LEGISLATIVE COUNCIL

Tuesday 20 April 1993

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

STATUTES AMENDMENT (FISHERIES) BILL

The Hon. T.G. ROBERTS: I move:

That the sitting of the Council be not suspended during the continuation of the conference on the Bill.

Motion carried.

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions, as detailed in the schedule that I now table, be distributed and printed in *Hansard:* Nos 30, 38, 44, 46, 47 and 48.

MENTAL HEALTH

30. **The Hon. BERNICE PFITZNER:** In relation to the Government policy to reorganise mental health services in South Australia and, in particular, to the closure of Hillcrest Hospital—

1. Will the Minister provide to Members of this House details of the funds that have been utilised to establish the headquarters of the S.A. 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
- 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 S.A. Mental Health Services, Mr. David Meldrum, 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 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 date 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 at which 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?

The Hon. M.J. EVANS: The replies are as follow:

1. Establishment costs of the Central Office of the South Australian Mental Health Service (SAMHS) at Marden were in the vicinity of $15 000. These funds were found from within the SAMHS budget.

2. Twenty four long-stay patients have been transferred from Hillcrest to Glenside. The estimated savings from these transfers are in the vicinity of $100 000 per year.

Sale of lands has, at this stage, raised $2.4m. Expenditure to date is $200,000 and relates to the development of the feasibility study and planning of impatient facilities.

The savings generated have not yet been utilised, but will be directed into new services (see answer 5).

3. The former SAMHS Board made a strong commitment to redirect funds from savings generated through the Hillcrest relocation and other efficiencies, to enable non-government organisations to play a larger part in providing information, education and a wider range of support services to people with mental illness and their carers. The role of self-help groups in providing community-based support services to consumers and carers is a fundamental component in the development of additional services. This commitment remains integral to SAMHS' overall objectives.

A grant was given to the Schizophrenia Fellowship to enable that organisation to continue to provide a range of new and innovative educational, social and recreational activities at its drop-in centre for up to 20 people a day.

4. No funds generated by the closure of Hillcrest have been given to the Intellectual Disability Services Council.

5. The matter of funds to be allocated towards provision of community-based services, the nature of the services and time-frame are being examined by the Review Team, and will be addressed in the Report of the Review Team.

6. The number of medical staff at Hillcrest now enables the Hospital to operate at 100 per cent capacity. This status was restored in February 1993.

Hillcrest continues to provide teaching facilities for trainee psychiatrists.

7. The events of December 1992 have been addressed by the appointment of an Administrator and a Review Team to examine the development of community-based services and the devolution of Hillcrest Hospital.

The process of change which this Government has initiated is aimed at redirecting resources to where they are needed most. The National Mental Health Policy strongly endorses these objectives.

EDUCATION, PHYSICAL

38. **The Hon. R.I. LUCAS:**

1. In the case of a Coordinator (Physical Education) position recently advertised at Flinders Park Primary School, is it the case that the panel has in fact had three Chairpersons and two Equal Opportunity nominees, apart from the one originally nominated from the Equal Opportunity Office?

2. Is it true that originally applicants were shortlisted by a panel with the first Chairperson and then interviewed by a panel with the second Chairperson?

3. What was the reason for the replacement of the first Chairperson?

4. What was the reason for the replacement of the second Chairperson?

5. What was the reason for the refusal of the first Equal Opportunity Officer to serve on the Panel?

6. Why did the second Equal Opportunity Officer withdraw from the Panel?

7. (a) Why were all the originally shortlisted and interviewed applicants not interviewed again?

(b) How many were so treated?

8. In such circumstances, can it be claimed that the best person is nominated for the position?

9. Have any concerns or complaints been lodged with the third Chairperson of the Panel, the Superintendent or the Director of Personnel?

10. Have the Superintendent and the Director carried out their roles effectively and correctly?

11. Has the position yet been filled and, if so, how long has it taken from the time of the original advertisement?

The Hon. ANNE LEVY: The position at Flinders Park Primary School was advertised statewide and a panel was convened according to Education Department selection procedures. The original Chairperson for the panel was offered and subsequently accepted a Voluntary Separation Package from the Education Department. At this stage the panel had short listed for the said position.

Consequently the panel, under instruction from Personnel, was reconvened and the process was recommenced with a new Chairperson and new Equal Opportunity Officer. In accordance with selection on merit, the panel process proceeded. At the point of the panel being reconvened, the criteria for selection were also defined, therefore it could not be assumed that the same applicants would be short listed the second time.

The second Equal Opportunity Nominee did not wish to continue on the third panel, given her role in identifying deficiencies in the process and procedures of the second panel.

The A/Promotion Officer and the Equal Opportunity Consultant, TASS Centre determined that an entirely new panel was appropriate and organised for the appointment of a new Chairperson and Equal Opportunity Nominee.

I am confident that the selection on merit principle has been applied in this instance and the most appropriate person was nominated for the position. All personnel concerned have performed their duties and carried out their roles according to the guidelines to which selection on merit adheres.

Neither the Chairperson, the Superintendent or the Director of Personnel have any recollection of concerns or complaints or documentation which would indicate a complaint against the process as a result of the final selection process. The position was first advertised on 13 August 1992. The closing date for applications was 10 September 1992 and the position was filled on 4 December 1992.

SCHOOL BUSES

44. **The Hon. DIANA LAIDLAW:** In respect of the 318 school buses owned and operated by the Education Department as at 30 June 1992—

1. What is the seating capacity of each bus?

2. How many services are operated by the buses?

3. What is the distance per service?

4. What is the cost per kilometre of operating each service?

5. What is the total cost per passenger journey?

6. What cost factors are used as the basis for calculating the cost of operating the service?

The Hon. S.M. LENEHAN: The replies are as follow:

1. The seating capacity of Education Department buses is calculated on the basis of 300 MM per seating space for children up to the age of 14 years. This method of calculation is in accordance with the requirement of the Road Traffic Act 1961.

The seating capacities of the buses are as follows:

No of Seats	No of Buses
21	101
71	136
76	58
	304

2. 304.

3. A list of the 304 bus routes in bus fleet number order showing the daily distance of the to and from school route of each bus and the cost per kilometre for each route is as follows:

Fleet No.	Distance	R/km
1053	36	138.8
1055	27	220.3
1061	42	330.9
1062	52	130.1
1063	40	232.4
1073	53	160.8
1086	90	96.5
1090	76	293.2
1092	50	131.7
1093	25	234.7
1094	40	371.7
1095	43	204.5
1099	42	157.1
1106	71	143.2
1108	22	190.6
1109	32	203.0
1119	66	101.6
1131	71	95.5
1133	83	98.3
1134	78	149.1
1136	181	90.1
1140	108	65.1
1141	126	146.4
1143	43	97.5
1145	71	115.1
1147	90	93.0
1148	116	84.2
1149	46	65.7
1151	84	178.2
1152	97	245.7
1153	98	109.5
1154	34	210.1
1155	116	132.9
1156	50	163.2
1157	117	110.5
1158	90	163.6
1160	133	110.2
1161	92	151.1
1163	172	108.3
1164	82	184.2
1165	99	130.3
1166	38	203.1
1167	82	117.1
1168	121	310.8
1169	77	228.4

Fleet No.	Distance	R/km	Fleet No.	Distance	R/km
1170	36	145.6	1236	147	110.6
1171	104	106.1	1237	77	226.1
1172	57	147.0	1238	114	143.4
1173	32	185.4	1240	87	162.3
1174	140	81.1	1241	61	147.4
1175	153	99.5	1242	62	188.0
1176	82	76.1	1243	117	92.8
1177	116	98.9	1244	242	92.4
1178	135	77.5	1245	87	133.0
1179	166	92.6	1246	170	150.8
1180	107	80.4	1247	65	165.1
1182	103	76.0	1248	58	194.9
1183	71	89.7	1249	84	147.3
1184	152	196.8	1250	86	146.5
1185	82	70.2	1251	58	226.8
1187	100	79.5	1252	102	198.7
1188	77	133.8	1253	103	122.4
1189	78	180.0	1254	108	99.5
1190	55	158.5	1255	110	261.8
1191	96	190.4	1256	89	168.9
1192	91	173.3	1257	120	151.0
1193	71	156.8	1258	64	253.9
1194	53	126.0	1259	214	297.7
1195	39	243.4	1260	151	127.7
1196	71	135.2	1261	40	252.9
1197	79	196.4	1262	49	207.4
1198	254	138.9	1263	52	168.8
1200	59	187.1	1264	47	202.5
1201	65	107.7	1266	66	273.2
1202	120	171.1	1267	111	199.6
1203	62	208.2	1268	174	107.7
1204	106	121.6	1269	109	188.5
1205	91	211.6	1270	105	197.7
1206	218	133.4	1271	104	128.8
1207	65	135.6	1272	58	219.5
1208	50	190.7	1273	72	209.6
1209	43	216.6	1274	94	143.4
1210	126	141.2	1275	117	189.2
1211	112	127.9	1276	91	158.2
1212	92	152.3	1277	71	180.6
1213	181	184.4	1278	88	154.2
1214	155	141.8	1279	54	260.4
1215	132	137.1	1280	71	185.7
1216	200	158.7	1281	98	167.6
1217	111	159.6	1282	121	185.9
1218	50	197.5	1283	96	174.2
1219	76	168.3	1284	150	175.9
1220	66	152.8	1285	174	161.1
1221	133	121.6	1286	64	200.5
1222	61	167.5	1287	104	201.4
1223	108	179.4	1288	162	170.0
1224	74	164.3	1289	170	115.6
1225	84	119.8	1290	192	81.8
1226	52	135.8	1291	85	61.9
1227	64	212.0	1292	69	87.9
1228	111	134.0	1293	147	75.6
1229	106	273.5	1294	60	109.0
1230	84	186.8	1295	130	73.6
1231	124	155.1	1296	125	63.0
1232	76	168.2	1297	105	63.8
1233	164	213.6	1298	79	87.1
1234	68	203.9	1300	117	83.1
1235	139	135.4	1301	207	75.3

Fleet No.	Distance	R/km
1302	181	86.0
1303	114	103.6
1304	113	69.9
1305	115	70.8
1306	76	76.7
1307	82	90.0
1309	82	89.0
1310	105	68.1
1311	70	94.3
1312	125	80.6
1313	102	80.4
1314	66	99.0
1315	106	123.1
1316	176	84.0
1317	84	99.4
1318	137	80.8
1319	114	87.2
1320	86	68.0
1321	114	80.8
1322	104	67.5
1323	47	102.6
1324	154	76.1
1325	104	88.2
1326	112	102.2
1327	82	119.6
1328	182	63.1
1330	116	118.5
1331	141	94.1
1332	210	78.7
1333	124	81.8
1334	205	75.0
1335	190	64.3
1336	96	111.8
1337	194	97.0
1338	105	97.3
1339	99	102.2
1340	172	73.8
1341	202	123.3
1342	117	64.2
1343	82	122.0
1344	117	61.4
1345	91	92.8
1346	83	90.0
1348	120	79.7
1349	171	62.3
1350	167	121.6
1351	91	135.3
1352	99	125.0
1353	92	126.8
1354	112	165.1
1355	103	127.6
1356	136	154.0
1357	124	197.1
1358	94	148.5
1359	165	109.3
1360	140	136.3
1361	103	174,6
1362	96	184.5
1363	129	110.0
1364	135	210.5
1365	94	139.5
1366	95	151.7
1367	100	153.7
1368	120	124.4
1369	84	181.5
1370	84	79.3
1371	185	67.1
1372	68	83.0
1373	126	66.9
1374	148	83.9
1375	64	115.7
1376	93	121.3
1377	98	122.3
1378	162	94.9
1379	122	82.8
1380	80	111.3
1381	128	94.6
1382	155	81.3
1383	109	99.4
1384	110	88.0
1385	41	260.5
1386	96	155.6
1387	142	122.1
1388	69	158.4
1389	67	142.3
1390	89	158.2
1391	86	240.9
1392	56	219.2
1393	143	118.2
1394	96	127.5
1395	140	120.6
1396	185	145.6
1397	126	118.0
1398	50	209.5
1399	106	136.2
1400	175	217.0
1401	69	224.7
1402	77	148.8
1403	84	149.4
1404	116	183.1
1405	105	151.2
1406	139	137.2
1407	144	126.6
1408	61	179.8
1409	124	169.4
1410	137	134.5
1411	122	70.2
1412	160	58.5
1413	67	125.0
1414	120	75.3
1415	137	75.4
1416	58	120.2
1417	46	92.3
1418	45	60.6
1419	60	76.6
1420	120	112.6
1421	120	109.1
1422	70	74.4
1423	74	94.7
1424	52	240.2
1425	114	126.9
1426	89	160.3
1427	93	148.1
1429	206	151.0
1430	72	161.4
1431	192	147.1

Fleet No.	Distance	R/km
1432	68	241.1
1433	46	247.8
1434	155	126.6
1435	87	141.6
1436	71	187.4
1437	82	174.6
1438	102	155.8

4. Included in 3.

5. The cost per passenger journey is $2.43.

6. The bus costing systems includes actual costs for all maintenance and operating drivers salaries, registration and compulsory third party insurance premiums, depreciation and accident costs.

CLARKE, Ms GERRY

46. **The Hon. DIANA LAIDLAW:**

1. Prior to September 1991 when Ms Gerry Clarke held the position of secretary to the General Manager of the State Transport Authority, what were her responsibilities and salary?

2. For what period did Ms Clarke hold the position of Manager of the Aldgate bus depot, and was this position advertised with the STA prior to her appointment?

3. What are the responsibilities and salary of Ms Clarke in her current role as Executive Officer to the General Manager of the State Transport Authority?

The Hon. BARBARA WIESE: The replies are as follow:

1. The primary objective of Ms Clark's position was to provide a range of confidential secretarial and administrative support services within the Offices of the Chairman and the General Manager and to undertake minor research and special projects for the General Manager. Her salary was $34 771.70.

2. Ms Clark held the position of Manager of the Aldgate Bus Depot from 15 May 1991 to 18 December, 1992. The position was advertised in the STA Weekly Notice.

3. Ms Clark's current responsibilities include the same secretarial service to the General Manager which she previously provided, but her other responsibilities have been significantly increased. She has taken over the coordinating role for the communications networks recently introduced into the organisational structure. She monitors service delivery on a daily basis and ensures on behalf of the General Manager that remedial action is taken when necessary to maintain the high standards set by the STA.

Her salary is $43 478.

DANIEL, Ms KYLIE

47. **The Hon. DIANA LAIDLAW:**

1. Why was Ms Kylie Daniel, former secretary to the General Manager of the State Transport Authority, been transferred to the Office of Transport Policy and Planning, and what are her current responsibilities?

2. What is Ms Daniel's salary and is the STA to continue to pay her salary?

3. For how long has the STA been paying Ms Daniel at her current rate of salary and why has the STA been prepared to pay her more than the salary received by the personal secretary to the Premier?

The Hon. BARBARA WIESE: The replies are as follow:

1. As part of the STA reorganisation over the last year the position occupied by Ms Kylie Daniel was declared surplus to requirements and Ms Daniel declared as a redeployee. Her current placement with the Office of Transport Policy and Planning (OTPP) forms part of a training and development placement designed to enhance Ms Daniel's skills, knowledge and experience.

Her major responsibilities are to assist the OTPP to establish Occupational Health, Safety and Welfare Services and procedures needed to meet Workcover requirements. She is also establishing other procedures for the OTPP, for instance those needed for handling Freedom of Information requests, monitoring training and development needs and activities and meeting Department of Labour personnel reporting requirements. All these activities are by nature of specific projects to set up systems, the ongoing operation of which can be handed over to OTPP personnel.

2. Ms Daniel's salary is $35 653, which is being paid by the STA.

3. Ms Daniel has been receiving her current salary since being appointed to the position of Secretary to the General Manager of the STA. Her salary level was determined using the Cullen, Egan and Dell assessment method. Her job specification required her to undertake tasks similar to those of her predecessor which is more than secretarial duties.

RAILCARS

48. **The Hon. DIANA LAIDLAW:**

1. What is the average consumption of fuel on a per seat per kilometre basis and on a per railcar per kilometre basis?

2. What is the average cost of fuel consumed by railcars in the STA fleet?

The Hon. BARBARA WIESE: The replies are as follow:

1. The average fuel consumption figures as requested are given in the following table:

Type of Railcar	Litres Per seat per kilometre	Litres per railcar per kilometre
300/400 Class (Redhens)	0.0156	1.25
2000/2100 Class *	0.0151	1.35
3000/3100	0.0098	1.08

* Note: the 2100 class railcars do not have engines as do each of the other classes of railcars; they are hauled by the 2000 class powered railcars. Therefore, for correct comparison with other classes of railcar the fuel consumed by the 2000 class railcars has been averaged over the 2000 class and 2100 class railcars.

2. The average cost of the diesel fuel consumed by STA railcars is $0.5216 per litre (30 March).

PAPERS TABLED

The following papers were laid on the table:

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

Legal Practitioners Complaints Committee – Statistical Report.

Regulations under the following Acts—

Associations Incorporation Act 1985 - Fees.

Business Names Act 1963 - Fees.

Co-operatives Act 1983 - Fees.

Evidence Act 1929 - Reproduction of Documents - Approved Process.

Equal Opportunity Act 1984, section 85s - Report of the Working Party reviewing Age Provisions in State Acts and Regulations.

By the Minister of Transport Development (Hon. Barbara Wiese)—

South Australian Centre for Manufacturing - Report 1992.

South Australian Council on Reproductive Technology - Report, 31 March 1993.

Agricultural Council of Australia and New Zealand - Record and Resolutions of 138th Meeting, Mackay, 24 July 1992.

Animal and Plant Control Commission - Report 1992.

Australian Soil Conservation Council - Record and Resolutions of 8th Meeting, Adelaide, 27 August 1992.

Regulations under the following Acts—

Controlled Substances Act 1984 - Poisons – Coca Leaf.

Motor Vehicles Act 1959 - Authorised Examiners - Fees.

Fees - Variation.

South Australian Health Commission Act 1976 - By-laws - South Australian Dental Service.

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

Director-General of Education, Portfolio Co-ordinator, Education, Employment and Training Report 1992.

Response to First Report of the Social Development Committee 'Social Implications of Population Change in South Australia'.

Regulations under the following Acts—

Bills of Sale Act 1886 - Fees.

Crown Lands Act 1929 Fees.

Pastoral Land Management and Conservation Act 1989 - Fees.

Real Property Act 1886 -

Fees - Registrar-General.

Variation.

Requisition Fee.

Registration of Deeds Act 1935 - Fees.

Roads (Opening and Closing) Act 1991 - Fees.

Strata Titles Act 1988 - Fees.

Workers Liens Act 1893 - Fees.

Corporation By-laws -

Elizabeth - No. 2 - Streets and Public Places.

Salisbury -

No. 1 - Permits and Penalties.

No. 2 - Streets.

No. 5 - Birds.

No. 7 - Animals and Birds.

No. 10 - Inflammable Undergrowth.

District Council By-laws -

Coober Pedy -

No. 1 - Permits and Penalties.

No.2 - Council Land.

No.3 - Taxis.

No.4 - Electricity Supply.

No.5 - Nuisances.

Wakefield Plains - No. 9 - Fire Prevention.

By the Minister of Consumer Affairs (Hon. Anne Levy)—

Regulation under the following Act—

Liquor Licensing Act 1985 - Dry Areas -

Colonnades Shopping Complex.

Berri.

PARLIAMENT HOUSE, SMOKING

The PRESIDENT: I advise honourable members that circulars issued by me to members and staff of the Legislative Council dated 27 February, 10 June 1992 and the latest one dated 16 November 1992, requesting that smokers refrain from smoking in any areas other than the designated smoking area in Botany Bay, evidently have not been complied with.

Following upon these circulars, a letter dated 18 March 1993 was addressed to the Leaders of the two major Parties in the Legislative Council requesting that

they bring to the attention of members the circular dated 16 November 1992, requesting that smoking should occur only in Botany Bay and that health effects that it was creating for some staff and members were undesirable.

I have to advise that I have now had a request to ensure that all smoking bans, as requested by me, are observed in the Legislative Council areas. I feel I have done all in my power to ensure that smoking bans are observed, and it now becomes a matter for the Legislative Council to deal with, so I am reporting to the Council and seeking its advice as to further action that can be implemented to ensure that the smoking bans, as requested by me, are adhered to. I shall be happy to discuss any suggestions that Party Leaders can come up with that can resolve the smoking issue in the Legislative Council areas.

RAPE IN MARRIAGE TRIAL

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I seek leave to make a ministerial statement.

Leave granted.

The Hon. ANNE LEVY: I inform the Council that this morning judgment was given in the appeal against the comments made by Mr Justice Bollen in a recent rape in marriage trial. These comments received national and international media coverage and were of great concern to women in our society. Justice Bollen said that it was acceptable for a husband to use 'rougher than usual handling' to convince his wife to have sex with him. Such comments are completely unacceptable in the 1990s. Justice Bollen also used an example designed to show that it was easy for women to make up allegations of sexual assault.

My office has been inundated with complaints and inquiries from women disgusted with this view of violence against women. The judgment by the Full Court of the Supreme Court of South Australia today was that both of these statements by Justice Bollen were an error in law.

On the question of the nineteenth century example about the rape allegations on a train, it was unanimous that the use of this example was erroneous in law. On the question of Justice Bollen saying that it was acceptable for a husband to use 'rougher than usual handling' a majority of two judges to one found this to be an error in law. This decision clearly underlines that these sorts of comments are not acceptable under South Australian laws and should not be used by senior members of the judiciary.

Submission is not consent under the law, because submission is often given out of fear. Women must feel safe in their own homes and on the street, and society cannot condone the sorts of statements that say 'It is just a domestic', or that a husband has any rights to force his wife into sexual intercourse.

I fully support the announcement by the Prime Minister during the run-up to the Federal election that training will be provided for the judiciary in matters before the courts dealing with violence against women, particularly in domestic arrangements. I am relieved that this finding upholds current society attitudes and look forward to a time where such comments will not be countenanced by anyone in our community.

HAMMOND, Ms RUBY

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I seek leave to make a ministerial statement.

Leave granted.

The Hon. ANNE LEVY: It is with great sadness that I inform members of the death on Friday 16 April of Ruby Hammond, a great South Australian. As members would be aware, Ruby made a significant contribution to the Aboriginal and arts communities of South Australia. In the 1970s she participated in many international forums on behalf of her people. She was part of the first Aboriginal delegation to China; she was the Australian women's representative at the International Women's Year Conference in Fiji in 1975; and in 1976 she was a delegate at the World Peace Council in Switzerland.

She joined the Public Service Board in January 1986 after completing a Bachelor of Arts degree in Aboriginal Affairs and Administration. She joined the then Department for the Arts in October 1991, and was the Aboriginal coordinator in the department until her recent retirement. Her highly developed communication skills and extensive experience with Aboriginal and Torres Strait Islander committees, along with her broadly based social research record, which extends to areas including health, women's issues, welfare, education and the arts, enabled Ruby to make significant and long-lasting contributions. Those contributions were recognised in March this year when Ruby Hammond was awarded the Public Service Medal by Her Excellency the Governor.

At a personal level, Ruby was a patient, caring, courageous and thoughtful person who had a positive impact on everyone fortunate enough to meet her. Her personal and professional contributions to individuals, to her department, to the Public Service, to the Aboriginal community and to South Australian society as a whole were outstanding, and she will be sadly missed.

QUESTION TIME

NICHOLLS CASE

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

Leave granted.

The Hon. K.T. GRIFFIN: I have been informed from within Government that the Government had considered the Nicholls case formally or informally before the jury gave its verdict and had reached a conclusion that an appropriate sentence in the event of a conviction on the substantive charges would be four years imprisonment, and that it would press for that penalty. My questions to the Attorney-General are:

1. Did the Government formally or informally consider the question of penalty in the event of a conviction?

2. Were any representations made to the Director of Public Prosecutions formally or informally by the Attorney-General or any member of the Government in relation to penalty in the event of a conviction?

3. Were there any discussions between the Attorney-General or his officers and the Director of Public Prosecutions or his officers about the issue of contempt of court and, if so, what view did he express as to the issue of proceeding with the charge of contempt and the penalty?

The Hon. C.J. SUMNER: Obviously, there are informal discussions about these matters from time to time, but this matter has not been considered by Cabinet. In fact, the Government was scrupulous about keeping at arm's length from this case for the obvious reason—although it did not do any good—that the Government ought not to interfere in this matter and should not be seen to be interfering in the matter; in any event, as it turned out, the defence ran the case that it was a political prosecution. That was one of the irrelevancies that was introduced into the trial, and it is an accusation that I personally resent and that the Government resents.

The matter was dealt with in accordance with the law. Obviously, there were complaints about the allegation of the breach of the law made, as I understand it, by Mr Stitt. He is a citizen and, indeed, the Minister would be entitled to make the same complaint if it involved her as well. Just because you are a politician, live with a politician or are married to a politician does not mean that you give up your rights in this community. If you believe that something has happened that has caused you to be a victim of crime, which is what happened in this case, then you are entitled to go to the police and have the matter investigated.

However, as far as the Government is concerned, that is all there was to it. It was a matter for the police to investigate and a matter for the independent Director of Public Prosecutions to decide whether to proceed with the case in court. As the honourable member knows, we established the position of Director of Public Prosecutions in this State to shield the prosecution process from any appearance of political interference or any actuality of political interference. I know that police and the Director of Public Prosecutions regard it as an insult and offensive that these allegations that they somehow or other took a political prosecution are made. That was part of the defence's case. As I said, it was an irrelevancy that was brought into the case by the defence counsel.

It is a regrettable fact that it may well have muddied the waters with the jury. However, the fact of the matter is that, apart from Nicholls' statements on the matter, there was not one skerrick of evidence of political influence in the bringing of this prosecution. It is a pretty sad state of affairs in this country and in this State when a politician or the spouse of a politician cannot assert their rights without it being said by people that there is some underhand political involvement.

Obviously there were informal discussions about this matter from time to time amongst members in Parliament and, from time to time, in Cabinet. There was nothing formal in Cabinet at any stage whatsoever. However, people talk. Personally I tried to avoid discussing the matter, and have not discussed the matter to any extent with my colleague who I am sure will vouch for that fact, or other colleagues, until the verdict was brought down in this case. I do not recall any discussions with the Director of Public Prosecutions, but the case might have been mentioned in a passing way with one of the officers at some particular time. There has been absolutely no direction or suggestion from me to the Director of Public Prosecutions that the case should be handled in a particular way. As to the proposition about four years imprisonment and the like, that I am afraid is pure fantasy on behalf of the Hon. Mr Griffin—pure and utter fantasy.

Members interjecting:

The PRESIDENT: Order! The Council will come to order while the question is being answered.

The Hon. C.J. SUMNER: I can assure the honourable member that I have not heard anything of that kind. I can assure the honourable member that during the course of the trial I did not discuss the matter at all with the prosecutor who was handling the case. I did not discuss with him the question of whether the matter of contempt should be dealt with. As I understand it he raised the matter at the close of the case and the judge suggested it be put off until this Monday.

There is one matter I wish to deal with in this Council, Mr President, and that is this very, very sleazy campaign to try to suggest that somehow or other there was political influence in the conduct of this case. I want to put right on record now that there was not. The matter was handled correctly and properly by the prosecution authorities, the police and the DPP at all times, and if there are complaints about the prosecution they should be directed to the Director of Public Prosecutions. I resent, and I know they resent, the accusation that was put in the trial, which was totally untrue and without any evidence, that this was somehow or other a political prosecution.

Mr President, as the honourable member has asked me a question about this topic there are a number of other things that I want to say about it, and put them quite firmly on the record for this Parliament and for the public of South Australia. First, I am quite happy to say that there should be no absolute rule which protects journalists from revealing their sources to courts of law. People who put that proposition in this community and this Parliament, and journalists, are, in my view, wanting to put journalists above the law. That is not acceptable, and is totally untenable in any democratic society.

The Hon. K. T. Griffin interjecting:

The Hon. C.J. SUMNER: No, you have not argued it; you have been very careful. However, the Hon. Mr Gilfillan has, and journalists continue to argue it. I am pleased that the Hon. Mr Griffin agrees with my proposition that there can be no absolute rule in a democratic society which enables a journalist to go to a court and say, 'I will not tell you the truth because I will not disclose my source.' That would undermine the criminal justice system and the rights that we have fought for in this State over a very long period of time. So, I want to make it clear that journalists are not above the

law. Regrettably, journalists have the capacity to seriously damage the lives, reputations and financial affairs of individuals in this community. Whether they be prominent people, politicians, business people, ordinary citizens or victims of crime, journalists have the capacity to destroy their lives and careers, and journalists will do it, and have done it from time to time.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: They cannot, in those circumstances, fail to reveal their sources to a court of law because, first, the source may be fabricated; secondly, the source may not be telling the truth, and no checks may be made by the journalist as to whether there is anything in the source. If a journalist is permitted to run a story on the basis of a source that is not telling the truth and then claim the right not to reveal that source, where are we as a community? All journalists, as they often do, may embellish the story, embellish the source and do a beat-up. Everyone in the trade knows about beat-ups: that is where you get a bit of a story and you beat it up without really caring whether or not it is accurate.

If this behaviour—the fabrication of sources, sources not telling the truth or a journalist beating up a story—causes damage to a citizen's personal reputation or to their health, or is to their financial detriment, are people in this Parliament saying that that citizen, whether he is a politician or an ordinary citizen, ought not to have a right of redress in the courts of this country against that journalist? That is a preposterous proposition put forward and spelt out by journalists and the media in this country in their own interests. They have a self-interested club. They are very clubby when an issue such as this comes up. The story I am putting never gets put across to the public because the journalists hog the print media and put their story.

This is the first time that I have been asked in this circumstance to comment on a matter at length, and I appreciate the fact that Mr Satchel has enabled me to put the proposition.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: However, normally the situation is that you get editorials and articles in the newspaper and talk back that is sympathetic to the journalist's cause. You do not normally—and I appreciate the opportunity this afternoon to put it—get the other side of the story: the victim of crime who has been destroyed by media attention, the politician who has had his reputation destroyed because of inaccurate information produced by a journalist, a politician or other prominent person who has had their life inquired into because of some scandalous accusation that has been taken up by a journalist. The proposition of absolute protection for journalists' sources is utterly untenable.

As I said, there have been examples of abuse in recent times, but I will not repeat them because members have heard me talk about them before. However, I addressed the question of journalists' sources when the NCA produced its first report on Operation Hydra. That raised serious questions about journalists' sources. The Hon. Mr Griffin should be interested in this, if he bothered to pursue the matter a bit more carefully, but I will not go into it any further at this time. But that was a case of journalists picking up a source and running with it when there was no justification for it whatsoever. It cost the State $5 million or $6 million to find out that what they said was phoney and was picked up by a source with absolutely no credibility.

In this case, whatever members say about the sentence of four months—I will not comment specifically about that—I will say this, and it needs to be said: the contempt that Mr Nicholls committed was extremely serious. One only needs to consider it for two seconds to realise how serious it was. First, if we accept Mr Nicholls' story that he gave to the court, the contempt was in relation to protecting a source who had probably committed a criminal offence. But he was not going to reveal him. Secondly, if we accept the Crown's story that there was no source at all, we have a situation where the court could not get to the truth because no-one could check whether there was a source. So, it is all very well to talk about Mr Nicholls' acquittal, but he could well have been acquitted because he did not reveal his source.

