LEGISLATIVE COUNCIL

Wednesday 24 March 1993

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

LEGISLATIVE REVIEW COMMITTEE

The Hon. M.S. FELEPPA: I bring up the third report of the Legislative Review Committee; the minutes of evidence given before the committee on regulations under the Fisheries Act 1982 concerning transfer of a licence for the marine scale fish fishery; and the minutes of evidence given before the committee on regulations under the Freedom of Information Act 1991 concerning exempt agencies, Senior Secondary Assessment Board of South Australia, revocation and replacement.

QUESTION TIME

GENTING GROUP

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

Leave granted.

The Hon. K.T. GRIFFIN: On 4 March this year I asked the Attorney-General questions about the suitability of Genting to be involved in the Adelaide Casino and the extent to which the Commissioner of Police and the Casino Supervisory Authority had pursued inquiries in New South Wales, Western Australia and Malaysia about Genting and its suitability to be involved in the operation of casinos. The Attorney-General said then that he would follow up the questions and bring back a reply. In the course of his response to my question, the Attorney-General said:

> Before things were put in place for the Adelaide Casino extensive inquiries were carried out by the police and by officers of the Department of Public and Consumer Affairs.

He made that reference particularly because he had previously been the Minister of Consumer Affairs. Later in the response on 4 March, he said:

> Those inquiries went into the people who were subsequently appointed to operate the Casino and those who were appointed to assist in its operation.

Quite obviously those persons included Genting. The Attorney-General made the same sorts of points in reply to other questions which I had asked on the same issues on 14 October 1987 following information about investigations in Western Australia. The fact is that that assertion that the inquiries went into the people who were subsequently appointed to operate the Casino and those who were appointed to assist in its operation is not true.

Documents to which the Opposition has gained access under the Freedom of Information Act show that the police, the Department of Public and Consumer Affairs and the Casino Supervisory Authority deny having investigated the background of Genting in the manner repeatedly advised to the Parliament both in this House and in the House of Assembly.

Further, the documents show that the roles of the police, the Department of Public and Consumer Affairs and the Casino Supervisory Authority have been misrepresented to Parliament. Police documents clearly show that the Police Department has not, at any time, had cause to report on Genting itself. The Department of Public and Consumer Affairs in a report in November 1984 to the Lotteries Commission states:

> This report does not delve into the character, honesty or integrity of the applicant (for the Casino operator's licence) or persons associated with the applicant.

It is also clear from the documents which have so far been obtained that the Casino Supervisory Authority has not been able to give Genting a clean bill of health as claimed by the Treasurer in another place on 10 March 1993. In fact, it and the other South Australian agencies have not been able to gain access to a Western Australian police report on Genting because, according to the Commissioner for Corporate Affairs in Western Australia, the 'report contained highly sensitive material which was considered potentially embarrassing to the Western Australian Government if released'. Will the Attorney-General now redouble his efforts to investigate the matters raised on 4 March and again today and indicate his willingness to admit that in 1987 and on 4 March 1993 he misled the Council as to the extent of inquiries into Genting and its suitability to be involved in the Adelaide Casino.

The Hon. C.J. SUMNER: In answer to the second part of the question, certainly not. I am happy to examine what I said in 1987 and again earlier this year. I am certainly not going to take the honourable member's word for his interpretations of what I said or his interpretations of documents that he has obtained under FOI. However, if he would make those available to me I will certainly check the statements and documents and respond further. However, I can certainly advise the honourable member that as far as I am concerned I have certainly not knowingly misled the Council about this matter.

What I do know in general terms is that when it was decided to have a casino in South Australia extensive inquiries were carried out and extensive checks and balances were put in the legislation. Those who were in the Parliament when it went through will know the extraordinary checks and balances that were put in the legislation to ensure that the Casino was operated properly, and that is why the Lotteries Commission held the licence, why there was a Casino Supervisory Authority put in over the top and why the Liquor Licensing Commissioner has responsibility for activities in the Casino.

Furthermore, I understand that when people are due to be employed in the Casino the police do a report on them and that report is made available to the Liquor Licensing Commissioner. That is my recollection of what occurs. I have not been directly involved in it for some time. In fact, there was a case at one point where someone was not employed because of a police report and he took a case to the Supreme Court on the basis of a denial of

natural justice, if my recollection serves me correctly, and was unsuccessful in that case so that he was refused employment on the basis of police reports that were obtained.

So, the point I have made in the past and which I make today is that within the legislation there are extensive checks and balances built in, as all honourable members who were in the House when the legislation went through would know.

At present a Lotteries Commission holds the licence, a Casino Supervisory Authority has general oversight and there is the Liquor Licensing Commissioner involvement and, as I understand it, there is also police involvement in checking people and preparing reports on the people who are employed in the Casino. I cannot say offhand the extent of those checks, but certainly the extent of criminal records and the like are checked with police. Because of the care that was taken in this matter I assume those checks were carried out as well during the inquiries as far as Genting was concerned.

In any event when the honourable member has raised these questions in the Council and when they have been raised in another place, the Casino Supervising Authority has examined them and that is why it was set up. I am not there to examine the matters. The Casino Supervising Authority is there to examine allegations of this kind that are made, and the Treasurer yesterday gave a report on the most recent set of allegations. However, the honourable member has now raised them again and I will ensure that the matters he has raised today are further examined.

FREEDOM OF INFORMATION

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister of Consumer Affairs a question about freedom of information requests.

Leave granted.

The Hon. R.I. LUCAS: On 11 January 1993, Mr Dale Baker MP applied to Mr W. Pryor, the Liquor Licensing Commissioner, seeking access to a range of documents relating to the ASER development, the Adelaide Casino and the involvement of Genting in the operation of the Adelaide Casino. The Liquor Licensing Commissioner has a wide range of responsibilities in relation to the Casino under the Casino Act. They include not only constant supervision of the operations of the Casino but also, in the start-up phase, the investigation of potential operators. There is evidence that the Department of Public and Consumer Affairs and the Liquor Licensing Commissioner deny investigating the background of Genting, background which should have been investigated because it was to be involved in the operations of the Casino.

In response to the request under the Freedom of Information Act, the Liquor Licensing Commissioner has acknowledged receipt on 12 January, and has written on 26 January that he is seeking the approval of the ASER group of companies and the Lotteries Commission to the request for access. The Freedom of Information Act requires a decision to be made by the agency within 45 days of the request. In fact, 72 days have now elapsed since the original request. My questions to the Minister are:

1. Why has the obligation imposed by the Freedom of Information Act not been complied with?

2. Has the Minister any knowledge of Mr Baker's request and has she played any part in the delay?

The Hon. ANNE LEVY: The answer to the second question is certainly not. Until the honourable member mentioned it I was totally unaware that such an application had been made. I do not know the reasons for the delay. I suggest that the honourable member has virtually given the reason in his explanation of the question, that if the particular documents which are sought refer to other individuals, be they natural persons or companies, that their agreement to release information about them may have to be sought, and it may well be this which is delaying a response, in that these third parties have not responded. However, I will certainly ask the Liquor Licensing Commissioner for a report on the matter.

DRIVER TRAINING

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister of Transport and Development questions on the subject of driver training and testing.

Leave granted.

The Hon. DIANA LAIDLAW: I have received a copy of a very angry letter to the Minister dated 22 March from the South Australian Chairperson of the Australian Driver Training Association, Mr Stacey, about the new driver training and testing initiatives that are due to be introduced in South Australia on 5 April, in less than two weeks time. Essentially the new scheme aims to provide applicants for a licence with a choice between the current on-road test and a new log book system whereby applicants, in lieu of a test, can qualify for a licence by being trained and assessed by their instructors over a period of some weeks.

The new arrangements, which envisage an expanded role for private driving instructors, have been developed over a period of five years between representatives of the Department of Road Transport, the Public Service Association and the Australian Driver Trainers Association of South Australia. However, Mr Stacey's letter states:

> Unfortunately our confidence has been destroyed in the last few days due to concerns that the program that we have all worked so hard to bring to fruition may be either axed, deferred or modified. The reasons for these possible delays or changes appear to be totally unjustified concerns of several radical Driver Development Centre employees who are members of the PSA. I say unjustified because the PSA have been actively involved in all discussions from the outset of the proposals...
>
> So far our members have entered into nearly five years of discussion, 18 months of training, advertising and other various expensive commitments with absolutely nothing positive to show for their efforts. Is this yet another case of small business being let down and misled by senior public servants, in their effort to support and appease a major union or association on behalf of the State Government? May I here point out that all Government licence examiners have during the past two years been offered

handsome voluntary separation packages or retraining options to become multi-skilled and to enhance their future promotional prospects...

Those who remained and accepted the retraining package at no cost to themselves are many of the driver development officers who conducted the training sessions for ADTA members. They gladly accepted the increase in their status and salary, but now appear to want to hang on to their lower grade of duties, but maintain their higher salary. A classic case of having your cake and eating it too...

In conclusion I have to advise you that should these proposals not proceed on the scheduled date of 5 April 1993 then our members will feel grossly let down and in fact misled by all levels of the Department of Road Transport relating to driver training.

Mr Stacey also advises that any delay will result in his association making a strong legal claim for damages and costs incurred by their members. The association's anxiety about possible axing, deferral or modification of the new system has been reinforced by the fact that the Minister's office cancelled a press conference set for 19 March—late last week—at which time the Minister was scheduled to launch the new initiatives, by the fact that no contracts have been sighted by driving instructors accrediting them to assess and qualify drivers for a licence, and by the fact that the Government has launched no educational or public relations campaign promoting this rather radical new system, although the official deadline for introduction of the new system is less than two weeks away. Therefore, as I understand there was a meeting of the PSA about this matter if not last night then this morning, I ask the Minister:

1. Can she now confirm that the proposed new driver training and testing system, known as the Authorised Testing and Accredited Competency-Based Training Program, will be introduced as planned on 5 April 1993?

2. Why is she prepared to tolerate the actions of three to five Driver Development Officers—PSA members—employed by the Department of Road Transport, who are threatening to jeopardise the introduction of the new system and to jeopardise both the goodwill and financial viability of accredited driving instructors in South Australia?

The Hon. BARBARA WIESE: I am totally committed to the introduction of the scheme to which the honourable member has referred. As she quite rightly pointed out, this scheme has been developed over a long period of time, with an enormous amount of consultation and with a wide range of people. It is an excellent opportunity for the public and private sectors to work in cooperation to provide driver training and testing for drivers and to improve a service to the people of South Australia that is currently provided in a more limited way through the public sector.

I have not seen the correspondence to which the honourable member refers, which is not surprising if it was written only two days ago, but I will be interested to receive the views of the organisation to which the honourable member has referred, and I shall reply to its concerns when I receive its correspondence.

Some representations were made to me by the Public Service Association some time ago about the consultation process that surrounded the development of the scheme. The General Secretary of the PSA suggested that the process had not been in accordance with the understanding that the association has as to the way that such matters should be introduced. The Department of Road Transport does not agree with that position. As the honourable member indicated from the correspondence that she has received, members of staff and PSA representatives were involved in the development of the scheme. However, as this is not something upon which I can make observations from personal involvement, because the claims being made relate to a period prior to my appointment as Minister of Transport Development, I asked that there be further discussions between representatives of the Public Service Association and of the Department of Road Transport in order that any concerns that still existed could be overcome. I understand that those discussions have continued. I have not heard the most recent outcome of the meetings that have been held, but I hope that they will be satisfactory and that nothing will stand in the way of this scheme being introduced.

The honourable member claims that I have cancelled a scheduled press conference on this matter. There was no press conference in my diary with respect to this scheme. The Department of Road Transport may have chosen a preferred date on which it thought it would be desirable to have publicity for this scheme, but that was not with my concurrence. Any proposal for publicity will be undertaken according to my preferences, my diary and my availability. In summary, I understand the concerns that have been expressed by the association to which the honourable member has referred. I would not like to see a scheme like this, which has had such strong and positive commitment from a large number of people, jeopardised because there may be some concerns about the process. I hope that before too long this scheme will be in place and will bring benefits to the people of this State.

The Hon. DIANA LAIDLAW: As a supplementary question, can the Minister confirm that this new driver testing and training program is to commence on 5 April, which has long been the scheduled date? How long will she tolerate these discussions between the PSA and the Department of Road Transport so that a date can be fixed in the near future for the commencement of the scheme, acknowledging that the Association of Australian Driver Trainers in South Australia will commence legal proceedings for compensation if the scheme does not commence on 5 April?

The Hon. BARBARA WIESE: I do not believe that this matter is as serious as or requires the sort of action suggested by the honourable member. I am sure that when there can be proper discussions with relevant parties, any heat that may have been generated from whatever source can soon be dissipated. As I indicated, we will shortly have a scheme which will be for the benefit of the State. As to the discussions that are taking place with the Public Service Association, it is not a matter of tolerating these discussions taking place into the future. There was an agreement about discussions that would occur about process and about the way decisions have been made and I hope that that clears the air for any future negotiations between the department and the association and that that will not affect the introduction of the scheme.

PILCHARDS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister of Primary Industries a question about Coffin Bay pilchards.

Leave granted.

The Hon. M.J. ELLIOTT: My question is about the practice of feeding caged tuna near Port Lincoln on pilchards caught in the vicinity of Coffin Bay and the reluctance of the then Department of Fisheries now Primary Industries to answer questions from locals on the issue. On 5 August last year a public meeting was held at Port Lincoln to discuss the Port Lincoln Aquiculture Management Plan. At the meeting concern was expressed at the number of pilchards being taken. The worry is that if the Coffin Bay waters are seen as a regular source of food for the caged tuna industry the pressure on the pilchard industry would be detrimental to other steps along the food chain, especially but not only affecting penguins. Mr V. Neverauskas of the Fisheries Department suggested at that meeting that concerned people should write to him and he would provide details of the pilchards being caught. They did so on 21 August, and I quote from a *Port Lincoln Times* article:

> The meeting was told that the pilchard industry worked offshore and did not target inshore schools of pilchards which form part of the penguins' diet.

However, that was not the correspondents' experience. Since the meeting they have learnt that just one boat has taken over 100 tonnes from the Coffin Bay waterways. To date they have not received a reply to the letter that they were invited to write. They have since sent a second letter containing a number of questions. The group is anxious to find out about the monitoring program for the Coffin Bay area, which is apparently going to assess the environmental impact of aquiculture. They understand that the order for pilchards for the Port Lincoln tuna farms from Coffin Bay is now 25 tonnes per week and believe that such a level of fishing is not sustainable and will have off-species effects, especially for the penguin colonies of the area. I ask the Minister:

1. Why is it that to date Mr Neverauskas, or any other departmental officer, has failed to answer the letter of 21 August 1992 from the action group for the protection of Coffin Bay waterways?

2. What monitoring is being done of the pilchards taken from the Coffin Bay area?

3. What work is being done to assess the impact of this catch on other species, which rely on pilchards as a food source?

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

TERRACE HOTEL

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, question about the Terrace Hotel Rolls Royce.

Leave granted.

The Hon. L.H. DAVIS: In late October I asked the Attorney-General a question about the Rolls Royce that had been purchased by Bouvet Pty Ltd, a fully owned subsidiary of SGIC which operated the Terrace Hotel. The 1986 Rolls Royce Silver Spur had been purchased in October 1989 for $275 000 from United Motors Retail Limited, a company in which SGIC Chairman Vin Kean was a director and shareholder. At the time Mr Kean was also Chairman of Bouvet Pty Ltd, the operator of the Terrace Hotel. The Rolls Royce was purchased by the Terrace Hotel without any shopping around whatsoever.

In the written answer provided to me in late November the Treasurer attempted to justify the purchase price of $275 000 by claiming that the vehicle had done only 5 000 kilometres. However, Rolls Royce experts around Australia have claimed that, at the time I asked the question and subsequently, a car in similar condition could have been purchased for $250 000 and quite possibly less. The answer provided by the Government relied on the retail prices contained in Glass's Vehicle Guide. But the Terrace Hotel, if it was being run as a commercial business, and one presumes that it was, would surely not have been content to accept a recommended retail price.

The point continually made is that, when purchasing a prestige vehicle for about $250 000, all buyers shop around, not only in their home State but also interstate. It is rare for a buyer of such an expensive vehicle to take the list price but rather to bargain hard and play one dealer off against another. The people to whom I have spoken are continually amazed that this simply did not occur.

As the Attorney-General is aware, this was a situation where the Chairman of Bouvet Pty Ltd, which was purchasing the vehicle, was also directly involved as a director of the firm selling the vehicle. On 17 October the *Advertiser* carried an advertisement for the sale of this Rolls Royce by private tender. I understand that the vehicle still remains unsold and that the continued softness in prestige car prices would now mean that this 1986 Rolls Royce is likely to attract no more than $140 000, just half of what was paid for it little more than three years ago.

My questions are: first, does the Attorney-General, as Leader of the Government in the Council, condone the Terrace Hotel's purchase of the Rolls Royce for $275 000 without seeking competitive prices? If so, how does he square his acceptance of this transaction in the light of the conflict of duty and interest guidelines which the Government released last year? Secondly, is the Terrace Rolls Royce still for sale?

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

STATE BANK

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer (Mr Blevins), a question about the sale and lease back of State Bank properties.

Leave granted.

The Hon. J.F. STEFANI: Following a decision made by the Executive Group of the State Bank at the end of December 1989, investment buildings and strategic branches were transferred to the State Bank Superannuation Fund for approximate $50 million. I have been informed that it was the view of the executive committee that, because of the current focus on capital adequacy together with the prevailing economic conditions, a list of properties comprising both Superannuation Fund and State Bank assets should be identified for disposal.

It was the view of the executive group that the opportunity existed for the bank to sell some of its properties and enter into a lease-back arrangement with a new property owner. I have been informed that the executive committee agreed to seek approval from the board to appoint selling agents to undertake a catalogue sale of Superannuation Fund and bank properties. The arrangements were that the bank would enter into a long-term lease-back and that settlement on all properties should be achieved by 30 June 1990.

Dealing with the long-term lease of properties by the State Bank Group, I have been informed that following a decision by the board in August 1990 the directors approved the relocation of the State Bank London office to the Counting House situated at 53 Tooley Street, London, SE1 2QR, on a rental/lease basis for 25 years with an annual rent of £210 300. This represents a long-term lease commitment amounting to £5.2 million. In view of the pending sale of the State Bank, my questions are:

1. Will the Treasurer provide Parliament with a complete list of properties which were sold by the State Bank Group and which are currently being leased on a long-term basis?

2. Will the Treasurer detail the lease commitments in money terms which the State Bank Group has undertaken to pay over the terms of the various leases?

3. Will the Treasurer confirm or deny that the contingent lease liabilities, including the liability arising from the lease of the London Counting House, will affect the sale price of the State Bank?

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

STATE BANK

The Hon. C.J. SUMNER (Attorney-General): I seek leave to make a ministerial statement on the subject of the State Bank.

Leave granted.

The Hon. C.J. SUMNER: Yesterday the member for Hanson in another place made various assertions about State Bank managers hiring a luxury motor launch to fish and cruise around the New Zealand coast in January 1991 at the bank's expense. The Treasurer has been advised by the bank that these claims are, to the knowledge of the present management, without foundation. The bank states that in January 1991 two of its senior executives used their own yacht in a local fishing competition while they were on annual leave. They were accompanied by two friends from the United Building Society. They state that they met all costs, and the State Bank contributed nothing towards the trip. If the member for Hanson has any evidence to back up his assertions, I would like to suggest that he gives it to the Treasurer for further investigation.

ENTERTAINMENT CENTRE

The Hon. J.C. IRWIN: I seek leave to make an explanation before asking the Minister of Consumer Affairs a question about the Entertainment Centre and retail trading.

Leave granted.

The Hon. J.C. IRWIN: Recently the Adelaide Entertainment Centre has come under fire from a number of quarters. Its dispute with the Hindmarsh council over the non-payment of rates is now in the courts. After a recent foray into retail trading, flea markets, trash and treasure—call it what you like—the Entertainment Centre has come under fire from East End Market developers and retail traders and others in the trash and treasure craft market business. A couple of weeks ago the East End Market developers (Metrocorp) was quoted as follows:

> It was criminal that people could operate outside retail planning laws. The Entertainment Centre at Hindmarsh, as I understand, was built for the staging of national and international performances and is not a retail outlet. The State Government as the owner is prepared to turn a blind eye to local quick-buck merchants at the expense of established retailers who have substantial investment in existing retail centres.

My understanding is that the Grand Prix Board did apply to the Hindmarsh council for permission under the Planning Act to hold a trash and treasure market and that the Hindmarsh council gave its approval. The people of Hindmarsh receive no proceeds whatsoever from the commercial venture which is held in their council area. My questions are:

1. Is it the intention of the Government through the Grand Prix Board to continue to use the Entertainment Centre and its surrounds for a multitude of commercial ventures other than the staging of national and international performances?

2. What was the average fee charged for a stall at the most recent market?

3. How many stall holders purchased a site?

The Hon. ANNE LEVY: I am not the Minister responsible for the Grand Prix Board, nor do I represent that Minister in this Council. However, I will see that the question is referred to the appropriate Minister so that the appropriate Minister can bring back a reply.

LANDCARE

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Environment and Land Management a question about the loss of funds from the national Landcare program.

Leave granted.

The Hon. PETER DUNN: It has been drawn to my attention that Landcare uses Federal funds which are approved and sent to this State for use by various groups

and some Government departments but which are principally used by Landcare groups and I understand some coast protection groups. It appears that the funds that were allocated to this State have not been totally used and therefore have gone back to Canberra. These funds are applied to the State under the following criteria: the funds can be used for employment costs, operating costs, capital costs; and some of the projects include community education and awareness, planning, resource inventory (that is, surveying and mapping), investigations, trials, training, demonstration, onground activities (relating to vegetation and wildlife habitat), other onground activities in the Murray/Darling basin and for monitoring.

When groups apply for these funds (and it is quite clearly laid out here) they should seek assistance from and discuss the proposed application with the appropriate agencies and technical specialists. I assume that they are the people set up within this State for just such purposes. In light of the anaemic state of South Australian finances, my questions are:

1. Did Landcare groups go wrong in submitting applications?

2. Did Government officers offer advice to Landcare groups when filling out applications for Federal moneys?

3. Did the Government make any extra effort when it became obvious that Federal funds may not be used to assist Landcare groups in getting up to the barrier and accessing funds?

4. What amount of money was promised but not accessed by both the Landcare program and the coast protection program in the last financial year or the period for which the grants were in operation?

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

POLICE COMPLAINTS AUTHORITY

In reply to **Hon I. GILFILLAN** (17 February).

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

a) The Police Complaints Authority wrote to the Minister of Emergency Services in December 1992 seeking temporary resources to clear the backlog of assessments, and seeking approval for a job re-design of the Office of the Police Complaints Authority, to be carried out by the Government Management Board, and funded from existing resources.

This submission is currently being considered by Government.

b) The Police Complaints Authority currently has the power to approve conciliation by the Department in specific matters, under section 22(5) of the Police (Complaints and Disciplinary Proceedings) Act 1985. The Minister has been informed that the Authority is currently negotiating with the Police Department to provide approval for conciliation in certain classes of offences, subject to the right of the Authority to conduct audits of conciliation outcomes, and subject to the right of the Authority to over-rule specific conciliated agreements and require further assessment of complaints when considered appropriate.

It is proposed that the classes of offence to be considered for approval for conciliation may be similar to those applying in Western Australia: that is, Police discourtesy or incivility, minor traffic infringements by Police, misunderstanding of Police practice and the Law, where such misunderstanding can be resolved by explanation, and complaints of no substance by persons of unbalanced mind.

It is pointed out that conciliation of this kind will necessarily place a greater responsibility on line managers in the Department to deal with complaints against their subordinates.

c) The Minister is supportive of appointing an Aboriginal person to the PCA, to be involved in the investigation of complaints by the Aboriginal community. This proposal is currently being considered in the context of the 1993-94 budget, and is dependent on the availability of resources.

d) There is duplication between the IIB and the PCA in that both organisations keep a register of all complaints against the Police, 70 per cent of which emanate from the PCA, and 30 per cent from the IIB. Given the need to maintain the independence of the PCA from Police Department operations it is difficult to identify how there could be further integration of the two systems beyond the current level of co-operation. However there is ongoing dialogue between the two organisations to explore possible rationalisation of activities and systems.

e) The imposition of financial penalties for proven misdemeanours is not the responsibility of the PCA, but rather the Commissioner of Police. The Commissioner has submitted a proposal to the Minister to increase fines under the Police Regulations to provide more appropriate disciplinary effect. This proposal is currently being considered.

CLEVE TO KIMBA ROAD

In reply to **Hon. I. GILFILLAN** (3 March).

The Hon. BARBARA WIESE:

1. I have been advised by the Department of Road Transport (DRT) that extremely wet weather in late 1992 and early 1993 resulted in damage to the Cleve to Kimba road. The January 1993 rains in particular, when water crossed the road in many locations, caused a great deal of damage resulting in a rough surface and some washaways.

Following these rains action was taken by DRT to improve the surface condition by grading and patching the road. I am advised that the road is currently safe for road users.

I am unable to comment on accidents within this period of wet weather as the relevant Police accident records have not yet been forwarded to DRT.

However, accident records over the ten year period from January 1982 to December 1991 show the Cleve to Kimba road had 0.05 accidents/km/year which is less than the accident rate on many other roads throughout the State.

2. Upgrading to a sealed standard is DRT's longer term objective for all of the State's unsealed arterial roads. Priority for sealing is determined by the functional importance of a road and traffic volumes. Sealing is currently in progress on the following high priority roads:

- Hawker-Orroroo, used by heavy transport as a link between Adelaide and Moomba
- Spalding-Burra, which completes the important link between the Mid North and Port Pirie
- Roxby Downs-Andamooka and Port Wakefield-Auburn, which are the most heavily trafficked unsealed arterial roads in the State with over 200 vehicles per day.

The Cleve to Kimba road, which carries approximately eighty vehicles per day, is one of the more lightly trafficked unsealed arterial roads. There are many higher priority projects on both the sealed and unsealed arterial networks competing for the available funds and sealing of this road is not anticipated within

the foreseeable future. The relatively low accident rate on this road, including the fact that there have been no fatal accidents in the previous ten years, does not suggest lives are at undue risk through not sealing the road.

3. DRT has a strategy for improvements to all of the unsealed arterial roads throughout the State. In the case of the Cleve to Kimba road, whilst sealing is not programmed in the foreseeable future, the strategy is to upgrade the open surface, alignment and drainage. Funding has been provided in recent years for these improvements and it is anticipated that funding for this work will be ongoing.

DALBY, MR STEPHEN

In reply to **Hon. I. GILFILLAN** (12 November).

The Hon. C.J. SUMNER: The Minister of Emergency Services has advised as follows:

1. If a police officer wrongly arrests someone or is guilty of some other civil wrong the person affected can take legal action to recover damages. The police are not immune from legal proceedings. The process must be initiated by the person claiming to be affected and usually legal advice is sought beforehand. This advice may be obtained privately or perhaps through the Legal Services Commission. If the parties to the proceedings do not agree on some settlement, there will be a trial. The court will make a decision on the liability of the police and the amount of damages to be paid if the police are liable.

A person affected by the conduct of the police may also make a complaint to the Police Complaints Authority. Sometimes, the Authority will recommend the complainant be compensated by the police.

2. An important preliminary point is that it does not necessarily follow that because the police arrest the wrong man he is entitled to damages. The arrest must be wrong in law. Police officers are empowered to arrest people they "reasonably suspect" of having committed a crime. The test is whether or not an average person, knowing what the police officer knew, would suspect the person of having committed a crime.

This incident is before the criminal courts (another person has been charged) and so public comment on the circumstances does not seem appropriate. However, it is clear to me that a crime was committed and the police officers involved reasonably suspected Mr Dalby as being the offender. For this reason, I expect any civil action by Mr Dalby will be defended by the department and will fail.

