was born out of a failure of grave proportions and is underpinned by an indemnity which gives the Treasurer powers of intervention not previously available.

The Government believes that, if the bank were to remain in public ownership, the imbalance in the legislation would need to be corrected. The risks attendant in not doing so are too great to come to any other conclusion. The Government believes there could be nothing untoward in a power to direct the bank because the State Bank Act specifically prevents influence which may lead to a decision being made other than on a proper commercial basis.

Mr Speaker, I said at the outset that this report is a major step in the process of providing this State a detailed analysis of the reasons for the bank's financial problems.

I believe it is a vitally important document, showing how and why the bank experienced the difficulties that it did. Combined with the action the Government has already taken to reform the structure and actions of the bank, it brings this State much closer to confidently being able to put the saga of the State Bank to rest. The investigation by the Auditor-General and the royal commission's report under its fourth term of reference will provide the final chapters in this matter.

The Auditor-General's investigation will examine the management practices of the bank, provide a detailed analysis of the transactions which led to the bank's losses, and disclose whether there are matters involving a conflict of interest, unlawful, corrupt or improper activity and whether the external audits of the bank were appropriate and adequate. It is in the report of the Auditor-General where any evidence of civil or criminal culpability will be found. The royal commission will consider this under its fourth and final term of reference.

Despite the regrettable delays in bringing the Auditor-General's inquiry to a conclusion, the Government is duty bound to ensure that the report is completed and further considered under the royal commission's fourth term of reference. I give a firm commitment that if, at that time, criminal charges or civil proceedings are warranted against any individual or individuals, the Government will not hesitate to act accordingly.

QUESTION TIME

STATE BANK

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

Leave granted.

The Hon. K.T. GRIFFIN: One of the defences that the Government has sought to use in relation to the State Bank debacle—and we have seen it again today in the ministerial statement that the Attorney-General presented—is that the board and the bank management caused the problem. The Government has sought to evade its responsibility.

While the second report makes it clear that the Government and the board must accept some responsibility for the debacle, it also makes it clear that the buck must stop with the Government, which is ultimately accountable.

My question to the Attorney-General is as follows: in consequence of the second report and notwithstanding the distortion that he demonstrated in the ministerial statement, does he accept the judgment of the royal commission and, as the Chief Executive Officer, most of the previous board and many senior managers have gone, will the Government now also resign as the only available demonstration that it has accepted responsibility?

The Hon. C.J. SUMNER: That is a pretty amazing try.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I would have thought that if he was going to make that sort of call, if it had any justification, it would have been on the basis of the first report, but certainly it has none on the basis of the second report which has now been tabled and which puts the—

The Hon. K.T. Griffin: It confirms the recommendations.

The Hon. C.J. SUMNER: I would be very surprised if he didn't confirm what he said in the first report. I repeat what the Premier said in his ministerial statement, namely, that the Government accepted its share of the responsibility for the problems experienced by the bank. What could be clearer than that? That is the question that the Hon. Mr Griffin asked and that is the answer already given in the ministerial statement.

I acknowledge that there has been an unsatisfactory level of communication and cooperation between the bank, etc. In so far as the Commissioner's first report was critical, the proper conventions of government have been met and discharged by the resignation of the former Premier and Treasurer as the responsible Minister.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: Largely. In so far as there is responsibility attributable to Government, it is obvious that the Treasurer of the day must take the greater part of that responsibility in general along with officers in Treasury. He has accepted that responsibility and resigned. That is the situation. We had this debate when the first report was tabled. There is no convention to suggest that when a report such as this comes down the whole of the Government should immediately pack up shop and go to an election.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: Well, I don't know where that has occurred, and you were unable in the last debate or in the intervening period, and I suspect that you will not be able to do so today and tomorrow, to provide any examples of a whole Government having resigned. The fact of the matter is that as far as political accountability is concerned, which was acknowledged by the Government on the last occasion and is reaffirmed in the Premier's ministerial statement, the conventions relating to bringing home that responsibility have been met by the resignation of the former Premier and Treasurer. What this report clearly does—and I should have thought that any objective reading of it would make that obvious—is point out that the responsibility for the policies that were developed by the bank in its early years and for going on with the growth pattern upon which the bank embarked rests with management, and the board has a heavy responsibility for not having overseen the Managing Director, Mr Marcus Clark, and the growth of the bank in a more diligent way.

That is quite clearly the conclusion that comes out of the second report, and of course that has to be read with the first report. But the first report dealt with the political responsibility. That has been accepted by the former Premier and Treasurer. He has resigned. Now is the time, and quite rightly, for those who are in charge of the management of the bank and those who were on the board of the bank and who had responsibility as directors to face the situation that a substantial responsibility for the bank's failings rests with them.

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Attorney-General a question about the State Bank.

Leave granted.

Members interjecting:

The Hon. R.I. LUCAS: There are so many disasters from which to choose to ask questions.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The Royal Commissioner has found that:

It is still fair to say that the Act itself was not a contributing cause or potent factor in the fate that befell the bank. The unsatisfactory relationship which existed between the Government and the bank and their respective failure adequately to address the clear warning signs were substantially due to the failure of both parties to understand and use the existing provisions of the Act.

The Commissioner is here referring to the Government and the bank. My question to the Attorney-General is: will he now acknowledge that the Government's attempts to lay on the State Bank Act the failure of the Government to intervene in order to prevent the bank debacle have been grossly misplaced and that the State Bank Act is not at fault?

The Hon. C.J. SUMNER: No, I do not concede that. I do not think there is any doubt—

The Hon. K. T. Griffin interjecting:

The Hon. C.J. SUMNER: Well, in so far as the Royal Commissioner says that there is no need for a power of direction of the State Bank by the Government or the Minister, I disagree with him. I really think—

The Hon. R.I. Lucas: You think he is wrong, do you?

The Hon. C.J. SUMNER: Yes, I think on that point he is wrong. I am quite happy to defend that position in the Parliament or in the public arena if I am required to. I do not mind saying, either, that I have had some experience in public administration over the last 10 years and, frankly, I believe—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: —that the conclusion that the commissioner comes to, that in these circumstances you can rely on common sense, is a conclusion which really is not supported by the evidence, because I think what this report indicates and what the whole saga of the State Bank indicates is that the one thing you cannot rely on to resolve the problems when you get into circumstances like this is common sense.

The Hon. R.I. Lucas: You are saying he does not have common sense?

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I did not say anything like that, if the honourable member had been listening. What I do think is that the commissioner's view that more action could have been taken by the former Treasurer at an earlier stage to deal with issues in the bank is correct. I am not resiling from that conclusion. I think it is fairly clear that by mid-1989 more could have been done by the former Treasurer in trying to get on top of the problems that had, I think, and certainly on the report, emerged by that time.

The Hon. R.I. Lucas: Arnold was told in '88.

The PRESIDENT: Order!

The Hon. C.J. SUMNER: However, I also have no doubt that had the lines of accountability been more clearly spelt out in the legislation then the capacity for the former Treasurer to intervene would have been enhanced. The fact of the matter is that there were—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: -ambiguities in the Act in the lines of accountability that were established by the Act and I do not think that can be denied. It is for that reason that the Government asserts, as it has set out in its Public Corporations Bill introduced into this Council, that for public trading enterprises the lines of accountability should be clear and that in the final analysis there should be the capacity for the Government through the Minister to direct the board of that public trading enterprise.

On that point, it is obvious that we disagree with the findings of the Royal Commissioner and all I can return to is that he felt that there was no change needed to the Act because these matters can be handled by common sense. I just repeat that the one thing that was not obvious, at least in the last couple of years of dealing with this matter, is the application of common sense. One only has to know about the relationship between a Government and boards of statutory authorities to know that some of them get very precious about their independence and it is clear from the two reports that that was particularly so in the case of this State Bank. They were very wary about seeing their commercial independence compromised in any way and the fact of the matter is that if you have an ambiguous Act and you have that attitude on the part of the board the capacity to intervene is made much more difficult.

I am not saying that that means that there was not the capacity to intervene in some respects at an earlier time than the Government did, or the Treasurer did; certainly something should have happened before that, as is obvious from the report. I also believe, and on this point disagree with the commissioner, that it is essential' if we are going to have public trading enterprises that the lines of accountability are clearly spelt out so that the board and the people who are appointed to those boards know right from the start what the ground rules are. I think that the ground rules that we have outlined in the Public Corporations Bill are essential for delineating these responsibilities and lines of accountability for the future.

RAPE CRISIS CENTRE

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister for the Status of Women a question about the Rape Crisis Centre.

Leave granted.

The Hon. DIANA LAIDLAW: At the International Women's Day rally outside Parliament House last Saturday, Jenny, a victim of sexual assault, made an impassioned plea to the Government not to close the Adelaide Rape Crisis Centre. The future of the centre has been in limbo since the release of a report by Moira Carmody in 1991 into the delivery of rape services to adults. In more recent months this uncertainty has been

compounded following the release of a further review—this time by the South Australian Health Commission—proposing nine options for the future of the centre.

Yesterday I learnt that the uncertain future of the centre prompted two staff members to resign last month and that the coordinator, Helen Smyth, has given notice. The centre has been told by the Health Commission that it cannot readvertise to fill these positions, and therefore client services are suffering at a time when the centre is attracting an increased demand for its services. I recognise that the Government is seeking to find a means to establish a 24-hour service for adult victims of sexual assault and to improve the delivery of services in the non-metropolitan area. I ask the Minister:

1. In respect of the realisation of these important initiatives, in terms of the non-metropolitan area and the 24-hour service, does she agree with the Health Commission's favoured option that these initiatives must come at a high cost—the closure of the Adelaide Rape Crisis Centre?

2. When will a decision be made about the fate of the centre, and in the meantime why has the centre been told it cannot fill current or imminent staff vacancies, thereby denying the victims of sexual assault access to services provided by the centre?

The Hon. ANNE LEVY: I have had discussions with the Minister of Health and officers of the ministry regarding the Rape Crisis Centre. As the honourable member indicates there have been reviews which are seeking to ensure that there is a 24-hour service and that this service is available where the victims are, and that includes outer metropolitan areas and regional areas of the State.

As indicated by the honourable member, suggestions have been put forward as to how the services for rape victims can best be provided to meet these objectives. There is no question at all of reducing services for victims of this appalling crime. The aim of the reviews and of the discussions that are occurring is to provide the best possible service for rape victims throughout the State and on a 24 hour basis. I am sure that the honourable member, as with everyone in this Chamber, would applaud that aim and hope that it can be achieved as soon as possible.

I do not know when decisions will finally be made: it is a matter for the Minister of Health, Family and Community Services and his officers in the Health Commission. Certainly, options have been prepared, as the honourable member noted. The latest paper indicated nine possible options. I am certainly not aware that either the Health Commission or the Minister of Health, Family and Community Services has at this stage decided on one of those nine options. There may well be one or two that have been removed from consideration, but I am certainly not aware of final decisions having been made.

I repeat that there is no question of removing services for rape victims. The aim is to provide the best possible services both for those who are recent victims and for those still suffering trauma from rapes that occurred a number of years ago. The aim is to provide the best possible service throughout the State on a 24 hour a day basis, and I am sure that everyone would endorse that aim. I understand that no final decisions as to the method of achieving that aim have yet been made.

The Hon. DIANA LAIDLAW: Mr President, I ask a supplementary question. Did the Minister in her discussions with the Minister of Health, Family and Community Services argue for the retention of the Rape Crisis Centre in its current form as one means of providing the best possible services for victims of sexual assault?

The Hon. ANNE LEVY: I discussed with the Minister of Health, Family and Community Services the nine options that are set out in the paper, and we discussed which of the nine might best achieve the aim of providing services for victims of rape on a 24 hour a day basis throughout the whole of South Australia. That was the aim of our discussions and I am sure that that is what the Minister of Health, Family and Community Services is taking into consideration in his considerations on this matter.

STATE BANK

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Attorney-General a question about the State Bank.

Leave granted.

The Hon. I. GILFILLAN: Last Saturday week in an article in the *Advertiser* the Managing Director of the bank, Mr Johnson, indicated that the good bank is currently trading at what would be estimated at approximately $100 million trading profit, if one allows the $50 million for bad debt provision, and certainly as being on the profit side of its trading ledger. He was also quoted as saying that he believed that the bank required the continuation of the Government guarantee for its current customers and general public confidence to continue. In his second report the Royal Commissioner quite clearly says in several places that he believes practically all the changes required to overcome the deficiencies and the risks to which the State Bank was previously exposed have been attended to by present changes and, to add further security to that, he actually analyses the current Act and makes recommendations for certain changes to make even more certain in his opinion that problems similar to those we have experienced could not recur. In the 1983 Act that established the State Bank, the functions of the bank are as follows (section 15(1)):

> In its administration of the bank's affairs, the board shall act with a view to promoting—
>
> *(a)* the balanced development State's economy; and
>
> *(b)* the maximum advantage to the people of the State,
>
> and shall pay due regard to the importance both to the State's economy and to the people of the State of the availability of housing loans.

The Attorney's emphasis in the statement previously read was that the bank is heading for sale under the present Government—the Government has decided to sell the bank. I ask the Attorney:

1. Does the Government believe that the aims as expressed to the State Bank in 1983 are no longer required in South Australia? If he does so believe, does he agree with me that a State Bank with the functions

spelt out, working under proper legislative control, is required and would be an advantage to South Australia?

2. Does the Attorney believe the Government would reconsider its apparent decision to sell the bank if the Act were amended to give the Treasurer or relevant Minister power to direct the bank?

3. Is it really the case that the decision to sell the bank is the result of a massive bribe of $600 million made by the Prime Minister to South Australia only on the condition that the State Government be forced to sell the good part of the State Bank?

The Hon. C.J. SUMNER: My ministerial statement canvassed the Premier's view on the sale of the State Bank, which he says he will be recommending to Cabinet and to the Parliament. However, that is a statement of principle and obviously depends on getting the right price for the bank and getting the compensation package from the Commonwealth Government, which was promised by the current Prime Minister.

Obviously, both those criteria have to be met, and work is currently being done on this issue as to what price might be able to be obtained for the bank by various methods of sale. So, the Premier has indicated that in principle he supports the sale of the bank subject to a realistic price and the compensation package being put together and coming forward. Of course, if the Labor Government is not re-elected on Saturday then the compensation package offered by the Prime Minister will not be available, although I understand an alternative package might be available—somewhat ill-defined—from the Opposition. However, the question of sale depends on those two factors and they are currently being worked on.

What the honourable member has to realise is that as a result of the problems of the bank—and the indemnity that had to be given by the State Government—the State debt has increased significantly. In fact, it is a matter of, I suppose one could say, considerable concern and anger to me when I look at the figures, which starkly show that our State debt prior to this State Bank disaster, was, in terms of comparison with other Australian States, relatively low. I think it was the second lowest net *per capita* budget-supported State debt in Australia after the decade of the Bannon Government.

The Hon. Diana Laidlaw: Hardly relevant.

The Hon. C.J. SUMNER: I agree. I am just saying that it is a matter that makes me extremely angry because, despite the protestations and complaints from members opposite, the debt situation in South Australia had been handled very well during a great part of the Bannon Government. However, the fact of the matter is, as I am sure the Hon. Mr Gilfillan will realise, our State debt has increased significantly and I think on those figures it is probably now the second highest *per capita* budget-supported State debt.

One of the strategies that the Government is working on is to try to reduce that debt to some extent. There are a lot of bright ideas around that emanate from financial experts throughout Australia and no doubt will emanate from a few of the self-styled financial experts in this Chamber. However, reducing the State debt is not an easy task.

What is being offered in this package that the Premier has accepted is the opportunity significantly to reduce that State debt. In doing that, of course, we also give away the income which the good bank currently provides to the State. However, the fact that that is given away has to be weighed up against reducing the debt, hopefully by something like $1 billion, and saving the interest on $1 billion so the income from the bank and the interest—

The Hon. Diana Laidlaw: You should have been Treasurer.

The Hon. C.J. SUMNER: Yes, I know. The Hon. Mr Davis certainly supports that. So, roughly that would balance out on the recurrent side of the budget. However, if that package can be put together, the advantage is that the debt would be reduced by that amount. As I said, it is not easy to reduce debt. There are a lot of bright ideas around to privatise various things, but it does not automatically mean that once one makes a decision to privatise or sell off that, first, one will be able to do it and, secondly, one will get the desired price, as we have seen with Sagasco. Of course, one always has to put up with the problem that if one sells something that is profitable and bringing an income to the State then in the sale one gives up that income as well.

The Hon. L.H. Davis: You also have the left wing.

The Hon. C.J. SUMNER: The left wing of what?

The Hon. L.H. Davis: The Labor Party.

The Hon. C.J. SUMNER: I do not understand that sort of talk, Mr President. I do not understand anything about factions, left wings or right wings or anything of that type so I will not comment on the honourable member's interjection on that point. That is a bridge that will have to be crossed when the time comes. However, I outlined the principles that the Premier has put in the public arena.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: One has to weigh up the situation. Obviously, in the light of history, one has to have some concerns about whether a State can in fact own a regional bank, make it profitable and manage it in a way that does not produce losses for the State. One would hope that one could do that permanently with good management and proper supervision by the board. But certainly that did not occur during the decade of our State Bank.

There is no doubt that there is more competition in the banking area at the present time. We have a fairly strong building society sector in South Australia that lends significantly for housing. The question of moneys available for housing is one of the factors that would have to be taken into account in any sale arrangement. It would have to be looked at in any sale arrangement.

In the final analysis, one has to weigh up whether you want significantly to reduce the debt, assuming that we can do that by this procedure (and that is what is being worked on at the moment) against whether or not there are advantages in keeping a State Bank. There might be advantages in keeping a State Bank, but there are certainly not advantages in keeping it if it produces the sorts of losses that the public of South Australia have had to sustain because of the collapse of the State Bank as it existed since 1984.

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Attorney-General, as

Leader of the Government in the Council, a question about the State Bank.

Leave granted.

The Hon. L.H. DAVIS: We have seen yet again today the Attorney-General pretending to deny the reality of the situation in relation to the State Bank. He advised the Legislative Council only a few minutes ago that the capacity of the Government or the Treasurer to intervene in the State Bank was made more difficult by legislation, yet on page 207 of the second report of the Royal Commission into the State Bank of South Australia, a report still warm in my hands, it states:

The first report sought to make clear that the former Treasurer's concept of the commercial independence of the bank and what that concept entailed in terms of a hands-off attitude by the Government is not enshrined in the Act. It was a concept driven by political and policy perceptions and not by legislative prescription.

The Attorney would be well aware that the Royal Commissioner, in talking about the Government, used 'the Government' in the broader sense to include not only the Government of the State of South Australia but each individual Minister of Government. So, I repeat the question from the people of South Australia that demands an answer: in the light of the second report of the Royal Commission into the State Bank, will the Attorney-General, as a senior member of the Government and as former Treasurer Bannon's closest confidant, admit that he and the Government, of which he was a member, must wear the ultimate responsibility for the State Bank debacle of $3.15 billion in losses, and will he no longer persist in his attempts to put the blame onto the shoulders of the State Bank directors or of the former Treasurer and Premier, Mr Bannon?

The Hon. C.J. SUMNER: The responsibility of the Government has been acknowledged, and I am surprised that the honourable member continues to pursue that line of argument. If members look back at the debate and the questions that occurred when the first report was tabled, they will see that the Government accepted responsibility for the problems in the bank, and that has been repeated today by the Premier. He acknowledges that there has been an unsatisfactory level of communication and cooperation between the bank and the various arms of Government, within Government, and between the Reserve Bank of Australia and the Government. That was a key finding in the first report of the royal commission.

He then goes on to say that in relation to the Royal Commissioner's critical comments in the first report and the Government's responsibility for what happened with the bank have been met in terms of the proper conventions of government by the resignation of the former Premier and Treasurer. Then he says, and I will requote it for the honourable member if he really wants me to:

The Government does not resile from an acceptance of its role in the bank's problems—

It could not be clearer. I really do not know what the argument is about so far as the honourable member is concerned—

...notwithstanding the fact that the Commissioner acknowledges that the Government was misled by the bank about its true financial position.

There it is in black and white. The Government does not resile from an acceptance of its role in the bank's problems. Of course, we could not. However, in terms of what the Government does about it—

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: I certainly was a bit player. In terms of the proper conventions following a report such as this, they have been met by the former Premier and Treasurer's resigning. He has done that. He has paid the ultimate political sacrifice for the problems that developed in the State Bank, and I would have thought that that was the usual and conventional course of action in these circumstances. I still do not know from members opposite where, in a situation like this, the whole Government has decided to pack up shop and accede to the Opposition's proposition that we have an election. I am sure that the honourable member, who is now smirking in his backbench seat (where he is likely to stay, whether or not the Liberal Party wins Government), would not seriously propose that, were he a member of a Government and there was a problem of this kind or any other kind that impacted on the administration of the State, he would walk across to the Governor and call an election. That just denies reality. It denies previous practice and, as I said, the suggestion is unrealistic.

What this Government is trying to do, in difficult circumstances, is to put in place procedures which will overcome the problems caused by the State Bank. The Premier intends in the next few weeks, once the Federal election result is clear and we know a bit more about what might be South Australia's fate in the future under an incoming Government of whatever persuasion, to make a full statement on economic development and budget issues. One of the matters that we have to deal with is the State debt. Also, we have to deal with the recurrent deficit in the State budget, and we have to look at the State Bank in that context. We have introduced a Public Corporations Bill to deal with the relationship between Government and public trading enterprises in the future. We are taking steps to put right what has happened in this State as a result of the State Bank.

The reality is that this second report places a substantial part of the blame for the State Bank situation on the former Managing Director, Mr Tim Marcus Clark, and the board members who were responsible for administering the affairs of the bank over this period.

I repeat what I said in the debate last year when the first report was tabled: the most fateful decision in fact taken in the State Bank disaster was the appointment of Mr Marcus Clark as Managing Director. No matter what the headhunters say about it, no matter what the interviewing committee that interviewed him and recommended his selection say, he was obviously the wrong person for the job. The report—

The Hon. Diana Laidlaw interjecting:

The Hon. C.J. SUMNER: You may be quite right.

Members interjecting:

The PRESIDENT: Order! The honourable Attorney-General.

The Hon. C.J. SUMNER: He was a very good showman, but the reality is that he was not much of a banker. One only has to read the first report, but particularly this report on this topic, to know that he

really did not know very much about banking. How he was selected in the first place is absolutely beyond me, and it is true that his appointment to manage the merger was seen to be a short-term appointment of three years, and he was reappointed.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I repeat that I think probably the single most significantly wrong decision in this saga was the selection of Mr Marcus Clark as the Managing Director. He was clearly inappropriate. He did not know a great deal about banking, as must be obvious to anyone who reads the report. He was a showman and a salesman and regrettably had little substance. However, he did manage to achieve a very high and favourable profile in the South Australian community and an extremely high salary, about which we could not do anything and which the board boosted in 1990, when they knew all about the problems. Well before the Government knew about the problems, this board—

Members interjecting:

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

The Hon. C.J. SUMNER: This weak, indecisive, vacillating board awarded him a bonus in 1990-awarded him a bonus. The only thing they weren't weak and indecisive and vacillating about was awarding themselves big fat salaries and directors fees and giving them—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: —to Mr Tim Marcus Clark, even in 1990, when at least they were aware of the problems of the State Bank, or some of the problems at least that the State Bank was facing.

FREEDOM OF INFORMATION

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General a question about a breach of the Freedom of Information Act.

Leave granted.

The Hon. M.J. ELLIOTT: I ask this question of the Attorney-General as I believe he is the Minister in charge of the administration of the Freedom of Information Act. There has been a breach of that Act by the Office of Planning and Urban Development.

On 29 January this year a member of the public made an FOI request for documents relating to the proposed sale and subdivision of Craigburn Farm. One of the documents requested was the Department of Road Transport report on the potential impact of such a development on the traffic flows in the Blackwood/Belair area. On 10 February this person received a reply from the Office of Planning and Urban Development denying access to the document.

The letter stated that it was deemed that the report was a restricted document in accordance with schedule 1, part 1(1)(e) and (f) and 2(1)(e) of the Freedom of Information Act. That section of the FOI Act relates to documents which are exempt under (1)(e) if they contain matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet or, under part (1)(f), if it was a briefing paper specifically prepared for the use of a Minister in relation to a matter submitted or proposed to be submitted, to Cabinet. The other reference relates to a section on the Executive Council.

What the letter did not do was quote more of the Freedom of Information Act which made quite clear under part 2 that a document is not an exempt document by virtue of this clause if it merely consists of factual or statistical material but does not disclose information concerning any deliberation or decision of Cabinet.

There has been some speculation about the DRT report's contents, but it is clearly a survey of traffic flows and the impact of development on the roads in the area. From my understanding of both the Act and the likely contents of the report, this reply from the Office of Planning and Urban Department is a flagrant breach of the FOI Act.

Concerned members of the public have questioned the motivation of this breach. Should the report show that the roads in the area are incapable of coping with the extra traffic which will be generated by any large housing development in the Craigburn site, it will provide extra fuel to the already blazing fire of public opposition to the carve-up of the farm.

On 2 February I also made an FOI request. I still have not had either a confirmation or denial of access to those documents. In the meantime, while I and members of the public have been trying to get information on what is happening with Craigburn Farm and the basis upon which decisions are being made, the Government has given interim effect to a supplementary development plan, and on the same day in which that interim effect took place a development application was lodged.

In fact, a series of other FOI requests in relation to Craigburn Farm were made by myself and others, none of which has been met, but as I said in the interim the Government have gone ahead, having denied that information to the public, and given interim effect on the same day that the development proposal came in. I ask the Attorney-General to investigate what is clearly a flagrant breach of the FOI Act for apparently political motives.

The Hon. C.J. SUMNER: First of all, I am not the Minister responsible for the Freedom of Information Act. That is a matter which falls upon my colleague the Hon. Ms Levy. However, can I say—

The Hon. M.J. Elliott: You were certainly involved in the drafting of the Act.

The Hon. C.J. SUMNER: And a very good Act it was, too. However, I can say that my colleague, the Minister of Transport Development, has told me that she has a short—

An honourable member interjecting:

The Hon. C.J. SUMNER: I am sorry; it was not her. It is Mr Rann. It was certainly not me, anyhow.

An honourable member interjecting:

The Hon. C.J. SUMNER: We find these things out eventually.

The Hon. R.I. Lucas: It is freedom of information, and no-one knows who's got it.

The Hon. C.J. SUMNER: It is with State Supply. I apologise to the Council. I overlooked the fact that the Hon. Ms. Levy is no longer the Minister for State

Supply. However, it is that Minister who is responsible for the FOI Act and to whom it is committed. However, I was getting on to say, before I was rudely interrupted—

An honourable member: Again.