In other words, this journalist has gone to a court of this land and said, 'I will not reveal my source' and thereby achieved an acquittal. He refused to tell the truth to the courts of this land. That is the situation and if that is what the Hon. Mr Gilfillan is supporting, and the people who want this issue of journalists' sources dealt with by an absolute prohibition on the revealing of sources, then I think they are out of touch with the community and it is not something that should be countenanced in our community. It could end up with a criminal justice system not being able to function. As one lawyer said in the debate earlier today, if you start doing that then the courts will never be able to get to the truth of the matter. It is quite possible—one cannot go into the jury's thinking, of course—that Nicholls was able to get an acquittal by refusing to reveal a source, if he had one—and, of course, it is still a legitimate point in my view to query whether he had one.

The Hon. K.T. Griffin: He could also get acquitted notwithstanding that he revealed the source.

The Hon. C.J. SUMNER: Well, he could have been, that's right. One can speculate; however, what we do know is that had he revealed his source the court and the community would have known the truth. Because he has not revealed his source we do not know the truth. That is the fact of the matter and that cannot be argued with. I think you can take that along to saying that Nicholls' acquittal could well be due to the fact—

The Hon. J.S. Stefani interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER:—that he did not disclose his sources, relying on the principles that journalists have expounded whenever one of these matters has come up, without the basis of what I think are important balancing arguments. I have dealt with the question of Government involvement in this case and I will not repeat it.

The second defence that was taken up in this case was that this was a trivial matter and involved a few thousand dollars at the most, and why should there be a prosecution because it was a trivial matter and why should the weight of the police be brought into play in this case? I would suggest to the Council and to the public of South Australia that it is not a trivial matter to

have a journalist or anyone else, or indeed a source to a journalist, going to a bank and getting private and confidential information. If a journalist can do that by deception, that is, by pretending to be someone else, then there is no privacy. Forget it. The Hon. Mr Lucas's medical records could be open if someone could, by subterfuge, get hold of his medical records. The Hon. Mr Griffin's financial affairs, with his farm and his legal practice, and what he earns, could be obtained by someone pretending to be Mr Griffin's wife and wanting the information.

This is a serious point. It raises another very serious issue relating to the privacy of individuals in this community, whether they are politicians or not. Are you saying that journalists have a right to deceive people in the way that was alleged in this case in order to get information about personal and private affairs? I would suggest that if that was put to the jury of this community in a proper and open debate they would say, 'No, that is an outrage. I do not want journalists prying into my private affairs in that particular manner by deceiving the people who hold the material.' Yet that is what happened in this case—whether it was Nicholls himself or his so-called source. So it was not a trivial case.

Members interjecting:

The Hon. C.J. SUMNER: Well, I am going to have a fair go on this. It is a serious matter. The Hon. Mr Griffin has asked the question and he is going to get the answer.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: The other thing I have absolutely no hesitation in putting on the record—and I think it needs to be put on the record now that this case is out of the way—is that Mr Nicholls is an unprofessional, unethical journalist.

Members interjecting:

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

Members interjecting:

The PRESIDENT: Order! I am prepared to name someone if the Council does not come to order. A question was asked of the Attorney-General and he is entitled to reply to that question in the way he sees fit. The honourable Attorney-General.

The Hon. C.J. SUMNER: The Parliament and the public should have the whole story on this matter. The fact of the matter is that the process of deception in which it was alleged Nicholls engaged in this case is his *modus operandi* as an investigative journalist. He has on previous occasions given false names in order to achieve access to people, in particular in the NCA and the South Australian Police. He has on previous occasions, as I said, given false names and engaged in acts of deception. The most serious of these I will refer to because of the cosy journalists' club which we saw at work this morning in the *Advertiser,* with Nigel Hopkins writing a sympathetic piece on Mr Nicholls but not mentioning, of course, that he had been found guilty of unethical and unprofessional conduct by the Australian Journalists Association and fined $200 and severely reprimanded.

I want to put on record for members and for the public in South Australia the circumstances of that case because I think anyone who hears the circumstances of that case will recognise that there was a deception, will recognise that it was appalling behaviour and will recognise that the ABC continued to employ this person knowing that he was an unethical person and had been so condemned by the Australian Journalists Association. I do it because this issue has come into the public arena. Mr Nicholls and others are trying to build up public sympathy for him, and I am concerned to ensure that everyone is aware of the facts.

The matter on which he was found to be guilty of unethical and unprofessional conduct was as follows. As people know, Mr Nicholls took an interest in the NCA when it had operations here in South Australia. On one occasion he presented himself at a reception desk at an Adelaide high school. I will not name the individuals in order to maintain their privacy. At approximately 2 o'clock one afternoon he asked to see the deputy principal at the time, claiming to be a personal friend of the deputy principal. When told that the deputy principal was absent on long service leave he then claimed to have written a story on twins, and was at school to do a follow-up story. This was the claim from Nicholls. He went to a school and said, 'I am here to do a written story on the twins (who were apparently at the school); I have done it before and I am now going to do a follow-up story.' That is a deception in order to get access to this person in this school.

When told there were no twins of that name at the school he indicated that the people in whom he was interested would be in year 12. After some discussion between Nicholls and the person at the school Nicholls identified a person whom I will call 'Miss Smith' as the person he wished to interview. When asked for identification he produced an ABC identification card bearing his name. Miss Smith turned out to be a 15-year-old daughter of a senior investigator, a police officer on secondment duties for the NCA office in Adelaide. He goes to a school, specifically asks to speak to the 15-year-old daughter of an NCA investigator in South Australia. Nicholls did not have permission from her parents to interview Miss Smith. He had never met her nor interviewed her. The deception was that he said he had and he was doing a follow-up story. She does not have a twin sister.

Miss Smith was then taken from her class, with the consequent disruption to her studies, to an interview area where she was left alone with Nicholls. This event heightened the curiosity of her peers and later maximised discomfort to where she was seen by them to be crying and attending the principal's office. Nicholls questioned Miss Smith.

Members should just think of this. Would we want this to happen to our kids because of some scurrilous journalist? Just think of it! Nicholls questioned Miss Smith about her father's employment, how long she had been in Adelaide, what knowledge she had of what her father did and whether or not he talked about his job at home. This is an NCA investigator and Nicholls has gone to the daughter of this person to ask the daughter what that person does in his job, what he was doing now, and so on.

In addition, he stated to her that he had a letter from her father and asked Miss Smith to tell her father to ring him at home later that night. He provided her with his

business card with his home number on the reverse side. He stated to her that he could not ring her father at work as the office telephones were bugged. When Nicholls left the school the senior investigative person was telephoned by the principal. He spoke with his daughter on the telephone and described her as 'severely emotionally upset and crying'.

I put this to the people of South Australia now the facts are out: do they believe that that child or that officer has a right to redress against that journalist or that organisation for that behaviour? The answer clearly has to be 'Yes.' That is behaviour that is intolerable; it was deceptive; and it attempted to target the daughter of an NCA officer in this State to get information. That is what has been done by Mr Nicholls—the hero of investigative journalists in this State.

I put it to everyone in this Council: we are all in public life, we all have kids, and we all get involved in controversy. Do we want people using the cloak of investigative journalism to be able to go to schools to interview our kids about our job? Do we want them to be stopped in the street by journalists and questioned about what we do at home and in our work? Of course we do not. It is an abuse of the procedures of journalism. That is why I say that Mr Nicholls is an unethical and unprofessional journalist. That matter was taken up—

The Hon. R.J. Ritson: There is a bit of it about. Rob Lucas was followed with long distance lenses and his kids photographed.

The Hon. C.J. SUMNER: Sure, it does happen; I know. But, of course, if one is a politician it is all right, but if one is an investigative journalist, if this continues to go on, it means that one can get away with anything. That is the point about this.

An honourable member interjecting:

The Hon. C.J. SUMNER: What happened? A complaint was laid with the AJA—it goes back to September 1990—and the AJA went before its judiciary committee. Mr Nicholls has been found to have breached sections 7 and 9 of the AJA code of ethics. Section 7 provides:

> They shall use fair and honest means to obtain news, films, tapes and documents.

That is what he was found guilty of doing: failing to use fair and honest means to obtain news, films, tapes and documents. Why was it not fair? Because he used a deception—exactly what he was charged with in the case that has just been dealt with by the courts. The second thing that he was—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: No, of course not; that is not what I am saying. What I am saying is that if people—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: That is why it was not relevant in the case. It was not brought up in the case.

An honourable member: Why are you raising it here?

The Hon. C.J. SUMNER: If you are going to have a debate, if someone is going to be out there putting themselves up as a paragon of virtue, as he does, and holding himself out—

Members interjecting:

The Hon. C.J. SUMNER: No, just a minute.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: —as an honest investigative journalist, then the public is entitled to know—and how often have members heard that from journalists—the other side of the story.

Members interjecting:

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

The Hon. C.J. SUMNER: Thank you, Mr President. The answer simply is that the public has a right to know in this debate.

The Hon. R.I. Lucas: So if you're guilty of one you're guilty of the next.

The Hon. C.J. SUMNER: I didn't say that, Mr President, and you know that. The second matter that was found against Mr Nicholls was that journalists shall respect private grief and personal privacy and shall have the right to resist compulsion to intrude on them.

They found his behaviour totally unacceptable in relation to those matters. They recommended that the branch impose a $200 fine, and then there were some appeal proceedings about which I do not know quite what has happened and I do not know whether we will ever find out from the South Australian Journalists Association, but people might like to ask.

I merely go on the record as saying—and this is clearly relevant to any public debate about this matter—that Nicholls has used deception before: it is not the only occasion. How anyone can support that sort of behaviour by journalists in this community is absolutely beyond me.

Members interjecting:

The Hon. C.J. SUMNER: It does affect the issue because, if one is able to behave unethically like that—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: —and then claim protection of one's sources, that is the nub of the question because there is an inherent inconsistency in the AJA's code of ethics. One of the codes provides:

> They shall report and interpret the news with scrupulous honesty by striving to disclose all essential facts and by not suppressing relevant available facts or distorting by wrong or improper emphasis;

That is one of the codes, and another provides:

> In all circumstances they shall respect all confidences received in the course of their calling;

Of course, one cannot have it both ways, because one can never find out whether a journalist is interpreting the news with scrupulous honesty unless in some circumstances (I am not saying in all circumstances) one can actually get to their sources. I would have thought that a court of law was one place where in some circumstances one ought to get that information.

The issue is an important one. It is an important issue to raise, but do not—and I hope the Parliament would not—support an absolute right of journalists not to disclose their sources to a court of this land.

The other disgraceful aspect of this case (while I am on my feet), is the fact that taxpayers paid for Nicholls' defence through the Australian Government Solicitor: Nicholls was charged with criminal offences and the Australian Government Solicitor, that is, the solicitor for the Commonwealth Government, acted for Nicholls in

this case, and his costs—the cost of a barrister for four weeks—

The Hon. R.I. Lucas: Isn't that normally—

The Hon. C.J. SUMNER: That is not normal; it is highly irregular. Personally, I should think that the taxpayers should be outraged that Nicholls has been defended by the Australian Government Solicitor. The local Director of Public Prosecutions—

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: Of course they wouldn't, not in a criminal case. It would be most unlikely that he would have been looked after in a criminal case. I merely make that point and add—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: —this to the situation: the DPP and the Head of the Attorney-General's Department came to me with their objection to this particular situation shortly after they found out about it when Nicholls entered his defence. I said to them, 'In my view, that matter should not be taken up at this stage in any official forum or in any way because it might be seen that we are somehow or other trying to interfere with his defence. So, contrary to the allegations made of political interference, we actually went out of our way to ensure that there was none, and that was a further example of it.

However, I understand that the Director of Public Prosecutions intends to take up that matter, and I believe he should, with the Australian Government Solicitor. Even if they decide to pay for private lawyers, it might be one thing, but to have the Australian Government Solicitor acting for a defendant in a case like this is, I believe, unacceptable.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: Finally, I wish to make the point that, although Nicholls was dealt with in July 1990 for unethical conduct by the AJA as a journalist, his employment with the ABC was continued right up until recent times. In other words, the ABC was quite prepared to overlook what I consider to be a quite horrendous breach of journalistic ethics. It continued to employ Nicholls and, as far as I am concerned—and I pay my taxes for the ABC—that, too, was totally unacceptable.

The ABC in South Australia and in Australia should ensure that its journalists abide by the highest standards of ethics and, when confronted with such a gross breach as occurred on that occasion, the ABC should have taken action to do something about it. I do not believe that anyone in this Parliament, if they were an employer, would tolerate their employees behaving in that way. I have taken some time on that question. The fact of the matter is that all those issues need to be put on the record if this debate is not going to be hijacked by the journalists and their club.

SCHOOL DISCIPLINE

The Hon. R.I. LUCAS: I am sure the Attorney will agree to an extension of Question Time, given that he took so long on that matter. I seek leave to make a brief explanation before asking the Minister representing the Minister of Education a question about school discipline policy.

Leave granted.

The Hon. R.I. LUCAS: Mr President, in this week's—

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: That is an interesting question. In this week's *City Messenger a* front page article headed 'Schools get Tough' outlines what, on the surface, appeared to be new initiatives to combat disruptive, violent and anti-social behaviour among students. The article lists the withdrawal of students from school for between four to 10 weeks and the expulsion of students from Government schools for up to five years as new Education Department measures being implemented to counter disruptive or violent behaviour in the classroom.

The article is interesting because the supposed initiative of withdrawing unruly students from school for up to 10 weeks was announced more than 14 months ago by the former Education Minister. It appears, too, that the department is somewhat fuzzy about some of the measures it is proposing to introduce from next week, particularly its plan to transfer recidivist unruly students to one of the department's alternative learning centres, or even the proposition to expel students for up to five

years.

The Liberal Party highlighted last year the acute waiting lists that exist at centres, such as the Northern Learning Centre, in the northern suburbs of Adelaide. Schools in late 1992 faced a three-week wait for disruptive students to be assessed, followed by a further fortnight's wait before withdrawal to the centre could begin. Then students could receive only one day a week tuition—in fact, part-time withdrawal from the school. We understand from the principals and others in schools that the situation is little better now than it was when the Liberal Party compiled its figures late last year. At that stage about 200 students were estimated to be waiting to get into the centre.

How the department's plan to expel students from Government schools for up to five years will work seems equally unfair. The department's project officer for student behaviour and management, Mr Richard Baxter, for example, is quoted in the article as saying:

> We don't know how the new system will go, where students are expelled from all South Australia Government schools for between one and five years, but we believe it will be rarely used.

Does the Minister believe that current resources for all learning centres are adequate and, if not, will she detail what additional resources will be provided to meet the excess demand for these facilities?

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

AUSTRALIAN NATIONAL

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Transport Development a question about the future of Australian National.

Leave granted.

The Hon. DIANA LAIDLAW: Following the revelation in a Sydney newspaper on 13 April that the Federal Government was about to appoint a consultant to review the future business operations of Australian National in South Australia, the Minister issued a news release two days later, stating:

Ms Wiese is astounded that she has not been taken into the Federal Government's confidence, despite repeated attempts over many months by her to try to find out where Canberra is heading with Australian National.

That is an extraordinary statement. It is an admission by the Minister that her own Federal Labor colleagues have treated her with contempt, and it is to South Australia's detriment that they have been doing so for many months and have been allowed to get away with it. What is even more disturbing in terms of the future of 3000-plus rail jobs in South Australia is the fact that the current Minister (Senator Collins) has no intention of changing past practices. Ms Wiese's news release of 15 April said:

Senator Collins has now assured her that the Federal Government will consult fully.

Yet, the same day, media reports reveal that Senator Collins refused to accommodate the Minister's representations that the terms of reference for the Federal consultant be amended to mention both the Rail Transfer Agreement 1975 and consultation with South Australia. Senator Collins went on to say that he will consult the State Government after—not before, not during but after—he has received the consultant's final report on 28 May. My questions to the Minister are:

1. Why does she think the Federal Government has failed to take her into its confidence and decided to treat her representations with contempt?

2. Based on her past failure to get the Federal Government to consult her about AN's future, and Senator Collins' recent insistence that South Australia will not be consulted until after receipt of the consultant's report in late May, how does the Minister now propose to ensure that the Federal Government begins to confide in her and to consult her fully on all matters relating to Australian National's future? For instance, does she agree with local rail union representatives that she should tell the Federal Government that she would not move to amend the Rail Transfer Agreement 1975 to allow the National Rail Corporation to operate in South Australia until the State Government is satisfied that Australian National is retained as a viable operation?

The Hon. BARBARA WIESE: I thank the honourable member for this question and also for the support that she is showing for the efforts I am making to the Federal Government on behalf of rail workers in South Australia and others who are concerned about the future of the rail system in this State.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: It is of very considerable concern to me that the Federal Government, for reasons that are best known to itself, up until this point has not been as forthcoming as I would expect it to be in consulting with the South Australian Government and with other relevant parties, including trade unions, about the future of Australian National since the establishment of the National Rail Corporation.

Since I became Minister of Transport Development last October I have raised the issue of consultation a number of times with Senator Collins' predecessor, who was then Minister responsible for land transport issues, including railway matters, and I have raised issues with the former Minister by letter and also in face to face meetings. Unfortunately, during that time, I found it extraordinarily difficult to get the sort of consultation that I was looking for.

Part of the problem at that time was that the Federal Government itself was waiting on a draft business plan to be prepared by Australian National and, for some reason or another, that plan took many months more than was anticipated to see the light of day. That has now happened: it was produced and presented to the Federal Government just after the recent Federal election, I understand. When I contacted Senator Collins last week, having heard for the first time about this consultancy project that was being embarked upon by the Federal department about the future of Australian National, I made quite clear to Senator Collins in no uncertain terms that I want a very distinct change in approach now that there is a change in Minister and now that some of the information upon which consultation can occur has been made available to the Federal Government.

The Federal Minister indicated to me that he is keen to consult with the State Government. He told me immediately that he would forward to me a copy of the Australian National business plan and that we would make arrangements as soon as possible to get together to discuss some of the issues that relate to the future of Australian National, to the future of rail within our State and to the future of the work force in South Australia, as well as issues relating to the future of the National Rail Corporation. At this point I can only take the Minister at his word. He has given me his word that the South Australian Government will be properly consulted.

The Hon. Diana Laidlaw: He didn't change the terms of reference. You asked him to change the terms of reference and he didn't change them.

The PRESIDENT: Order! The Hon. Ms Laidlaw will come to order.

The Hon. BARBARA WIESE: The honourable member says that the Federal Minister has not changed the terms of reference. I cannot say whether or not he has changed the terms of reference because he has not yet communicated with me about that matter.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! The Hon. Ms Laidlaw. Order!

The Hon. BARBARA WIESE: But I expect that when I have the opportunity to discuss these issues with him I will have some better idea about his view. I suggest that the Hon. Ms Laidlaw has no idea whether or not what she claims is correct. In fact, I assert quite strongly that she is making it up, because she would not know. She herself has not spoken to Senator Collins. She has no idea what is in his mind, but she comes into this place—as all these Liberals do on a daily basis—tells all sorts of furphies and expects us all to believe them. All I can say is that I have to take the new Minister at his

word. He has indicated to me that he will be consulting with the State Government.

I hope that he will take the relevant trade unions into his confidence and that they will also be consulted appropriately about the future of rail workers around our State. I hope that the outcome of Federal Government deliberations on the future of AN and the future of the NRC will take proper account of the needs of South Australians in this matter.

SMEAR TESTS

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister of Transport Development, representing the Minister of Health, Family and Community Services, a question about cervical smears.

Leave granted.

The Hon. CAROLYN PICKLES: There has been some press coverage over the past few days regarding a report commissioned by the State and Federal Ministers of Health entitled 'Making the Pap smear better'. I understand that the report makes a number of recommendations on improvements that need to be made in a range of areas to do with this testing process and particularly emphasises the need for women of 18 to 70 years to screen regularly every two years. I am informed that the Pap smear test detects abnormalities well before they turn into cancer, and currently prevents about 750 cases every year. However, 350 women in Australia still die from cancer of the cervix every year, and about 1000 new cases are diagnosed.

It has seemed to me for some time that private practice could assist in this area by sending out reminder notices in a way similar to that adopted by the dental profession, and I know that my own doctor performs this service for his patients, for which I am extremely grateful. My question to the Minister is: what steps are being taken in South Australia to promote the need for regular screening and to improve the quality of the test?

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

URANIUM

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Mineral Resources, a question about uranium oxide deliveries from Roxby.

Leave granted.

The Hon. I. GILFILLAN: I have been informed that a consignment of uranium oxide was scheduled to be loaded aboard the Dutch vessel *Aalsmeergracht* on the morning of Friday 12 March, the day before the Federal election this year. The information regarding the shipment was available in Adelaide on Monday 8 March and so therefore is quite widely known amongst those people and organisations that were interested and concerned. In fact, a protest, which is a normal activity by organisations that continue, as I do, to have concern about our involvement with the export of uranium, was organised to take place. In fact, it is a continuing vigil which police, those who are involved and Western Mining have come to expect as par for the course. However, what was not widely known was that the plans were suddenly changed. The *Aalsmeergracht* sailed out of Port Adelaide on Thursday 11 March, two days before the Federal election, without the uranium, and disappeared from local view. For all intents and purposes it was off and away overseas with its cargo of copper. But no, it came slinking back on the Monday morning after the election, and picked up the uranium which had come down from Roxby on Sunday evening, the day after the Federal election.

The Hon. L.H. Davis interjecting:

The Hon. I. GILFILLAN: There are some interjections of a somewhat derisive nature on this question, but I think they will change when they see the flavour of it evolve. I have been informed that at least two Federal Labor MPs, frightened at the consequences of a protest at the export of uranium prior to the election, had lent on the Western Mining Corporation and the Mines Department to delay the delivery until after the election. The two members named were the Hon. Peter Duncan and Senator Nick Bolkus, both of whom are Federal MPs who are particularly sensitive to the export of uranium and the reactions that are often made from their faction of the Labor Party at the continued export of uranium by this current Labor Government. The duplicity was quite substantially contrived. On approach to the PR firm, Chris Rann and Associates of Western Mining, on Thursday the 11th the answer was emphatic, that there would be no uranium loaded, there was no intention to load the uranium and the information was totally false. What I think a lot of people are asking is what happened between that Thursday the 11th and Monday the 15th. The answer quite simply is: the Federal election. So, my questions to the Minister are these:

1. Why was the loading time for the uranium altered from Friday 12 March to Monday 15 March?

Members interjecting:

The PRESIDENT: Order!

The Hon. I. GILFILLAN: My further questions are:

2. Were any politicians involved in formal or informal discussions about the date of loading? If so, who, when and why?

3. If not, why did the *Aalsmeergracht* depart Port Adelaide on Thursday 11 March—

The Hon. L.H. Davis: And where did it go?

The Hon. I. GILFILLAN: Yes, where did it go? This is becoming now a cooperative question exercise. Where did it go, because we think it may have hid around the other side of Yorke Peninsula, and then returned for loading on Monday the 15th?

The Hon. C.J. SUMNER: I will refer the question and see what I can find out; not much I suspect.

NICHOLLS CASE

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General questions about Mr Chris Nicholls.

Leave granted.

The Hon. L.H. DAVIS: Yesterday, as we know, the journalist Mr Chris Nicholls was gaoled for four months for failing to reveal his source of information, and this apparently could be the harshest sentence ever handed out to an Australian journalist for such an offence. Debra Cornwall, formerly a political reporter with the *Advertiser* in Adelaide and now with the *Sydney Morning Herald* also faces a possible gaol sentence for failing to reveal her source as a result of an article that was published in that daily paper in Sydney. David Hellaby, an investigative reporter with the *Advertiser,* who played a leading role in exposing the $3.1 billion financial fiasco with the State Bank, may ironically become the first person to go to gaol as a result of the State Bank debacle, because he failed to reveal the source of a major page one story on the State Bank which was published in the *Advertiser*.

This morning Mr Stephen Halliday, the State President of the Media Entertainment and Arts Alliance, in commenting on the Nicholls case said, that his union would continue to push for national shield laws to enable journalists to protect their sources. Mr Halliday suggested laws modelled on New Zealand legislation where courts have discretionary powers to excuse witnesses from giving evidence that would disclose confidential communications. The Attorney-General knows that the journalists have a code of ethics which preclude them from revealing private sources, and as the *Advertiser* editorial this morning stated:

> ... if the action of Australian courts in gaoling journalists who refuse to disclose those sources leads to restrictions in the information they receive then press freedom and ultimately the free society itself will be the losers.

Only recently, the Legislative Council passed whistleblowers legislation designed to protect public servants who have blown the whistle on matters of public interest. Opposition members in particular often receive documents from an unknown source and it is not unreasonable to suspect that on occasions the document may have been obtained in circumstances involving a breach. My questions to the Attorney-General are:

1. Will the Attorney-General now support national legislation designed to protect journalists from having to reveal their private sources if courts in their discretion rule that they need not do so?

2. Does the Attorney-General claim that, when he was the Leader of the Opposition in the Legislative Council, he was always aware of the source of documents that were embarrassing to the Government of the day, or will he not concede that there could have been occasions when documents may have been obtained by him in circumstances amounting to a breach and unlawfully passed onto him or, to use the Australian Journalists Association code of ethics which lie quoted today, 'documents that perhaps were not always obtained by fair and honest means'?

3. Did he on any occasion do anything about this?

The Hon. C.J. SUMNER: Opposition was a long time ago.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: Opposition was a long, long time ago. I suppose I could go back and try to remember what documents I got, if any.

Members interjecting:

The Hon. C.J. SUMNER: Tell me which ones they were.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I would have to check back into the depths of history to answer the honourable member's questions about documents that I may or may not have received. Frankly, I do not remember receiving a lot of documents that were not obtained by fair or honest means. In fact there is no case that comes to my mind. On the run like this I cannot recall cases—

The Hon. L.H. Davis: You don't think that happens in Parliament?

The Hon. C.J. SUMNER: You asked me about the matter. I do not recall matters where I was personally in possession of documents that I knew had not been obtained by fair or honest means. Obviously, there are circumstances where leaks occur within Government or within other organisations, and if those leaks occur then I do not say that politicians should not use the material that they get, unless there are very exceptional circumstances of privacy, national interest, law enforcement or something, but obviously, if members of Parliament get documents that are leaked from some source, they are entitled to use them. I do think there is a somewhat different situation, however, if members of Parliament know that the documents they receive have been stolen or obtained by some illegal means. I think that raises much more of a dilemma for members of Parliament, or at least it should; apparently it does not in the mind of the Hon. Mr Davis. If a member knows that he has documents that have been illegally obtained, there are questions that he must address to himself from an ethical point of view: should those documents be taken—

The Hon. L.H. Davis: Have you ever raised this matter in Cabinet? Have you ever raised this matter in your Government?

The Hon. C.J. SUMNER: It has nothing to do with my Government. We are on the other side of the fence. We are the people who have documents leaked about us, not to us. So I think it does raise issues that need to be addressed by the individual member in those circumstances. It may be that the member decides that the public interest is best served by disclosure of the documents or it may be that the member decides that the public interest is best served by taking the documents to the police, if that is the circumstance. However, to sum up, I repeat: where an honourable member gets documents but does not know their source, normally one would expect the member to use them unless there are special circumstances whereby the member might decide that that is not appropriate; for example, massive invasions of privacy or, in the Federal Parliament, matters of national defence or law enforcement issues that might disclose criminal behaviour or put a trial at risk or something of that kind. In those circumstances one would hope that the member would not use the documents. Likewise, if the documents have been illegally obtained and the honourable member knows that, that raises serious questions for the honourable member, and so it should. That is the answer to the second question. If members wish to remind me about matters that come to their mind, I will address them

individually, but I do not recall getting the documents that I knew were illegally obtained.

The next question relates to national legislation. I support an examination of this matter. I do not think there is any problem about that, but my problem is that journalists will not face up to the facts about it. They want a blanket exemption, and I do not think that is acceptable. If what the honourable member is saying is that there should be some discretion for a court to excuse a journalist or someone else from having to declare confidential sources, that might be another issue. As I understand it, the courts have that discretion now, anyhow, and sometimes exercise it. There is the so-called newspaper rule which operates to give journalists some protection regarding the disclosure of their source before a court. I am happy to look at the matter nationally, but I cannot tolerate circumstances which see journalists having absolute protection, for the reasons that I have outlined.

ASSENT TO BILLS

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

Aboriginal Lands Trust (Miscellaneous) Amendment

Barley Marketing,

Construction Industry Training Fund,

Disability Services,

Education (Non-Government Schools) Amendment,

Government Management and Employment (Miscellaneous) Amendment,

Industrial Relations Advisory Council (Removal of Sunset Clause) Amendment,

Legal Practitioners (Reform) Amendment,

South Australian Health Commission (Incorporated Hospitals and Health Centres) Amendment,

Whistleblowers Protection.

AGE DISCRIMINATION

The Hon. C.J. SUMNER (Attorney-General): I seek leave to make a ministerial statement.

Leave granted.

The Hon. C.J. SUMNER: I am required to table a report on those Acts of this State that provide for discrimination on the ground of age, pursuant to Section 85s of the Equal Opportunity Act. The report is required to be prepared within two years after the commencement of the anti-age discrimination provisions of the Act, and must include recommendations from the Minister, and from relevant Government agencies and instrumentalities as to whether the Acts referred to in the report should be amended or repealed. The report is thus due to be completed by 1 June 1993.

At my request, the Commissioner for Equal Opportunity established a working party to undertake a review of all legislation and has coordinated the compilation of a report which details all references to age contained in South Australian legislation. The report also contains the working party's recommendations as to whether the Acts referred to in the report should be amended or repealed.

The principles guiding the Working Party were:

- a person's ability or capacity to perform the duties of a position should be individually assessed by identifying the essential skills, abilities and qualifications required to perform the duties of the position.
- it is not appropriate to use a person's age as a substitute for, or as an indicator of, a factor that is directly relevant to action being taken, or to a decision being made, with respect to that person's ability or capacity.
- it is not appropriate to use age merely as a convenient management tool.
- the need to maintain special provisions for minors, in view of the fact that minors do not possess the capacity to assume fully all of the rights and responsibilities associated with adulthood.
- special provisions may be justified where there is an identified need related to a particular age or age group.
- the desirability of maintaining a consistent approach in the application of all laws.

The working party which compiled the recommendations received written submissions from the agencies with responsibility for administration of each Act considered. Those submissions included the agency's own recommendation as to whether the provision concerned should be retained or amended. While agencies were consulted by the working party prior to the preparation of the report, there are some provisions where the working party's recommendation is contrary to the responsible agency's recommendation. Accordingly, it is proposed that the report be referred to all Ministers and agencies so that they can make appropriate submissions as to whether the recommendations contained in the report should be adopted and amendments to legislation prepared to implement those recommendations.