It is up to Mr Dalby to take some action now if he wishes. It would be greatly to his advantage to take some legal advice. If he wishes to put a detailed claim to me it will be considered although, as I have said, I doubt whether I would be advised to make any payment in the circumstances.

HOUSING, PENSIONER

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister representing the Minister of Housing, Urban Development and Local Government Relations a question about pensioners' rental.

Leave granted.

The Hon. J.C. BURDETT: I have had a number of representations from pensioners who are Housing Trust tenants. They are incensed by the fact that every time the pension is increased their rent goes up by the same amount, so that they get no benefit from the rental increase. It seems hard enough in any event that pensioners get no benefit from an increase in their pensions. I acknowledge that persons who have the benefit of a concessional rental do have to account for an improvement in their financial position.

The increase in pensions due to an increase in the CPI is one thing, but during the recent Federal election campaign, when the Coalition had proposed an 8 per cent increase in the pension in addition to the CPI increase, the reaction of pensioners who were Housing Trust tenants was, 'That won't help us because the Housing Trust will put up the rent by the same amount.' My questions are:

1. Is it the position that the Housing Trust puts up the rental of pensioner tenants by the amount of any increase in the pension?

2. What is the basis for fixing the rents of pensioner tenants?

The Hon. ANNE LEVY: I will refer those questions to my colleague in another place. I had always understood that the concessional rent was a proportion of total income, but I will get a more detailed response from my colleague in another place.

TUBERCULOSIS

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health, Family and Community Services a question about tuberculosis.

Leave granted.

The Hon. BERNICE PFITZNER: Tuberculosis or TB is on the increase again. In an Australian medical article in 1991 entitled, 'Increase in TB Threatening', it states that:

- One third of the world's population carry the TB bacteria.
- TB kills more people than any infectious disease.
- More than 8 million new cases occur world wide and nearly 3 million people die annually.

An article in 1992 entitled 'TB resurfaces' declares the concern of the control of TB in Australia. It states that:

- There is a lack of adequate post migration screening, namely, that screening done at present is for the disease and not for the infection.
- There are follow up difficulties due to confidentiality.
- Only 30 per cent of people admitted for long-term stay are screened.
- Incidences of Australian born residents is only 2.5 per 100 000 (representing 28.8 per cent of the population) and incidences of overseas born is 15.7 per cent (1987) and 18.5 per 100 000 in 1990 (representing 70 per cent of the population).
- People at risk are not only foreign born residents but also Aborigines, homeless, elderly and health care workers.

In February 1993 an article entitled 'TB on the Move' recounts a recent undiagnosed case of TB admitted into a Sydney emergency department and the possible spread of the infection to health care workers. It has been reported to me that there is a similar case of undiagnosed TB here in South Australia and that the patient was seriously ill and, I believe, is now deceased; and that the spread to family, workmates and the community was of great

concern. I understand that the Institute of Medical and Veterinary Science (IMVS) has information of this. I have been unable to obtain any further information. My questions are:

1. Will the Minister investigate this case, which has serious implications?
2. What are the latest statistics on the frequency of TB and a typical TB in South Australia since 1990?
3. Will the Minister look into the screening and follow-up of migrants and refugees as it relates to South Australia?
4. Will the Minister look into ways and means of following up immigrants and refugees after they have arrived in Australia, so that the next generation will have TB levels equivalent to those of Australian born residents?

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

OPEN ACCESS COLLEGE

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister representing the Minister of Education a question on the subject of the Open Access College.

Leave granted.

The Hon. R.I. LUCAS: For many decades a small number of students just across the border in western New South Wales—students and families with traditional trade, social and cultural links with South Australia—have been enrolled in the old South Australian Correspondence School and now the Open Access College. In fact, for some time there has been a reciprocal agreement between the Governments of South Australia and New South Wales in relation to these students. I will quote briefly from that reciprocal agreement, as follows:

> Enrolment at an interstate correspondence school should only proceed after the parent has received a no objection' letter from the home State.

Further on it states:

> Parents seeking enrolment in another State must advise in writing that they intend that their child should attend a secondary school in that State.

Families in these areas have indicated to me that they are, in fact, closer to Adelaide than are some families in the northern and western parts of South Australia. Last year, the Minister of Education abruptly stopped essential home visits by Open Access College teachers to these students, even though home visits continue for all other students enrolled in the Open Access College. Parents of these students are understandably furious at the actions of the Minister in ignoring the essential education needs of these isolated students. Some parents have been informed that the reason for the cancellation of home visits was that there were workers compensation problems with teachers travelling over the border into New South Wales. These parents are amazed at this claim, especially as they point out that many teachers and other public servants travel interstate regularly as part of their essential job requirements. My questions are as follows:

1. Will the Minister explain why home visits to students in areas such as the western part of New South Wales have been stopped?
2. Will the Minister indicate why parents were told that it was due to workers compensation problems?
3. Does the South Australian Government have reciprocal agreements with the Governments of the Northern Territory, Western Australia and Queensland, similar to the reciprocal agreement between South Australia and New South Wales and, if not, will the Minister give an undertaking to commence discussions with the Governments in those States and the Territory to achieve such reciprocal agreements?

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

MARINE TESTING

In reply to **Hon. M.J. ELLIOTT** (10 November).

The Hon. BARBARA WIESE:

1. The samples have been forwarded to the Chemistry and Forensic Science Analytical Unit, State Services, for testing for the presence of hydrocarbons in their tissues.
2. The analyses of samples revealed that at the level of detection no hydrocarbons were present in the tissues.
3. The dispersants used were compounds known as "ardrox" and "corexit". The precise chemical composition of each dispersant is propriety in nature and the department does not have access to that information. Both have been cleared by Federal Authorities both in Australia and overseas and have been extensively tested for toxicity to marine life.

STATE TRANSPORT AUTHORITY

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister of Transport Development a question on the subject of STA Bills.

Leave granted.

The Hon. DIANA LAIDLAW: On 14 October last year the Minister introduced two Bills to amend the State Transport Authority Act, the first to address the issue of prevention of graffiti vandalism and the second to provide authorised officers, essentially Transit Squad officers, with increased powers. I note from the Notice Paper that both Bills have been adjourned repeatedly by Government members since 6 November last year, and that follows concerns expressed by me on behalf of the Liberal Party and the Australian Democrats about the ramifications of both Bills. In fact, I recall supporting with severe reservations both measures, while I think the Democrats indicated that they would vote against the second reading on the State Transport Authority (Prevention of Graffiti Vandalism) Bill.

I understand that the Minister has been having some discussions regarding these two Bills. Can she say whether she proposes that these Bills will be debated further in this place this current session, recognising that we have at best three weeks, possibly four weeks to go? Is it her wish that, if the Bills are debated in this place this session, they also pass through both Houses this session?

The Hon. BARBARA WIESE: I am not in a position to answer this question now. As the honourable member indicates there have been concerns raised about the two Bills as they stand. They have been raised by the Hon. Ms Laidlaw and the Hon. Mr Gilfillan in this place, but also there have been further concerns raised with me since the introduction of the Bills by at least one of the trade unions that covers the STA area. All of the issues that have been raised by those respective parties are the subject of further discussion. It has taken rather longer than I would have anticipated for these matters to reach some conclusion, but I hope that in the very near future some resolution on key points can be reached which will enable me to determine whether it would be possible to proceed with these Bills in this session. I would certainly like to proceed with the legislation in this session in order to provide the additional powers that are required by the transit officers, but in view of some of the matters that have been raised some negotiation is necessary with relevant parties and hopefully that will be resolved very soon.

SPORTS INSTITUTE

In reply to **Hon. R.I. LUCAS** (29 October).

The Hon. ANNE LEVY: The Minister of Recreation and Sport has provided the following response:

1. The South Australian Sports Institute (SASI) have a total of five mini-buses (2 x 8 seaters, 2 x 12 seaters and 1 x 22 seater). These have been leased from State Fleet to enable SASI squads to travel locally, intrastate or interstate for competition and training.

If these buses were not required for use by SASI programs at any particular time they would be available for use by any sporting bodies associated with SASI or other Government bodies. This availability was never actively promoted.

The only formal conditions for the use of these vehicles was that they were either a SASI sporting group or a Government body, they completed the appropriate booking form and accepted the daily costs prior to collection of vehicle. Outside groups would also be expected to pay a $500 fee to cover insurance excess as a refundable deposit.

It will not be necessary to review these conditions as the Director of the Sports Division has decided to withdraw the availability of these vehicles to all groups outside of SASI programs.

2. There is a booking schedule maintained for the use of all SASI mini-buses. The only non-SASI groups to have hired the vehicles in the past twelve months have been:

- International Amateur Athletics Federation
  1 x 12 seater
  21 - 26 February 1992
- Australian Mens Lacrosse Team
  1 x 12 seater
  26 February - 2 March 1992
- State Fleet
  1 x 22 seater
  13 November 1991
  1 x 22 seater
  30 November 1991
  1 x 22 seater
  27 February 1992

All other use of the vehicles was by SASI squads or garaging by staff members.

There were a number of other inquiries by sporting bodies for access to vehicles, however most requests coincided with bookings already made by SASI programs. Obviously, the major periods required were school holidays, long week-ends and then week-ends in general.

3. There were no audits carried out on the mini-buses to check the distances travelled, as payment is required on the basis of time, ie. cost per day. Distance audits have now been put in place.

4. The only group that did not pay for their own fuel was State Fleet. On these three occasions the vehicles were only rented for one day and driven locally. State Fleet were charged $75 per day to cover costs and provided with a fuel card. The SASI fuel costs are already paid by State Fleet as part of our own lease arrangements for the vehicles.

The other two users were required to purchase their own fuel. There is no record of the cost of fuel purchased as it was of no relevance to the daily charge.

5. The amounts of $50 per day for the use of the eight and twelve seater buses and $75 per day for the twenty-two seater bus was based on the daily rate of charges applied by State Fleet to SASI for the lease of the vehicles. There was no intention to make a profit out of the users, but to cover costs while providing a service to these sporting or Government bodies.

WAITE CAMPUS

In reply to **Hon. J.F. STEFANI** (6 November).

The Hon. BARBARA WIESE:

1. The Minister of Primary Industries became aware that a section of one tree had not reached its designated destination, viz the Butler Bros. Timber Mill at Hahndorf, on 3 November, 1992.

2. It cannot be confirmed with accuracy whether the remaining portions of the trees are sufficient to complete the restoration. I understand, however, that the timber to be donated represents only a portion of the total quantity required to restore the vessel.

3. Upon becoming aware of the incident on 3 November the Minister immediately initiated a full inquiry. It has been determined that an employee of the demolition contractor (Tolmer Earthmovers) had chosen to contravene his delivery instructions for the tree trunk in question and had taken it to the Wingfield dump where other demolished material from the Waite had been deposited. Tolmer Earthmovers have subsequently recovered the tree section from the dump and re-transported it to the Hahndorf Mill on 11 November.

It has since been advised that the trunk suffered damage whilst at the dump. Whilst it cannot now be milled in the lengths preferred by the Museum it can be milled in its entirety for use in the restoration.

OUTER HARBOR TERMINAL

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Transport Development a question about the Outer Harbor Passenger Terminal.

Leave granted.

The Hon. DIANA LAIDLAW: I read with interest newspaper reports some six weeks ago that the Department of Marine and Harbors was considering seeking expressions of interest from the private sector for the future development of the Outer Harbor Passenger Terminal. I note that that terminal has not realised its potential and I understand that there has been only about one passenger ship visiting that terminal-

The Hon. L.H. Davis: Three.

The Hon. DIANA LAIDLAW: Three in the last three years, and it is costing the department a small fortune to continue to operate. So, I am not surprised that it is seeking some expressions of interest in respect to the future of this terminal.

Has the department considered selling the terminal? The Minister would appreciate the debt problems facing the Department of Marine and Harbors and one way of reducing that debt is the sale of land. If that is not the case, why not? Can the Minister say when the department, or the Minister herself, will be making up their mind on when tenders will be called for expressions of interest in the future operation of the terminal? Finally, what is it costing the department in recurrent terms and capital terms on an annual basis to maintain the passenger terminal?

The Hon. BARBARA WIESE: I cannot answer the last question today, but I will seek information relating to costs. As to the future of the terminal I am aware that officers of the Department of Marine and Harbors have been considering the future use options for the passenger terminal. I think we all acknowledge that since the terminal was built there has been a very considerable shift in travel patterns of people around the world and they have moved away from passenger ships to a much greater use of aircraft and other forms of travel. So, the passenger terminal has not fulfilled the dreams that people in the 1960s and 1970s might have had for it and the Department of Marine and Harbors which is charged with moving towards having a commercial basis or operation is now looking at options. Thus far no proposals have been put to me about seeking expressions of interest but no doubt sometime in the next few months such a proposal will be put to me and options can be explored in greater depth based on any registrations of interest that might come forward.

The Hon. Diana Laidlaw: Sale is not an option?

The Hon. BARBARA WIESE: As to the question of whether sale is an option my mind is completely open on that matter at this point. I am quite happy to consider that as an option should it be put forward by a party that has an interest in it, as I would be prepared to consider other options that may come forward for leasing the property for various purposes.

The Hon. DIANA LAIDLAW: As a supplementary question, does the Minister anticipate that expressions of interest called for by the department would have sale of the passenger terminal as an option?

The Hon. BARBARA WIESE: I do not envisage anything at this stage. I am waiting for the department to produce ideas as to where it thinks this should be heading. I would not expect that the department would be wanting to prejudge these matters in any case. Any registration of interest is likely to produce the best solution if it is as broad and as open as possible, and I am sure that the Government will consider any option which is a good one.

PLANNING REGULATIONS

The Hon. BERNICE PFITZNER: I move:

That the regulations made under the Planning Act 1982 concerning Development Controls (Local Government), made on 17 December 1992, and laid on the table of this Council on 9 February 1993, be disallowed.

New regulations that transfer planning authority from State Government to local council have been gazetted on 17 September 1992 and laid on the table on 9 February 1993. Over the most recent Christmas break the Government has again been sneaking in important planning legislation, as it did two years ago, over a similar period, December 1990 to February 1991. Except for some improvements in consultation with local councils, the same objections as stated two years ago are still current.

The new planning regulations will seek, first, a revocation of the fifth schedule. The implication is that the State's advisory activity will cease with respect to applications for consent to developments in the areas listed in the fifth schedule. Secondly, the regulations seek to vary the seventh schedule, which will remove the `minor' development applications and some major development applications from the State authorisation to local council in the areas listed in the seventh schedule. What does this mean? Why should we disallow these gazetted explanations? The explanations will relate to the following three aspects: parliamentary input, technical terms and personal and practical knowledge of local councils.

In relation to parliamentary input, as mentioned, the sneaking in of gazetted regulations on 17 December 1992, and with special certification for regulations to take effect on 1 February 1993, was done with unacceptable haste. These regulations tie in with the Development Bill not yet debated in Parliament. The draft development regulations consultation period closed on 5 March, and one of these drafts, regulation 13, encompasses this new variation to schedule 7. The status of the Development Bill and the draft regulations still have to be debated by Parliament. This means that the Government's new regulations are premature and pre-empt parliamentary decisions on the Development Bill and its regulations. Therefore, we do not know what form the Bill will take as it passes through both Houses and most certainly it will have many amendments.

Planning, especially when it relates to development, is not an easy task as it is always very controversial. Besides, two years ago there was some discussion with regard to setting up regional authorities which could perhaps take on some of the State's planning issues. What has happened to the concept of the regional authorities? How does transferring of planning powers to local government at this stage affect that concept, if the concept is to be resurrected again? What is the great rush to transfer these planning powers when we do not as yet

know the overall structure of the State's planning development process? Also of note is the report of the Environment, Resources and Development Committee which has concerns that the Government notifies the committee of planning decisions, such as SDPs, after it has been endorsed and authorised by the Governor. I believe the Government is pushing through legislation without full parliamentary debate.

In technical terms, it is true that these new regulations do not affect the substantive law or policy but just who administers it. But the authority, local or State, that is responsible for the planning administration will have a substantive effect on planning outcomes. In relation to schedule 5, which relates to planning application requiring the State's advice, the deletion of schedule 5 removes the requirement for consultation with the State. The Government looks at this change as duplication. It is argued that this fifth schedule was to monitor local councils' planning outcomes. Statistics show that the council's track record is significantly non-compliant with the State's advice. I seek leave to have a table of statistics, which relates to details of land division, inserted in *Hansard.*

Leave granted.

Details of land division applications recommended for approval/refusal by SAPC and councils decisions
Survey period—Dec is ions received between 1 June 1987 to 30 June 1987

Area: Number of land division applications

	No objections by SAPC	Recommended for refusal by SAPC	Councils approved contrary to SAPC advice to refuse *	Councils refused in accordance with SAPC advice to refuse	SAPC-recommended for refusal but council decision not known to date
State	966	168*	72 (43% of *)	55 (33% of *)	41 (24% of *)
Metropolitan	404	20*	14 (70% of *)	1 (5% of *)	5 (25% of *)
Central.....................	323	54*	18 (33% of *)	16 (30% of *)	20 (37% of *)
Country	239	93*	39 (42% of *)	38 (41 % of *)	16 (17% of *)

The Hon. BERNICE PFITZNER: We note from this table that in the metropolitan area there was 70 per cent council approval of land division contrary to the commission's advice to refuse; 5 per cent of councils refused in accordance with the commission's advice to refuse; and 25 per cent had a commission recommendation for refusal but with the council decision not known to date. This table relates to a one month survey period, 1 June to 30 June 1987. It would be beneficial to have a more up-to-date record of compliance or otherwise of State and local government decisions. I have requested such data from the previous Minister but have not as yet had any further information. Indeed, I understand that the department has been instructed not to produce such data again. One has to wonder why.

The areas under this section involve the Flinders Ranges environmental class A and B areas, the Murray River fringe zone, the landscape zone and the coast. Regarding the Flinders Ranges environmental class A and B areas, only a very small number of applications were being dealt with by the State prior to regulation changes. Major development types are beyond resources and the capacity of councils to process; for example, the Wamsley proposal to develop a wildlife sanctuary near Quorn. In this case, it would possibly be a repeat of the Tandanya debacle. The environmental class A and B areas should be listed in schedule 7 so that the decision on major developments is made by the State.

With regard to the Murray River fringe zone, only major types of development applications were being dealt with by the State prior to the regulation changes, and the number of applications was very small. Once again, major development applications are beyond the resources and capacities of council to process; for example, the tourist development at Purnong. The Council processed the application without consulting the E&WS Department. It is reported that the department was very concerned about the impact of the development on an adjoining lagoon. Major development types in the fringe zone should be placed on schedule 7.

In relation to landscape zones, it may be desirable to delete some of these areas from consideration under schedule 5. However, it would appear that many should come under the conservation zones under the direct control of the State. Until the department has undertaken a proper assessment of landscape zones, their deletion from schedule 5 will be premature. As to coastal zones, the State should play a much stronger role in decisions affecting our coast, particularly in view of the greenhouse effect and impending sea level rises. Certainly any change to the present arrangements is premature until the new coastal SDP has been authorised.

I now look at schedule 7, which is the most important list of all. The areas involved are the hills face zone, the Mount Lofty watershed, the conservation zone and the River Murray flood zone. In the hills face zone planning authority is transferred to the local council in relation to detached dwellings and realignment of boundaries if no additional allotments are created. Twelve councils are involved in the hills face zone. Eight councils are now being given different planning authorisation as against the four other councils. This will be discussed further.

In the watershed area, boundary alignments between two contiguous allotments is now the local council's authority. This difficulty will be discussed further in a separate section. In the conservation zone, realignment of allotment is now the council's responsibility. In the River Murray flood zone, marinas with four or fewer boat moorings are the council's responsibility. However, we note that there is a flaw, because there is nothing to stop

the incremental enlargement of these moorings with four plus four plus four for each development application.

I now move into the area of personal and practical experience as a former local councillor and as a resident in the hills face zone. We should not be sidetracked or confused by the Government in its explanation of duplication, minor pergolas and toolshed applications, nor that we are against local government having more planning powers, nor that more stringent policies and development plans are adequate protection, nor that the Government has the final veto provisions, and therefore we ought not to be concerned about these new regulations. Indeed, the concerns should be present as they are very real.

The concept of an open space hills face zone came into being in the early 1960s. In the mid-1980s the hills face zone was recognised and heavily promoted by this Government as the cornerstone as what is known as the second generation parklands which would in future be an asset to match the city's inner parklands. Not only does the hills face zone provide a natural and now famous backdrop to the city, but it enables the retention of agricultural and horticultural activities and of remnant native vegetation and valuable wildlife corridors in areas not necessarily visible from the Adelaide Plains or from scenic routes.

Over recent years the hills face zone has been protected by legislation which has required the State Planning Commission to be the responsible authority for any changes which occur in this unique zone. A change of authority might lead to the destruction and desecration of one of the State's crown jewels. Over the Christmas recess two years ago the Government initiated a transfer of planning powers for the hills face zone from the State to local government. Fortunately for the people of South Australia, this change to the legislation was subsequently disallowed in Parliament with the Liberals and Democrats voting to disallow it.

Following this well justified disallowance, the planning bureaucrats held discussions with the Local Government Association, and agreement in principle was reached that the transfer of some of the hills face zone powers from the State to local government could occur provided that individual councils were prepared to take over the responsibilities. The 12 councils concerned were then asked in June 1991 whether they were prepared to accept the changes that were being proposed. No doubt their responses will have varied from one council to another, with each council possibly wanting to see different things occurring in the hills face zone.

Recently we saw the Government repeating the Pontius Pilate act of washing its hands of responsibility for the hills face zone over the last Christmas recess. The *South Australian Government Gazette* of 17 December details a further exercise in transferring many planning powers for the hills face zone from the State to local government. The changes will result in the loss of uniform and coordinated control over what should and should not happen in the hills face zone. It is staggering that the gazetted changes for Stirling and Campbelltown are quite different from those of East Torrens and Burnside.

What will be the result of these changes in the short and longer term? The whole future of the hills face zone could come under threat with each unfortunate council decision creating a precedent for other subsequent decisions. At the whim of a current batch of local government councillors, obtrusive and conspicuously coloured houses, housing additions or outbuildings could be built in locations inappropriately close to scenic drives, on ridge lines of particular scenic landscapes or on sites which will result in the loss of valuable sections of remnant native vegetation.

The planning experts of the commission—those with both vision and longer term responsibility to the State as a whole—will have no opportunity to assess many new development proposals in the context of the development plan, and hence they will have no opportunity to suggest alternative and more acceptable locations for developments in the hills face zone. Obtrusive fences, such as high cyclone fences, could sprout up on property boundaries adjoining scenic drives.

The aforementioned changes relate to consent-type developments. There will also be problems experienced in relation to development applications where the proposed development specifically listed in the development plans is a prohibited development, and hence the South Australian Planning Commission must concur with the council before the development can be approved. Where councils are consistently voting to support a given type of development, even though it is designated as prohibited, it will become increasingly difficult for the South Australian Planning Commission to deny concurrence.

Expenses will have been incurred, expectations raised and time spent processing an application which the Planning Commission would have refused from the outset. As a consequence it will, for humanitarian reasons, become increasingly difficult for the Planning Commission to repeatedly refuse to concur with councils' decisions. Once the commission relents precedence will be created and the hills face zone as we know it today will be progressively eroded. Do the people of South Australia value the hills face zone and do they desire its retention?

Public opinion at the time of the recent planning review was strongly in favour of retaining the hills face zone. It is already an important tourist asset. This Government should appreciate that, if it wants to make changes which will affect an area of special State significance like the hills face zone, it should do so openly. It should not sneak in another entry in the *Government Gazette* over a Christmas recess. In fact, on an issue of such importance to the State they should take the matter to Parliament by writing these changes into the Act.

I now move to the Mount Lofty Ranges watershed area. Although the protection of the quality of Adelaide's water supply is a major headache for its planners and legislators, there is one issue on which there is general agreement. Every possible step should be taken to restrict or if possible reduce the number of residential allotments in the Mount Lofty Ranges water catchment area. In spite of this the Government has, through gazetted changes to the Planning Act regulations, indicated that it is intent on transferring from State to local government some powers which relate to the Mount Lofty Ranges watershed. This transfer of powers could well result in an unnecessary increase in the number of

residential allotments or inappropriate boundary alignments in the watershed, with a consequent further deterioration in the quality of water collected.

Currently the creation of new residential allotments and the inappropriate realignment of boundaries in the watershed have been restricted not only by the designation of land subdivision as a so-called prohibited development but also by legislation which has required the State Planning Commission to be the planning authority for any land subdivision in this most important watershed area.

The advantage of the current planning structure has been that it has provided the State authority with the opportunity to make the important initial assessment of any application to divide land or to realign boundaries. Appropriate consultation earlier rather than later with the relevant section of the E&WS Department has enabled informed assessment and provided the opportunity for the State authority to oppose or suggest amendments to an application in order to minimise potential degradation of the watershed.

Changes to schedule 7 of the Planning Act regulations which were gazetted on 17 December last year will result in local councils rather than the State Planning Commission being the planning authority for realignment of boundaries and division of an allotment where two habitable detached dwellings are situated on a single allotment. The local council will assess the application and will make its decision although, because land division is designated as a `prohibited development' in the watershed, the State Planning Commission will then be required to concur with council's decision before approval can be granted. This is putting, I believe, the cart before the horse. It should be the State authority which has the influential first say in the decision making process in something as important as our already heavily populated and polluted watershed.

Councils could support subdivision applications without due consideration to their potential to result in a considerable increase in the degradation of the watershed. If councils with a supposed better local knowledge are consistently supporting applications to subdivide land or realign boundaries it will become increasingly difficult for the State authority to keep opposing the applications by refusing to concur with their decisions.

For areas of State significance, as are the hills face zone and the watershed, the State should be the planning authority. Local government is excellent for providing impact from the community but only for their own small area.

We, as a State Government, ought to have wider views and vision. We ought to make the decisions on areas of State significance as a State Government and save developers, local councils and conservationists an unnecessary financial burden, possible litigation and environmental deterioration. We ought to disallow these regulations as, first, apart from minor alterations, such as tool sheds and pergolas, the development encompassed in these regulations are major and ought to be fully debated; secondly, they pre-empt and prevent full parliamentary debate on very difficult issues; thirdly, the planning authority for areas of State significance should and must resile and be with the State Government; and, fourthly, the track record of some local councils has shown that they do not comply with their own development plans or supplementary development plans.

It is sad that this motion for disallowance will not be supported by the majority as I am quite sure that the new regulations will promote and fragment the final destruction of our natural and beautiful environment, in particular the hills face zone and the Mount Lofty watershed. Our next generation will be all the poorer for it. I strongly support the disallowance, but it would seem as a voice in the wilderness.

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

CRIMINAL INJURIES COMPENSATION (MISCELLANEOUS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

The Government has, over a number of years, put forward and implemented initiatives to assist victims of crime. These measures have included improvements to the Criminal Injuries Compensation Scheme. The amount of compensation available for criminal injuries compensation has been increased (over time) from $10 000 to $50 000. The Act has been amended to include discretionary powers to make *ex gratia* payments. Interim payments to victims in need are now possible.

A Criminal Injuries Compensation Fund has been established and this fund receives money from persons expiating or found guilty of offences. In addition a Declaration of Victims Rights has been developed, which includes the use of victim impact statements in court.

This Bill makes a number of amendments to the Criminal Injuries Compensation Act. The major amendments (which for ease of reference are explained in the order in which they appear in the Bill) are as follows.

The proposed new section 7(3) and (4) will require the applicant for compensation to notify the Crown Solicitor three months before making an application to the court. This change results from a recommendation made in a report into delays in the Criminal Injuries Compensation Division in the District Court.

The report made a number of recommendations, some requiring legislative change and others requiring changes in court procedures. The report identified the need to give the Crown advance notice of a claim as a means of enabling the Crown Solicitor to inquire into the circumstances of the claim before proceedings are commenced. The period of three months should enable the Crown Solicitor to obtain a report from the Police Department or any other source. The object of the new procedure is to enable the Crown in appropriate cases to settle matters without the need for proceedings to be instituted. This matter is discussed further below.