The Hon. C.J. SUMNER: —again—that my colleague the Minister of Transport Development has just informally advised me that she has already signed a letter responding favourably to your FOI request on this topic.

The Hon. M.J. ELLIOTT: I have a supplementary question. I ask the Attorney to address my question which related to another breach where a person had already been denied access to that material. That person had clearly been refused quite a few weeks before interim effect was given to the supplementary development plan.

The Hon. Anne Levy: I rise on a point of order. A supplementary question cannot have an explanation: it is merely a question.

The PRESIDENT: The point of order is upheld.

The Hon. M.J. Elliott: In other words, you are ducking this issue like you have been all along. It has been a cover-up all along.

The Hon. C.J. SUMNER: That is a bit of an over-reaction.

Members interjecting:

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

The Hon. C.J. SUMNER: They are fairly ructious today, Mr President.

The Hon. R.I. Lucas: The poll results are down.

The Hon. C.J. SUMNER: The poll results looked good this morning in the *Advertiser*.

The Hon. R.I. Lucas: The Democrats.

The Hon. C.J. SUMNER: The Democrats. Oh, yes, I know—

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

The Hon. C.J. SUMNER: There are procedures established in the Act where, if a request is denied, one can go to the Ombudsman or the District Court and have the matter contested. I do not know the circumstances of the document to which the honourable member is referring, but he will recall, having taken an intense interest in the FOI Act, that where requests are denied by Government there is a procedure established to challenge that. If the honourable member thinks that the Government has wrongly denied access to a document under that Act, there are appropriate legal proceedings that can be taken. I will refer the question to my colleague in another place—

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: I will refer the question if you want me to; if you do not want me to I will not. You do? Well, I will refer it to my colleague Mr Rann and ask him to investigate the first point that you make. On the other point, I understand that the Minister of Transport Development has responded to your request.

BANKCARD

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Minister of Consumer Affairs a question about bankcards.

Leave granted.

The Hon. J.C. IRWIN: I am not quite sure whether this is in the Minister's area. I have two bankcards which will not work through an automatic teller device. I am talking about petrol stations, not the bank device. It is not that there is nothing in there; it is that they will not record anything at all. They have not worked since about the first week that I have owned those cards. From talking to others, I do not believe it is an isolated experience.

The Hon. Diana Laidlaw: Have you got money in your account?

The Hon. J.C. IRWIN: It is nothing to do with that; it just will not go through the system. I am advised that at the end of March this year businesses accepting bankcards will not be able manually to put the bankcard numbers into the teller machines. At the moment, if they pass the card through the automatic part and it does not work, they can put in the numbers, but I am told that from the end of March they will not be able to do that. They will have to use the manual printing device, where they run the roller over the top, which is not only wasteful because of the amount of paper that it uses but time-consuming when the business is busy and they have to put everything down and rattle this through the manual process. While I can understand that the proposed measure has a safety element in it, that need is diminished somewhat if a person is manually putting in the numbers from the card and is able to compare the signatures. I do not necessarily accept that safety element as the main reason why this has to be changed at the end of March this year.

Will the Minister seek advice from the banks as to whether they intend to discontinue the practice of manually putting bankcard numbers into a teller machine after 31 March; and will the Minister seek an assurance from the banks that they will introduce a card which will work and not be so easily contaminated before they discard the present practice on 31 March?

The Hon. ANNE LEVY: This certainly seems to be a matter for Consumer Affairs. I will certainly be very happy to ask my officers to take up this question of bankcards with the banks. It would be of assistance if the honourable member could indicate which banks have issued the bankcards to which he referred and from which he is unable to get the use which has been promised by the banks issuing them. I do not know whether the honourable member has taken the matter up with the banks concerned regarding the non-useability of his bankcards. I can assure him that in his situation I most certainly would have done so very rapidly to ensure that the cards with which I was provided did function as they were meant to function.

With regard to the measures proposed by the banks, the bankcard organisations have the right to make decisions regarding the administration of their bankcards, but I am sure that their wish is to make them as user friendly as possible while maintaining adequate safeguards to prevent fraud. That would be the overriding desire of the bankcard organisations and of the banks which make them available to customers. It may be that a compromise has to be found between the desires of being user friendly and of having safeguards which prevent fraud. I am sure that the bankcard

organisations would wish to strike a balance which provided the greatest satisfaction to and use by their customers. I will seek a further report from officers and bring back a reply. In the meantime, I suggest that the honourable member should adjourn post haste to the banks which have given him cards which do not function.

SCHOOL VIOLENCE

In reply to **Hon. R.I. LUCAS** (2 March).

The Hon. C.J. SUMNER: First of all, I am informed by the Commissioner of Police that reports on the incidents which occurred on Friday and on Monday have been referred to a screening panel for consideration. The screening panel will in due course recommend how the juveniles concerned should be dealt with in relation to the alleged offences.

In relation to the point about restraint orders, I advise that juveniles are subject to the same criteria as adults in so far as the making of protection orders are concerned. While applications for protection orders against juveniles are made in the Children's Court, the magistrate hearing the application is required to treat the matter in the same way as a magistrate in the Magistrates Court would deal with proceedings in relation to an adult.

This means that the court has to be satisfied on the balance of probabilities that there is a threat to the personal safety or to the safety of the property of the person or persons on whose behalf the protection order is sought. Provided that the court is so satisfied, it can issue an order imposing such restraints upon the defendant as are necessary to prevent him or her from acting in the manner complained of.

In the case referred to by the honourable member, I am informed by the Commissioner of Police that, as a result of incidents at or in the vicinity of the school some months ago, the police considered applying for restraint orders on behalf of the school but decided that such an application would have been unsuccessful on the information then in their possession. The police did take further statements and restraint orders were in fact made by the Children's Court late last week.

I should add that applications for restraint orders can be taken out by anyone. They do not have to be taken out by the police. Consequently, it was open to the persons who felt threatened or intimidated by the behaviour to apply for restraint orders themselves.

To summarise, as the matter had not been considered by the Children's Court at the time of the honourable member's question there is no question of an appeal being lodged. The provisions of the Summary Procedure Act 1921 do not need to be amended to cater for this type of matter.

ROAD TRAFFIC (MISCELLANEOUS) AMENDMENT BILL

The Hon. BARBARA WIESE (Minister of Transport Development) obtained leave and introduced a Bill for an Act to amend the Road Traffic Act 1961. Read a first time.

The Hon. BARBARA WIESE: I move:

That this Bill be now read a second time.

This Bill deals with four separate issues:

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

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

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

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

Section 137 of the Act requires every motor vehicle to be equipped with mirrors by means of which the driver may obtain a clear view of traffic to the rear and to the sides of the vehicle. Section 102 requires the driver to be in such a position that by means of a rear vision mirror or mirrors a clear reflected view of the approach of any vehicle about to overtake the vehicle can be obtained. Due to the construction of some types of commercial vehicles, in particular waste management trucks and long distance coaches, it is not always possible for the driver by means of mirrors alone to have a clear view to the rear and to the sides. The same applies to some vehicles carrying wide loads. In order to improve all-round vision and thereby safety, some of these vehicles have been

fitted with closed circuit television systems (CCTVs). The Act makes no provision for a CCTV and the regulations ban the use of television receivers by drivers. Australian Design Rules make provision for the use of television receivers and visual display units in vehicles to add to the driver's vision. The Crown Solicitor has given advice that amendments to the Act and regulations are necessary to provide for the fitting of CCTVs in vehicles.

Although these amendments are not considered to be complex in application, they are nevertheless essential for the efficient administration of the Road Traffic Act. I seek leave to have the detailed explanation of the 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 on a day to be fixed by proclamation.

Clause 3: Amendment of s. 5—Interpretation

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

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

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

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

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

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

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

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

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

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

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

Clause 7: Amendment of s. 102—Driving position

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

Clause 8: Substitution of s. 137

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

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

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

Clause 10: Amendment of s. 176—Regulations

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

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

CONSTRUCTION INDUSTRY TRAINING FUND BILL

Adjourned debate on second reading.

(Continued from 26 November. Page 1039.)

The Hon. R.I. LUCAS (Leader of the Opposition): Mr President, the shadow Minister of Employment and Further Education for the Liberal Party, Bob Such, in another place indicated the position of the Liberal Party in relation to this particular piece of legislation. On behalf of the joint Liberal Party he placed on the record during debate last year the general support for the principles of the legislation before the Parliament at that time. He indicated on behalf of the Liberal Party that, in broad terms, the industry groups associated with the housing and construction industry were supportive of the legislation before the Parliament and he also indicated his agreement with those industry groups such as the HIA, the MBA and a number of other industry associations.

Members will know that this legislation was brought into this Chamber on the last sitting day of last year and there was a view from some that the legislation ought to be hurriedly considered by the Legislative Council and passed through the Parliament on that sitting day. Certainly, whilst Bob Such had indicated on behalf of the Liberal Party its support for the legislation, it is nevertheless an important principle that even whilst there is support there needs to be due consideration for the detail, as outlined in the clauses of any piece of legislation. It is certainly not my view, nor the view of my colleagues, that the legislation ought to have been rushed through the Parliament without due consideration.

I hope that the period of time that has elapsed since December of last year until now will prove to have been productive. On behalf of the Liberal Party I intend to indicate a number of areas where we believe the legislation can be improved by way of amendment, and I would hope that after due consideration this Council may well agree to amend the legislation in a number of important respects. If that is the case I think it will be further evidence of the attractiveness of that general principle that we ought not rush legislation through but give it a chance for further consultation and have further review, which is indeed the role of this Chamber. Even if there is support from both sides of the House for the principles of a Bill it can nevertheless be improved above and beyond the original nature of the Bill as it is introduced into the Chamber.

In general terms, during the second reading stage I intend to make some general comments about the legislation as it exists here and in some other States. I intend to flag a number of concerns that have been raised by a number of concerned groups about the legislation, and their views as to what ought to be done with the legislation. I then intend to canvass in broad detail a good number of matters that perhaps could more appropriately be covered in Committee, but to expedite our consideration of the Bill I intend to flag them at least at this stage so that the Government and Democrat members can think about the issues. I am continuing to have discussions with Parliamentary Counsel and with others who are interested in the legislation to see whether or not it is appropriate to move certain amendments and, if so, in what form, and I would hope to at least place on file some time tomorrow some amendments which could perhaps then be considered either late tomorrow evening or certainly on Thursday. Within that time frame I am sure we can have the legislation through the Committee stage and finally considered and debated by the end of this week, with all parties having considered it.

The Hon. T. G. Roberts interjecting:

The Hon. R.I. LUCAS: I intend to discuss the amendments, as I said. I just want to make some general comments at the outset. The legislation is based on legislation that exists in some other States and it is fair to note that the Liberal Party in various States has expressed differing views as to similar legislation. For example, in Victoria the Liberal Party opposed the Labor Government's legislation and stopped it, but in some other States like Western Australia, and I understand in Tasmania as well, the Liberal Opposition has either supported it or certainly not voted to oppose it.

I want to refer in some detail to the Western Australian experience, because I have been provided with a good amount of information about the Western Australian experience of the scheme. I refer, in particular, to the concern from some important industry sectors, and I mention to the mining and resource sector and also the agriculture sector, and their concerns in Western Australia because, indeed, their concerns have now flowed on to similar concerns being expressed about the South Australian legislation by their equivalent bodies here in South Australia.

In relation to the Western Australia legislation there has been strong opposition or concern expressed by the agriculture sector and the mining and resource sector in Western Australia about the effects of the legislation on those sectors and they sought a meeting with the then Premier of Western Australia, Carmen Lawrence, and met with the Premier on 13 August 1992 at 2.30 p.m. I have a copy of the briefing notes for the meeting with the Premier on that day and I want to refer to some of the concerns that were raised with the Premier about the operation of the Western Australia legislation. I will refer to these in dot point form to hasten our discussion. After a general outline of the legislation the people who were meeting with the Premier note here:

> It is estimated that the fund will generate annually in excess of $8 million in Western Australia, over half of which will be from the mining industry.

Western Australia has a big mining and resource sector, and there is concern that the fund will generate $8 million but that over $4 million will come from the mining industry in Western Australia. I quote:

> The level of concern about the legislation is highlighted by the number of organisations, both Government and private, who have applied to the board for exemption.

They then indicate that they have been lobbying for some time for exemptions and change and have had little success. Then they list the industry concerns:

> The ambit of the legislation is much broader than originally intended to address training of the housing and building industries. It is iniquitous and effectively represents a double dipping for the industry.
>
> A Chamber of Mines survey in 1991 indicated that member companies spend an average 4.4 per cent of gross wages on structured training.
>
> ABS figures for July to September 1990 indicate that the Australian mining industry spent an average of 4 per cent, one of the highest figures for all industry.
>
> It appears that the industry which already makes a considerable commitment to training is being penalised to

address a lack of training in the building and construction industry.

Expenditure Examples.

Hamersley Iron invests in excess of $9 million annually or 6.7 per cent of gross wages.

The construction levy in Western Australia will impose an additional liability of $1 million to $1.3 million on the Marandoo Iron ore project.

BHP Iron Ore invests approximately $7 million annually in structured training and will be heavily penalised for the $200 million Nelson Point project.

Alcoa invests $16 million annually, 7.8 per cent of gross wages, and has a number of construction activities including the Wagerup Refinery expansion. It is an additional impediment to resource development providing a competitive cost disadvantage for Australian projects. It will encourage offshore fabrication.

Projects with a high capital cost are comparatively disadvantaged as the levy is based on the estimated value of the construction cost and not the human resource component.

Then there is a list of other concerns that they have, in particular this one:

The ambit of the definition is too broad. It covers many operational costs including maintenance. The information brochure refers to works for the extraction, refining, processing or treatment of materials. This could conceivably include the operational costs of constructing a mine.

They then note:

The chamber has had discussions with other industry associations. The Western Australian Farmers Federation is strongly opposed to the legislation and is of the view that the ambit of the Act should be reduced. The Chamber of Commerce and Industry has similar concerns about the legislation and is of the view that the legislation should only apply to the building and housing sectors. The Master Builders Association and Housing Industry Association, while supporting the legislation accept that there are significant concerns with the Act and are not opposed to a review [of the legislation].

The chamber contends that construction for mining and petroleum operations, whether on or off site, should be excluded from the ambit of the Act. Accordingly, an immediate review of the Act is requested to facilitate this. To effectively achieve this the ambit of the legislation should be limited to the section of the building industry for which it was intended.

That was the view that was being put in Western Australia, and I have received a good amount of other material from the Chamber of Mines and Energy, the Western Australian Farmers Federation and other groups in Western Australia expressing concern about the operation and the ambit of the Western Australian legislation, and arguing that there needed to be a review of that Act.

There was a review eventually established late last year; a Mr Carrig was appointed to conduct the review. He finished that review just prior to the change of Government and one of the reasons for the delay in trying to have this legislation considered here in South Australia was our endeavour to try to get hold of a copy of that Carrig review of the Western Australian legislation. It was certainly my view that, if we are to implement a new Bill here modelled on the Western Australian legislation, and that it had just been reviewed by an expert in Western Australia, it made good sense for us at least to have a look at the results of that review and see whether or not we could improve the legislation before the Parliament. We have had all sorts of problems in getting that and have still not been able to get a copy of the report. Mr Carrig was unable to release it early on because the former Minister was, in effect, waiting for the election and was not in a position to look at it because he or she had an election to fight.

The Hon. Anne Levy: They presented it on 5 February and the election was on the 6th.

The Hon. R.I. LUCAS: Oh. He was, properly, unprepared to release the report to someone from interstate even if we were in this position. Then, of course, we had the further delay with the delay in the announcement of the new Minister of Education under the Liberal administration and, as of the end of last week, the new Minister still, with all the onerous responsibilities of a new Minister, had not had an opportunity to look at that report, so we still have not been able to obtain a copy of it. That, of course, hinders our consideration of the legislation here.

However, some of the industry sources here and some other sources—I am not sure how—have gleaned some information from the recommendations of the report and we believe, at least, that we are aware of some of the recommendations. That certainly has influenced some of our thinking in relation to the amendments that need to be considered to the legislation. All these submissions in South Australia have come from industry groups since the Bill was considered in the House of Assembly.

I want now to refer to a submission from the South Australian Chamber of Mines and Energy. This is a letter to the Hon. Susan Lenehan dated 15 February this year and I quote from Mr Noel Hiern, the Director, as follows:

The mining and petroleum industries seek exemption from the provisions of this Bill.

It then outlines the reasons why, and I will not go through all of them. They are similar in part to the opposition from the Western Australian Chamber of Mines to the Western Australian legislation. The document continues:

Your second reading speech on November 10 referred to extensive consultation with industry members on this proposal. I am unaware of any consultation with the Chamber on this matter. The Chamber would be pleased to discuss with you an amendment which specifically excludes the mining and petroleum industries from the application of this legislation.

Obviously, the Chamber of Mines is concerned at what it hears from the Western Australian experience where over $4 million of the $8 million in that fund is evidently coming from the mining sector in that State. Obviously, the Chamber is concerned at the potential effect on the South Australian mining and resource industry of the introduction of the legislation. I now refer to a submission from the South Australian Farmers Federation in a letter addressed to me after I had sought information as to its attitude to the Bill. I quote from the letter by Dean Bolto, Director of Policy of the South Australian Farmers Federation, as follows:

Following further discussions on the matter and consultation with our sister organisation in Western Australia the following is provided. In summary, the South Australian Farmers Federation is opposed to the introduction of this legislation in relation to implications for agriculture. Our opposition is twofold. Firstly, the levy would impose yet another cost on an extremely fragile

farm economy and, as I read the Bill, involve additional bureaucracy in getting building construction approvals. These factors would apply whether or not farmers did the work themselves or engaged someone else to do so. Secondly, as has been pointed out in the Western Australian Farmers Federation submission, a levy applied on construction in the agricultural industry would result in absolutely no benefit at all for farmers who in the main undertake their own building construction and work. It is doubtful whether any benefits would accrue to local contractors either.

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: No, it is not. Better speak to your own advisers. The document continues:

My request is that you seek to have an amendment introduced in the Upper House to exclude the agricultural industry from this additional impost.

I have also received a letter from Mobil Refining Australia Proprietary Limited, a copy of a letter forwarded to the Hon. Susan Lenehan, which states:

It is our view that further passage of the Construction Industry Training Fund Bill should be delayed until the fate of the Federal Training Guarantee Act is known. If the Federal scheme continues, we suggest that the Bill be amended to exclude engineering construction and maintenance projects where contractors are covered by the Federal Training Guarantee scheme.

Again, I will not go through the full submission from Mobil Refining Australia Pty Limited, but it indicates its concern about the legislation. I have also received a copy of a letter from SAGASCO Holdings dated 1 October last year to the Hon. Frank Blevins, Minister of Mineral Resources, from Clive Armour, General Manager of the Gas Company, about this legislation. In part, that letter states:

The South Australian Gas Company Limited seeks an amendment to the Bill effectively exempting the Gas Company from the operation of the Bill. It is submitted that an exemption is appropriate due to the nature of the Gas Company's operations and the extent of its expenditure on training. Unlike much of the building and construction industry the Gas Company spends significant amounts on training. In the 1991-92 financial year we spent approximately $860 000 on training which equates to approximately 2.6 per cent of our payroll.

Further, he states:

It is unlikely that the Gas Company will gain significant benefit from any broad industry based training program. We hope that this submission will receive your favourable consideration. We would of course be happy to provide any further information that you may require or to discuss any other approaches to exemption which may be considered appropriate.

They have written in similar terms to the Construction Industry Training Council.

The Hon. Anne Levy: They have all had responses. Have you seen the responses?

The Hon. R.I. LUCAS: Some of them, yes. Mr President, I am sure that in her reply the Minister can outline the Government's position in relation to those. I have been privy to some of the responses, although not all. Suffice to say—

The Hon. Anne Levy: Which have you not seen?

The Hon. R.I. LUCAS: I think you can summarise all of them. I do not have copies of all of them, but some of them told me they got no joy from the Government in relation to their submissions. With SAGASCO for example, the initial response was the Hon. Frank Blevins saying, 'Look, this is not my responsibility, it is Susan Lenehan's; I have forwarded it to her.' Now I understand they are not going to be exempt. I certainly understand, from discussions with the Minister's advisers, that the whole mining and petroleum industry will not be exempt either, although I have not formally seen a copy of the reply. I am also aware that the agricultural industry will not be exempt completely either in relation to the legislation.

I wanted to place some of those on the record because there are a number of significant industries and of industry groups that knew nothing about the legislation when it came in at the end of last year, and they will be significantly affected by the imposition of this compulsory levy on their operations. We have a situation in which the Farmers Federation and the Chamber of Mines are now opposing at least the implementation of the Bill as it exists at the moment. In effect, they want to be exempt from the provisions of the legislation, and other companies are either seeking particular exemptions for themselves or exemptions for particular operations in which they may well be involved and which their legal advice says would come within the provisions of the legislation.

I do not intend to go through any of the others that have been telephoned through to me. That is just a small selection from four of them, two industry groups and two specific companies, to indicate that there is concern about the direction of the Government in relation to the compulsory nature of the levy and the effect that this will have on the competitive position of various companies and on the industry sectors they represent. I now want to turn to some of the matters that were raised in some of these submissions and flag some of the issues we are still having discussions with Parliamentary Counsel about in relation to whether or not we can move amendments.

I am not indicating at this stage that we will being seeking to amend every one of these. It may well be that after discussion we make the judgement that it is not sensible or practical, given the nature of legislation and the fact that the Liberal Party has indicated its position in relation to the legislation, for us so to amend a particular clause or section.

One of the strong concerns that has been expressed by the Farmers Federation, and certainly by some of my rural colleagues, has been the potential effect of this legislation on the farming industry and farmers. A number of my colleagues and the Farmers Federation have highlighted the fact that many farmers do a lot of work themselves. When one looks at this legislation and the fact that we are told that the regulations will be based—although not exactly—on the Western Australian regulations, one sees that they will be liable for the payment of the levy in a number of circumstances.

The response that I have had from the Minister's advisers has been twofold. First, it would mean a lot of work by the farmer to get over the $5 000 level above which the levy applies. Secondly, the response I have had from some people involved in the legislation is that it will not really be rigidly policed. Whilst the legislation does say that these provisions will apply in those circumstances, people will not be running around everywhere policing the legislation. If the farmer does

not report it, it is unlikely that anyone will become aware of it.

That is an unsatisfactory way to approach legislation, particularly when the onus is placed on the farmer, in this case, in effect to nominate himself or herself in relation to whether or not the levy applies to their building or construction activity which might involve a sum greater than $5 000. If they do not they commit an offence under the legislation and are liable to a penalty. It is fine to say to the farmers, 'Well, don't worry too much; we are not going to be running around picking up every last dollar under the legislation.' Nevertheless, the farmers are placed in a position where if they do not do it they have committed an offence and, if someone seeks to pursue them for whatever reason, clearly they are in breach of the Act and could be penalised accordingly. We are having discussions with Parliamentary Counsel about an attempt to try to tidy up that section of the legislation as it applies to farmers.

My rural colleagues have highlighted the fencing work and dam construction work that they do. We are looking at amendments in relation to both those activities. The advice provided to me indicates—and this also relates to home owners who help construct their own home or extensions—that the value of the work that they put in, even if they do it themselves, forms part of value of the building construction project and they must pay a levy on that value. So, if we have a farmer or a home owner who is building an extension or doing farm construction work above the value of $5 000, and that person himself or his son, daughter or family members are doing it at no cost, the notional value of the work that they do is included in the valuation that is done and the levy must be struck on the estimated value of building or construction work as prescribed. I am told that is the way it is intended to operate here in South Australia, as it exists in the other States.

When one looks at that situation one sees that many farmers and others do a lot of extension building work on their own home or, indeed, build their own house. The legal advice provided to me is that if one looks at, for example, some of these fundamentalist religious groups, which in the space of one weekend all band together in a voluntary fashion and build a house which might be valued at $50 000, $100 000 or whatever, they will have to pay the levy on the value of that building and construction work. That is just an example of where voluntary effort and work has gone into a particular task, yet the levy would have to be applied on that activity.

Similarly, as I said, if a home owner wants to build extensions and does most of the work himself or herself then that home owner has to pay the levy on the value of the work that he or she has done. In all of those areas we are looking to see whether sensibly we can come up with some arrangement—

The Hon. J.F. Stefani interjecting:

The Hon. R.I. LUCAS: My colleague the Hon. Julian Stefani tells me that a lot of the ethnic community associations have built clubs through voluntary effort. I presume that the clubs are probably worth $200 000 or more, and the levy would be struck on that and those clubs would similarly have to pay the levy on that voluntary effort.

The Hon. K.T. Griffin: They have even built churches.

The Hon. R.I. LUCAS: My colleague the Hon. Trevor Griffin indicates that they have even built churches that way. Again, we would have the same position. As I said, it is a difficult area. We have had, and continue to have, discussions with Parliamentary Counsel to see whether there is some way of coming sensibly to some arrangement in relation to the value of the voluntary effort or the personal work done either by the home owner or farmer or others who voluntarily engage in this sort of activity. We are investigating whether in some way the levy will not be struck on that particular voluntary effort.

In addition, I am advised that the definition of 'building construction work' could apply to farmers who at their own expense engage construction workers and others to undertake land care activities on their farming properties. I refer to farmers who might do construction work on their property for the care, conservation or rehabilitation of agricultural land or land that has been agricultural land. If the value of that work is greater than $5 000, the levy would be struck on that activity. That is the legal advice that has been provided to me. If that is the case, the Government is saying that, if a farmer undertakes at his own expense, in effect, an environmental land care activity—the type of activity which the Government wishes to encourage and which many environmental groups say they would like to see encouraged in our community—it will strike an additional cost or impost on that farmer in relation thereto.

That does not seem sensible to me. If a farmer is prepared to spend money in that way, it does not seem sensible that the Government ought to be striking a construction and building levy on that farmer who is trying to do the right thing in relation to the environment. I am concerned that the Minister, who in a previous incarnation had responsibility for environmental matters, should seek to do that by way of this legislation. We are looking at whether or not we can sensibly move amendments in relation to that to try to protect the environment in South Australia and ensure that this levy does not apply.

The other concern in relation to the definition clauses and schedule 1 that has been expressed by the mining industry is that, with the way in which the definitions are constructed and the regulations have operated in other States, this levy could well be struck on the operational aspects of the mining and petroleum industry. I guess there are two ways to go: either they want to go the whole hog and be completely exempt, or else they will somehow try to delineate within the mining sector the sorts of activities and expenditure which could be deemed to be operational activities and not have them covered by the levy. If there were construction and building-type activities, the levy would apply to that section of their expenditure. Again, we are having discussions to see whether or not it is possible to construct some sensible amendments in relation to those areas.