Obviously, some of the matters dealt with in the report are more wide-ranging than others and will require a greater lead time to ensure smooth implementation. The Government intends to compile a timetable for the implementation of those recommendations which are adopted by the Government, and it is anticipated that many of the adopted recommendations will result in amendments being prepared and introduced next session. I will also present to Parliament at the beginning of next session, a timetable for the implementation of the balance of the adopted recommendations.

The review of the legislation by the working party was in itself a valuable exercise. The preliminary consultation with agencies meant that the principles underlying anti-age discrimination have been widely disseminated throughout the public sector. This educative role resulted in many of those agencies changing their initial recommendation to accord with the principles underlying the anti-age discrimination provisions. As honourable members will appreciate, the acceptance of the proposed recommendations by the agencies concerned is important in terms of achieving the effective implementation of anti-discrimination legislation such as this. Mr President, I tabled the report earlier today.

MEMBER'S LEAVE

The Hon. R.J. RITSON: I give notice that on the next day of sitting I will seek leave to move that the Hon. J.C. Irwin have four weeks leave of absence on account of family illness.

The PRESIDENT: Also, I advise the Council that I have this day forwarded a letter on behalf of members and staff of the Legislative Council to the Hon. and Mrs J.C. Irwin conveying our sorrow to learn of their son's accident and our sincere wishes for his speedy and complete recovery.

ADELAIDE AIRPORT

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Transport Development a question about Adelaide Airport's runways.

Leave granted.

The Hon. M.J. ELLIOTT: When dairy products are exported from South Australia, they incur a 15c per kilogram penalty on their competitors from Victoria. The reason is the length of the Adelaide Airport runways and increasingly the airport is being seen as a major stumbling block to the development of some potentially lucrative export industries in South Australia. The State's producers are suffering a significant trade disadvantage because fully-laden Boeing 747 aircraft cannot take off from Adelaide. Good airlinks are vital to exporting our fresh fruit, vegetables, seafood and even meat into the growing marketplace of South-East Asia, but because a fully-laden international plane cannot leave from Adelaide it must stop over interstate to top up its capacity before leaving the country. Companies exporting from South Australia are having to pay higher costs for air freight than their competitors interstate because the air link is not direct. This is causing increasing concern. We are on the doorstep of a lucrative, new and growing market, but unless this penalty is removed we will be priced out of it no matter how efficient our farmers and processors can become.

There are two possible solutions to this problem: relocate an expanded Adelaide Airport north of the city or extend one of the existing runways. I would suggest that the investment needed to extend one of the airport's runways over Tapleys Hill Road would be minuscule when compared to the investment needed to develop the MFP, yet in practical terms would mean far more to the State's economy in the long term. Certainly residents in the Glenelg area who have difficulties at the moment because of over-flights, although they are not supposed to occur, would have those reduced because the runways would cause the planes to go directly out to sea over Gulf St Vincent. My questions to the Minister are:

1. What work has been done on the costs and benefits of extending one of Adelaide Airport's runways, or relocating and expanding the airport?

2. Does the Minister agree that such an investment in the State's infrastructure will significantly boost our chances or success on the international market as far as fresh produce is concerned?

The Hon. BARBARA WIESE: Having not actually heard the explanation, it is going to be rather difficult to answer the question, but I did catch the last part of the question that related to the upgrading of Adelaide Airport, I think.

The Hon. M.J. Elliott: Do you want me to repeat it?

The Hon. BARBARA WIESE: Since I did not hear that the honourable member was asking me a question, it might be better if I provide an answer tomorrow, rather than having to go through it again. So I will take the question on notice and reply tomorrow.

MAREEBA CLINIC

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health a question about Mareeba.

Leave granted.

The Hon. BERNICE PFITZNER: As we know, Mareeba is now the 'stand alone' abortion clinic with links to the Queen Elizabeth Hospital. I understand that the Mareeba clinic is well equipped with medical staff and emergency operating theatres to cope with complications that might eventuate during an abortion, especially a late abortion; that is, between 12 and 24 weeks. It has come to my notice that there have been three incidents following the abortion procedure, and they are:

1. A late trimester (between 12 and 24 weeks) pregnancy with complications of a perforated uterus, massive haemorrhage and involvement of the bladder and ureters.

2. A late trimester pregnancy with complications of haemorrhage and perforation of uterus.

3. An early trimester (between 2 and 12 weeks) pregnancy with complications of a possible perforated uterus.

All three women had to be taken across the road to the Queen Elizabeth Hospital. The first two cases were taken by ambulance to the Queen Elizabeth Hospital and have had their uterus removed. These two people were in a moribund condition. The third case was taken in a clinic car, and it is alleged that the form of transport was chosen to camouflage the situation. To put a seriously ill person in a car instead of an ambulance is unacceptable. My questions to the Minister are:

1. How many such cases have there been since Mareeba opened as an abortion clinic?

2. If there are adequate medical staff and operating facilities at Mareeba, why do these patients with complications have to be transported to the Queen Elizabeth Hospital?

3. What is the exact medical staff back-up and the medical/surgical equipment at Mareeba to cope with such complications?

4. If the facilities are inadequate, will the Minister ensure that they are upgraded so as to provide a safe service for the abortion procedures?

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

GRAND PRIX

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question about the Australian Formula One Grand Prix Board.

Leave granted.

The Hon. J.F. STEFANI: The Auditor-General's Report for the year 30 June 1992 provides details of ventures in which the Australian Formula One Grand Prix Board has a financial involvement. The report identifies that at 30 June 1992 the board owned a 50 per cent shareholding in a company called Good Sports Pty Limited which manufactures and wholesales Grand Prix licensed clothing and other special event and corporate clothing. My questions are:

1. Will the Treasurer advise what was the amount paid by the Australian Formula One Grand Prix Board for the 50 per cent share of Good Sports Pty Limited?

2. When was the 50 per cent equity purchased?

3. What is the amount of the dividends which have been received by the Australian Formula One Grand Prix Board from this investment?

4. Are there any contingent liabilities that arise from the 50 per cent shareholding held in Good Sports Pty Limited by the Grand Prix Board?

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

SCHOOL VIOLENCE

In reply to **Hon. R. I. LUCAS** (17 February).

The Hon. ANNE LEVY: The Minister of Education, Employment and Training has provided the following response:

1. The answer is No. There is no evidence to support such an allegation. On the contrary, South Australian Government schools are much safer places for teachers and students since schools have implemented the non-violent, success orientated Students Behaviour Management Policy.

Schools have the mechanism to respond directly to the occasional violent out-burst and have other facilities for the very small percentage of students who are very violent. Schools are increasingly proactive in identifying potentially violent situations and are successfully teaching students and staff to use grievance procedures and conflict resolution skills to solve difficult situations non violently.

Some larger secondary schools have witnessed violence from outside the school in recent times. They have responded by increasing their level of care through increasing the number of teachers on yard duty and by using two-way radios.

2. The Education Department has increased the number of school counsellors to schools and provided training programs for staff to develop an effective non-violent culture.

Students are taught conflict resolution skills and how to use grievance procedures to solve problems. In some circumstances, 1:1 staffing is provided to the students for a limited time to focus on non-violent ways of dealing with issues.

Schools are to be pro-active in preventing violence in schools and have the mechanism to respond appropriately to the occasional violent outburst. Each of the six Teacher and Student Support (TASS) Centres have a Student Behaviour Management Team. This team assists schools in the development and maintenance of the student behaviour policy. The team and school staff work together to encourage the return of the students to mainstream classes.

In addition, each TASS Centre operates an Interagency Team comprised of Health, Welfare and Education personnel. The team nominates one of the professionals to work with the student, school and family to achieve a successful conclusion of an issue.

Many of these interagency workers are based in the districts serviced by each TASS Centre. In this way a more prompt response is available. The provision has been there for the individual teacher to lay a complaint against a student, parent or any other adult either personally or through the police.

It is unclear whether the term 'person' applies to students. The Education Department is working closely with the Police Department to further develop effective ways of dealing with the few violent students in schools.

EXAMINATIONS

In reply to **Hon. R.I. LUCAS** (10 March).

The Hon. ANNE LEVY: The Minister of Education, Employment and Training has provided the following response:

Language examinations have changed in a number of ways in the last few years. With the growing number of examinations, adherence to the past timetable would have exacerbated the lengthy period between oral examinations and the final written exam for language students. There has been a concern expressed by a number of language teachers that the languages examination timetable used in the past has unfairly disadvantaged language students. Language students undertook their oral assessments in October, their aural assessments in the first week in November and written examinations were not scheduled in most languages until towards the end of November. Thus language students were expected to maintain a high level of proficiency in their language acceptable for examination performance, for over a month.

Some have argued this detracted from their capacity to perform in other subjects being studied. It is now the case that aural assessments and written assessments are carried out at the same time and rather than put back the aural assessments until the end of November, it was considered better that the written examination be scheduled at the time of the formal aural exam in the first week of November.

Another factor in the decision is that there are now 19 nationally assessed Year 12 languages which are part of the very successful National Assessment Framework for Language at Senior Secondary Level, a project which SSABSA coordinated and which involved all of the assessment authorities around the country. Last year all national languages examinations were held on 26 October by agreement across the States and in 1993, 26 October will be the date on which all national examinations occur.

SSABSA undertook consultation on this matter with a number of Chief Examiners and, in particular, discussed the proposal and the resultant organisational changes necessary with senior staff at Adelaide High School, which is the specialist language school in the Department of Education. The matter was also discussed this year at SSABSA's Ethnic and Multi Cultural Board Liaison Group.

On the basis of these discussions, it is SSABSA's view that on balance this is a desirable change. Relatively few students will undertake more than one language examination in the former 'swot-vac' but, like the rest of the exam period, will schedule study around actual examinations during the period. This decision was made by the board at its December meeting and is in place for 1993. It will be reviewed on the basis of the 1993 experience and a decision taken in the long term as to whether this organisation of language assessments will continue to be applied in the future.

STATE CHEMISTRY LABORATORIES

In reply to **Hon. M.J. ELLIOTT** (17 February).

The Hon. BARBARA WIESE:

1. The ODR report recommended that the activities performed by SCL be substantially reduced and reorganised, as most of its services and activities are discretionary, and not obviously aligned with the mission of the Department of Primary Industries.

It was not in the ODR's terms of reference to examine the broader State roles performed by SCL. Clearly, the review did not address the future State requirement for a central government laboratory and the contribution that SCL currently makes to the State in executing this role.

I have stated in a press release on 17 March 1993 that 'Vetlab research activities and associated infrastructure and the cereals sections of State Chemistry Laboratories will be transferred to SARDI'.

In view of the number of public submissions received in support of SCL, Primary Industries will conduct further investigations to determine where SCL is best situated.

2. It is recognised that SCL provides services to other Government Departments and private clients, and their needs will be taken into consideration in restructuring of the laboratories. SCL will continue to provide independent analytical services to all areas of Government.

PILCHARDS

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

The Hon. BARBARA WIESE:

1. Following receipt of the letter of 21 August 1992, detailed discussions took place between Mrs Rhonda Ogilvie a long standing and prominent member of the Action Group and the Project Officer (Policy) in the Primary Industries (Fisheries), specifically on the issue of pilchards and with reference to the meeting of 5 August 1992 at Port Lincoln.

It was understood that these discussions adequately addressed the concerns raised in the Action Group's letter. Nevertheless formal responses to Mr. Johnson's letters of 21 August 1992 and 11 March 1993 are now being prepared.

A discussion paper outlining proposed management arrangements for the pilchard fishery has been prepared and presented to the Scalefish Management Committee. Copies have been forwarded to interested persons for comment.

Mr. Johnson has been sent a copy of the discussion paper on the pilchard fishery and the Action Group has been invited to make comment during the public discussion phase.

2. The South Australian Research and Development Institute has an ongoing monitoring program for pilchards. This includes the collection of samples for analysis and length frequency studies, detailed daily catch data and data on fishing and searching times. Funding for a more detailed research program is to be sought from the Fisheries Research and Development Corporation and this is considered in the draft management plan.

Primary Industries (Fisheries) will be advocating a very conservative stance until further work on the fishery can be undertaken.

3. Primary Industries (Fisheries) is not involved in any such work. Studies on species such as marine mammals and sea birds have traditionally been undertaken by the South Australian Museum and National Parks and Wildlife Service.

BUS SHELTERS

In reply to **Hon. J.C. BURDETT** (1 April).

The Hon. BARBARA WIESE: I am advised by the State Transport Authority (STA) that the wind breaks at Modbury interchange which were removed some 18 months ago will be replaced.

The STA is actively pursuing design alternatives which will allow the wind breaks to be reinstated while reducing the opportunities for graffiti vandalism and other anti-social behaviour. The wind breaks will be installed for an initial trial period of six months during which time their effectiveness will be assessed. It is anticipated the wind breaks will be installed by the end of June.

BACTERIAL WILT

In reply to **Hon. R.I. LUCAS** (2 March 1993).

The Hon. BARBARA WIESE: Crown Law advice recommended that the Department of Primary Industries' report into the outbreak of bacterial wilt in potato crops in South Australia be only released on third party discovery. A third party discovery hearing was held on 16 March 1993, at which a copy of the report was released.

SCHOOL SPORT

In reply to **Hon. M.J. ELLIOTT** (3 March).

The Hon. ANNE LEVY: The Minister of Education, Employment and Training has provided the following response:

1. In 1988-89 a joint committee from the Education Department of SA and the SA Department of Recreation and Sport, 'The Children's Sport Task Force', developed a draft of the Junior Sports Policy. This was based on extensive and wide ranging research evidence including the 'Review of School Sport' and extensive consultation with state sporting associations, Catholic Education Office, Independent Schools Board and the Equal Opportunity Commission.

From the literature reviewed the weight of evidence and research findings indicated clearly that intensive competition at a time when children are going through a vital period (10, 11 and 12 years of age) of physical growth and social development was not appropriate.

The 'Children's Sport Task Force' based the development of Sport Camps on the finding in these studies.

The Junior Sports Policy has never sought to prevent children or teenagers from participating in sport but rather to enhance the experiences of young people attracted to sport so that they will

not be 'turned off' t too early an age; so that they will want to discover and repeat the pleasures from their involvement in sport.

2. As the intent of the policy is to encourage greater participation in sport, in this case particularly those exhibiting outstanding coordination and movement skills, it is essential that the direction embarked upon be maintained.

Research data will only be relevant through the medium of a longitudinal study. Any change in direction or attempts to shorten the study - no matter how small will fail to provide the review process with accurate information about children's and teenage involvement in sport.

3. The Junior Sport Policy is a collaborative venture between the Education Department and the Department of Recreation and Sport; it is not just an education policy affecting school sport. The policy impacts on sport in schools and community sporting clubs.

Whilst involvement in interstate competitions through the Australian Schools Sports Council has involved a cost factor to Education in the past the significant cost was to the parents of the children involved. Children from some socioeconomically disadvantaged areas and country regions were unable to attend selection trials which precluded them from the selection process and consequently from participation in the team. The cost of participation—air fares, clothing and spending money was an additional expense, unable to be met by such families. When the competition was held interstate this cost often exceeded $400. The Sports Camps program offers all children an opportunity to participate regardless of socioeconomic circumstances.

The costs for the Sports Camps program involving 21 sports, is shared between Education and Recreation and Sports Departments—$75 000 each ($150 000).

In 1992 the Income from Sports Camps for 17 sports was $57 920.

The expenditure for 17 sports was $154 158.22.

The cost of conducting the camps for the 17 sports was $96 238.

Any involvement in interstate sport for primary school level will detract from the general thrust of the Junior Sports Policy, which states... 'there will be a move away from primary school interstate teams and from primary school interstate competition for children up to the age of 12 years'. Any change in direction, no matter how small, will fail to provide accurate information about children's and teenage participation in sport for future planning.

The South Australian Junior Sport Policy has been an outstanding success in providing a widely accepted model for the organisation and management of children's and teenage sport in Australia.

Western Australia, Tasmania and the ACT have made decisions along with South Australia, that primary school interstate teams and primary school interstate competitions for children up to the age of 12 years are inappropriate.

The South Australian National Football league is a participant in the Sports Camp program.

BETTING

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

The Hon. ANNE LEVY: The Minister of Recreation and Sport has asked me to draw to the honourable member's attention his answer given in the House of Assembly on 31 March 1993 in response to a question asked by the member for Davenport concerning on-course telephone betting.

ODR REPORT

In reply to **Hon. PETER DUNN:** (11 February).

The Hon. BARBARA WIESE: In general, Government laboratories have higher operating costs than private enterprise laboratories. There are a number of reasons for this:

Government laboratories must have sufficient operating capacity to:

- receive and process samples from the community at large on demand, rather than to a pre-arranged schedule.
- react to emergencies such as chemical spills or incursions of exotic disease such as foot and mouth disease.

Government laboratories, including both the laboratories in question have a role in:

- monitoring and maintaining standards of other government and private enterprise laboratories.
- providing certification for both imports and exports. The majority of importing countries will only accept certification from government laboratories.

Government laboratories usually have other roles, notably in research and development, the costs of which are usually not fully recovered through the charges of diagnostic and analytical services.

In attempting to maximise cost recovery, both laboratories charge fees which are, in general, higher than those in the private sector, and comparable to other government laboratories, both here and interstate.

The ODR did not recommend closing down the Central Veterinary Laboratories (CVL), although it did recommend "disbanding" State Chemical Laboratories (SCL). The ODR report stated that "....most of the services and activities in both CVL and SCL are discretionary, and not obviously aligned with the mission of the Department. It is therefore recommended that these units be substantially reduced and reorganised." The ODR further recommended that CVL should be reduced in size overall, and amalgamated with the Department's animal health program, which should determine what activities are undertaken by CVL. In relation to SCL, the ODR recommended that some Sections of the laboratories should be amalgamated with other functions of the Department, and other activities wound down, with the testing outsourced.

The question as to whether these two laboratories *in toto* should be closed down is therefore not relevant, in the context of the ODR recommendations. Since the Hon. Member's question, Cabinet's decision has been made known Vetlab field research activities and associated infrastructure and the cereals section of State Chemistry Laboratories will be transferred to SARDI.

It is unlikely that any work would be contracted overseas.

In reply to **Hon. PETER DUNN** (17 February 1993):

The Hon. BARBARA WIESE:

1. In 1991-92, as part of the Government Agency Review Group (GARG)/Budget savings requirement, the former Department of Agriculture was required to reduce its net call on recurrent State funds by $9.4 million over a 3-year period. In addition, the Department estimated that a further saving of $3.6 million was required to accommodate unfunded cost escalations due to award restructuring, salary increments, classification creep, etc., thus resulting in a total savings requirement of $13 million.

The $13 million savings were those identified for agriculture as part of an overall requirement for the Government to make savings in its recurrent budget. Agriculture was not singled out

in this process, but was required to find its share of the savings. These savings were required prior to undertaking the ODR, and the ODR had therefore to accommodate this requirement. However, the major emphasis of the ODR was to identify new strategic directions for the department, as it was believed that there was potential to increase agricultural productivity through industry development and enhanced research and technology transfer programs to the benefit of the State.

2. While the importance of agriculture to the State is acknowledged, the Government must resource all its portfolios and provide necessary services to the community at large. It also stated that, if the changes recommended by the review were implemented successfully, the new Department of Primary Industries and the South Australian Research and Development Institute would be more effective and have more impact on helping agriculture in South Australia. Improvements can be made in the nature and delivery of the Department's services, by identifying the means of creating a more financially and operationally accountable Department, and adopting more business-like approaches with specific bottom-line targets. This can still be achieved with a lower level of resources.

SUPPLY BILL (No. 1)

Adjourned debate on second reading.

(Continued from 31 March. Page 1778.)

The Hon. J.C. BURDETT: I support the second reading of the Bill. I also support my colleagues in deploring the monumental mismanagement by the Labor Government of the finances of this State, including the State Bank fiasco, SGIC, the Timber Corporation and many others. The indebtedness of the State, to add to the already alarming magnitude of the State debt, will be a burden on us, to our children and to our children's children for many years to come.

A detailed matter to which I will refer relates to the Police Force and the Police Complaints Authority, on both of which Government moneys are expended, and that is the reason why I speak to this matter in this debate. On 24 November 1992, the Hon. Ian Gilfillan directed a question to the Attorney-General relating to Whyalla councillors. I will use the relevant names for the sake of convenience, because they have already been used by the Hon. Ian Gilfillan. The part of the honourable member's allegations that are relevant to the Supply Bill, in that they are relevant to the police and the Police Complaints Authority, are that a councillor of the Whyalla City Council, Eddie Hughes, raised alleged involvement by Councillors Roger Thomson and Tom Antonio in certain offences.

At the time the honourable member asked the question charges were pending against them. I do not know the outcome, if any, of these charges and that is not relevant to the matters pertaining to the expenditure of money.

Councillor Hughes told the Hon. Mr Gilfillan that prior to the relevant council meeting Councillor Antonio approached him and told him he had been speaking with an old friend of his—a former police officer, Sam Bass, who is currently Secretary of the Police Association. The Attorney in his reply very properly said that if Mr Hughes had any complaint that police officers has been involved in the release of unauthorised information he had recourse to the Police Complaints Authority. This advice was followed and as a result of the ensuing inquiry the authority wrote to Mr Bass on 1 April 1993 as follows:

I write to inform you that the report of the Internal Investigations Branch on the complaint made against a member of Police Force by Councillor E. Hughes, arising out an incident which is alleged to have occurred on 16 November 1992, has been received. This complaint was entered in the Register of Police Complaints as number C5425.

I enclose a copy of my letter to the Commissioner of Police dated 15 March 1993 which sets out my assessment and recommendation in respect of this complaint.

I further inform you that the Commissioner of Police has agreed with this assessment and the register has been noted accordingly.

The letter that Mr Peter A. Boyce of the Police Complaints Authority wrote to the Commissioner of Police, to which he referred in his letter to Mr Bass, is dated 15 March 1993 and is headed 'Assessment and recommendations—Re: complaint by Mr Edward Hughes'. It refers to the complaint number and states:

I have considered the report and attached material forwarded to me by the officer-in-charge of the Internal Investigations Branch in respect of this complaint. On 24 November 1992, Mr Ian Gilfillan raised allegations [the letter refers to the House of Assembly, but that was wrong as it was in this Chamber] that a councillor, Mr Hughes, had been subjected to threats and political interference from another Councillor, Mr Antonio. Mr Hughes alleged that Mr Antonio had inferred to him that he had obtained information of his past involvement with police from the Secretary of Police Association, Mr Sam Bass.

Mr Hughes states that Mr Antonio told him that Mr Bass had some very interesting things to say about him. Mr Antonio also told him that he knew that Mr Hughes had prior convictions, including one for false pretences. Mr Hughes states that he was arrested in 1978 or 1979 for false pretences, but this fact was not common knowledge. He agrees that it is possible that Mr Antonio could have found out about his past involvement with police in another manner, but it is his opinion that his conviction for false pretences was not widely known.

Mr Antonio admits that he telephoned Mr Bass in relation to Mr Hughes. Mr Antonio had heard that Mr Hughes had been involved in an incident during the Queen's visit in 1977 and that Mr Bass was one of the police officers who arrested Mr Hughes for disorderly behaviour. Mr Antonio telephoned Mr Bass and asked him for information about the incident. He states that Mr Bass was extremely uncooperative and would not supply him with any information. Mr Antonio then went to the Adelaide Library and found newspaper articles about the incident. He states that he spoke to Mr Hughes about the information contained in the newspapers. Mr Antonio denies that he mentioned a conviction of false pretences to Mr Hughes and states that he was not aware that such a conviction existed. Mr Hughes admits that his involvement in the incident during the Queen's visit in 1977 is common knowledge about Whyalla.

Mr Bass states that Mr Antonio contacted him about Mr Hughes. Mr Antonio asked him if he remembered arresting Mr Hughes in 1977 during the Queen's visit. Mr Bass informed Mr Antonio that he could not pass on any information about Mr Hughes to him and also informed him that he could not even remember the incident. Mr Bass states that Mr Antonio rang him

again a few days later and told him that the incident had been in the newspapers and asked him if he could remember anything further. Mr Bass informed him that he could not and he had no comment about the matter. He states that the incident in 1977 was the only contact he had with the complainant and he has no knowledge of any other convictions relating to Mr Hughes.

I note that Mr Hughes states that the false pretences charge was in relation to a breach of social security regulations. Even though this is a Federal offence, information about the conviction should be recorded on Mr Hughes' criminal record. However, there is no indication on the record of any conviction for false pretences. If Mr Bass did tell Mr Antonio that Mr Hughes had a conviction for false pretences then he did not receive this information from the South Australian records. I consider that it would be highly unlikely that Mr Bass could have found out information about Mr Hughes which was not recorded in the South Australian police records.

In my view there is no evidence to show that Mr Antonio received confidential information from Mr Bass. Mr Antonio states that he had not heard that Mr Hughes had a conviction for false pretences and this information is not recorded on South Australian records. Mr Antonio has been free in admitting that he questioned Mr Hughes about the disorderly behaviour incident in 1977 and also that he attempted to get information about the incident from Mr Bass. Mr Antonio maintains that Mr Bass refused to give him any information about the incident and, in fact, he could not recall it.

I am unable to find, on the available evidence, that Mr Hughes' allegation is sustained. Accordingly, my assessment is that there has been no conduct to which section 32 of the Police (Complaints and Disciplinary Proceedings) Act 1985 applies and I recommend that no further action should be taken in the matter.

Unless you disagree with my assessment and recommendation the register will be noted accordingly. I would appreciate your early reply so that I might notify the member and the complainant as required by section 36 of the Act.

Of course, that has been done in accordance with the letter that I read before. Money has been expended both on the payment of police at the time and on the Police Complaints Authority on the matter which the Hon. Mr Gilfillan saw fit to raise and the outcome indicates clearly that there was no justification in the allegations against Mr Bass. I suggest that the Hon. Mr Gilfillan could have given that advice to Mr Hughes to refer the matter to the Police Complaints Authority without raising it in this Chamber. With those comments, I support the Bill.

The Hon. K.T. GRIFFIN: I indicate support for the Bill. Because it is a Supply Bill, it provides an opportunity to raise issues of relevance to the issue of Supply. The issue I want to touch upon today is one raised by the Trades and Labor Council several weeks ago in the context of a submission to the Government about its proposed economic statement. The Trades and Labor Council looked back over a decade and decided that in its submission it should continue the class warfare position that the Labor Party until that time had pursued, and that it ought to support the reintroduction of death and gift duties and, in addition to that, seek to have the Government impose a land tax on one's home where the home was worth $200 000 or more.

That would be a retrograde step and it would certainly be a discouragement to home ownership. It would also have a very stifling impact upon business, whether it be in the rural sector or small business in the urban areas of the State, because there is no doubt that, in the many years that death and gift duties existed in South Australia, the farming community and small business were those sectors which principally bore the burden of death and gift duties.

Death duties sent farmers broke, as they required them to sell up the family farm to pay death duties where there had been inadequate estate planning undertaken. Business burdens increased dramatically and some small businesses had to be sold to meet the burden of the death duties that were imposed. Of course, death duties were derived from the old outdated view that a person ought not to be able to transfer onto one's family the benefits of a hard working life and that accumulation of assets ought to be discouraged.

We saw the consequences of that in the United Kingdom before Mrs Thatcher took office and substantially reduced death duties where many families who could trace their lineage to past centuries and who owned family homes, maybe castles, but were obliged to sell them off or open them to the public to enable them to pay the burden of death duties. It was not so obvious within South Australia but, undoubtedly, a significant burden was placed upon families by the imposition of death and gift duties.

The Council will remember that the Tonkin Liberal Government abolished death duties in 1980, as well as abolishing gift duties, and we abolished land tax on the principal home; that exemption continues to today. We took a strong view that the investment of money in assets, whether they be business or farming assets or the family home, ought to be encouraged.

Land tax and stamp duty on the first home purchased were certainly a disincentive to home ownership, and death and gift duties were certainly a disincentive to build up business assets which contributed to making South Australia prosperous.

Let me just refer to the 1970s. At that time with the burden of death duties being quite extensive, it was a lucrative area of business for lawyers and accountants in estate planning, and a variety of schemes were developed to avoid the passing on of property by way of transfer or by way of will, which transfer incurred death duties.

As a result of estate planning, gift duties were imposed on gifts over $10 000. At one stage in South Australia anything over $4 000 in a gift attracted gift duty and, although that was a disincentive to estate planning, nevertheless it was more attractive than death duties because those gift duties were at a lower rate than death duties.

One could plan the distribution of one's estate over a longer period, always having in mind that death might not come at an early age but rather when one reached advancing years. There was an element of risk involved in that, but one could plan the disposition of one's estate and pay the gift duties over a longer period of time. In fact, it would spread the burden. There was no such opportunity with death duties. Death duties were incurred on death and they had to be paid within six months of

death, or six months of the grant of probate, I think it was, and then, if one did not pay, interest accrued.

Even if one paid interest, one's property could still be sold up by the Commissioner of Succession Duties if one did not pay up the duty bill within a reasonable period. So, there was no opportunity to spread the load: there was no opportunity to defer the impost. One had to meet Government revenue obligations up front and then the family had to work for a long part of their lifetime to pay back the bank from which they had borrowed to pay the gift and death duties.

There were some concessions for farmers. As I recollect, there were not concessions for other small business people. There were some concessions for widows or widowers and there was some concession for children under 18. There was a different rate for widows or widowers from that imposed in relation to adult children. However, these concessions did not provide significant relief and, even with a quite modest estate, there was a substantial amount being paid out to the Government by way of death duties.

The Tonkin Government took the view that the taxes were iniquitous, that the community should be relieved from them and that, if there were to be revenue raising, it ought to be done by more broadly based taxes and charges rather than by imposing substantial burdens upon those who might have been prudent, who might have practised frugal habits during their lifetime or who worked hard to build up assets that they could leave to their children and from which a reasonable income could be obtained.

It punished the thrifty, it punished the responsible and it punished families. We took the view that that was quite inequitable and that death and gift duties ought to be removed. That followed the removal of death and gift duties in Queensland. We saw that, too, by virtue of the differential taxes attracting people to Queensland away from South Australia, just as we have at the moment, with a lower debits tax, as I recollect, and no financial institutions duty in Queensland.

The Hon. Diana Laidlaw: No petrol excise, either.

The Hon. K.T. GRIFFIN: No petrol excise. So, there is an attraction in our country to go to places where you pay less tax. And why not? One is entitled to arrange one's affairs to minimise taxes, provided that that is not in breach of the law. The whole object of death duties was to bring everyone down to the lowest common denominator. A certain amount of envy was involved in the basis for death duties and there was no encouragement for incentive. I have a very strong view that in this State we need incentive, not just for business but for people who are employed: incentive to work hard, to earn, to build up their assets, to save and to be responsible and thrifty rather than spending all that they receive; not that at the moment there is either much incentive or, for that matter, much surplus left in the ordinary family budget after meeting taxes, charges and living costs.

As I said earlier, death duties and gift duties were good for lawyers and accountants. There was a variety of options for estate planning that were undertaken with companies: the establishment of trusts, jointly owned property and gifting programs. Whilst the lawyers and accountants benefited, I suggest that the ordinary community did not. Why should the focus of business be taken from the real game and placed upon minimising taxes and charges? It was a fertile ground for estate planning, and no-one can blame the professionals for developing expertise in seeking to achieve the goal of minimising those capital taxes.