The report did in fact recommend a period of two months notice but following discussions with the

Assistant Crown Solicitor in the civil section of the Crown Solicitor's office it was determined that three months was a more appropriate time.

The Bill introduces a new method for the calculation of the compensation under the Act. At present, compensation is determined by the courts on the basis of a common law assessment of damages, and then the Act requires a formula to be applied to determine the amount of compensation to be awarded. The formula (which has been in the Act since the time the Act was substantially reviewed and reenacted in 1978) requires that the amount awarded be $2000 plus three-quarters of the amount above $2000. Where the applicant is awarded $2000 or less the applicant is awarded the full amount. The rationale for the formula is that the Criminal Injuries Compensation Act is not a total compensation scheme; it is a compensation of last resort and cannot meet the full amount of damages awarded.

The Bill provides that compensation will be assessed using a method now successfully used in the calculation of the non- economic loss component of motor vehicles injuries claims under the Wrongs Act. Non financial loss (defined in the Bill to be pain and suffering, loss of amenities of life, loss of expectation of life and disfigurement, which is the same definition used in the Wrongs Act) is to be assigned a numerical value on a scale running from 0-50; the greater the severity of the non financial loss the greater the number. The amount to be awarded for-non financial loss is to be calculated be multiplying the number assigned by $1000. This means that the maximum amount of non financial loss will be $50 000. It is expected that the introduction of a provision of this nature will result in a greater consistency of awards. The formula set out in the Act (and explained above) will not apply in relation to the amount of damages awarded under this head; in other words, the applicant's award under this head will not be discounted. In relation to damages for financial loss the formula will be retained. (That is to say the applicant will receive $2000 plus three-quarters of the amount above $2000). The aggregate maximum will remain at $50 000.

The inclusion of additional words in section 7(9)*(a)* arises from a need to take account of so-called "revenge" injuries. These injuries can best be described as situations in which A injures B then at a later time B injures A. In a case late in 1991 the Full Court of South Australia considered the present wording of section 7(9)*(a)* and *(b)* in a case with the following facts:

6/7/88	T stabs N
19/1/89	T convicted of wounding with intent to do grievous bodily harm and imprisoned
23/11/89	N applies for compensation
7/12/89	T released on parole then, only 4 days later
11/12/89	N shoots T

The majority of the court considered that the shooting by N of T was not a circumstance relevant to the determination of N's claim for compensation. The minority view (supported in argument by the Crown) considered N's disregard of the law had a sufficient nexus with the wounding of him by T and that in all the circumstances N's application for criminal injuries compensation should have been dismissed. It is considered that the inclusion of the additional words will enable the courts to take into account a broader range of circumstances in determining whether the conduct of a victim is such as to disentitle him/her to compensation.

Section 7(9a) is expanded to include two factors not presently required to be taken into account. At present a court must not make an order for compensation where the applicant failed to report the offence to the police or failed to co-operate properly with the police in the investigation of the offence. The failure must be without good reason and must hinder the police to a significant extent in the conduct of their investigations. The Crown Solicitor has advised that if the interpretation currently accorded to the provision by the Courts remains there will be very few circumstances in which the State will be able to avail itself of the defences as set out. The section is therefore amended to include additional provisions which will require the court to refuse an order for compensation where the claimant failed, without good reason, to provide information as to the offender's identity or whereabouts and refused or failed to cooperate or give evidence in the prosecution of the offender.

The minimum amount of compensation that can be awarded is currently $100. This figure has been in the Act since it was first enacted in 1969 and has never been increased. It is considered reasonable to increase the minimum to $1 000.

The new section 7(14) relocates and clarifies the provision dealing with the interrelationship of this Act and the motor vehicles insurance provisions. The provision makes it clear that where the offender is insured in respect of liability incurred in respect of the injury by the requisite motor vehicle insurance then no order can be made for compensation under the Criminal Injuries Compensation Act. The clarification is necessary because several cases have arisen where a claimant is not really covered by either motor vehicles or criminal injuries legislation.

Provision is made for the Crown to be represented in proceedings by a person nominated by the Attorney-General. At present much of the criminal injuries compensation work in the Crown Solicitor's Office is done by law clerks. The Senior Law Clerk has been refused leave to represent the Crown at pre-trial proceedings in CIC matters; this is in spite of the fact that law clerks from the private profession regularly appear in these matters. It is intended therefore to use this provision to allow the Senior Law Clerk to represent the Crown in pre-trial procedures so that the Crown is in the same position in this regard as other practitioners.

The *ex gratia* payment provisions are expanded to allow for payment to persons ordinarily resident in this State who are injured out of the jurisdiction. The payment will only be available where a person is convicted of the offence, and where the applicant has taken reasonable steps to secure compensation under the law of the other place if it is available. This Bill also makes provision for the criminal injuries compensation levy to be increased. The Criminal Injuries Compensation Fund, which is established pursuant to the Act, receives principal funding from—

(a) the State budget, at the rate of 20 per cent of all fines received; and
(b) from levies imposed pursuant to section 13 of the Criminal Injuries Compensation Act.

Other sources of revenue to the fund include interest receipts from Treasury on the fund balance, the recovery of payments from the party convicted of inflicting the injury, and proceeds of confiscated assets.

Levies were introduced in 1988 in order to provide continued funding without impacting further on the State budget. The levies were set at the following rates:

Expiated Offence	$ 5
Summary Offences	$20
Indictable Offences	$30
Offences by Children	$10

At the time levies were introduced, total compensation payments in each financial year had been under $1.5 million. The greatest number of compensation payments at that time had been 318 in 1987-88. Since that time, the maximum compensation payment pursuant to the Act has increased to $50 000, and the number and total of compensation payments in the last completed financial year (1991-92) were 537 and $5.03 million.

These significant increases have continued to reduce the Criminal Injuries Compensation Fund balance until it has reached the stage that the fund is requiring additional general revenue to remain in credit. Activity in the fund during 1991-92 resulted in the fund balance decreasing by $1.3 million. The fund balance at the start of this financial year was $2.1 million. With the full impact of the new maximum compensation payment of $50 000 expected this financial year, payments are expected to exceed receipts by $2.2 million.

Criminal Injuries Compensation is a compensation of last resort, available only where all other sources of compensation are exhausted or no other compensation is available for the injury occurring as a result of the commission of an offence. Before the creation of the fund the total amount of criminal injuries compensation payments came from the general revenue (and a proportion of this was recovered from offenders). The levy was introduced as a means of requiring offenders to pay back their debt for violating society's laws. The levy and other payments into the fund are no longer sufficient to meet the outgoings from the fund. This means that taxpayers generally are subsiding the fund. The Government considers the initial rationale for the levy remains apposite, and that if the fund requires further monies to meet obligations then it is those who break the law who should contribute to the fund, not taxpayers generally.

Several mechanisms for increasing the revenue to the fund have been examined. The Bill increases the levy payments to the following:

Expiated Offences	$10
Summary Offences	$40
Indictable Offences	$60
Offences by Children	$20

Such increases should fund the expected shortfall in the fund. Other measures to increase the fund which will be examined include providing the Confiscation of Profits Unit in the Police Department with additional resources to maximise the return to the fund from this area.

The final aspect of this Bill is the delegation power provided in the new section 14b. The need for this provision is related to the first amendment requiring a notice before action. The report, in recommending a notice before action, also recommended that there be a mechanism whereby the Crown can settle matters without the need to institute proceedings where the identity of the offender is unknown or the Crown Solicitor is satisfied that it would be pointless to pursue an offender for a contribution to the compensation payable. In order to implement this recommendation it has been decided to utilise the already existing *ex gratia* payment provisions. In order for the Crown to be able to settle the matters suggested by the report as suitable for settlement without action, without seeking the approval of the Attorney-General in every case, it is necessary to include a delegation power.

In all it is envisaged that these measures should result in more money coming into the Criminal Injuries Compensation Fund, and a more equitable and efficient disposition of those funds under the Act. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for the measure to be brought into operation by proclamation.

Clause 3: Amendment of s. 4—Interpretation

This clause introduces a definition of "non-financial loss" that is required for the purposes of amendments to section 7 of the principal Act proposed by clause 5(b). The definition is the same as the definition of "non-economic loss" in section 35a of the Wrongs Act 1936.

Clause 4: Repeal of s. 6

The repeal of this section is consequential to the amendment to be made to section 7 by clause 5(g).

Clause 5: Amendment of s. 7—Application for compensation

Paragraph *(a)* of the clause makes new provision for a minimum of three weeks written notice of a proposed application for compensation to be served on the Crown Solicitor. Non-compliance with this requirement will result in an award of costs unless the court otherwise orders.

Paragraph *(b)* makes amendments relating to the monetary limits fixed for compensation for injury or financial loss resulting from an offence. The current limit of $50 000 is retained. The current provision for compensation to be reduced by one-quarter of the excess over $2 000 of the amount that would otherwise be ordered is retained, but only for financial loss. Compensation for non-financial loss is now to be assessed by rating the loss on a scale running from 0 to 50 and multiplying the number at which the loss is rated by $1 000. This method of assessment corresponds to that applying under section 35a of the Wrongs Act 1936 for non-economic loss arising from motor vehicle accidents.

Subsection (9) of section 7 currently requires the court to have regard to the extent to which the victim's conduct may have contributed directly or indirectly to the commission of the offence or the victim's injury when determining an application for and the quantum of compensation. Paragraph *(c)* of the clause amends this provision to make it clear that the victim's conduct that will be relevant for this purpose need not

necessarily form part of the circumstances immediately surrounding the offence or injury.

Subsection (9a) currently provides that the court must not make an order for compensation in favour of a claimant who hindered police investigations of the offence to a significant extent by failing, without good reason, to report the offence within a reasonable time or to co-operate properly with the police. This provision is widened by paragraph *(d)* of the clause so that it excludes compensation where the investigation or prosecution of the offence was not commenced or was terminated or hindered to a significant extent because the claimant, without good cause—

- failed to report the offence to the police within a reasonable time after its commission;
- refused or failed to provide information to the police that was within the claimant's knowledge as to the offender's identity or whereabouts;
- refused or failed to give evidence in the prosecution of the offender;

or

- otherwise refused or failed to co-operate properly in the investigation or prosecution of the offence.

Paragraph *(e)* of the clause increases the minimum amount of compensation below which no order for compensation may be made from $100 to $1 000.

The amendment made by paragraph *(f)* is of a drafting nature to maintain consistency of expression and to remove doubt that the reference in subsection (13)*(b)* to injury that is compensable under the Workers Rehabilitation and Compensation Act 1986 includes death that is so compensable.

Paragraph *(g)* includes in section 7 a new subsection excluding compensation under the Act for death or injury if the offender is insured in respect of liability for the death or injury by a policy of insurance in force under Part IV of the Motor Vehicles Act 1959 or under a corresponding law of another State or a Territory, or if there would be a right of action under that Part against the nominal defendant. This provision replaces the current section 6 of the principal Act which deals with this matter but is expressed in terms that do not clearly attract the limitation of insurance coverage under Part IV of the Motor Vehicles Act introduced by amendment of that Act in 1986.

Clause 6: Insertion of s. 10a-Representation of Crown in proceedings

The new section 10a to be inserted by this clause is designed to make it clear that the Crown may be represented in proceedings under the Act by any person nominated by the Attorney-General, that is, not necessarily by a qualified legal practitioner.

Clause 7: Amendment of s. 11-Payment of compensation, etc., by the Attorney-General

Section 11 presently allows *ex gratia* payments in the nature of criminal injuries compensation in certain specified circumstances. The clause adds to the circumstances specified the situation where—

- a person suffers injury, financial loss or grief in consequence of an offence committed outside this State;
- the victim is at the time of commission of the offences ordinarily resident in this State;
- some person is convicted of the offence;

and

- if the law of the place where the offence is committed establishes a right to compensation—the applicant has taken reasonable steps to obtain compensation under that law.

In such a situation, the Attorney-General will have an absolute discretion to make an *ex gratia* payment in respect of the injury, financial loss or grief not exceeding the limits that would apply to the compensation that would be payable under the Act if the offence were committed in this State.

Clause 8: Amendment of s. 13—Imposition of levy

Section 13 imposes levies on offenders or alleged offenders as follows:

- on a person who expiates a summary offence—$5;
- on a person convicted of a summary offence—$20;
- on a person convicted of an indictable offence—$30.

An upper limit of $10 is placed on the amount of the levy payable by a juvenile offender.

Under the clause, each of the above amounts is doubled.

Clause 9: Insertion of s. 14b—Delegation

This clause inserts a new provision which would allow the Attorney-General to delegate a power or function under the Act. Under the clause, any such delegation could be made subject to conditions and limitations and would be revocable at will and would not derogate from the power of the Attorney-General to act in any matter.

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

EQUAL OPPORTUNITY (COMPULSORY RETIREMENT) AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Equal Opportunity Act 1984. Read a first time.

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

That this Bill be now read a second time.

This Bill amends the Equal Opportunity Act 1985 (the Act) by extending the sunset period within which compulsory retirement is allowed to remain as an exemption to the general provisions prohibiting discrimination on the basis of age in the Equal Opportunity Act.

The Government believes it is prudent to defer the abolition of the compulsory retirement age because of the general economic situation, high unemployment (particularly among youth) and the need to maintain maximum flexibility in dealing with the public sector work force as we deal with the difficult State budgetary situation. The Government is not abandoning its objective, but proposing a deferral for two years. This is reflected in the Bill before the House which would remove the compulsory retirement age in the public and private sectors on the 1 June 1995.

When the anti-age discrimination provisions were being prepared it was envisaged that two years would be an adequate period within which to assess the implications of abolishing compulsory retirement ages. Members will recall that the Government is required to prepare a report on those Acts of the State that provide for discrimination on the ground of age. The Commissioner for Equal Opportunity convened a Working Party to ascertain all such Statutes and to make recommendations to me concerning their retention or amendment. The Working Party has undertaken significant consultation with agencies and the Commissioner has advised that her report to me will be

finalised by the end of March. This will not allow sufficient time to prepare and introduce amendments to those statutes which do contain discriminatory references before the 1 June 1993, which was the date by which compulsory retirement was to be abolished.

While the report which is being prepared by the Commissioner will be complete within the time-frame established by the legislation, with the benefit of hindsight, the time-frame itself could have been more wisely framed by allowing a period of time after the tabling of the report to allow for implementation of the recommendations made in it. As it is, we are faced with the situation that a report is about to be presented in which the State's legislation is examined and in which recommendations are made concerning reform or maintenance of the *status quo* in relation to age discriminatory practices including compulsory retirement.

Compulsory retirement in the public sector is governed by specific statutes which provide for retirement of employees at specified ages. These specific statutes override the general provisions contained in the Equal Opportunity Act. Those general provisions will of course be binding on the private sector immediately upon expiry of the two year sunset period which was included when the anti age discrimination provisions were put in the Equal Opportunity Act. Thus, as the law stands now, compulsory retirement would be unlawful in the private sector on the 1 June 1993, while the public sector would not be subject to the same obligation unless legislation is passed prior to that date.

The Government accepts that it is inappropriate for more onerous standards to be imposed on the private sector than the public sector has to comply with. The Government is still firmly committed to the abolition of compulsory retirement ages, but it is not going to insist on the original implementation schedule where it has proved impossible for it to put the proper procedures in place to enable its implementation timetable to be achieved.

As it is not practicable to have legislation dealing with the public sector in place by 1 June, the Government introduces this Bill to defer the operation of the provision abolishing compulsory retirement for a period of two years. I commend the Bill to members and seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Clause I.: Short title

This clause is formal.

Clause II.: Amendment of s. 85f-Exemptions

Section 85f(5) of the principal Act allows employers to impose a standard retiring age in respect of employment of a particular kind. This provision expires on the second anniversary of the commencement of Part VA of the principal Act (1 June 1993). This clause defers the expiry of section 85f(5) until the fourth anniversary of the commencement of Part VA (1 June 1995).

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

BARLEY MARKETING BILL

Second reading.

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.

This Bill, together with complementary legislation in Victoria, will continue the joint scheme for the marketing of barley produced here and in that State. However, the measure represents more than an automatic renewal of the legislation and in fact, is a result of the first comprehensive review of the barley marketing scheme since its enactment in 1947. This review was undertaken in 1988-89 by a group drawn from both Governments, the Australian Barley Board and grower organisations in the two States.

The working group subsequently reported to the South Australian and Victorian Ministers and its recommendations form the basis of this Bill. There was, of course, later and lengthy consultation with grower organisations and the users of barley in order to refine the recommendations.

While many of the provisions contained in the Bill have been carried over from the current Act, the proposed measure adds refinements that will place the Australian Barley Board in a better position to respond to a grain marketing environment facing a period of change.

In that vein, the financial position within the grain industries, deregulation of the domestic wheat market and the expanded powers of the Australian Wheat Board have focussed attention on State authorities marketing their geographical portions of a grain crop or crops.

Although there is evidence of industry support for national co-ordination of the marketing function for most grains, consensus as to a desirable structure is yet to emerge. Since South Australia and Victoria believe that such consensus may take some years to evolve, they have agreed to maintain an improved form of the joint barley marketing arrangements for a further five years.

The Bill requires the two States to formally consult before continuing these arrangements beyond that term. The role of the Australian Barley Board in future, Australia-wide marketing will be a significant issue at these consultations.

In turning to particular features of the Bill, it is appropriate to reiterate that the measure is based on the recommendations of the working group previously described. However, in establishing the Australian Barley Board, the Bill strikes a compromise between the views of that group and those of certain sectors of industry.

Accordingly, the Australian Barley Board will consist of two Ministerial nominees, two elected grower members from South Australia and four members nominated on merit, by a Selection Committee. At least one of the selected members must be a Victorian barley grower. Similarly, one of the two members with a knowledge of the barley industry must be a Victorian resident. The selection process already used by the Commonwealth and others in appointments to statutory marketing authorities encourages high quality candidates to offer themselves for appointment. This is not to suggest that elected members have proved or will prove unsatisfactory, but the positive aspects of selection should be appreciated.

The Selection Committee itself will comprise five members, four of whom will be nominated equally by the South Australian Farmers Federation Incorporated and its Victorian counterpart. Members will know that election versus selection of grower members has been debated actively in South Australia. While the

Bill provides for the election of officials, certain factions maintain that the issue must ultimately be resolved by taking a poll of growers. The Bill provides for the conduct of such a poll if barley producers indicate that is their collective desire.

The Bill provides for the Australian Barley Board, through a compulsory delivery requirement, to retain its control over the export of barley and oats from South Australia and barley from Victoria. For the domestic market, the Bill establishes a framework whereby barley processors will be able to more readily source grain direct from producers.

Besides providing an element of domestic competition to the Board, this feature will allow growers and processors to enter into mutually advantageous arrangements for the production and sale of special purpose barley. The intent of the Bill is that while the Board may not actively discourage such direct sales, it will retain an element of control over them.

In this regard, deeds of agreement setting commercial and other conditions for the licensing of such sales had already been developed by the Australian Barley Board and major malting companies. However, difficulties later arose in Victoria where two influential maltsters wanted the Bill to provide for automatic licensing before signing the agreements. The Board and grower organisations resisted this demand and stalemate followed. The revised maltster licensing provisions of Part 5 of the Bill simply and directly resolve the impasse.

The Bill also allows the Board to market, at its commercial discretion, a wide range of grain crops grown in South Australia and Victoria. Marketing of those crops (other than barley and oats) will be on a voluntary basis on the part of both the Board and the grower. Cash trading will be a further option available to the Board.

In a wider monetary context, the Barley Board is entirely self-funding and no Government funds have been, or will be, required for its operations. The Bill provides that the Board's borrowing activities will be governed by South Australian financial legislation under which the Board has operated for some years.

The Bill will also enable the Board to establish grain pools on a range of criteria and to set up financial reserves to facilitate the pooling and marketing operations of the Board. Honourable Members will note that under its proposed powers, the Board may carry out or fund research and development that assists in the production or marketing of grain. The reserves could also be put to that use.

On that note, a further initiative in the Bill is the establishment of a Consultative Committee. The major function of this committee is to provide grassroots advice to the Board concerning its general policies but particularly in regard to the Board's use of financial reserves and possible joint venture arrangements with a commercial partner or partners. The joint fixing by the Ministers of a maximum reserve fund would be based on recommendations by the Consultative Committee.

Having alluded to research, the South Australian Bill transfers from the current Act provision for the deduction of `voluntary' research levies as they are commonly termed. It will be recalled that the Wheat Marketing Act 1989, has already been amended to accommodate changes in the Commonwealth arena and to deposit wheat levies in the South Australian Grain Industry Trust Fund. This Bill also provides for such procedures with barley levies.

The accountability of the Australian Barley Board to government and the barley growing community will be strengthened. In addition to providing both Parliaments and each grower organisation with an annual report detailing its operations and financial position, the Board will also be required to provide both Ministers with a rolling operational plan based on a five year time horizon.

The Government believes this legislation will put into place, for the next five years, marketing arrangements that will make a significant contribution to the efficiency of the South Australian and Victorian barley industry. I commend the Bill to the House.

The provisions of the Bill are as follows:

Part 1 of the Bill (comprising clauses 1 to 7) contains the preliminary provisions.

Clauses 1 and 2 are formal.

Clause 3 defines words and expressions used in the Bill.

Clause 4 provides that for the purposes of this Act, the Minister and the Victorian Minister may, by notice in the *Gazette,* declare the grain to which this Act applies.

Clause 5 provides that Parts 4 and 5 apply to barley and oats harvested in the season commencing on 1 July 1993 and each of the next four seasons but do not apply to barley grown in a later season. Proposed subclause (2) provides that the Minister must consult with the Victorian Minister before the end of the season commencing on 1 July 1996 about the arrangements for the marketing of barley grown in South Australia or Victoria.

Clause 6 provides that it is declared that it is the intention of the Parliament that this Act and the Victorian Act implement a joint South Australian and Victorian Scheme for marketing barley grown in South Australia and Victoria. Proposed subclause (2) provides that it is also declared that it is the intention of the Parliament that this Act not be amended in any manner that may affect the operation of the joint Scheme except on the joint recommendation of the Minister and the Victorian Minister.

Clause 7 provides that the Minister may, in writing, delegate to any person any of the Minister's powers under this Act, other than any power which is to be exercised jointly with the Victorian Minister or this power of delegation.

Part 2 of the Bill (comprising clauses 8 to 26) provides for the establishment of the Australian Barley Board and its powers and functions.

Clause 8 provides that the Australian Barley Board is established as a body corporate with perpetual succession with all of the consequences at law that go with being a body corporate.

Clause 9 provides that the Board does not represent, and is not part of, the Crown.

Clause 10 provides that the common seal of the Board must be kept in such custody as the Board directs and may be used only as authorised by resolution of the Board.

Clause 11 provides that the Board consists of eight members appointed jointly by the Minister and the Victorian Minister, of whom one will be a person nominated by the South Australian Minister, one will be a person nominated by the Victorian Minister, two will be growers in South Australia (who will be elected), one will be a barley grower in Victoria nominated by the Selection Committee, two will be persons with knowledge of the barley industry (one of whom is resident in Victoria) nominated by the Selection Committee and one will be a person nominated by the Selection Committee with particular expertise. A person who is a member of the Selection Committee is not eligible for appointment as a member of the Board.

Clause 12 provides that the Selection Committee is to consist of five persons appointed jointly by the Minister and the Victorian Minister of whom two will be persons appointed from a panel nominated by the South Australian Farmers Federation Incorporation, two will be persons appointed from a panel

nominated by the Victorian Farmers Federation and one (the Chairperson) will be jointly nominated by the chief executive officer of the South Australian Department of Agriculture and the chief executive officer of the Victorian Department of Food and Agriculture. The members of the Selection Committee are appointed for such period and on such terms and conditions, including payment of allowances, as the Minister and Victorian Minister determine. The clause further provides that a decision may not be made at a meeting of the Committee unless all members are present or, in the case of a meeting conducted by telephone, unless all members participate by telephone.

Clause 13 provides that the Minister and the Victorian Minister may determine selection criteria to be applied by the Selection Committee in selecting persons for nomination.

Clause 14 provides that the Minister and the Victorian Minister will appoint one of the members appointed by either of the Ministers to be the Chairperson of the Board for such period as the Ministers determine.

Clause 15 provides that the members of the Board may elect another member to be the Deputy Chairperson of the Board.

Clause 16 provides that a member of the Board, unless an officer or employee of the public service, is entitled to be paid by the Board the remuneration and allowances (if any) fixed by the Minister and the Victorian Minister.

Clause 17 provides that a member's term of office must not exceed three years and a member is eligible for re-appointment.

Clause 18 provides the terms by which the office of a member of the Board becomes vacant including the removal from office by the Minister and the Victorian Minister under proposed subsection (3).

Clause 19 provides that if the office of a member of the Board becomes vacant for some reason other than the expiry of the term of office of the member, a person nominated for appointment to the office in accordance with clause 11 will be appointed to fill the vacancy and to hold office, subject to this Act, for the remainder of the term. However, if the vacancy occurs within six months of the expiry of the term of office of the member, the office may be left vacant for the remainder of the term.

Clause 20 provides that a member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board. Such a disclosure must be recorded in the minutes of the meeting and, unless the Board decides otherwise, the member must not be present during any consideration of the matter by the Board, or take part in any decision of the Board with respect to the matter. It further provides that this clause does not apply to a pecuniary interest that a member has because of his or her qualification to be a member if that is an interest in common with other persons holding a corresponding qualification.

Clause 21 provides that the Board is subject to the general direction and control of the Minister and the Victorian Minister and any specific written directions given by the Minister and the Victorian Minister or by either Minister (with the written consent of the other Minister). A Minister must not give a written direction unless satisfied that, because of exceptional circumstances, the direction is necessary to ensure that the performance of the functions, or the exercise of the powers, of the Board, does not conflict with major government policies and the Board must include in each annual report directions given under this clause during the year to which the report relates.

Clause 22 provides for the manner in which the proceedings of the Board will be carried out.

Clause 23 provides that an act or decision of the Board is not invalid by reason only of a defect or irregularity in, or in connection with, the appointment of a member or of a vacancy in membership, including a vacancy arising out of the failure to appoint an original member.

Clause 24 provides that the Board may employ staff (including a chief executive) on such terms and conditions as it thinks fit and may make arrangements for using the services of any officers and employees of the public service or any public authority.

Clause 25 provides that a member of the Board is not personally liable for anything done or omitted to be done in good faith in the exercise of a power or discharge of a duty under this Act or in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act and that any liability resulting from an act or omission that, but for proposed subsection (1), would attach to a member of the Board attaches instead to the Board.

Clause 26 provides that the Governor may, if of the opinion that circumstances have arisen rendering it advisable to do so, by notice in the *Gazette,* remove all the members of the Board from office, but they or any of them are eligible (if otherwise qualified) for re-appointment.

Part 3 of the Bill (comprising clauses 27 to 32) deals with the objectives, functions and powers of the Board.

Clause 27 provides that the objectives of the Board are to supply marketing services to South Australian and Victorian barley growers and producers of other grains and to maximise the net returns to South Australian and Victorian barley growers who deliver to a pool of the Board by securing, developing and maintaining markets for grain and by minimising costs as far as practicable.

Clause 28 provides that the functions of the Board are-

- to control the marketing of barley and oats grown in this State and of barley grown in Victoria
- to market and promote grain in domestic and overseas markets
- to co-operate, consult and enter into agreements with authorised receivers relating to the handling and storage of grain and carriers relating to the transport of grain
- to determine standards for the classes and categories of grain delivered to the Board
- to determine standards for the condition and quality of grain delivered by authorised receivers to purchasers
- to import barley and grain; and
- to provide advice, as requested, to the Minister and the Victorian Minister about the marketing of grain.