I want now to turn back to the structure of the board. It is important to note that clause 5(1)(b) provides that the board shall comprise:

Two persons nominated by the Minister, being persons who have appropriate experience in vocational education or training and who are or have been employed or engaged in the provision of such education or training;

I think the industry people involved in the legislation had a view that these sorts of people would come perhaps from the TAFE sector or similar training providers. It is important, because the industry people do not want to see a majority of union controlled people on the board. The board comprises 11 persons, and they do not want to see on the board a majority of union people or people who might have a particular point of view in relation to the expenditure of this fund.

Clause 5(1)(b) is important. What has been snuck through in relation to the drafting of this—and I have had legal advice to confirm this—is that the Trade Union Training Authority (or Clyde Cameron college by another name) is an education or training provider, and a Government of the Labor persuasion could appoint two persons from the Clyde Cameron college—I am just using that Trade Union Training Authority as an example—and they would come within the provision of clause 5(1)(b), that is, persons who have been employed or engaged in the provision of such education or training.

It might even be argued that Laurie Carmichael, with his high profile of recent years in relation to education and training, including the Carmichael report, various agencies and boards and other matters with which he has associated himself, might well perhaps come under this provision.

The Hon. T.G. Roberts: Too busy!

The Hon. R.I. LUCAS: Well, he might be too busy, but I am sure there might be people like him, within the Trade Union Training Authority or some similar agencies, who would fit the bill in this area. When one realises that (and I do not think the industry people have appreciated that), we then have a situation where three persons are nominated by the unions or employee associations. You could have the Minister, particularly one who is a member of the left wing such as the Hon. Susan Lenehan, appointing two persons from the Trade Union Training Authority, or Clyde Cameron college. Similarly, you could go to an agency where you have an ex-unionist or leading unionist lecturing at the University of South Australia or a TAFE college.

The Hon. T.G. Roberts: Tom Morgan?

The Hon. R.I. LUCAS: Does he lecture? I do not know that he lectures. He is a liaison person or something now. Paul Ackfield may be an example. He is a member of the left wing and of the Minister's own faction. He is involved as a union representative. He might have past experience in education or training. There are many examples, not just in the Trade Union Training Authority. You could select a good number of people from good union backgrounds, such as a member of the Minister's own left wing faction, who has had some involvement previously (it does not say recent past but merely refers to past involvement), who 20 years ago lectured in a TAFE college or whatever and who could fit this bill. Clause 5(1)(a) provides:

A person nominated by the Minister, after consultation with the employer and employee associations ... to be the presiding member of the board;

The Minister must consult with the employer and employee associations, but is not required to abide by their views. So, the Minister could consult and say, 'I think Laurie Carmichael is a great bloke; he ought to be the presiding member.' The union representatives could say, 'Terrific, we are all for Laurie.' The employer representatives could say, 'Not over our dead bodies', and then the Minister could appoint Laurie Carmichael. So, you have a position where the Minister, through that particular construction, is able to organise a majority on the board.

I raise this in relation to clause 7 because six members constitute a quorum of the board. The point I make is that you could have a quorum of the board without any one of the five persons nominated by the employer associations attending. You could have a quorum of the board with the presiding member, the two Clyde Cameron college nominees, for want of a better description, and the three persons nominated by the employees.

The Hon. Anne Levy: Is that true?

The Hon. R.I. LUCAS: The Minister says that is not true. It is not her Bill. She does not understand it, so I would await her written advice from the Minister before she enters the debate.

The Hon. T.G. Roberts: It is a long bow.

The Hon. R.I. LUCAS: Whether or not it is a long bow, it is an accurate bow. At least the Hon. Terry Roberts is closer to the situation when he says that it may well be a long bow. He is certainly closer than the Minister, who says it is not true.

The Hon. Anne Levy: What about clause 7(3)?

The Hon. R.I. LUCAS: I am about to come to that. That is not the point I have just made, and the Minister knows that. The point I have just made is that the quorum could comprise all other members other than the five employer association representatives. The Minister says that is not true. She now acknowledges what I have said is true, and I thank her for that.

The Hon. Anne Levy: They could not make any decision.

The Hon. R.I. LUCAS: They can make a decision, and let me explain how. This is what the Government has tried to slip through, and I want to explain how it comes about. Under clause 7(3), as the Minister indicates, a decision is only a decision, in effect, if that majority is constituted by at least one of the persons appointed by the Governor under clause 5(1)(b), which is the Clyde Cameron college provision. Clause 7(3)(c) provides:

The majority of the persons appointed by the Governor under section 5(1)(c) who are present at the meeting and who vote...

If none of the persons is present at the meeting, that clause is non-operational. So, if the other six persons turn up, and none of the employer representatives attend, that provision under 7(3)(b) is non-operational. There can be a majority decision with all other persons present, and that supposed protection that is provided to protect the employer association representatives will not work.

I have taken some time to explain that, because the Minister in this Chamber did not appreciate it or understand it, and it is important to place it on the record for all members. It is important that that loophole in the legislation be closed. I would hope that the employer

associations would not want that fund, which will be worth many millions of dollars, controlled potentially by the unions with respect to where the money is spent, how it is applied and who gets what.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: I am not an expert on union meetings, Hon. Terry Roberts. You can talk about that later, if you like. So, I flag that as an area that I think needs to be considered. There are a number of other questions in relation to the operations, which I think can be more appropriately discussed at the Committee stage of the debate. Clause 23 provides:

> The levy is not payable in respect to building or construction work if the estimated value of the work does not exceed $5 000 or such other amount as may be prescribed.

I want to flag that we intend to move an amendment to that: to have 'such greater amount' rather than 'such other amount'. On the drafting of the legislation it would be possible for the Government to prescribe a lower amount, $1 000 or $2 000, if it wished, and we would like to tie the Government's hands in relation to that, so that it would be 'such greater amount'.

We have done only some initial thinking in relation to this, but because of the concerns that the mining and petroleum industries and the Farmers Federation and other companies have about the application of the Act and the application of the levy to their industries we believe that we perhaps ought to think about the provision of some appeal mechanism in the legislation. It is a difficult area and I readily concede that. We are having discussions with Parliamentary Counsel and others about trying to provide some mechanism for appeal because if the final decision of this Parliament is that we do not exempt the mining and petroleum industries, for example, and if the numbers in this Council are such that they are not to be exempted and the agricultural industry is not to be exempted then there are some big questions that have to be confronted by the board.

For example, if Roxby Downs or Western Mining were to have a $200 million development in the north of South Australia and the board decided that the levy would apply to $150 million out of that $200 million, and Western Mining felt it was, in effect, covering non-construction type activities and that it was more particularly the mining or operational side of their activity—and there is a large mine there, with roads going down into it—it would be a very difficult question in relation to what value of expenditure applying to which part of its development should or should not attract the levy. We might be talking about a $200 million development. In the Western Australian circumstance, some of those big resource based developments in the West were up for $1 million to $1.3 million in the levy applicable to their operations.

It is a matter that we will be raising. I think the Western Australian levy, for example, is only .2 per cent, but I do not have the exact figure at the moment. Ours is a bit higher at 2.5 per cent, but there is provision in our legislation for it to go up to .5 per cent, as the regulations may prescribe. If the Government of the day has the support of the Democrats to increase the levy to .5 per cent for the mining industry, with big resource developments we are talking of potentially many hundreds of thousands of dollars and maybe millions, depending on the size of the development and whether or not the Government gets the support of the Democrats to double the levy to .5 per cent for, say, mining and petroleum based industries.

So there are a lot of difficult questions. It is not black and white and the Construction Industry Training Council concedes that, and I know the Government advisers would concede that. But in some cases it is not going to be black and white. We do rely on the judgments that are going to be made by this board. Therefore, I think there is a good case to be made that some sort of appeal mechanism be put into the legislation so that a party or a company that is aggrieved by a decision of the board—which might cost them as I said some hundreds of thousands of dollars, although in the greater number of cases I readily concede it might be a very small amount of money—can explore the possibility of making an appeal against a decision. So that is another area that we are discussing with Parliamentary Counsel and subject to those discussions we may move an amendment in Committee.

I think that covers the major aspects of the Bill on which we have received expressions of concern and in relation to which we are considering amendments. There are a good number of other provisions in the Bill that we will question the Minister and her advisers about during the Committee stage. I anticipate that, as this is a Committee type Bill, it will take some amount of time for us to get through the debate in Committee, but as I indicated it is certainly my intention to get the first draft of the amendments on file and therefore available for the Minister by tomorrow, so that her advisers can at least see the detail.

I have already flagged the various areas involved so that the Minister's advisers can certainly be thinking about those particular areas, whether or not they are implacably opposed, full stop, or whether they are going to consider possible amendments in some of those areas. As I said, I think we could productively get through the legislation late tomorrow night or on Thursday so that we can meet not necessarily the deadline but the goal of trying to see the legislation finally considered by the Parliament by the end of this week.

The Hon. J.F. STEFANI secured the adjournment of the debate.

EVIDENCE (VULNERABLE WITNESSES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 March. Page 1435.)

The Hon. K.T. GRIFFIN: Last week I sought leave to conclude my remarks on this Bill for several reasons, not the least of which was that I had not had an opportunity to complete my research on the legislation in other jurisdictions which had been referred to in the white paper published by the Government at the end of last year. Last week I referred to the legislation in several jurisdictions: the Criminal Justice Act in the United Kingdom and the Queensland legislation. I think

it is also important to look at what happens in other jurisdictions and, notwithstanding that reference is made to the main aspects of the provisions in other jurisdictions, in several instances the full range of provisions have not been explored with the appropriate balances which that legislation provides.

In New Zealand, the Evidence Amendment Act 1989 deals specifically with the case of minors. It sets out rules in cases involving child complainants. The New Zealand Evidence Act now provides that the provision for a trial judge to give directions about the way in which a trial will be conducted where the complainant is under the age of 17 years applies to offences basically of a sexual nature and conspiracy with any person to commit any such offence. The Act applies to those who are under the age of 17 years.

The procedure is that a judge of the court shall, before the trial, consider what directions should be given as to the mode by which the complainant's evidence is to be given at the trial. The obligation of the judge is set out in section 23D of the New Zealand Evidence Amendment Act, now the Evidence Act. The judge is to hear and determine the application in chambers; each party is to be given an opportunity to be heard; the judge may call for and receive reports from any persons whom the judge considers to be qualified to advise on the effect on the complainant of giving evidence in person in the ordinary way or in any particular mode described in section 23E; and, in considering what directions, if any, to give under section 23E, the judge is to have regard to the need to minimise stress on the complainant while at the same time ensuring a fair trial for the accused.

Two aspects of that provision need to be noted. The first is that the judge is to have regard to the need to minimise stress on the complainant. That is the first consideration but, notwithstanding that, he is also to ensure that there is a fair trial for the accused. It may be that that does not need to be said, but in the Queensland legislation and in the United Kingdom Criminal Justice Act there is a specific provision which requires the accused to be given a fair trial in the context of any special arrangements that might be made for taking the evidence of a vulnerable or special witness.

Section 23E provides for the videotaping of a complainant's evidence which has been shown at a preliminary hearing to be admitted in the form of a videotape. In all instances the judge has to be satisfied as to the form of the videotape. The judge may excise portions if the judge believes that there is material which it would be improper to show to the jury and which would otherwise be inadmissible. The focus is upon closed circuit television.

The New Zealand Act provides that a screen can be used or one-way glass, but where reference is made to a screen or one-way glass the New Zealand Act provides that the complainant need not be seen by the accused and the screen is to be placed so that that does not occur, but the judge, jury and counsel for the accused must be able to see the complainant. The judge also may order that the complainant be placed behind a wall or partition constructed in such a manner and of such material as to enable those in the courtroom to see the complainant while preventing the complainant from seeing them, and then the evidence is to be given through an appropriate audio link.

It can be seen from the way in which the New Zealand Act is expressed that there is concern that all the rights of the accused, the obligations of the judge and even the placement of the screen are identified in the legislation—at least, the principles are identified—so that, when a judge is considering a particular matter, the principles which have to be adhered to are clearly expressed and are consistent from court to court. The jury is to be given advice by the judge that the law makes special provision for the giving of evidence by child complainants in such cases and that the jury is not to draw any adverse inference against the accused from the mode in which the complainant's evidence is given.

In Victoria the special arrangements which can be made for the giving of evidence by a child witness are limited to offences of a sexual nature or an indictable offence which involves an assault on or injury or threat of injury to a person. The Crimes (Sexual Offences) Act 1991 in Victoria applies to a person with impaired mental functioning or to a person who is under the age of 18 years when such person is called to give evidence. Then closed circuit television screens or other facilities that enable communication between the place where the witness is and the courtroom are permitted. That legislation also provides for a person to be beside the witness while he or she is giving evidence for the purpose of providing emotional support to him or her.

In this legislation, again the judge is enjoined to warn the jury not to draw any inference adverse to the defendant or to give the evidence any greater or lesser weight because of the making of special arrangements. It goes on to provide, as does other legislation, that where a witness is in a place outside the courtroom and is giving evidence from that place, that place is to be taken to be part of the courtroom while the witness is there for the purpose of giving evidence. That puts it under the jurisdiction of the court. It may be that is not necessary to be expressly spelt out in our legislation, but it is an issue to which the Attorney-General should give attention with a view to addressing the matter in reply. It is important to note that the scope of the Crimes (Sexual Offences) Act in Victoria is limited to those offences and to those persons.

The Crimes (Rape) Act 1991 of Victoria also provides for evidence by a witness in sexual offences or an indictable offence involving an assault where the person concerned has impaired mental functioning or is under the age of 18 to be given in a way which allows screening with visual links and so on. Where the proceeding relates to a charge for a sexual offence and the court is satisfied that, without alternative arrangements being made, the witness is likely in giving evidence to suffer severe emotional trauma or to be so intimidated or stressed as to be severely disadvantaged as a witness, in such cases it applies also to adult witnesses.

In New South Wales closed circuit television may 'be used for the giving of child victims' evidence. It relates to a prescribed sexual offence on a child and it is limited to those circumstances where the child would suffer mental or emotional harm if required to give evidence in the ordinary way, or it is likely that the facts would be better ascertained if the child's evidence is given in

accordance with such an order. In this particular provision in New South Wales it relates to children under the age of 16. The focus in this legislation is on providing some special arrangements for children to give evidence; closed circuit television under circumstances strictly controlled by the court where the criteria are specific and not general. There is also a provision in section 405(f) of the New South Wales Crimes Act which deals with the situation of personal assault offences on a child, and allows alternative arrangements to be made for the giving of evidence by the child. That extends to seating arrangements, the use of screens and even the adjournment of the proceedings or part of the proceedings to other premises.

If one looks at the provisions in other jurisdictions one can see that South Australia's legislation is certainly the widest. It also does not appear to contain all the safeguards which other jurisdictions' legislation includes for the protection of the witness, but also to focus upon that proper balance that nothing should be done which will detract from the opportunity of an accused person to expect and receive a fair trial. We are back to the issue of balance that I referred to last week when I began my contribution on this Bill.

So, there are a number of issues that *need* to be addressed in the context of this Bill. I did say last week that there are judges on both sides of the fence in relation to the use of screens and closed circuit television. Notwithstanding that the Law Society supports the view held by the Chief Justice, it does express a view that the conditions precedent to the exercise of the judicial discretion to make special arrangements are so imprecise as to be illusory.

I have already made an observation that in the context of the Bill it is not appropriate to extend the special arrangements beyond the prevention of embarrassment or distress, or the intimidation by the atmosphere of the courtroom. It is not proper to extend it to 'any other proper reason' which leaves the discretion completely in the hands of the trial judge, and that is likely to raise a number of issues, particularly on appeals.

Again, the Law Society does say that South Australia's proposed test and threshold is much lower—so low as to amount to no threshold at all. The Law Society states applicants could at the very least be required to show special reasons for such an order, a test already imposed on an accused if he wishes a complainant in a sexual case to be called. I am not sure that I can go along with that. On the other hand, I do agree that the threshold is very low and that one ought to attempt to make it specific and not leave the discretion solely in the hands of the trial judge.

The Law Society also makes the point that the categories of persons who are within the definition of 'vulnerable witness' is too broad, particularly paragraph (d) of the definition which refers to 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. That is so broad as to apply it virtually to any person who is required to be a witness. I propose the deletion of that provision.

I have already referred to the fact that we need to provide that there shall be no departure from the normal protections for an accused, that is, that witnesses are available for cross-examination or re-examination. One of the arguments on proposed section 13(2) that the Law Society puts is that there is no guarantee that the arrangement proposed could not include the limiting of cross-examination or re-examination, and that is certainly an issue that needs to be addressed.

I also make the point which has been expressed by the Law Society and others that have responded that the sensible course is not to extend the definition of 'vulnerable witness' to persons who are over the age of 75 years. Anyone who goes to court in one way or another may be intimidated by the experience; the 75 years of age is essentially arbitrary. There are persons of 30 who will be more likely to be intimidated than some persons of 75, so it is an arbitrary figure and I do not see any need to include that. In fact, the South Australian Council on the Ageing is satisfied with a deletion of that special provision.

One must recognise that, however evidence is given, the courts, or juries particularly, are conscious of any special disabilities experienced by witnesses. They make allowance for overbearing counsel who might be giving a rather timid and unprotected prosecution witness the run around. In my experience, and as I understand it from others who are more experienced than I, they are certainly sensitive where young witnesses are being questioned and cross-examined. One legal practitioner who wrote to me about it but who wanted his identity to be kept confidential for some reason, so I will respect that, said:

> Just looking at the definition of 'vulnerable witness' is enough to cause concern. I have seen 10 to 15-year olds for whom it could be said on first appearance that butter wouldn't melt in their mouths, but who it transpires can be quite deceitful and manipulative and, in some cases, even ruthless. I could foresee considerable abuse of a system by which any alleged victim of a sexual offence would be able to pressure the court into allowing them, for example, to give evidence from outside the courtroom. Not all victims are telling the truth. The majority may be, but it is the minority who are not and who have been given special favours which may lead to grave injustices. Surely, there should be some heavy onus on the applicant to justify special circumstances applying to that person.

Again, whilst I have sympathy with that point of view, one does have to acknowledge that there needs to be some protection for witnesses, particularly young witnesses, where there is a fear of intimidation. One must remember that the judge does have a discretion and that it is not all 15-year olds or 16-year olds who will be given that protection.

I mentioned last week that I did have a communication from the Intellectual Disability Services Council, which was of the view that the use of the term 'intellectual handicap' in the definition of a 'vulnerable witness' is anachronistic. The commonly-used term in this State by all services, including IDSC, is 'intellectual disability'. They would prefer to see the amendment include the terminology that is in common usage.

They also raise the question whether one should consider the court having power to appoint a person to act as a communicator for the vulnerable witness, particularly in those circumstances where there is a witness with intellectual disability and there are others

with speech difficulties which may make speech only intelligible to those who know their speech pattern well.

Whilst I am not proposing that that be addressed in the Bill, I do commend that for further consideration by the Government. It may be that the interpreting provisions that are already in place will adequately cover that, although the interpreting provisions, as I recollect, are essentially related to different languages rather than speech difficulties.

I also had some communication from the Queen Elizabeth Hospital and its sexual assault services, who say that they support the provision of special arrangements for the protection of witnesses and are particularly pleased that they are also to apply to all alleged victims of sexual offences. They raise one reservation, and that is a question whether the witnesses will have to go through a *voir dire* to prove likely distress in confronting the alleged assailant.

I must confess that I cannot answer that. I would suspect from the drafting in the Bill that that may be a possibility which the judge will have to take into consideration, but it is something that may be determined by less formal means than the formal *voir dire* provision in court in the absence of the jury.

Parents Against Child Sexual Abuse expresses the same support for the amendments, although it wants something that is more vigorous in its application of the provisions, tending towards a mandatory application of the provisions in all cases. I must say that, whilst I am happy to put that on the record as its view, it is not something that I would support, because some discretion must be left in those who have the responsibility for the conduct of the court. The organisation also says that it believes that it should be the child's automatic right to have a support person in court and that this should not be at the discretion of the court and should not be able to be disputed by the defendant or defence counsel. Again, I have some reservations about that but it is proper to put that point of view on the record.

I want to refer specifically to only two other matters, and they are issues that can be the subject of amendment. The first is that, because this is a novel procedure so far as South Australia is concerned and the white paper itself acknowledges that there has been an inadequate opportunity to assess the effectiveness of the screening or closed circuit television process, there ought to be some monitoring of the way in which it operates. Under section 69 of the Evidence Act, which relates to suppression orders, we already have an obligation on the court to inform the Attorney-General of those occasions on which and circumstances in which a suppression order is made, and the requirement for an annual report by the Attorney-General on that information.

I believe that it would be valuable for the Parliament and for the community, particularly those concerned with the protection of child witnesses but also for those concerned about the effect these procedures will have on the rights of an accused person, if the courts could be required on each occasion that they make this order to make a report to the Attorney-General as to the fact that the order has been made and some assessment of the effectiveness, and a requirement that the Attorney-General make an annual report, much as he does now in relation to suppression orders.

The second but final point is that in the definition of 'vulnerable witness', whilst seeking to remove the over 75 years provision and paragraph (d), which is a catchall provision allowing a wide discretion to the court, there is a valid argument that the other category of persons who ought to be regarded as vulnerable witnesses are those who are the victims of assault. I notice that in some of the States' legislation there is a specific provision relating to assaults, particularly where the victim is known to the accused and *vice versa.*

I appreciate that this is more likely to apply to circumstances of domestic violence than to many others, but in all other cases, too, it is important to recognise that there is a potential for a significant measure of intimidation where the victim of such violence is giving evidence in the presence of an accused, and I would be seeking to move an amendment in conjunction with the others that I have identified in respect of the 'vulnerable witness' definition, to ensure that those witnesses who are the alleged victims of an assault, where they are alleged to be known to the accused, should also be included within that category for protection.

In summary, we support the second reading of the Bill. We believe that there ought to be some provisions for protection of vulnerable witnesses, and it is in that context that we support the second reading but do propose some amendments, which we believe ought to be supported on the basis that we should walk before we can run.

The Hon. BERNICE PFITZNER secured the adjournment of the debate.

LEGAL PRACTITIONERS (REFORM) AMENDMENT BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: Will the Attorney-General indicate the date on which he expects this legislation to come into operation when passed—whether he proposes that any part of the Bill will be suspended so that it does not come into operation all on the same day?

The Hon. C.J. SUMNER: No, it is intended to bring it all in as soon as possible.

Clause passed.

Clause 3—'Fusion of the legal profession.'

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

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

I want to make a couple of observations in relation to this clause. I know the Attorney-General has a very strong view that we ought to express specifically that the profession in South Australia is a fused profession. I have argued very strenuously that that is a nonsense because the Legal Practitioners Act already deals with the situation in section 15. The Supreme Court, in admitting practitioners, admits them as barrister and solicitor of the Supreme Court. There is no provision for the court to admit only as a barrister or only as a solicitor.

There is, it is true, in existing section 6 a provision which would enable the legal profession to be divided into two classes, but it is agreed on this side that that section ought to be repealed. The disagreement will be what is put in its place.

The Attorney-General has a view that for some reason perhaps more associated with giving a lead to other States—certainly not in South Australia to the public or the legal profession, but maybe for some interstate reasons—we ought to talk specifically about the profession being fused. Of course, that is qualified by proposed subsections (2) and (4) of proposed new section 6. It states that it is fused on the one hand, but then it states that one can still voluntarily establish a separate bar and voluntarily have an association of legal practitioners 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. I t seems to me that it is something of a nonsense that Parliament expresses the intention and then it withdraws from the intention.

I am arguing that section 15 speaks for itself. We repeal existing section 6 and it remains, therefore, quite clear that practitioners are admitted as barristers and solicitors and not as one or the other. If we want to have the recognition which is embodied in subclauses (2) and (4) then my proposed new sections 6a and 6b will address that issue. Personally I do not think they are necessary, but they are offered as an alternative to removing completely subsections (2) and (4).

It may be appropriate for us to deal with the amendments separately. I want also to oppose subsection (3), which is the undertaking required by the Chief Justice, but that is an argument in itself and it may be appropriate to deal with section 6(1) first as an issue of principle, then move on to subsections (2) and (4), and then ultimately deal with subsection (3) as three separate issues about the structure of the legal profession.

The Hon. C.J. SUMNER: I oppose this amendment. The Government through its green and white paper process has always asserted that section 6 should be repealed and replaced by a positive statement about the fusion of the South Australian profession. That is what the Bill gives effect to.

I think it would be a retrograde step to remove the provision in which we make it quite clear that the profession in South Australia is to be fused. Those who followed the debate about this issue in South Australia and interstate realise that the central point of the argument revolves around whether the profession is fused or divided between barristers and solicitors.

The Government's view quite simply has been—and I will make it clear now and I will not repeat it during the Committee stage—is that lawyers should be admitted as barristers and solicitors, and that then they should be able to choose how they practise: either as barristers exclusively or as barristers effectively but who take some direct instructions from the public; as barristers and solicitors in partnership or on their own; or as solicitors in partnership or on their own. We want to make quite clear that that can happen, that there is no impediment to that happening and that the notion of dividing the profession in some legal way is rejected.

The fact is that there has developed historically—in other States in particular and in South Australia to some extent but to a much lesser extent—restrictive practices built up by the profession which in my view have increased the cost of legal representation by creating a non-competitive environment. The central point of the Government's reform is to ensure, either in the legislation or as has occurred in negotiations with the Law Society, that those restrictive practices are removed.

Critical to that proposition is an assertion that the profession is fused, but within that fused profession lawyers, once admitted, can choose to practise in any of the sorts of ways that I have outlined.

The Hon. K.T. GRIFFIN: The fact of the matter is that for probably all of this century and most of the past century practitioners have been admitted as barristers and solicitors. The profession in this State developed quite differently—

The Hon. T. Crothers: Do you want to stay back in the nineteenth century, then, do you?

The Hon. K.T. GRIFFIN: I am not saying that at all. What I am trying to stress is that there has not been the obligation to be admitted as either one or the other—barrister or solicitor. It has been an admission by the Supreme Court as both barrister and solicitor. I think it is barrister, solicitor and attorneys and proctors, but that is another issue.

The profession in this State has developed quite differently from that in, say, New South Wales. New South Wales being the oldest established State, formerly a colony, took upon itself the traditions of the United Kingdom in the eighteenth century and developed very much along the lines of the legal profession in that country, where there was a very strong division between the barristers on the one hand and solicitors on the other. There were different exams, admission requirements and different bodies admitting to practise.