In respect of land tax on homes, I have already indicated that there is a distinction proposed by the Trades and Labor Council that any home over $200 000 ought to be subject to land tax. I am not sure whether that is at the rate applicable to $200 000, remembering that it is a progressive tax: the higher the value the higher the rate; therefore it is compounded in its imposition. I am not sure what the Trades and Labor Council was proposing: whether it should be that rate applicable to $200 000 less the concession, or what. But the fact was that it was seeking to impose a capital tax that bore no relationship to the use to which the property was put, the productivity of the property and the benefit that was being obtained by the family from living in a house, whether by accident over $200 000 or by dint of one's personal endeavours.

The Trades and Labor Council has proposed death duties and gift duties as well as a range of other initiatives. The Premier has said that no consideration is being given to these, but I wonder how much weight one can give to a statement before an election, when the finances of the State are quite desperate, when we may well be faced with a rather glamorous and glossy economic statement later this week, and when, after the election, if by some mischance the Government should be returned, we will see immediately the consideration of other means of raising revenues. Death duties, gift duties and land tax on homes are certainly on the agenda, remembering that the Labor Party is the political wing of the trade union movement and that a very substantial amount of influence is exercised by the trade union movement upon the political wing, the Labor Party, and thus on the Government.

If the trade union movement is anxious for a Government to proceed with these sorts of capital taxes, I do not think that any amount of dissociation by the Government from those propositions will convince South Australians that they are totally free of the risk of those capital taxes being reimposed after the election, if by some mischance the Labor Government should be returned. So, although the Premier has said that they are not on the agenda, that can only mean not on the agenda at the present time, and we may well see the spectre of these taxes after an election if something should go wrong and the Labor Government be returned.

It is important for South Australians to recognise that it is not just a matter of saying that this will not occur: it is a matter of believing, and for the statements to have credibility. I suggest that, in light of what promises to be a glossy economic statement but nevertheless a statement that demonstrates that South Australia is in a very difficult situation financially, there must always be the spectre of these capital taxes after the election, if Labor has any say in it. I indicate support for the Bill.

The Hon. BARBARA WIESE (Minister of Transport Development): I want to address a couple of issues that were raised during the debate on this Bill and

also to raise one other that was not raised during the debate, to which I will refer very briefly. The matters I want to refer to were raised by the Hon. Diana Laidlaw with respect to the State Transport Authority and also to matters relating to the future of rail in South Australia. The first issue relates to fare evasion in the public transport system. It must be acknowledged that this is a vexed problem and has been a problem for our own State Transport Authority and many other public transport organisations in Australia and overseas over a number of years.

Many assessments have been made of the extent of the practice here in South Australia within our own public transport system. The Hon. Ms Laidlaw herself indicated that varying assessments had been communicated to her over a period of time, and she quoted some of those in her speech as well as referring to estimates that had been made by the State Transport Authority in the past. She also indicated in summary that she thought that at least $1 million was being lost annually to the State Transport Authority. That statement was made on 31 March, and over the weekend the Hon. Ms Laidlaw issued a press release that indicated that this figure somehow seems to have blown out to something like $5 million, although there was no supporting information to justify the claim that $5 million might be the extent of the evasion.

The Hon. Diana Laidlaw: That's what John Crossing said.

The Hon. BARBARA WIESE: But as I have just indicated, you did not provide any supporting information to justify that amount of money, whether it came from you or from John Crossing. I would want some justification for such a figure. As I said in my opening remarks, this is a vexed problem and it is difficult to assess the extent of the problem of fare evasion, whoever is making the assessment. I suggest that most people are only in a position to make a guess: perhaps for some people a more educated guess than for others. I would like to make a couple of comments about the $5 million figure that has been suggested by the Hon. Ms Laidlaw, based, she says, on information provided by the public transport union.

It is rather difficult to imagine how the amount might have been calculated. I asked the State Transport Authority to provide information on this, and they have been unable to validate that sum and they do not have any information about the formula which was used for arriving at such a figure. So, it is rather difficult to

imagine what it might have been, or that it is indeed an

accurate assessment. If we look at the reality of the situation and see that each journey is calculated as being one-tenth of a multi-trip ticket, then each journey represents a cash value of $1.40. Therefore, if the claim of $5 million were correct it would represent 3 571 428 fare evasions per year, which is 9 785 per day. There are currently 52 952 000 journeys made on public transport each year, and this would therefore represent 145 073 per day which means that under this suggestion one in 15 passengers is evading paying their fare. That would be very hard to believe and was certainly not indicated in the last spot check that was undertaken by the State Transport Authority.

In fact, recently the State Transport Authority responded to various comments that had been made from customers and also employees about the level of fare evasion on trains, and the most up-to-date information that has been provided to me follows an investigation into the level of fare evasion on rail, an investigation undertaken in recent weeks as part of a continuing effort to increase the effectiveness of detection. This has indicated that fare evasion varies depending on the time of day: in the peak period it is about 3 per cent and in the off-peak period about 6 per cent. It is evident that on some occasions during the off-peak, particularly at night or when passengers travel from suburban station to suburban station on selected services, we experience a level of fare evasion that can be up to 20 per cent. However, this percentage relates to relatively small numbers of passengers travelling at these times, and I think it is important to emphasise that. If you have only four people on a bus and one is a fare evader, you have a fare evasion rate of 25 per cent. So, we need to treat these percentage figures carefully.

To put the rail issue into context with the overall system the fare evasion on buses of about .3 per cent, when combined with rail, produces an overall level of about 1 per cent or $500 000 per annum, as I have stated previously. Contrary to the honourable member's comments that the problem has flourished since the State Government got rid of guards on trains, the level of revenue lost on trains was always higher than that experienced on buses. The STA has taken a proactive stance on the matter and has introduced several new approaches designed to increase the intensity and effectiveness of ticket inspections by its 58 field supervisors. For obvious reasons I will not detail the information as to what methods are employed by the field officers, but this information can be provided on the basis that it is treated in confidence.

A second cause of revenue loss has been the malfunctioning of ticket validators on the trains and this problem is being tackled head on. The ticketing supervisor, as was mentioned by the Hon. Miss Laidlaw, heads up a team of employees who identify problem validators and take specific action to minimise any revenue loss. Members will be interested to know that the average level of ticket equipment malfunction for the whole fleet is lower than anticipated by the system manufacturers, Crouzet, as a performance criteria.

In regard to faulty tickets, the number of ticket refunds on multi-trip tickets increased dramatically in the early months of last year, peaking at a level of 29.2 refunds per 10 000 validations. Of those multi-trip tickets which failed to work part way through their lives, about 50 per cent were due to either magnetic or physical damage; 25 per cent were due to faulty working of ticket validators; and the remaining 25 per cent had no discernible cause—that is the tickets would work normally when tested by STA staff. By adopting a variety of measures, such as changing the ticket material and more frequent checking of validators, the number of ticket refunds has now dropped back to 21 refunds per 10 000 validations, or about .2 per cent. Some brands of tickets did not perform as well as others and the STA took appropriate action when this became obvious. Like anything manufactured, it was a case of identifying the problem and working with the manufacturer to address it.

I have provided details of the ticket outlets in metropolitan and near country Adelaide on several occasions. We now have over 950 ticket outlets, about 700 of which are licensed ticket vendors. They are principally small businesses such as delicatessens and newsagents, which are well located in relation to public transport services or in near country towns for the convenience of country residents. Nevertheless, in an effort to provide another ticket purchasing option for customers, we have been testing ticket vending machines on railcars for some months. As the machines are not available off the shelf, manufacturers were invited to develop suitable equipment for trial purposes. Up to 10 prototype TVMs, as they are known, from four manufacturers are being tested. The development of machines and software has taken longer than initially expected, but that has been outside the STA's control.

The tests are designed to test the suitability of vending machines in the rail environment through assessment of factors such as reliability, technical performance and security. Quotations will be sought from select manufacturers for supply of suitable ticket vending equipment after further trials. Subsequent installation of the vending machines throughout the railcar fleet should commence during the latter half of this year. So, it can be seen that the STA is well aware of the issues raised by the honourable member, and it is taking appropriate action. There are also some other matters which have arisen recently and which are being considered that hopefully might lead to further measures being taken to deal with the problem identified on which considerable work is taking place.

It is very easy to build up emotion about the rail system, and the honourable member on numerous occasions has tried to do that by suggesting that there is some sort of hidden agenda for the future of the metropolitan rail system. I want to say again, as I have said on previous occasions, and I am sure as my predecessor said, the notion that the Government has a hidden agenda to do away with the metropolitan rail services is nonsense. As the honourable member full well knows the Government has replaced the rail signalling system at a cost of about $48 million. We have ordered 50 new 3 000 class railcars at some $150 million. We have upgraded the Adelaide railway station. We are upgrading numerous suburban stations. We are resleepering the tracks with steel sleepers, and we have recently introduced new transit link train services on the Gawler, Noarlunga Centre and Outer Harbor lines. I do not think that anybody would suggest that sounds like a Government which is running down the rail system.

One other issue that I would like to refer to with respect to the question of fare evasion relates to a matter that was referred to also by the Hon. Miss Laidlaw in the press release which she put out during the course of the weekend where she referred to the Victorian public transport corporation blitz on fare evasion that took place recently, and in which she made extravagant claims about its success and advocated that such a move should be made here in South Australia. Since that time I have had some inquiries made about the blitz undertaken in Victoria and I have discovered a number of things which present a picture not quite as glowing as that which was presented by the Hon. Miss Laidlaw in her press release. First, she indicated that as a result of this blitz, which required members of management and office staff to be present at stations to check tickets, etc., there was an increase in revenue of some $2.5 million.

I have had that matter checked and discovered that that is not accurate. In fact, what occurred is that during the four-week period of the blitz there were two factors at work. One was the result of the blitz: it is estimated that about $500 000 in increased revenue can be attributed to the blitz activities and the remaining $2 million, which the Hon. Ms Laidlaw attributed to the blitz, was in fact a blimp in the budget figures in the sense that at that time and during that month there were a number of student pass renewals which occurred later than anticipated and which amounted to about $2 million. So, the result of the blitz was not as enormous as suggested, and I think the facts ought to be set straight. Fare evasion rates on the Public Transport Corporation of Victoria's rail services are estimated to be about 5 to 6 per cent, which is consistent with our own estimates of 3 per cent peak and 6 per cent off-peak.

The Hon. Diana Laidlaw interjecting:

The Hon. BARBARA WIESE: Had the honourable member listened to what I said earlier, and perhaps she can read the *Hansard* tomorrow—

The Hon. Diana Laidlaw: I have been listening.

The Hon. BARBARA WIESE: No, you have not; if you are asking this question you have not been listening to what I said. I suggest that the honourable member reads the *Hansard* because she will find that overall the average is about 1 per cent when you add up rail and bus and off-peak and peak estimates of fare evasion. I suggest that the honourable member look at the figures, and she will then be able to recognise the point that is being made.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: It has been suggested that a sustained blitz in Victoria will roughly halve the PTC evasion rate, but it would have to be at the continuing ongoing cost of staff resources. I am sure that assessments will be made in Victoria, as of course assessments must be made in South Australia, of the cost benefit of undertaking such extensive work in this area and devoting huge resources to the problem. The point I am making is that a cost benefit analysis of those things must be made before decisions are made about the extent to which resources should be deployed in areas of this sort. It should also be noted that the PTC in Victoria still has a manual ticket system in place and is moving to introduce automatic fare collection equipment, which has been operating successfully in our public transport system for almost six years.

Finally, there is one other matter concerning the STA that I would like to address briefly, and that is to place on the record the success so far of the STA's transit link services, which have been introduced in metropolitan Adelaide over a period of time. As members who have followed this will be aware, there are now six services in various parts of Adelaide: Aberfoyle Hub-city; West Lakes-city via Port Road; Elizabeth-city; Port Adelaide-city via Arndale; West Lakes-city via Henley Beach Road; and, finally, a new cross-suburban route which travels from Burnside to The Levels. The last

three of those services have been in operation only for a very short time, and it is probably too early to make profound judgments about their success, but early indications are that they have been extremely successful.

In the case of route 580, the service that runs from Burnside Village to The Levels, its success has been so overwhelming that additional buses have had to be provided to meet the growing demand. The early indications of the newly-introduced north-western sector services are that they too are very successful. In the case of the Elizabeth service and the longer-standing service from West Lakes to the city, I think it is worth putting on the record that for the week ending 2 April this year the average daily patronage was the highest so far recorded for those two services. In the case of the West Lakes service, there was a substantial 40 per cent increase in patronage compared with recent weeks, and that has been attributed to the service changes that were introduced in the north-west sector during the course of that week. So, it would appear from the results thus far that the transit link services are very successful. They are very popular and they are continuing in an upward trend with respect to increasing patronage. That is extremely important to note, because it means that we are getting on top of the problem of declining patronage. That decline in patronage which has been obvious for 10 years is slowly but surely being arrested as and when we are able to revamp the public transport services that are provided to the public and introduce services more in keeping with the sorts of service that people are looking for.

The last issue I want to raise relates to the rail systems outside the metropolitan area. I had intended to address the broader question of the future of Australian National and the National Rail Corporation; however, I do not believe that it is necessary for me to do that now as I referred to those matters during Question Time. I refer anyone interested in that matter to the points I made in response to a question today. However, one issue raised by the Hon. Ms Laidlaw to which I have not referred today concerns the breaker gauge lines which link the grain silos to the Adelaide-Melbourne rail line and the fact that recently it was brought to the Government's attention that those lines will not be standardised as part of the standardisation project. It seems ridiculous to me that that should be so in view of the small amount of additional resources that would be required in order to bring those lines up to scratch. It has been estimated that it would cost about $500 000 extra to upgrade those lines to standard gauge. That would enable grain contracts to continue, and it would certainly be in the interests of farmers in South Australia and of the port of Adelaide, not to mention the interests of the Government with respect to moneys that would be saved in road upgrading, for us to keep that grain traffic on the rail system rather than the problem that could emerge if these lines are not standardised of having to transport this grain by road. That would add considerably to the Government's burden in increased costs of maintaining our roads, and we are certainly not keen to see that occur.

I approached the Federal Minister on this matter as soon as it was brought to my attention, and I hope to have meetings with the Federal Minister in the very near future to discuss that matter and other issues relating to the future of AN and the NRC.

The Hon. Diana Laidlaw: On 1 April you told the Council that you hoped that such a meeting would take place in the very near future.

The Hon. BARBARA WIESE: That is correct—

The Hon. Diana Laidlaw: It is now 20 days on.

The Hon. BARBARA WIESE: —and I am hoping that I will be able to get into the Federal Minister's diary in the very near future. I cannot say exactly when that will be. I can understand the pressures that a Minister has so soon after an election, and a Minister whose responsibilities have essentially changed. Prior to the last election, although Senator Collins was Minister of Transport and Communications, he really had very little involvement in issues relating to land transport. The arrangement that existed within the Federal Government was that Minister Brown was responsible for those matters and since—

The Hon. Diana Laidlaw: You might be as pleased that he has gone as I am.

The Hon. BARBARA WIESE: I do not wish to comment about that. But the new Minister, of course, is now familiarising himself with the wide range of land transport matters. When I had a discussion with him recently I was very pleased to hear that since joining the ministry he has always felt that a consultative approach is the best way to go about things and I think that members who followed the debates relating to communications issues when he was responsible for those matters would be aware that he did consult very extensively with interest groups. I am expecting that there will be quite a change in approach under his leadership in this area. So, as I say, I am hoping to have a meeting with him very soon to canvass these matters and to put forward the views of the various interest groups, as I understand them, in South Australia with respect to the future of rail. I am hoping that the outcome of those discussions will be positive for South Australia.

Bill read a second time.

In Committee.

Clause 1—'Short title.'

The Hon. DIANA LAIDLAW: The Minister indicated during her response to the second reading debate, and I thank her for the detail that she provided, that there are now 10 ticketing machines on railcars and that the STA has been having some difficulty with these machines because of design problems with the manufacturers. Can the Minister indicate how long the trial of these 10 machines is anticipated to take? Is there a finishing point when the Minister will be making a decision that there will be no further machines on trains or that an investment will be made for further machines at platforms or on trains?

The Hon. BARBARA WIESE: As I indicated during my contribution I am hoping that we can start to introduce new systems towards the end of this year. Although I cannot be specific about exactly when we will stop trialling machines, because there are still some problems to be ironed out, I am hoping that very soon we will have machines that we are confident will work well. This will enable contracts or tenders to be called and contracts to be let to enable the introduction of machines to commence towards the end of this year.

The Hon. DIANA LAIDLAW: The Minister also mentioned the transit link service, and I do agree that for those people who do have access to those services the express bus service has been an excellent initiative. It is one that has been practised in many States over quite a number of years and I do welcome the fact that it is now operating in South Australia. There is a problem, however, for people in the inner suburbs, and I have mentioned this issue publicly in the past. I note that Rae Atkey also expressed concern about it in the *Sunday Mail* last Sunday. Increasingly, people in inner metropolitan areas are being denied services because the emphasis in the STA now is on the long distance express bus services. Is the Minister aware of this problem and can she indicate whether any studies or investigations are being undertaken within the STA to see what arrangements can be made to accommodate the needs of people in inner suburban areas? I suspect that that may be possible with a revamp of the STA, which the Minister has apparently been discussing with Cabinet. That arrangement, and introduction of more competition by the STA, may see that inner suburban residents are catered for. I would like an explanation from the Minister on that matter.

The Hon. BARBARA WIESE: The State Transport Authority is aware of some of the problems that have been created for some commuters in inner suburban areas as a result of the reorganisation of the transport services to place more emphasis on express services from the outer areas of Adelaide. As part of the ongoing review of services for the metropolitan area, and as part of the ongoing discussions taking place with people in the private sector and people in local government, for example, about the transport needs of people in the community, it is hoped that the needs of people in the inner suburban areas can be addressed over time. I cannot be more specific than that at this point except to say that the STA is aware of the problems that have been expressed by various people in the inner suburban areas.

The STA has undertaken its own surveys from time to time which give it a better picture of what the expectations and needs of people in various suburban locations are. It is this basic research work that forms the basis for the development of future services and also the opportunity to discuss with interested parties what might be suitable future options for the provision of public transport. Hopefully from such considerations some new services can be developed, whether they are bus services or taxi services or whatever they might be, that can meet the public transport needs of people in all parts of the metropolitan area.

The Hon. DIANA LAIDLAW: The Minister indicated in response to an interjection I made when she was delivering her second reading speech that she, like the current Federal Minister, believes in the importance of consultation. I have been told that in relation to the current changes that the Minister is proposing for the STA, which were the subject of this Cabinet submission but about which we have yet to hear an announcement by the Government, that there was no consultation with the Public Transport Union and the member bodies of that union. Can the Minister clarify that issue?

The Hon. BARBARA WIESE: I am not in a position to comment about documents that the honourable member referred to in public statements. I do not know what document she has in her possession or from where it came. All I can suggest is that it may be a document which was circulating within the public sector, but I am not in a position to make any comment about it. I have indicated on previous occasions, in response to questions that have been asked of me about the public transport system in South Australia, that there are a number of options that have been put forward over a period of time and dating back to the Fielding Report in 1988.

Numerous options were put forward in that report. There have been other studies that have made other suggestions from time to time. The honourable member's own passenger transport policy is taken from the Fielding report. Numerous ideas have been examined by the Government since 1988 and under a previous Minister. Since I became Minister, as I have indicated before, I have been looking at various options. At this stage no decisions have been made about the future or what is an appropriate organisation for the public transport system. However, I can assure the honourable member that when decisions have been made there will be consultation with relevant parties and there will be public announcements.

Clause passed.

Clause 2 and title passed.

Bill read a third time and passed.

CRIMINAL INJURIES COMPENSATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 March. Page 1655.)

The Hon. DIANA LAIDLAW: The Hon. Mr Griffin will be speaking to this Bill in some detail. However, I wish to focus on just one aspect relating to criminal injuries compensation contained in the provision which seeks to double the levies for expiated offences to $10, for summary offences to $40, for indictable offences to $60 and for offences by children to $20. This amendment has been designed by the Government to deal with a significant shortfall in the Criminal Injuries Compensation Fund of some $2.2 million in the current financial year.

I have received representations from the Royal Automobile Association of South Australia on this matter and I want to make some reference to them, because these representations reinforce the view of the Liberal Party that we would not support the Government's proposal in its current form. The Liberal Party believes that the levies in relation to expiated offences should be opposed and that levies in relation to offences which are dealt with in courts should be allowed to increase, but only by the amount of inflation since 1988—which is when the fund was established—and not 100 per cent as the Government proposes.

The representations from the RAA state very strongly that there are no so-called victims of crime from expiable motoring offences. It argues that expiable offences or traffic offences that are now subject to traffic infringement notices should have no levy at all, let alone the doubling of the levy that is proposed in this Bill. The

Liberal Party believes that the levy should remain at the current level of $5. I want to read from the RAA's letter to me dated 14 April, which states:

The association has long opposed a levy on traffic related court convictions and expiation fees to fund victims of crime, believing this cost should be borne by the entire community. There are no so-called victims of crime from expiable motoring offences or offences heard in courts of summary jurisdiction, and motorists already contribute to compensation of victims of road accidents through compulsory third party insurance premiums.

And that is so. The association goes on to state:

In addition, the association considers motorists contribute a disproportionate share towards the funding of the scheme. In 1991-92, the levy on traffic infringement notices generated some $1.112 million to the Criminal Injuries Compensation Fund (based on 222 400 expiable offences and a levy of $5 per offence) and approximately $500 000 from an excess of 30,000 traffic related offences heard in court. In total, this represents about 70 per cent of the $2.264 million generated by the levy scheme in 1991-92.

Of course, we do not have later figures at this stage. Contrary to the view of the RAA and, indeed, of the Liberal Party in this matter, the Government continues to maintain that all offenders rather than all taxpayers should be required to pay for criminal injuries compensation. That view is quite contrary to the current provisions in the Act. I point out to the Attorney, in particular—

An honourable member interjecting:

The Hon. DIANA LAIDLAW: Yes, I hope he is listening or that at least someone from the Government is listening to this empassioned—

An honourable member interjecting:

The Hon. DIANA LAIDLAW: It is the left wing behind the column. It may be the fifth column. It may be all that the members of the left wing have remaining and that they can fit behind one pillar.

An honourable member interjecting:

The Hon. DIANA LAIDLAW: Yes, that is true. There is an important provision in part IV of the Criminal Injuries Compensation Act which appears to have been ignored by the Government. I refer to section 12(5), which provides that any deficiency in the fund will be met from the general revenue of the State. So, we have a situation where in relation to this Bill the Government has decided that the deficiency in this fund, which is likely to be $2.2 million this year, will be met from a levy on all offenders and not from the general revenue of the State.

The RAA also points out that offending motorists have contributed considerable funds to general revenue in recent years since the introduction of speed cameras and red light cameras. It is estimated that $14.7 million in expiation fees were generated from nine speed cameras in 1991-92 compared with about $5.1 million from four speed cameras in 1990-91. Between 1990-91 and 1991-92 we saw an increase of four to nine speed cameras gaining an increase of $9.4 million in funds obtained from offending motorists into general revenue.

As there is the prospect of a $2.2 million shortfall in this fund for the current year, the Liberal Party would argue that there are plenty of funds going into general revenue from offending motorists that could be used to top up the fund and, at the same time, ensure that the Government abides by section 12(5), which requires that 'any deficiency in the fund will be met from the general revenue of the State'.

An interesting table has been provided by the RAA in its letter of 14 April, and I seek leave to have the table, which is of a purely statistical nature, incorporated into *Hansard.*

Leave granted.

FUND STATISTICS

	Opening Balance	Receipts	Payments (No. Claims)	Closing Balance
1988-89	$ 964 000	$ 3 237 000 (247)	$ 1 545 000	$ 2 656 000
1989-90	$ 2 656 000	$ 3 969 000	$ 2 900 00 (343)	$ 3 725 000
1990-91	$ 3 725 000	$ 4 156 000	$ 4 442 000 (497)	$ 3 439 000
1991-92	$ 3 439 000	$ 4 257 000	$ 5 595 000 (497)	$ 2 101 000
1992-93	$ 2 101 000	$ 4 300 000 (estimate)	$ 8 600 000 (estimate)	- $ 2 200 000

The Hon. DIANA LAIDLAW: The table notes the opening balance in the fund in 1988-89 at $964 000 and that last financial year the sum had increased to $2.1 million. It also notes an increase in the number of claims and payments as a result of those claims. In 1988-89 there was $1.3 million in payments and 247 claims. It appears that in this financial year there will be payments of $8.6 million, although in preparing this table the RAA was not able to estimate from any of its sources (either the Auditor-General or the actuary) what the number of claims will be for this year.

There has been an increase from 247 to 497 in the number of claims between 1988-89 and 1991-92. It is fair to ask—indeed, the RAA does ask—what is the reason for this jump in the number of claims and payments. I support the RAA's suggestion to the Government that there be some explanation about these increases before the Parliament considers these measures and, therefore, I would appreciate advice from the Minister before we get into the Committee stages of the Bill regarding what factors make up the anticipated shortfall at the end of the financial year in terms of the closing balance in this fund.

I have focused on just one aspect of the Bill and the Hon. Mr Griffin will range more widely. I indicate that a number of amendments will be moved by the Liberal Party in Committee, but otherwise we support the second reading of the Bill.

The Hon. I. GILFILLAN: The Democrats support the second reading of the Bill. It is now part of the accepted welfare and human care aspect of our community and society, and part of the parliamentary governmental responsibility, and we welcome it. As with any compensation system there is difficulty in setting the level of compensation to match the quantity of loss, suffering or injury, which is often difficult to determine. It is equally difficult to determine from where the funds should come, whereas in this example we are seeing in this case an expanding justifiable need and claims on funds to compensate for the suffering.

I want to focus on a matter which I believe the previous speaker, the Hon. Diana Laidlaw, spent most of her contribution dealing with, that is, clause 8, which makes a dramatic and, to me, quite unjustified increase in the levy extracted from offenders in various categories in our courts in South Australia.

The levies were introduced in 1988, and the Government's second reading states that they were:

> ...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

The Bill proposed to double all those rates. It is important to point out that the compensation in most cases is totally detached from the offences with which we are dealing here in the category of the levy increase and, of course, motor vehicle infringements; and that is why the RAA wrote to me as well as to the Hon. Diana Laidlaw expressing its concern that a section of the community was to be unfairly penalised to fund this area of criminal injuries compensation.

I have indicated directly to them and to their Managing Director, Mr Fotheringham, my agreement with their position and the argument put forward in their letter. I refer to the second reading speech, which is relevant to the observations that I am making, as follows:

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;

It is drawn specifically from the fines that are extracted from offenders. Again, I point out that that is generally right across the board and is not related specifically to the offenders who cause the injury that requires the compensation. The second reading speech continues:

> (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 the proceeds of confiscated assets.

I have no argument with the fund's being contributed to by the recovery of payments from the party convicted of inflicting the injury. That seems to me perfectly just and, in certain circumstances, it is perfectly just that the proceeds of confiscated assets go to ameliorate the suffering of victims of crime. I have already identified the dramatic increase proposed in this Bill by the doubling of the levies, and the 'significant increases' dealt with in the following comment relate to the amount that is required from the fund because of the increasing of the maximum to $50 000 and the increase in the number of claimants determined as eligible for compensation payments. The second reading explanation states:

> 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.

I can understand the anxiety of the Royal Automobile Association, as it suspects that it will be used as an increasingly generous milch cow to provide funds through this back door method of a levy on offenders who are in no way responsible for the injuries that will be compensated for by this fund.

The Hon. R.J. Ritson: Are the increases in line with the CPI?

The Hon. I. GILFILLAN: No. The interjection is appropriate and reflects some observations that the Hon. Diana Laidlaw made that I would like to repeat from the Democrats' point of view that, were the increases from 1988 to be in line with what would have been an inflationary or CPI index, we would have no problem. In fact, we would accept that as reasonable on the basis that they were introduced in 1988, and it is estimated that about a 20 per cent maximum increase could be taken in on that.

The Hon. Diana Laidlaw: Not 100 per cent.

The Hon. I. GILFILLAN: Not 100 per cent. I may as well indicate now that, if the Opposition has an amendment that will make that variation, then it will have Democrat support. If not, I will be moving such an amendment myself.

The Hon. Diana Laidlaw: I did indicate and the Hon. Mr Griffin will indicate again that there will be such an amendment.

The Hon. I. GILFILLAN: I am assured by interjection that there will be such an amendment and that means I will save Parliamentary Counsel the trouble of drawing up similar amendments twice. That is saving taxpayers' money, obviously. The point I want to bring out here, as well as this extraordinarily large increase and the fact that it does tend to impact to a large extent on innocent parties (the people who infringe motor vehicle procedures), is the general principle of where the funding for this compensation should properly lie. I will read a couple of paragraphs from the second reading explanation, because I think they are relevant. The second reading explanation states:

> 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 subsidising the fund. The Government considers the initial rationale for the levy remains apposite, and that if the fund requires further moneys to meet obligations then it is those who break the law who should contribute to the fund, not taxpayers generally.

I disagree profoundly with that. It seems to me that it is a rather pious, complacent way of a Government that is acknowledged to be cash strapped following a path that is very comfortable to walk. Those offenders having to pay the levy are in a minority and tend to be denigrated by the media and generally looked down on by the public, so they are a sort of victim in their own way of being taken into this category of fund providers for compensation of criminal injuries. My position is that criminal injuries compensation is a decision made by the community of the whole of South Australia and that the compensation for those injuries should be the financial responsibility of the whole population of South Australia, and the only way that can be expressed is through the general revenue of the Government of the day.

But of course it is not popular, because it is much more fun to say 'Look, someone else will pay it, and if we need more money we will get those people to pay more, and that is done by increasing this levy.' The Government has viewed other ancillary measures such as increasing the efficiency of the Police Department's Confiscation of Profits Unit so that it will maximise the return to the fund from that area, and that seems a reasonable exercise, whether the Confiscation of Profits Unit returns go directly to this fund or to other deserving funds.

I intend to reserve my remarks during this second reading contribution purely to this issue, and I recap by saying quite clearly that I sympathise with the position of the RAA, and it is the Democrats' intention to support moves to reduce the amount of increase in the levy as spelt out in the Bill; and to repeat as clearly as I can what is the Democrats' basic philosophy as far as the Compensation Fund is concerned. That is, that the decision was made to compensate victims by the whole population of South Australia; the injuries are often caused by an offender who has no connection with nor is responsible for other offenders (it is a totally detached event); and therefore I think the premise that levies or revenue from fines for people who offend in totally separate categories should specifically be gathered to fund the compensation of victims is wrong in principle.

Therefore, I believe that, rather than increasing the levies, we must face the fact that, if there are more people who are suffering compensable injuries from crime, it goes without saying in this place, I hope, that we must make every effort to reduce the crimes and the injuries from those crimes, and that requires a much wider social, community, financial and economic campaign than we are dealing with in this Bill. The second part of the point I am making is that, if we are going to compensate those who are victims, it should come from a pool of general revenue to which some levies will contribute a part, but they should not ever be regarded as the substantial source of revenue that can be leant on to provide more and more funds as the Compensation Fund requires.