Clause 29 provides that the Board may do all things necessary for the performance of its functions and, in particular, has the following powers-

- to acquire barley, oats and other grain
- to dispose of barley, oats and other grain
- to appoint agents, or to act as an agent, whether in or outside Australia
- to give guarantees or indemnities
- to arrange the marketing of barley, oats and other grain
- to promote, carry out or fund research and development that will assist in the production or marketing of barley, oats and other grain; and
- all other powers conferred on it by or under this Act or the Victorian Act.

Clause 30 provides that the Board may, in writing, delegate to any member of the Board, or to any employee, any of its powers under this Act, other than this power of delegation.

Clause 31 provides that for the purposes of this Act, the Board may, by notice in writing, served on the person to whom it is addressed, require the person to give to the Board, in writing, within the time specified in the notice, such information relating to barley and oats, barley and oat products or substances containing barley or oats as is specified in the notice. A person must not, without reasonable excuse refuse or fail to comply with a requirement under this section or give to the Board any information that is false or misleading in any particular. The penalty for contravention of this clause is a division 7 fine ($2 000).

Clause 32 provides that before the first anniversary of the commencement of this proposed section, the Board must submit to the Minister and the Victorian Minister a plan of its intended operations during the remaining seasons to which this Act applies and thereafter, with each annual report it submits to the Minister and the Victorian Minister, the Board must also submit a plan of operations for the remaining seasons to which this Act applies.

Part 4 of the Bill (comprising clauses 33 to 41) deal with marketing.

Clause 33 provides that subject to this Act, a person must not sell or deliver barley or oats to a person other than the Board. Subclause (2) provides that it is an offence if a person transports barley or oats which have been sold or delivered in contravention of proposed subsection (1) or bought in contravention of proposed subsection (4). Proposed subsections (1) and (2) do not apply to—

- barley or oats retained by the grower for use on the farm where it is grown
- barley or oats purchased from the Board
- barley of a season sold or delivered to the holder of a licence or a permit for that season issued under proposed section 42 or 43
- barley or oats which do not meet the standards determined by the Board
- oats sold to a person who purchases the oats for the purpose of converting the oats into chopped, crushed, or milled oats or any other manufactured product and reselling the oats in that form; or
- oats sold to a person who purchases the oats for use and not for resale.

Proposed subsection (4) provides that a person must not buy barley from the grower other than under a licence or permit issued by the Board under Part 5 or oats from the grower except with the written approval of the Board. The penalties for an offence against this section are different where the offender is a natural person or a body corporate and if it is a first or subsequent offence.

Clause 34 provides that, unless it is otherwise agreed, on delivery of barley and oats to the Board, the property in the barley and oats immediately passes to the Board and the owner of the barley and oats is to be taken to have sold it to the Board at the price to be paid under this Act.

Clause 35 provides that the Board may by instrument appoint a person to be an authorised receiver for the purposes of this Act. Where a grower intends to deliver barley, oats or other grain to the Board, a delivery of the barley, oats or other grain (as the case may be) to an authorised receiver is, for the purposes of this Act, to be taken to be a delivery to the Board and an authorised receiver holds, on behalf of the Board, all barley, oats and other grain the property of the Board which is at any time in the receiver's possession. This clause further provides that an authorised receiver must not part with the possession of any barley, oats or other grain the property of the Board except in accordance with instructions from the Board or from a person authorised by the Board to give such instructions.

Clause 36 provides that any person who, after the 'declared day' in relation to a season, consigns or delivers to an authorised receiver any barley or oats harvested before that day, must make and forward to the authorised receiver a declaration stating the season during which that barley or oats were harvested. The penalty for contravening this provision is a division 8 fine ($1 000).

Clause 37 provides that the Board must market or otherwise dispose of, to the best advantage, all barley and oats delivered to it under this Act, having regard to the reasonable requirements of maltsters in this State.

Clause 38 provides that for the purpose of marketing the barley and oats of which the Board has taken delivery, the Board may establish pools in relation to barley and oats of a season. The Board may at any time transfer any barley or oats remaining in a particular pool to another pool, and/or declare a pool closed.

Clause 39 provides that if the Board sells barley or oats from a pool, the net proceeds of sale must be distributed among the growers who contributed barley or oats to the relevant pool in proportion to the quantity contributed by each grower.

Clause 40 provides that notwithstanding the other provisions of this Act, where barley of a season is sold to the Board by any person under this Act, a payment of the prescribed amount will, with the consent of the person, be made for barley research purposes out of the money payable to the person by the Board in respect of the barley.

Clause 41 provides that a person does not have a claim against the Board in respect of any right, title or interest in barley or oats delivered to the Board.

Part 5 of the Bill (comprising clauses 42 and 43) deals with stockfeed permits and maltsters licences.

Clause 42 provides that a person who applies to the Board for a permit for a specified season authorising that person to purchase barley harvested in that season from growers for stockfeed purposes in Australia must be issued with the permit within 21 days of the Board receiving the application and the fee set by the Board.

Clause 43 provides that a person who is engaged in or who proposes to engage in the business of malting or other processing of barley for human consumption who is also a party to a deed of arrangement entered into with the Board may apply to the Board for a licence for a specified season to purchase barley harvested in that season from a grower for malting or other processing in Australia for human consumption purposes. Such a licence must be issued within 21 days of the Board receiving the application and the fee set by the Board.

Part 6 of the Bill (comprising clauses 44 to 47) is entitled 'Financial'.

Clause 44 provides that the Board is a semi-government authority within the meaning of the Public Finance and Audit Act 1987 that must before 31 December of each year, apply to the Treasurer for consent to its proposed financial program for the following financial year and forward a copy of the consent and any conditions attached to it, to the Minister and the Victorian Minister.

Clause 45 provides that the Board may establish a reserve fund to provide for the costs of administering the marketing

scheme and defraying any other costs of the Board. This clause further provides that the Board may pay into the reserve fund an amount not exceeding five per cent of the net proceeds derived from the sale of barley, oats or other grain and that the balance of the reserve fund must not exceed the amount set by the Minister and the Victorian Minister.

Clause 46 provides that any of the functions of the Board may be exercised by the Board, by an affiliate of the Board or by the Board or an affiliate (or both) in a partnership, joint venture or other association with other persons or bodies. This clause further provides that for the purpose of exercising its functions, the Board may join in the formation of a corporation to be incorporated and may purchase, hold, dispose of or deal with shares in, or subscribe to the issue of shares by, a corporation, provided the Board acts in accordance with such guidelines (if any) as are determined by the Minister and the Victorian Minister.

Proposed subsection (4) provides that an affiliate of the Board must not, except with the approval of the Minister and the Victorian Minister, engage in any activities which the Board may not engage in.

Clause 47 provides that if the Board is a member of, or forms or participates in the formation of, a limited company within the meaning of the Corporations Law and the Board has a controlling interest in the company, the Board must include in its annual report a copy of the accounts of the company in respect of the financial year ended during the period to which the Board's annual report relates and within 14 days after lodging any report, statement or return in respect of the company with the Australian Securities Commission under the Corporations Law, submit a copy of the report, statement or return with the Treasurer.

Proposed subsection (4) provides that if the Board is a member of, or forms or participates in the formation of, a limited company to which proposed subsection (1) applies, the accounts of the limited company must be audited annually by the Auditor-General or, with the agreement of the Auditor-General, by the Victorian Auditor-General.

Part 7 of the Bill (comprising clauses 48 to 52) deals with accounts and reports.

Clause 48 provides that the Board must keep proper accounts and records of all money received and paid by or on account of the Board.

Clause 49 provides that the Board must, in respect of each financial year, prepare an annual report to be laid before each House of the Parliament before the expiration of the seventh sitting day of that House after the report is received by the Minister.

Clause 50 provides that the Board must cause its accounts to be audited at least once each year by a registered company auditor appointed by the Minister and the Victorian Minister on the recommendation of the Board.

Clause 51 provides that, subject to section 38(4), the accounts of the Board relating to different pools of the Board must be kept separately.

Clause *52* provides that the Board must give a copy of each annual report to the South Australian Farmers Federation Incorporated and to the Victorian Farmers Federation when the report is submitted to the Minister and the Victorian Minister.

Part 8 of the Bill (comprising clauses 53 to 59) deals with the dissolution of the Board.

Clause 53 provides that the Board may be dissolved in accordance with this Part on a poll taken under proposed section 54, at the request of the Board under proposed section 55 or on the recommendation of the Minister under proposed section 56(1) and of the Victorian Minister under the corresponding provision of the Victorian Act.

Clause 54 provides that the Minister must direct that a poll be taken of growers on the question that the Board be dissolved if the Minister is satisfied, on representations made during a permitted period by growers by petition to the Minister, that at least half those growers desire that the Board be dissolved or if the Minister has received notice that representations have been made to the Victorian Minister under a provision of the Victorian Act corresponding to this section. If a poll is to be held in both states, then it must be held on the same day.

Clause 55 provides that the Board may, by instrument under its seal, request the Minister to take action to dissolve the Board. The Minister may refuse to consider such a request unless the request is confirmed by the Board, by a similar instrument, within such period as the Minister determines.

Clause 56 provides that if the Minister is satisfied of certain matters and he or she recommends this action to the Governor, the Governor may, by notice in the *Gazette,* direct the Board to wind-up its affairs, after which the Board must proceed to wind-up its affairs and a liquidator may be appointed.

Clause 57 provides that as soon as practicable after a notice under this Act is published in the *Gazette* directing that a poll be taken, and before the day fixed for the taking of the poll, the Minister must cause a report relating to the proposal to which the poll relates to be published in such manner as the Minister considers appropriate.

Clause 58 provides that the regulations may, subject to this Act, make provision for or with respect to the conduct of polls.

Clause 59 provides that the Board must pay the costs and expenses of a poll under this Act.

Part 9 of the Bill (comprising clauses 60 to 68) provides for the Barley Marketing Consultative Committee.

Clause 60 establishes the Barley Marketing Consultative Committee.

Clause 61 provides that the function of the Committee is to provide advice to the Board about its general policies, particularly with respect to the use of financial reserves and the establishment of joint venture companies.

Clause 62 provides that the Committee consists of a Chairperson (who must not be a grower) appointed by the Minister and the Victorian Minister jointly and four other members so appointed.

Clause 63 provides that the Chairperson of the Committee must preside at a meeting of the Committee.

Clause 64 provides that three members of the Committee one of whom must be the Chairperson constitute a quorum of the Committee and that the Committee must meet at least once every six months. Subject to this Act, the Committee may regulate its own proceedings.

Clause 65 provides that a member of the Committee, unless an officer or employee of the public service, is entitled to be paid from the funds of the Board the remuneration and allowances (if any) fixed by the Minister and the Victorian Minister.

Clause 66 provides that a member's term of office must not exceed three years and a member is eligible for re-appointment.

Clause 67 provides for the circumstances in which the office of a member of the Committee becomes vacant.

Clause 68 provides that if the office of a member becomes vacant otherwise than by reason of the expiry of the term of office of the member, a person nominated for appointment to the office in accordance with proposed section 62 must be appointed

to fill the vacancy and to hold office, subject to this Act, for the remainder of the term. However, if the vacancy occurs within six months of the expiry of the term of office of the member, the office may be left vacant for the remainder of the term.

Part 10 of the Bill (comprising clauses 69 to 74) of the Bill deals with general provisions.

Clause 69 provides that the Board may appoint persons as authorised officers for the purposes of this Act.

Clause 70 provides that an authorised officer or any member of the police force may, for the purposes of exercising any power conferred on the officer by this Act or determining whether this Act is being or has been complied with, at any reasonable time and with any necessary assistants—

- enter and search any land, premises, vehicle or place
- where reasonably necessary, break into or open any part of, or anything in or on, the land, premises, vehicle or place or, in the case of a vehicle, give directions with respect to the stopping or moving of the vehicle (on the consent of the occupier or on the authority of a warrant issued by a justice)
- search for, inspect and make copies of any documents
- require the occupier of premises entered and searched to produce any documents and to answer questions.

Clause 71 provides that it is an offence for a person to—

- delay or obstruct an authorised officer or member of the police force in the exercise of powers under this Act
- without reasonable excuse, refuse or fail to comply with any requirement made under proposed section 70; or
- give false or misleading information in response to a requirement made under proposed section 70,

the penalty for which is a division 7 fine ($2 000).

Clause 72 contains the evidentiary procedures for proceedings for an offence against this Act.

Clause 73 provides for service of notices or other documents required or authorised by this Act.

Clause 74 provides for the making of regulations under this Act.

Part 11 of the Bill (comprising clauses 75 and 76) contains the transitional and repeal provisions.

Clause 75 repeals the Barley Marketing Act 1947.

Clause 76 contains the transitional provisions.

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

ECONOMIC DEVELOPMENT BILL

In Committee.

(Continued from 23 March. Page 1639.)

Clause 16—'Functions of the board.'

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

Page 9, after line 17—Insert subclauses as follows:

(3A) If an authorisation is given under subsection (3)—

(a) the statutory power may be exercised by the board as if the power had been duly delegated to it by the authority, body or person in whom the power is primarily vested; and

(b) the board must consult with that authority, body or person in relation to the exercise of the power (but is not bound to comply with directions as to the exercise of the power given by that authority, body or person); and

(c) any statutory provisions governing, or incidental to, the exercise of the power must be observed by the board as if it were that authority, body or person; and

(d) any statutory provisions for appeal against or review of a decision to exercise the power or to refrain from exercising the power apply in relation to a decision by the Board in relation to the exercise of the power.

(3B) An authorisation under subsection (3) is to be given, varied or revoked by proclamation.

This amendment addresses the Opposition's concerns that any authorisation be exercised by the Economic Development Board as if it were the body having the relevant power and confirms that any appeal provisions would apply and that any resolution of the Executive Council be made public through gazettal, that is, with respect to clause 16(3) which we debated last evening.

The Hon. R.I. LUCAS: We heard much of this debate last evening. The Liberal Party indicated its support for clause 16 (3) and indicated Party support for this amendment.

Amendment carried.

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

Page 9, after line 27—Insert subclause as follows:

(6) Any approval, authorisation, ratification, consent, licence or exemption given under subsection (2), (3), or (5) must-

(a) be notified in the Gazette as soon as practicable after it is given; and

(b) be reported to both Houses of Parliament within 6 sitting days after it is given.

The amendment just passed deals to a partial extent with the authorisation under subclause (3) by providing that the authorisation is to be given, varied or revoked by proclamation. Notwithstanding that, I hold the view that under subclause (2) any agreement negotiated by the board which is ratified by the Governor ought to be notified in the *Gazette* and also reported to both Houses of Parliament. If there is to be ratification by the Governor of an agreement, the public is entitled to know about it as soon as that occurs and I cannot see that there are any bases in public policy for deferring notification of that event.

In relation to the authorisation by the Governor of a specified proposal it is true that proclamation will require gazettal and again it is important to have the exercise of that power the subject of a formal report to the Parliament and not just to be addressed by proclamation only.

In relation to subclause (5) the acquisition of shares must be approved by the Governor and the entry into any contract to carry out any kind of development project and other activities must also be approved by the Governor. I hold the very strong view that in those two instances also, not only should gazettal be required—which, of course, is not the provision under the Bill at the moment but is required by my amendment—but also that those matters are reported to both Houses of Parliament. It will at least make for a contribution to more open government. There is, as I said earlier, no reason in public policy why that information should not be available at an early stage and the sooner it is on the public record in my view the better.

The Hon. C.J. SUMNER: The Government has no problem with the principle of notification under clause 16(3). In fact, the amendment that I have just moved provides that an authorisation under clause 16(3) is to be given, varied, or revoked by proclamation and as such would become public through the *Gazette* in any event. So, there seems to be a doubling up between my amendment and the Hon. Mr Griffin's amendment, at least with regard to clause 16(3).

Notwithstanding how we get to it by the drafting, we do not have any objection to the principle of notification for authorisations under section 16(3) to be made public. However, we do have a problem with the time frames which are being suggested for the notification under section 16(2) of any agreements negotiated by the board for industrial expansion or development, or notifications relating to acquisition of shares under section 16(5) or the entering into contracts under section 16(5). The problem with this is that the honourable member's amendment to those two points provides that immediately the acquisitions are made, the contracts entered into or the agreements negotiated, then they must be notified in the *Gazette.*

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: The Hon. Mr Griffin interjects and says `as soon as practicable'.

The Hon. K.T. Griffin: Not after the negotiation, after the approval.

The Hon. C.J. SUMNER: Still my advice is that that is providing too strict a time constraint within which the ratifications must be made public. The argument—which I am sure the honourable member is familiar with—is that their disclosure could jeopardise commercial proceedings or negotiations in some cases. I think that the Government would be amenable to some discussion on this point to try to get to a reasonable proposition but it thinks that at the moment the immediate public notification following the ratification may be too strict and create difficulties in exercising those powers in clauses 2 and 5.

The Hon. K.T. GRIFFIN: I understand the point that the Attorney-General is making, and I appreciate that at least on the principle he is indicating that the Government is not unhappy with the proposition. I am not sure that there is going to be any prejudice. If one looks at subclause (2) it states, as soon as practicable after ratification by the Governor, that the notification must be given and reported to both Houses within six sitting days after it is given. One would expect that all of the loose ends would have been tied up by the time the ratification by the Governor is made. I suppose one can say that it is akin to an indenture, at least in some respects, and of course once that has been signed it is produced to the Parliament by way of an indenture ratification Bill and then becomes public knowledge. Because an agreement negotiated by the board for industrial expansion or development is binding on the State and its instrumentalities, once it is ratified I would have thought that it would be proper to have that information made available publicly. I would like to consider any specific examples of potential compromise if the Attorney-General has any.

In relation to acquisition of shares, again I would have thought that there would at least be a conditional agreement for the acquisition, subject to the approval by the Governor, and that once the approval has been granted by the Governor then all the conditions would have been satisfied and it then would not create compromise to the State if the acquisition is made known publicly. I suppose the only area of potential compromise would be if the board was looking to take over a publicly listed company, but then there are very strict disclosure requirements by the Stock Exchange and the corporations law about takeovers or acquisitions of interests in excess of 20 per cent. So I do not see that there is any potential for compromise. However, I am prepared to give consideration to any specific examples that the Attorney-General may raise. I come from the point of saying that, as a matter of public policy, this information ought to be in the public arena because it does vitally affect not only the State but the residents and taxpayers of the State, and ought to be made available publicly at the earliest opportunity.

The Hon. I. GILFILLAN: I support the amendment. I indicate that there may be argument regarding the time constraint of six sitting days and may be there needs to be some other qualification of the notification in the *Gazette,* being as soon as practicable, based on the sort of points raised by the Hon. Trevor Griffin. However, to me that would only be finetuning of the basic principle which is disclosure of matters which I think should be made available, certainly to this Parliament and to the public at large.

The Hon. C.J. SUMNER: My advice is that this could create difficulties in the Economic Development Board carrying out its functions. I am advised that the reporting provisions suggested in the amendment for the contracts specified in subclause 16(5)(b) are not a problem, but there could be problems with, in effect, the immediate public reporting of acquisitions or shares under either clause 16(2) or 16(5)(a), because there may be circumstances, for instance, where there has been an acquisition of shares in a company and the company wishes to keep that confidential for various reasons—at least in the short term—and that could not occur if the honourable member's amendment is passed.

A couple of possible compromises have been put—and it may be not be possible to resolve them today—but I will throw them in for what they are worth. First, the reporting of these matters occurs in the annual report, and that is an issue with which we have dealt in another context earlier on in the Bill. The other proposition that was put to me is that the reporting could be made to the Industries Development Committee, which I understand is the current procedure where the Government acquires shares or enters into agreements for economic development. So, that is another proposition which would keep the Parliament informed—or at least some of the Parliament informed—by a reporting procedure to the IDC. That is my advice on the topic. If members are not persuaded by it, then I guess the amendment will be passed and the Government will have to consider it in another place and enter into discussions, which I understand are open to members opposite, on whether some more appropriate provision can be agreed to. In the final analysis, of course, if we cannot reach agreement we will have to deal with it in conference.

The Hon. K.T. GRIFFIN: I would not be satisfied with disclosure only in the annual report; that could be some 15 months after the event. Generally speaking, there ought to be more immediate disclosure. I would not be satisfied only with disclosure to the IDC or even the Economic and Finance Committee, because that is a very limited disclosure, and that is confidential. Ultimately, what these provisions of clause 16 do is to require approval by the Governor. It is an Executive act but involves a contract into which the State has entered. The best course to follow is to allow the amendment, even if it is defective, to pass and certainly we are open to discussions to try to reach a reasonable position on this so that it does not create the potential for compromise of the actions of the Economic Development Board. But that, on the other hand, does not cover up activities which ultimately the public are entitled to become aware of.

Amendment carried; clause as amended passed.

Clause 17—'Powers of the board.'

The Hon. K.T. GRIFFIN: Clause 17 deals with the powers of the board. Subclause (2)(e) authorises delegation of powers to the Chief Executive Officer or to any other person or group of persons. Subclause (3) provides that a delegation may only be made with the Minister's consent and must be in writing. Members will be aware that I have concerns about unlimited powers of delegation, and that concern is brought into focus by the provisions in subclause 16(3) which, of course, allows the board, if authorised by the Governor, to exercise particular powers to grant approvals, consents, licences or exemptions. Only the board should exercise those powers, if they are to be exercised by anybody other than the appropriate statutory bodies under other legislation. We ought to specifically exclude the power of the board to delegate that responsibility. They may well be controversial—they may not be, but I suspect that the former is likely to be the case. So, on that basis, I seek to move the amendment in a slightly amended form as follows:

Page 10, after line 15—Insert subclause as follows:

(3A) The board cannot delegate a statutory power that the board is authorised to exercise by the Governor under section 16(3).

The Hon. I. GILFILLAN: I support the amendment. I would like to make a couple of observations about it and also the amendment which I missed because I was not expecting the Committee stage to come on quite so rapidly, and I refer to the one which I assume was moved by the Attorney and which was passed regarding authorisation, under subclause (3).

As members will recall, the Democrats vehemently oppose the whole issue of clause 16(3), and the amendment or qualification to it bears more detailed analysis than the Committee has given it to date. Referring to that successful amendment, paragraph (c) provides that 'any statutory provisions governing or incidental to the exercise of the power must be observed by the board as if it were that authority, body or person.' That is unexceptional and the least that could be expected, and I am glad to see it is there. Paragraph (d) provides that `any statutory provisions for appeal against or review of a decision to exercise the power or to refrain from exercising the power apply in relation to a decision by the board in relation to the exercise of the power'. Likewise that is a qualification which I welcome as being the least that can apply, and I am glad to see it in the final draft of the Bill.

However, paragraphs (a) and (b) compound the problem that we indicated, namely, that the board was the inappropriate body to be given this responsibility to grant approvals, consents, licences or exemptions.

Paragraph (a) in particular provides that 'the statutory power may be exercised by the board as if the power had been duly delegated to it by the authority, body or person in whom the power is primarily vested', and paragraph (b) provides that `the board must consult with that authority, body or person in relation to the exercise of the power (but is not bound to comply with directions as to the exercise of the power given by that authority, body or person)'.

The latter part neatly encapsulates the reason why we feel it is grossly inappropriate that the board be given this power. The statutory authority was set up specifically to do these tasks. If its opinion is to be ignored or contradicted by the board, it is an expression of lack of confidence in the statutory authority itself. Unfortunately, I feel that in the amendment moved by the Attorney-General, which is now part of the Bill, paragraphs (a) and (b) re-emphasise what the Democrats have argued throughout. First, it is dangerous because of the scope for abuse and, secondly, it is an unnecessary procedure when there are already in place the authorities, bodies or persons who are competent and experienced in exercising the power.

I wanted to put on the record, as I would have done had I been here at the time of the moving of the amendment, that we accept that paragraphs (c) and (d) are useful, but we vehemently oppose paragraphs (a) and (b), particularly paragraph (b), which absolves the board from taking the direction of the statutory authority, body or person, which is the proper body to make those decisions for the people of South Australia.

That is my position on that amendment. I repeat that the one that is presently before us, which requires these powers to be limited to the board (it cannot delegate to regional subdivisions or other parts under its control), at least restrains it to some extent and we support it.

Amendment carried; clause as amended passed.

Clauses 18 and 19 passed.

New clause 19A—'Appropriation.'

The Hon. K.T. GRIFFIN: I move the following suggested amendment:

After clause 19, insert the following new clause:

19A. The money required for the purposes of this Act is to be paid out of money appropriated by Parliament for those purposes.

I was concerned about the provision in the Bill which allowed the Minister merely to approve the budgets in clause 19 and to approve such a budget with or without modification, but with a provision that the board may not expend money unless provision for the expenditure is made in a budget approved under this section or unless the expenditure is approved by the Minister.

That form was used in the Courts Administration Bill which established the State Courts Administration Council, but in that Bill there was a specific provision relating to appropriation. It seemed to me to be necessary

in this Bill, in the establishment of this statutory corporation, to provide that the money required for the purposes of the Act should be paid out of money appropriated by Parliament.

I suppose that to some extent it raises the constitutional question of the extent to which the Legislative Council can amend money clauses. I think it revisits the debate that we had in the earlier part of the session in relation to appropriation. On all the information that I have, I think it is desirable to include this clause to avoid those complications.

I was also concerned that the approval by the Minister might have absolved the statutory corporation from needing to have its budget reviewed by the budget Estimates Committees, but I do not think that initial reaction is correct. Regardless of whether or not my suggested new clause is approved, there will still have to be an account made of the board's activities and budgetary requirements to the Parliament through the Appropriation Bill. On the basis of the issues that I have addressed briefly, I think it is desirable to make some specific reference to the way in which this is to be funded and to provide for that appropriation.

The Hon. C.J. SUMNER: The Government opposes this suggested new clause because it is not clear as to the purpose of it. The new clause is not necessary to appropriate funds, and it would not prohibit borrowing under the Public Finance and Audit Act. Its purpose is really not clear. The Government has stated in Parliament that if the EDB were to raise money it would do so under the provisions of the Public Finance and Audit Act. That is not prohibited by this new clause, and it is not necessary to appropriate funds for the purposes of the Act in any event.

The Hon. I. GILFILLAN: I oppose the suggested amendment.

Suggested new clause negatived.

Remaining clauses (20 to 22) and title passed.

Bill read a third time and passed.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

Adjourned debate on second reading.

(Continued from 9 March. Page 1478.)

The Hon. R.J. RITSON: 'Thou shalt not kill but needst not strive officiously to keep alive.' That is a very well known and ancient medical dictum which has guided the medical profession. It is fairly easy to appreciate but how hard it is to put it into detailed legislation. There is another dictum which has also served to guide the medical profession. I first came across it when I was training in the 1950s. A surgeon asked a group of under-graduates what the function of a doctor was and one bright spark said, 'To cure disease, Sir.' The surgeon replied, `No. The function is to cure but seldom, to relieve often and to comfort always.' It is in that spirit that I think the select committee has tackled its task and recommended certain legislation. It is a spirit which we all commend, and for that reason I will give this Bill a second reading.

I am concerned about a number of things in the Bill which I will mention, but I am concerned mostly about the unfettered power of medical attorney: its absolute nature, the lack of any check and balance. The Bill as presented to us will give a medical attorney the power not only to refuse unnecessary, futile or burdensome treatment when a person is faced with a terminal illness but also to refuse curative treatment. It will give the attorney power to refuse life saving surgery, and I fear that this power may not always be exercised with wisdom or even with goodwill.

There is a provision that the person exercising the power must believe that they are acting in the patient's interest, but there is no objective test; it does not have in fact to be in the patient's interest. The world is full of different people, and the average person to whom such power may be delegated is not always a university graduate or a person with deep religious beliefs. They may be a loved one who has become a hated one. There is no restriction on the time that such a power of attorneyship could run. The person who has the power delegated to them under such legislation may have, over many years, become a hated one or a greedy one who is watching with anticipation and hopes to gain the family home. The person over whom the power is exercised could indeed have forgotten entirely that they have assigned the document.

It is clear that other people have quite independently come to the same view because the Hon. Mr Elliott came up with a draft proposition very similar to the one that I initially had drafted, which in fact returns the power to the Guardianship Board.