The New South Wales bar has developed over the years, because of its unique position in that State, quite restrictive practices which the profession in this State never adopted and which I certainly do not support.

It has been recognised in Australia in the community and across the legal profession that in South Australia it is an amalgamated profession—it is barristers and solicitors. If people want to specialise and practise in particular ways they ought to be able to do it.

The Attorney-General indicated that there have been changes to professional conduct rules which put beyond doubt the question that certain so-called restrictive practices could not be maintained or even developed. However, as I recollect, South Australia has led the way in relation to advertising and the limitations on that have been further removed.

The question of barristers attending legal firms, not having to have a junior if one is a QC and all that does not exist now in South Australian has not for some time. So, it seems to me to be an unnecessary point to be making by way of legislation that this is a fused profession. It is a fused profession, and the Act says that it is. There is no plausible argument why it ought to be so expressed again in section 6(1) as proposed by the Attorney-General.

The Hon. I. GILFILLAN: Whether the right word is 'fused' or 'amalgamated', it seems to me from my

meagre personal experience and from listening to both the Attorney and the shadow Attorney that there is agreement that the situation exists in South Australia fulfilling what appears to me to be the aims outlined by the Attorney. I do not have any argument with it. It seems to me that that is a desirable goal and all three of us entities agree on that. What is the difference in the end result of the two parcels of amendments, if my assumption is correct, and that is that Mr Griffin and Mr Sumner actually do agree as to what is the end result, a fused and/or amalgamated legal profession?

The Hon. C.J. SUMNER: The difference is that my amendment specifically states that it is Parliament's intention that the profession should continue to be a fused profession of barristers and solicitors. The Hon. Mr Griffin says that that is making an unnecessary point. I do not believe that it is an unnecessary point because of the current debate around the country about reform of the legal profession and the restrictive practices that exist within it. I think it is important for Parliament to make it quite clear that we will not have a bar of that. The subsequent provision in section 6 that provides, in effect, that the undertaking required by the Chief Justice that Queen's Counsel can only practice at the separate bar is contrary to public policy and void, is related to emphasising that we have a fused profession and that we do not have a separate bar. The argument simply is that it is anti-competitive and restrictive, and we should not contemplate it.

It is interesting to note, if one wants to go back in history, that in the latter part of last century, the Victorian profession was divided into barristers and solicitors, and legislation was passed in that State in effect to fuse the profession. However, the bar got around it by an informal arrangement. It established a separate bar on an informal basis and then cloaked that bar with the sorts of restrictive practices that we are trying to ensure do not creep into South Australia. It is all very well to say that, in the current environment, it will not happen because of the debate about these matters around Australia, but you only have to listen to some of the discussions in the Bars that exist in New South Wales and Victoria to understand the sort of passion these people can develop about the desirability of a separate bar which, in my view, is purely self-serving.

All I am trying to do is ensure that, in legislation in South Australia, we make it quite clear that we will not have a bar of that and we will not have a bar of the restrictive practices that go with it. We will not have a situation where the barristers can establish their own club with those restrictive practices. We want to make it quite clear that we are a fused profession and within that fused profession all the options for lawyers are practised in that spectrum that I have outlined, voluntarily.

The Hon. I. Gilfillan: Subclause (4) does actually allow for legal practitioners to belong to a particular group who may well be barristers who act as barristers?

The Hon. C.J. SUMNER: That is to make it quite clear that, when saying that it is a fused profession, we are not prohibiting what exists now, which is the voluntary bar association. It does exist, but it is basically a social club. It does not have standing or status in the administration of the profession. In other words, it is not responsible for professional conduct rules. That is all conducted by the Law Society that represents barristers and solicitors, that is, all admitted practitioners. The Council of the Law Society makes the professional conduct rules.

The bar association exists, but it is basically a social organisation—although it does make representations on behalf of barristers, from time to time. The important thing is to ensure that that voluntary association of barristers, called the bar association, does not develop as it did historically in Victoria into an organisation which effectively tends over time to a division of the profession which, in my view, is contrary to the public interest. I just think that South Australia has an opportunity here to take a lead in the reform of the legal profession and to say to Australia, 'Look, this business that you carry on with in the eastern States, concerning the separate bar, its importance and all the rorts that go with it, is not for us.'

The Hon. K.T. GRIFFIN: I think that is really the essence of it. The Attorney-General wants to get some publicity interstate and to justify his previous observations of the legal profession which, in many instances, have been misplaced, and to use South Australia as an example that he has managed to clean up the legal profession. I must say that I have a concern about that being the basis for inserting in this Bill an expression of Parliament's intention. Parliament's intention is already clear. If we remove section 6 which allows the establishment by rule of a separate bar, then we get rid of the potential, if it was ever a real potential, to divide the profession, as the Attorney-General is supposing it may at some time in the future be divided.

I take the view that this subclause seeks to give the Attorney-General an opportunity to make a point without achieving anything useful in the administration of justice in South Australia. By way of interjection, the Hon. Mr Gilfillan drew attention to proposed subclause 4 which is a modification of the expression of intention. My preference is to make it clear, through the repeal of section 6 and the reliance upon section 15, that the legal profession is one. The Act provides that only the Law Society and the various tribunals identified under the Legal Practitioners Act have any responsibility for the governance of the legal profession, discipline matters and complaint resolution matters. That is clear in the Act. It is not as though the bar association or any other body will set up its own independent disciplinary structures because they would not be binding if they were ever sought to be established or to be enforced.

If we have the repeal of existing section 6 we stay with section 15 and then we go either to retaining subsections (2) and (4) or we go to my new clauses 6a and 6b, which really put into perspective the fact that legal practitioners have a right to choose the field of law in which they practise. Heaven help us if there is ever any attempt to direct that you have to practise in particular fields of the law in which you do not have an interest. It indicates that Parliament recognises the right of practitioners to practise solely as barristers, to form a separate bar if they want to—and that is a reflection of what is in the Bill—and that there is a right of freedom of association, so that you can form an association, whether it be Law Asia, whether it be the Family Law Association, or some other group, and that it is okay to do that. That seems to

me to be the eminently sensible way of dealing with it. The Attorney-General brought into play the question of the undertaking by the Chief Justice. Whilst it may be related to the general issue of so-called restrictive practices I see that as a separate issue and I have some substantive arguments to advance on that when we deal with that particular amendment.

The Hon. I. GILFILLAN: I believe that the Attorney is probably indulging in a little preventive legislation in ensuring that unacceptable practices will not creep in, rather than looking to exterminate practices which are deeply entrenched. He is the author of the Bill; there does not seem to be much conflict of intention and I signal that in this particular case I will support the way the Bill is drafted and oppose the amendment.

The Committee divided on the amendment:

Ayes (8)—The Hons J.C. Burdett, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, R.I. Lucas, R.J. Ritson, J.F. Stefani.

Noes (9)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, R.R. Roberts, C.J. Sumner (teller), G. Weatherill, Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived.

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

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

I will proceed with this amendment to delete subsection (2). There is probably not a lot of difference between my proposed section 6a, which we will vote on, and this subsection (2), but I would prefer my proposed amendments, which establish more clearly the principles rather than what is in the present drafting.

The Hon. C.J. SUMNER: I think that, given the structure of this clause and that we have now accepted the principle of a fused profession, we should continue with the scheme as proposed by the Government in the section. It is what the Hon. Mr Griffin intends to insert, using other words, in any event. So I would ask the Committee to stick with the Government's amendment.

The Hon. I. GILFILLAN: I will heed the call. I will stick with the Government's original drafting, although probably if it were taken to the wire I would be attracted by the layout and the set out of the Hon. Trevor Griffin's amendment. It is a little more appealing, but as far as I am concerned the essence is the same. It is the Government's Bill and if that is how the Government wants it I am prepared to support it.

Amendment negatived.

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

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

I obviously did not have the numbers on the last one and so did not divide. I probably will not have the numbers on some others but there are some on which I will divide. This next amendment is one on which I will divide because I think it is important. This says that an undertaking by a legal practitioner to practise solely as a barrister or to practise solely as a solicitor is contrary to public policy and void. What this seeks to do is not to say that the Chief Justice cannot impose a requirement that a legal practitioner should give an undertaking before being appointed a QC but it takes on the legal practitioner so that the undertaking can still be required but, if it is, it is invalid.

More particularly, it is contrary to public policy, and that is a fairly serious observation to make. I spoke at some length on second reading about the view of the Chief Justice and of Mr Justice Perry. Both believe that a Queen's Counsel should be available for all tasks, not only for tasks performed with particular legal firms if a QC happens to be practising in partnership with a firm of barristers and solicitors.

Mr Justice Perry indicated that he was of the view, when he was first required to make the undertaking before he took silk, that it would create problems for him in terms of practice and he was not happy with the undertaking. However, after practising at the Bar solely as a QC, he found that greener pastures were opened up to him and other opportunities for work were available and, more particularly, other people in the community who previously would not have gone near him or, if they had, would not have been able to gain his services because of other contacts that he had within his firm, were then able to take advantage of his experience. Unions as well as industry or employer groups were able to take advantage of his expertise in the industrial jurisdiction. Opponents to hotels were able to take advantage of his expertise against hotel interests where previously they had not been able to do that. He expressed a clear view that the undertaking was important not only for the legal practitioner but for the community.

The Chief Justice drew attention to the fact that, before the undertaking was required of QCs, they were by professional ethics and the membership of legal firms acting for particular clients prevented from taking instructions from those whose interests opposed those of the firms' clients. There was concern that one firm had a QC and another did not and why did not the one that did not have a QC at least have an opportunity to join the select group.

I hold the strong view that the undertaking required by the Chief Justice is not improper. It is appropriate to the office of Queen's Counsel, which recognises competence and ability, and that ability ought to be available to the wider community and not limited to the clients of a particular firm to which the QC may belong. I am surprised that the Attorney-General cannot see that there are advantages in a person practising as a QC—a recognition conferred at the moment, although he would want it otherwise, by the Governor-in-Council—and that the undertaking is of public benefit and should not be regarded as being against public policy.

I undertook a little research on the issue of public policy. I do not profess to have been able to do an adequate job in the time available, but, in relation to contracts which are invalidated by public policy, one can see the seriousness of the approach that the courts take to declaring a contract unenforceable by virtue of its being contrary to public policy. Halsbury's Laws of England, in its section on void and illegal contracts, refers to a number. It makes the point that it is important that the doctrine should be invoked only in clear cases in which the harm to the public is substantially incontestable. I would argue, in the context of this Bill, that the undertaking by the Chief Justice does not fall within such a category. The undertaking is not a clear case in which there is harm to the public and that such harm is

substantially incontestable. I would argue, rather, that it is a benefit to the public. If that argument is accepted, it is not contrary to the normal principles of public policy. For that reason, I believe it is wrong in principle to declare such an undertaking by statute to be contrary to public policy.

Halsbury's Laws of England observes that, at least in relation to contracts, there are many transactions now upheld that in former times would have been considered against the policy of the law. The rule remains, but its application varies with the principles which for the time being guide public opinion. Public policy must be distinguished from the policy of a particular Government. Obviously, this is a policy of the Arnold Labor Government. I suggest that although, if it is passed, it will be with the majority of both Houses and therefore become a decision of the Parliament it is wrong to be arguing that it is an issue of public policy when in fact, on my argument, it provides a public benefit. There is a range of other agreements which have been declared to be contrary to public policy: for example, an agreement by a newspaper carrying on the business of advising investors in land not to publish any comment upon its creditors, companies or business; an agreement for a pretended assault and subsequent summons for the purpose of advertisement; a contract improperly fettering a borrower's liberty of action and disposal of his property or depriving him of his sole means of support. There are others.

That is not an exhaustive list of all the matters that might be regarded as contrary to public policy, but it is curious that one should put into the category of a matter that is contrary to public policy an obligation required by the Chief Justice, a person who is sworn to uphold the law, that the undertaking hereafter is deemed to be contrary to public policy. I suggest that is offensive and inappropriate on a proper and objective assessment of the nature of the undertaking that is required and its consequences. Therefore, I move to delete subclause (3).

The Hon. C.J. SUMNER: However it is expressed, the honourable member knows that the intention here is to enable Queen's Counsel, after appointment, to continue to practise in a firm. I submit that that is a natural consequence of the amendment that we have just carried, namely, that the legal profession in South Australia is a fused profession. It is interesting to note that, until it became fashionable to have a separate Bar and for the Chief Justice to require this undertaking, all South Australia's prominent jurists came out of the fused profession. They all took silk and, until the late 1960s at least, they remained in their firms.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: It might have been 1964, then. In any event, the separate Bar did not get going until the late 1960s. Dr Bray, the present Chief Justice, Dame Roma Mitchell and Justices Hogarth and Bright all came out of the fused profession. It seems to me that the undertaking to be required by the Chief Justice actually reinforces the notion of a separate bar, and I think if you accept the basic proposition that the Government has put, which is once you are admitted as a practitioner whether you are a Queen's Counsel or not you should be entitled to practise as you choose, then the undertaking required by the Chief Justice should no longer be able to be sought.

I point to the example of some barristers and solicitors who have worked in firms and developed a particular aspect of the practice of the law, which may be welfare law or labour law, and they have tried to develop a practice which helps ordinary people in the community. They work more cheaply than other firms to enable that to occur, and their senior partner may get to such a stage and be so highly regarded by the court that it is appropriate to appoint them Queen's Counsel. As soon as that happens under the existing system that person has to leave the firm and that expertise is lost. That person has to stop practising that particular type of law and go off to the separate bar. I think that is unfortunate because it limits the way that people practise and it can be to the detriment of the community, because the community then no longer has direct access to that highly skilled person. That may be particularly noted in the case of a QC who may well come out of a relatively small firm, but one that traditionally has practised in the area of welfare law or labour law, if you like—and I am quite happy to use as an example the case of Mr Elliott Johnston, QC, who remained in his firm. He was a very prominent Queen's Counsel, who continued to practise in the way that that firm had practised for many years. He took on the tough cases, often for nothing, fought them through the courts and formed a very important service for a sector of our community. Under this—

The Hon. K. T. Griffin interjecting:

The Hon. C.J. SUMNER: You may be able to do it, but you are divorcing the Queen's Counsel from that firm, so you lose that leadership and expertise that the Queen's Counsel in that firm has, which has been built up over those years, and I think that is unfortunate.

The final point I make is that the Hon. Mr Griffin's view is not by any means the unanimous view and is certainly not my view. However, I would call in aid the report that was done for the New South Wales Law Reform Commission in the early 1980s on the reform of the legal profession (which did not get very far, I might add—they never do because of the resistance and articulateness of the legal profession). However, we are just about to break the mould. The Commissioner in charge of that report was Professor Julian Disney, who is probably well known to members as a spokesperson on a number of issues, particularly related to the welfare sector. I believe he was a former Chair of ACOSS and he was very critical of the undertaking that was required by the Chief Justice for the reasons I have outlined, namely, that it caused a split in the profession and was unjustified. Once you split the profession you force up costs and introduce restrictive and anti-competitive practices which make the costs of legal services to the general public more expensive. So, he was critical of the undertaking and thought it should not be required. He thought Queen's Counsel should be able to practise in firms once appointed, and I think that is the preferred view and that is what is being expressed in the Government's proposition.

The Hon. I. GILFILLAN: I support the intention of the Government in this clause in the Bill. I am not clear on the full implications of the phrase 'contrary to public policy and void', but I do not feel that it needs to be

fully interpreted by me as to what the effect of public policy is. I listened with some interest to what the Hon. Trevor Griffin indicated from his research, but the more salient point is that I believe there are advantages to the customer side of the public looking for legal service cheaply and readily available, and the more skilled providers of that service seem to me to be more readily available in the system as outlined by the Attorney rather than isolated in their own hive. So, I indicate opposition to the amendment.

The Committee divided on the amendment:

Ayes (7)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, J.F. Stefani,

Noes (8)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, R.R. Roberts, C.J. Sumner (teller), Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. K.T. GRIFFIN: I do not intend to proceed with my amendment to subsection (4) because I lost the earlier argument on that. I make only one further observation, namely, that it is interesting to note that subsection (5) provides that no contractual or other requirement may be lawfully imposed in a legal practitioner to join an association of legal practitioners. I make the observation in passing that it is a prohibition against compulsory unionism, and I would hope that the Government's interest to have it included in this Bill will encourage them to take another giant step in relation to the industrial relations area equally to provide for the same sort of prohibition in relation to other persons who are employees.

Clause passed.

New clause 3A—'The Litigation Assistance Fund.'

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

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

3A Section 14a of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) Any—

(a) communication between the Society, or any officer, employee or agent of the Society, and an applicant for assistance from the Litigation Assistance Fund;

or

(b) document in the possession of the society concerning the affairs of an applicant for assistance from the Fund, is privileged from production or disclosure in the same way and to the same extent as if it were a communication between legal practitioner and client.

This amendment has been requested by the Litigation Assistance Fund Advisory Board and approved by the Law Society. It seeks to provide the same privileges from production or disclosure for communications and documents between the Litigation Assistance Fund and an applicant as that presently applying to such communications between solicitor and client. This amendment is consistent with the privileges enjoyed by the Legal Services Commission and community legal centres.

The Hon. K.T. GRIFFIN: I have no difficulty with that. It seems to me to be sensible, so I support it.

New clause inserted.

New clause 3B—'Conditions as to training, etc., to be imposed on issue of new practising certificates.'

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

3B The following section is inserted after section 17 of the principal Act:

17a (1) A practising certificate will, if the rules of the Supreme Court so require, be issued subject to conditions—

(a) requiring the holder of the certificate to undertake such further training and to obtain such further experience as may be prescribed by the rules or by determination of the Board of Examiners of the Supreme Court;

and

(b) limiting the rights of practice of the holder of the certificate until that further training and experience is completed or obtained,

(but the rules may only require the imposition of such conditions on the issue of a practising certificate to a practitioner who has not previously held a practising certificate).

(2) The Board of Examiners may, on such terms as it thinks fit, exempt any practitioner, or practitioners of a particular class, from any such conditions either wholly or in part.

(3) If a person to whom a practising certificate was issued subject to conditions under subsection (1) fails to satisfy the Board of Examiners, in accordance with the rules, of compliance with the conditions, the Supreme Court may exercise either of the following powers:

(a) the court may impose further conditions;

(b) the court may—

(i) cancel or decline to renew the practising certificate;

and

(ii) decline to issue a fresh practising certificate to the previous holder of the certificate until stipulated conditions have been complied with.

(4) Subject to the rules of the Supreme Court, a person dissatisfied with a determination or decision of the Board of Examiners under the rules made for the purposes of this section, or the society, may appeal against the determination or decision to the Supreme Court.

(5) On such an appeal, the Supreme Court—

(a) may confirm, vary or reverse the determination or decision of the Board of Examiners;

and

(b) may make any consequential or ancillary order.

This new clause deals with the issue of practising certificates to legal practitioners. It will allow the Supreme Court to make rules for the issue of practising certificates to be made subject to a condition obliging the admitted practitioner to undertake further study or training.

The amendment is required because of the new arrangements being made with respect to the graduate diploma in legal practice course in 1994. It is proposed that as from 1994 the University of South Australia will offer a shorter certificate course. The shorter course will enable more than one intake per year, with the result that it should be possible to ensure that all students who wish to obtain a practising certificate will be able to obtain the necessary practical qualifications.

In order to maintain a satisfactory level of competency, the judges have resolved that it will be necessary to impose a requirement for post-admission practical training.

It is proposed to require practitioners by rules of court to undertake further practical legal training for some two years following admission to practise, with a proviso that if an admittee secures continuous full-time employment

with a legal practitioner for one year there would be no further obligation to undergo post-admission training after the expiration of that year.

The amendment also provides for a right of appeal from a ruling of the board of examiners to the Full Court of the Supreme Court. This amendment has been requested and approved by the Chief Justice.

The Hon. K.T. GRIFFIN: I can appreciate the reason for it in the context of the new admission arrangements. It does have the potential to go much further than that, and I wonder whether any consideration has been given to its longer-term application in relation to continuing legal education across the whole legal profession. I know there has been some discussion from time to time about the possibility of legal practitioners even in later years being required to undertake courses of training, refresher courses or continuing legal education courses. Does that have any place in the thinking behind the amendment or is it solely related to the issue of admission of new practitioners, and for the first two years after admission?

The Hon. C.J. SUMNER: This amendment is designed to cater only for those who have just been issued with a practising certificate for the first time. The general question of continuing legal education is before the Law Society. There are some proponents of compulsory continuing legal education and others who think that it should be done only on a voluntary basis. I am not sure that the members of the Law Society have resolved that issue amongst themselves yet. Certainly, the Government has not had any requests for support of one view or the other and at the moment it is a matter that is being dealt with by the Law Society.

A report on this topic was undertaken for the Law Society and it has been considering it. No doubt, if the honourable member wants further information he could contact the President and find out what is happening.

New clause inserted.

Clause 4 passed.

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

Clause 5—'Obtaining information for purposes of audit or examination.'

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

Page 2, line 16—After "under this Division" insert "(who must, if the manager so requires, produce a copy of the instrument under which he or she is employed or appointed to make the audit or examination".

Clause 5 deals with section 35 of the principal Act, which relates to the obtaining of information for purposes of audit or examination and to the power of an approved auditor engaged by a legal practitioner or firm making an audit and requesting information. My amendment seeks to ensure that, if the manager of any financial institution in respect of whom information is sought so requires, the auditor or inspector must produce a copy of the instrument under which he or she is employed or appointed to make the audit or examination. That was raised by the Joint Legislation Review Committee of the Institute of Chartered Accountants and the Association of Certified Practising Accountants, and I think it is a reasonable provision.

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

Amendment carried.

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

Page 2, line 24—Leave out "or other body" and insert ", trustee company, broker or other body or person".

Again, the Joint Legislation Review Committee to which I have just referred suggested that trustee companies and brokers ought to get a specific reference in the definition of 'financial institution'. Technically it is not necessary but, because it seems to me that it makes it more specific that bodies such as trustee companies, which do accept money on deposit, particularly in respect of their common funds, and brokers, who handle the transfer of funds, should in fact be specifically referred to, I move the amendment to include them in it.

The Hon. C.J. SUMNER: Our position is that is simply not necessary. Apart from that, I am indifferent.

Amendment carried; clause as amended passed.

Clause 6—'Confidentiality.'

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

Page 3, after line 5—Insert subsection as follows:

(5) If an auditor divulges information under subsection (4), the auditor must inform the society and the practitioner or firm of practitioner by which he or she was employed to make the audit of that fact.

This clause deals again with the issue of confidentiality in the whole context of auditing and allows an auditor to divulge information. What I am seeking to do is to provide that if an auditor does divulge information then the society should be informed and the practitioner or firm of practitioner by which he or she was employed to make the audit should be informed. I sent the Law Society a copy of these amendments. It was of the view that it should be mandatory upon the auditor to inform the society and the practitioner and thus I now use the wording 'the auditor must inform the society and the practitioner', whereas the wording of the amendment originally on file was 'the auditor may inform the society and the practitioner'.

The Hon. C.J. SUMNER: I am not sure I am happy with this. I know the Law Society has now indicated that it is prepared to agree to this amendment, whereas initially it was opposed to it, I understand. This information provided by the auditor is for purposes of pursuing a criminal offence. I am concerned that there is an obligation on the auditor, an absolute obligation in effect, to tell the people that they have audited that they are being investigated for a criminal offence. I am not sure that that is very appropriate. It might tip them off and they will take action to frustrate the investigations—or do a whole lot of things. It might be that if it is 'may' it might make it less of a problem rather than 'must' because the auditor could then make his determination about it.

There may be some circumstances where it is quite appropriate to advise the legal practitioner that the matter has been referred to the police or to others for criminal investigation. I just find it, in principle, strange that an auditor carries out an audit, finds evidence of possible criminal offending an then before the matter has been investigated by the investigators has to tell the people that he has audited. The honourable member may think it is a good idea, but I have worries about the way it is expressed. I am not convinced.

The Hon. K.T. GRIFFIN: It was drawn to my attention, as I said during the second reading, by the

joint legislation review of the two accounting bodies. They made the point that basically the information that will be made available is information which is already gleaned from the solicitor's records. It is not as though it is information that is solely within the knowledge of the auditor: it is knowledge which the auditor has derived from the audit and from the solicitor's files. It was put to me, and it seemed to me that it had some merit, that the release of information gathered by an auditor, which was in a variation of the existing obligation of confidentiality, should at least be referred to the client, whether it be the solicitor or the Law Society, for the purpose of satisfying what is the normal sort of auditor/client obligations. New subsection (4), in clause 6 provides that the duty of confidentiality imposed by the section (section 37) does not prevent the society, an officer or employee of the society or an auditor or inspector from divulging information arising out of an audit or inspection to a member of the Police Force investigating a matter referred for police investigation by the Attorney-General.

I suppose that is likely to be in relation to the conduct by the solicitor of the matter or the trust account, but it is quite possible that it might be related to something else and not impinge upon the lawyer's own integrity, to an officer or officer of an authority vested by the law of the State or 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 audit or examination have been brought. It really can apply in two contexts: one where the action is brought against the practitioner, but in another instance where the action does not involve the practitioner but maybe some clients or other people unrelated to the practitioner. I am not pressing it, but it seems to me a reasonable proposition.

The Hon. I. GILFILLAN: I am more attracted by the original wording, using 'may'. I take it the authorities to which the information may be given—with confidentiality broken—are responsible entities. It is not as though it is a sort of indulgence or a widespread freedom of breaking the general restraints of the confidentiality. I do not see any obligation for it to be in every instance a requirement that the auditor divulge the information to the society and the practitioner or firm of practitioners by which he or she was employed, but it may well be a reasonable option for the auditor to have the opportunity to inform the society, the firm or practitioner if he or she thought fit.

The Hon. K.T. GRIFFIN: The Attorney-General has indicated he would be more comfortable with the word 'may', although he is not necessarily agreeing with it even in that context, and with the Hon. Mr Gilfillan indicating that he is more comfortable with 'may', and after the debate that has occurred, I seek leave to revert to the original wording and substitute 'may' for 'must'.

Leave granted; amendment amended.

Amendment as amended carried; clause as amended passed.

Clauses 7 and 8 passed.

Clause 9—'Duty to deposit trust money in combined trust account.'

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

Page 5, line 19—After 'excess' insert '(but before the auditor includes a statement expressing such an opinion in the report, the auditor must allow the legal practitioner a reasonable opportunity to comment on the proposed statement and may make any modification to the proposed statement that the auditor considers justified in the light of the legal practitioner's comments)'.