I repeat that the Democrats support the second reading of the Bill and support the principle of criminal injuries compensation, and we will be supporting amendments to the level of levies.

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

WORKERS REHABILITATION AND COMPENSATION (REVIEW AUTHORITIES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 March. Page 1737.)

The Hon. J.F. STEFANI: The Opposition supports the amendments contained in this Bill. The Bill continues the reforms of the WorkCover scheme and in this process seeks to incorporate the recommendations of the second interim report of the Joint Select Committee on the Workers Rehabilitation and Compensation System covering the review and appeal process.

Briefly, the recommendations contained in the interim report provide for the hearing of appeals without the requirement for lay representatives; the giving of the power for the Workers Compensation Appeals Tribunal to refer matters to the review officers for reconsideration; restricting the representation at review hearings; making the review process more independent of the WorkCover administration system; and seeking to establish proceedings rules for the conduct of matters before the review officers. More importantly, they identify that the legislation before this Chamber seeks to cover a number of significant issues and are therefore in common with the agreement of all parties and members of the select committee.

The Bill addresses the following matters: limiting the charges for representation before the review authority; the statutory independence of the review officers who are to operate independently of WorkCover; the exclusion of lay people from the Workers Compensation Appeals Tribunal; the clarification of powers to be delegated to exempt employers regarding medical expenditure (and it classifies that the Crown and other agencies are to be exempt employers); the referral of certain matters for consideration to the review officers by the Workers Compensation Appeals Tribunal; enabling WorkCover and exempt employers to redetermine claims; and,

finally, providing for the direct submission of applications to the review panel.

There are four amendments which are a direct result of the recommendations which come from the WorkCover select committee. These amendments relate to the membership of the Workers Compensation Appeals Tribunal, matters to be referred to the review officer, the representation at the review process and the position of review officers. There are further amendments which cover compensation for medical expenditure, the determination of claims, the application for review and the exemption of the Crown and other agencies. I would like to very briefly refer to the amendments. The amendment under section 32 which covers the compensation for medical expenses is, in fact, supported by the Opposition. This amendment deals with the issue of medical expenses and is, in fact, an amendment which we feel should be appropriately referred to the persons who are consulted in the process. The amendment under section 53—'Determination of claim'—seeks to address the situation where there is an under-payment. We believe that the power of the WorkCover Corporation should be extended to determine, in the circumstances where the corporation is subsequently satisfied that there should be any change of expenses, whether these would be downwards in the level of benefit. The amendment under section 61 allows the Crown and certain agencies to be exempted as employers. We believe that there is sufficient evidence from the report to indicate that these agencies should be, in fact, covered by the performance standards which are applicable to other employers.

As to the amendment under section 64 relating to the compensation fund, we are concerned that this could be viewed as an open-ended cheque book and that the costs should be monitored in the review process so that we have much more control and public scrutiny. As to the substitution of section 77, the review process, we believe that there is a clear requirement for the independence of the review process. We strongly support the idea that review officers should be seen to be totally independent of the corporation. We further believe that there is a fundamental requirement that review officers must have extensive experience and qualifications in terms of their positions.

We support the amendment to section 77d which deals with the responsibilities of review officers. There are obviously requirements for the independence of review officers and we believe that this amendment deals with the issue appropriately and gives the opportunity for those people to be, in fact, operating under those conditions. As to the amendment under section 92a regarding costs, we believe that there is a strong requirement for the calibre of the representative to be, in fact, very strongly underlined as a necessary requirement, and the quality of representatives to be reviewed in this process.

Finally I wish to refer to section 97 which deals with appeals to the tribunal. We support the amendment for the tribunal to refer matters back to the review officers. This is a requirement that has been supported strongly by employers and employers' organisations. There are a number of minor amendments which will be moved by the Opposition in terms of technical requirements, and generally I support the second reading.

The Hon. L.H. DAVIS: I have been a member of the Joint Select Committee on the Workers Rehabilitation and Compensation System which has been meeting for some two years, and has had, in that time, over 50 meetings. In fact, the committee is coming close to completing its deliberations. However, the second interim report of the workers compensation joint select committee did report specifically on the issue of review, as my colleague the Hon. Julian Stefani has mentioned. Before I deal specifically with the Bill I think it is worth noting that this select committee has been successful in addressing the major defects of the WorkCover administration, and defects in existing legislation, and has, over the period in which it has been meeting, had the satisfaction of seeing a substantial reduction in the WorkCover levy in South Australia from a high point of 3.8 per cent down to a current level of 3.04 per cent. Certainly that is no cause for complacency because South Australia still has the highest average workers compensation premiums in Australia.

I think it is only fair to give credit to Mr Lew Owens, the Chief Executive Officer of WorkCover, and other staff of WorkCover for the extraordinary effort that they have made to address the not inconsiderable challenges that faced them when they took over the management of WorkCover two or three years ago. WorkCover, as we all remember, got off to a rocky start. It was administered by SGIC for the first part of its life—I guess the very mention of those four letters, SGIC, would not engender confidence in many people—but it must be said that Mr Owens and his staff have tightened up the system considerably. They have cut out many of the rorts relating to stress and fraudulent applications and they have introduced systems that have avoided the gross abuse by some providers of services to people on workers compensation. I refer, particularly, to people outside the umbrella over doctors and other health professionals, but there was evidence of considerable abuse which of course added to the cost. The level of stress in the public sector has remained a source of concern.

Ultimately one must make a judgment on the system by looking at the figures. It is pleasing to see that in a scheme which must, for the comfort of all taxpayers of South Australia, in the long term be a fully funded scheme, the level of unfunded liabilities has shrunk dramatically over the past few years. From a high point of $150 million in 1989-90, it has fallen to an estimated $26 million as at March of this year when the WorkCover Corporation last reported. An unfunded liability of only $26 million suggests that, currently, WorkCover is 96 per cent funded compared with the low point when it was only 72 per cent fully funded in 1989-90 when the unfunded liability was running at $150 million.

The reduction in the unfunded liability of WorkCover is due principally to the steady improvement in the tightness of the administration regarding the handling of claims, the continued reduction in claim numbers, which I will mention in a minute, and the significant legislative changes to the Act which were brought in in late December last year. It must be mentioned that the very good investment return on the assets of WorkCover, $550 million to $600 million being invested in the

WorkCover compensation fund, is outstanding and is a principal factor in reducing the unfunded liability of the WorkCover scheme. In fact, during the 1991-92 financial year WorkCover had an earning rate on its fund of 14.4 per cent, one of the best performances of any Australian institution investor. It earned $65 million on its investments. That compares favourably with the 9.8 per cent rate earned by the South Australian Superannuation Fund Investment Trust—one must raise one's eyebrows at the calculation of that figure—and it compares favourably with the WorkCare returns in Victoria, which have been good but certainly not as good as the WorkCover returns.

It is important for that investment return to be maintained in coming years. If that occurs, it will continue to underpin the financial strength of the WorkCover scheme as it now operates. It is also fair to say that the improvement in the WorkCover scheme is due in no small part to the extraordinary collapse of the South Australian economy. That the South Australian economy trails all other States by the length of the straight is not an understatement, and that has obviously impacted heavily on the propensity of employees to claim under the WorkCover scheme. When employment is in jeopardy, as it must surely be in many small, medium and large businesses in South Australia, workers think twice about putting in a claim to WorkCover; their job is too important to take the risk. I am sure that it is true to say that even as I speak there are people in the work force in South Australia carrying injuries that would suggest that they should not be in employment but on workers compensation, whereas three or four years ago when WorkCover was loosely administered it was fair game for people to go on workers compensation. There was a high level of abuse, and I think that has been acknowledged by all political Parties, and it is certainly reflected in the statistical data that has been made available to the WorkCover select committee.

If we look at the number of WorkCover claims we see that they have risen from 50 488 in 1988-89 to a high point of 56 134 in 1989-90. That coincided with the year in which the unfunded liability reached a record high of $150 million. In the past two financial years the number of WorkCover claims has shrunk dramatically from that high point of 56 134 in 1989-90 to 49 884 in 1991, a fall of over 6 000 claims (about 11 per cent) in one financial year. In the past financial year (1991-92) there was an even more dramatic fall with only 40 545 claims being recorded, a dramatic reduction from 49 884 in the previous financial year of over 9 300 or about 18 to 19 per cent. So, in two years there was a fall of about 15 500, and that equates with a fall of about 28 per cent overall. Obviously, that must substantially benefit the financial position of WorkCover.

I would like to think that Liberal Party pressure, pressure from employer groups, the continuing role of the WorkCover select committee and, not least of all, as I have said, the considerable professionalism of the WorkCover management team have ensured that WorkCover is in much better shape now than when the select committee began its deliberations many months ago.

I introduce comments on the Bill with that updated brief picture of the WorkCover scheme as it now stands, because I think it is important to recognise that this Bill addresses one particular aspect that can have very costly implications if not monitored correctly. The joint select committee in looking specifically at review was given the term of reference to review all aspects of the workers rehabilitation and compensation system and to recommend changes, if any, to the Workers Rehabilitation and Compensation Act to optimise WorkCover's effectiveness, taking into consideration that WorkCover should be fully funded, economical and a caring provider of workers rehabilitation compensation, with the aim of increasing workplace safety. So, whilst review and appeal provisions of the Workers Compensation Act may appear to be a very narrow part of it, nevertheless, it involved a considerable amount of time. The committee took evidence from a wide range of witnesses, including WorkCover itself, employer groups, trade union representatives, exempt employees, exempt employers, submissions from the review officers themselves and many other interested parties. In making our recommendations, which really form the basis of the Bill before us, we acted on information that was received as a result of very lengthy questioning and also the gathering of much material.

Part VI of the Workers Rehabilitation and Compensation Act of 1986 deals with reviews and appeals, and review officers are established under the provisions of this part. Section 77 provides that review officers should be officers of the corporation but not subject to the direction of the corporation when it comes to any matter of review. In other words, the corporation was not in a position to be able to interfere to overrule any of the decisions which were made by review

officers. An appeal tribunal was created in this part, which consisted of the President of the Industrial Court, the Deputy Presidents of the Industrial Court and other members nominated by the Minister. Part VI also establishes that medical advisory panels should be created for particular classes of disability with members having knowledge and experience to deal with these disabilities and they have the power to insist that workers have a medical examination and report in writing to the review authority on the matters referred to them. General principles established for the conduct of review are also covered under the legislation.

Section 95 lists that the decisions that can be reviewed include claims for compensation, the nature of rehabilitation services provided, the reduction or disallowance of a charge for medical service, a refusal of an extension of time to apply for review or variation, suspension or discontinuance of weekly payments and applications for review have to be made within one month of receiving notice of decision that has been reviewed, although, of course, the WorkCover Corporation could, if it chose, provide for an extension of time.

If the corporation can resolve the matter by agreement then that is fine but if an agreement is not reached within 14 days, or if an agreement cannot be reached, then a review officer comes into play and they examine the matter afresh. The parties to the proceedings have to bring all relevant information to the proceedings for a determination by the review officer. From that determination by a review officer an appeal can be made

to the Workers Compensation Appeal Tribunal by the employer or by the employee, or by the WorkCover Corporation itself. That appeal must be made within one month and questions of law can be referred to the Supreme Court for determination.

In a nutshell that is the background of the appeal process as it was constituted under the original Act with some of the amendments that have occurred since the principal Act was introduced in 1986. There had been a concern that there was undue delay in the determination of reviews and even though there were provisions in section 102 for workers who believed there had been undue delay it obviously remains a central problem. So, the committee set out to gather information about the current status of the review process in the WorkCover system in South Australia. We, for instance, sought details of the number of review applications by WorkCover and from exempt employers and it showed a fairly dramatic rise—I think you could describe it that way—from 1989 through to the beginning of early 1991 and a levelling off in the period since then.

Exempt employers covered about 40 per cent of the work force in South Australia. They accounted for about 36 per cent of the claims in the three-year period 1989-91. It seems that claims from the non-exempt employers, that is, the people under the WorkCover scheme, had increased more rapidly than for exempt employers during 1991. I think it is important to recognise that the number of appeals lodged by employers made up only about 4 per cent of the total. A vast bulk of the appeals did not come from employers.

One of the concerns that came out in the data provided to the committee was the very large decline in the number of review applications that were resolved by agreement. An analysis of figures show that 44 per cent of all review applications were resolved by agreement in 1989. That figure slumped to only 33 per cent in 1990 and then collapsed to 21 per cent in 1991. In other words, what we saw in the space of just two years was a halving in the number of review applications that were resolved by agreement. That was a disappointing trend.

Also, we also noted the time taken in processing claims. The average time for the application receipt to resolution or review was 53 days; the average time taken from review allocation to file closure was 72 days; and the application to file closure, 104 days. Whilst there is evidence that those times were levelling out, certainly there was very valid criticism of the lengthy delays in the review process.

Most of the claims which led to review came as a result of the rejection of claims followed by discontinuance, lump sum payments and calculation of weekly payments. These were the major grounds for the appeals lodged under the provisions of section 95.

We asked also what happened when the review officer gave determinations. We asked what were the statistics when the review officers came to examine the cases and what were their findings. For the period between October 1991 to March 1992—a six-month period—in 19 per cent of the cases the decisions were confirmed, in 45 per cent of the cases the review officer varied the decision and in 20 per cent they consented to agreement. There were other categories such as the case being withdrawn or discontinued, which represented 16 per cent of the cases.

In summary, this data did give the committee a feeling for the length of time required for the steps that are necessary in the review and appeal process and the frustration suffered, particularly by the employee and quite often by the employer. I think the information supplied by the WorkCover Corporation was of concern to the committee. In many instances WorkCover could not provide the data required. It was not keeping the appropriate statistical information for the review and appeal process, which, of course, is essential as an aid to managing these very important functions. As I said, the fact that only 21 per cent of review applications were resolved by agreement in 1991 versus 44 per cent in 1989 showed a declining, adverse and alarming trend.

There was some dissatisfaction with the reply from WorkCover which indicated that information simply was not available or was not kept. I am sure that since the committee grilled WorkCover on those matters there has been an improvement in that important area.

Section 95 relates to review applications processed by WorkCover, which looks to resolve the questions and issues by agreement amongst the parties. As I have mentioned, if this fails a review officer convenes a hearing to identify the issues in the dispute and again to see if agreement can be arrived at between the parties without the need to proceed to a full hearing. In 1990, certainly, 80 per cent of applications were agreed to without the need for any formal determination. If necessary, the directions hearing will set a date for a full hearing, and in 1991 the delay was four to eight weeks.

So, having taken evidence from a range of people, including as I have said the unions, the employer groups, some large companies in the private sector, the President of the Workers Compensation Appeal Tribunal—Justice Stanley—WorkCover, the Law Society and the employer-managed workers compensation association, we concluded that there was a large number of issues which had been identified and which needed to be resolved in legislative form.

In summary, as set out in the select committee's report from last year, we found the major issues identified from this quite exhaustive review, from evidence and statistical data received, were the successful way in which conciliation between the parties—which was required under WorkCover legislation—had solved a large number of matters in dispute. That was agreed to by disparate parties, from the Law Society to the United Trades and Labor Council and to the WorkCover Corporation. That was well supported. However, there was agreement that an unduly long time was required to process disputes. That was mentioned by employer groups, the Law Society, the President of the tribunal and by many private sector organisations.

Matters of concern regarding the review hearings themselves included the fact that review officers did not have formal legal training, that legal representation in effect has become a requirement due to the need to get the case properly corrected, because there is no appeal as to determination of the facts, and that the cost recovery for such review hearings does not really reflect the actual cost of legal representation. In addition, review officers do not routinely have access to transcripts when

preparing their determinations. How can review officers make a proper decision if they do not even have the transcripts? Transcripts of proceedings should be supplied for matters not only to review officers but also in relation to matters appealed to the Workers Compensation Appeal Tribunal. They were some of the points raised.

We gave the Chief Executive Officer of the WorkCover Corporation, Mr Lew Owens, the opportunity to examine the criticisms and constructive suggestions from all interested parties, and he was given the opportunity to respond. One of the points he acknowledged was that there had been a delay in the review process, but that had been addressed by increasing the number of review officers from nine to

16. In the four months before his presentation—and I should say he did appear before the committee in July 1992—from April to July 1992, the increase in the number of review officers had already resulted in a very significant reduction in the backlog index from 7.5 months to 4.1 months.

The corporation had also appointed an administrative review officer, who was screening out a number of matters that previously would have resulted in a review hearing. Certainly, that was a positive result.

Another point that Mr Owens made was that review officers were now located in a separate building from the main office of WorkCover. Although that had increased accommodation costs, the corporation had done that to underline the independence between WorkCover and review officers. They had also introduced performance goals for the review function, with a chief review officer being put in charge of achieving those targets. WorkCover management was not involved in setting those performance goals for review officers.

The target which Mr Owens advised the committee had been set was that 80 per cent of review applications would be processed by administrative review officers within six weeks of receipt and 100 per cent of applications proceeding to review would have an initial hearing by a review officer at the very least within eight weeks.

It was held that, as the newly-created role of administrative review officers took effect, review performance should continue to improve. The committee was satisfied that the senior management of WorkCover had recognised the defects of the review process. The lack of review officers to handle review work and the almost doubling in numbers had a pretty immediate impact when the committee last took evidence on that point.

On the basis of all that information, and this wide range of opinions which were received from the legal profession through to the unions, employer groups, WorkCover and the WorkCover Tribunal, the committee made a series of recommendations which, by and large, are embodied in the Bill and which have been described by my colleague the Hon. Julian Stefani.

We made a series of recommendations to allow the Workers Compensation Appeals Tribunal to hear appeals without the requirement for lay representatives and to provide the power for the Workers Compensation Appeal Tribunal to refer matters back to review officers for further consideration. We also recommended that persons representing parties at review hearings should be restricted only to those employed by approved organisations representing employers or employees, or to specialist advocates employed within the Department of Labour. Of course, that was a contentious provision.

We also recommended that the review process should be independent of the administrative functions of the WorkCover Corporation, and that had been set in train by the Chief Executive Officer of the corporation. Finally, we recommended that proceeding rules should be drafted for the conduct of matters before review officers. As I mentioned earlier, we did make the point strongly that, to more properly monitor the review and appeal processes, Workcover should collect adequate data, because that was an important management tool in overseeing the review and appeal processes.

I am pleased to see that the Government has accepted by and large these key recommendations of the second interim report of the committee on which my colleague Graham Ingerson and I served, along with other members of the Parliament, including the Hon. Terry Roberts and the Hon. Ian Gilfillan from this Council. It has been a worthwhile committee whose recommendations, when the final report is tabled, will meet with approval from all parties.

[Sitting suspended from 6 to 7.45 p.m.]

The Hon. K.T. GRIFFIN: I indicate support for the second reading of the Bill. There are just two issues that I want to address briefly. My colleague the Hon. Julian Stefani has dealt with the Bill as a whole: I want to focus for a moment on the issue of review officers and also on the issue of the fixing and limiting of the recovery of costs. One of the concerns that has been expressed in the operation of WorkCover is the way in which review officers work. Originally, they were intended to be administrative review options, designed to get a quick turnover of business, to make some snap decisions and, if there was any remaining issue outstanding, ultimately they would go to the appeal tribunal.

In fact, though, given the way the review process has been structured, so much was dependent upon the decision of the review officer that injured workers were represented by legal practitioners and a full range of issues was canvassed by the parties before the review officer for fear that, if they did not do that, they would not be able to take particular points about the evidence that had or had not been presented when and if the matter went to a review officer. Rather than being a quick administrative fix for some of the administrative natters that arose during the consideration of claims for compensation, we ended up with a complex system where there were more complaints than there were commendations of the way in which the system operated.

The select committee has acknowledged that there is that difficulty. I suspect that it will not be greatly improved by taking the review officers out of the direct employment and influence of WorkCover, but it will go some measure towards that. It will be interesting to see what happens in practice. There was always a basic conflict of interest in the way in which review officers operated. They were employees of WorkCover; they were to act independently of WorkCover when they were

exercising their administrative function as review officers; yet their appointment made them ultimately accountable to WorkCover and their pay and other responsibilities made them accountable to WorkCover.

How anyone ever expected that that system would operate fairly, I do not know, but the fact of life is that they were not in any measure independent; they were not seen to be independent; and, although a number of them did try hard to be independent of WorkCover, there could never be independence from the day-to-day authority of WorkCover. So, that was an issue of principle in itself that we raised at the time the principal Act was being debated, but we were not able to persuade the majority that that structure was totally unacceptable. It certainly engendered no confidence on the part of employers, nor did it engender confidence on the part of injured workers.

We now see that what the Government seeks to do in the Bill is to translate the review officers from WorkCover to the department, and to appoint review officers on the recommendation of the Minister under the provisions of a new section 77b. The Governor would then determine the salary and conditions of the review officer. The term was to be for a period not exceeding seven years. Certainly, there is a measure of insecurity about that. It has been a common argument of mine that, when members of tribunals are appointed, they should be appointed for fixed periods and those fixed periods should be of a relatively longer period of time than merely the year-by-year appointments that sometimes occur.

The problem one has with short-term appointments and with variable terms of appointment is that it is impossible to ensure that the officer who is appointed is independent. Always, the officer will be looking over his or her shoulder to determine whether or not the Government will be recommending the renewal of an appointment on salary and conditions and other terms that make the review officer or other officer very dependent upon acting in a way that pleases the Government of the day.

So, where in this Bill there is an appointment for a term not exceeding seven years, we regard that as unsatisfactory; it does allow the year by year type appointment to occur. It may give the Government flexibility but one really has to question why the appointment should be made for anything other than a fixed term. We will be proposing a five-year period when we get to the Committee stage of the consideration of this Bill.

We will also be asking the Council to consider a couple of other issues. One issue is that the removal from office may be only with the concurrence of the senior judge of the Industrial Court. That builds in a safeguard against abuse of the power to hire and fire. We will also be seeking to remove the general direction of the Minister from the powers contained in new section 77d. I would suggest that that general power of direction of the Minister is inconsistent with the role and status of a review officer. I acknowledge that the review officer is not a judicial officer and is not judicially trained. That was one of the difficulties and will continue to be one of the difficulties, in dealing with a range of issues which review officers presently are required to consider, but the fact is that there ought to be some measure of independence from the Government. So, we have very strong views that there ought to be an attempt to strengthen the position of review officers as persons to determine administrative issues rather than weakening it by making them subject to the general direction of the Minister.

There was also a proposition by the select committee initially that the question of legal costs ought to be controlled. In fact, at one stage there was a proposition that lawyers should be barred completely from the review process. That met with a great deal of criticism by the Law Society, the trade union movement, the self-insured employers and the exempt employers, and as a result the Government modified its position. It had in mind that there would be a body of advocates attached to the department and employers and employees could have access to this body of advocates. Again, that shows a significant lack of understanding of the relationship between advocate and the person he or she is representing. To suggest that officers within the department could effectively act as advocates for one or other of the parties ignores the reality of the situation and the potential for conflict of interest and for abuse of the system. The Minister responsible for the department is the Minister also responsible for WorkCover, so there is immediately a potential for conflict.

That, in my view, and the view of the Liberal Party, was undesirable. The advocates would ultimately be accountable to the Minister responsible for the department and the Minister responsible for WorkCover. They would ultimately be responsible for the salary and conditions, and there would be a Government Management and Employment Board responsibility for the advocates which may well compromise their capacity to adequately represent persons in some instances against the interest of the Government, and in some instances against the WorkCover Corporation.

So, that fortunately was dropped, but now there is a curious provision which provides that a representative must neither charge nor seek to recover in respect of his or her representation in those proceedings, and any other associated work an amount by way of costs in excess of the amount allowable under scales published from time to time by the Minister in the *Gazette,* and the Minister must consult with the Crown Solicitor before fixing or varying a scale for the purpose of subsection (5a).

We have a number of factors there which are objectionable. The first is that it is the Minister who fixes the scale, and there is no potential for the Parliament to review the decision of the Minister and, although technically the Minister is accountable to answer questions in Parliament, in practice that will not mean much in relation to the scales which are published in the *Gazette.* So, it is objectionable that the Minister promulgates the scales. Of course, the Minister is required to consult with the Crown Solicitor before fixing or varying the scale for the purposes of subsection (5a).

At one stage there was a proposition that the Crown Solicitor fix the fees but that too was objectionable. Consultation with the Crown Solicitor is equally objectionable because the Crown Solicitor frequently acts for the Government in WorkCover proceedings, and to

suggest that the Crown Solicitor should fix the fees of persons who appear for parties opposed to the interests of the Government represented by the Crown Solicitor is in my view to give the Crown Solicitor the whip hand in an undesirable fashion.

The Liberal Party is proposing that that problem of potential conflict and compromise should be overruled by the costs being fixed by the senior judge of the Industrial Court, who knows what happens in the jurisdiction and what sort of work is involved and who is independent. Costs can be subject to taxation by the Industrial Court. There is no difficulty with any of that, and it is independent and beyond reproach. We have the very same situation in relation to Supreme Court, District Court and Magistrates Court fees. It is the judges and magistrates who set the scale of fees, and they are the persons who will assess whether or not in a particular case costs are reasonable.

So, the proposition which we put is that there should be that independence in the fixing of fees. It is not clear from the Government's proposition the extent to which fees are proposed to be regulated. It talks about neither charging nor seeking to recover in respect of his or her representation in particular proceedings, and any other associated work. Does that mean that a self insured employer or an exempt employer is not permitted to pay a charge in relation to other work that might be indirectly related to the matter that is being addressed under this Bill? If so, that will create a quite unreasonable limitation on the scope of individuals to obtain advice. The same may equally apply to the trade unions. Are they to be limited in the amount which they can pay for legal costs or other representative costs in these sort of proceedings and in matters leading up to the proceedings and for general advice? The whole of that proposition is quite objectionable and ought to be resisted, and certainly that is the way in which the Opposition will be addressing the issue in the Committee stage.

There have been submissions made to the select committee about this issue. There have also been submissions made by the Law Society, the Chamber of Commerce and Industry and other bodies—I suspect the trade union movement would be one—all designed to have a neutral umpire exercise the responsibility for setting of fees. I think that will eliminate the concerns which a variety of bodies and people have expressed in relation to this proposition. They are the two major matters to which I wish to direct attention at this stage. I indicate support for the second reading.

Bill read a second time.

CRIMINAL LAW (SENTENCING) (EDUCATION PROGRAMME) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 March. Page 1615.)

The Hon. K.T. GRIFFIN: There are a number of Bills which the Attorney-General introduced over the past few weeks on which I will speak tonight; some are controversial, others are not. This Bill is one of those which is not controversial, I am pleased to say. It seeks to allow a further option for sentencing to be imposed by the courts. Any additional option which becomes available to the courts for sentencing is generally a good thing, because it will remove the pressure for other more labour intensive options, such as imprisonment in appropriate circumstances. Hopefully the sentencing options can be tailored to each particular case and, if wisely applied, they can be used to reduce the prospect of reoffending and assist in the longer term with the rehabilitation of offenders in relation to less serious offences, and ultimately there will be less costs for them as well as for society.

Since June 1990 magistrates have required some offenders to attend educational programs conducted by National Corrective Training Pty Ltd on a user pays basis. In other words, the court has ordered a person appearing before it to be placed on a bond, but one of the conditions of the bond is that the person will pay for a course of training designed to assist that person to face up to the consequences of a particular offence and hopefully restore their confidence in themselves and also endeavour to ensure they do not reoffend. The requirement to attend educational programs was, as I have said, attached to a bond by way of a condition. It has generally been related to offences of shoplifting and, to a lesser degree, assault and domestic violence. Certainly, in the area of shoplifting, it has been reasonably successful and, as I understand it, also in relation to domestic violence, although that is a much longer term project.

A pilot program has been conducted into the use of education programs, and a report has been presented by Dr Tim Hill who runs the programs for National Corrective Training. I sought some information from the Attorney-General about National Corrective Training Pty Ltd and the pilot project and he sent me some details, some Australian Securities Commission searches as well as the report and other relevant information. From that information I have been able to ascertain that National Corrective Training is American based, has provided training programs for over one million offenders in the United States and has provided some cause for hope that they may prevent reoffending when applied in Australia.

Apparently there is some concern that the way in which magistrates have been dealing with this issue since 1990 is in doubt legally—that is, the attaching of the training program to the bond by way of condition. The Government proposes an amendment to give express authority for the requirement to attend such a program. It is proposed initially that the programs be an option in relation to shop stealing, domestic violence and offences such as driving in a manner dangerous to the public, but this may be extended later to include drink driving and other programs where American experience indicates positive results from similar programs.

In the first two years of the operation of the scheme, the Government proposes that there will be only one approved program provider: National Corrective Training. An evaluation of the pilot program indicates that the National Corrective Training classes are viewed by participants as very beneficial and effective. Results from the United States indicate that they have a significant impact on recidivism. I have been through the information which the Attorney-General provided to me,

and that includes the evaluation of all the training classes. There is a significant level of acceptance among offenders of not only the concept of the training program but also its content.

Responsibility under the Bill for approving a specified education program is given to the Attorney-General. During the Committee stage, if not at the second reading reply, I would like the Attorney-General to provide some information as to the criteria which will be applied in approving a program, the mechanism for assessment and the way in which interest in providing a program might be achieved. Is it proposed to advertise or merely to call for interest by word of mouth?

The scheme, which is provided under clause 3(b) of the Bill, allows the Attorney-General to revoke an approval or vary the conditions of an approval. I would like some information as to how that is likely to be addressed. The question of fees is important. The fees are to be borne by the defendant, subject to any relief from payment given by the payment provider in accordance with conditions imposed by the Attorney-General pursuant to this subsection. Again, what I would like to have information about at this stage is whether there has been any consideration given to the mechanism by which fees will be fixed and what conditions are—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: The Attorney-General has asked whether I would be happy for that to be provided by correspondence and I indicate that I would be happy for that to occur, provided that I get it before the matter has been dealt with in the House of Assembly. It is relatively uncontroversial and all I want to do is get some idea of the framework within which the Attorney-General is proposing to exercise powers that are vested in the Attorney-General. In relation to the specified education program what will be the basis for determining whether or not approval should be given and, in the longer term, for determining the process by which other offences might be the subject of the availability of these programs and, particularly, the criteria for the approval of other providers after the initial period of two years has passed.

I did send the Bill to a number of bodies, and one in particular, OARS, has taken the trouble to respond. It says that it does support alternatives to imprisonment as a penalty for crime, and it also says:

> OARS has no objection to a provision legalising conditions which allow offenders to undertake educational courses. I am not aware of the nature of these particular courses and presume they relate specifically to the crimes of shoplifting and violence. Our view of education goes much wider than this.

I think this is important in the broader context of rehabilitation and it may be that in his reply by letter the Attorney-General may be able to provide some response to this part of the issue raised by OARS. They say, and I quote :

> Our view of education goes much wider than this. From our experience offenders are in need of wide-ranging education as a basis for their rehabilitation. In particular, they need education in basic life-management skills which may begin at the level of literacy and motivation moving across the range of skills to specific training for employment. In recent years greater weight has been placed upon intervention programs designed to bring about behavioural and lifestyle modification amongst people of all ages but particularly with youth. One OARS program for youth is known as the Shaftesbury Citizenship Course, which has met with outstanding success and needs resources to be ancillary to every high school in the State.
>
> More recently we have become involved with Commonwealth-funded projects such as Job Skills and at present we have 40 people involved in job training and development schemes ranging from clerical through to landscaping and building construction work. Perhaps this legislation is the keyhole through which educational programs in the wider sense may be drawn in the near future.