I want to comment about something that I do not really appreciate. I attempted to consult with the Guardianship Board. I was concerned about an apparent conflict between this legislation and the Guardianship Board. Amongst other consultations, I wrote to the Executive Officer of the Guardianship Board and I got no reply for weeks. Then a rumour started going around to the effect that the Minister had forbad the Executive Officer to speak to me and that he, the Minister, would brief me.

Sure enough, a few days later, a phone call arrived at my office and the Minister's secretary asked me if I would like a briefing. I was sent for, and two senior health officials were present taking notes while I was talking to the Minister. I told him quite openly what anxieties I had with this part of the Bill: the unfettered powers. The Minister said, `Well, that is all right, we are going to fix up the guardianship provisions to make sure that they remain unfettered.'

So whatever this Council decides on the question of the role of the Guardianship Board as a safety net to guard against unreasonable decisions by a proxy or malicious, even homicidal, decisions by a proxy, we know that after exercising our vote, if we do amend the Act in that way, following right on the heels of this Bill is the guardianship legislation which in effect repeals what we have done today. That will be a Government Bill with Cabinet solidarity.

I think honourable members, men such as the Attorney, should think carefully about that and see whether the Labor Party can have a conscience vote on the role of the Guardianship Board related to this

legislation when the other Bill comes before us. I urge him to think about that.

There are two problems: first is the problem of patient autonomy, and secondly there is the problem of what is called 'substituted judgment'. It has been put to me (and it is the view of the select committee members) that, because the patient had autonomy during his time of competency, that autonomy ought to be exercisable by another person after the patient ceases to be competent. That is really a contradiction in terms. It is really an absurdity. The patient's autonomy is extinguished at the moment of his becoming incompetent. That is generally true of agents under other areas of law. If one appoints someone as an agent to sell a house or to do anything else, then legal incompetence extinguishes that agency, I am advised.

The Hon. J. C. Burdett interjecting:

The Hon. R.J. RITSON: Yes, but the argument from autonomy was put that because the patient had autonomy during competence, the autonomy ought to persist. No-one else can exercise autonomy on the part of someone else. What you have is a substituted judgment. You are substituting the judgment of one person for the other. There is a different approach to this, and amendments have been put on file to this effect by members of at least two other Parties here. That is, patients may be fearful of being the subject of a substituted judgment. Patients will not buy the argument from members of the select committee that they still have autonomy when they are unconscious because someone else is exercising it for them. They may be fearful of a totally powerful substituted judgment, and they might want to do what they could have done had not this Bill sought to repeal the Natural Death Act. But having repealed the Natural Death Act, if it is successful, there will not be any provision for a prior declaration. Amendments to achieve this are on file, to enable those people who would like to make a specific declaration if they are incurably ill that they will not be treated with treatment that is futile, intrusive and burdensome. That is what people would want generally.

Those people have had the statutory right to do that taken away from them by the repeal of the Natural Death Act. Several members are seeking, if you like, to give people the right to do something other than have a substituted judgment. They want people to have the rights of the kind they had under the Natural Death Act. I think we will have some difficulty in the Committee stage of this Bill, because it has not really been discussed, certainly from our point of view as a Party, and amendments have not been compared. Whilst I am sure each member's instructions have been accurately drafted, when we put them all together and start to amend the amendments to the amendment, it is possible to create a great mess. It may be necessary during the Committee stage to report progress, perhaps two or three times even, for members to correlate their amendments and talk with Parliamentary Counsel.

The objection to the unfettered powers is not mine alone. It is held by the Catholic Archbishop of Adelaide and by the Chair of the Lutheran Church Committee on Ethics. It is held also by some private lawyers. It is difficult to know what to do with it. There are some advantages in almost plenary powers given to a proxy. The advantages are to the doctors because it more clearly indicates to the doctor that what he or she is doing will be all right. They do not have to be steeped in the common law, and there are circumstances not only in palliative care but in ordinary curative medicine where we are not just worrying about refusal of treatment but we are worried about consent of treatment.

I raise the example of a surgeon who is operating and, during the course of the operation, which was consented to, he discovers a different condition from the one that was anticipated, and believes in the best interests of the patient that he should proceed and perform the operation which was not consented to. Rather than waking up the patient, putting them through the distress of post-operative pain and the recovery period, and telling them about the other condition, taking them back and doing a different operation—

The Hon. T.G. Roberts: What did he find, a gauzal growth?

The Hon. R.J. RITSON: It is usually a growth, but it is sometimes gauze. There are great advantages, where a proxy exists, in obtaining the consent of that proxy to do something to the patient's advantage. As I said at the beginning of my remarks, it is easy to understand the spirit of the old adage, but it is very difficult to put it into perfect legislation. Let me give an example that has arisen recently. I will be moving an amendment concerning the age at which a person can appoint a proxy—

The Hon. J.C. Burdett: Will you make it 18?

The Hon. R.J. RITSON: Yes. There is the restriction to 18 years on the part of the person who receives the power of attorney, but not on the part of the person who gives it. There is an inconsistency with Federal and South Australian law. A case has just arisen recently involving consent to medical treatment. It is known as Marion's case. In that matter, the parents of a daughter aged 14, who was mentally retarded, sought to have her sterilised. I cannot be sure of the form of sterilisation—sometimes tubal ligation is used, but sometimes hysterectomy is indicated if the child is affected so badly that the ordinary hygiene control, when menstruating, could not be achieved.

The circumstances were such that, even though these two parents were officially guardians of the child and gave consent, the Department of Family and Community Services stepped in and applied to the Family Court. The Family Court's decision was objected to, and the grounds of the objection were that the Family Court did not have a general consent to medical treatment right, but that the natural parents and guardians of the child had that right. It ended up before the full bench of the High Court in 1992, and the High Court held that the Family Court had very wide powers to decide questions of medical treatment. In this case it was sterilisation.

The legal basis for holding that the Family Court had that right was a doctrine that I will probably get a little wrong because I am not trained in law. However, the Attorney-General is listening and he might consider correcting me at some stage. It was a doctrine called *parens patria:* the concept that those people in society who are incapable of giving consent either through youth or disability are in effect children of the fatherland of the country, and the only authority to give consent in

relation to such people is the Family Court. The Family Court's jurisdiction was upheld by the High Court. Let me read a portion from the judgment about the Family Court's role. It states:

> While there are limits on the Family Court's welfare jurisdiction, the scope of the jurisdiction is nevertheless very wide. So long as an order of the Family Court is constitutional, there can be no limits on the court's powers emanating from the need to preserve the scope of State legislative powers.

With regard to this matter, I think that our age of majority ought to be the same as the Commonwealth's age of majority. A situation can occur in which a parent is a guardian, and then the parents fall out over the issue of what treatment is or is not to be given to a child. That situation can occur and does occur frequently, particularly in relation to sensitive matters such as the termination of pregnancy, sterilisation and questions such as removing the teeth and fingernails so that a child who is uncontrollably violent can be allowed to play with their peers. That sounds pretty brutal, I know; it is very arguable and contentious philosophically and ethically. Traditionally these sorts of decisions have been reserved for the Guardianship Board itself, even in cases where the board delegates minor matters to custodial parents, and this is because of the serious nature of some decisions. In fact, in Marion's case the court referred to the `significant risk of making wrong decisions'.

That is a point which I think does involve the 16 years of age provision, which I will be moving to make eight years, with respect to the power to give power of attorney. As I say, the principal objection is to dangerously unfettered and absolute power, and I expect that I will be holding discussions with the other people who have moved amendments to provide a safety net review and to try and put the amendments (no matter who actually moves them) in a way that is coordinate and not have one amendment make a nonsense of another. Even as we speak, there are increasing concerns which are not fundamental to the principle in the adage 'Thou shalt not kill but needst not strive', etc., but which create difficulties in the Bill. For instance, Part III states:

> In the absence of an express direction by the patient, a doctor is under no duty to use or continue to use extraordinary measures (whatever they are) in treating the patient if doing so would be to merely prolong the life.

The Bill creates, for the first time, a duty for the doctor to use the extraordinary methods if there has been a direction. I do not know what the position would be if a distraught relative insisted that all sorts of heroic measures be embarked upon if the patient's last competent words before lapsing into unconsciousness were, `Please doctor, no more operations; I am ready to go,' and then the relative with the power of attorney comes along and says, `Operate'. The doctor has to, even though it is futile, even though it produces its distressing period of cooperative pain and does not extend the patient's life by a day.

I think there are a number of unintended consequences throughout this Bill, simply because of the difficulty of putting that old adage, the spirit of which we all understand, into statute. As I say, I will support the second reading because I think, with good will, we can perpetuate the spirit which is desired by those who look mainly at the palliative care side of it and which is desired by surgeons who have practical difficulties in getting informed consent when confronted with urgent curative operations on people who are not terminal but who have driven their motor bike into a stobie pole or something like that. Of course, they have a defence of either implied consent or necessity and they are unlikely to be sued, but nevertheless they would feel vastly more comfortable if it was in some cases a little bit more cut and dried.

Medical people are feeling generally comforted by the expressions at the beginning of the Bill—the objects. But there again, we find that one of the objects of the Bill is to provide for people to consent or refuse medical treatment. It was put to me only today by a senior silk that the schedule empowers the agent to make decisions about medical treatment—and decisions about medical treatment is a wider term than giving consent or refusal, because consent or refusal is essentially a response to a proposal that may be put by a medical attendant, whereas the making of medical decisions may include making one's own proposals and requiring the doctors to carry them out whether or not they think it is a good proposal.

I do not think we should assume that everyone who is given these powers will exercise them wisely. So, I urge members to consider any amendments which reintroduce the Guardianship Board; and I object to the Minister having employed what I think is almost a subterfuge (not really because he told me about it) and calling on, if you like, the question of Cabinet solidarity to in fact repeal a provision if we put one in the Bill.

The Hon. J.C. Burdett: Repeal a provision in a conscience Bill.

The Hon. R.J. RITSON: Yes, that is right. I really do object to that and I look with interest to see whether people such as the Attorney-General can persuade the Labor Party to give that particular line of the guardianship legislation a conscience vote as well. In fact, the chair of the Guardianship Board, Carolyn Richards, did not consider herself subject to ministerial direction and both phoned and wrote to me, with a discussion paper. The first point she made was that the views expressed were definitely not the views of the Guardianship Board because the board, as a statutory entity, is purely a dispute solving quasi-judicial body and it would not be right for the board under that role to take a quasi-legislative role and attempt to influence the Legislature.

She also indicated that she would send a copy of everything she sent me to the Minister. That was shortly before I was sent for but I would like to refer to some of the material that she did send me because that material was sent to me as problems that were being widely academically discussed amongst interested persons, and it may be that some of those persons also happen to be members of the Guardianship Board, but certainly the Guardianship Board has never met and resolved to make any sort of political lobby. Nevertheless, those provisions are important, and I will pursue the matter in the Committee stage, as it relates to a belief in the legal competence of the person doing the appointing.

There has to be no undue influence, but there is no test of anything on the person so appointed. The person so appointed can subsequently acquire Alzheimer's disease. The person so appointed can, in fact, not be the

person appointed to exercise the powers but the brother, cousin, aunty or beneficiary of the patient. I do not know how you are to test the validity of that when somebody comes into intensive care saying, 'I've got this, unplug all the tubes.' Quite frankly the intensive care specialists have a different view of that set of powers than do the palliative care specialists. The palliative care specialists, after all, are working with difficult cases, very sick people. They know intimately how to make the judgments as to when to walk away and when to stay and comfort, and when to try to cure.

The intensive care people are receiving acutely ill people where the prognosis, at first, is often not known. A deeply unconscious person brought in from a car accident may indeed be in a situation where most of the neurological deficit is due to reversible swelling of the brain rather than physical disruption of the brain tissue and we do not know what would happen if someone with power of attorney said, 'Look, Dad said if he was ever unconscious or hooked up to life support he would not want to be treated. Pull it out.'

There is a lot of cheap life term insurance in the community and it has no surrender value. It works in a way that is like having a bet with the insurance company that you will live to a certain age and, if you do, you get nothing back and if you do not, your relatives get a lot. But there comes an age at which the life insurance disappears, an age at which it is extinguished. I wonder, first of all, whether there could not be the occasional situation where, let us say, an accident victim who is suffering an unknown amount of brain damage and is possibly recoverable is unfairly dealt with because the birthday on which that insurance is due to be extinguished is next Tuesday. Human beings are such that some day someone will have a few hundred thousand dollars running on the fact that Dad, who has had a stroke or has been in a car accident, dies this week

instead of next week. I have no confidence that loved ones always stay loved ones. If the divorce statistics are anything to go by about half the population—including the people who would wish to be divorced but cannot afford to be divorced—are hated ones. They may have been loved ones once when the power of attorney was made.

I have no confidence that power of attorney is always given freely and spontaneously. I recently heard of an incident in which in one nursing home 100 per cent of the residents had signed powers of attorney and, in every case, the person exercising the power of attorney was the proprietor of the nursing home. I do not think that you can conclude that anything wicked was going on; it just might have been convenient. But it does demonstrate the way in which people who perhaps are still legally competent are nevertheless able to be influenced one way or the other by persuasive argument, not necessarily by subterfuge, in something as serious as this in which the High Court, in relation to the Family Court exercise of consent to medical treatment, referred to the gravity of making a mistake.

There are other little things scattered around. The Hon. Dr Pfitzner spoke of 'extraordinary measures' and it is difficult to define 'extraordinary measures'. It is very difficult to define 'extraordinary measures' because they are also 'ordinary measures' depending on the context. A blood transfusion is an 'ordinary measure' if it is a two or three unit transfusion following a road accident or surgery where one expects the person to recover.

It is extraordinary if it is the seventy-fifth unit of blood in someone dying of a blood dyscrasia such as Hodgkin's disease or leukaemia. Nasogastric feeding is ordinary if the tube is put down to sustain life and hydration while a person who has had a brain operation from which they can be expected to recover is undergoing recovery in the ward.

Another example is the case of a bowel operation if the tube is for suctioning where it keeps the patient comfortable by keeping the gastric juices out of the bowel. It is extraordinary if an old person with a terminal disease who appears only to have a week or two to live has nasogastric intubation and finds it distressing, pulls the tube out—you try to put it back and he tries to punch you because he is scared of it and you know it is futile and is not going to extend his life significantly. Then it becomes 'extraordinary'. I much prefer the word `natural' as compared to 'artificial', as one set of distinctions, and the words that are used in one part of an amendment by the Hon. Dr Pfitzner where she refers to treatment that is not intrusive, or I think she used the word 'distressing'.

We must not call the treatment either natural or unnatural but look at the value of the treatment. Is it futile? What is the benefit of the treatment expected to be? How much does it bother the patient? If it bothers the patient a lot and it is futile that is when you walk away from it. If it is going to make the patient a bit more comfortable and it is well tolerated then you do it, and it has nothing to do with 'ordinary' or 'extraordinary' and those words should be eliminated from this sort of debate. In fact, Professor Margaret Somerville did want to eliminate those words from discussions. There is another problem with the choice of the phrase 'incapable of consenting' because a person can be incapable of consenting but can understand quite clearly and be acutely aware of what is going on. The patient may know what they want but be unable to communicate it.

As the honourable Attorney knows with the court finding of 'unfit to plead', whilst it is commonly a consequence of mental disturbance, that is not always so. It may be because the only obtainable Armenian court interpreter has died. In the field of medicine and with the concept of legal competence, I think the phrase 'legal competence' should be exchanged for the phrase 'incapable of consent'. In the case of someone who has had a stroke you get a condition called aphasia where the person cannot speak but their mind can speak. The person knows what they want to say but the neurological damage has interrupted the connection between the brain and the speech muscles, but not necessarily other muscles. Indeed you could say that the person is incapable of communicating and incapable of making decisions, but if you sat down with them and used a code of hand squeezing you would find that they could demonstrate that they understood you. I like the test of legal incompetence before this would operate because that has a specific meaning and understanding, and I

think the understanding is the important bit and not any physical barriers that make communication difficult.

There are many little things all over the Bill. I do not think that we should just say it is a big motherhood statement, a hoo-ha, bow to it and pass it through without critical examination. I am sure that we can still enact the laudable spirit that it embodies but I do ask members to give it very careful intellectual consideration during the Committee stage. Having said that, I support the Bill.

The Hon. J.C. BURDETT: Mr President, I support the second reading of the Bill. This Bill is the result of a select committee of the other place. The *modus operandi* of the select committee was a model of genuine community consultation. Not only was evidence called for and given in the usual way but there were two interim reports that were open to public comment, and a final report. Moreover, public meetings were held by the Committee at which interested community groups could make comment. This is a model which, not all but certainly some, select and standing committees could well follow on appropriate occasions. I do not intend to canvass all the provisions of the Bill. I do make the comment that the Bill provides for consent of persons of sound mind over 16 years of age to medical treatment and this is totally outside the terms of reference of a select committee. I suppose the reason for this is that the Bill repeals the Consent to Medical and Dental Procedures Act which has a provision to the same effect. The same applies to clause 9 in regard to consent for persons under 16 years of age, and in this regard I note that the Hon. Bernice Pfitzner has an amendment on file to provide for parental consultation, in effect, in such cases, and I would feel disposed, when the time comes, to support that amendment.

I also note that while the provision to this effect, that is in regard to clause 6, is the same as that in the draft Bill attached to the final report of the select committee, it varies from the provision in the draft Bill attached to the second interim report. I also note that the Bill before us in the long title refers to a Bill to repeal the Consent to Medical and Dental Procedures Act 1984; there is no such Act. The relevant Act is the Medical and Dental Procedures Act 1985, and this is the Act repealed by the schedule. I suggest to the Minister that the error in the long title should be amended either by amendment or, if it is appropriate, by clerical correction.

This Bill does not legalise or decriminalise euthanasia. We will all have received letters saying that it does, but this is not correct. The letters urge members to oppose the Bill. Some of these letters come from Margaret Tighe of Right to Life Australia. I point out that, while this organisation has a presence in South Australia, it is not the same organisation as the Right to Life Association (SA Division) Incorporated. This latter organisation has not, as far as I am aware, contacted members of Parliament or opposed the Bill. In this connection, it is interesting to note that the South Australian Voluntary Euthanasia Society Incorporated (SAVES) certainly is well aware of the fact that the Bill does not condone euthanasia. The *VE Bulletin* of November 1992 states:

> We have made a further submission questioning the select committee's findings in respect of medical aid in dying. The essence of what we have said to the select committee is contained in a new SAVES publication that we have called 'none so blind'.

Obviously they think that the select committee is among those who are none so blind as those who will not see.
The publication continues:

> This title brings into sharp focus our perception that the select committee is absolutely determined not to acknowledge the strength of our case—

I repeat that—

> the select committee is absolutely determined not to acknowledge the strength of our case. Whether this is because it considers medical aid in dying is always morally wrong or decriminalising it would be somehow dangerous or it would be politically unwise or for some other reason we can only guess.

So, SAVES is under no illusions; it is aware that the select committee and the then draft Bill, which is now this Bill, did not permit euthanasia. The second interim report of the select committee summarises SAVES' submission. At page 50 it says that SAVES seeks 'a change in the law so that in appropriate circumstances medical assistance in dying becomes an available option to both patients and medical practitioners'. The second interim report states:

> The growth of the voluntary euthanasia movement, results of public opinion polls, medical opinion polls and published articles do not persuade us that Parliament should legislate for voluntary euthanasia.

But Right to Life Australia and other correspondents seem to think that somehow or other unknown to the select committee it has. The Bill does not condone euthanasia, and if it did I would not support it. Euthanasia was in the terms of reference of the select committee, so I do intend to address the subject briefly.

SAVES refers to the withdrawal of life support as passive euthanasia. I think it is trying to trick us by asking, 'We already have passive euthanasia, so why not move to active voluntary euthanasia' and, dare I say it, 'at some stage to non-voluntary euthanasia?' Withdrawal or withholding of life support is not euthanasia, passive or otherwise. There is the old saying—and I will not repeat it in full—to which the Hon. Dr Ritson referred: thou shalt not kill, but needst strive officiously to keep alive. I suppose the question of what is or is not euthanasia is a question of definition. The word 'euthanasia' was in its origin a Greek word meaning a good or a happy death, and I suppose we all hope for that. But in modern English usage, euthanasia means killing people. A Catholic congregation, the Congregation of the Doctrine of the Faith, declaration on euthanasia is quite unequivocal, and states:

> ...nothing and no-one can in any way permit the killing of an innocent human being, whether a foetus or an embryo, an infant or an adult, an old person or one suffering from an incurable disease or a person who is dying. Furthermore, no-one is permitted to ask for this act of killing either for himself or herself or for another person entrusted to his or her care, nor can he or she consent to it either explicitly or implicitly. Nor can any authority legitimately recommend or permit such an action. For it is a question of the violation of the divine law, an offence against the dignity of the human person, a crime against life and an attack on humanity.

I also refer to an article in *Quadrangle* of autumn 1992 (a publication for the disabled), written by Joan Hume,

entitled 'Assisted Suicide for people with disabilities: a right or an act of repression?' Under the heading is set out in large print the following:

Unrelieved human suffering calls for the removal of the cause before it calls for the removal of the human.

That is a quote from Dr Brian Pollard, a specialist in palliative care. I certainly share the reservations about the medical powers of attorney elaborated on by my colleague the Hon. Dr Ritson, and I do not propose to do that again. Certainly, that is a matter that I will want to look at carefully in Committee, and I notice that some amendments are on file and there will doubtless be others.

The Bill does not change the present legal situation with regard to the withholding or withdrawal of life support or the administration of pain killing drugs, except, I suppose, with regard to the medical powers of attorney. In these matters, the fundamental matter is intention. If the intention is to alleviate pain, then it does not render the action either illegal or immoral; the side effect might be to shorten life. But, of course, if the intention is to kill, that is presently prohibited and would remain prohibited under the Bill.

I will address the amendments on file and perhaps other matters in the Committee stages. However, I am pleased to support the second reading of this Bill.

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

SUPPLY BILL (No. 1)

Adjourned debate on second reading.

(Continued from 4 March. Page 1438.)

The Hon. R.J. RITSON: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

The Hon. R.I. LUCAS (Leader of the Opposition): I support the second reading of the Supply Bill. As members will be aware, traditionally we have two Supply Bills in any particular year. The first Supply Bill in the year, the one that we are now discussing, is to provide Supply or Appropriation of $900 million for the Government to provide public services during the first two months (July and August) of the 1993-94 financial year. In the new parliamentary session commencing in August we then pass another Supply Bill which covers the period September and October and through part of November until the major Appropriation Bill is passed each year.

The amount of appropriation this year is, as I said, $900 million, which is $40 million more than the $860 million sought for the first Supply Bill last year. The Government advises that the reason for the increase is that the Supply Bill is predicted to be for a period slightly longer than normal (that is, July, August and the first part of September of this year), and it says that there will be a corresponding reduction in the amount for the second Supply Bill that we will discuss later in the year.

It has always intrigued me—and I thought I might as well ask the question this year having addressed a number of Supply Bills during my time in the Parliament—why we need two Supply Bills. This is not urgent and I should be happy to receive a reply in due course, but I would like to know whether the Government has considered the option of having one Supply Bill providing for a larger sum of money which can, in effect, tide the Government over from 1 July through to the period when the Appropriation Bill is passed.

There seem to be two options. One is that we specify an upper limit and, if that limit is not expended, the money in some way goes back into Consolidated Revenue. Alternatively, the Government estimates what is required and, if it looks as though a second Supply Bill will be required, one could be introduced only in those circumstances. There may be financial or constitutional reasons why this is not possible. If there are, I should be interested to hear from the Minister what they are.

I want to make some general comments about the economic conditions that confront South Australia and, in particular, the changes in the industrial environment that may or may not be required to turn the State's economy around. I think all economic commentators agree that the South Australian economy is an economic cot case. As I indicated last night, Access Economics, the respected economic commentators, have described the South Australian and Victorian economies as rust-belt economies, and others have referred to us as an economic basket case or an economic cot case. Nevertheless, they all agree that we have significant economic problems.

We have almost 100 000 unemployed in South Australia and many tens of thousands who are under-employed. Those figures were revealed quite starkly by the Australian Bureau of Statistics in a publication that was released during the Federal election campaign. The impact of unemployment is felt right across the board, but in particular we see it in the youth unemployment where the rate for 15 to 19-year-olds is generally between 30 and 40 per cent. Of course, in some parts of Adelaide, particularly the northern and southern suburbs, the unemployment rate for young people is between 40 and 50 per cent.

An associated problem from the State's budgetary viewpoint is South Australia's estimated debt which, in real terms, is now about $8 billion. That represents 26 per cent of the gross State product—an increase of 15.5 per cent since the financial year 1989-90. The interest costs are now almost $700 million or $480 per head of population in this financial year. The interest cost figure absorbs 45 per cent—almost half—of the total amount of State taxation that is collected in any one year.

I do not intend on this occasion to outline again in graphic detail the extent of South Australia's economic problems. I want now to offer some comment about some of the suggested solutions, in particular, as I said, in relation to the industrial relations area. First, of course, this Government or an in-coming Liberal Government will have to tackle that debt problem which I have summarised. You must also obviously tackle the whole question of business taxation and the ability of businesses to invest in the future and the ability of businesses to provide future employment options for South Australians. An in-coming Government will also

have to tackle the areas of microeconomic reform and industrial relations reform.

I want now to refer to an article in the *Business Australian* of today by the Asian business writer Florence Chong. I want to quote a number of sections of that article because it gives us, in this Parliament and those of us as members in an alternative Government, considerable food for thought. The article, under the heading of 'Worker attitudes: key to prosperity', states:

It is often said Australia cannot compete with Asia when it comes to manufacturing. The reason given is the high cost of doing business here. The argument goes that wages for one will have to be reduced sharply to bring Australia into line with Asian countries. This is only half true, according to advocates of total quality management control, because Australia can still sharpen its competitiveness without sacrificing its standard of living. Certainly Australian companies, which have adopted this approach, have shown they are capable of competing for export markets against the best in the world.

The world's most competitive economy is Singapore, according to two accepted measures of international competitiveness, the Beri Report 1992 and the World Competitiveness Report 1992. Yet Singapore is far from being a low cost manufacturing or business centre. Wages in some instances are higher than in Australia. Although the Singapore Government is constantly reducing its corporate taxes to maintain its competitive edge, the overall tax burden is not much lower than in Australia when the compulsory contribution to the Central Provident Fund, Singapore's national superannuation scheme, is taken into account. There are also other imposts such as a levy for the skills development fund.

The difference between Australia, Singapore and for that matter Japan may be that the latter two have universally embraced the concept of total quality management control. Their companies and factories constantly sharpen their competitive edge as they strive to match or be the best in the world.

An acknowledged expert on productivity, Mr Freddy Soon, of Singapore, said it was important to measure performance against the best not only in the same industry but against the absolute bench mark of efficiency.

The point that Florence Chong is making, at least in that section of her article, is that it need not necessarily be the case that Governments and alternative Governments need to argue for reductions in wages of the work force as the only solution to the economic problems that confront either a State or a nation. Florence Chong expands on that view later in her article:

Although the Federal Government often speaks of Australia's improved efficiency and consequently international competitiveness it is true only of certain sections of industry. The Beri Report on international competitiveness ranked Australia 21st out of 49 nations, while the World Competitiveness Report rated Australia 16th out of 22 developed countries.

Australia's weakest point was its worker attitude in which the country was ranked 35th by the Beri Report. Factors such as absenteeism and days lost through industrial disputes were taken into account to assess worker attitudes in the countries surveyed. Apart from worker attitudes Australia ranked reasonably well against other countries in areas such as technical skills and legal framework. In fact Singapore was only two places ahead of Australia in the ranking on technical skills.

Mr Soon dismissed the myth that Asians were the only people with the right work attitude. Although Japan scored the highest points in worker attitude in the Beri Report, second position went to Switzerland. Other non-Asian countries to feature in the top ten included Belgium (5), Germany (6), the Netherlands (7) and Norway (8). Mr Soon said this should dispel any notions that Asians were by character the more hard working.