This amendment again arises from some observations by the Joint Legislative Review Committee to which I have referred earlier. Clause 9 deals with the duty to deposit trust money in a combined trust account, and the amendment provides the formula by which that is determined, and later deals with a legal practitioner being able to withdraw money or withhold money from the combined trust account. Proposed subsection (10) provides:

> If a legal practitioner withholds money from deposit...the auditor must, in the report on the audit for the relevant year, express an opinion on whether the 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.

The point made by the Joint Legislative Review Committee was that the auditor looks at this as a one off, perhaps in isolation from the general conduct of the trust account and obligations of the combined trust account over the full year, and what the auditor might determine might not be appropriate when looked at in the context of the whole of the practice obligation during the year. My amendment seeks to require the auditor to allow the practitioner reasonable opportunity to comment on the proposed statement and require the modification of the proposed statement in any way that the auditor considers justified in the light of the practitioner's comments. The Law Society has looked at the amendment and writes in response:

> The Society has concerns that the proposed amendment could create difficulties with the independence of the auditor's opinion. We concur that the legal practitioner should have the opportunity to comment on matters raised by the auditor, but feel that the auditor must be free to arrive at his opinion and report accordingly. The society therefore recommends that the word 'must' in line 3 of the amendment be replaced by 'may'.

I have no difficulties with that, and I can see the good sense in it, so I have moved my amendment in its amended form to incorporate the suggestion of the Law Society.

The Hon. C.J. SUMNER: The Government does not believe it is necessary, but we will not go to the wall over it.

Amendment carried; clause as amended passed.

Clauses 10 to 12 passed.

Clause 13—'Claims.'

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

Page 6, lines 23 to 25—'Leave out paragraph (ab) and insert:

> (ab) in respect of a fiduciary or professional default occurring outside this State unless it occurs in the course of, or incidentally to—
>
> (i) legal work arising from instructions given in this State; or
>
> (ii) legal work substantially carried out in this State.

I raised this issue in the course of my second reading contribution. This overcomes the problem of a South Australian legal practitioner taking instructions interstate

and doing the bulk of the work here, but then being denied cover by the professional indemnity cover which all practitioners are required to take out. My amendment seeks to focus upon legal work arising from instructions given in this State, or legal work substantially carried out in this State. I think that overcomes the practical problem.

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

Amendment carried; clause as amended passed.

Clauses 14 to 22 passed.

Clause 23—'Proceedings to be generally in public.'

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

Page 9—

Line 10—Leave out 'section is' and insert 'sections are'.

After line 19—Insert new section as follows:

Tribunal's proceedings to be privileged

84b. Anything said or done in the course of the Tribunal's proceedings is protected by absolute privilege.

I suggest that we take both amendments together because they are consequential. This relates to the disciplinary tribunal. This proposition in the Bill is that the proceedings are to be generally in public. That means that anything that is said is then open to public scrutiny but, more particularly, might be the subject of some legal action, particularly in defamation if the statements made are defamatory, and I would suspect that many of them could be. The tribunal is protected by qualified privilege.

The suggestion has been made to me that it would make the task of the tribunal much easier and its decision to sit in public more readily made if the proceedings of the tribunal were to be absolutely privileged. That is the position in Victoria under its Legal Profession Practice Act. In fact, it goes further and in that State the tribunal is deemed to be a legally constituted court. I suppose the tribunal is, to a very large extent, acting in that way in relation to disciplinary matters, and its powers are quite extensive. I have no difficulty with the concept of hearings in public, but I do think that members of the tribunal must have adequate protection. That is the reason for this amendment.

The Hon. C.J. SUMNER: I am not sure what difference going public in this respect makes. I do not think it is relevant, frankly. The Government is not inclined to accept this amendment. Under the present Legal Practitioners Act, no liability attaches to a member of the tribunal for any act or omission if the members act in good faith in the exercise of their functions under the Act. The Medical Practitioner's Complaints Tribunal has the same protection from liability as does the Legal Practitioners Disciplinary Tribunal which again is the same as the tribunal constituted under the Legal Profession Act in 1987 in New South Wales. Therefore, the Government believes that the tribunal has adequate protection in these circumstances. It should be understood that in South Australia at least, with regard to witnesses before the tribunal and other tribunals, the privilege is qualified. This is consistent with other witnesses before similar tribunals and witnesses before a royal commission. If it is desirable to grant absolute privilege to witnesses before a royal commission, it is necessary to legislate.

The only circumstances in South Australia where absolute privilege is enjoyed is in Parliament and before a judicial tribunal, a court. In all other circumstances, the privilege is qualified. The privilege has been qualified for the Legal Practitioners Disciplinary Tribunal under section 81 of the Act since it came into force in 1981. I am really not sure why going public should mean that the absolute privilege should provide. All I say is that in South Australia it is not the situation that absolute privilege pertains to the operation of these tribunals. Surely good faith is adequate.

The Hon. I. Gilfillan: Do the other tribunals sit in public?

The Hon. C.J. SUMNER: Yes, that is one of the reasons that motivated the Government to provide that the Legal Practitioners Disciplinary Tribunal go public, because the Medical Practitioners Complaints Tribunal, which is chaired by a District Court judge in the form of Chief Judge Brebner, does hold its hearings in public usually, and—

The Hon. K.T. Griffin: It was only recently started.

The Hon. C.J. SUMNER: Well, maybe. We were trying to line up the provisions of the Legal Practitioners Tribunal with those that operate for medical practitioners. Their proceedings have qualified privilege and we thought that for consistency's sake qualified privilege should remain for the Legal Practitioners Disciplinary Tribunal. I do not know what difference going public makes to that particular point; I do not think the two are connected.

The Hon. K.T. GRIFFIN: I suppose it is a matter of judgment as to whether the tribunal ought to be protected in this way or left with qualified privilege. I suppose in terms of defamation, if the hearing is in public there is, of course, wider publication of the alleged defamatory statement. The Attorney-General, I acknowledge, is correct in relation to the immunity from action given under section 81(2), where the tribunal acts in good faith and where it acts in the exercise or purported exercise of functions or in the discharge or purported discharge of duties under this Act. All that I can say is that it has been suggested to me and the Law Society agrees with it—but that does not necessarily make it the final position—that the tribunal in its public operation would certainly feel more comfortable about its actions. There is no suggestion that it will act otherwise than in good faith, but it would certainly feel more comfortable in relation to issues of defamation and pick up, as I said earlier, the provisions of the Legal Profession Practice Act in Victoria, which actually makes the tribunal akin to a court.

I can acknowledge that if this is changed one might then have to look carefully at all the other tribunals to see whether they need specific protection or greater protection than is provided in their respective legislation. But the focus is on legal practitioners at the moment and I can really advance no further argument other than that it would seem to be an additional desirable protection for tribunal members in the exercise of their responsibilities and would certainly provide a greater level of comfort for those who have to do this job. They are probably a bit different from judges in the sense that judges, when they sit as persons chairing tribunals, may well carry their immunity with them.

The Hon. I. GILFILLAN: I can see some justification for the requirement for absolute privilege for

a tribunal sitting in these circumstances. It would appear to me though the same argument could be applied to the medical tribunal and maybe other tribunals which publicly hear evidence and make determinations.

I am not sure whether I missed, from what the Hon. Trevor Griffin may have said earlier, what the history of this amendment was, whether in fact it is one that the society has promoted or it is one which he has evolved through his own personal or the Party's assessment, but frankly I can see no disadvantage to it. The only disadvantage that one would feel is that this tribunal is likely to recklessly use the public forum to ruin reputations or hurt people maliciously, and I do not see that that is in character with the likely people involved in the tribunal or its deliberations. So without making a commitment I would indicate that I see more argument in favour of absolute privilege than against it.

The Hon. C.J. SUMNER: I am not convinced that it is necessary. I think the fact that the privilege is qualified provides some restraint on witnesses before the tribunal just slagging off about someone with absolute privilege. I do not think we are running much risk that the tribunal will itself behave improperly or otherwise than with good faith but, of course, if we are confident that they will behave in that way then we do not need the absolute privilege anyhow.

Section 81 gives the protection to the members of the tribunal and where they act in good faith in the discharge of their functions there is no liability attaching to the members of the tribunal. One would expect members of the tribunal to act in good faith and if they did not do so quite frankly I do not know why they ought not be sued.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That's right, exactly. Which means that you do not need the absolute privilege. The honourable member's amendment does not just apply the protection to the members of the tribunal but it applies it to everyone, witnesses or anyone who comes before the tribunal, which means that a witness before the tribunal has complete protection whether they are acting in good faith or not. I think the requirement for good faith for witnesses, which is implied by the fact that witnesses under a duty to give evidence before a tribunal have qualified privilege as far as what they say is concerned, is a protection against a witness before these tribunals saying what they like under absolute privilege, as the honourable member would suggest, being able to slag off at other people with complete protection whether they are acting in good faith or not. I just think there is a bit of a rule running through these things—that is those things that are less than Parliament or less than the formal courts—which says that there should not be absolute protection and that the protection should be that which is given by qualified privilege. I am not convinced about this one.

The Hon. K.T. GRIFFIN: We are taking it that one step further. I suppose that even witnesses who are being reasonable always run the risk that they will be sued by an offended party or person. I imagine they would normally have protection, but they may find themselves, in the face of litigation by a highly litigious legal practitioner, having to defend themselves and their actions and what they said before the tribunal even if the statements were reasonable. I tend to the view that, if one gives a tribunal and those appearing before it this sort of protection, generally speaking it will assist the conduct of the proceedings. It is not an issue on which I am going to the wall. If the majority view of the Committee is that my amendments should be supported, I have an open mind on the issue. If the Attorney wants to have another look at it before it is finalised in the other place, I am amenable to that. I shall not be unreasonable about it.

The Hon. I. GILFILLAN: I support the amendments. There is the risk that a witness in good faith may and can be intimidated by threats of legal action. If these are public hearings, there is a possibility that the tribunal would take a hearing in private on an application by a witness that that is how he or she would prefer it. In indicating my support for the amendments, I echo what the Hon. Mr Griffin said: I am amenable to hearing further argument about it.

Amendments carried; clause as amended passed.

Clause 24 and title passed.

Bill read a third time and passed.

ECONOMIC DEVELOPMENT BILL

Adjourned debate on second reading.

(Continued from 3 March. Page 1414.)

The Hon. C.J. SUMNER (Attorney-General): I thank honourable members for their contributions on this Bill. It is most heartening, given the significance of the Economic Development Bill, that representatives of the Opposition Parties and the Australian Democrats have spoken in the strongest terms of their support for the Bill.

I will refer to progress to date on the establishment of the board. An interim Economic Development Board has been formed and it is having its first meeting with the Premier today to begin the process of agenda and priority setting.

The Government has made considerable progress with the implementation of the recommendations of the Arthur D. Little report. The Government has, in its initial response, provided a $40 million economic development program, reduced port and electricity charges and introduced payroll tax rebates where there are increases in employment.

The Hon. Mr Davis spoke of the need for a one-stop shop for small and medium sized businesses to be advised of licence and legislative requirements. The Government has this year committed funds for the Business Licence Information Centre and the centre will be up and operating before the next financial year. The contract has been let for the software that will support the centre, and information for this service is being loaded and tested at present.

In response to the Opposition's call to view the amendments to be introduced into the Legislative Council, the amendments were filed on Thursday 4 March and they address issues raised in another place. They should clarify for the Opposition Parties that the EDB would exercise any powers under clause 16(3) within the spirit and the letter of the law and that the Government would be accountable to the community

through the proclamation of any determination by Executive Council where the EDB would exercise another Government agency's powers.

I will now turn to specific comments and questions raised in the Legislative Council in the debate on 3 March. In relation to the establishment costs for the Economic Development Board and the Economic Development Authority, up to 8 March the costs were just less than $51 000. There are a series of costs reflected within this figure, including letterhead design, career counselling for staff, workshops for EDA staff to introduce them to the new organisation and its priorities, signage and letterhead for the EDA. To date no voluntary separation packages have been approved or offered to any members of the former Department of Industry, Trade and Technology.

As regards the role of the EDB in financial assistance to business, the Hon. Mr Lucas and the Hon. Mr Griffin have raised the prospect of the Economic Development Board picking winners. It is reasonable to question whether this is a role that can be assumed by the Economic Development Authority, but it is a mistake to believe that this is how the Economic Development Board will operate. The EDB will be subject to strict controls with any borrowings or investments.

The Economic Development Board will be a funded agency and its funds will be provided through the appropriation processes of Parliament. The board will not have powers to raise funds, except under the provisions of the Public Finance and Audit Act for which the Treasurer's approval is required.

The Hon. Mr Davis questioned what the role of the Industries Development Committee would be, and I am sure he will be pleased to learn that there is no intention to disband the IDC. It is intended that the Industries Development Committee will continue to play an important role in assessing industry assistance.

It is the Government's intention that the Economic Development Board would recommend the policies and general priorities for financial assistance to new and expanding industry in South Australia and review the performance of the South Australian Development Fund and the economic development program against determined objectives and targets.

With regard to public and private sector collaboration, while 'picking winners' was derided by the Opposition, it has to be recognised that the State needs to have more winning firms and that the EDB will be actively backing winners. It will need to rely on the commercial judgment of its own board members in consultation with the private sector to determine what might be the prospective industries and 'clusters' that provide growth opportunities for South Australia. However, the EDB will not be in the business of initiating the selection of individual firms as winners. Such selection has to be market driven.

The EDB will provide the supportive environment for industry sectors within which firms will self-select themselves as winners. That is why the Government provided $1.5 million to the wine industry for its export strategy rather than supporting individual firms. This is a good example of industry leadership but where the Government has been able to play a facilitation role. Therefore, it is the EDB's objective to create the right economic environment or business climate for an industry in which individual businesses can make their own decisions.

In other developed economies the private sector, and the private sector in collaboration with the public sector, has brought firms together to establish highly successful clusters; for example, the electronics and computer-related clusters of Silicon Valley, the automobile, microelectronic and robotics clusters of Japan and the machine tool and ceramic clusters of Italy. Arthur D. Little identified four clusters with potential in South Australia. These are the wine industry, automotive sector, advanced engineering sector and research and development services. The EDB will be working to develop the potential of these areas in collaboration with the private sector.

The wine industry in South Australia is, under private sector leadership, developing as a most successful cluster. The EDB and the auto assemblies and component manufacturers in South Australia and Victoria, with support from Stanford Research Institute, are beginning clustering activity and strategy for more effectively tackling export markets. Advanced engineering research and development services are potential clusters and the EDA is assessing the State's current capabilities in these areas.

With reference to the EDBs role in development, reservations have been expressed about the EDB being the economic planning agency and having the power to initiate development in the State. The Hon. Mr Griffin was concerned at potential conflict of interest and the State becoming involved in developments which are not viable.

Given the structure of the State economy and the regional difficulties it faces, it is critical that the EDB help drive economic growth in this State rather than be solely a planning body. Under its functions the board can negotiate for the expansion of industries in the State or for the establishment of new industry in the State (clause 16(e)) and initiate and carry out projects and programs, or participate as a member of a joint venture in projects and programs for the economic development of the State (clause 16(k)).

In exercising these powers the EDB may bind the State and its agencies and not itself alone. In order to ensure that there is broader public sector scrutiny of any use of these powers, and that the board does not establish contractual arrangements, that is, sign any agreements for industrial expansion or development or participate in any joint ventures without prior approval of the Government, clauses 16(2) and 16(5)(b) provide for approval by Executive Council.

In any of its development activities the Government and the EDB will be seeking to ensure private sector leadership. The Government and the EDB would want the private sector to be assessing the financial risks of projects and determining their participation assuming that they are to carry those risks. The EDB will commission some of the preliminary work of market research and planning, and it will provide information to the private sector so that they can determine whether to undertake the necessary feasibility studies and business plans. Ultimately, the EDB would want the private sector to assume leadership and ownership of any such developments.

With reference to the development approval processes, the Government would agree with the Hon. Mr Gilfillan that all development projects need to be subject to 'a much. quicker way of dealing with the necessary requirements but not avoiding the responsibility to do them properly'. Planning approval processes generally will be improved under the provisions of the new Economic Development Bill. However, the Government can envisage circumstances where it will be fundamentally important to a project that it be treated with urgency and that all agencies are alerted to this through a resolution of Executive Council that the Economic Development Board may or will exercise agencies' powers of consent or approval.

In relation to clause 16(3), the Hon. Mr Gilfillan has asked what are foreseen as the approvals, consents, licences and/or exemptions that are foreseen under clause 16(3). The Bill provides that Executive Council could empower the Economic Development Board to exercise any statutory power within South Australian legislation, so it is possible for Cabinet to determine that any authority, approval or consent that is needed to get a proposal up and running can be delegated to the Economic Development Board.

In exercising statutory powers of another agency, the EDB could not shortcut the proper processes provided within legislation. For example, if the Government was to indicate to the proponent of a major project that the Economic Development Board may exercise the powers of other agencies in order to guarantee a timeframe for approvals, then the Economic Development Board would be working with all Government agencies to ensure that the timeframe was met with or without the EDB needing to exercise its approval processes.

The timeframe that was set for approval would have to take proper account of the processes to be undertaken including, for example, for a project of major social, economic or environmental importance, the requirement that an environmental impact statement be prepared, for there to be a period of public display, a response to submissions and an assessment report. All the necessary steps would remain part of the process and the EDB would continually work with the agencies in order that realistic and desirable timeframes were met.

With reference to regional boards and their use of delegated powers from the EDB, the Hon. Mr Gilfillan has questioned who are the regional authorities and what are the intended delegation of powers, particularly powers under clause 16(3), to them. The regional development authorities are those currently operating and assisted under the Government's regional development policy. The EDB currently assists the regional development bodies in their pursuit of development objectives for their regions. The regional bodies are self determining.

Clause 16(m) enables the EDB and the regional bodies to have a mechanism for the board to more specifically assist the regional authorities by making the expertise of board staff available. In addition, it makes it possible for the regional bodies to act on the board's behalf. Where the regional bodies were pursuing plans or projects that were part of or consistent with the State's economic plan or strategies then the board could delegate relevant powers to the regional authorities.

With regard to clause 16(3), these powers would be sought and used with Cabinet's approval in exceptional circumstances. In some instances the powers may be applied to a regional project. Since the intent is to follow due process and achieve the approval processes in a timely manner, in close and cooperative relationships with the relevant Government organisations, any advice to Cabinet about the exercise of these powers would have to take into account how this could best be accomplished.

In regard to the relationship with the MFP, this Bill establishes the Economic Development Board as the State's primary agency for determining, coordinating and implementing economic development strategies for the State. The MFP is a national project but it is also designed to be one of the State's significant economic development programs, although more narrowly focused than the EDB agenda.

The Hon. Mr Gilfillan refers to the board's function (clause 16(1)(j)) and suggests that it duplicates the MFP. This reflects a misunderstanding of the two agencies' roles in this area. The MFP Development Act provides for the MFP to 'promote and assist scientific and technological research and development' while this Bill provides for the board 'to integrate scientific and technological research and its commercial exploitation within the economic development framework of this State'.

The latter emphasises commercial returns from the State's research and development assets. The board will be looking at how South Australia's research and development strengths can be utilised to make existing industry more competitive, attract investment into the State and create new viable businesses. The MFP, which has a national perspective, will contribute to some specific aspects of this objective. However, the board's role is across the whole economy and is focused solely on this State. What the EDB can bring is an overview of the links required between priority sectors of the economy and our research capabilities.

In relation to the nature of performance agreement between the Minister and the board, there could be two sets of performance targets which the Minister would want to negotiate with the Economic Development Board. The first would be a series of targets for the State economy towards which the Minister would ask the board to direct its efforts. For example, the Government may indicate that it has targets for growth and targets for employment, and it is setting these so that the board is, in all of its decision-making processes, guided by the overall direction and vision that the Government has for the State economy. The Government would recognise that the board could, directly and indirectly, influence the achievement of the first set of targets and it would be the Government's expectation that the board's efforts would be directed towards those.

The second set of performance targets would be those that the Minister would ask the board very directly to meet. This may include that the board, for example, undertake a major education and marketing program towards the South Australian and Australian communities and that specific measures be applied to assess the effectiveness of those efforts. The Minister may outline the policies and strategy areas which it wants the board to address and which could include such items as

business climate, investment attraction incentives, policy for the commercialisation of our research and development capacity, etc. The second series of targets are those for which the Minister would hold the board very directly responsible and against which it would assess its performance.

With reference to the relationship to the Public Corporations Bill, the Hon. Mr Griffin has asked whether the EDA will be subject to the Public Corporations Bill, and the answer is 'No'. The relevant provisions of that Bill have been incorporated into this Bill and it is not intended that the provisions of this Bill be as stringent or as far reaching as those of the Public Corporations Bill since the EDA is not an operational agency in a trading or commercial role.

In relation to the disclosure of interest, the Hon. Mr Griffin has sought clarification of 'private interest' (clause 12), and Parliamentary Counsel advises that 'private' is synonymous with 'personal' interest and interpreted to include pecuniary interest, that is, private is co-extensive with personal and pecuniary. Private interest could therefore include a personal financial benefit, nepotism in employment or the letting of a consultancy or other contract. It is envisaged that any private interest would be primarily financial but it could also include other less tangible benefits.

With reference to members' duties of honesty, care and diligence, the Hon. Mr Griffin has queried the intention in clause 13 where a member is deemed not to be culpably negligent unless the court is satisfied that the member's conduct fell sufficiently short of the standard required of the member to warrant the imposition of a criminal sanction.

The Government's intention is to establish what would be practice in reality, that is, that prosecution not be contemplated for a single episode of negligence unless that matter was of such significance as to lead the court to make a judgment of criminal negligence. The courts have developed the notion of culpable negligence in the criminal law and it is envisaged that in these circumstances the courts could determine the difference between ordinary and culpable negligence.

I now refer to board membership. The question of representation on the board has been raised and it needs to be clearly understood that the board is not drawn from representative bodies. There are many talented people potentially available for the board and it was a difficult selection. It will be a requirement of the board that it work successfully with representatives of all sectors.

In relation to the annual report, principally, the delegations would be to exercise approvals in financial and human resources matters. Given the ongoing role of the IDC and the Minister in approving assistance to industry, it is not planned for the delegations to vary significantly from current practice.

Bill read a second time.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

Adjourned debate on second reading.

(Continued from 2 March. Page 1350.)

The Hon. BERNICE PFITZNER: This is a complex and difficult piece of legislation. It is complex because of the very many different pieces of legislation that surround the topic of death and dying, and it is difficult because the issue is an emotional one, the crux of which are the two positions that in this context are mutually exclusive: that of the sanctity of life and that of the quality of life. Therefore, it is a most wise and traditional decision that such matters are dealt with as a conscience issue rather than on Party political lines. However, it was stated in the second reading explanation that:

> The hallmark of a humane society is one which recognises the right to die with dignity in circumstances which are not needlessly distressing and as free of pain as medical and scientific knowledge permit. The law should reflect that community attitude.

Let us look at some attitudes of health care workers and of doctors and of nurses towards death and dying and to their reaction towards the community. A research report done by the School of Social Sciences at the Flinders University in August 1992 is most helpful in our search for community attitudes. A statistical table entitled 'Request to hasten a patient's death by withdrawal of treatment or by taking active steps to hasten a patient's death' shows that 47 per cent of doctors have received a request from a patient to hasten death by withdrawing treatment, and the same proportion have received such a request from the patient's family. Thirty-three per cent of doctors said that they had received a request from a patient to hasten death by taking active steps, and 22 per cent had received a request from the patient's family for taking active steps.

The data relating to nurses showed a similar trend, except that fewer nurses than doctors reported that they had received such requests from families of patients. This difference is explained in the report as, first, the close contact between patients and nurses; secondly, the lack of intimate contact between nurses and the families of patients; and, thirdly, the relative authority of the doctor in caring for the patient in the eyes of the family. Reasons for the request to hasten death are given in the report. I seek leave to have the statistical table 'Request to hasten a patient's death by withdrawal of treatment or taking active steps' to be incorporated in *Hansard.*

Leave granted.

Table 3: Requests to Hasten a Patient's Death by Withdrawal of Treatment or by Taking Active Steps

	Doctors		Nurses		Total Population	
	No.	%	No.	%	No.	%
Withdrawal of treatment						
Request made by patient	140	47.5	129	47.6	269	47.5
Request made by family	138	46.8	105	38.2	243	42.6
Active Steps						
Request made by patient	97	32.9	78	30.0	175	31.5
Request made by family	64	21.8	42	16.5	106	19.3
Total = Doctors 298						
= Nurses 278						

The Hon. BERNICE PFITZNER: Another table in the same report gives the ranking of reasons for requests to hasten death, according to the requests from patients and also according to requests from the family. I also seek leave to incorporate this statistical table 'Ranking of reasons for requests to hasten death' into *Hansard.*

Leave granted.

Table 5: Ranking of Reasons for Requests to Hasten Death

	Ranking							
	1	2	3	4	5	6	7	Not Ranked
Request from Patient								
Persistent & irrelievable pain	67	34	8	8	2	-	-	38
Terminal illness	61	44	15	8	2	-	-	38
Incurable condition	20	19	35	13	9	-	-	31
Infirmities of old age	19	13	17	13	5	14	-	17
Not wanting to be a burden on others	9	20	21	22	14	4	-	21
Afraid of slow decline while dying	6	14	17	10	14	12	1	18
Request from Family								
Persistent & irrelievable pain	75	16	9	3	1	-	-	26
Terminal illness	40	43	11	2	1	-	-	33
Incurable condition	32	16	24	6	-	-	-	23
Infirmities of old age	11	6	5	10	5	3	-	11
Not wanting to be a burden on others	2	4	3	1	4	4	-	8
Afraid of slow decline while dying	5	8	4	5	4	1	-	5

(Respondents were asked to rank the reasons for requests to hasten death: the majority ranked a few items only, while others ticked categories but did not rank them.)

The Hon. BERNICE PFITZNER: This table shows that the most commonly cited reason for appeals from both patients and family was persistent and irrelievable pain. Other reasons for requests to hasten death were terminal illness, incurable condition, infirmities of old age, not wanting to be a burden on others, and fear of a slow decline while dying. The sequence of reasons for requests in order of relative importance was the same for both patient and family except for the last two, that is, not wanting to be a burden on others and afraid of the slow decline while dying. The respondents were divided about the relative importance of these last two factors.

In another table the question was asked, 'Is it ever right to bring about the death of a patient by withdrawing treatment?' This table shows, and it is interesting to note, that 59 per cent of all respondents said that it was right to bring about the death of a patient by withdrawing treatment. A further 31 per cent said 'Yes, but only if requested by the patient,' while 10 per cent said that it was not right. I seek leave to incorporate this statistical table, entitled 'Is it ever right to bring about the death of a patient by withdrawing treatment?' into *Hansard.*

Leave granted.