Now, I take that a step further and say that within the penal institutions of the State there ought to be a much greater focus upon further education and literacy and developing literacy and numeracy skills and, whilst I do not necessarily want this part of the matter resolved before the Bill goes through the House of Assembly, it may be that some update can be given to me on the extent to which these programs are available in the various penal institutions within the State.

As I said earlier, the Attorney-General did make available to me a copy of Dr Hill's report and I have read it with some interest. He refers to the fact that some 200 people have been referred to national corrective training classes for offences. Twenty classes have been held and the age of participants ages has ranged from 18 to people in their sixties. Most groups were reasonably heterogeneous with respect to socioeconomic status and educational background and he says that some non-English speaking people have attended accompanied by an interpreter. The majority of participants were first offenders and the vast majority of participants were sentenced as a condition of bond. Six people were referred by solicitors prior to court hearings and one person referred herself prior to her court appearance.

I think that that is encouraging because if it becomes regarded as desirable for first offenders to undertake these sorts of classes and that training is undertaken before a matter gets to court it does save time and demonstrates a genuine concern on the part of offenders to do something about their behaviour and the causes of that behaviour. I am pleased to commend the initiative and indicate support for the program. I look forward to periodic reviews of its operation and its extension where appropriate to other offences which ultimately may prove to be beneficial to individuals who experience the training and to the community at large.

The Hon. C.J. SUMNER (Attorney-General): In reply, I thank the honourable member and the Opposition for their support of the Bill. As I understand it, there is no problem as far as the honourable member is concerned with letting the Bill pass tonight and I undertake to provide him with the information that he has requested as soon as possible and, in any event, before the Bill is debated in another place.

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

CRIMINAL INJURIES COMPENSATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1910.)

The Hon. K.T. GRIFFIN: I understand that my colleague the Hon. Diana Laidlaw and the Hon. Mr Gilfillan have already spoken on aspects of the Bill, and I thank my colleague the Hon. Diana Laidlaw for doing that, particularly in relation to the levy upon those who might receive traffic infringement notices for road traffic offences. However, I want to deal with a range of issues, including that one, in respect of this Bill.

I say at the outset that, again, I wrote to the Attorney-General in relation to a report about delays experienced in the criminal injuries jurisdiction with a view to assessing the information against the Bill. That report was received yesterday and I thank him for that. The difficulty with the receipt of the report yesterday is that I have not had time to finish reading it. So, it may be during the Committee stage of the Bill—which will not be tonight—that I will wish to raise some other issues. The report essentially dealt with issues of delay or the defining of 'delay', and it is for that reason that I want the give some further consideration to it.

The other point I make about the Attorney-General's reply is that I did ask for particulars of the offences in respect of which levies are made. He has given me the number and description of the regulations, but I have not had an opportunity to research that in time for this second reading contribution. It may be that, again, when I have refreshed my memory on that that I will want to raise some further questions on it during the course of Committee consideration of the Bill.

In April 1990, legislation was passed which increased from $20 000 to $50 000 the maximum compensation payable to victims, and the Liberal Party supported that increase. At that time the Attorney-General was not able to give any assessment of what that might involve in terms of costs for the fund. It is quite obvious from the second reading speech that as more and more claims are made at that higher level of $50 000 there is a blowout in the compensation which is required to be paid out.

In 1988, the Criminal Injuries Compensation Fund was established and levies on certain infringement notices and convictions in court were imposed as a means by which the Criminal Injuries Compensation Fund could receive moneys in addition to moneys from general revenue to support payments of compensation. We supported the establishment of the Criminal Injuries Compensation Fund and the imposition of a levy, although at the time concern was expressed by bodies such the RAA about the imposition of levies on offences which could largely be put into the category of being victimless. Those concerns were expressed but, notwithstanding them, we did take the view that it was appropriate to allow the Criminal Injuries Compensation Fund to be boosted by this revenue.

The Bill now seeks to increase the levies quite substantially. Whilst presently the levies are $5 for expiated offences, $20 for summary offences, $30 for indictable offences and $10 for offences by children, we see in the Bill a quite dramatic increase of 100 per cent. It is a doubling of levies proposed in order to deal with a significant shortfall in the Criminal Injuries Compensation Fund which, according to the Attorney-General, is expected to be $2.2 million in the current financial year. I will deal with that issue again in a bit more detail shortly.

The Bill seeks to establish a new procedure by which three months notice of intention to make a claim under the Act must be given to the Crown Solicitor with a view to allowing the Crown Solicitor to examine the case and attempt to settle it before legal proceedings are taken and additional costs incurred. The Bill also seeks to alter the minimum compensation from $100, which was fixed in 1969, to $1 000. It seeks also to alter the method of calculating an entitlement to non-economic loss to relate it more to the method of calculation used for the non-economic loss of a component of motor vehicle injuries under the Wrongs Act. It seeks to eliminate claims for revenge injuries where a person is injured as a result of a criminal act and subsequently, even though it may be a year or so later, exacts revenge. In those circumstances neither party will be able to claim criminal injuries compensation from the fund.

The Bill also seeks to ensure that where a person fails to cooperate with police in the prosecution of an offender no compensation is payable. The Bill allows law clerks to represent the Crown at pre-trial proceedings, although the amendment actually goes much further than that, and I will address that issue later. The Bill expands the *ex gratia* payments that the Attorney-General can make to South Australian residents who are injured outside South Australia. Again, I will address some remarks to that later.

The most significant aspect of the Bill, though, is the doubling of the levies. My colleague the Hon. Diana Laidlaw and I understand the Hon. Ian Gilfillan have both referred to a letter received from the Royal Automobile Association, which expressed considerable concern about the doubling of the levy in relation to traffic-related court convictions. That letter makes the point that general revenue has been bolstered in recent times by increased payments of expiation fees from an increase in the number of speed cameras. I think these figures are already in the record, but it will not hurt to repeat them. The RAA estimates that $14.7 million in expiation fees was generated by nine speed cameras in 1991-92 compared with an estimated $5.1 million from four speed cameras 1990-91. The increase in the number of cameras has also increased levy payments. These levy payments are estimated to have been $1.112 million during 1991-92 and, of that, some $752 400 resulted from camera-detected speeding offences.

The RAA makes the point that, because there has been such a substantial increase in revenue from the operation of speed cameras, in particular, rather than using the Criminal Injuries Compensation Fund shortfall as an excuse to impose a levy, some topping up should occur from the dramatically increased revenue received by way of expiation fees from the speed cameras. I have some sympathy with that view.

The Attorney-General in his second reading speech makes the point that the Government holds the view that those who commit offences, even so-called victimless

offences, should provide the revenue for the compensation of crime victims. As I said, the RAA questions that particular link. But, notwithstanding that, what the Attorney-General also says is that there should not be a topping up from taxpayers generally.

In his second reading speech the Attorney stated that 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 subsidising the fund. It can be argued rather forcefully that, in the light of those figures that the RAA has provided about revenue from speed cameras, it is not the general community who are making the top up payments but motorists who are subsidising not only the criminal injuries compensation present contribution to revenue but also other activities in the community unrelated to road traffic issues. It is my view and that of the Liberal Party that the increase in the levy on expiation fees ought not be supported.

We also hold the view that other increases should be supported only to the extent of CPI increases. My calculations are that since the June 1990 quarter the all groups consumer price index has risen by 8 per cent to the end of the December 1992 quarter. That is the last figure I have available and, if one looks at that in relation to the summary offences levy at the moment of $20, one sees that it amounts to what should be an increase of $1.60. We can round these figures off, but with indictable offences where the levy is presently $30 it would be $2.40 and for offences by children the increase would involve 80c. We believe that those levies ought to be increased only by those amounts.

Whilst making an observation on the question of the Criminal Injuries Compensation Fund, I sent the Bill to a number of bodies, and OARS was one of those. It responded and it is important again to read aspects of the letter into *Hansard,* as follows:

> As I am sure you know, our organisation advocates 'justice' for all parties involved in the effects of crime—the victim, the offender and the community in general. Accordingly, we support legislation to compensate those who suffer injury as a result of crime and are not otherwise compensable.
>
> The only question which arises is whether the means of finding the funds for compensation is 'just' and fair and equitable. Since its inception there have been reservations about the across the board levy on all offenders. For example, is it fair for people who are fined for crimes where no injuries are involved, such as traffic offences, or other statutory breaches, to be contributing to compensation for people who are injured in the areas of assault or other trauma?
>
> I note that when the legislation was first introduced in 1969 it was said that 'because criminals usually have no assets...the Bill provides for the payment of compensation.. from the general revenue of the State.'
>
> Overseas the funds come from a percentage of the fine and this does at least have a progressive rather than a regressive flavour to it. It is not a levy over and above the prescribed fine.
>
> However, it is no doubt too late to go into the philosophy. The levy is in fact a revenue raising device justified on the assertion that 'offenders' of all types should pay before 'innocent' taxpayers.

He then goes on to say:

> Other than these comments I have no objection to the amendments.

As to the other issues raised in the Bill, I have some difficulty about increasing the minimum compensation from $100 to $1 000. I acknowledge that 24 years has passed since any increase was made. It is one matter on which I have not had time to check the CPI increase since 1969, but it seems to me that probably a figure like $500 is more appropriate than $1 000 and, unless there is some persuasive argument to the contrary, we will be proposing that the minimum be lifted to $500. The $1000 figure is very high and there is some justification for being modest in the increases rather than extravagant.

As to representation by law clerks nominated by the Attorney-General—and I have no difficulty with that—the Bill provides that the Attorney-General may be represented by anyone he nominates. That is not limited to preliminary or interlocutory proceedings. I would have some concern about the representation by the Attorney-General in Full Court proceedings by anyone other than legal practitioners.

It would give the Attorney-General of the day an option for representation which is not available to others. There may be an argument for others to be granted that option, but I think we ought to make it clear in the Bill that the delegation in respect of that matter is for the purpose of preliminary procedural or interlocutory matters.

In relation to the Attorney-General's power to delegate, I again have concern about the wide power to delegate in respect of all *ex gratia* payments. I know that the procedure that the Attorney-General is envisaging for the settlement of cases before proceedings are issued is to use the *ex gratia* payment provision in the Bill. I do not believe that that was ever intended for that purpose, and I wonder whether it would not be better to give the Attorney-General or his delegate the power specifically to authorise the payment of claims which have been negotiated by way of settlement before proceedings issue without potentially compromising the power to act by way of *ex gratia* payment. I raise that in the hope that it will be a helpful suggestion to try to clarify the power, without adopting what may be perceived to be artificial devices by which payments can be made.

The only other issue which does cause concern is the capacity for the Attorney-General to make *ex gratia* payments to South Australian residents who are injured outside South Australia, even though they may have made a claim against compensation funds interstate. It is not clear to me really why that is occurring. If it is part of some reciprocal arrangement, I would prefer it to be more specifically addressed in the Bill to make it clear that that is what is occurring. This is not limited to offences in Australia and it can be extended to offences committed anywhere outside the State, including overseas. It means that there will be a considerable difficulty in establishing the facts. It means that South Australians are paying for injuries sustained outside the jurisdiction. I question whether that is fair and reasonable.

It is true that those injuries may be suffered by a South Australian, but that is where the issue rests. I wonder about the good sense and the equity of the Criminal Injuries Compensation Fund being used for the purpose of compensating people who allege that they are the victims of crime outside South Australia. As I say, the

checking and the establishment of the facts will be frequently difficult but, more particularly, there is the issue of principle. Why should South Australians be paying for injuries that occurred outside South Australia, keeping in mind that the criminal injuries compensation legislation in any event provides an *ex gratia*-type payment to those who are injured, where there cannot be or is unlikely to be recovery against the person who has committed the offence? So, it is in the nature of a voluntary payment.

It may be that, under his general powers to make *ex gratia* payments in emergency situations, perhaps a fare home is something that can be authorised to be paid. But the whole concept of paying $50 000 or whatever other sum in relation to an injury that occurred outside South Australia is, in my view, not an appropriate application of the Criminal Injuries Compensation Fund. The second reading explanation says that other measures to increase the fund will be examined, and they include providing the Confiscation of Profits Unit in the Police Department with additional resources to maximise the return to the fund from this area.

I know that it says that these will be examined, but can the Attorney-General give to the Council any information about the extent and nature of the resources that may be available and what additional recovery might be expected, and can he indicate what other measures might be in contemplation to increase the fund? Those are the matters that have exercised the Liberal Party's mind in relation to criminal injuries compensation. As I said at the beginning, our position is that we support the Criminal Injuries Compensation Fund and the objects of the principal Act, but we do have reservations about aspects of this Bill, which must be addressed before the matter is finally disposed of.

The Hon. C.J. SUMNER (Attorney-General): Although I thank members for their support of the second reading, I am disappointed in the attitude taken in particular to the levy. I think it is quite misguided of members opposite and the Democrats to take the view that the general taxpayer should pay criminal injuries compensation, and that is basically what they are saying. Without wishing to debate the principle at length again, the fact is that the Government and I have a very simple proposition to put to the community of South Australia—that either the general community pays for criminal injuries compensation through its taxes or the part of the general community that has offended pays for criminal injuries compensation.

If the argument is about equity, then I have absolutely no problem in saying that it is more equitable for offenders of whatever class and whatever offence to pay to support criminal injuries compensation than it is for the totally innocent taxpayer. Obviously, members opposite and the Democrats are swayed by the RAA and what the RAA is likely to say about this matter, and all I can say is that it is disappointing. I will certainly be telling the Victims of Crime Association and victims of crime generally that the Liberal Party and the Democrats have effectively put a cap on any further increases in criminal injuries compensation to victims of crime. There can be absolutely no question that that is what will occur, because, unless you can increase the amount of money in the fund, you cannot increase the maximum amounts of compensation available to victims of crime unless the general taxpayer pays for them.

That was the dilemma that we had in 1988 when we introduced the levy, and that is the dilemma that we have now. I believe that the Parliament, in the interests of ensuring adequate compensation for victims, ensuring that the fund is kept topped up to a reasonable level, should agree to offenders as a class making the payment to assist victims of crime to be compensated, rather than that being something that falls on the general taxpayer. However, for some reason which I must say escapes me, the Liberal Party has decided to take this course. If members opposite ever get into Government, as they may do at some stage in their lives if they hang around for long enough, presumably they will then have to confront the fact that the general taxpayer is supplementing the criminal injuries compensation scheme to assist victims of crime, and that offenders as a class are not paying enough to make the fund viable.

That is disappointing, but all we can do at this stage is to negotiate about what might be an appropriate increase during the Committee stage: unless of course one or other of the Democrats or the Liberal Party change their mind. That is the issue of principle regarding the levy. The Hon. Mr Griffin raised the question of the increase of the minimum claim from $100 to $1 000, the $100 not having been increased since 1969. Basically, this was done to stop a significant drain on the fund from fairly small and not very serious claims.

I should have thought that the priority in this area should be for the more serious victims to be compensated and not to encourage relatively minor claims to be pursued, given that it is the general taxpayer who is making the payment to victims. However, no doubt that can be debated further, and I note the honourable member's proposition of $500. Presumably, someone can do the CPI calculation between 1969 and now. It would not surprise me if it came to possibly more than $500.

The Hon. K.T. Griffin: I indicated that I had not had a chance to do that.

The Hon. C.J. SUMNER: We will do that calculation and see what we come up with, but I think that $1 000 is reasonable. Given the pressure on the fund, there is a case for excluding relatively minor examples of damage.

The Hon. K.T. Griffin: Do you have the details of the fund to get some idea as to whether there are, say, 20 under $1 000?

The Hon. C.J. SUMNER: I am advised that last year there were around about 40 that were less than $1 000. I hope that the Council will stick with the original Bill, but I note the honourable member's foreshadowed proposition of $500. I have no problem with an amendment on law clerks if the honourable member wants to put it forward, to limit it in the way he outlined. I have no problem with his proposition on giving a specific power in the Act to authorise the settlement of claims outside the institution of court proceedings, rather than using the *ex gratia* provisions, and if an amendment is prepared on that I am prepared to support it.

As to the question of compensation for injury caused overseas, I had drawn to my attention some time ago a

case that occurred in Victoria where a girl was murdered in France, and the parents of that girl tried to get compensation and spent some $14 000 fighting their way through the system in France. Eventually no payment was forthcoming. It was put to me that there ought to be some simpler system to compensate citizens of Australia if a criminal injury occurs overseas. This has been taken up at conferences of the World Society of Victimology and the like, dealing with the Criminal Injuries Compensation Act, and what has been put forward is that there should be reciprocal arrangements and rights in this area. I understand that in Europe there is a proposition to do this, if it is not already in place. It is one thing to get reciprocal arrangements in a place like Europe where they have, through the European Community, whole ranges of treaties dealing with many issues. It is another thing for Australia to get reciprocal arrangements with countries overseas, and I suspect it would be a virtually impossible task, and probably not worth it.

So, I came up with the proposition that, rather than give it as an absolute right in the South Australian legislation, we could include it as something that the Attorney-General could do as an *ex gratia* payment if the circumstances of the case were needy enough or deserving enough for compensation for an overseas injury to be paid. So, that was the genesis of the proposition. I think it is worth while. I think the protections are there in the Act, and the fact that it is the Attorney-General who has to decide to make the *ex gratia* payment is sufficient protection to avoid abuse, and of course there are the other qualifications about their needing to be a conviction overseas and the need for reasonable steps to have been taken to obtain compensation under the law of that country. No doubt the honourable member can, if he wishes, deal with that matter further in Committee if he sees fit to move an amendment. So, there are two or three issues that will need to be debated in the Committee stage, and I have indicated those that I am prepared to support if they are moved by the honourable member.

Bill read a second time.

LIMITATION OF ACTIONS (MISTAKE OF LAW OR FACT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 31 March. Page 1813.)

The Hon. K.T. GRIFFIN: This Bill deals with the Limitation of Actions Act. That Act sets the time limits within which actions can be taken in court. For example, with personal injury claims legal proceedings must be issued within three years of the date of the injury occurring, although that is different in relation to minors where the proceedings must be issued within three years of the minor attaining the age of 18. For the recovery of debts the period of limitation is six years from the date when the debt became repayable. There are other periods of limitation up to 20 years for deeds and specialties, and there are some other periods of limitation. Until 1992 money paid under a mistake of fact was recoverable, but money paid under a mistake of law was generally not recoverable. However, in the High Court case of *David Securities Pty Ltd and others v. the Commonwealth Bank of Australia* there was a significant shift in the principle to be applied in Australian courts. I do not intend to deal at great length with the case. It is a rather complex case and runs into many pages. However, it should be noted that the High Court made a significant change in the law as it relates to mistake, and that necessarily affected the period of limitations.

The Government argues that the High Court decision makes a significant and sudden change which may have adverse implications for business. The Government also claims that the High Court decision results in a windfall for the person who may have paid money under a mistake of law at some time during the past six years, and that the High Court decision will result in uncertainty in the business community such as it will be difficult for businesses to assess possible liability, and in consequence of this the Government proposes to limit the period of six years to one year where moneys have been paid under a mistake of fact or law. In addition to that, the Government proposes that there will not be power in the court to extend the period of limitation, which presently it is empowered to do.

At the moment the courts have discretions and there are frequently special circumstances in which the period of limitation is extended, and if there is no power to extend, as this Bill proposes, then injustice can occur. I suggest the amendment prejudices those who have always had a right to take proceedings within six years after moneys were paid under a mistake of fact, and limits what now have been established to be the rights of those who have paid money under mistake of law and, once the transitional period is passed, to limit the rights of both groups—those who have paid money under a mistake of fact and those who have paid money under a mistake of law—to the limitation period of one year.

It must be acknowledged that to determine what is a mistake of law as opposed to a mistake of fact is not an easy issue to resolve. Many situations are a mixture of mistakes of fact and law, and I think that is probably one of the main reasons why the High Court has finally decided to remove that basic distinction in terms of the rights of recovery which is based upon the principle that the receiver of the money should not be unjustly enriched.

The Government also refers in its second reading report to a House of Lords case which will have some significant ramifications for Government if adopted in Australia. The House of Lords decided that where tax payments are made by a taxpayer whether voluntarily or under protest and subsequently it is determined that the tax is invalid, such payments are *prima facie* recoverable. At the moment the law in Australia relating to the recovery of moneys paid to a public authority in the form of taxes or other levies pursuant to an *ultra vires* demand by an authority is dependent upon whether or not the payment was voluntary. The Bill seeks to provide that money paid by way of tax or purported tax voluntarily or under compulsion can be recovered within 12 months after the date of payment. As I indicated earlier, there is a transitional period to allow actions to be taken where payments were made more than six months before the commencement of the operation of the Bill but within six months after the commencement of the

Act or within the six year limitation period, whichever period first expires.

There is no difficulty with the removal of the distinction between moneys paid under a mistake of law or under a mistake of fact. That has been proposed by a number of agencies for a number of years largely because of the difficulty in determining into which category payments may fall. However, I suggest that there are some difficulties in limiting the period to one year. I suggest that the rationale for the limitation of the period to one year is not proper, that in respect of payments made under a mistake of fact there are certainly no windfall gains. It may be argued, I suppose, that as a result of the High Court decision those payments made under a mistake of law may now be regarded as recoverable and to that extent be windfall gains. They may be payments made to Governments, to public authorities or to private individuals. The Liberal Party and I are concerned about the period of limitation.

It may be also that the invalidity of an Act or the determination of a mistake and the standing of that mistake may not have been tested within the period of one month or, if tested, certainly not resolved within the 12-month period. I think there are problems with that, too, because if, for example, litigation is pursued on a test basis—it may be in relation to taxes or charges paid or to private sector payments—one may find that all those who wish to have decisions taken upon the basis of the resolution of the test case will be left whistling in the dark if they do not also issue their proceedings within the 12-month period. I think that is unsatisfactory. The fact that litigation may be initiated within the 12-month period and not resolved for a couple of years or, if it goes through the appeal process, for three or four years, where others may depend upon that result and the limitation period is 12 months, can create an injustice.

The other point concerns the question of businesses being unable to determine their liabilities. With respect to the Attorney-General, I do not think that is a major issue. There is not a significant number of cases where money is paid under a mistake. I ask: so what if it takes six years to resolve an issue or for an action to be taken and later resolved? Once the payment has been identified and the assertion made that the payment was by way of mistake, it seems to me that the organisation to which the payment was made is able in its accounts to indicate that that is a contingent liability. I do not see the disadvantage to business which the Government sees. There is an issue from the Government's point of view, and that is to protect revenue. I express the concern that whilst the one year period treats Governments no differently from non-government organisations, these days there is a significant move towards ensuring that Governments are in no better position than ordinary citizens or business organisations.

One must ask seriously in the circumstances of this legislation why, if the period is three years or six years, citizens should not be able to recover amounts which have been paid even voluntarily but under a law which subsequently is determined to have been invalid or where the payment has been required to be made on the basis of an *ultra vires* claim. So, whilst we will not oppose the second reading of the Bill, there are some issues to be explored both in the reply and the Committee stage. If I could identify those by way of summary: we have no difficulty with the six year period; we have no difficulty with the elimination of the distinction between mistake of fact and mistake of law; and we believe that Governments should be put in no better or worse position than organisations and individuals which operate in the private sector. It may be of course that, in consequence of that position, the best thing is to defeat the Bill. However, because of the complexity of the issue we are happy to have the matter explored in Committee, and we will take a decision on the third reading once those matters have been resolved.

The Hon. C.J. SUMNER (Attorney-General): As I understood the honourable member's second reading speech, the position he is basically putting is a philosophical one. I am not sure that I could make any responses at this point that would convince him on those topics, so I will not go into the debate again at this stage. The Government's position is set out in my second reading explanation. The honourable member has put his position, and we will have to see whether there can be a meeting of the minds during the Committee stage, which obviously will not occur tonight, as I understand that the honourable member may or may not have some amendments. At this stage, I thank the Opposition for its support of the second reading.

Bill read a second time.

STATUTES AMENDMENT (COURTS) BILL

Adjourned debate on second reading.

(Continued from 31 March. Page 1817.)

The Hon. K.T. GRIFFIN: This Bill is relatively uncontroversial but again there are some issues that do need to be explored and I think it is important to raise them now with a view to ensuring that those issues can be properly addressed during the Committee consideration of the Bill. The Bill amends a number of Acts that relate to the courts restructuring and, as I said, most of them create no difficulty. I think it is important to quickly identify what I see as the changes which are being proposed in the Bill, and there are some 17 as I understand it. The Bill provides for interest on amounts awarded for personal injury claims to be made from the date fixed by the court and, as I understand it, at the moment interest may not be calculated from a date prior to the date of commencement of proceedings. Proceedings are generally issued quickly, even though many of them are subsequently settled and it is as a result of representations made by SGIC, which administers the compulsory third party fund, that the Government is proposing this change in respect of interest. The Government believes that the change will reduce the pressure to issue proceedings because of the interest question and may give a better prospect of settling cases before those proceedings are issued.

There is an observation in the second reading explanation relating to legal costs and I think that it is important to note that there the Attorney-General says that of the $201.1 million paid out for third party claims in the 1991-92 year legal costs comprised $40.5 million

or 20.1 per cent of claims. I wrote to the Attorney-General—and I appreciate the response that he has given—seeking some information about those costs for the past three years in relation to third party claims, and I wanted them broken down into plaintiff costs and defendant costs.

It is interesting to note that the plaintiff costs in 1990 were $18 464 000, in 1991 they were $19 613 000 and in 1992 they were $22 806 000. The defendant costs, that is SGIC's costs in 1990 were $14 499 000, in 1991 they were $15 809 000 and in 1992 they were $17 738 000, and those payments include the payment of disbursements. I did not ask the Attorney-General for a breakdown of disbursements. I suspect that a significant amount of those figures are for medical and other expenses. Whilst I do not want to hold up the consideration of the Bill, I wonder if it would be possible to obtain a breakdown into costs and disbursements. If it is not, I will be surprised because I would have thought SGIC in properly accounting for costs and expenditure would have a detailed breakdown of those costs and expenses. It is, I must say, quite misleading to merely lump all of the plaintiff costs as one sum without seeking to identify the breakdown. That is not a criticism of the Attorney-General—

The Hon. C.J. Sumner: Why is it misleading? It is part of the costs.

The Hon. K.T. GRIFFIN: I am just about to explain it. I thought the Attorney-General might take some exception to that. I do not regard it as a fault of the Attorney-General in providing the information. I think it is misleading in the sense that we do not have a breakdown of all of the fees. The second reading explanation states:

> SGIC has for some years been concerned by the huge increase in legal costs in litigating compulsory third party claims. Of a total of $201.1 million paid out for third party claims in the 1991-92 year...legal costs comprised $40.5 million or 20.1 per cent of claims.

It is misleading to suggest that payments to medical practitioners, rehabilitation advisers and to others are legal costs when, in fact, they are not. They might be the plaintiffs' costs and all I am asking is whether there might be a more detailed breakdown. If that is not possible I am just saying that I think that that is unsatisfactory on the part of SGIC.

Can I say in relation to that first amendment we have no difficulty in supporting that. Amendments are made to clarify the right of the public to have access to proceedings in court, including the judge's direction to the jury. I did not think there was any doubt about that but apparently there is, and on that basis I am happy to again support the amendment which clarifies that.

Difficulties have been encountered in the Magistrates Court in effecting personal service on persons who live in high security premises and amendments are proposed to enable the court to order service by post or some other means of service where such difficulties are experienced. There has always been a level of concern about service by post—not a significant level but enough, though, to lead to complaints from time to time that people have not received a summons or other documents and to suggest that sometimes the post does not get through. My recollection is that we endeavoured to address that issue, to provide a means by which the proceedings can be set aside, if a person claims that the service has not been effected by post. It is always a difficult thing to prove.

The South-East Women's Emergency Services Incorporated did make a comment to me about the Bill which focused upon the question of service. They expressed concern about service by post generally. I recognise that this is directed towards high security premises but can I just read the representation which the services have made to me with a view to seeing if there is any way in which that can be more specifically addressed in relation to service by post. The services say in relation to the problem with service by post that:

> A case which demonstrates this clearly arose where a woman fleeing domestic violence had, for obvious reasons, kept her current address secret from her partner (the perpetrator). Said partner decided to obtain access to the children and attended court interstate. An order was apparently sent out to the woman's last known address. Because of the need to keep her whereabouts confidential (for safety and security) there was no forwarding address and consequently the order was never received. Eventually the partner discovered the whereabouts of their eldest son, who was living independently in Adelaide, and the order was posted care of the son. The woman was severely disadvantaged by the fact that the court considered that the original order had been received but she was unable to prove that it had not. Thus she was unknowingly in contempt.
>
> I feel that service by post is very *ad hoc* as there are many ways in which mail can be delayed, diverted or lost. Under Part 3, 50A, section 2, 'any process, notice or other document served in accordance with an order under subsection (1) will, despite any other law, be taken to have been duly served.' From this I understand that there is no defence for the fact that Australia Post has not delivered an order.

Again, that may be an issue that we can discuss during the Committee stage, but it does raise some concerns about the service other than personally where presently the Act provides that service must be personal service. That particularly relates on the other hand to protection orders. Subject to that matter being resolved, we then can see that matter progressing.

The South Australian Supreme Court has ruled a District Court rule invalid where the rule has sought to require the production of all reports of persons who may be called as expert witnesses. That rule was promulgated with a view to ensuring that all the cards were on the table. It was held that that did not override legal professional privilege. It is always a problem when one comes to override the question of legal professional privilege, but I can see the merit in providing a valid means by which the court can ensure that experts' reports are tabled so that all the cards are on the table. So, there is no difficulty with that.

There is presently no power for a registrar to delegate tasks to a deputy registrar and it is proposed that that occur. The only question I raise in relation to that is that if the deputy registrar is to be given the powers of a registrar what guarantee is there that the deputy registrar will be appropriately qualified to exercise the responsibilities of the registrar? It may be that there should not be any concern about it, but that is an issue which I think ought to be clarified.

There is a clarification of the magistrates courts in relation to the constitution of the court by a special justice or two justices of the peace. I have no difficulty with that. There is a clarification of the view that no appeal lies against an interlocutory judgment in summary proceedings. Some concern has been expressed to me about that, particularly where the interlocutory matter does have a significant impact on the summary proceedings result. However, provided an appeal can be made at the end of the proceedings and include the interlocutory judgment then that will not be a matter of concern.

More flexibility is given under the Bail Act in relation to the failure by a witness to obey a summons where the witness is arrested, and we have no difficulty with that. Provision also is made for an amount which has been estreated to be paid by instalments, and that seems reasonable and sensible. The definition of 'judgment debt' puts beyond doubt that costs are part of the debt, and that is sensible. The sheriffs' power to sell and to eject occupants of land—that is, persons who are not lawfully entitled to be on the land—is supported.