That is the point that I wanted to pursue in a little detail in my contribution on the Supply Bill. As I said, it is a false notion that the only solution to our economic problems is a policy for a Government or an alternative Government that seeks solely the winding back of wage conditions for its work force. Productivity ought to be the goal of the Government or an alternative Government and policies should be directed towards improving productivity, not just solely in the replacement of human capital by technology—although of course that will be one of the more usual ways of increasing productivity—but in developing worker attitudes and giving a worker involvement in industry through employee participation schemes and a variety of schemes that I know both this Government federally and the alternative Government, through John Howard, have been espousing.

The Hon. T.G. Roberts: Industrial democracy.

The Hon. R.I. LUCAS: Well, no, not industrial democracy. As the Hon. Mr Roberts would know there is a distinction between industrial democracy, as promised by the Labor Party in the 1970s in South Australia, and more manageable or more acceptable employee participation schemes, some of which do involve employee share ownership or an employee involvement in the profitability of the company that they happen to work for. That is a notion that I believe the Federal coalition in its review of its policies on industrial relations and the economy needs to take into account. It is a notion that I think some members federally do accept but that perhaps others have been seen not to accept.

The Hon. T.G. Roberts: How do you measure it in the public sector?

The Hon. R.I. LUCAS: I am about to turn to that. That is a very interesting interjection because I also believe that any review of the industrial relations policy of the Federal coalition and any policy that we adopted here in South Australia should consider the effects of such a policy on enterprise bargaining in particular and employment contracts on the public sector as opposed to the private sector.

In particular I want to address some comments in relation to the public sector to an area that I am familiar with and that is the teaching service. I also want to make some comments in relation to where I believe the review of Federal policies ought to be looking at the policies that we espouse towards young people and in particular the youth wage.

It is my view that the people of South Australia and Australia not only had major concerns with the goods and services tax but they also had major concerns about the principal elements of the Federal coalition's industrial relations policy and in particular, as I said, the way it would affect the public sector and also young people in relation to the youth wage. The notion of, for example, in South Australia a Minister of Education and his or her delegate signing up to 20 000 individual employment contracts with teachers and staff is a notion that I have always had some difficulty in grasping. Certainly there would need to be a very powerful economic and

efficiency argument to convince you to go down the particular path of having individual employment contracts with potentially therefore individual members of the teaching work force in the one work place having different working conditions.

It is relatively easy to measure productivity improvements in the private sector and in particular if you are talking about that part of the private sector in relation to say industry based enterprise. It is, however, much harder in my judgment to make those sorts of productivity judgments and therefore productivity and wage trade-off judgments when one is talking about public sector wage and employment conditions. It is very difficult to make those judgments in relation to the productivity or performance of the 20 000 teachers and staff who work here in South Australian schools.

The Hon. T.G. Roberts: And nurses?

The Hon. R.I. LUCAS: You can make the same argument and judgment about nurses, but let me limit at this stage my comments to teachers as an example of the problems that you see in the public sector. So, if one wants to move down the path of individual employment contracts for every worker in a State or country, then in my judgment you would have a major problem when one is talking about that sort of situation working in the public sector and, for example, in schools.

As I said, you need a powerful argument, and I have not yet seen the powerful argument to convince me that the notion of having a Minister signing up to 20 000 individual employment contracts for teachers and staff within schools in South Australia is a way whereby, in the short to medium term at least, we will see those major productivity and efficiency gains. If you are not going to get that up side, if one can speak frankly in political terms, what it does is leaves a Party open to the sort of massive scare campaign used by the union movement, in particular the Institute of Teachers leadership—and I make no criticism obviously of the membership of teachers—as to what might or might not be in an individual employment contract that a teacher might be asked to sign.

It is always possible for a union leader to dig up a contract that may or may not exist in another State or country, and use that in a fashion that will cause alarm to the up to 20 000 teachers and staff in our schools. That is certainly the view that I would like to see, the review of the Federal coalition policy, and obviously from the South Australian viewpoint, as an alternative Government, a view we have to consider in South Australia in relation to the operation of the industrial relations policy as it affects this State, and I make only the comments at this stage on the public record in relation to the public sector and that section of the public sector with which I am familiar. At this stage I will reserve my comments in relation to the private sector and the operation of enterprise bargaining to the privacy of the Party room and other appropriate Party fora.

Finally, in any review of the industrial relations policy, we must refer to the area of youth wages. The Liberal Party in South Australia has always supported the notion that there ought to be some sort of stepping process from the trainee wage to the full adult wage, if I can use that phrase, or the full wage. The notion that a youth wage of $3 or $3.50 an hour was ever going to be supported by young people was obviously naive, but what people have to realise is that, particularly in the present economic circumstances, it was just not young people who were concerned about a youth wage of $3 to $3.50 an hour, but there were many mums and dads in South Australia and throughout the country who were concerned that their sons and daughters, perhaps helping to work their way through university, TAFE college or further study with part-time employment, might well lose their current conditions of whatever it might be, from $7 to $10 an hour, and find themselves having to work on a wage of $3 to $3.50 an hour.

So, the concern was not just limited to young people. It was much wider than that, and it extended to many thousands of mums and dads throughout South Australia and Australia. It is my view that this issue again has to be one that needs to be reviewed in the Federal context, and one certainly that we will need to address in the South Australian context as well.

Finally, I tie that back to the original statements of Florence Chong in the *Business Australian.* We need not in any policy of trying to revitalise the South Australian economy necessarily rely just on the reduced wages for workers. We can look at changed worker attitudes, changed economic policies that do not directly penalise the work force, and through that path we can see hopefully an economic revival in South Australia. With those remarks, I indicate my support for the second reading of the Supply Bill.

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

[Sitting suspended from 6.1 to 7.45 p.m.]

CLASSIFICATION OF PUBLICATIONS (FILM CLASSIFICATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 March. Page 1506.)

The Hon. K.T. GRIFFIN: This is a relatively simple Bill but nevertheless an important one. It is one of those few Bills upon which I do not think there will be any controversy and, I suggest, probably no amendments either. Presently one of the classifications for films permitted under the classification of publications legislation is the M category. This is the classification of a film considered to be unsuitable for viewing by persons under 15 years of age. What the Bill seeks to do is introduce a new classification MA for those films at the top end of the M classification. Those films which are classified MA will not be permitted to be sold, hired or delivered to persons under 15 years of age other than by a parent or guardian or exhibited to persons under 15 years of age unless they are accompanied by a parent or guardian.

As I understand it from what the Attorney-General said when he introduced the Bill, the Bill is model legislation agreed between the States and Territories and is proposed to come into force on 1 May 1993. This new classification will relate to a film which depicts, expresses or otherwise deals with sex, violence or course

language in such a manner as to make it unsuitable for viewing by persons under the age of 15 years. I am pleased that there is this tightening up of the M category. This category has been a matter of concern to parents and those who take an interest in the quality of material available to young people through film and television. Obviously it has been of such concern to others in Australia, such that this additional classification is being proposed.

I think that there remain, though, a number of other issues which obviously are not addressed in this Bill. One is the continuing availability through the Australian Capital Territory of X rated videos, particularly through the mail order market, and also through the Northern Territory (so we do not focus only on the ACT). However, in both areas X rated videos are still available and that is a continuing disappointment to me and my colleagues. There is also the continuing difficulty with AO ratings on television, where they may not be displayed before 8.30 p.m. each day. I do not think that some of the material which is rated AO ought to be shown at all, but I have a very strict view of what should or should not be available for public viewing through the medium of television.

Certainly there are many who would share my view that 8.30 p.m., particularly in the months of daylight saving, is much too early for AO movies to be displayed on television. I hope this matter will be taken up at the Federal level. I know that the Federal Coalition proposed changes to that. The Prime Minister, Mr Keating, has expressed concern about material being shown which is unsuitable to young people to view during periods when they are watching television. I would hope that there can be a tightening up on that because television is such a powerful and influential medium. There are, as I said, many children who still are up and about at 8.30 p.m., particularly during periods of daylight saving, but even during wintertime, and to have television readily accessible and AO movies readily accessible I think creates an undesirable influence for those children.

Returning for a moment to the Bill, whilst I do not propose to move any amendment, it was the subject of debate previously when we considered the Classification of Publications Act that, with R rated movies for example, parents are able to allow their children to view that material. There is a strong view in the community that children ought not to be permitted to view R rated material even with the consent of their parents. I am not suggesting that we should seek to intervene between parent and child, but I do think that parents need to exercise a very conscientious role with respect to the material their children are permitted to view. It is certainly not easy, particularly where children go to the homes of friends and the parents of those friends are not as strict as one's own parents may be, and the visiting children are then exposed in some instances to undesirable videos and television generally. I am pleased to be able to indicate the Liberal Party's support for the Bill.

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

EVIDENCE (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 10 March. Page 1505.)

The Hon. K.T. GRIFFIN: Mr President, I indicate support for the second reading of this Bill. The Bill deals with a number of important issues, but it may surprise members to hear that I do not propose to move any amendments to it. However, I intend to address the issues raised in the Bill. The Bill does make it clear that, where evidence of a child has been given on oath or assimilated to evidence given on oath, there is no rule of law or practice obliging a judge in a criminal trial to warn the jury that it is unsafe to convict on the uncorroborated evidence of the child. Presently the principal Act provides that in proceedings relating to sexual offences the judge is not required by any rule of law or practice to warn the jury that it is unsafe to convict the accused on the uncorroborated evidence of the alleged victim. According to the second reading explanation of the Attorney-General the Supreme Court did indicate in 1988 that this does not relate to the uncorroborated evidence of a child.

One always has to be cautious about the way in which evidence is regarded but, equally, I think it can be said that the community and those who practise in the criminal jurisdiction do now take the view that blanket rules about corroboration are not necessarily appropriate, and that each case ought to be dealt with on its merits. So, it would seem appropriate that, in relation to the evidence of a child, each case is taken on its merits and that there not be a mandatory rule of practice or that warnings be given about the lack of corroboration. On the other hand, whilst it is certainly promoted that children do not lie, I must confess not to agree 100 per cent with that proposition, because I think children, and particularly older children, do have the capacity to lie about their experiences. I think the more appropriate aspect is that in the course of a child who is a witness in a criminal trial being questioned and statements being taken there is the potential for the evidence of the child to be moulded on each occasion that the child might be examined for the purpose of taking a statement.

One has to be very cautious about that process and it is one of the reasons why, in the course of the debate on the vulnerable witnesses legislation that we dealt with last night, I suggested that there ought to be a diligent approach to the audiotaping or, more appropriately, videotaping the statements of children so that what actually occurs, what is said and the circumstances in which questions are asked and in which the responses given can be readily available to the court on each occasion that the child has been questioned. So, I am a very strong advocate in the conscientious move towards achieving that objective, on the basis that what we are all endeavouring to do in the criminal process is to get to the truth—neither to convict an innocent person, nor to acquit a person who is guilty.

Anything we can do to facilitate the taking of evidence and recording of statements of child witnesses is to be supported. However, in this particular case, whilst it does not deal specifically with that issue but rather with

the question of corroboration, I do indicate support for the proposition. The only note of caution that was sounded to me by an experienced and reasonable legal practitioner who has practised on both sides, both defence and prosecution counsel, and in the civil jurisdiction, was that we should ensure that we do not get to the point where the child's evidence ultimately becomes *prima facie* evidence and that may be one of the risks of removing the rule of practice. However, I think that is a matter for monitoring to ensure that that does not occur when the new provisions come into operation.

The second amendment deals with the competency and compellability of witnesses. Under the principal Act a close relative of a person charged with an offence is competent and compellable to give evidence for the prosecution in proceedings relating to the charge, but that person can apply to the court for an exemption from the obligation to give evidence. The Attorney-General indicated that the Supreme Court judges in their 1991 annual report did express the view that there ought to be a discretion in the court where the close relative is a young child or is mentally impaired, and the Bill acts upon that recommendation.

The third area relates to the power to make orders to inspect and take copies of banking records. Magistrates are to be included among the judicial officers who may make such orders. Supreme Court judges and District Court judges presently can do that, and to make the amendment in section 49 of the principal Act brings the magistracy into the general range of judicial officers who can make such orders. I agree with the Attorney-General that it is consistent with the wider jurisdiction which magistrates now have under the courts restructuring package and consistent with the power of magistrates under the Crimes (Confiscation of Profits) Act.

The fourth area is the formalising of the capacity for a South Australian court to take evidence from a place outside the State by video link or by some other form of telecommunication that the court thinks fit. Video links are becoming more and more appropriate. They save time and inconvenience. They save money and I think are a very useful development in the conduct of litigation. The High Court has been using video links for applications for special leave to appeal for quite some time so that counsel do not have to travel, say, from Western Australia to Canberra just for the purpose of making an application for special leave, and that has advantages for the court and for counsel, and, more particularly, for the litigant in relation to the issue of costs. I think more use ought to be made of it, not only in the courts but in business and in other areas of Government.

One can save a tremendous amount of time—even Ministers who participate in ministerial conferences by video link rather than having to track across to Canberra, Cairns or some other place taking two or three days when a video link conference might take half a day. It may not always be possible to achieve that, but certainly that wider use of video links in Government ought to be explored and encouraged. The area of negotiation for settlement is much more widely used now than it has been in the past, both in conciliation conferences under the jurisdiction of the courts as well as in private mediation and alternative dispute resolution procedures. What the Bill seeks to do is ensure that evidence and discussions in such private dispute resolution activities is protected, except in specific circumstances identified in the Bill. The information which is communicated in the course of such negotiations remains confidential.

The suppression order provisions are amended to prevent the publishing of details of an alleged sexual offence at a bail application. The Evidence Act presently prohibits the publication of such information at a preliminary examination but not a bail application. As I understand it, there was a case where the information which would lead to the identification of an accused appearing at a bail application was published when it should have been the subject of the appropriate suppression order provisions.

The amendment proposed by the Bill is consistent with the general provisions of the Evidence Act relating to suppression orders, and I suggest that this matter is not controversial.

The only other matter is the translation of section 351a of the Criminal Law Consolidation Act to the Evidence Act. The section in the Criminal Law Consolidation Act does prohibit the publication of the identity of an acquitted person where an application has been made for the reservation of a question of law arising at the trial. The Attorney-General has said in his second reading speech that it is his view that the provision rests more appropriately with the Evidence Act than the Criminal Law Consolidation Act. I have discussed that with those who particularly advise the media but who also have an involvement with defendants, and they agree that it would be helpful to have the provisions all together in the Evidence Act. As I have compared the two provisions, it seems to me that if there is no substantial, if any, variation and, accordingly, offer support for that, too.

So the Bill, whilst it does contain a number of important changes to the law relating to evidence, is not controversial, and I am, therefore, prepared to indicate support for it.

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

INDUSTRIAL RELATIONS ADVISORY COUNCIL (REMOVAL OF SUNSET CLAUSE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 March. Page 1581.)

The Hon. J.F. STEFANI: I will make a short contribution to this Bill. The Liberal Opposition has been conscious of the Industrial Relations Advisory Council's good work in terms of its contribution to industrial harmony and industrial relations in this State. The organisation was established in a bipartisan manner, and the parties concerned had agreed to have a sunset clause inserted originally so that this body could be reviewed on a regular basis.

We are of the view that the sunset clause is a useful mechanism in terms of allowing the review by either Government, be it Labor or Liberal, to ensure that the advisory council has an opportunity to be updated and

reviewed in terms of the requirements that may evolve, and particularly in the future when enterprise bargaining, which is strongly promoted by the union movement and by some employer organisations, will become an issue and some ground for referral to the council.

Therefore, it is with this question in mind that we feel it appropriate to move amendments which retain the sunset clause. We do not in any way feel that this process is in any way a sign of our lack of support for the council: on the contrary, we feel that it has the effect of providing an opportunity for the Government of the day to seek to review any of the workings of the council which may otherwise be somewhat more cumbersome by the introduction of amendments to the Act itself.

I want to place on record our appreciation for the work of the Industrial Relations Advisory Council. All Liberal members of Parliament who have knowledge of industrial relations appreciate that the council has a very important role. In fact, it can be an important sounding board for the Minister of the day and for other organisations that may require guidance and assistance. I will now close my remarks so that we can proceed with the amendments.

Bill read a second time.

In Committee.

Clause 1—`Short title.'

The Hon. J.F. STEFANI: I move:

Page 1, lines 10 and 11—Leave out 'Removal of sunset clause' and insert `Postponement of expiration.'

As I indicated in my brief introduction and comments about the amendment, the Liberal Opposition wishes to reinsert the sunset clause and thereby allow the postponement of the expiration.

The Hon. C.J. SUMNER: The Government opposes this amendment. It is contrary to the Bill which was introduced and which was intended to remove the sunset clause. This legislation has been in place for some considerable time and there does not seem to be much point in continuing to include sunset clauses in it. Either we want IRAC or we do not. If a future Government decides that it has outlived its usefulness, it can introduce a Bill to repeal the Act. I think that is the most sensible way to go about it.

The Industrial Relations Advisory Council has been in place since 1983 and we have continued until the present time to have sunset clauses in the legislation. I think we reach a time in Parliament when we decide whether to allow a body to continue. While it is reasonable to have a sunset clause for the first two or three years to test it out, it is unreasonable to keep a sunset clause going *ad infinitum.* I suggest that the amendment should be opposed and, if a future Government wants to abolish IRAC, it should introduce a Bill to do it.

The Hon. I. GILFILLAN: I oppose the amendment. I see the purpose of sunset clauses in some cases as providing the opportunity for a second look or review. Where an original proposal has some misgivings at its inception, a period of time is determined usually to give it a chance to prove itself or otherwise. At that time the criticisms or the problems can be dealt with in an amending Bill. In other words, this is the time, if specific measures ought to be taken, for it to be debated fully.

I am not convinced that we serve any purpose in keeping the proposal on tenterhooks by having an extension of the sunset clause. My firm view is that, if within a couple of years or so there is seen to be good reason to change the legislation or to terminate the Industrial Relations Advisory Council, the avenue of introducing a Bill specifically for that measure is always available.

The Council divided on the amendment:

Ayes (9)—The Hons J.C. Burdett, Peter Dunn, K.T. Griffin, J.C. Irwin, Diana Laidlaw, R.I. Lucas, Bernice Pfitzner, R.J. Ritson, J.F. Stefani, (teller).

Noes (10)—The Hons M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, Barbara Wiese.

Pair—Aye—The Hon. L.H. Davis. No—The Hon. T. Crothers.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 2 and title passed.

Bill read a third time and passed.

ROAD TRAFFIC (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 9 March. Page 1450.)

The Hon. DIANA LAIDLAW: Mr President, the Minister in her second reading address indicated that this was not a complex Bill but nevertheless essential for the efficient administration of the Road Traffic Act. I have subsequently sought advice from the South Australian Road Transport Association, the RAA and the South Australian Farmers Federation and the advice I have received from all of those organisations is that they concur with the Minister's assessment of this Bill.

The Bill essentially addresses four separate issues. The first relates to tandem axle group and tri-axle group. The Bill amends both definitions to conform with the Australian Design Rule Standards and the Minister's second reading explanation outlined the difficulties that are being experienced with the current definition of 'tri-axle group' meaning 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. This definition is absolute and one can envisage that there have been difficulties encountered for inspectors at weighbridges and also for owners of such vehicles because it has not always been easy to find tri-axle vehicles that have space differences that comply with the Act. In fact such space differences have ranged from between .01 metres and .25 metres.

I also understand from consultations that this matter of the space differences has meant that there have been considerable difficulties when vehicles are over-weight or over-mass and yet the department has not been able to prosecute because of the definition of a tandem axle group and tri-axle group vehicle.

The second part of the Bill addresses police directions to drivers. It amends sections 33 and 41 of the Act to provide police with the necessary authority to regulate

and control traffic as circumstances dictate. Apparently the amendment follows an appeal in the Supreme Court, which held that section 41 does not apply where at the time police direction is given the driver is not in the vehicle. The amendments also provide that a person will not be guilty of an offence for failing to comply with a direction if it is proved that he or she was not in fact in charge of the vehicle or was not responsible for leaving it standing on the road. The Liberal Party would agree that this is an important provision in determining an offence.

The third issue deals with the use of rear vision devices. Every vehicle is required under the Act at the present time to be equipped with mirrors to enable the driver to obtain a clear view of traffic to the rear and to the sides of the vehicle. That is required under section 37 of the Act. Under section 137 of the Act every driver is required to be in a position by means of a rear vision mirror to obtain a clear reflected view of the approach of a vehicle about to overtake the vehicle. There are, however, due to the construction of some commercial vehicles, difficulties in relation to those two provisions in sections 37 and 137. This arises from the fact that some vehicle owners and drivers have now installed closed circuit television systems. The Australian Design Rules make provision for the use of television receivers and visual display units to improve a driver's vision but our Act currently bans this use and the amendment proposed by the Minister, by means of regulation, will address this deficiency.

The one issue I want to talk about in a little more depth is that of pedestrians being required to obey signs and marks. Currently pedestrians are only obliged to comply with traffic signs and signals where there is a specific provision in the Act, for instance, at traffic lights. The proposed amendment to section 76 addresses this anomaly. The only representation I have had on this provision is from my colleague, the Hon. Mr Dunn who regularly walks to work—not from Eyre Peninsula but from Unley. I know he is fit and enthusiastic but his walk to work is only from Unley. He tells me that there are many sets of traffic lights that he encounters on the way to work. I suspect that his concerns in relation to this provision arise from the fact that he may not have been obeying the laws that apply at the current time. I think that maybe something that he would have to address and perhaps I should be providing him with a copy of the Road Traffic Act. I do not, however, wish to pursue this matter with such diligence that I dissuade him from walking to work in future.

The other point I would like to make which is somewhat of interest to me is that we are looking at this amendment to the Road Traffic Act in relation to the laws by which pedestrians must abide. On 18 February in this place we debated amendments to the Road Traffic Act in relation to pedal cycles. At that time the Hon. Mr Gilfillan moved amendments which proposed that a cyclist could disobey or ignore traffic signals if the cyclist considered it was safe to do so. We all understood the dilemma that he was trying to address because it is almost impossible for a cyclist, when approaching traffic lights, to get the traffic lights to register their presence. In opposing the amendment by the Hon. Mr Gilfillan, I said:

> I have seen from time to time many pedestrians at lights that they can activate or other sets of lights where they illegally cross the street now because they are impatient. I do not advocate that we change the law because of that.

I am interested that one month later we are in fact changing the law in relation to pedestrians and their frustration at traffic lights and elsewhere on the roads. So in fact here we are tightening the road laws as they apply to pedestrians when one month ago we were debating in this place reducing the restrictions that would have been placed on cyclists at traffic lights and elsewhere on the roadway.

So, perhaps it was wise at that time for this other reason to have rejected the Hon. Mr Gilfillan's amendments with respect to cyclists, although it was not apparent from the Minister's contribution at the time that she was proposing to introduce this Bill and tighten up the requirements for pedestrians in terms of obeying signals, signs and marks on our roadways.

I should add that the only other correspondence I have received in relation to this Bill has been provided to me by the Hon. Jamie Irwin, and his correspondent is Mr Gordon Howie. He is well known to all members in this place for his diligence in policing and, in fact, possibly hounding councils in the way they apply the Road Traffic Act and bylaws. It is apparent from his correspondence that he is again concerned about the potential application by councils generally of a number of provisions in this Bill. I do share Mr Howie's concern because it is apparent, since the repeal of the Local Government Department, that there is no organisation or body overviewing what is happening in local government generally or local government on an individual council basis. It is increasingly apparent from the diligence of Mr Howie that we must look at some measure, if not now, at least in the future, that would encourage councils, either through the Local Government Association or some other body, to be far more diligent in the applications of road signs and the implementation of other road laws. Like Mr Howie, I look forward to such a day.

Mr Howie has outlined in this correspondence to the Hon. Jamie Irwin more and more instances where he is alleging that the Corporation of the City of Thebarton, in particular, is acting in a manner outside the law, and I am certain that the Hon. Jamie Irwin will be taking up these matters with the Minister and with the council.

Finally, I note that Mr Howie is advocating the need for a review of the Local Government Act and the Road Traffic Act to tidy up many of the discrepancies and overlaps between the two Acts where they apply to signs, signals and marks, both on the road and general instructions to motorists and pedestrians. The Liberal Party supports the second reading of this Bill.

Bill read a second time.

In Committee.

Clauses 1 to 5 passed.

Clause 6—'General provision as to signals, signs and marks.'

The Hon. PETER DUNN: As the Hon. Diana Laidlaw indicated, as I stroll to work in the mornings, I come upon a number of different sorts of signals. Some are automatic that have pedestrian lights which automatically change in conjunction with the traffic

signals. Others are hand operated, so they do not come on at all unless the button is pressed. On many occasions, pedestrians are not there in time to press the button, or other people are there, or if a pedestrian had two broken arms and could not press the button, which signal does the pedestrian go by? The pedestrian signal will remain red, 'Don't walk', but the traffic signal will turn green, allowing the traffic to proceed. Does the pedestrian stand there waiting all day for the pedestrian signal to turn green? A person came to me the other day—and this is the only reason I raise this matter—inquiring which signal should they take note of. Could they cross on the traffic signal when it turns green, or did they have to press the button and wait for the pedestrian signal to turn green?

The Hon. BARBARA WIESE: I do not have an officer here this evening to assist with the passage of this Bill. I was not aware that there would be questions on it, so my reply is not necessarily something that I would want to be tested on in a court of law. My understanding of the law is that one is required to obey the signs that one sees before one's eyes so, if the signals are showing a green light for traffic but a red light for pedestrians, then that is the indication that a pedestrian should wait for the cycle to come again, once the traffic light has been activated to enable a pedestrian to cross when the signal changes.

The Hon. I. GILFILLAN: I am not sure whether the Minister could find this out in due course, but where there is a green light in conjunction with a right turn arrow or another turn arrow, there is quite a deliberate red light for pedestrians because it is quite unsafe to walk across whilst vehicular traffic is likely to be turning. The Hon. Mr Dunn has raised a quite significant point, in that if there is a purely four way intersection with no turn arrows, and the pedestrian light is only activated on the pressure of a button, as a matter of interest to the Chamber and maybe for general discussion, should something be done about this particular nicety? If there are any such intersections where the pedestrian green light will only activate on the pressure of a button, at a simple four way intersection with no left or right green arrow turns, those situations would be confusing. I would like the Minister to answer in due course whether they do exist.

The Hon. Barbara Wiese interjecting:

The Hon. I. GILFILLAN: The Minister has asked for a little more clarification. If we imagine the simplest form of intersection, which is two roads intersecting at right angles with no turning arrows, when vehicular traffic receives a green light, the pedestrian light should quite sensibly turn green. If the pedestrian light is dependent upon someone pushing the button, and it will not turn green unless it is so activated, the dilemma referred to by the Hon. Peter Dunn could occur. It could be a perfectly safe crossing, but the pedestrian lights are not activated because the pedestrian was not there in time to coordinate the light with the traffic light, or the button was not pressed for some reason.

The Hon. Peter Dunn: Or they are too short to reach it.

The Hon. I. GILFILLAN: Yes. In those circumstances it seems an unnecessary restriction in relation to pedestrian lights. Can the Minister discover whether there are such intersections with those sorts of traffic light systems?

The Hon. BARBARA WIESE: Yes, there are; lots of them.

The Hon. I. Gilfillan: The Minister has now discovered that information without an adviser.

The Hon. BARBARA WIESE: Yes, I know that from my own observations.

The Hon. I. Gilfillan: Could I suggest that the pressure button is pointless.

The Hon. BARBARA WIESE: I disagree with the honourable member's point of view on this. I think there are good reasons for having a combination of traffic signals that relate to vehicle and pedestrian access across an intersection. The fact is that it is likely to take a pedestrian longer to cross the road than it would take a vehicle to cross the road. I understand that the reason for having different timing for these negotiations by vehicles and pedestrians is to protect pedestrians. If a pedestrian comes upon an intersection well after the green light has been activated for traffic to cross the road, a pedestrian is not always aware of how much time there is left to negotiate that crossing.