Table 8: Is it Ever Right to Bring About the Death of a Patient by Withdrawing Treatment—Total Population

	Yes Number	%	Yes, Only on Patient Request Number	%	No Number	%
Age[1]						
20-29 years	44	56.4	30	38.5	4	5.1
30-39 years	122	60.1	69	34.0	12	5.9
40-49 years	86	55.8	46	29.9	22	14.3
50-59 years	47	62.7	16	21.3	12	16.0
60+ years	35	61.4	17	29.8	5	8.8
Sex[2]						
Male	158	65.8	65	27.1	17	7.1
Female	176	54.0	112	34.4	38	11.7
Religion[3]						
C of E	85	57.4	51	34.5	12	8.1
Other Prot	89	56.0	56	35.2	14	8.8
Catholic	51	54.1	33	33.0	16	16.0
Other	20	54.1	12	32.4	5	13.5
None	88	72.1	26	21.3	8	6.6
Total	337	58.8	179	31.2	57	9.9

1 x^2 = 16.0, DF = 8, P= <.05
2 x^2 = 8.5, DF = 2, P= <.05
3 x^2 = 16.7, DF = 8, P = <.05
Total cases = 573
Missing = 3

The Hon. BERNICE PFITZNER: In response to the question, 'Have you ever taken active steps that have brought about the death of a patient?', the report states that 19 per cent said 'Yes', 75 per cent said 'No', 5 per cent did not wish to answer, and 1 per cent were unsure. There was little variation between doctors and nurses in their response ratio to this question. These results of the Flinders University survey give us an idea- of the attitudes of doctors, nurses, patients and their families to the withdrawal of treatment, the reasons behind the requests to withdraw, the rightness of the whole procedure and the extent of practice of active euthanasia in health care givers.

The result of this survey does not surprise me since, having previously worked in the health field, this is the impression that I would have gained, an impression of the importance of the quality of life as opposed to the sanctity of life.

Let us now look at these two positions. Most societies place a high value on the sanctity of life, regarding the human life as sacred. If we have certain legislative changes, they could damage our fundamental regard for the sanctity of human life.

Indeed, our training as doctors has put this first and foremost and to be considered as paramount. If we take the strict interpretation of the sanctity of life then everyone who is born has the 'right to life'. This position commits the holder to the belief that all killing is wrong as it violates that right. It would then mean that all patients should be treated with all available medical resources up to the moment when life ceases. This is difficult to accept when there is a person suffering on the other end of treatment.

There is the position of the modification of the sanctity of life. An interpretation of this position is that, whilst it may never be permissible actively to kill someone, it may be permissible to act or fail to act when the foreseeable result will be the person's death. Again, if the death were merely foreseen but not intended then the death was not the result of killing. The quality of life perspective is not so much the sacredness of life but respect for human life. It is the value which is placed upon human life that is critical. The quantity of life should not be given any greater priority than the quality. The difficulty is with the measurement of the quality of life and what criteria to use, and also to distinguish between the biological and physical and biographical or spiritual lives.

In the quality of life position the 'best interests' of the patient, as defined by wellbeing and self-determination, should be the foundation of medical decisions. Although 'best interests' is difficult to define, it can be achieved by consultation. Considering the various perspectives, the position of modified sanctity of life is possibly the position of this present Bill. Those who support fully the quality of life that medical treatment should be made on the basis of the benefit to the individual could argue for euthanasia. As Veatch (1976) asks:

1. Is there any difference between killing and letting die?

2. Is there any difference between stopping treatment and failure to initiate it?

3. Is it acceptable to undertake treatment if one of its side effects is death?

4. Is there any significant or absolute difference between 'ordinary' treatment and 'extraordinary' treatment?

Although this Bill does not deal with euthanasia one should have a definition of this most emotive word. There is no consensus on its definition. The broader the definition, the more likely will medical actions fall into its ambit. The more precise and more discrete the definition the less likelihood of misinterpretation. The *Oxford Dictionary* defines euthanasia as:

quick and easy death; the means of procuring this; the action of inducing a quiet and easy death.

This very broad definition encompasses actions which are both active and passive and deaths are both voluntary and involuntary. Suicide can also be included in this definition. A more precise definition of voluntary euthanasia is:

a medically assisted quiet and peaceful death at the request of and in the interests of a patient.

This is voluntary active euthanasia, which this Bill does not encompass. The select committee has done an excellent job in taking all the most complex and emotive submissions and providing recommendations of a positive nature. The key reasons which emerge and to which this Bill is firmly linked are:

1. The need for the right to refuse treatment.

2. The need for greatly increased awareness of value of palliative care.

3. The need to educate health care workers on benefits of palliative care and the nature of the dying process.

4. The need for palliative and hospice care principles to be adopted.

5. The need to appoint an agent to make decisions about medical treatment on their behalf if patients themselves become unable to do so.

6. The need to repeal the Natural Death Act and replace it with more appropriate and relevant legislation.

7. The need for the development of quality services for patients suffering from long-term dementia.

8. The need to recognise the special problems of dying patients with disabilities.

9. The view of some people in the community in favour of decriminalising voluntary euthanasia and their belief that it should become an acceptable part of medical practice.

The objects of this Bill are threefold:

(a) To make certain reforms to the law relating to consent to medical treatment to allow persons over the age of 16 years to decide freely for themselves on an informed basis whether or not to undergo medical treatment and to provide for the administration of emergency medical service and treatment in certain circumstances without consent.

(b) To provide for medical powers of attorney under which those who wish to do so may appoint agents to make decisions about their medical treatment when they themselves are unable to make such decisions.

(c) To allow for the provision of palliative care in accordance with proper standards to the dying and to protect the dying from medical treatment that is intrusive, burdensome and futile.

The important principles are patient autonomy and that the wishes of patient should be paramount. This legislation repeals the Consent to Medical and Dental Procedures Act 1985, but its provisions are restated in this Bill. The requirement of a patient to have informed consent is important and is a routine of good medical practice. The concept of medical power of attorney is introduced and the Natural Death Act is repealed. Although it was a first for its time, its mandate is now seen as narrow, and with advancing medical science the requests may be irrelevant and obsolete.

The latest Canadian experience, which expands on the Natural Death Act or the living will concept, is of interest. It is called the 'personal health care directive'. The introduction to the Canadian checklist states:

In this directive I have stated my wishes for my own health care should the time ever come when I am not able to communicate because of illness or injury. This directive should never be used if I am able to decide for myself. It must never be substituted for my judgment if I am competent to make these decisions. If the time comes when I am unable to make these decisions I would like this directive to be followed and respected. In an emergency please contact by advocates or my family doctors who are listed below. If these people are not able, then please do as I have directed in this directive. I have thought about and discussed my decision with my family friends and my family doctor. I do not want to leave these decisions to my family, my doctor or strangers who do not know me.

In the personal health care chart, it states:

This chart is to be consulted only if I am no longer able to make or communicate my own decisions. My choices are noted in the spaces below each section.

Then we have the sections in three categories: life threatening diseases, feeding difficulties and cardiac arrest. Under each of those three categories are the conditions as to whether it is reversible or irreversible, and under each of those conditions are whether it be palliative, limited, surgical or intensive treatment. In this check list, there is a definition of the terms used in the directive. This is a document that we ought to think about. Some of us might still like to make our own decisions beforehand, and this check list type of chart with a yearly update and review might be another idea, because this document does state that it should be reviewed once a year, after an illness or if there is any change in health. However, at this stage this concept might be what we call overtaking the opinions of the community in South Australia on this most difficult subject of death and dying. It is also important at this stage to reiterate that the prohibition against assisted suicide remains in the Criminal Law Consolidation Act (Section 13a).

In thinking through this whole legislation, I am greatly encouraged by the protection that this Bill will give to health care workers. As a medical practitioner, I can still recall the many instances when permitting death with dignity was a practice. Some of these experiences I can now share with members. I recall two young lads in their 20s who had broken their necks in a sporting activity and were rendered quadriplegic, that is, completely paralysed, and needed to be assisted in breathing. They were totally alert and competent. They requested the machines to be turned off, an action permitted in the Natural Death Act.

I recall a patient with severe cancer of the throat and terrible pain, and given insufficient pain killers because of the fear of death. At 30 he jumped from a five-storey window. In relation to wards of elderly patients, in the 80 to 90-year old age group, who were mentally incompetent, with bed sores and feeding difficulties, if they caught pneumonia treatment was cautious. Again, in the over 80-year old age group, there were those with cerebral haemorrhage, deeply comotosed, on drips and tube fed, dry of mouth and stiff of limb, with the 'do not resuscitate' orders put up and with the tubes for intravenous and gastric feeding finally all withdrawn. There were the newborn of very low birth weight, between 500 and 700 grams, on a respirator, tube-fed,

with lung problems and intermittent cessation of breathing. In the end, life supports were withdrawn.

With these examples with which I have been involved, the quality of life is very important. There have been detractors to this Bill. The South Australian heads of churches would like further amendments to put further accountability into the Bill. The Right to Life organisation has a fundamental position which is completely against the principles of this Bill. I acknowledge their concern and understand it, but do not agree with that particular line of argument.

At this stage I also flag certain amendments that I would like to introduce. They include an amendment to clause 6, with respect to refusing consent as well as to consent; in relation to the medical treatment of children (clause 8) that the parents have more involvement; an amendment to pursue the living will concept, and an amendment to prioritise the medical power of attorney.

In conclusion, changes in the law have not yet been sufficient to improve the differences between medical practice and the law. In this legislation, there is no change in the overriding importance of the sanctity of life. This Bill signals that the making of these difficult decisions is not the sole prerogative of the medical practitioner. It recognises that medical science is so far advanced that it is no longer the simple issue of a medical fight against death and disease, but that other issues, such as the ethical issues surrounding the debate on the quality of life, are also important.

Although there may be dangers in extending the right of self-determination to incompetent patients through the use of agents, there are also sufficient inbuilt checks and balances to ensure that this Bill will serve to enhance patients' rights and self-autonomy. I commend this most complex but visionary Bill to my colleagues in this place and I support the second reading.

The Hon. M.S. FELEPPA: I wish also to participate briefly in the second reading debate by drawing the attention of members to some aspects of this Bill. Before so doing, I wish to make a more general observation. The first interim report of the Select Committee on the Law and Practice relating to Death and Dying contains a list of 301 written submissions and 36 individual people who made oral submissions. The mass of evidence set members of the Committee the enormous task of sifting through it all so they could arrive at their conclusions and recommendations, which they finally did.

There was also a second interim report after more work, and a final report in November 1992, with a draft Bill upon which the current Bill now before the Council is based. Members of the select committee of the House of Assembly are to be commended for the effort that they have made, and for the final report that they presented to the Parliament. This Bill is a matter of conscience because it contains a moral issue. It is about what in conscience we ought or ought not to do. We ought not to deliberately take human life. That is the first moral principle in all societies, even primitive society, may I suggest. This is enshrined in our criminal law, but the issue before the Council here this evening contains a matter of compassion. We hope to relieve the pain and the suffering as death approaches.

It used to be, in times past, that death came upon us and we could do very little or nothing to hinder its approach. Now, however, with all the technology that science has given us we can arrest the approach of a death to the degree of being able to keep life in a body even after there is a certainty that the brain is dead and that there is little or no chance whatsoever of normal life returning. Because of this technological advance there is concern about and a need for legislation that will allow death to take its more normal course. It is compassion and more responsibility that is at the heart of this Bill, as I read it, that is for the entire Council to consider.

The Natural Death Act 1983 was the forerunner of the present Bill and emphasised the death aspect of our concern. The present Bill emphasised the treatment of the patient so that the patient can receive the best care for quality of life, which may, incidentally, extend to death. The title of the present Bill in my view reflects truly our compassion and moral concern.

In considering the content of the Bill my first point falls outside of the statute but arises from the Bill. During the debate and discussion elsewhere permanent medical power of attorney has been mentioned. If a permanent medical power of attorney is granted it could be in force for years and years. It is therefore reasonable that this power should be reviewed from time to time as conditions may have changed over the years and that the power may have to be transferred or varied. In this way the review is on a par with one's last will and testament, which should be reviewed from time to time. This is a matter that the public should be encouraged and educated to consider instead of loading the legislation with unnecessary details. I take it that in the normal course of events a plain language information sheet will be produced in connection with the content of this Bill and that the point I have just raised should be included with other information. The next point that I wish to draw to the attention of the Council is that the Bill contains, in schedule 1, the accepted form by which a permanent or temporary medical power of attorney is granted to a medical agent. The form makes very clear the intention to grant the power and the conditions which apply when the patient (himself or herself) is unable to make a choice. To the contrary there is no provision in this Bill for a patient to record the intention to refuse or accept the treatment under particular circumstances. On this point I wish to draw the attention of the members to the Natural Death Act, which had in it what came to be called a 'living will', whereby a person could legally record such an intention and I regard this as an extremely important point.

In the second interim report of the select committee, Professor Ian Maddocks is recorded as saying:

> If the affected individual has indicated that he or she does not want further resuscitation or transfusion and been judged by the attending physician to be making an informed and rational statement to that effect, then the physician may indicate to the attending medical and nursing staff that it would be inappropriate to undertake resuscitation and write an instruction to that effect on the patient record. It will assist the doctor in making an order if the patient has previously left written instructions about his or her wishes not to be the subject of resuscitation.

In my opinion the Bill should contain a section making such a provision, which would be for the benefit of the patient and somehow to ease the burden of responsibility from the hospital staff. I believe that such a provision would contain something like the following:

It is my considered intention that:

1. I will refuse medical treatment that is most likely to leave me in a vegetative state or totally dependent or permanent assistance to lead a daily life;

2. When in terminal phase of illness I will refuse medical treatment that is burdensome, intrusive and futile and such measures that would merely prolong life in a moribund state without any real prospect of recovery; and

3. I will consent to palliative care of a proper professional standard even though an incidental effect of the treatment would hasten my death.

Unless I am convinced by what is said in this debate that such a provision should not be in this Bill, while it was included in the previous Act, I will propose to move an amendment to clause 6 when we reach the Committee stage. If my amendment is accepted of course its meaning and application should be included in the plain language information sheet under schedule 1(a), which I will also be proposing.

The last point I wish to make is that I suspect that also in this Bill there is an anomaly in clause 7(2), which provides:

A person convicted or found guilty of an offence against this section forfeits any interest that that person might otherwise have had in the estate of the person improperly induced to execute the power of attorney.

As I read the *Hansard* of 18 February 1993, during the Committee stage in the House of Assembly, this provision was passed without comment. From the little that was said in that debate this provision seemed to have been included in the Bill to prevent abuse of medical power of attorney where there is an interest in the estate involved. I would take it that the interest is in the estate of the terminally ill patient. The provision seemed to be so framed as to prevent a beneficiary of an estate putting pressure on to the medical agent to, as it were, hurry the estate into the probate.

So, as the Bill stands a person, not the medical agent, as I read it, who is guilty or convicted under subsection (1) forfeits an interest in the estate of the medical agent. That is how I interpret it. The medical agent may be a friend of the patient and the person convicted or guilty may have no interest in the estate of the medical agent. This needs to be clarified. The estate that should be in question is the estate of the patient in which the convicted person may have an interest, but the forfeiture does not touch that interest. Again, unless during the debate this becomes clear or unless the Minister clarifies my concern on this section, I propose to move an amendment in Committee to have the forfeiture applied to the estate of the patient.

The Bill seems to achieve what it sets out to do. It allows patients to choose or refuse treatment which would allow them to meet their end with integrity and depart this life with dignity. Whatever choice a patient makes, no justification has to be given for such a decision. Counselling and comfort can be given by relatives and friends, and religion offers guidance and strength. These are most desirable to ease the mental stress and strain of the last hours. The content of the Bill adds to these comforts.

Most of us will not be called upon to assume the role of medical agent nor be placed in the situation of having to choose or refuse treatment, but this Bill makes provision and gives legal protection when such choices have to be made.

In conclusion, the Bill, to my interpretation, reflects moral and compassionate aspects and it should be in place if it is needed. I support the second reading.

The Hon. M.J. ELLIOTT: I support the Bill, but as I do so there are some issues and points on which I would like some clarification and, depending on the explanations, I may seek to table some amendments.

The Bill deals largely with the ability of a person to appoint an agent to act on that person's behalf when they are no longer able to express their will or make a decision about their health care. It is about conferring a medical power of attorney. These agents are to be directed in their decisions by the conditions set out within the agreement signed by both parties when the power is conferred. The ability of a medical agent to refuse or consent to a medical procedure on another's behalf, therefore, is subject to the agent's understanding of the wishes of the person for whom they are acting. The patient at all times retains his or her own right to refuse medical treatment while competent. The agent is called upon only when the patient is unable to do that.

Living wills have been used in many places as one way of ensuring that a person's wishes are respected, even when they themselves are unable to express them. An example of a living will is the form, called a 'Personal Health Care Directive', used in some parts of Canada and included in Dr. D.W. Molloy's book, *Let Me Decide.* The introduction to the four-page form says:

In this directive I have stated my wishes for my own health care should the time ever come when I am not able to communicate because of illness or injury.

This directive should never be used if I am able to decide for myself. It must never be substituted for my judgment if I am competent to make these decisions.

If the time comes when I am unable to make these decisions, I would like this directive to be followed and respected.

In an emergency, please contact my advocate or my family doctor, listed below. If these people are not available, then please do as I have requested in this directive. Thank you.

I have thought about and discussed my decision with my family, friends and my family doctor. I do not want to leave these decisions to my family, my doctor or strangers who do not know me.'

It is not something which is pleasant to consider—a time when we may not be able to speak for ourselves—but it is something which, in order to spare our families distress and confusion, we should invest some time in contemplating.

The Canadian form is quite comprehensive in the situations it contemplates and in the options it presents, although active, assisted euthanasia is not among them. I seek leave to table the document, because I believe that the table on the second page provides clear guidance for the person completing the form to consider a range of

situations from reversible to irreversible conditions and cardiac arrest and treatment options.

Leave granted.

The Hon. M.J. ELLIOTT: The person completing the form must consider the level of intervention they would want when in a reversible or irreversible condition. It is advised that the document is reviewed each year, after an illness or if there is a change in health, and space is provided for changes in instructions. I believe that is sensible. The choices that a person may make as a fit and healthy 35-year-old may vary greatly from those that the same person would make as a 45-year-old recently diagnosed with cancer.

I am concerned that the form contained in schedule 1 for the appointment of medical agents is overly simplistic. It does not give any real direction to the person filling it in, and I would ask the Government to consider incorporating in the system the concept of prompting consideration of various situations. I believe that at least the community information accompanying the form could fulfil this task. If the Government will not consider—and I am still giving it consideration myself—a change in the form displayed in schedule 1, the very minimum condition that I would lay down even now is that, once the Bill is passed, suitable pamphlets and information packages should be compiled to assist people wishing to appoint a medical agent and those accepting such an appointment. It may be that the table contained in the Canadian example, which I have already tabled, would be a useful guide.

Clear guidance in the form of directions from the person appointing the agent will reduce the confusion and potential for dispute once the power is exercised. For example, will people completing this form consider what should be done if the principal falls into a coma, a persistent vegetative state, for any length of time? The Bill allows for the agent to refuse intravenous sustenance and hydration under the wording of clause 6(6)(b)(i), but, if it is not discussed at the time the agreement is signed, how would the agent know what the patient would have wanted?

The important point I would make about the need for more direction is that it can act in both directions. People have expressed to me a number of concerns about the Bill. Some are concerned that the agent would go too far; others are concerned that the agent would not go far enough. What is most important is that we are leaving something which is akin to a living will and which is as close as possible reflecting the wishes of the person who has signed the form. I believe the more comprehensive that form and the greater guidance given, the more satisfactory the final result that would be achieved. I believe it should be for the best for everybody involved.

Another concern I have is that, while a person is permitted to appoint alternate agents, there is no limit on the number. I support the concept of having more than one, because one could anticipate a situation where one appoints an agent, some years elapse and the agent becomes incompetent for some reason and then there is no agent at all. That situation is easy to comprehend, particularly if it happens to a person later in life. Therefore, having alternate agents makes a lot of sense.

However, as I read it there is no space for an indication of an order of priority for the person who should be contacted when the power of attorney must be exercised. The Bill does not make it clear that a patient can revoke a medical power of attorney, although my suspicion is that the power to appoint is the power to revoke; it is really a legal question.

Although this Bill deals largely with people in or approaching the final stages of terminal illness, remission to a point where a person is once again competent to express their own wishes is not uncommon. An attorney may be appointed while the person is in good health, and after a number of years have elapsed the person may have changed their mind about whom they want. I have been told that, as the Bill establishes the right to appoint, it also implies the right to revoke that appointment.

The most substantial concern I have with the Bill is that there appears to be no provision for dealing with someone seeming to abuse their power of medical attorney, or someone who is no longer competent to carry it out. There may be an avenue to go to the Supreme Court in these situations but this is a lengthy, expensive and cumbersome process. I can see that there is a potential for a role for the Guardianship Board to oversee the conduct of medical agents, not only when their decisions relate to a person who is under the board but also where there are allegations of abuse or neglect, or when the agents themselves are no longer, for whatever reason, fit for the task.

Under the Victorian Medical Treatment Act as amended in 1991, the Guardianship and Administration Board may suspend or revoke a power of attorney (medical) in certain circumstances and appoint an alternative agent. Alternative agents can act where it is believed the original agent is dead, incompetent or cannot be contacted. The alternative agent's power is subjected to the board's discretion. I am told that the board has only about three cases a year where it has to override a medical power of attorney.

I ask the Minister to explain what would happen in South Australia if someone nominated as a medical agent became unable to carry out the task, because situations do change through a long and protracted illness. For example, the elderly spouse of an elderly patient who has been appointed the medical agent themselves could become ill and incompetent. This could be a situation where the Guardianship Board might need to step in.

Another situation which could cause difficulty may be where many years pass between the time when the agent was appointed and contact was not maintained with the person for whom they were to act. Members of the patient's family may be concerned that the agent is no longer acquainted with the patient's views and is therefore unable to represent them.

I think there are two ways of solving that problem. The first one is as I have already suggested: if the first schedule is sufficiently comprehensive or if there is some other means by which very clear guidance is given, if there is a living will, the level of discretion actually being exercised by the agent is extremely limited. Of course, also a periodic review of the appointment of a medical power of attorney is one way of overcoming a change of circumstances or beliefs and relationships. Certainly, the question that arises is 'How do you go about getting a periodic review?'. The danger is that, if we make it compulsory that it happen every certain

number of years, some people will fail to renew. In fact, a number of people are likely to do that, and that is not really a suitable way of handling things.

I suggest that, with the advent of computers, it would not be terribly time-consuming to keep a register of people who have given power of medical attorney to someone and that they might just simply get a reminder notice every five or 10 years.

The Hon. I. Gilfillan interjecting:

The Hon. M.J. ELLIOTT: Okay, there may be a very small fee attached, but it should not be much more than the cost of postage, because it would be a very simple register, involving only the name and address of the person who is granting the agency. If, on a voluntary basis, appointments using the form contained in the first schedule were held in a central register, not only would hospitals in an emergency situation be able to access the information and contact the appointed agent but also both parties could be reminded of the appointment at a regular interval. That interval could be as long as 10 years, and the notice could merely ask whether both parties remain happy with the arrangement. At no time should a failure to answer such a notice be taken to mean that the appointment is terminated.

The next issue which I will be raising and on which I will move amendments is recognition interstate of the powers of medical attorney established by legislation in those States. This is important, given the mobility of our population.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: Okay, I will get to that. Should a person fall ill interstate, would the word of their medical agent, appointed under this statute in South Australia, still be respected? As the Hon. Mr Griffin noted by way of interjection, clearly we cannot legislate for that. There is nothing that we can do. However, we can recognise people appointed under similar legislation interstate and give them rights comparable to those conferred under this Act. We certainly cannot give them greater rights than this Act gives but, if, as I understand it, in Victoria this power of attorney or agent is given, such agencies should be recognised here in South Australia. I would ask the Minister to approach relevant Ministers in other jurisdictions which have established a similar system to ensure that people appointed under South Australian legislation are also recognised.

As I said, I support the legislation, I have no problems with the thrust and direction of it. I think that there are a couple of areas that could be made a little tidier, and I have already tabled two amendments, and one consequential amendment. Under one amendment, medical agents appointed interstate would be recognised here in South Australia, and under a second amendment the Guardianship Board, on the application of a medical practitioner or other person, would be able to decide that the medical agent was incompetent to exercise the powers conferred or that the medical agent had acted contrary to express directions of the person. If either of those things occurred, the board could then revoke the medical power of attorney or vary, reverse or cancel a decision that had been made.

The major difficulty which I raised, and the major issue which I still want the Minister to address, is this question of just how clear an instruction will be given to the agent. I believe that as the current first schedule is drafted insufficient direction is given to the person filling in that form. I would have preferred a far more comprehensive form along the lines of that which I tabled and which is used in Canada as a form of living will. I hope the Minister will give serious consideration to that suggestion.

I note that the Hon. Mr Feleppa has on file an amendment which I think is moving in that direction, but I am not quite sure that it is as comprehensive as I would like. I will not indicate support one way or another at this stage until I have had a further chance to address it. As I said, he does seem to be moving in the direction of my concern. It is not something which undermines the legislation; in fact, if anything, I think it makes it a much better piece of legislation, allowing the person who is granting the power of agent more certainty as to how the agent will act in particular circumstances. I support the Bill.

The Hon. R.J. RITSON secured the adjournment of the debate.

WHISTLEBLOWERS PROTECTION BILL

Adjourned debate on second reading.

(Continued from 4 March. Page 1430.)

The Hon. M.J. ELLIOTT: I rise to indicate the Democrats' support for this Bill, although there are some concerns which I will be raising and on which I will be seeking a response from the Minister, and I will be moving a couple of amendments during the Committee stage. We have long believed that whistleblowers, particularly those who unofficially leak public interest information from within the public sector, play a vital role in a democracy that values free speech.

In recognition of that role, protection should be provided to those whistleblowers releasing information that they believe to be true and in the public interest. These people risk recrimination and retribution by breaking trusts and accepted practices of the Public Service because they believe that Government policies and decisions are harmful or, simply, that information should be on the public record.

This Bill begins to address this need for protection, although there are several measures that I believe could be improved, and I will discuss those during my contribution. I have often spoken in this place of the need for public servants truly to be able to serve the public of the State, not only the Government of the day. It has often been argued that the Government is elected to represent and to make decisions in the public interest, which the Public Service then should implement without question. But this is far too simplistic a view for the late twentieth century.