In relation to the question of industrial offences being set down for hearing by an industrial magistrate, we are not going to raise an objection because generally we lost that debate when industrial relations legislation was before us. We expressed the view that all proceedings for breaches of industrial-type legislation ought to be dealt with in the mainstream courts so that there should be consistency of approach. We were not successful on that, but it is still an issue to which we hold strongly and which at some other appropriate time will be addressed in relation to industrial relations matters.

Costs may now be awarded under the Bill against a party who unreasonably delays proceedings. Again, we have no difficulty with that. The status of firearms orders is clarified so that they are part of the order. Again, we have no difficulty with that. I presumed when we were dealing with protection orders and the status of firearms orders that they were part of the protection order, but apparently there is some doubt about that.

We did make some amendments to the Summary Procedure Act in relation to protection orders where they were made by telephone. There is some question whether the amendments we made achieved the objective of requiring that those matters made by telephone be dealt with as a matter of priority in the courts, and the amendment, as I understand it, does address that issue.

The only other matter that is dealt with is the need for personal service of a protection order and the commission of an offence against a protection order. The amendment in the Bill clarifies the position so that the offence is committed only if a defendant has been served with a summary protection order.

So, there are not significant difficulties with this Bill, the Attorney-General will be pleased to know, and on that basis I indicate support for the second reading.

The Hon. C.J. SUMNER (Attorney-General): I thank the honourable member for his support of the second reading. I think he asked two questions to which I can respond now and this may resolve the matter. The first question related to service other than personal service, to which he referred and which dealt with a situation where people were, in effect, avoiding service by being in a place to which access could not easily be obtained.

The answer to the honourable member's question is that in fact it will be up to the court to decide how the service will be done. It may be by post or in some other way, for instance, by placing the summons in the mail box on the property, and so on. So, it is at the courts' discretion as to how service can be effected. The important point is that one cannot have a situation where someone can avoid service by making themselves unavailable in the circumstances that have been outlined. The court can then order service other than the personal service, but it is not necessarily service by post.

The second question related to the powers given to a deputy registrar. The question is: what guarantee is there that the deputy will be appropriately qualified? The idea is that the deputy will act only in the registrar's temporary absence. At all times the deputy registrar is responsible to the Chief Magistrate. Under the old Justices Act, section 42(3), a deputy clerk could, subject to any limitations imposed by the Governor, which were in fact never imposed, do everything that a clerk could do.

This amendment is really restoring the *status quo,* that is, the situation that existed before the passage of the courts package in 1991 and its proclamation last year. I trust that that answers the questions raised by the honourable member.

I will attempt to get the information relating to the legal costs in respect of SGIC. In answer to the honourable member's question, I think it is correct to refer to them as legal costs, even though they may be medical disbursements. They are medical disbursements for the purposes of the legal proceedings and, therefore, they are costs that are claimed in the context of the legal proceedings. However, I will check to see whether SGIC can provide the additional information and write to the honourable member on the topic.

Bill read a second time.

In Committee.

Clauses 1 to 9 passed.

Clause 10—'Interpretation.'

The Hon. K.T. GRIFFIN: I want to pursue the question of the registrar. As I understand it, the Attorney said that it is proposed that the deputy registrar will exercise the responsibilities of registrar only in the temporary absence of the registrar. The Bill seeks to amend the definition of 'registrar' to include 'the Principal Registrar, or any registrar or deputy registrar of the court.' Section 15(4) provides:

> A registrar or justice may—
>
> (a) issue summonses and warrants on behalf of the court;
>
> (b) adjourn proceedings before the court;
>
> (c) exercise any procedural or non-judicial powers assigned by the rules.

That rather suggests that, instead of acting in the absence of the registrar, that the deputy may be acting at the same time as the registrar is present. Is that intended and will that create any difficulties? Are we going to have more than one deputy registrar in the jurisdiction undertaking different functions? Can the Attorney clarify that situation?

The Hon. C.J. SUMNER: It is not worded so as to limit the situation in the way that I outlined. There is a need for someone to act in the place of the registrar during temporary absences. It may be an absence for lunch. I do not think it is reasonable for the business of the court to be brought to a halt because someone is at lunch or absent for some other legitimate temporary reason, and that is why this provision has been introduced. As I said, it only restores the situation that existed under the old legislation.

The Hon. K.T. GRIFFIN: The only other question is whether deputy registrars are to be appointed on the basis of the possession of certain qualifications, or are they to be similarly qualified as the registrars in respect of the exercise of functions?

The Hon. C.J. SUMNER: There are no formal qualifications for registrars and neither will there be formal qualifications for deputy registrars. The salary level at which they are appointed will be set in accordance with a range within the Public Service, and that is the range to which the people will be appointed. Presumably the people appointed will be appointed on the basis that they have the skills to carry out the tasks. It has not been a problem in the past and we do not envisage that it will be a problem in the future.

Clause passed.

Clauses 11 to 33 passed.

Clause 34—'Summary protection orders.'

The Hon. K.T. GRIFFIN: The Attorney may not thank me for this query, or it may be that I have overlooked something. It is a technical question and is not related to the general operation of protection orders. Paragraph (a) provides:

> by striking out from subsection (4) 'not later than seven days after the date of the order';

I checked my copy of the principal Act that has been consolidated and I must confess that I could not find that provision in the Act. Can the Attorney say whether there is a misprint in the consolidation or whether I have just overlooked something in the principal Act?

The Hon. C.J. SUMNER: The consolidation does not include the sections that were not proclaimed to come into effect, and this is one of those sections. Now that we are correcting the situation, obviously the unproclaimed bits have to be repealed or they would come into effect within two years of their passage. In any event, it would be unsatisfactory to have left on the books a section that it was never intended to proclaim. That is the simple answer to the question.

Clause passed.

Clause 35 passed.

Clause 36—'Insertion of sections 99b-99d.'

The Hon. K.T. GRIFFIN: Before dealing with that, I make a comment in passing about clause 34, that I appreciated the response of the Attorney-General, but it does create some difficulties in this place when it is not easy to get hold of the Acts that have been assented to but not proclaimed. It is not the Attorney's fault, but there are difficulties in the way in which information is available in the statutes as to whether or not something has been proclaimed. With regard to proposed section 99c, the variation or revocation of a summary protection order, there is a provision that a firearms order cannot be revoked unless the court is satisfied that the summary protection order should be revoked in its entirety or that the defendant has never been guilty of violent or intimidatory conduct and needs to have a firearm for purposes relating to earning a livelihood.

Do I take it from that that what the Government is proposing is that where there is a firearms order, if the whole protection order is revoked, the firearms order goes with it, but you cannot get rid of the firearms order unless the conditions of subclause 2(b) are satisfied together, so that even if somebody needs a firearm to earn a livelihood but may have been guilty of some intimidatory conduct, in no circumstances can the court revoke the order and *vice versa?* I suppose that the contrary does not apply.

The Hon. C.J. SUMNER: The redraft of the current provision is designed to be of the same effect as the present section 99a(3), which currently deals with the revocation of orders. In the new section 99c(2) it has been redrafted, but it is of the same effect as in the original legislation. Basically what the honourable member says is correct: that if a court decides that the whole summary protection order should go, then the firearms order is revoked in its entirety. However, if the whole of the summary protection order is not revoked, then the defendant must establish that he or she has never been guilty of violent or intimidatory conduct, on the one hand, and that he or she needs to have the firearm for purposes related to earning a livelihood. Both those things need to be satisfied. That, in fact, is the current position.

The Hon. K.T. GRIFFIN: I thank the Attorney-General for that response. My recollection is that at the time the principal provision was being considered we sought to provide a greater level of discretion to the court in relation to that issue but, on the basis that it is at least to similar effect as the present provision, I will not take the issue further. I just expressed some reservation about it because on the last occasion we sought to give a wider discretion to the court.

This provides that, basically, firearms orders cannot be revoked except in very limited circumstances and, where it may be necessary or desirable in the interests of the parties to retain even a minor part of a summary protection order, unless conditions of paragraph (b) apply in relation to the court being satisfied that the defendant has never been guilty of violent or intimidatory conduct, firearms orders will continue. As I say, we did as I recollect raise some questions about this when the matter was last before us, but I do not intend to take the matter further.

Clause passed.

Remaining clauses (37 to 42) and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

Adjourned debate on second reading.

(Continued from 31 March. Page 1819.)

The Hon. K.T. GRIFFIN: I indicate support for the second reading of the Bill. It seeks to deal with three

issues. The first issue is the power of the State Director of Public Prosecutions to delegate powers to lay charges to the Commonwealth Director of Public Prosecutions. Because that, as I understand the Attorney-General's second reading explanation, provides for a continuation of the position which has been the case for some years, we have no difficulty with that.

The next amendment deals with the jurisdiction of courts cross-vesting legislation. I must confess I have had some difficulty coming to grips with this particular provision, and I may still want to raise some questions about it during the Committee stage. As I understand it, two amendments have been agreed by the Standing Committee of Attorneys-General. I would like to know whether those amendments have been made in other jurisdictions and, if not, when that is likely to occur and when those provisions will come into operation? The amendments to the Jurisdiction of Courts (Cross-Vesting) Act relate to special Federal matters, particularly related to the adoption of children by a step-parent, and section 60AA of the Commonwealth Family Law Act. I must confess the one confusing aspect I had was why it appears that the Federal court should be given jurisdiction in relation to adoption matters. I know we have transferred certain powers to the Commonwealth to be exercised by the Family Court, but I have not yet quite worked through the reason why, in the second reading explanation, there is a reference to the transfer of a proceeding in which a special Federal matter arises to the Federal court unless the State Supreme Court orders that it should continue to hear the matter. It may be that in reply the Attorney-General can give some further clarification of the impact of that. Subject to any other doubts which might arise once the issue is further explored at the Committee stage, and provided the matter is resolved, it is proposed to be dealt with on a uniform basis, and I do not propose to raise objections to the provision.

The Motor Vehicles Act is amended to ensure that where a young offender commits an offence and is not convicted by the Children's Court mandatory licence disqualification is not avoided because the conviction has not been recorded, and that has been accepted.

The Real Property Act amendment causes concern. It is amended to give the Registrar-General of Deeds a discretion whether a duplicate mortgage, which is presently required to be produced to the Lands Titles Office with a discharge, should continue to be required to be produced with such discharge. There is a discretion to the Registrar-General. The Real Estate Institute, the Land Brokers Society and the Law Society have all raised concerns about this proposition. They say that there has been no consultation with interest groups, although I understand that the Registrar-General believes that there has been. The clear view of members of the Joint Conveyancing Committee is that that issue has not been raised either with that committee or with the specific participating bodies. To remove the obligation to produce the duplicate mortgage with a discharge is regarded by some members of those bodies as being a quite radical step, even though it does occur in New South Wales and Victoria. That is not necessarily a good reason for dispensation occurring in South Australia.

The fact that there has been no consultation about an issue of major importance is of concern. I would have thought that by consultation one could resolve many of these issues. I understand from a telephone call that I received late this afternoon, that there is to be a meeting with the Deputy Registrar-General of Deeds at the Lands Titles Office on Thursday afternoon. The Law Society, the REI, the Land Brokers Society and the Australian Bankers Association will participate in that meeting which is to deal with this particular issue. If the matter can be resolved by negotiation that is of primary importance, and the most desirable way to go, because unless all parties cooperate in the administration of the Real Property Act difficulties and tensions can arise.

So, what I would ask the Attorney-General to do is not proceed to the Committee stage of the Bill until that meeting has occurred. If the Bill is to be proceeded with, notwithstanding that that meeting is on Thursday afternoon, for the moment I am proposing that we will oppose that part of the Bill that relates to the Real Property Act amendments in the expectation that later something may be resolved by negotiation.

The Hon. C.J. Sumner: Are you going to oppose it?

The Hon. K.T. GRIFFIN: Only that part relating to the Real Property Act, unless the consideration of it is deferred. What I said was that there is a meeting on Thursday afternoon with the Deputy Registrar-General of Deeds on that particular part of the Bill. Because there had not been consultation with interest groups on that proposition to dispense with the production of the duplicate mortgage, I am suggesting that if consideration at the Committee stage is deferred until that meeting has occurred it may be that the matter can be easily resolved. If it is not deferred then we will oppose that part of the Bill for the moment and it can be addressed again at a later stage. However, for the moment, I indicate support for the second reading.

The Hon. C.J. SUMNER (Attorney-General): As to the first point about the cross-vesting provisions, the Standing Committee of Attorneys-General has agreed to the amendments that are in this Bill. The Commonwealth Parliament has already enacted the legislation and is awaiting amendments in various States before proclaiming it. However, I am not sure what the situation is in other States. I am advised that the Federal court will not have power, in fact, to hear adoption matters, but there may be some further questions the honourable member has in the Committee stage.

As to the question of the Real Property Act I am advised as follows. The proposed amendment to section 143 of the Real Property Act that may require the production of the duplicate mortgage or encumbrance before registering the discharge or partial discharge of the mortgage or encumbrance has been raised with industry representatives formally on two occasions. It was raised at the Registrar-General's reference group with representatives from the Australian Bankers Association, Association of Permanent Building Societies, the Law Society of South Australia, the Land Brokers Society Inc., as well as other professional organisations in attendance at the 26 November 1992 and 7 April 1993 meetings. This should have given sufficient

time for any concerns to be raised if the proposed legislation was at all contentious.

The amendment allows the Registrar-General a discretion. At least two major financial institutions believe the idea has a great deal of merit and some senior conveyancers have said that they do not see any problem with it. The Law Society was sent a copy of the amendment in February, and it has not provided any comment. The matter has been discussed with key industry members individually several times. The Senior Deputy Registrar-General is confident that arrangements can be made to cater for concerns. A meeting will be held between industry representatives and the Registrar-General to discuss these arrangements. Several suggestions have already been made as to how the legislation should be administered, and legislation providing when the Registrar-General should use his discretion to require production of the duplicate could be developed to deal with this.

The current practice when a discharge of mortgage is produced for registration is that the registration appears on the original and duplicate certificate of title. No endorsement of the discharge is made on the original and duplicate mortgage. This has been the practice for the past three years. It was formerly endorsed on both titles and on the original and duplicate mortgage. It creates unnecessary filing and is a nuisance. Some banks require that the duplicate mortgage be returned to them. They can only do this if they, as most lending institutions do, are given a land discharge in the first instance. Where a mortgagee has lost their duplicate mortgage and wishes to discharge the mortgage, currently they must make an application to dispense with the production of the duplicate mortgage. This requires a statutory declaration and advertising in the local newspaper and Government *Gazette* as well as a statutory period of two weeks provided for under the Real Property Act and the payment of an additional fee.

So, the point made by the Registrar-General is that there has been consultation, but obviously people are still not satisfied. The honourable member tells me that there is a meeting on Thursday and if we put off the Committee debate it might be that these matters will be resolved by then. My only concern is that that does not hold the Bill up in another place. The Hon. Mr Griffin has indicated that it will not be held up, and I imagine that a Bill of this simplicity will not be held up in another place when it gets there. I take it from what the honourable member has said that he will use his good offices and persuasive powers to convince his colleagues in another place that the matter can be dealt with. On that basis, I am happy to leave it until Thursday or Friday or early next week when we know the outcome of these consultations that are occurring. It may be that we can deal with the question of cross-vesting before we come back to this issue of the Real Property Act, but in the meantime we will take the Committee stage on the next day of sitting.

Bill read a second time.

GUARDIANSHIP AND ADMINISTRATION BILL

Adjourned debate on second reading.

(Continued from 31 March. Page 1840.)

The Hon. K.T. GRIFFIN: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

Bill read a second time.

In Committee.

Clauses 1 to 21 passed.

New clause 21a—'Public Advocate responsible to Attorney-General.'

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

Page 10, after line 35—Insert new clause as follows:

21a (1) In performing his or her functions under this Act or any other Act, the Public Advocate is responsible to the Attorney-General.

(2) The Public Advocate may have Public Service employees (but not Health Commission employees) assigned to assist in the performance of his or her functions.

During the second reading stage I expressed concern bout the possibility that the Public Advocate could be colocated with the Health Commission sharing both staff and facilities. There is the potential under such circumstances for conflict to arise. That is not only my belief but the belief of a number of people who have contacted me. They believe there should be a clear separation, and they suggested that we should do what has been done in Victoria, as I understand it, where the Public Advocate is responsible to the Attorney-General and employees of the Public Advocate are not employees of the Victorian equivalent of our Health Commission. I understand that the Minister has indicated that he intends to make sure that the separation occurs, but I am trying to take what is a verbal assurance and include it within the Act to guarantee that that separation does occur. I think my suggestion is fairly straightforward, and I covered it during the second reading stage.

The Hon. J.C. BURDETT: What the amendment seeks to do is put the responsibility of the public advocate—and that is an important new position put into the legislation relating to people who may be placed in guardianship—to the Attorney-General instead of to the Minister who, generally speaking, is charged with the responsibility of administering the Bill. I certainly think that that is attractive. The public advocate, who has a duty to the persons who may be placed in guardianship, and other persons to whom the Act applies, should have a responsibility other than to the Minister generally administering the Bill. One would expect that the administration would be given to the Minister of Health, although, as also one would expect, it is not stated in the Bill itself. If we look at the consequential amendments, it leaves out 'Minister' and where appropriate inserts 'Attorney-General'. This, to me, is attractive, that the responsibility should be to the chief law officer of the State because it is a legal function which the public advocate carries out. The amendment was placed on file recently but in my view the amendment is acceptable, for the reasons that I have stated and I support it.

The Hon. BARBARA WIESE: The Government opposes this amendment. It seems to me, from the explanation given by the Hon. Mr Elliott in moving this amendment, that there is some confusion being expressed here between the colocation of the public advocate with the Guardianship Board—and it is with the Guardianship Board and not with the Health Commission—and the

question of accountability or to whom the public advocate will report. As to the second matter it is quite clearly spelt out in the legislation that the public advocate will report directly to the Minister of Health and to Parliament. As to the question of colocation, although they will be physically colocated it is intended that the essential functions that will be performed by the public advocate and by the Guardianship Board will be clearly separate and there will only be sharing of physical resources such as reception areas and so on. Other physical areas of the public advocate and the Guardianship Board, for example, hearing rooms, interview rooms, waiting rooms, staff areas, etc., will be quite separate and they will operate separately.

The matter of whether the public advocate should report to the Minister of Health or to the Attorney-General is one which I understand has been given very detailed consideration, not just recently with the preparation of this legislation but dating back to about 1991 when there was some representations made by a number of key consumer advocacy groups. But as a result of the very extensive discussion which took place at that time and which has taken place more recently, and also after careful consideration by the Attorney-General, it was decided by the Government that it was more appropriate for the public advocate to report to the Minister of Health than to the Attorney-General, for a number of reasons. Culturally, the Minister of Health is going to be more familiar with the issues that are being dealt with by the public advocate.

The public advocate is probably more likely to achieve action on behalf of the groups or individuals for whom representation is being made if there is direct access to the relevant Minister, and the Attorney-General feels very strongly that it is not appropriate to have this function incorporated within the responsibilities over which he currently has jurisdiction. In addition to that, I should also point out that although, as I said, back in 1991 there were some consumer groups who favoured the proposition that is being put forward, I am advised that that is no longer the case. Those key consumer groups now agree that it is better to have the public advocate associated with or reporting to the Minister of Health rather than to the Attorney-General. So, as far as I know, there is now no organisation outside the Parliament that is putting forward this proposition.

The Hon. R.J. RITSON: The splitting of this package into three separate Bills instead of the previous Mental Health Bill sees the end of the former tribunal which was a body to which people appealed on matters of health, liberty and personal freedom. That body was, in a sense, almost a parole board in the medical system. With its demise we see the creation of the office of public advocate, who should be seen to stand entirely separate from the deliberations. That is very important not only in fact, as I understand it, but it should appear to be quite separate. The present CEO of the Guardianship Board is, in fact, a Health Commission officer. Whilst the board does not consider itself subject to ministerial direction, the CEO does and is from time to time directed by the Minister of Health.

The Hon. Ms Wiese has pointed out that there is an appropriateness in the Minister of Health performing this function because, after all, he has access to all the case notes without having to seek discovery. He is the employer, the boss, of the doctors from whom evidence will be called. But I agree with the Hon. Mr Elliott that that relationship is too close and appears to be too close. If someone such as the CEO also handles matters concerning public advocacy, the very first person you deal with at the counter, at the shop front, will have several hats in matters where there may be dispute or conflict of interest.

The wearing of several hats is not uncommon among CEOs of different organisations. Certainly, the Registrar of the Medical Board of South Australia also controls the office that registers other health professionals. I am just concerned that the closeness and convenience will mean that friends, relatives or attorneys acting for a person disagreeing with a decision of the board could in fact have to front up to the same public servant subject to ministerial direction who wears a hat for the board as well. For these reasons, the Opposition supports Mr Elliott's amendment.

The Hon. M.J. ELLIOTT: I think the Minister in her response really affirmed my resolve for the need for separation of the Public Advocate from other bodies functioning under this Bill. In fact, I have been approached by a number of groups that still are concerned by the fact that the Public Advocate would be answerable to the Minister of Health. They believe it is inappropriate, I believe so and I am pleased to see that the Opposition agrees with that view point.

The Hon. BARBARA WIESE: Obviously, it would seem that members have made up their mind, so there is not much point in my prolonging this too far. However, I think there is some misunderstanding about the issues involved and I believe it is appropriate that at least the facts be put on the table before there is a vote on the matter.

The Hon. Dr Ritson talked about the changes that are being brought about by the modification of the existing legislation and referred to the changes to the appeals processes, and so on. I think it should be pointed out that under the existing legislation the Mental Health Tribunal has always—or at least for the last several years—reported to the Minister of Health and there has never been any suggestion that it was not a body that acted in an independent way and fulfilled its functions appropriately. What is happening under this legislation is that the functions of appeals and reviews will still be heard by judicial bodies, namely, the board and the Administrative Appeals Court. It is important that that be understood.

There was also some confusion about the roles of the Public Advocate. It is recognised that the Public Advocate performs a number of roles. It will be an investigator, an advocate, a guardian and an educator. It seems ridiculous to me to suggest that there should be separate organisations for each role. It would mean that clients ultimately would have to go to up to half a dozen separate places to get their needs met.

The perceived conflicts really are rather academic. In practice, professionals working in these areas recognise the need to wear a number of hats and to respond appropriately to potential conflicts. No single worker in the office of the Public Advocate would try to undertake two roles that were in conflict. That is clearly also the

experience from other jurisdictions where the Public Advocate has been established to perform a number of roles. So, it seems to me that, although the objective that is being put forward here, which is to ensure that there is independence and that the Public Advocate is providing a range of independent functions on behalf of clients or client groups, it is an objective which everyone would share.

However, it seems to the Government that it is not necessary to take the step that is now being suggested and take it right out of the responsibility of the Minister of Health, because the sort of objectivity and independence that is being sought can be achieved, and it has been proven that it can be achieved, through a reporting relationship with the Minister of Health. That is the method that is most supported by the relevant parties, including the Attorney-General. If this is not a function that the Attorney-General feels is appropriately located within his jurisdiction then I think that is something to which we should pay some attention. It is certainly the view of the Minister of Health that the function should be performed as outlined in the Bill.

New clause inserted.

The CHAIRMAN: Through an oversight I advise that there is an amendment to clause 21. If the Hon. Mr Elliott asks that that be reconsidered later we will reconsider clause 21. We missed the amendment on clause 21. We considered new clause 21a and, because the Committee has just passed that amendment, clause 21 now becomes relevant.

Clause 22—'Delegation by Public Advocate.'

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

Page 10, line 38—Leave out or Health Commission employee'.

This is essentially a consequential amendment. If we are to separate the Public Advocate from the Minister of Health, not only do we place the advocate under the Attorney-General but also the employees should not be Health Commission employees who are working below the Public Advocate.

The Hon. R.J. RITSON: This is part of the same set of arguments and the Opposition supports this amendment.

Amendment carried; clause as amended passed.

Clause 23—'Annual Report.'

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

Page 11, lines 7 and 12—Leave out 'Minister' and insert 'Attorney-General'.

These are consequential amendments.

Amendments carried; clause as amended passed.

Clauses 24 to 56 passed.

Clause 57—'Application of this Part.'

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

Page 27, lines 8 to 11—Leave out all words in these lines.

This is a most difficult matter because it involves interaction with another Bill. Standing Orders require us not to anticipate another Bill, but the spirit of Standing Orders is that we do not get two goes at a second reading speech. I wish carefully to avoid arguing the merits of the other Bill, but it is not possible to speak to this amendment without referring to it. Although I will try to refer to it in an explanatory way without arguing the merits of that Bill, I do request some latitude in this. I will try to preserve the spirit of Standing Orders. Clause 57 has two paragraphs. Paragraph (a) refers generally to persons who are legally incapacitated in the legal sense by a mental condition, and paragraph (b) refers to people who have signed over a medical power of attorney.

If we look at it, we see that it refers to people who do not have a medical agent, and then in the definition clause it refers to the medical power of attorney. The problem with that so far as Standing Orders go is that there is no such thing as a medical power of attorney until and unless the other Bill, which is still to come, passes into law. Clause 57 provides that all the powers of the board, which are listed on pages 27, 28 and half of page 29, apply to the first group but not to people who have a medical agent.

As I say, we will not have anyone with a medical agent unless the other Bill passes. My understanding is that paragraph (b) was not in the legislation as originally presented to Cabinet and that it came to be so inserted after I had a conversation with the Minister after asking some questions around the traps about possible conflicts between the two Bills.

In relation to the other Bill, I have on file an amendment which purports to give the Guardianship Board a whole jurisdiction in respect of people who have a medical agent, who have granted a power of attorney, when that exists, to people who choose to, pursuant to the Bill yet to come, but here they are written out of the script. My proposed amendment and some qualifications of it, which I seek to discuss with the draftsperson, envisage a wide exercise of any or all of these powers by the board in respect of people who do have a medical power of attorney appointed but where that person has acted, albeit innocently or ignorantly to the detriment of the patient, so that, where a medical emergency arises due to refusal of treatment, perhaps in relation to a quite curable disease, some oversight will be possible by the board and so that there can be some reversal of perhaps a death-dealing decision to someone who would otherwise be restored completely to healthy life because that Bill does not apply solely to instances of terminal illness. There is nothing in it which says it must apply only to people of goodwill or only to people of good mental understanding.

The Hon. Mr Elliott has another amendment which is quite different in some ways, although it has a sort of similar intent, and it may not require the removal of paragraph (b) in the same sense as my amendment might. As long as paragraph (b) is there, I see an enormous difficulty in granting under certain restricted circumstances any or all of the powers of giving medical consent which Part 5 generally gives to people who come within its jurisdiction.

The Hon. Mr Elliott is proposing an amendment to the Bill that is to follow which provides for a Guardianship Board jurisdiction but of much more limited nature. I ask people such as the Attorney, and I intend to ask Parliamentary Counsel, whether his amendment is consistent with leaving paragraph (b) in there and whether any inconsistency could be judicially resolved by a situation in which the later Bill grants a few powers and is therefore somewhat different to the extensive list of powers granted to the Guardianship Board in respect of the group of persons represented in paragraph (a).

I will ask the Committee to consider removing paragraph (b) so that it cannot be an obstacle to my subsequent amendment being assessed on its merits without my arguing the case here, because I could not do that, without the shadow of paragraph (b) hanging over it. If my subsequent amendment should fail, I believe—as I have been advised—that it would be possible once it has failed for us in the subsequent Bill to insert a provision which makes the jurisdiction or the absolute autonomy of a medical agent again as absolute as it is now, or in some other way to ensure that there is no inconsistency between the two pieces of legislation.

I appreciate that this Bill is not a conscience vote, yet it will or may limit our conscience vote. As I say, paragraph (b) was not in the Bill when it went through Caucus, but the Bill has the status of a Cabinet Bill and I do not really expect that members of the ALP are in any position other than to support it.

The Hon. BARBARA WIESE: I understand the concern that has been expressed by the Hon. Dr Ritson. It is certainly not the intention of the Minister somehow or other to use this Bill as a way of getting around a debate on a conscience matter contained in the consent Bill which is still to be debated by this Chamber. Either way one could say that by dealing with this matter in this Bill we are to some extent anticipating the result of the debate on the other piece of legislation.

This has caused quite some discussion as to how we might handle the matter. Finally, it has been decided that the Government will support the amendments being proposed by the Hon. Dr Ritson on the clear understanding that, should the debate on the consent Bill produce a different result, it may be necessary to reconsider this matter and to include appropriate provisions after that debate is concluded. That may be done by way of attaching a new schedule or something to this piece of legislation. It is on that basis that the Government will support these amendments at this stage, pending the debate that is yet to come on the question of medical agents.

I should also point out that, if we take this course of action with this proposed amendment, at the end of the debate on this Bill we will need to revisit clause 3, because in clause 3 there is a definition of medical agents, which will also need to be removed.

The Hon. M.J. ELLIOTT: I will speak to the amendment rather than for or against it, since the numbers have already been decided. Part 5 of this Bill is talking about medical and dental treatment of mentally incapacitated persons and, as clause 57 stands, they cannot make a decision and they do not have a medical agent available. Therefore, it spells out the role of the Guardianship Board in those circumstances. The other piece of legislation relates to persons who, whilst mentally competent, have appointed a medical agent to make particular decisions. We have quite a different argument there as to what sort of review should occur in those circumstances, and we are talking about two distinctly different circumstances.

Here we are talking about people who are already mentally incapacitated and do not have an agent, and you need to set up a system of protections, and that system of protections may be quite different from the system of protections you may decide to set up where a competent person appoints an agent. I am not saying that you do not need protections but they may be, and I believe they should be, different ones. Personally, I do not believe that clause 57 (b) is any obstacle to this Committee making decisions about how we will handle medical agents appointed under the other Bill.

It might be that the Hon. Dr Ritson would like them to be handled in the same way as in this Bill, and there is nothing to stop him moving amendments along those lines when we handle the other Bill. I do not necessarily see this as being limiting, but at this stage it appears largely academic because the Minister has said that she is accepting the amendment.

Amendment carried; clause as amended passed.

Clauses 58 and 59 passed.

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

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

Page 29—After line 12 insert:

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

This amendment is, in effect, to write back a provision that was in the Mental Health Act, which is repealed under the present package of Acts. It relates to the question of the board's giving approval to sterilisation or termination. The repeal provision in section 28d of the Mental Health Act stated:

(1) Upon receiving an application for its consent to the carrying out of a sterilisation procedure or termination of pregnancy on a person and determining that the person is a person to whom this part applies, the board shall then determine whether or not to grant its consent... In making any determination under subsection (1) in respect of a person, the board—

(a) shall afford—

(i) where it is practicable to do so, the person;—

that, I might add, is the person on whom the procedure is to be carried out—

(ii) subject to subsection (3), any parent of the person; and

(iii) any other person who the board is satisfied has a proper interest in the matter,

an opportunity to appear before, and make representations to, the board;

(b) shall give due consideration to the expressed wishes (if any) of the person;—

that is the person to whom the procedure relates—

and

(c) shall give due consideration to the object of minimising interference with the rights of the person so far as is consistent with the proper protection and care of the person.