The Hon. I. Gilfillan: The flashing red light comes on to warn the pedestrian: 'Don't leave the kerb' and when it changes to a steady green the person can take off.

The Hon. BARBARA WIESE: That is true in some cases; I am not sure that it is true in all cases. The point I am making is nevertheless an appropriate point—that if that is not the case, if there is not a flashing 'Don't walk' sign or a caution sign, it is reasonable that a pedestrian in the interests of safety should wait until the cycle has come around again in order to ensure that it will be safe to cross the road and that there will be adequate time to cross the road. As for the example of a person being unable to activate the pedestrian crossing lights because they are too short to reach the button, I can only assume that that would apply to very small children who probably ought not to be crossing the road alone in any case. One would hope that they might have adult company. In any case, it is rather difficult to design pedestrian activated systems that will cater for persons of every height. The Australian standard, which is the standard adopted by the Department of Road Transport in the construction of traffic lights, is considered to be the most appropriate compromise position, if you like, and is based on the height of the average person.

The Hon. PETER DUNN: I do not want to prolong this; perhaps the Minister could come back with an answer. I do not want to be pedantic, but the Bill is not terribly clear. It provides that a driver must comply with any indication by a traffic signal and that a pedestrian must do the same, that is, they must comply with any indication by a traffic signal. It does not say a pedestrian signal but a traffic signal. What takes precedence, because some crossroads do not have a pedestrian signal? I am assuming that you take note of the green traffic signal. The other day I came upon an intersection where the green signal did not work on the pedestrian crossing. I just took the traffic signal. I assume that that is normal because at the same time on the same light the red traffic signal was not working. There are a number of combinations. My question initially was which takes

precedence, the pedestrian signal or the traffic signal, and whether I would get into trouble if I went over on the green light in the absence of a pedestrian signal.

The Hon. BARBARA WIESE: I indicated my understanding of the situation the first time around, but I also suggested that this may be something that was inaccurate. I shall check this out with the people who have framed the law. If my understanding of the situation is incorrect I will ensure that the Council is provided with accurate information at a later date.

The Hon. I. GILFILLAN: I recommend to the Minister that perhaps the department engage the Hon. Peter Dunn as a sort of roving intersection assessor and maybe put him on a bike from time to time so that he can test the reaction. It is bikes partly that prompt me to make the concluding observation that I think it was ill-advised of me to indicate that those hand press signals would be useless in certain circumstances, because obviously for cyclists—and we have discussed this problem before in this place—that is the only way that maybe in the latter hours of the day they can actually activate the lights. So from that point of view they do have a very specific purpose.

The Hon. DIANA LAIDLAW: As shadow Minister and colleague of the Hon. Mr Dunn, I probably have failed my colleague by not providing him with a copy of the Act at the time he first raised these questions with me. There are specific provisions in the Act in relation to the duties and responsibilities of pedestrians at traffic signals. This evening I will provide him with a copy of that section of the Act.

Clause passed.

Remaining clauses (7 to 10) and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (FISHERIES) BILL

Adjourned debate on second reading.

(Continued from 9 March. Page 1488.)

The Hon. PETER DUNN: I support the Bill, although I will indicate some changes I wish to make to the latter part of it. This Bill changes the activities of a very old industry in this State. Fishing was one of the first activities that took place in this State. If we look at our history we will find that there were fishermen, whalers or people catching seals and the like on Kangaroo Island long before we settled the State proper. So, we are dealing with something that has been a tradition in this State for a very long time. The Fisheries Act has never had an easy path. It has always caused a few problems. Fishing is a bit like hunting, because you are catching a wild animal.

The long title of the Act is to change and will become one of the longest titles in our statutes. We are now adding marine mammals to that title and that includes seals, sea lions, dolphins and whales. That also has implications, and I think correctly so, that we are going to try to protect those marine mammals, because over the years the world has been denuded of whales and there has been a substantial attack on seals for their pelts and their blubber. Fortunately they are now beginning to reassert themselves in our waters and they are a great tourist attraction which benefits this State. So, I am all for having them included in the title of this Bill so that they can gain some protection from whatever regulation or Acts may be passed by this Parliament. There are also some small changes to the joint authority between the State and the Federal Parliaments, and those have more to do with the management of the fish stock than anything else. There are also some changes to the Director and the Director of Fisheries' Management Committee. Those are just in-house changes and they do not make a great deal of difference other than for better management of the fishery.

Clause 16 which deals with the abalone fishery is one that will always be a problem, and the reason is that abalone is a very high priced product. At the moment abalone is bringing in the order of $100 per kilo. I might be out by $10 or so but it is in that order. Abalone is a very high priced product and very difficult to recover. Because of its high price it will always be poached and people will want to poach it, and because of its high price and because you do not need a very great quantity of it, it is very easy to gather abalone and take it interstate or somewhere and sell it on the black market. Therefore, it will be very difficult to control the industry as such, and it has had a prolonged history of poaching. Unfortunately, it has had a history where that poaching has been attached to parts of the drug industry and I guess that is because of the high return. I know that there has been abalone taken from Eyre Peninsula to markets in Sydney and Brisbane and it only needs a station wagon or ute with some in the back of it to make a considerable sum of money.

However, it is a well managed industry. The people in the industry who are professionals are managing the industry very well. There does not appear to be any consequent large depletion in the stock, and I shall shortly table a chart which shows just that. If you want to buy a fishing licence now for abalone the cost is over $1 million. So it is seen to be a very profitable industry to the people who are in it. By the same token it is only a young man's industry and it is a very high risk industry and I suggest that the people who dive for abalone have shorter lives than the average person in this State.

The inclusion of the marine mammals in this Bill is to stop people killing them, and it is quite well known that they have been used for cray bait or for selling the flesh and as a result we have increased the fines on those. They have now become a division 3 fine and division 5 imprisonment, which is a considerable increase—something like $30 000 for the fine and a couple of years in gaol—and I think that is quite suitable. I do not think there is any need for any person to kill a beautiful wild animal for fee or reward.

One of the other things provided for, which I guess is correct—and I note that in the Council we have a Bill dealing with foreign ownership—is that the Bill will limit foreign ownership in the fishing industry in all parts of it, as I understand, to 15 per cent or less. In fact, the Minister has a fairly draconian power in that if he finds that someone from a foreign country owns more than 15 per cent of a licence he can in fact cancel that licence. He can also prevent the sale of a portion greater than 15 per cent to foreigners. I do not disagree with that. I think

it is an industry that needs to be attached to the coastline. It is very easy for other countries to come in with big mother ships and big fishing vessels to fish in our waters.

We have seen a fair amount of that in the tuna industry where fish are caught and processed on these boats and then taken away to other countries. We need to know fish stock quantities. It is very easy to cheat under those conditions. I think it is important that the industry stay within Australia. I might add that I am not terribly worried about the foreign ownership of land because the great thing about that is you cannot cart it away; you cannot take it with you. If you look at the history of Australia we have had the English in the northern parts of Australia and the Americans into the Esperance area but they have never taken the country with them. However, with fishing stock they can cart that away. So I agree with the limitation of 15 per cent on this.

Another part of the Bill deals with fish processing and it is restricting the sale and processing of prescribed fish. There are some fish that should not be dealt with and this puts a restriction on the processing of those either desirable or undesirable fish, and it may help in the control and restocking of some of those fish. The Bill also provides that corporate bodies may own boats. That mainly applies to the abalone industry. In the past it was seen to be an owner-operator operation and a corporate body could not own a boat with an abalone licence. That will change under this legislation. I do not disagree with that. A lot of small business today operates for convenience sake, because it allows their families to become involved as they get older and to gradually buy shares in the operation. I think if we allow that for farming and other small business operations there is no reason why the fishing industry cannot avail itself of the same facility.

When the owner-operator was the only person who could fish with that licence we saw a certain amount of cheating with people being brought in who were not licensed to fish, and that was because the fisherman who owned the licence might have been ill or there might have been some other reason that he could not fish, so he illegally brought somebody in. I do not disagree with what is happening under this change to the Act. This Bill also makes the masters of the boats culpable and liable, and the owner, if he is on the boat and is not registered to sail that boat and he has a master, they are equally liable for anything that they may do that threatens the Act.

I want to spend a little more time on Part III of the Act which deals with Gulf St Vincent, and it is a contentious issue. There is a long history to the prawn fishing in Gulf St Vincent. It started in the late 1960s, and until that time prawns were not found in this State, I suppose. But from that time they were continuously fished in Gulf St Vincent and in the Spencer Gulf and, in fact, we over-fished the industry to the extent that it became non-viable.

As I understand it, the fisheries were fishing about 400 tonnes of prawns when the gulf was producing at its best. That reduced to about 169 tonnes in about 1990; in fact, they were getting 260 tonnes in 1987. So, in three years, it reduced from 260 to 169 tonnes. No industry can survive when it has reductions of that order in its income. So, recovery really is the crux of the industry. It was at about that time that Professor Copes from North America was brought in. He was the so-called expert on the recovery of the prawn industry. He came in and took evidence from all sections of the industry. He said that we should aim to get about 400 tonnes out of the Gulf St Vincent prawn fishery in three to seven years' time. We are two years down the track from that, and my information is that there is no indicated recovery in the fish stock. Two previous surveys were carried out in June and November last year and, although I do not have the figures in front of me, I understand that they are indicating little or no recruitment in the industry. If that is the case, Gulf St Vincent has a very rocky road ahead of it if it wants again to be a viable industry.

The interesting thing is that there will be another survey commencing on 14 April next to determine the fish stock. In April we ought to try to determine whether the fish stock will recover, because it is my impression that the other fish in the gulf are recovering. There are indications that more blue swimmer crabs, snapper, whiting, garfish and snook are being caught in the gulf. It is only anecdotal evidence: I do not have any specific figures relating to recent months. However, I might add that the same is occurring in Spencer Gulf, and I understand the fishermen there are saying that the crabs have never been better; the snapper, which are too small to catch and keep in your boat, are driving the whiting fishermen mad. So, maybe it is a seasonal factor, and we need more testing of the Gulf St Vincent to determine whether there will be good recruitment of the prawns in the gulf and whether there will be a continued recruitment of those fish.

When the industry collapsed in about 1990, a select committee was set up, and it determined that the fleet ought to be reduced by about five to six boats. The cost to buy out each boat was roughly determined, and the rest of the industry decided to buy them out under the guidance of the Government. That cost was about $2.96 million. It has now risen to about $3.4 million. The 10 remaining fishermen—I think there were 11 originally, but another one has gone—were unable to meet their requirements, because the fish stock and the catch were so low that they were unable to pay back some of that debt. That debt has now blown out to about $3.4 million.

At that point, the Copes report, which was used in the select committee, said that there should be between five and eight boats fishing in the Gulf St Vincent. That would give them 50 tonnes per boat, and that is a very good quantity of prawns for a boat. Even in Spencer Gulf, where longer distances and deeper waters are involved and the costs of recovering the fish are higher, they are recovering approximately 40 tonnes of fish per boat per year. That is dividing the number of boats by the tonnage caught, and they seem to find that a viable amount of fish. So, something above that would certainly make the Gulf St Vincent fishing industry viable.

There is a snag in all of this. This Act changes what those fishermen have to pay back. As it now stands, that debt of $3.4 million is against the industry in total. But this Act puts that debt collectively on each individual fisherman, so it is $3.4 million divided by the 10 fishermen, which means that before they start they have a debt of $340 000 each. I do not think that is fair.

The Bill goes on to stay that that sum could be recovered from those fishermen if they gave up their licence or, if the fisherman failed to pay his licence fee within 60 days, he must surrender his licence and therefore pay that amount. That amount can be pursued by the Government and may be recovered from the sale of the boat or any other assets that the fisherman may have. That is fairly unreasonable in the light of the fact that those fisherman have not been fishing for two years—not because they did not want to fish but because the Government in its wisdom said that they should not.

Maybe if there had been closer coordination between the fisherman and the Government, the fishermen may voluntarily have come out of the fishing industry, but it was the Government which took them out of the industry and said, `Until the fish stocks recover, you should not fish in there.' Therefore, under the direction of Government, the fishermen have had to withdraw.

To then say that they will incur a debt of $3.4 million, when it appears—and I have said this in the past—that the fishing stocks are not recovering will mean that those fishermen are heading for a very gloomy future. There is no industry to pay off the debt at the moment because they are just not fishing. Under the regulations, the fishing cannot start until November of this year. So, I deem that there is no necessity for this part of the Act to be proclaimed.

SAFIC agrees with that, and it maintains that there is no reason at all to want to recover the moneys at this stage or even incur the debt on the fishermen until they start fishing. I think that is only fair and reasonable. It appears that the Government, because it is strapped for cash, wants to pursue this debt. Admittedly, it lent the money from SAFA to the fishermen. From the Bill it is clear that the debt will incur interest of 15.2 per cent—and that is at the point where the debt was incurred, some three years ago. That defies logic.

Today, I can go out and borrow money commercially for 10.1 per cent or less. If I take it out in bills, I can get it for 8.5 or 8.7 per cent. So, the commercial fishermen would be wise to go out and borrow the money at 8.1 per cent and pay off SAFA, which put them out of the industry. I know that is what the Government would like to do, but it is unjust, ill-conceived and incorrect to do that.

The fact that they have to pay 15.2 per cent on that $3.4 million does not sound a terribly good commercial operation. However, I am not surprised at that. As I have said many times in this place, nobody over there has ever borrowed money of any consequence and gone into business and had to pay it back. Therefore, I doubt whether they would understand it. That has been proved with the State Bank. They did not even know the questions to ask. We have had questions in this Parliament in the past few days. When they saw money heading off overseas with first-class air fares and living in the lap of luxury, the first question that should have been asked of a small bank like the State Bank was, `Why do you want to go over there? You are in the big league when you start to compete with them.' I think that reflects what is in this Bill. The Government do not understand what they are doing when they put 15 per cent interest on fishermen when today's interest rate is 10.1 per cent.

There is another factor. There has been a case in the Federal Court which puts another complexion on this matter. There may be an appeal by the Australian Fishing Council against the decision in the Federal Court. If so, there may be compensation. All this is subjective at the moment and we do not know exactly what will happen. However, until it is cleared up we should not be proceeding with this part of the Bill. It should be quite clear what happens to the Gulf of Carpenteria prawn fishery where there is a proposed reduction in the number of fishers there. Until that is cleared up—and it should not take that long—we ought to be waiting and taking this section out of the Bill. I shall pursue that matter in Committee.

We must wait until those three or four things are triggered off. I am referring particularly to the April survey when we see the recruitment of the fish. We must also wait until we can determine those interest rates more clearly and until we can find out what is happening about compensation for the Gulf of Carpenteria fishermen, or whether they get any compensation at all. In fact, this Bill says that there will be no compensation payable under the Act. I think that is because they have seen what has happened in the Gulf of Carpenteria.

The Bill also has other draconian effects. For example, if a fisherman surrenders his licence or does not pay his licence fee in 60 days it is automatically surrendered. Therefore, he has to pay the whole amount or his proportion of the $3.4 million. If that is divided by 10, that is $340 000 that those fishermen have to find there and then. The Minister really has absolute control over those fishermen.

I cannot support that section of the Bill which repeals the old Act and I shall vote against it. The Liberal Party believes that the fishermen have a right until it is determined what fish are there or whether they have an industry to fish at all. We should not knock them out and put a debt on them, causing them to have an even greater debt than they have now. As they have not fished for two years, what sort of money have these people got? They would not have any at all. That reflects the thinking of the Government of the day.

There are other components to this legislation which have been dealt with in some detail in another place, particularly the rock lobster industry in the South-East. I agree with what the Bill does in relation to those fishermen. That has been cleared up in another place and there is no point in my going into detail about it.

I believe that the Gulf St Vincent fishery is a difficult industry to correct, and it will be for the future. However, Spencer Gulf, by clever management, has had a dip in the amount of fish that were caught. It started with a high quantity and dipped and now it is going up again because of modern techniques and good management. I have a set of figures dealing with the prawn fishery in the Gulf St Vincent. They show that in 1985-86 they were catching 230 tonnes, it got as high as 248 tonnes in 1988-89, and it dropped dramatically to 134 tonnes in 1990-91. In Spencer Gulf they were catching 1 657 tonnes in 1984-85 and were up to 1 767 tonnes in 1990-91. I understand they will be catching about 1 9000 tonnes this year. By comparison with Gulf St Vincent, that has gone up. The Gulf St Vincent prawn catch has gone down.

This table also has on it the rock lobster catch. It indicates that that has gradually risen. I know that the

Minister wants to restrict it because he thinks that it is being over fished. The abalone industry has decreased slightly, although that tends to go up and down from year to year. I seek leave to have that table of a purely statistical nature incorporated in *Hansard.*

Leave granted.

PRODUCTION OF PRAWNS, ROCK LOBSTER AND ABALONE—SOUTH AUSTRALIA, 1984-91

	1984/85		1985/86		1986/87		1987/88		1988/89		1989/90		1990/91	
	Catch '000kg Weight	Value ('000)	Catch '000kg Weight	Value ('000)	Catch '000kg Weight	Value ('000)	Catch '000kg Weight	Value ('000)	Catch '000kg Weight	Value ('000)	Catch '000kg Weight	Value ('000)	Catch '000kg Weight	Value ('000)
Prawn—Gulf St Vincent	215	1 982	232	2 479	216	2 640	211	2 999	248	3 202	169	2 185	134	1 725
Prawn—Spencer Gulf	1 657	13 099	1 543	14 169	1 048	11 938	1 532	16 399	1 629	18 587	1 671	19 060	1 767	17 879
Rock Lobster Whole State	2 216	23 549	2 206	24 298	2 208	32 049	2 468	37 978	2 275	26 891	2 525	36 488	2 666	44 931
Abalone Whole State	1 007	4 399	877	7 507	911	10 953	1 037	13 219	973	14 542	959	16 693	863	14 008

The Hon. PETER DUNN: The rest of the Bill is relatively clear. I need not say much more, other than that if part 3 is knocked out it can be reintroduced in August or at some later date when the industry indicates that it is becoming viable again. I support the Bill on that basis.

The Hon. M.J. ELLIOTT: I support the Bill. Representatives of the fishing industry have made it quite plain that they have no difficulties with the Bill, with one exception, and that is part 3—the amendment of Fisheries (Gulf St Vincent Prawn Fishery Rationalisation) Act.

It is worth looking back to March 1987 when the principal Act was first being debated in this Parliament. We were told at that stage that the fishing effort was too great. In particular, the boats were getting out on about 60 days in the year. The boats were spending most of their time tied up in port, and it was suggested that the number of boats fishing the Gulf St Vincent should be reduced to get maximum return for effort.

There was also some concern that the catch had dropped. In the year when we were debating the principal Act, they had caught 260 tonnes, but that was well below the peak catch of about 400 tonnes. When I was speaking to fishermen at that stage, they expressed concern that the fishery was in dramatic decline and they were not too confident that it would recover.

Following the first Copes report the Government decided that two boats which were operating in Investigator Strait, at the bottom end of the gulf, would be removed compulsorily from the fishery. They wanted to remove four more boats voluntarily from the Gulf of St Vincent fishery. As things eventuated three boats volunteered to come out of the fishery and they were paid compensation for doing so. Of those three boats that left the fishery voluntarily one was paid $600 000 and two $730 000. My recollection is that there was also the cost of the boats over and above that as an additional cost. The two fishermen who were compulsorily removed from the fishery each received $450 000.

The Government argued at the time that since the benefit of the removal of these boats from the fishery would go to those that remained in the fishery it was fair that they pick up the cost. So we had a fund arrangement set up whereby the cost of removal of a boat—at that time five boats and subsequently another boat came out—was fixed at $450 000. The remaining fishermen as the beneficiaries, so the Government said and under the principal Act, over a 10 year period would pay for that removal.

I recall saying at the time, 'There is a chance too that the fishery will not recover in the way the Department of Fisheries has suggested.' I certainly had been given warnings that the fishery may not recover at that time and as a consequence I had negotiated with the Minister to have the terms of payment changed so that the payments would be not just an equal payment each year for the 10 years but such that the payments would be linked to catch to some extent. So that in the early stages while the recovery was occurring, as expected by the Government, the payments would be relatively low but as the fishery recovered and as the catch improved the payments would increase. As things turned out, and I expressed a fear that it might happen, the fishery indeed did not recover. The Hon. Mr Dunn has already put on the record what indeed happened to the fishery. My recollection was that the catch declined to as much as 139 tonnes.

At that point we saw Copes return and we saw the fishery closed for two years, the idea being that during that closure the fishery would finally recover because all the fishing pressure would be removed. I have seen the results of trial runs and sampling runs that have been done in the Gulf of St Vincent during these two years. I have two concerns having seen those figures: one, that the sampling was rather inadequate but inadequate insofar as they did not sample across the full gulf and so you do not know whether or not the prawns were in different parts of the gulf at different times and they might have missed the principal schools. But where you

could correlate samples taken from one year to the next the indication was that indeed the fishery still is not recovering.

As I said, the sampling was rather inadequate and not doing adequate sampling during that two year period is something the Government should be condemned for. How can you make sensible decisions about opening up the fishery again if you do not have a year by year comparison as to what is happening to the stocks? As the Hon. Mr Dunn said there is a more comprehensive survey about to be done in a month's time but this comprehensive survey will not be able to be easily compared with like surveys because there have been so few of those done. So, we will have an incomplete picture.

I find it incomprehensible that we should be debating these particular clauses in Part 3 of the Bill, clauses which again, like the principal Bill, talk about the way in which repayments will occur, when we have no real evidence that fishing is about to resume; no evidence whatsoever. There is a very real likelihood that the decline in the fishery will continue, and a very real possibility if that occurs that the fishermen may never be able to repay the principal let alone the interest which is accruing on it. I do note that the Government has at least written off some of that interest but then I believe in the circumstances that is only reasonable.

As I said earlier, the whole assumption was that the fishery would recover; that the remaining fishermen would catch a lot of prawns; that they would make a lot of money; that as they would be the beneficiary of removing the other boats and that therefore they would pay for the removal. That assumption has not looked too good in the six years since we debated the principal Act. How we can now continue with that assumption, which is exactly what this particular set of amendments is doing, is totally beyond comprehension. As the Hon. Mr Dunn said, we should wait not only for further sampling but, assuming the sampling even looks positive, we should be waiting for the fishery to reopen, which at this stage is planned to be November, and see what the fishery is actually like. Will the sustained catch out of the fishery ever be able to meet the bills that are here, the bills that the fishermen will eventually be facing? I rather suspect that we may at some future time, and it may be either late this year or around this time next year, have to consider a quite different option from the one we are currently considering.

It is my belief that what we may need to do is to simply write off the whole debt and then recover as much as we can by charging high licence fees. Fees which are directly linked to catch. Possibly the question of transferability might be brought in as well but that is a further matter. If the fishery does not recover we cannot expect the fishermen to be paying back the full debt. They simply will not be in a financial position to do so.

If we link payments directly to catch, if we link licence fees directly to catch, then if the fishery does eventually recover we can make a high recovery rate that way. I think that is the model that we eventually will have to follow. It is totally inappropriate to be making a decision now in the absence of the information that we need.

At this stage I would like to briefly speculate as to why the fishery has collapsed. It could be simply a seasonal thing, a fluctuation, not just from year to year but from decade to decade. The fishery is a relatively young one, so we do not have records over a long period of time to see what the nature of the population in the gulf is like. It might just be possible that the fishery began at a time when the conditions were right and the prawn population was higher than its normal population. On the other hand, the population may have declined due to mismanagement by the fishery and that was certainly an allegation that was being made to me back in 1987. However, when you realise that the fishing effort was reduced dramatically following the passage of the principal Act and in fact the fishery was closed for two years and seems not to have recovered, the mismanagement theory does not seem to stack up very well.

That leaves a third possibility. That is that something more serious is happening in the gulf or to some part of the life cycle of prawns. An important part of the life cycle of the prawn is when the larvae settle into mangroves. Over the past two years, the Government has been measuring the rates of settlement, and I am told that the rates of settlement in mangrove areas have been relatively high. From further discussion, I have been told that the highest rates of settlement have occurred in the Port Wakefield area. I asked about the areas around Barker Inlet, St Kilda, where there are extensive areas of mangroves, and I was told that there was not a high settlement rate but that it could not be tested very well because of the high levels of sea lettuce *(ulva lactuca)*.

Those high levels of sea lettuce are there because of one reason: high nutrient levels coming out of the sewage works at Bolivar and Port Adelaide. That is one major ecological consequence, the presence of sea lettuce. It does interfere with the testing to see whether or not there are high settlement rates in the area. If one part of the ecology in that area is significantly upset, it is reasonable to assume that other parts may be upset as well. It is very likely that the mangroves on the eastern side are being significantly upset, and that that is having an impact upon the population of prawns in the gulf itself, because it is interrupting a part of their life cycle over a significant area. All I can do is put that up as a theory.

As I said, the collapse in the populations can be from only three things: it is either part of the natural cycle, due to mismanagement or high nutrient levels from the sewage works. I must say that my suspicion is moving rapidly towards the latter. That is a real worry. Also, if that is the case, why are the fishermen being asked to bear the cost? They have done nothing wrong. They have not been responsible for mismanagement. They have not been responsible for the pollution or the natural cycles, but what we are doing with this collapse in the fishery is asking them to pick up all the bills. To me, that is extremely unjust and will not have my support.

Quite plainly, therefore, the Democrats will not be supporting the amendments in relation to the Gulf St Vincent prawn fishery. However, we will support the rest. Perhaps late this year or early next year we will be in a position to have a more comprehensive analysis of what needs to be done with the significant debt that is

there, and ultimately determine where the responsibility of that debt should lie. With the reservations expressed, the Democrats support the Bill.

Bill read a second time.

In Committee.

Clauses 1 to 24 passed.

Clause 25—'Amendment of preamble.'

The Hon. PETER DUNN: This is one of the principal clauses in the Bill. It amends the preamble of the principal Act. We would like to see that stay as it is; likewise sections 4 and 8 of Part 3 should remain in the Act and not be repealed by clauses 26 and 27. The Act should be left as it is so the present fishermen have some protection and are not put under the impediments involved in passing the subsequent clauses.

The Hon. M.J. ELLIOTT: I said during the second reading debate that I believed that Part 3 of the Bill, which is made up of clauses 25, 26 and 27, should not be dealt with at this stage. I will be opposing each of those three clauses and doing so on the basis that, until we know the state of the fishery, we are really not in a position to make decisions about how debts in relation to that fishery should be met. It is quite likely that the fishermen will never be in a position to meet those debts, debts for which they were not originally responsible other than being made responsible by the principal Act. We really have them in a position where they can lose everything that they own. That is unacceptable. These clauses must be opposed at this time.

The Hon. BARBARA WIESE: The Government obviously does not agree with the point of view that has been put by members, otherwise the Bill would not have been framed in this way. I point out to members, without stretching this debate in any way at all (because I can count and we do not have the numbers), that the Bill itself has been the subject of significant consideration and debate involving the relevant parties. The Government believes that Part 3 of the Bill is necessary as part of the package of measures that make up this piece of legislation. Therefore, we support the retention of it and would urge members to reconsider their position.

Clause negatived.

Clauses 26 and 27 negatived.

Remaining clauses (28 and 29) passed.

Title amended and passed.

Bill read a third time and passed.

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

Adjourned debate on second reading.

(Continued from 9 March. Page 1489.)

The Hon. DIANA LAIDLAW: The Liberal Party supports this Bill. Essentially it is a simple Bill although it has a long and tragic history. The Bill amends section 58a of the Act which provides for circumstances where an incorporated hospital or health centre fails persistently to properly discharge its functions and expands the grounds for removal of the board in such circumstances. It also extends for a period of eight months—essentially from four months to 12 months—the time in which an administrator can be appointed upon the dismissal of a board. With respect to the grounds on which a board can be dismissed, the Government now proposes that this can occur where the board:

> (b) has, in the opinion of the Governor, been guilty of serious financial mismanagement;
>
> (c) has, in the opinion of the Governor, persistently failed properly to perform the functions for which it was established; or
>
> (d) seeks its own dissolution on the basis that a majority of the board are of the opinion that the board is unable to perform properly the functions for which it was established.