The community generally is no longer happy to let decisions be made by the elected Government without its involvement between elections. Consultation is important to keep Government in touch with changing community attitudes and to allow for participation on issues that have not necessarily been canvassed during campaigns. However, consultation cannot occur in an information

vacuum or where one side holds all the cards. This is the reason why we have freedom of information legislation, although games can be played with information to keep it out of the public domain. Only today in Question Time I gave another example, in relation to the Craigburn development, where information that should have been made available to the public was denied, improperly and illegally, under FOI.

I see whistleblowers protection legislation as another step down the path towards more open and accountable Government, but I am concerned that the scope of this Bill is narrow enough still to prevent some information reaching the public. There is a danger that this Bill will provide protection only in the most extreme of cases by discouraging the release of all but the most sensational information. It is quite conceivable that information relating to decisions of the Government may be of public concern but may not fit into the categories provided in clause 4, that is, it may not relate to an illegal activity, an unauthorised or irregular use of public money, conduct which causes a substantial risk to public health or safety or to the environment, or relate to a public officer being guilty of maladministration.

As I see it, the power of this clause will rest very much upon the interpretation by courts of the word 'substantial', when we talk about substantial risk, and also upon the interpretation of the word 'maladministration'. If the interpretation is fairly rigorous, and 'substantial' is spelt with a capital 'S' and 'maladministration' with a capital 'M', then in fact it is offering protection to a relatively small number of people.

It is often the public servants who are closest to the issues, who have the greatest in depth knowledge and who can see firsthand the effect of Government policies, actual or potential. Those effects may not be as critical now as the Bill would have them be for the public servant to claim protection under whistleblowers legislation. However, in the case of a development towards which the Government is sympathetic, the long-term effects on the environment of the development proceeding may be of concern but not immediately a substantial risk.

Public officers are also the first to know when something is going wrong or when things are not happening as they should, through either maladministration or corruption. The dangers of a passive and servile Public Service can be seen in Queensland, where massive corruption was allowed to continue unchallenged for decades.

The most obvious block to whistleblowing in South Australia has been section 67 of the Government Management and Employment Act and regulation 21. In tandem they forbid not only the disclosure of information gained in an employee's official capacity but also any comment on any matter affecting the Public Service or the business of the Public Service. I find it interesting that, where a disclosure of information relates to corrupt or illegal conduct generally, this Bill offers protection for people within the private sector. This I believe is appropriate because, as the Attorney said in his second reading explanation:

It is also the case that the distinction between the public sector and the private sector is artificial and in practice blurred, and in the present climate is likely to become more so.

As relationships between the public and private sectors can be very close, particularly in the development area, it is important that public and private sector employees are able to seek the protection of this Act where there is evidence of those relationships involving corruption or illegal activities.

Exposure of illegal activities generally in the private sector can involve great personal risk for an individual, and this Act will provide some comfort to people so motivated. It would be expected that only businesses involved in somewhat sensitive or controversial areas and perhaps with something to hide would feel a twinge of concern about their inclusion in the ambit of this Bill, but I would be interested to hear from the Attorney-General what comments he has received from the private sector.

I am concerned that, while a comprehensive list of appropriate agencies is cited in clause 5(4) of the Bill, members of Parliament are not among them. I acknowledge that the bracketed phrase in clause 5(3), namely, '(but this is not intended to suggest that an appropriate authority is the only person to whom a disclosure of public interest information may be reasonably and appropriately made)' opens the door for an MP to receive information.

I believe that the special role of members as elected representatives should be acknowledged by special mention. The fact that we have immunity in this place from civil action for information we bring to the attention of the public and of the Government is already a recognition of the role of Parliament in keeping the Government accountable.

The Fitzgerald inquiry in Queensland showed that corruption can go to the highest levels in public administration, right to Ministers, so that the ability of a concerned public servant to reveal information to another person in the public domain must not be ignored.

All the agencies in the list in clause 5(4) are agents of Executive Government. There is no point making a disclosure there if that is where the problem lies. A good reason for specifically referring to members of Parliament is to inform public servants who may read this when considering blowing the whistle that their elected member is someone to whom they can turn with the information they believe should be in the public domain when they cannot trust the integrity of a body under the direct control of a Minister.

I have also considered including the media for similar reasons. Let us face it: when a person considers blowing the whistle on a major corruption or gross maladministration, he or she would automatically think of the media or his or her MP, not the list of official appropriate authorities contained in this Bill. However, difficulty with defining 'media' and 'journalist' persuaded me to be satisfied that, where appropriate, a disclosure to the media would be protected under the bracketed phrase in clause 5(3) to which I have already referred.

I will, however, be moving an amendment to protect the recipients of public interest information from civil or criminal liability for publishing that information. This is

important not only to protect the media and the important role it plays as a watchdog on Government accountability but also to protect people within the appropriate agencies listed in clause 5(4) from facing legal action over letters or memos they may write or telephone conversations they may make in undertaking their responsibility to receive and pass on public interest disclosures.

Whilst I agree that informants should assist with official investigations into the information they have disclosed, as under clause 6, I do have some concerns with the wording of the clause and believe that its deficiency could be the grounds for someone keeping quiet with information that should be known.

My concern is that, for example, a person with information on corrupt activities within an agency may be forced to reveal all that is known to them to officers actually implicated in the information. When this information relates to corrupt or illegal practices this could put the whistleblower in a dangerous situation. This will also apply to the police, who must ensure that where there is information relating to police corruption the person with the information must have confidence that they will not be forced by the Act to reveal the information they hold in totality to an officer who is a suspect. While no-one likes to think this would happen, I believe it needs to be stated in the Act that it as a practice would be unacceptable.

There are, I am aware, people in the community who do not trust the Police Complaints Authority because they see it as the cops investigating cops and would prefer their grievances to be dealt with through other channels. Whether one considers that a fair concern or not, nevertheless that concern exists. The same could be said for a person within the Police Department wanting to blow the whistle on activities or practices which are inappropriate. In making this comment, I am not wanting to be seen to be levelling allegations against the current Police Force or its administration. I am keeping my eye on the future when people who are not yet born will be in positions of power—or, at least, people who may not yet be in the force. I cannot even attempt to predict their motivations.

In the Committee stage I will also seek to address the protection, which is partly provided in clause 7. I do not believe it is wide enough to protect the identity of a whistleblower, for example, where they have given information to a journalist who later finds himself or herself in court being compelled by common law rule to divulge their sources.

The final issue I wish to raise is perhaps the most important when it really comes to protecting the interests of the whistleblower; that is, retribution for mistreatment. This is to be dealt with under the Equal Opportunity Act provisions for victimisation. I am seeking an assurance from the Attorney-General that this provision does indeed have the teeth to deal with a private company or Government agency which has badly treated an employee who has brought into the open information which is in the public interest.

As I said, the Democrats support the Bill. During the second reading debate I raised a series of concerns, to which I hope the Attorney-General will respond. I have tabled amendments to which I have referred during my second reading contribution. Whether other amendments are necessary really does depend on the response I receive at the end of the second reading debate.

The Hon. C.J. SUMNER (Attorney-General): I thank members for their contribution to the debate. The Bill will now become a Committee Bill. The Hon. Mr Griffin has raised a number of points to which I will respond now and then I will seek leave to conclude my remarks to enable me to respond to matters raised by the Hon. Mr Elliott. However, I would hope we can proceed to the Committee stage tomorrow. In the course of his contribution, the Hon. Mr Griffin made a number of observations and asked a number of questions about the Bill. Many of the matters that he has raised are quite complex and go to the heart of the debate about this kind of legislation.

First, I refer to the issues raised by the honourable member about the way in which this legislation—which, as he rightly points out, is primarily concerned with the public sector—has application to the private sector. The first thing to be said about this issue is that both the various Queensland reports and the Western Australian Royal Commission report argued that the private sector should be included. A fundamental reason for this is the blurring between the private sector and the public sector to which I referred in my second reading speech and about which the honourable member desired some further explanation and clarification.

I should say at once that this was not some veiled reference specifically to the State Bank or SGIC, although these are examples of what I have in mind. I had in mind much more mundane and everyday examples. For example, take the area of the environmental risk and damage. Recently, in New South Wales, a local government authority and its contractors and employees were convicted of offences under their environmental protection legislation in relation to the spillage of a storage dam into a watercourse. In this State, the disposal of waste collected on behalf of local government may be by the council itself, by a controlling authority under the Local Government Act, or by a private contractor—or a mix.

If the whistleblowing legislation was limited to the public sector, then the protection offered to an employee who disclosed a threat to public health caused by the environmental mismanagement of waste disposal would depend on how the local authority organised its affairs. There would be protection if the disclosure was about the local authority, no protection if the disclosure was about the private contractor and possible protection (or possibly not) if it was a controlling authority. We thought that such distinctions were not sensible in light of the clear purpose of this legislation. Here the distinction between private and public sector is artificial in the sense that it may depend on how a body organises the structure of its affairs for its own reasons.

The idea that there is no fixed divide between public and private sector is not new. For example, are universities public or private? Is the disclosure that a university has misused public money a public sector allegation? If so, what about a disclosure that a researcher has published fraudulent research? What about a local theatre group which primarily exists on government grants? We live in a community that is so

organised that there is in many ways in what it does an interdependence between the private and public sectors in the delivery of goods and services to the society. In some cases it is possible, I suppose, to say that something is pretty well all private or all public—but these are merely extremes on a continuum of an unclear definition. But the major point is that what might be called private sector for some purposes can often engage the public interest in a disclosure about its activities.

In thinking this legislation through, therefore, we took the position that to say that the legislation applied to the public sector and not the private sector was a distinction which paid no attention to the public interest in having certain kinds of allegations made and investigated, and that it invited the making of a distinction which was, in practice, difficult and problematic. However, it did make sense to discriminate in general between the private and public sectors in terms of matters in which the public interest in having the information revealed outweighs the private interest in having something not nice concealed.

We took the view that the private sector could hardly argue that it should be able to conceal information about criminal activity, or about the improper use of public funds, or about conduct that causes a substantial risk to public health, safety or the environment. But we also thought that, while there is a public interest in disclosure of information which tends to show that an officer in the public sector is incompetent or negligent, for example, that is not so about the private sector. If a company wants to keep secret the fact that its managing director has shown incompetence—well, so be it. The legislation is structured to reflect those decisions. It follows that, in relation to the matters listed, private sector employees will have protection against reprisals in relation to disclosures about private sector dealing with Government agencies.

The second group of issues that I would like to address are about, in effect, the level of detail that is necessary in legislation of this kind, particularly in terms of the accountability of the system, both to the public and to the individual. The issues raised by the Hon. Mr Griffin that I have in mind are: imposing a positive obligation on Government agencies to establish procedures for handling whistleblowing allegations; imposing an obligation on the appropriate authority to supply on request a written notice of the action taken in relation to a disclosure; imposing an obligation on agencies to include details of these matters in their annual report; having some kind of central body to coordinate responses to disclosures; and establishing a whistleblowers counselling unit—perhaps in the office of the Commissioner for Public Employment.

I will discuss each of these suggestions—but I want to make a general point about them taken as a whole. While the initial impetus for whistleblowing legislation in Queensland came, of course, from the Fitzgerald Report, the detailed proposals including a draft Bill derived from a report of the Electoral and Administrative Review Committee in October 1991. That Bill contained five parts, ran for 27 pages and contained 70 sections. It has been an extensive consideration process.

In April 1992 the Parliamentary Committee for Electoral and Administrative Review published a report on it, fundamentally agreeing with the Bill. Nearly a year later, the Bill has still not emerged. I can only guess at the reasons for that, but I suspect that a basic reason is that the Bill is too complex and tries to write into law all of the tiniest details. I turn now to each of the detailed suggestions.

The first is that the legislation should impose a positive obligation on Government agencies to establish procedures by which employees and members of the public may make disclosures that relate to that agency. As the honourable member points out, there is no Criminal Justice Commission in this State to facilitate the process of compliance. There can be no doubt that, properly implemented, this would be a good thing. But at the moment at least, I think that this obligation does not belong in this legislation, and that it is, in a way, peripheral. The reason for that can be seen in the structure of the Bill and in the evidence in the literature on whistleblowers.

The establishment of procedures within Government agencies by which, in essence, disclosures made by a whistleblower may be properly investigated is really a matter of priority only if one believes that it is via that route that the disclosures will be investigated. Now, the evidence in the literature says that whistleblowers tend, by and large, to have used what internal procedures exist within the organisation of which they are a part, if they are going to use them at all, before they decide to blow the whistle. The structure of the legislation reflects the fact that, in terms of the very serious kinds of allegations with which we are here dealing, in this State we tend to rely, both as citizens and as a society, upon external and independent investigators. So, one sees that the suggested list of appropriate authorities in the Bill reflects that assumption.

I suggest that whistleblowers who have the courage to take the risk will, by and large, go to external agencies, and we would think that the sorts of serious allegations with which this Bill deals ought to be dealt with by external investigation. So, while it is quite all right for a whistleblower to pursue an allegation internally—and the Bill says, of course, that is fine—the reality is that the main investigatory work will be done externally. So, while I am not opposed to the suggestion in principle, in practice I think it will involve a good deal of administrative activity to little practical end, and therefore would oppose it.

The second suggestion is that a whistleblower should be entitled on request to receive written notice of the action taken by a proper authority in respect of the public interest disclosure. Again, my response to this is that of course I can see what the point is. The honourable member is quite right to say that one of the more frequent failings of governments is to keep complainers informed about what is going on, but it does have difficulties once one starts thinking through the implications. As the honourable member says, the first is that confidentiality must be preserved. The second is that such a general obligation cuts across the statutory obligations of some of the appropriate authorities. Is the Anti-Corruption Branch of the Police Department, or the Police Complaints Authority, or the Auditor-General—or, if one suggestion is agreed to, the National Crime Authority—to be obliged by statute to give out public information about the course of their

investigations? Taking those two problems together: what sort of level of detail is the whistleblower to get? A letter saying 'We are pursuing our inquiries' is unlikely to be of much comfort. Are we to set standards of reporting back with which all must comply?

The third suggestion is that agencies should be obliged to report in their annual report on matters which have been the subject of a blown whistle. I assume that the point of this suggestion is that those who read the annual report can get some general idea of how often this happens, and what is done about it, as an index of how that agency is performing. I can see and understand the motivation behind this but, for the reasons that I have just given, I do not think that it is a measure which will have much impact on the area. If I am right about where whistleblowers will go, then a government agency may have an incomplete idea, or no idea at all, of what the disclosure is about and what is being done about it in a great many cases. At this stage I think this will largely be a waste of time.

The fourth suggestion is that there ought to be a central agency like the Criminal Justice Commission to which reference should be made if the agency is not dealing adequately with the issue. This comes from the Queensland Bill. With one exception, I do not think that this is a good idea for South Australia. That exception is that we have in this State, and this Bill recognises, the central clearing house function of the Anti-Corruption Branch of the Police Department in relation to corruption disclosures. In general terms, however, the Queensland scheme is set up in a way which reflects the structure of public investigation in that State and that is very different to that which appertains in this State.

The Queensland scheme, which was set up against the background of the complete failure of the guardians of abuse and corruption in the public sector, was to concentrate investigative power in a new and uncorrupted central agency, that is, the Criminal Justice Commission. That central agency would then control investigations and take over those which are not being dealt with satisfactorily. We do not have a Criminal Justice Commission because the investigative agencies that exist in this State, such as the Police Complaints Authority, the Anti-Corruption Branch of the Police Force, the Ombudsman and so on, have not forfeited public confidence in their abilities to act as guardians of the public interest in their special fields. So we have a decentralised system of officially investigating complaints, and those systems have done and will continue to do their jobs well. We simply do not need another central body overseeing all of this. If it happens that a Government agency does not perform to the reasonable satisfaction of the whistleblower, this Bill provides that he or she may go elsewhere.

I have considered the Queensland idea of the establishment of a whistleblowers' counselling unit. Again, if there is to be such a thing, I do not believe that it should be set out in legislation. There are real difficulties in doing so. For example, where would such a unit be placed? The Hon. Mr Griffin suggested the office of the Commissioner for Public Employment. I do not think that to be a good idea, for a whistleblower could be forgiven for thinking that it might be biased. The Queensland recommendation was that it be based in the Criminal Justice Commission, but the EARC Parliamentary Committee did not think that to be a good idea either, because there ought to be independence between the counselling and advice function and the investigation function. The committee could not think of a place for it to go.

I take the view that, if there is to be an advice unit of some kind. it ought to be set up cooperatively between employers and employees as part of the relationship between them. This Bill covers the Public Service, the private sector, local government and so on. I think it is not a good idea to legislate on such specific industrial issues in the context of this Bill which sets out the general principles. Personally, I doubt whether a whistleblowers' counselling unit is necessary. I say at once that, when this Bill is passed, an education campaign for public sector employees, in cooperation with the PSA, will be a necessary beginning to the task of informing the public, and I will look to giving that trial wider publicity after some experience is gained.

The Hon. Mr Griffin raised the question whether there ought to be a criminal offence of taking unlawful reprisals. I considered this matter quite carefully in the formulation of the Bill and decided against it. The reasons for this are as follows: first, there is the general principle of parsimony in the use of the blunt weapon of the criminal sanction. In general, I would create a new criminal offence only if I thought there was a real need for it and that it would serve some useful purpose. I am not persuaded that that would be the case here.

Secondly, and allied to that, what we are trying to do with this Bill is deal with ethics and to educate about what is and what is not ethical and acceptable, rather than intensify, make adversarial and up the ante on what may be already a difficult and fraught situation. The equal opportunity methodology is much better suited to that kind of objective rather than to have police investigations into possible employment malpractice which would only serve to obscure the real issue and which would create the wrong focus for the merits of the disclosure. It would be very difficult for the Ombudsman, say, to investigate a disclosure about malpractice if at the same time police were investigating the same disclosure to see whether it formed the basis of criminal victimisation. Lastly, of course, a criminal offence of victimisation would require very careful precision of language in this area where precision is most difficult, and the higher burden of proof would make convictions necessarily hard to get. It may also pose confidentiality problems. On balance, I think that the negatives outweigh the possible benefits.

The last issue of general principle raised by the Hon. Mr Griffin was whether the victimisation protection ought to be in the District Court rather than the equal opportunity legislation. The honourable member understands why the Bill takes the course that it does and I understand why he makes the suggestion that he does. In response, I can provide two reasons why I have decided to take the course suggested. The first is the issue of access. While it is the case that in the past year or so legislation has made the courts far more accessible in terms of costs and formalities than ever before, the fact is that, compared with the equal opportunity route, they are far less accessible. This is most obviously so in

terms of cost, formality and the need for representation. The Commissioner and the tribunal have formal powers of conciliation. The Act already contains the concept of victimisation in employment (section 86), an informal procedure for the making of complaints (section 93), and provision for assisting the complainant (section 95(9)).

The second reason has to do with available remedies. The Bill taps into the existing powers of the tribunal (section 96) to award compensation, to make an order requiring a person to refrain from contravening the Act, and/or an order to make redress, and this is backed by a criminal offence with a fine of $2 000 attached to it. This seems to me to be a flexible, accessible and appropriate regime, with a balance of protection to both sides.

The Hon. Mr Griffin asked a number of technical questions which I will now answer. First, the honourable member asked whether the reference to 'irregular and unauthorised use of public money' ought to be 'irregular or unauthorised use of public money'. I am advised that in this context 'and' means 'and' not 'or' and that was intended.

Secondly, the honourable member asked why the Bill was limited to adult persons. The answer is that it was thought that there ought to be no public interest exception overriding the confidentiality of the identity of child offenders and child victims of crime, except as provided in legislation specific to those areas.

Thirdly, the honourable member asked whether public interest information ought also to cover the 'waste or mismanagement of public resources'. The Queensland Bill covers 'substantial waste of public funds' but not 'mismanagement'. The New South Wales Bill covers 'substantial waste of public money' and 'maladministration' but not 'mismanagement'. I foreshadow that I am considering an amendment in this area as a result of consultation, but I must say at this point that I find the concept of 'waste of public funds', whether qualified by substantiality or not, as very vague, and an invitation to dispute the merits of *bona fide* Government programs. I prefer the much more specific concepts of 'irregular and unauthorised use of public money' backed up by negligence and impropriety.

Fourthly, the honourable member questioned whether teachers and those employed under TAFE are 'public officers'. My advice is that they are. Section 15(1) of the Education Act provides that the Minister appoints teachers to be officers of the teaching service. Section 9 of the Technical and Further Education Act provides that the Minister appoints employees under the Act. The definition of 'public officer' in the Bill covers 'any other officer or employee of the Crown'. My advice is that covers them both.

Fifthly, the honourable member raised a question of the interpretation of clause 4(2) of the Bill, in its application to people who are not, technically, employed. I think that the honourable member has a point here, and I thank him for it. Although the clause was drafted in the way that it was because we had instructions from the Commissioner for Public Employment in mind, it clearly has a greater potential for application. I am looking at a suitable amendment.

Sixthly, the honourable member asked whether 'the judiciary' includes the magistracy. That was certainly our intention. The reason why I believe that to be so is that the magistracy is referred to in the Judicial Administration (Auxiliary Appointments and Powers) Act 1988 and the Magistrates Court Act 1991 as 'judicial officers'.

Seventhly, the honourable member expressed the view that the list of appropriate authorities should include the presiding officer of either House, a Parliamentary Committee and the National Crime Authority. I am inclined to resist this suggestion. The legislation is so framed that the list of appropriate authorities is not exclusive and an indicative list only. A case could be made for the inclusion of a number of people and/or bodies. If we tried to list all of those which would be possible in all possible situations, we would have a very long list indeed.

Eighthly, the honourable member questioned why we did not adopt the Queensland suggestion of making explicit provision about disclosure to the media in certain serious cases. There are two answers to that. The first is that it is not necessary. Under the Bill, you can go to the media in any case where it is reasonable and appropriate to do so in the circumstances. Cases of serious and immediate danger would, I am sure, be among such cases. The second is that to specify the cases in which you can go to the media—as opposed to somewhere else—may be seen as unduly limiting. The scheme of this Bill is to set out the general principles as a framework for consideration of the merits of what will be a wide range of different single instances. I seek leave to conclude my remarks.

Leave granted; debate adjourned.

STATUTES AMENDMENT (FISHERIES) BILL

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

The Hon. BARBARA WIESE (Minister of Transport Development): I move:

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

1. Marine mammals

Following an incident in which four dolphins were killed for rock lobster bait on Kangaroo Island in April 1990, and numerous representations for stronger penalties, the government sought to reconsider the levels of penalties that could apply to such offences under the *Fisheries Act 1982*. The two persons directly involved in the offence were convicted and each received a penalty of $1,000, which in turn initiated considerable public concern at the killing of dolphins and attracted more public comments at the perceived inadequacy of the fines imposed.

The dissemination of that concern through the print and electronic media has in itself sent a clear message to the fishing industry that the killing of dolphins is not acceptable to the people of South Australia. That level of public concern would, to a degree, have a deterrent value in its own right.

However, it is believed that the public concern that has been expressed (including international) in response to the incident indicates a desire for increased penalties for the offences against protected fish, especially marine mammals.

Therefore, it is proposed that the Fisheries Act be amended to prescribe a division 3 fine (a fine not exceeding $30,000), or a division 5 term of imprisonment (a term not exceeding two years) as a penalty for the harming or killing of a marine mammal. It should be noted that a Bill to amend the *National Parks and Wildlife Act* 1972 to amongst, other things, prescribe such penalties for the harming or killing of a marine mammal has been introduced into Parliament.

2. Rock lobster offences

Penalties that can be applied to a licence holder following a conviction for a breach of the Fisheries Act include a fine not exceeding $2,000 for a first offence, seizure and forfeiture of equipment used in the offence, demerits on a licence which could result in suspension or cancellation of the licence, and a mandatory penalty of five times the wholesale value of the fish or $30,000, whichever is the lesser. Collectively, the penalties are substantial, but some rock lobster licence holders are continuing to operate unlawfully, particularly by using more pots than are endorsed on their licences.

During discussions with representatives of the rock lobster industry, concern was expressed by industry that some licence holders continued to use more rock lobster pots than they were entitled to. Not only is such action contrary to the regulations, it is also contrary to the agreed management arrangements which have been put in place to provide for a sustainable commercial fishery. Introducing excess effort into the fishery can lead to over-exploitation of the rock lobster resource and ultimate collapse of the fishery.

It is clear that the existing penalties are not sufficiently high to act as a deterrent to those contemplating breaches of the Act. Persons engaging in over-potting often do so over an extensive period and earn more than the penalty expected under current legislation. This has prompted industry to recommend an additional mandatory penalty for an offence involving the use of more pots than a licence holder's entitlement. Specifically, the court would be required to permanently revoke the number of rock lobster pots used in the offence from the licence holder's allocation.

The government supports the proposal, given the seriousness of illegal fishing and the impact it has on the rock lobster resource. It is considered that such a mandatory penalty would act as a deterrent and help reduce the incidence of licence holders using excess pots.

3. Marine scalefish fishery review

The marine scalefish fishery has been under review for over two years during which two green (discussion) papers have been released (January 1990 and July 1991) and in which substantial consultation has taken place.

On 10 August 1992, the government endorsed a wide ranging package of long term management measures for the fishery. This will entail changes to the *Fisheries Act 1982*—

- to increase penalties under the Act to make it a separate offence for licence holders and fish processors to fail to comply with catch and disposal record documentation; and
- to make it an offence for fish processors to be in possession of blue groper for sale.

4. Previous convictions

Section 56(3) of the *Fisheries Act 1982* provides that where a court convicts the holder of a fishery licence for a prescribed offence, the court must—

- suspend the licence for not less than three months if the licence holder has one previous conviction; or
- cancel the licence if the licence holder has two previous convictions.

On 24 July 1992, the Supreme Court of South Australia delivered a judgment in relation to an appeal by the (former) Department of Fisheries against the result of a prosecution against a commercial abalone fisher. The appeal was based on the fact that the presiding magistrate failed to suspend the licence in accordance with section 56(3) of the Fisheries Act.

In the judgment, reference was made to the application of section 56(3):

> "... the wording in the subsection 'previous conviction' and 'previous convictions' must be construed as referring to a conviction or convictions recorded before the commission of the offence resulting in the conviction first referred to in the subsection. As that was not the case here, the complainant's appeal must be dismissed."

As a result of the judgment, it is proposed that the Fisheries Act be amended to make it quite clear that a suspension or a cancellation of a licence would result from a second or third conviction for a prescribed offence within a three year period, irrespective of when the offences were actually committed or when the convictions were recorded.