(3) The board is not obliged to afford a parent of a person to whom this part applies (except where the parent is the applicant for consent) an opportunity to appear before, and make representations to, the board—

(a) if the whereabouts of the parent cannot, after reasonable inquiries, be ascertained;

(b) if, in the particular circumstances, it is not reasonably practical to do so;

or

(c) if the board is satisfied that it would not be in the best interests of the person the subject of the application to do so.

(4) The board shall determine any application relating to a proposed termination of pregnancy as expeditiously as is reasonably practicable.

The amendment which Parliamentary Counsel has drafted is a much simpler one than that. It is basically to write back the same thing, which is removed in this package. It was not referred to in the second reading explanation, and there was a Government instituted inquiry into the Mental Health Act which did not refer to the matter, so I suggest that the provision that is in the law at the present time has not caused any problems, because no-one has said so.

The amendment that Parliamentary Counsel has drafted is much simpler. To me, this amendment cannot do any harm to the person concerned, because if it is not practicable because of whereabouts or if, in the opinion of the board, to allow the parents to appear before the board would not be in the best interests of the mentally incapacitated person, then it need not do so, but it does seem to me to be wrong to remove a minimum of parental rights, because to omit this provision, that is what it would do. I have spoken to a number of parents of mentally incapacitated persons since I have contemplated this amendment and they have said, 'I would want to know, and I would want to have the opportunity.' That is all it does: it does not say that their representations need to be taken into consideration.

It only says that where it is practicable and where the board is not of the opinion that it would not be in the best interests of the mentally incapacitated person, then the parents should have that right. I am aware that we are talking not of children, but we are talking of adults, but very many parents of mentally incapacitated persons do take a very keen interest in their welfare, and it seems to me only appropriate that they should have the opportunity, where procedures of this kind are contemplated, to make representations, particularly in regard to termination. We know that time is of the essence if it is in an advanced stage, but this amendment allows for that because it says 'the board is not required to do so if of the opinion that to do so would not be in the best interests of the mentally incapacitated person'. A similar amendment was moved in the House of Assembly and the Minister opposed it. He gave as his reason that clause 14(4) of the Act provides:

The board must give the following persons reasonable notice of the time and place of the hearing of proceedings.

Subclause (4)(d) provides:

Such other persons as the board believes have a proper interest in the matter.

The Minister claimed that that solves the problem. In my view it clearly does not, because it applies across the board, not only in regard to termination and sterilisation, but in any matter. It seems to me to be most improbable that the board would be likely to determine that the parents were persons who ought to be informed and be able to appear in a matter of this kind. It certainly would be drawing a long bow to assume that they are going to be informed and given notice under clause 14(4)(d). It seems to me that there is no harm whatever in providing in this way, with the let-outs that are provided in regard to not being available and not being in the best interests, specifically that the parents be notified and given the opportunity to appear. So, for these reasons I move the amendment.

The Hon. BARBARA WIESE: The Government opposes this amendment. The current legislation provides the sort of specific right to attend for sterilisation and termination of pregnancy which is the sort of thing that the honourable member is wanting to reinstate in this legislation. No doubt when the original legislation was drafted it was considered that such applications would primarily be received for persons with an intellectual disability where significant parental involvement often continues throughout the person's life. In practice, it has been found that that has proved to be correct in relation to sterilisation procedures, but not so in relation to termination procedures. Women with other problems, such as head injury, for example, experienced during adult womanhood, or people with a mental illness, have appeared before the board for such procedures.

So, it has been deemed more appropriate to draft the current legislation to provide for the needs as they have been experienced, but also to expand the type of treatments that require board oversight. For example, in New South Wales such provision allows for the use of medication to chemically detain persons, and that has received the New South Wales Guardianship Board's attention. It would be rather silly to suggest that the board should be legislatively obliged to consider the issue of notifying parents of, say, a 70-year-old nursing home resident, because a prescribed treatment is being considered. So, what we are trying to do here is draft legislation which meets the needs of people in the real world. It is trying to expand the procedures that would be covered and it is also providing for, nevertheless, a general provision as was stated by the Minister of Health in another place under clause 14(4)(d) which requires the board to give persons, who the board believes have a proper interest, reasonable notice of the hearing, and under clause 14(6)(b) the right for them to make representations to the board.

So, in the circumstances that previously applied where you would expect the parents still to have a keen interest and involvement, then obviously that would be continued under this legislation, and those parents would be recognised as people who have a proper interest in the matters that are being heard by the board. However, there are occasions with other adult people or elderly people where such a provision is not necessary, and where there ought to be the option for such inquiries to be deemed unnecessary.

The Hon. J.C. BURDETT: Mr Chairman, in regard to the real world, two of the people I have spoken to were parents of a 48-year-old mentally incapacitated woman who spoke to me about another matter pertaining to the Guardianship Board. I raised this matter with them and they said, 'We would want to know. We would expect to be told before it happened.' As I said before, I am not satisfied with clause 14. I mentioned the fact that the Minister had used that in the House of Assembly,

and I am not satisfied with that because it is so general and so bland, and it does not refer to this particular circumstance. I am not at all satisfied that in appropriate cases the parents would be notified and be able to make representations.

The amendment which I have moved has so many let-outs. First, where it is not reasonably ascertainable to do so, and, secondly, if, in the opinion of the board to do so would not be in the best interests of the mentally incapacitated person. It would not be very difficult for the board at all to make those two inquiries: first, as to whether the whereabouts of the parents were reasonably ascertainable and, secondly, as to whether or not they considered it to be in the best interests of the mentally incapacitated person. So, it appears to me that it is imposing no considerable obligation on the board to make those two inquiries and can do no harm. This will ensure that in appropriate circumstances the parents are notified and have an opportunity to make submissions. These things are important to some parents.

I appreciate what the honourable Minister has said, but that is not a real argument against simply inserting this power, which does not impose any great obligation on the board. Despite what the Minister has said about termination and sterilisation in the past, it was not mentioned in the second reading explanation why this was left out and, more importantly, I read carefully the inquiry instituted by the Government into the administration of the Mental Health Act, and that did not make any adverse comment. I cannot believe that to include this amendment, which is more bland and less specific than the present law, can do any harm.

The Hon. M.J. ELLIOTT: I do not believe that this amendment creates any difficulties. We are talking about adults and their parents. In general terms, when a person becomes an adult they are free to make their own decisions, but we are talking about people who are not capable of making their own decisions and about parents who are not disinterested in their adult children. When the Guardianship Board is about to make a decision I do not believe it can dismiss—indeed, I hope it would not even try to dismiss—the views of parents, even though in this case we are talking about parents of adults. I do not believe that what is being proposed is onerous. It simply provides the opportunity for parents to make submissions—nothing more, nothing less. It is not unreasonable, and I support the amendment.

The Hon. BARBARA WIESE: The debate seems to be focussing too much on people who are intellectually disabled and perhaps who have been so since birth and on parents who have been very much involved in the care of those people from the beginning and who quite rightly continue to have an interest in their care throughout their life. However, there are other categories of people, for example, older people who suffer dementia late in life, who fall into the category of people who require special attention and for whom one would not necessarily need to contact parents in order to have an appropriate family input into the decision making process. In a situation such as that it might preferably be a spouse or a sibling who is the appropriate person who should be contacted in order to participate in the decision making. For that reason the legislation has been redrafted so that the most appropriate choice can be made. I am advised that there is no intention whatsoever to preclude people who have a proper interest in the care of individuals who fall within the jurisdiction of this legislation. On the contrary, there needs to be flexibility to ensure that the most appropriate people are involved in the process and that it not be limited only to parents.

The Hon. J.C. BURDETT: The Minister has misunderstood me if she thought I was talking only about people who had been mentally incapacitated from birth, because I was not; I was talking about the whole range of people. Clause 14, to which the Minister refers, which directs that reasonable notice should be given to such other persons as the board believes have a proper interest in the matter, has already been passed, and that clause applies anyway. However, what I am saying is that we ought specifically to deal with the important questions of sterilisation and termination and include this provision in the Bill, as it largely reinforces what is in the present law and which was not shown to be unsatisfactory by the inquiry and which provides all the 'outs'. If the parents are dead—and the honourable Minister talked about older people having dementia—obviously they cannot be given an opportunity. They will not be given an opportunity if it is considered it is not in the best interests of the medically incapacitated person. I can see no reason why this specific provision should not be inserted.

Amendment carried; clause as amended passed.

Remaining clauses (61 to 83), schedule and title passed.

Bill recommitted.

Clause 3—'Interpretation'—reconsidered.

The Hon. BARBARA WIESE: I move:

Page 2, lines 8 and 9—Leave out all words in these lines.

This is consequential upon the amendment moved by the Hon. Dr Ritson relating to decisions which are yet to be made about medical agents and which will be made when the Council debates the consent Bill that is currently before it. As I indicated earlier, the Government will support the Hon. Dr Ritson's amendments on this matter, pending the debate on the question of medical agents when the consent Bill comes before us.

The Hon. R.J. Ritson interjecting:

The Hon. BARBARA WIESE: The Hon. Dr Ritson indicates that he agrees that the Bill must be consistent, whatever the outcome of that debate. At this stage, in order to proceed with this legislation I am agreeing, on behalf of the Government, with the Hon. Dr Ritson's amendment, pending the outcome of further debate on this issue in another piece of legislation, and consequential upon agreement to that amendment we must also at this stage remove the definition of 'medical agent' in clause 3, which is what this amendment seeks to do.

Amendment carried; clause as further amended passed.

Clause 21—'General functions of public advocate'—reconsidered.

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

Page 10, line 35—Leave out 'or by the Minister'.

It is an amendment consequential to an amendment I moved to clause 21a.

Amendment carried; clause as amended passed.

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

The Hon. BARBARA WIESE: I move:

Page 28, lines 13 and 14—Leave out the words 'the consent to medical treatment and Palliative Care Act 1993, but otherwise notwithstanding that' and insert the word 'any'.

This, too, is consequential on the amendment that was agreed to and which was moved by the Hon. Dr Ritson and relates to the Bill which is yet to be debated.

Amendment carried; clause as further amended passed.

Bill reported with amendments; Committees report adopted.

MENTAL HEALTH BILL

Adjourned debate on second reading.

Continued from 1 April. Page 1879.)

The Hon. BERNICE PFITZNER: The Mental Health Bill is one of three Bills that will replace the current Mental Health Act 1977. The Bills are the Mental Health Bill, the Guardianship and Administration (Mental Capacity) Bill and the Supported Residential Facilities Bill, all three of which deal with people with a mental incapacity which is defined as 'the inability of a person to look after his or her own health, safety or welfare or to manage his or her own affairs'. We note that the objectives of this, the Mental Health Bill, are:

1. The Minister, the Health Commission, the Board, Directors of approved treatment centres and any court or other body or person engaged in the administration of this Act must, in performing their functions under this Act, seek—

(a) to ensure that patients receive the best possible treatment and care;

and

(b) to minimise restrictions upon the liberty of patients and interference with their rights, dignity and self respect, so far as is consistent with the proper protection and care of the patients themselves and with the protection of the public.

2. The Minister and the Health Commission must endeavour—

(a) to work towards ameliorating the adverse effects of mental illness on family life;

(b) to rationalise and coordinate services for persons who have a mental illness;

(c) to assist and encourage voluntary agencies that provide services for persons who have a mental illness;

(d) to assist and encourage the development of services designed to reduce the incidence of mental illness in the community;

(e) to promote research into the problems of mental illness;

(f) to promote a high standard of training for those responsible for the care of persons who have a mental illness;

(g) to promote informed public opinion on matters of mental health by the dissemination of knowledge and generally to promote public understanding of and (wherever practicable) involvement in measures for the prevention, treatment and cure of mental illness.

In particular I would like to highlight the relevant objectives of best possible treatment and care and high standard of training for the carers. With regard to 'best possible treatment and care' I would like to take this opportunity to speak a little on de-institutionalisation. We have been informed by experts that de-institutionalisation is best for people with a mental disability. Indeed, it is the best form of treatment and care for people with any disability. Let us look at the attitude of the society to people with a mental disability (as it used to be called, 'madness'). Contemporary views of 'madness' have always reflected the prevailing social order and have in turn determined the nature of psychiatric care. Changes in the management of the mentally disabled was dramatic after the Second World War and psychiatric hospitals have been discharging their chronic patients into the community and the era of long-term institutional care for the mentally ill which began in the late nineteenth century is slowly coming to an end.

Awareness of the potentially detrimental effects of institutionalisation, of changing clinical practice and of the advent of suitable medication initiated this process. It was further promoted by attitudes towards civil liberties and by the political and economic realities of the 1980s. Hospitalisation, once the norm for psychiatric patients, is now reserved for acutely disruptive, uncooperative and suicidal patients and only the most disabled chronically ill patients. Yet, chronically mentally ill patients remain vulnerable whether in or out of institutions. Their needs extend beyond the mere provision of long-term residential placement. Community-based mental health services now face the challenge of providing comprehensive medical and psychiatric care and follow ups, of providing support services to patient's families, of extending social networks to isolated patients and of offering adequate help in arranging essential life services to those lacking the necessary personnel and social resources and skills.

We are aware of the limitations and disadvantages of institutionally-based care. We are also aware that it is not the disease alone that determines the final outcome but rather the interaction of illness and social factors. Institutional life may exert enormous influence, and the longer the stay the greater this influence. Having been rendered susceptible by the disruption of the effects of the mental illness, the person becomes unusually dependent on the current environment to determine appropriate behaviour. It is in this state of disruption and vulnerability that a person entering a mental hospital assumes the sick role and then finds himself or herself unfit for life in ordinary society.

However, although institutions are not the ideal place for most mentally ill people, deinstitutionalisation is not merely the process of moving long-term patients out of hospital. In many instances where such short sighted measures have been undertaken patients have simply transinstitutionalised to nursing homes, penal institutions or similar, where their care is less, rather than more, adequate. Other patients roam the inner city to find themselves merely subsisting on the fringes of society. Away from hospital many needs that an institution formerly catered for must be met. As well as providing housing and food, patients must find ways of handling their finances, obtaining medical care, realising work opportunities and developing social relations. Deinstitutionalisation must therefore include rehabilitation of all handicaps.

The process needs to begin within the institution so that once discharged a patient can not only survive but can also make the most of his or her resources and minimise his or her disabilities. They will require

ongoing care and ongoing support to maintain a reasonable level of functioning. So, as we watch the process of the closing of Hillcrest we wonder whether this Government has put sufficient funds, staff, plans and strategies into deinstitutionalisation of the patients into the community. We are concerned that there is insufficient planning and insufficient and unsatisfactory infrastructure in place to receive these mentally disabled people into the community.

With the insecurity resulting from the closure of Hillcrest we hope that one of the objectives of this Bill—that is, to ensure that patients receive the best possible treatment and care—will be met. Since the steady but relentless closure of Hillcrest, top psychiatrists have left that centre; some of them are arguably the best in the nation and they are going interstate. Hillcrest itself used to be one of the top psychiatric hospitals in the nation. However, now with the loss of highly trained professionals, the hospital has lost its teaching accreditation to train psychiatrists, and the only psychiatric hospital now left in South Australia is Glenside, which is still to be accredited.

Again we hope that the other objective in the Bill—to promote a high standard of training—can be fulfilled. In general, this Bill is a welcome effort to give treatment and care in such a way that the rights, dignity and self respect of the patient are maintained. I hope that this Government will abide by the intent of the Bill.

I have certain concerns with some of the following clauses and I will flag them at this stage. In clause 3, under the heading 'Interpretation', the Bill seeks to add by amendment the definition of 'Public Advocate'. In relation to clause 6, I wish to clarify the duties of the chief adviser in psychiatry. In clause 20, under the heading 'Treatment orders for persons who refuse or fail to undergo treatment', I wish to include an amendment to allow an application for treatment orders to be made not only by a medical practitioner or a Public Advocate but also by a guardian or relative.

I have read in *Hansard* the reasoning by the Health Minister in the other place regarding this amendment. I do feel that it has not been adequately reasoned nor fully understood. Also in clause 20, it is noted that the treatment order is for 12 months only. I am concerned that after 12 months there is no specified method of renewal of the treatment order. In particular, I am concerned that the family has to go through the whole formality once again rather than having a shorter renewal procedure. As the renewal procedure is not spelt out, I note that the Minister of Health in another place has assured us that it will be simplified. In his assurance in the other place the Minister stated:

> It is just a reauthorisation of existing treatment. I can certainly give the assurance the honourable member seeks that an expedited procedure would be available.

I hope this is so. In relation to clause 28, I wish to have clarification as to whether a provision for a stay of an order, especially for medical treatment, during the currency of an appeal is envisaged. In clause 35, in relation to prohibition of publication of reports of proceedings, I wish to clarify whether ignorance of this provision is a defence.

I raise those few points to seek clarification and to highlight amendments that are to be moved. This Bill, together with the other two Bills, will help to support, encourage and protect the mentally disabled. I therefore support the second reading.

The Hon. BARBARA WIESE (Minister of Transport Development): I thank honourable members for their contributions to the debate. I have taken note of the issues raised by the Hon. Dr Pfitzner on which she seeks further clarification, and I will undertake to provide whatever information I can during the Committee stage of the Bill rather than take up more time of the Council than is necessary during the second reading stage.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

The Hon. BARBARA WIESE: I move:

Page 1, line 27—Leave out '(Mental Capacity)'.

This amendment and several others to be moved to other clauses and the schedule are all procedural amendments following the passage of an amendment to the long title of the Guardianship and Administration Bill which was made in another place, so that the title perhaps more accurately reflects the full scope of the board's work and creates a more positive understanding of it in the community.

Persons with any physical illness or condition that renders them unable to communicate their intentions or wishes in any manner whatsoever come within the scope of the Bill. By deleting 'mental capacity' from the long title, it was felt that any avenue for misunderstanding could be avoided. These amendments make corresponding changes wherever the title appears in the Mental Health Bill.

The Hon. R.J. RITSON: If a person was unable to communicate their wishes or consent or manage their affairs, for example, due to a stroke which produced aphasia, a condition where persons can think conceptually and know what they want to say but cannot choose the words which express it, and such persons if put on trial would be unfit to plead for that reason. Does the Government believe that the legislation should not apply to a person in that situation who had before arriving in that physical condition appointed a medical attorney under legislation yet to come to us? This legislation appears to be operating in the patient's interest as judged by the medical community.

The Hon. BARBARA WIESE: I seek clarification. The honourable member seems to be asking a question relating to a definition contained in the Guardianship Bill, and we are dealing with the Mental Health Bill. What is the relationship between the two?

The Hon. R.J. RITSON: Is not the Government in this trilogy of Bills doing several quite different things with regard to the principle of consent and personal liberty? In one of the Bills it makes not only patient autonomy but also the judgment of third parties tantamount. In another of the Bills it provides for State control of that patient's autonomy, if a person thus incapacitated can be said to have autonomy. Does not the Government think it is approaching exactly the same problem? Whether someone having, let us say, medical or psychological care of a patient operates under one Bill

or the other, there should be the same principle: either the patient has freedom or the patient has an agent entitled to speak, or the patient ought to be treated without consent or against their wish to get them better.

It seems to me that there is not a principle running through this where one Bill says, 'If you get sick and you cannot agree or, if you disagree, we take you off to hospital and make you better, anyway,' and under another Bill, if one gets the same illness but has signed a document, we say, 'We are not going to take you off and save you but, if your idiot cousin makes a decision that you shall die, then so be it; you shall die.' It seems to me that there is not a commonality of compromise between freedoms, the rights of friends and relatives and the rights of autonomous willpower, and that this Bill, in relation to that, is doing something quite different from some of the other Bills. It is a philosophical question and not a legal question. I refer to teenage suicides, for example.

The Hon. BARBARA WIESE: The honourable member is raising here the philosophical debate which is much better undertaken under the other Bill dealing with consent. It would be more appropriate if we had that debate when we are dealing with the appropriate piece of legislation, rather than rehearsing the arguments during the course of the debate on this Bill.

Amendment carried.

The Hon. BERNICE PFITZNER: I move:

Page 2—after line 20—Insert:

'the Public Advocate' means the person holding or acting in the office of Public Advocate under the Guardianship and Administration Act 1993;.

I wish to include the definition of 'Public Advocate' in the interpretation clause. I realise that there is only one Public Advocate and that it is understood that it is he or she, but I believe it would be helpful for understanding when reading the Bill if one could look up what was actually meant by the advocate, so that one could find the duties of the advocate and the qualities which were looked for and which are in the Guardianship and Administration Act 1993.

Therefore, I had wished for this term 'public advocate' to be further spelt out. For example, we have in the interpretation section 'medical practitioner', and we all know what a medical practitioner is, but it is spelt out what the person is and where the definition can be found in the Medical Practitioners Act 1983; therefore I sought to clarify and inform further as to the position of the public advocate.

The Hon. BARBARA WIESE: The Government supports this amendment.

Amendment carried; clause as amended passed.

Clauses 4 to 17 passed.

Clause 18—'Treatment is authorised during initial detention in an approved treatment centre.'

The Hon. BARBARA WIESE: I move:

Page 8, line 10—Leave out "(Mental Capacity)".

This is consequential and I have already explained the reason for it.

Amendment carried; clause as amended passed.

Clause 19—'Orders for treatment for patients subject to continuing detention orders.'

The Hon. BARBARA WIESE: I move:

Page 8, line 27—Leave out "(Mental Capacity)".

Amendment carried; clause as amended passed.

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

The Hon. BERNICE PFITZNER: I move:

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

I have moved this amendment because I believe that an application should not only be able to be made by a medical practitioner or the public advocate but also by a guardian or a relative. After all, who knows the ill person better than a guardian or a relative? This application is an application to the board for treatment orders. This particular illness has its fluctuations, and if a person were to review the ill patient, at some times the ill patient might be seen to be quite normal. I believe that the guardian or relative would have a much better perspective on the patient than a public advocate.

I note that it was argued in the other place that, if a relative made an application without the support of a medical practitioner, possibly it would be of no use. I do not support this, because the relative would just be making an application to the board for treatment orders, and the board has as one of its members a psychiatrist, and the board must be satisfied by the three conditions in clause 20(a), (b) and (c). Therefore I think that a relative or guardian would be beneficial to be added to that section.

The Hon. BARBARA WIESE: The Government opposes this amendment. These orders essentially are about medical treatment against the express wishes of the person. In order that they can be implemented, it is essential that there be a medical practitioner who can state that the treatment is required, that such treatment is necessary, and who is willing to provide such treatment. This change gives recognition to that fact by requiring an application to be made by, in fact, any medical practitioner.

Some families, I am advised, misunderstand the role of the Guardianship Board and want the Guardianship Board to force service providers to treat their family member. The board cannot do that and can give its sanction only to a plan which the treating team wishes to provide. However, in making the applicant a medical practitioner, this does not in any way lessen the importance of the board's needing to obtain the views of the family at its hearings because, as the Hon. Dr Pfitzner herself pointed out, very often members of the family, people who are closest to the individual concerned, can provide very important information that must be taken into consideration in determining what might be appropriate treatments.

So, it would be the intention that members of the family would be involved in these proceedings if they wanted to be, and that they would play a very important role. But it is not possible, on the application of a parent or a member of a person's family, to have the board force a form of treatment on an individual. There must be agreement by a medical practitioner, and it would be inappropriate to take the sort of course that the honourable member is suggesting, that is, to rely on the individuals who sit on the board, whatever their medical qualifications might be.

It is not appropriate to have, say, a psychiatrist sitting on the board making specific judgments about medical treatment or dosages of medication, or monitoring the treatment of individuals. Someone has to undertake those functions. You cannot expect the members of the board to do that in each individual case. Therefore it is important that there must be a medical practitioner who is involved in the process and who is closely involved in the treatment of the individual. So, for that reason, the Government believes that the amendment moved by the honourable member is not appropriate, although it is accepted that very often members of the family will be providing very important information that will help in the decision making process about the individual concerned.

The Hon. BERNICE PFITZNER: Why is it that a public advocate can make an application, if the Minister is saying that it should be a medical practitioner? Why is a public advocate any more credible than a relative or the guardian? Secondly, there might be a medical practitioner who has authorised the treatment and who is not able to get a different medical practitioner. Therefore why cannot a relative or guardian apply for treatment orders? There would be a medical practitioner who has authorised the treatment but, perhaps, is not able to get a different medical practitioner to authorise the treatment. Therefore, I find it difficult to understand why a relative or guardian cannot apply to the board for a treatment order when there is already a medical practitioner who has authorised the treatment.

The Hon. BARBARA WIESE: I take the point, in part, that the honourable member makes; that having put the argument that I did the existence of the provision that enables a public advocate to bring the matter before the board does seem on the surface of it as something of a contradiction. However, I want to explain why it is that that provision was made. Essentially it is something of a compromise that has been reached between some of those organisations which have strongly put the case in the past that family members ought to be able to force a particular sort of treatment if that is what they believe is appropriate.

The public advocate provision builds some flexibility into the system providing an avenue for those families and clients who feel that they have not had a fair hearing, but it would be in the situation where they have been unable to find a medical practitioner who was willing to make application to the Guardianship Board in the first place. In other words, they have not been able to find a medical practitioner who believes that certain treatments that are being requested by the family or the client are appropriate. They would be able to use this provision by going through the public advocate to have something of a conference which would include the medical practitioner, the family, the client and the public advocate to have an airing of all issues that are involved, so that families can be satisfied that they have exhausted every opportunity to achieve what it is they are looking for. It should be noted that under the current legislation such applications are very uncommon. There are some three or four such applications out of several hundred each year. It is envisaged that this clause, which enables an application to be made by the Public Advocate, would be used on even fewer occasions than currently exists. It would be considered to be an avenue of last resort.

The Hon. BERNICE PFITZNER: If it is so rarely used, I still cannot see why a relative or guardian cannot be included in that group of a medical practitioner, Public Advocate or relative. I do not see that they would force treatment because what they are asking is just an application for a treatment order, and then the board assesses it according to the four criteria. I find it difficult to understand the way it has been put.

Let me present another scenario to the Minister. If the board has in place four criteria—that the person has a mental illness, that a different medical practitioner has authorised a treatment, that the person should be given the treatment for the illness for his own health and safety, and that an order under this section should in all circumstances be made—but if the relative or guardian is unable to find a medical practitioner or a Public Advocate is unavailable, why on earth cannot a relative or a guardian make an application for a treatment order?

The Hon. M.J. ELLIOTT: I support the amendment, so we can ease a little of the pain. I might just make a few observations. The question of the Public Advocate having a role here under section 20 raises a little concern in my mind. My understanding of the Public Advocate under the Guardianship and Administration Bill is clearly that the Public Advocate is a person who represents directly the interests of the person who is under guardianship and who may have some mental incapacity. What the Minister is suggesting is that parents may go to the Public Advocate and ask the Public Advocate to go to the board to require particular treatments to occur.

In this case the advocate is being asked not to represent a person who is mentally incapacitated but to represent the parents. That to me seems to be something of a conflict of the role of the Public Advocate, but I will leave that to one side. I have been approached by a number of people who have concern about the clause as it currently stands. While they might be perhaps few in number overall, I do not see the difficulty where parents or guardians may be the ones who make the approach to the board. After all, the board still has to make a determination, and in that determination I presume they would seek evidence from elsewhere. It is simply giving the parents the capacity to ask the board to make such a decision.

Probably even more importantly, the board having made the decision once, perhaps the parents in many cases are the ones who know whether or not there has been any real change or progress and whether or not there may be a need for a further extension of treatment orders. In many cases they are living day-to-day with that person and can often make the best judgment. They should be in a position to be able to go back to the board and say, 'We believe you should be considering a further extension of the treatment order.' I do not think that is an unreasonable thing for a parent or guardian to be able to do.

The Hon. BARBARA WIESE: It seems that members are missing the point of this argument. What we are talking about is a situation where an individual refuses treatment. I think the case that the honourable member is putting involves a situation where the family of the individual believes that treatment should be provided. Further, we are talking about a situation where no medical practitioner who is willing to provide

treatment can be found. In other words, the medical practitioner takes the view of the patient or client in saying, 'I do not believe that treatment is necessary or desirable here.' We are saying that unless you have a medical practitioner who is willing to provide treatment and to monitor such treatment there is no point in providing a power for members of the family to go to the Guardianship Board because the Guardianship Board does not have the power to order a medical practitioner to provide treatment. Unless somewhere there is a doctor—and a parent or family member can go anywhere they like to find such a medical practitioner—who is prepared to provide the treatment, we have a serious problem. If they are able to find a medical practitioner who is willing to provide treatment, the problem that the honourable member is trying to overcome does not exist, because if that medical practitioner has agreed that treatment is desirable they will presumably make the application themselves to the Guardianship Board against the wishes of the individual. Does the honourable member see the distinction I am making?

The Hon. BERNICE PFITZNER: The medical practitioner who makes the application may not be the same medical practitioner who has authorised the treatment; they might be two different medical practitioners. For example, the medical practitioner who has authorised treatment might be on holiday, but he has authorised the treatment so why should a medical practitioner be needed to make the application? Why cannot the application be made by a relative or a guardian? After all, all they are doing is making an application to the board, which will then assess it. The two medical practitioners need not be the same person.

Amendment carried.

Progress reported; Committee to sit again.

SOUTH AUSTRALIAN TOURISM COMMISSION BILL

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

SUPERANNUATION (VISITING MEDICAL OFFICERS) BILL

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 purpose of this Bill is to restructure the superannuation arrangements for visiting medical officers (VMO's) employed in hospitals incorporated under the Health Commission Act, so that the requirements of the Commonwealth's Superannuation Guarantee Charge (SGC) legislation are satisfied.

The total salary rate paid to VMO's includes a 10 per cent loading for superannuation but at present 76 per cent of VMO's take this superannuation loading as cash in hand.

In terms of the SGC legislation, the employer, that is the hospital in this case, is required to pay the employer superannuation contribution directly into a scheme.

Accordingly, this Bill provides that in order to satisfy the SGC legislation, VMO's will now have to be a member of either the VMO Superannuation Fund or the main state Superannuation Scheme. The VMO Superannuation Fund was established in 1983 by the South Australian Salaried Medical Officers Association, and currently a little under 24 per cent of VMO's are members of the scheme.

The Bill also provides for the total salary rates to be reduced by 10 per cent to reflect the fact that the already included employer financed superannuation component will be directed to either the VMO scheme or to Treasury to meet the cost of the accruing liability for benefits under the state scheme.

The South Australian Salaried Medical Officers Association supports the Bill. The provisions of the Bill are as follows:

Clause 1: Short title is formal. Clause 2: Commencement

Clause 2 provides that the Act will have retrospective operation from 1 April 1993.

Clause 3: Interpretation

Clause 3 provides for the interpretation of terms used in the Bill.

Clause 4: Membership of the VMO Fund

Clause 4 provides that visiting medical officers are members of the SAHC Visiting Medical Officers Superannuation Fund.

Clause 5: Reduction of salary

Clause 5 provides for the reduction of salary paid to visiting medical officers.

Clause 6: Membership of the State Scheme

Clause 6 enables a member of the VMO Fund to apply for membership of the State Scheme.

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

ADJOURNMENT

At 12.12 a.m. the Council adjourned until Wednesday 21 April at 2.15 p.m.