The Liberal Party believes that the expansion of these grounds for dismissal are warranted. We also support the extension to 12 months of the period during which an administrator can be appointed. There is currently an administrator overseeing the administration of the South Australian Mental Health Service in South Australia. Mr George Beltchev was appointed I think in early December last year. At that time the Act provided a maximum period of appointment of four months. That period will run out within a couple of weeks and therefore it is important, because Mr Beltchev's work has not been completed, that we extend the period for his appointment, but allow for the appointment of further administrators if that is required in the future.

I have taken considerable interest in the matter of the care of the mentally ill and psychiatrically disturbed for some time, in part because friends of mine have children who suffer such disabilities. I also took an intense interest in this subject when I held the shadow portfolio of community welfare between 1986 and 1989. Particularly during that latter period, I spent a lot of time focusing on the needs of carets in our community, who generally are women. Carers are, in my view, the most underrated people in the world. I have the most extraordinary admiration for the people whom I know, of all ages, who care for not only the mentally ill and psychiatrically disturbed but also for those who are physically disabled.

It is in the area of the mentally ill and psychiatrically disturbed that the problems are even more traumatic for the immediate family, particularly for the prime care giver. Also during the period I was shadow Minister of Community Welfare I spent a lot of time getting to understand the work of the Mental Health Association, in particular the Schizophrenia Fellowship. I remain a member of both associations, essentially because of my respect for the work that the carers undertake—there is a tremendous feeling of care and respect for those who suffer in such ways—and because the organisations themselves are so under-resourced.

My other interest in this matter stems from the fact that my family is so fortunate not to have any one member who is either mentally ill or psychiatrically disturbed, and it is my view that our good fortune is a reason for me to give my emotional and financial support to these organisations. I was again reminded during the recent Federal election of the impact of the current Government's policy to devolve many people with intellectual and psychiatric illnesses or disabilities to the community from institutional care.

When doorknocking in many areas, particularly in the south-west corner of Adelaide, the number of people

with such illnesses who are living behind closed doors and who are very lonely people within our community is obvious. They are fortunate if they receive a visit from a care giver. Essentially they do not receive visits from family members and they have few friends and distractions. When one is doorknocking and a door is opened, it is quite apparent if the house has not been cleaned and many have not been aired for some time.

I have considerable anxiety about this policy of so-called community care, when the Government is not prepared to ensure that resources are available to provide such community care. I recall many years ago attending the opening of the Mental Health Week and learning that the theme of the association is `Dare to Care' and I do not think there is possibly any more powerful an appeal in our community at this time than exhorting people to dare to care for others who are less fortunate than ourselves, and particularly those who suffer mental illnesses and psychiatric disturbances. The dare to care theme is one that I have used on many occasions when addressing community groups over recent years and it is an appeal I make many times not only within my Party but elsewhere, because I suspect in this time of financial hardship in our community people tend to become more intolerant of others and particularly those who need care in our community; those who are vulnerable in our community. So, I hope that after the decade of greed in the 1980s this slogan for Mental Health Week, `Dare to Care', will be a slogan which is used by many people throughout the community throughout any given year and, hopefully, throughout the decade of the 1990s and beyond.

I mentioned a moment ago one experience during the Federal election when I was door-knocking. I had a further experience when a woman asked me to forward her a postal vote application. She was living at home with her 21-year-old son who was mentally ill and because of that illness and because of boredom and other matters he did not undertake much physical exercise and had become a very heavy youth. This woman found that she went out very rarely indeed. She could not get a carer to help on the day of polling and she needed a postal vote application. She finds it very difficult to leave her son with anyone and she certainly finds it very difficult to take him to places that are strange and where there are a range of people. The polling booth would have been such a place. On a Saturday she could not get the help she needed for the half-hour or hour when she would have liked some respite to get to the polling booth. It is those sorts of things which are very sobering and reinforce my earlier contention about the extraordinary and under-rated role of carers in our community.

While this policy of community care and the devolution of care from institutions to the community is noble in principle, I have grave misgivings that such a program should be pursued with the vigour with which it has been pursued in this State, unless there are adequate resources to see that it is undertaken with enormous care and diligence. I do not believe that those in Government who have been pushing this community care initiative have always had the needs of those in need of care at heart, and I suspect that money has been the principal motivating factor for the push for community care programs in this State. It has long been my view that anybody who believes that community care will actually save the Government or the community money is in cloud cuckoo land themselves. I believe that there will be little saved and in fact it may well cost more in the long run that institutional care. The costs should not be the sole motivating factor (whether those costs be lower or higher in the long run) and we should be aiming to provide the support and care necessary to meet the individual needs of the people in need.

I was not surprised at the tragic events which occurred in November last year when a doctor at Hillcrest was killed by a patient or person for whose care she was responsible, because the pressures on Hillcrest in particular, but also Glenside and others in the community care field have been enormous and have been growing. They will continue to grow while there are financial, economic and employment problems in our community. The fact that the Government has not been listening for some considerable years to the pleas of the voluntary organisations, the members of Parliament and care-givers generally, but also the fact that the Government has not been listening to a number of reports commissioned on this subject, is one of the reasons why we saw this tragedy occur last November.

So, the Opposition does support this Bill but we would plead to the Government, notwithstanding the frightful economic circumstances that plague this State, that great care is taken in future in devolving further services into the community unless the Government can guarantee that it can also provide the level of care that is at least equal to what people are receiving at Hillcrest at present, and it may be that we should be aiming for even higher levels of care.

Finally, I say that the pressure on halfway houses and women's shelters and the like are tremendous at this time as the Government devolves care from institutions to the community, and most of these halfway houses, women's shelters and the like have not been established and are not funded to cope with many of the people and their problems that they are now encountering on a daily and weekly basis which is putting those facilities and the people associated with them under even greater pressure than they would normally experience at the time of a recession. So, we do support this Bill. We regret that it is necessary because we contend most strongly that if the Government had been listening over the last couple of years to the pleas from officers in this field—from nurses, doctors and other care-givers—I suspect the tragic events of last November would not have occurred in the first place and we would not now need to address this Bill.

The Hon. R.J. RITSON: I support the Bill and I want to make a comment that it is an absolute tragedy that it becomes necessary to enact such legislation. The tragedy is that the functions of a larger teaching hospital have been destroyed, functions which are not going to be replaced by multiple community-based units and functions which are going to damage almost irreparably an important discipline in the caring for such people. This has been done for greed and financial gain by a cash-strapped Government which has looked at potential broadacres land and subdivision to assist it to get out of

its trouble, and has dealt with the problem of how to do this with least harm to the system by saying, 'Yes, Sir Humphrey' and Sir Humphrey has said, 'Oh, good decision, Minister.'

People who do not know a bee from a bull's foot about what they are really doing clinically have been put in charge of this devolution, and this has major clinical implications. A place such as Hillcrest may be a rambling old hospital and it may be possible to look at the back wards and the accommodation and say, 'We will re-duplicate all this in smaller community-based hospitals.' Some agenda to get the land! But some things cannot be re-duplicated in small community-based hospitals; I am talking about teaching and research functions, functions which require a large enough unit to give students a broad range of teaching experience, research broad statistical data within the same institution, to give the cross-fertilisation between minds, and academic communities that are large enough to bring guest lecturers from the United States.

All that dies with the devolution of Hillcrest. What you get is a number of under-funded mental health and social workers operating from a centre such as the Noarlunga small bed hospital that remains unutilised through lack of other medical staff in other disciplines. I know what will happen to a place such as Noarlunga. Units such as Flinders University, which is heavily crammed with emergency treatment and long waiting lists, will, if Noarlunga is set up as a psychiatric unit, very quickly fill that with acute cases to get the bed pressure off themselves. So, lay people who have dreams of having the Noarlunga centre operating with a junior RMO, some social workers and mental health visitors will find that patients will be sent there for acute neuroleptisation, and it will receive acute patients where it is necessary to have the on-call consultant physician to check whether it is a drug-induced psychosis or a brain tumour. This will not happen, first, because, from what I have heard from attending meetings and discussions, the Sir Humphreys who are not medically qualified, who have decreed that it shall happen, do not know how to make it happen or about these potential pitfalls and, secondly, because the professions have recognised the impending disaster, the professionals have left the State.

If you talk to post-graduate students interested in training in psychiatry or to mental health units about difficulties, for instance, in James Nash House, in obtaining occupational health workers, you will find that their numbers are dwindling, and they are going interstate, where there will be better teaching and a better academic climate. That is self-perpetuating because a year ago post-graduate medical students at least—and I think this would apply to other disciplines—who wished to undergo training programs were holding their bated breath or crossing their fingers to see whether they would get the position in these training programs. Today they are coming as easy as pie and the State Government is advertising for trainees. So, that is an effect which will reverberate through the next generation.

It is the general opinion that the way in which this devolution is being handled has damaged a whole generation of medical and allied health workers in the mental health field and reduced numbers in such a way that will take a long time for them to come back. One thing that disturbs me about the situation is that the phrase 'shooting the villains' has been used as though we should shoot the villains that represent Sir Humphrey, the Public Service. I have just made some remarks that are critical of inappropriate administration. But that comes back to the Minister.

I will say something about Ministers. John Cornwall, for all his abrasiveness and all his radical political opinions, was one of the most effective Ministers, because he actually understood something of his portfolio; he would kick a few butts and he would tell people what to do. He was succeeded by a series of people who just sat and said, 'Yes, Sir Humphrey.' Now they have the bloody gall to say, 'Shoot Sir Humphrey.'

The Hon. Diana Laidlaw: And the board.

The Hon. R.J. RITSON: Yes. I do not believe for a moment that the Government can avoid responsibility. It is pretty good at avoiding responsibility, and it is doing this by using phrases such as, 'Shoot Sir Humphrey,' 'Shoot the villains.' But really we have a right to expect a Minister who takes a real technical interest in their portfolio. Of course, if a Minister has the portfolio of health and environment and they love everything that has leaves and are frightened of anything scientific because they have only an arts education, you can guess where their interests will lie and where they will say, 'Yes, Sir Humphrey, no Sir Humphrey.' At the end of the day, when the matter comes into this Chamber, it is not fair to shoot Sir Humphrey. The blame must come back to the Ministers who have not looked at the problem.

You can see where plans have been put up, with subdivision markings and buildings where the houses will go. There is a bit to be retained; it is called James Nash House and is a multi-million dollar, approximately 25 or 30 bed secure unit for mentally abnormal offenders. The houses go very close to that secure perimeter, which is perhaps 15 or 20 metres from the walls of the actual wards. I can foresee great pressures to get rid of this purpose-built James Nash House once the blocks are sold and the houses are put there. That is what the devolution is about: it is not about the uniqueness of research that comes with a larger academic community. Once those houses are there, I can see their purchasers becoming anxious about the security of the inmates or simply feeling prejudiced or stigmatised by the presence of the inmates.

With the same fervour with which someone who buys a cheap house at the end of the runway next to the airport starts to complain about the airport noise, these people, having enriched the Government or partly saved it from its financial problems by buying those houses, will complain about the existence of James Nash House.

It becomes very difficult for those patients to be re-accommodated in other psychiatric units, because they are more open, they knocked down their walls 20 years ago, and they will not want to build them again. We have the Supplementary Provisions (Mental Health) Act still in existence, and it is modelled on an 1806 English Bill which permits the Government to proclaim a prison or parts of prisons as hospitals for the purpose of caring for the mentally ill. It is not beyond the bounds of imagination that we could march forward to 1806 and simply accommodate these people by declaring B division at Yatla to be an accommodation for them.

The Hon. T.G. Roberts: The Adelaide Gaol.

The Hon. R.J. RITSON: Probably, yes; 1906 let us say. Let us shift a century—we are not going back a whole century, then, perhaps. That Act needs to be repealed. The Government has had advice to repeal it, but it has not done so. Perhaps the Government wants a bolt hole if there is too much trouble at what used to be Hillcrest.

Having had that cathartic outburst I feel a bit better. However, the Government has to do more than duck shove the blame, by necessary implication blaming the public servants. A succession of half-hearted Health Ministers, without the inquisitive figure of the Hon. Dr. Cornwall, have let it happen. This has set back the disciplines of psychiatry and allied mental health care, training, teaching and research, and that will not be recovered. I support the Bill.

The Hon. BERNICE PFITZNER: I shall make a very brief contribution. Basically, the Bill relates to mental health. As the Hon. Dr Ritson said, Hillcrest, as we all knew it, was a world-renowned hospital for mental health, staffed by world-renowned and leading psychiatrists. The main one had also applied to be the CEO, and his appointment was declined. Instead we had placed in position a non-medical person. In my opinion, this has led to a misunderstanding of many things that have gone on at Hillcrest.

I point out that I have had questions on notice since 25 November asking the Minister about the Government's policy on the reorganisation of Mental Health Services in South Australia and, in particular, the closure of Hillcrest Hospital. Those questions are:

1. Will the Minister provide to members of this House details of the funds that have been utilised to establish the headquarters of the South Australian Mental Health Services at Marden and the sources of those funds?

2. Will the Minister identify the savings that have been generated from relocation of services from Hillcrest and the sale of lands around Hillcrest and Glenside and the utilisation of such funds that have been generated?

3. Why were funds given to the Schizophrenia Fellowship to maintain services when the Chief Executive Officer of the South Australian Mental Health Services, Mr David Meldrum [at that time], said at a public meeting at St Peters on 6 August that funds would be used for new services?

4. (a) Will the Minister confirm that funds generated by the closure of Hillcrest have been given to the Intellectually Disabled Services Council?

(b) If so, how much has been allocated to the IDSC?

5. Will the Minister provide details of the new services to be established as part of the `transfer' of mental health resources to a community-based service together with details of funds allocated and the likely commencement and completion dates of such services?

6. Will the Minister specify the measures to be implemented in the event that another five psychiatrists leave employment at Hillcrest before the end of 1992 and Hillcrest loses accreditation to train trainee psychiatrists due to lack of medical staff from the commencement of 1993?

7. Will the Minister indicate the point the Mental Health Services have to reach in their collapse before the Government will admit the failure of its policy and move to provide an alternative to the current crisis?

I believe that by this Bill the Government has shown and admitted the failure of its policy. I hope that some improvement will be put in place now for our degenerated and run-down Mental Health Services. I support the Bill.

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

EDUCATION (NON-GOVERNMENT SCHOOLS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 March. Page 1584.)

The Hon. R.I. LUCAS (Leader of the Opposition): The Liberal Party supports the second reading of the Education (Non-Government Schools) Amendment Bill. This Bill has a long history in the Parliament, or at least its predecessors do. It was originally introduced back in 1991 and lay around on the table through 1992 and eventually dropped off the Notice Paper at the end of the early part of the 1992 session.

The reason for the failure for the Bill to be even debated in another place was that originally this Bill included a provision which would have sought to prevent the establishment of many new non-government schools in South Australia and the Liberal Party strenuously opposed that provision in the Bill at the time. There was considerable publicity highlighting our objection to that provision in the Bill. There was also opposition from a number of non-government schools such as Eynesbury College and Trinity College and others indicating their objection to this provision in the Bill. It was seen by some non-government schools as being a quite blatant attempt to prevent the establishment of new non-government schools on the basis that if the establishment of a new non-government school could be seen as detrimental to an existing school, whether it be Government or non-government, then it could not be registered by the Non-Government Schools Registration Board.

Eynesbury College does not take a dollar of Government money, whether it be Federal or State, and has proved to be a very successful non-government school filling a niche in the education market at the moment for year 11 and 12 students, particularly those with an academic bent. It does not have much in the way of extra sporting programs or extra curricula programs but it gets students through year 11 and 12 or through the new South Australian Certificate of Education and prepares them, of course, for life and further study afterwards. However, a school such as Eynesbury College would have been prevented from establishing under the provisions of the original Bill.

The reason the Bill was never debated was not because of the opposition of the Liberal Party but because of the opposition of the Independent Labor members in another place. The Hon. Martyn Evans and, I understand, also the Hon. Terry Groom, strenuously opposed the Bill or that provision of the Bill and told the Minister of Education at the time (Hon. Greg Crafter) that, if he chose to continue with that provision, it would be defeated by the Liberal Party and by the Independent

Labor members. It was for that reason and that reason alone that the Government decided not to proceed with the Bill. Now we see that the Hon. Mr Evans has joined the Labor Cabinet and has obviously rolled the Hon. Mr Crafter, the Hon. Ms Lenehan and others within the Cabinet, and that particular provision has been removed from the Bill.

We now have a relatively inoffensive Bill which seeks to increase a range of penalties in relation to non-government schools. Some of those penalties relate to the operation of an unregistered non-government school and increasing the penalties for that particular offence. They arise out of various cases that have been fought by the board and persons seeking to operate unregistered non-government schools. This Bill, as I said, seeks to increase penalties in relation to that offence and a range of other offences.

So now that the offensive provision has been removed through the support of the Independent Labor member and the Liberal Party's opposition, the Bill is now an inoffensive Bill and the Liberal Party supports it.

The Hon. M.J. ELLIOTT: I rise on behalf of the Democrats to support these amendments to the Education Act. When similar measures were introduced last session my office contacted prominent non-government education groups including the Commission for Catholic Schools and the Independent Schools Board and ascertained that they had no difficulty with what was being proposed. While it is the right of parents to choose for their children an educational experience which includes certain cultural or religious factors, it remains the role of Government to ensure that the standard of that education and that the institution which provides it is adequate.

This Bill confers on the Non-Government Schools Registration Board the power to include as conditions on the registration of a private school safety, health and welfare issues. Another requirement of registration is that the school has sufficient funds to enable it to comply with those conditions. Once registered, schools must display certificates to that effect in a prominent place. The penalties for operating an unregistered school have been lifted to a level which ensures they are a deterrent to groups considering that course of action. Parents can then be assured that the educational program of the school they have chosen for their children's education has been approved by the Government.

Arising out of past experience the procedures for serving notices for registration review are being amended to include written notice delivered by hand or posted to the school. There is also a penalty for obstructing a member of an inspection panel from carrying out an inspection. In all these amendments seem entirely sensible and have the Democrats' full support.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I thank members for their contributions and the support they have indicated for the Bill before us.

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

SOUTH AUSTRALIAN TOURISM COMMISSION 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.

The tourism industry in South Australia is poised to play a vital role in the growth of South Australia's economy for the remainder of this century and into the next. Tourism directly generates over $1.8 billion income and over 32,000 jobs in South Australia. With a co-operative effort from government and industry this could grow to exceed $2 billion per year by the year 2000.

The establishment of the South Australian Tourism Commission will enshrine in legislation a partnership between industry and government in the development and promotion of our state to travellers and tourists from throughout Australia and the world.

The A.D. Little Consultancy Report agreed that tourism is an export industry with significant potential to increase its contribution to our economy. It commended the Government's current strategy and argued that a radical new approach was not needed and would not be effective. However, it highlighted a number of challenges that must be dealt with through a hard-edged and co-operative effort. The establishment of the Commission is a key step in ensuring government and industry are united in taking up these challenges.

Whilst the Government has a vital role in co-ordinating and assisting tourism industry development, the private sector must ultimately drive the marketing and operation of our tourist attractions and facilities. The South Australian Tourism Commission Bill 1993 establishes an industry-driven Commission as the primary agency for the marketing of tourist attractions and facilities in this State and puts the direction, administration, and operation of the new Commission clearly in the hands of those in the industry.

The South Australian Tourism Commission will be governed by a Board of Directors, who will be prominent men and women from a business environment with experience, skills, and a vision for the industry, and a clear understanding of its importance to the South Australian economy.

The Government intends to appoint an interim Board pending passage of this Bill to allow the transition from Government department to a Commission to occur as smoothly as possible, and to ensure a fresh start for the new Commission on July 1.

The Government acknowledges the invaluable contribution from members of the Tourism Advisory Board, which was expanded last year to provide direct advice from industry during the planning stages of the Commission. Their input has directly influenced the framework of this Commission, including the legislation before the House.

Tourism South Australia will be abolished following the establishment of the Commission. The Commission will pick up the key marketing functions of Tourism South Australia, whilst other functions will be transferred to the Office of Business and Regional Development. Specifically, the planning and development of tourism infrastructure, including investment attraction, administration of the $5m Tourism Infrastructure fund, and research will remain a direct responsibility of the

Minister of Tourism, enabling the Commission to have a sharper focus on implementing a statewide marketing plan.

However, the Commission will have a key role in gathering feedback from tourists and operators and using this information to identify opportunities for the development of tourism facilities and attractions. It will contribute its expertise and knowledge to the preparation and implementation of economic development plans for tourism in this state.

One of the functions of the Commission will be to assist regional bodies engaged in tourism promotion. The State's tourism industry relies heavily on the quality of experience offered to travellers outside the Adelaide Metropolitan area, and the Commission itself will be most effective if it listens to the constructive ideas of our regional operators and tourist associations.

At the same time, industry and government must together assist regional tourist bodies to be efficient, outward looking, and aware of their role in their regional economy. Close links will be encouraged between regional economic development and regional tourism associations, with regional bodies taking responsibility to develop these relationships in accordance with local needs.

There are growing opportunities for tourism in South Australia arising from our geographic and cultural assets and cosmopolitan lifestyle. We can offer the authentic experience and quality of service increasingly demanded by today's tourists. Through the establishment of the South Australian Tourism Commission, industry and government can continue to work together in ensuring increasing numbers of visitors to this State enjoy the essential character and culture of South Australia, and contribute to the creation of more jobs and a healthy State economy.

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for the measure to be brought into operation by proclamation.

Clause 3: Object

Clause 3 states that the object of the measure is to establish a statutory corporation to assist in securing economic and social benefits for South Australia through the promotion and development of South Australia's tourist industry.

Clause 4: Interpretation

Clause 4 is the interpretation clause.

Clause 5: Establishment of Commission

Clause 5: establishes the South Australian Tourism Commission as a body corporate with perpetual succession and a common seal and the capacity to sue and be sued.

Clause 6: Board to be governing body of Commission

Clause 6 establishes a board of directors as the governing body of the Commission and provides that anything done by the board is binding on the Commission.

Clause 7: Ministerial Control

Clause 7 makes the board subject to the control of the Minister, but provides that a Ministerial direction cannot be given to suppress information or recommendations from a report by the board. It also provides that the board must enter into a yearly performance agreement with the Minister and that the performance agreement and any Ministerial direction given during the financial year must be published in the report of the board for that financial year.

Clause 8: Chief Executive Officer

Clause 8 establishes the office of the Chief Executive Officer of the Commission and provides that the Chief Executive Officer is to be appointed by the Governor on the recommendation of the Minister and the board.

Clause 9: Composition of board

Clause 9 determines the composition of the board and provides that the Governor is to appoint one director to chair the meetings of the board.

Clause 10: Conditions of membership

Clause 10 provides that with the exception of the Chief Executive Officer, directors are to be appointed for not more than three years but are eligible for reappointment. it also sets out the conditions upon which the Governor may remove a director from office and the circumstances in which the office of a director will become vacant.

Clause 11: Vacancies or defects in appointment of directors

Clause 11 provides that an act of the board is not invalid by reason of a vacancy in the board's membership or a defect in the appointment of a director.

Clause 12: Remuneration

Clause 12 provides that the remuneration of a director is determined by the Governor.

Clause 13: Proceedings

Clause 13 deals with the proceedings of the board and provides, amongst other things, for a quorum of the board, for the person presiding at a board meeting to have a casting vote, and for meetings by telephone or video conference and round-robin resolutions.

Clause 14: Disclosure of interest

Clause 14 requires directors to disclose any pecuniary or personal interest in any matter under consideration by the board. It provides that it is a defence if the defendant can prove that they were unaware of their interest in the matter. Any disclosure must be recorded in the minutes and reported to the Minister and if, in the Minister's opinion a particular interest or office is of such significance that the holding of the interest or office is not consistent with the proper discharge of the duties of a director, the Minister may direct the director either to divest himself or herself of the interest or office or to resign from the board.

Clause 15: Members' duties of honesty, care and diligence

Clause 15 provides that a director must always act honestly and exercise a reasonable degree of care and diligence. If a director is culpably negligent, the director is guilty of an offence. A director or former director must not make improper use of his or her official position or of information acquired through his or her official position to gain a personal advantage or to cause detriment to the Commission or the State.

Clause 16: Common seal and execution of documents

Clause 16 provides that the common seal of the Commission must not be affixed to a document except in pursuance of a decision of the board, and must be attested by the signatures of two directors. It also provides that the board may authorise a person to execute documents on behalf of the Commission or for two or more persons to execute documents jointly on behalf of the Commission. Under the clause, a document is duly executed if the common seal of the Commission is affixed or if the document is signed on behalf of the Commission in accordance with authority conferred under the clause.

Clause 17: Delegation

Clause 17 confers on the Commission power to delegate its functions or powers. Any such delegation may be subject to conditions and limitations and may be revoked at will. The clause also provides that a delegate may not act in any matter in which the delegate has a pecuniary or personal interest.

Clause 18: Immunity of directors

Clause 18 provides that a director incurs no civil liability for an honest act or omission but that this immunity does not extend to culpable negligence. Civil liability that would normally attach to a director attaches to the Crown.

Clause 19: Functions of Commission

Clause 19 states that the functions of the Commission are to—

- promote South Australia as a tourist destination
- identify tourism opportunities for the State
- contribute to economic development plans relating to the tourism industry
- prepare plans for tourism promotion
- encourage industry participation in and financial support for co-operative tourism marketing programmes
- assist bodies engaged in tourism promotion
- ensure appropriate tourism and travel information and booking services
- provide advice to operators for the improvement of tourism services and products
- encourage government, industry and community action to improve visitors' experiences of the State
- provide reports to the Minister on tourism
- carry out any other functions assigned by the Minister that are consistent with the objects of the measure.

The Commission must carry out its functions in consultation with the Minister and in co-operation with other Government agencies, industry, local government and community bodies and must ensure that its plans give effect to the Government's economic, social, employment and environmental objectives.

Clause 20: Powers of Commission

Clause 20 provides that the Commission has the powers necessary for the performance of its functions. This allows it to, for example, enter into contracts, employ staff, engage consultants and establish committees and assign them delegated powers.

Clause 21: Banking and investment

Clause 21 provides that the Commission may establish and operate bank accounts.

Clause 22: Budgets

Clause 22 requires the Commission to prepare budgets for the Minister and provides that the Commission must not expend money unless it has been provided for in a budget approved by the Minister.

Clause 23: Accounts and audit

Clause 23 provides that the Commission must keep proper accounting records and have annual statements of account prepared for each financial year. The Auditor-General may audit the accounts of the Commission at any time and must audit the annual statements.

Clause 24: Annual report

Clause 24 provides that on or before 30 September in each year the Commission must forward a report to the Minister containing the audited statements of account and a report on the state of tourism, the Commission's plans and their execution and the extent to which the targets set in the Commission's performance agreement for the preceding financial year have been met. Twelve sitting days after receiving a report the Minister must have the report laid before both Houses of Parliament.

Clause 25: Protection of names

Clause 25 allows the Commission to conduct its operations under a name prescribed by regulation. It gives the Commission a proprietary interest in the name "South Australian Tourism Commission" and in any other name prescribed by regulation. A person who uses a name in which the Commission has a proprietary interest is guilty of an offence.

Clause 26: Regulations

Clause 26 provides that the Governor may make regulations for the purposes of the measure.

The Hon. R.I. LUCAS secured the adjournment of the debate.

ECONOMIC DEVELOPMENT BILL

The House of Assembly intimated that it had agreed to amendments Nos 1 to 8 and No. 10 and had disagreed to amendment No. 9.

CONSTRUCTION INDUSTRY TRAINING FUND BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments.

ADJOURNMENT

At 10.37 p.m. the Council adjourned until Thursday 25 March at 11 a.m.