Such an amendment would restore the intent of the provision, it would reflect the seriousness of fisheries offences, and it would also serve as a deterrent to those contemplating breaches of the Act.

5. Abalone fishery

In October 1991, the House of Assembly Select Committee enquiry into the abalone industry recommended that a number of changes be made to management arrangements relating to the fishery in South Australia. These recommendations were endorsed by the government in June 1992.

The Select Committee recommended, amongst other things, that the issue of abalone licences not be restricted to natural persons as is the present situation and that provision be made for abalone licences to be issued to partnerships and companies. However, the Committee had concerns that corporate licences without owner operator provisions may make it easier for foreign interests to obtain licences and to gain control of processing and pricing arrangements. In this regard, the Committee recommended that foreign ownership of any one abalone licence be limited to a maximum of 15%.

It is recognised that the structure and ownership of companies can be complex matters and the Department of Primary Industries (Fisheries) has no expertise in this field. Without additional resources to monitor ownership on a routine basis, the system would rely on the Act amendment acting as a deterrent to people exceeding 15% foreign ownership and the Department would follow up only specific cases brought to its attention.

To be an effective deterrent, the legislation would need to confer on Director of Fisheries the power to not renew a licence where foreign ownership was found to exceed 15%. This is supported by advice from the Crown Solicitor, who noted that there would be some difficulty in determining any arrangements behind the company which holds the licence. The Crown Solicitor also suggested that Commonwealth controls on foreign investment could be sufficient to protect Australia's interest.

The Committee also recommended that there be an increase in fines and the introduction of jail terms for taking, dealing in, and/or processing illegally taken abalone.

It is proposed that specific penalties for taking abalone without a licence (poaching) be as follows:

- division 1 fine (a fine not exceeding $60,000); or
- division 5 imprisonment (a term of imprisonment not exceeding two years),

or both.

An issue not addressed by the Select Committee is the matter of licence suspension following a prosecution. The Fisheries Act provides for a licence to be suspended or cancelled for various offences. However, suspending a licence for three months (as provided for after two offences) would not necessarily act as a penalty because of the quota arrangements which apply in the fishery — i.e. a licence holder could still take the annual abalone quota (within a licence year) after serving a term of licence suspension. It is proposed that this anomaly be rectified by amending the fisheries legislation to provide for a licence holder's quota allocation for that year or subsequent year to be reduced following a conviction for a fisheries offence.

The Abalone Industry Association has indicated that it supports the cancellation of quota in lieu of licence suspension in such instances.

6. Gulf St Vincent Prawn Fishery

In October 1991, the House of Assembly Select Committee enquiry into the Gulf St Vincent Prawn Fishery recommended that a number of changes be made to management arrangements relating to the fishery in South Australia. These recommendations were endorsed by the government in November 1991.

The Select Committee recommended that a Management Committee be established to determine policy and its execution in the Gulf St Vincent Prawn Fishery. This committee is to consist of—

- a representative of the licence holders. The representative to be determined by a compulsory ballot where more than one nominee is proposed conducted under the auspices of the State Electoral Office annually;
- a public officer nominated annually by the Minister of Fisheries (now Minister of Primary Industries); and
- an independent chair selected by the Minister and appointed for two years.

The Crown Solicitor has advised that for a Management Committee to be anything more than an advisory committee, it must be given statutory recognition.

Amongst other things, the Select Committee recommended that the Management Committee be empowered to suspend fishing licences for up to 28 days following breaches of fishing strategy. For a fishing strategy to be enforceable, a breach of the strategy would have to constitute an offence against the Act. To give the Management Committee the power to suspend a licence would involve it in making a finding of guilt which would pre-empt the judgment of a court. In this regard the Parliamentary Counsel has expressed concern at allowing a non-judicial body to suspend a licence.

The government has given careful consideration to this matter and decided that giving such powers to the Management Committee would be contrary to the existing provisions of the Fisheries Act which already has scope for licences to be suspended or cancelled. Accordingly, the government has decided not to implement this element of the Select Committee recommendations.

The Select Committee also recommended a number of options relating to payment of licence fees and surcharges. One of the recommendations was that licence holders be encouraged to make larger payments to pay off their individual debt.

If individual licence holders are to be encouraged to make larger payments on their individual debt, the *Fisheries (Gulf St Vincent Prawn Fishery Rationalization) Act 1987* would need to be amended. This matter was clarified in a judicial review (judgment delivered May 1991) which determined that the Rationalization Act provides for surcharges to be levied providing they are levied evenly on all licence holders. Under the current provisions, the Act does not provide for a variety of surcharges to be levied at the same time.

It is proposed that the Rationalization Act be amended to provide, notwithstanding that all licence holders will incur the same base debt when the fishery reopens, for different surcharges to apply to different licences to enable this to occur if required.

This Bill also provides for an amendment to section 4 of the *Fisheries Gulf St Vincent Prawn Fishery Rationalization) Act 1987,* which stipulates preconditions that must be met before a licence in respect of the fishery can be transferred.

Specifically, the existing provisions require the transferor to pay accrued and prospective liabilities imposed by way of surcharge on the licence before the Director of Fisheries can authorise the transfer of the licence. The accrued and prospective liabilities relate to money borrowed from the South Australian Government Financing Authority by the Minister of Primary Industries in order to buy back (remove) six licences and boats from the combined Gulf St. Vincent/Investigator Strait Prawn Fishery. Repayment of borrowed money is to be made via a surcharge on the remaining ten licensees.

It is proposed to remove the surcharge repayment constraint on the transferor and allow the transferee (incoming licence holder) to assume liability for the prospective licence surcharge amounts until the debt is extinguished. The proposed variation provides a means for current licence holders who cannot service their licence surcharge payments to leave the fishery and the government to recoup the debt from future licence holders.

At present, if a licensee were to surrender the licence or the licence was cancelled by the Minister for non-payment of the surcharge liability, there is no provision for recovery of the liability other than for the current licensing year. It is proposed that a provision be included in the Act that in the event of non-payment of any amount of the liability, the outstanding amount be recoverable as a debt to the Crown. This will provide the government with a means of recovering a debt due attributable to a licence holder and help any remaining licence holders by not expecting them to pay for a debt incurred by a defaulter.

7. Integrated management

At the 1991 annual general meeting of SAFIC, the (then) Minister of Fisheries announced the convening of an industry/department working group to discuss self or co-management of the State's fisheries. The term *integrated management* has subsequently been adopted, as it better describes the intent of the proposed arrangements.

The proposal has also been discussed with representatives from the recreational fishing sector, as recreational fishers are major users of fisheries resources, particularly the scalefish resource. In this regard, the South Australian Recreational Fishing Advisory Council (SARFAC) would also be involved in the integrated management process.

The working group's discussions have resulted in agreement on the following matters:

- integrated management requires industry accepting genuine responsibility;
- responsibility be exercised by delegating specific fishery management responsibility to streamlined management

committees (as opposed to management liaison committees which tended to have large membership);

- responsibility be reflected in the legislation to ensure the management committees operate in accordance with the objectives of the Fisheries Act.

It is proposed that the Fisheries Act be amended so that the role of the fishing industry in managing the State's fisheries resources is recognised in the legislation, and at the same time imposing responsibilities on industry management representatives to operate in a manner consistent with the objectives of the Act.

8. Offences committed by agents

Under the Fisheries Act a licence holder may nominate a person to engage in fishing activities pursuant to the licence as their agent and register the person as the master of a boat used pursuant to the licence. The master is in charge of the boat while it is being used for commercial fishing activities in the fishery.

Section 69 of the Act provides that if a person is guilty of an offence against the Act while acting as the agent of another, the other person is guilty of an offence and liable to the same penalty as is prescribed for the principal offence. The section also provides that if a registered boat is used in or in connection with the commission of an offence against the Act, the registered owner of the boat is guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

Section 56 of the Act requires a court convicting a licence holder of a prescribed offence who has one previous conviction for a prescribed offence to suspend the licence and, where the holder has two or more such previous convictions, to cancel the licence. A prescribed offence includes offences against section 69 where the principal offence is an offence against certain specified sections of the Act.

The intent of these provisions is—

- to ensure that licence holders exercise care in their choice of masters and other agents;
- to make licence holders accountable for fishing activities occurring on their boats; and
- to ensure that licence demerits in the form of convictions for prescribed offences (which lead to suspension and cancellation of the licence) can be attributed to the licence holder.

The Crown Solicitor has advised that section 69 as it stands is not adequate to secure the conviction of a licence holder for an offence committed by a master or other agent. In order to make it work as intended, section 69 needs to be amended and consequential amendments made to section 56. The necessary amendments have been included in this Bill.

Furthermore, the opportunity has been taken to amend the *Fisheries (Southern Zone Rock Lobster Fishery Rationalization) Act 1987*. The amendment reflects the fact that the former Department of Fisheries has been abolished and its functions taken over by the Department of Primary Industries and the South Australian Research and Development Institute (SARDI). Under the Rationalization Act the former Department of Fisheries was the government fisheries representative on the Rationalization Authority, and there is a need for such representation to continue. In this regard, the amendment proposes that the government fisheries representative be a Public Service employee rather than an employee of a particular government department. The amendment has been drafted in this manner so that the Act will not need further amendment in the event of any future changes to government administrative arrangements.

In providing the above explanation of the proposed amendments to the *Fisheries Act 1982* and to the *Fisheries (Gulf St Vincent Prawn Fishery Rationalization) Act 1987,* I would inform the House that the South Australian Fishing Industry Council (SAFIC), representing the interests of commercial fishers, and the South Australian Recreational Fishing Advisory Council (SARFAC), representing the interests of amateur fishers, have been consulted and generally support the proposed amendments. In addition, other interests groups have been consulted and their responses indicate agreement in principle to the proposals.

In preparing the Bill, the Parliamentary Counsel has taken the opportunity to substitute the references to the Commonwealth *Fisheries Act 1952*, which has been superseded by the *Fisheries Management Act 1991,* with references to the equivalent provisions of the latter Act. The references in the South Australian Act relate to Commonwealth/State fishing management arrangements.

I commend the measures to the House.

PART 1

PRELIMINARY

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: Interpretation This clause is the standard interpretation provision included in Statutes Amendment measures.

PART 2

AMENDMENT OF FISHERIES ACT 1982

Clause 4: Amendment of long title

This clause amends the long title to reflect the Act's protection of marine mammals in their own right and not as fish of a class declared to be protected for the purposes of section 42.

Clause 5: Amendment of s. 5—Interpretation

This clause introduces into the Act definitions of "abalone", "Australian fishing zone", "fishery management committee" and "marine mammal", substitutes the definition of "Commonwealth Act" and strikes out the definition of "Commonwealth proclaimed waters".

This clause amends the provisions relating to the application of the Act to replace obsolete references to "Commonwealth proclaimed waters" with references to the Australian fishing zone and makes other changes to reflect changes to the application of the Commonwealth fisheries legislation within the Australian fishing zone.

Clause 6: Amendment of s. 6—Interpretation

Clause *7: Amendment of s. 7—Powers and functions of Minister*

These clauses delete references to provisions of the repealed *Fisheries Act 1952* of the Commonwealth ("the repealed Commonwealth Act") and substitute references to the equivalent provisions of the *Fisheries Management Act* 1991 of the Commonwealth ("the new Commonwealth Act").

Clause 8: Amendment of s. 10—Delegation

This clause substitutes subsection (5) to bring it into line with the equivalent provision of the new Commonwealth Act.

Clause 9: Amendment of s. 11—Procedure of Joint Authorities This clause substitutes subsection (1) so that it refers to the provisions of the new Commonwealth Act.

Clause 10: Amendment of s. 12—Report of Joint Authority

This clause replaces the reference to a provision of the repealed Commonwealth Act with a reference to the equivalent provision of the new Commonwealth Act.

Clause 11: Amendment of s. 13—Arrangement for management of certain fisheries

This clause replaces references to provisions of the repealed Commonwealth Act with references to the equivalent provisions of the new Commonwealth Act.

Clause 12: Substitution of s.14—Application of this Act to fisheries in accordance with arrangements

This clause substitutes a new section so that references to "Commonwealth proclaimed waters" are no longer included.

Clause 13: Amendment of s. 15—Functions of Joint Authority

This clause inserts a new provision to require a Joint Authority, when exercising functions under section 15, to have the objectives stated in section 20.

Clause 14: Amendment of s. 20—Objectives

This clause provides for fishery management committees to have, in the administration of the Act, the same objectives as the Minister and the Director of Fisheries have.

Clause 15: Amendment of s. 23—Delegation

This clause empowers the Minister and the Director to delegate their powers under the Act to fishery management committees.

Clause 16: Amendment of s. 34—Persons and boats engaged or used in fisheries to be licensed

This clause increases the maximum penalty for taking abalone for the purpose of trade or business, or engaging in a fishing activity for the purpose of taking abalone, without a fishery licence from a division 5 fine ($8,000) to a division 1 fine ($60,000) or division 5 imprisonment (2 years).

Clauses 17 Amendment of s. 37—Conditions of licences

This clause increases the maximum penalty for taking abalone in contravention of a condition of a fishery licence from a division 7 ($2,000), division 6 ($4,000) or division 5 ($8,000) fine, depending on whether the offence is a first, second or subsequent offence, to a division 1 fine ($60,000) or division 5 imprisonment (2 years) whether the offence is a first or subsequent offence.

This clauses also increases the maximum penalty in the case of any other offence of contravening or failing to comply with a condition of a fishery licence from a division 7 fine ($2,000) to a division 6 fine ($4,000) in the case of a first offence, and from a division 6 ($4,000) fine for a second offence and a division 5 ($8,000) fine for a subsequent offence to a division 5 fine ($8,000) whether the offence is a second or subsequent offence.

Clause 18. Insertion of s. 41a

This clause inserts section 41 a.

Section 41a: Offence of killing, injuring, etc. a marine mammal

Subsection (1) prohibits a person from—

- killing, injuring or molesting, or causing or permitting the killing, injuring or molestation of, a marine mammal; or
- taking, selling or purchasing or having in his or her possession or control a marine mammal or the body or part of the body of a marine mammal.

The maximum penalty is a division 3 fine ($30,000) or division 5 imprisonment (2 years).

Subsection (2) provides that in proceedings for an offence against subsection (1), it is a defence if the defendant proves—

- that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence; or
- that the act alleged to constitute the offence was authorised by or under some other Act or law.

Clause 19: Amendment of s. 44—Offences with respect to sale, purchase or possession offish

This clause increases the maximum penalty for selling or purchasing abalone taken in waters to which the Act applies but not pursuant to a fishery licence and for selling or purchasing abalone, or having possession or control of abalone for the purposes of sale from a division 5 fine ($8,000) to a division 1 fine ($60,000) or division 5 imprisonment (2 years).

Clause 20: Amendment of s. 46—Regulations relating to fisheries and fishing

This clause amends the regulation-making powers relating to fisheries and fishing to authorise the making of regulations—

- that prohibit or limit foreign ownership of fishery licences;
- that establish fishery management committees;
- that empower or require a court convicting the holder of a fishery licence of an offence of contravening or failing to comply with a licence condition to order that the conditions of the licence be varied by the Director in a manner specified in the regulations;
- that authorise the Chief Executive Officer of SARDI, rather than the Director of Fisheries, to determine what information must be included in returns; and
- that require returns to be lodged with the Chief Executive Officer of SARDI rather than with the Director.

Clause 21: Amendment of s. 55—Regulations relating to fish processing

This clause amends the regulation-making powers relating to fish processing to enable the making of regulations—

- that authorise the Chief Executive Officer of SARDI, rather than the Director of Fisheries, to determine what information must be included in returns;
- that require returns to be lodged with the Chief Executive Officer of SARDI rather than to the Director; and
- that prohibit or restrict the sale, purchase, possession or control by fish processors of fish of a prescribed class, including fish taken in waters to which the Act does not apply.

Clause 22: Amendment of s. 56—Suspension or cancellation of authorities by courts

This clause inserts provisions—

- requiring the Director of Fisheries to record on a fishery licence convictions of the licence holder or a registered master of a registered boat for offences against section 69 (4);
- requiring a court to suspend or cancel a fishery licence if the holder of the licence or the registered master has previously been convicted of offences against section 69(4);
- requiring a court convicting the holder of a fishery licence or a registered master of a prescribed offence to take into account previous convictions for prescribed offences whether the prescribed offences were committed before or after the commission of the offence under consideration.

The clause also amends the definition of "prescribed offence" to include offences against sections 41a and 69 (4) which are inserted by this measure.

Clause 23: Amendment of s. 58—Review of decisions relating to authorities

This clause provides for there to be a right to a review of a decision by the Minister to order the cancellation of a fishery licence held in breach of a regulation prohibiting or restricting foreign ownership of such a licence.

The clause also removes subsection (4) which is obsolete because of the repeal of the *Local and District Criminal Courts Act 1926* and changes all references to "a District Court" to the Administrative Appeals Court which is a Division of the District Court established by the *District Court Act 1991*.

Clause 24: Amendment of s. 69—Offences committed by bodies corporate or agents or involving registered boats

This clause inserts a new subsection which provides that if the registered master of a registered boat or some other person commits an offence while on a registered boat or does something on a registered boat that if done by the holder of a fishery licence would constitute an offence against the Act, the registered master is guilty of an offence, and if the registered master is not the registered owner (i.e. the licence holder), the registered owner is also guilty of an offence. The maximum penalty is the maximum penalty that is applicable in the case of the principal offence.

PART 3

AMENDMENT OF FISHERIES (GULF ST. VINCENT PRAWN FISHERY RATIONALIZATION) ACT 1987

Clause 25: Amendment of preamble

This clause amends clause 5 of the preamble to the principal Act by striking out the word "equally".

Clause 26: Repeal of s. 4

This clause repeals section 4 of the principal Act which deals with the transfer of licences. Section 4 prohibited transfers of licences until 1 April 1990 and since that time a transfer of a licence has required the approval of the Director. The Director is required to consent to a transfer if the criteria prescribed by the regulations are satisfied and an amount is paid to him representing the aggregate of the licensee's accrued and prospective liabilities by way of surcharge under the Act, less any component of that prospective liability referrable to future interest and charges in respect of borrowing. The section also provides that where the registration of a boat is endorsed on a licence to be transferred, that registration may also be transferred.

The effect of repealing section 4 is that a licence in respect of the fishery will be transferable in accordance with the scheme of management for the fishery prescribed under the *Fisheries Act 1982*. The criteria prescribed by the *Fisheries (Gulf St. Vincent Prawn Fishery Rationalization) Regulations 1990* are identical to, and thus duplicate, those prescribed by the *Scheme of Management (Prawn Fisheries)* Regulations 1991 under the Fisheries Act. The new section 8 substituted by clause 25 of this measure will provide that the licensee's liability under the Fisheries (Gulf St. Vincent Prawn Fishery Rationalization) Act 1987 will, on transfer of the licence, pass to the transferee (the new licensee). Section 38 (4) of the Fisheries Act already provides that where a licence is transferable, the registration of a boat effected by endorsement of the licence may be transferred.

Clause 27: Substitution of s. 8—Charges on licences

This clause repeals section 8 of the principal Act and substitutes a new provision.

Proposed subsection (1) requires the Minister, by notice in the *Gazette,* to quantify the net liabilities of the Fund under the Act as at the day fixed by the Minister in the notice ("the appointed day").

Proposed subsection (2) provides that, as from the appointed day, each licence is charged with a debt calculated by dividing the amount determined under subsection (1) by the number of licences in force on the appointed day.

Proposed subsection (3) provides that the debt will bear interest at a rate fixed by the Minister by notice in the *Gazette* and the liability to interest is a charge on the licence.

Proposed subsection (4) requires a licensee to pay the debt, together with interest, in quarterly instalments (which may be varied from time to time) fixed by the Minister by notice in the *Gazette* and payable on a date fixed by the Minister in the notice and thereafter at intervals of three months, or if there is an agreement between the Minister and the licensee as to payment, in accordance with the agreement.

Proposed subsection (5) provides that where a licence is transferred, the liability of the licensee passes to the transferee.

Proposed subsection (6) provides that any amount payable by a licensee under the Act may be recovered as a debt due to the Crown.

Proposed subsection (7) provides that if a licensee is in arrears for more than 60 days in the payment of an instalment, the Minister may, by notice in writing to the licensee, cancel the licence.

Proposed subsection (8) provides that where a licence is surrendered on or after the appointed day or is cancelled under subsection (7), no compensation is payable for loss of the licence and the total amount of the debt charged against the licence becomes due and payable by the person holding the licence at the time of the surrender or cancellation.

Proposed subsection (9) defines "appointed day" and "net liabilities of the Fund under this Act" for the purposes of the section.

PART 4

AMENDMENT OF FISHERIES (SOUTHERN ZONE ROCK LOBSTER FISHERY RATIONALIZATION) ACT 1987

Clause 28: Amendment of s. 3—Interpretation

This clause amends the definition of "Southern Zone" to update the reference to regulations to the current scheme of management.

Clause 29: Amendment of s. 4—The Southern Zone Rock Lobster Fishery Rationalization Authority

This clause provides for a Public Service employee appointed by the Minister to be a member of the Rationalization Authority rather than an employee of the Department of Fisheries which no longer exists.

The Hon. PETER DUNN secured the adjournment of the debate.

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

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

The Hon. BARBARA WIESE (Minister of Transport Development): I move:

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill is essentially administrative in nature. As Hon. Members would be aware, Section 58a of the principal Act provides for the removal from office of the members of a board of an incorporated hospital or health centre and the appointment of an administrator.

A board of an incorporated hospital or health centre must have—

- contravened, or failed to comply with a provision of the Act or its approved constitution;

or

- in the opinion of the Governor, persistently failed properly to perform the functions for which it was established.

In those circumstances, the Governor may remove all members of the board and appoint a person to administer the service until the appointment of a new board. During the period of appointment, the administrator has all the powers of the Board. The administrator must arrange for a new Board to be constituted within 4 months after the removal of the previous board.

This is not a course of action which is taken lightly. Fortunately, it has been used rarely. Nevertheless, it is an important power to have available, should circumstances arise when such action is necessary.

Hon. Members will recall the unfortunate circumstances which arose in the SA Mental Health Service late last year. The tragic death of a doctor was followed by a series of events which necessitated decisive action to restore stability and ensure the maintenance of patient care. Section 58a was invoked.

While substantial progress is being made, it is apparent that matters will not have been concluded by 11 April 1993, the end of the 4 month period. Pre-emptive or precipitate action in such circumstances would not be conducive to the satisfactory conclusion of the tasks at hand.

The Bill therefore seeks to introduce a degree of flexibility by enabling an administrator to be appointed for up to 12 months.

The opportunity has also been taken to ensure that the grounds for removal of a board include serious financial mismanagement. It is arguable as to whether that is already encompassed within the provisions. However, in the interests of accountability for public funds, it is important to ensure that it is explicitly included.

A further amendment seeks to cover the situation where a Board itself is unable to deal with problems confronting it and, of its own volition, seeks dissolution and the appointment of an administrator. Again, this is a rare occurrence, but the Act needs to be flexible enough to deal with it.

I commend the Bill to the House.

Clause 1: Short title

Clause 1 is formal.

Clause 2: Amendment of s. 58a—Provision where incorporated hospital or health centre fails persistently to properly discharge its functions

Section 58a provides for the dissolution, by the Governor, of a Board of an incorporated hospital or health centre on its failure to perform properly its functions and for an administrator to be appointed until a new Board is constituted. The proposed amendment provides that a Board may be dissolved if it is guilty of serious financial mismanagement and that a Board may seek its own dissolution. The proposed amendment also increases the length of time within which a new Board must be constituted, should a dissolution occur, from four months to twelve months.

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

PUBLIC AND ENVIRONMENTAL HEALTH (REVIEW) AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendment.

FIREARMS (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly informed the Legislative Council that the Bill entitled 'an Act to amend the Firearms Act 1977' transmitted on 24 November 1992 contained an error in clause 27. The House of Assembly transmitted a Bill identical to the Bill transmitted on 24 November 1992 with the exception of clause 27 which had been corrected.

The Hon. C.J. SUMNER: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

The Hon. C.J. SUMNER (Attorney-General): I move:

That the proceedings subsequent to the motion on 25 November 1992 that 'the Bill be now read a second time' be declared null and void.

Mr President, during the Committee stage of this Bill in the House of Assembly a number of amendments moved by the Minister were agreed to. The last of those amendments to what was then clause 25 of the Bill was inadvertently omitted when the Bill was referred to StatePrint for printing. Following renumbering of clauses as a result of the other agreed amendments that clause is now numbered 27 and appears in the Bill referred to the Legislative Council today in its correct form.

The Firearms Act Amendment Act 1988 included a transitional provision that entitled a person in lawful possession of a firearm when the amending legislation comes into force to continue to possess and use the firearm pursuant to subsequent renewals of the licence for any purpose that he or she could have used the firearm before the Act was amended. The result of this is that these firearms would never be subject to the additional restrictions imposed by the amending acts while they remained in the ownership of the original owner.

The amendment passed by the House of Assembly removed that provision and replaced it with a provision that only allowed gun owners to continue to possess and use their firearms pursuant to their existing unrestricted licences during the term of the licence.

Upon renewal of the licence, after the amending Acts come into force, these gun owners will be subject to the same restrictions in respect of their existing firearms as other gun owners will be in respect of firearms purchased after the amendments come into operation.

That is why this Bill is back before us and why we have to proceed through the whole of the Committee stage again. The Bill that we received from the House of

Assembly, when we dealt with it on the first occasion, was not the Bill that had been passed by the House of Assembly. There were some errors in it. I am advised that this is the only satisfactory way to correct the matter.

The Hon. K.T. GRIFFIN: The Opposition will not oppose the motion moved by the Attorney-General. It is not a satisfactory state of affairs. We must acknowledge that if we act on what we receive from another place, no blame can be ascribed to the Legislative Council or its officers for what subsequently occurs. As I said, it is unsatisfactory if we do not get proper messages and Bills which have been passed in their accurate form. It can involve, as it will now, a considerable amount of procedural work as well as not only members' time but officers' time in trying to sort it out. I do not want to make a big issue of that. It goes back to what I raised only a matter of weeks ago when I said that we have to look very carefully at the way in which amendments are made under the guise of clerical, typographical or grammatical changes to legislation. It was a source of considerable debate on the WorkCover validation legislation that we dealt with several weeks ago. It may not be the last time, but it is not a satisfactory way to deal with the legislative business of the Parliament. On this occasion it does not show the House of Assembly in a particularly good light. I shall not make a bigger issue of it than that. I hope that it does not arise in the future.

Motion carried.

ADJOURNMENT

At 10.28 p.m. the Council adjourned until Wednesday 10 March at 2.15 p.m.