LEGISLATIVE COUNCIL

Wednesday 4 August 1993

The PRESIDENT (Hon. G.L. Bruce) took the Chair at 2.17 p.m. and read prayers.

LEGISLATIVE REVIEW COMMITTEE

The Hon. M.S. FELEPPA: I bring up the eighteenth report of the Legislative Review Committee.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. T.G. ROBERTS: I lay upon the table the first annual report of the Environment, Resources and Development Committee for the period February 1992 to January 1993.

SELECT COMMITTEE ON THE PENAL SYSTEM IN SOUTH AUSTRALIA

The Hon. C.J. SUMNER (Attorney-General): I move:

That the Hon. Caroline Schaefer be substituted in the place of the Hon. R.J. Ritson, resigned, on the committee.

Motion carried.

SELECT COMMITTEE ON THE CONTROL AND ILLEGAL USE OF DRUGS OF DEPENDENCE

The Hon. C.J. SUMNER (Attorney-General): I move:

That the Hon. Peter Dunn be substituted in the place of the Hon. R.J. Ritson, resigned, on the committee.

Motion carried.

UNIVERSITY OF ADELAIDE COUNCIL

The Hon. C.J. SUMNER (Attorney-General): I move:

That the Hon. Bernice Pfitzner be elected a member of the Council of the University of Adelaide in place of the Hon. R.J. Ritson, resigned.

Motion carried.

BENEFICIAL FINANCE CORPORATION

The Hon. C.J. SUMNER (Attorney-General): I seek leave to table a ministerial statement being given this day by the honourable Premier on allegations relating to Beneficial Finance Corporation.

Leave granted.

QUESTION TIME

DEPARTMENTAL MERGER

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister of Public Sector Reform a question about the ETSA and E&WS merger.

Leave granted.

The Hon. R.I. LUCAS: As a result of the Government's announced intention to merge ETSA and the E&WS Department, a number of committees have been established to consider the costs and benefits of the merging of various parts of both agencies. I have now received leaked copies of the minutes of some of those meetings, and in particular some documents signed by Mr Jim Killick, who is the Director of the merger implementation subcommittee. These minutes refer to the possible development of an in-house market research capability within the new merged agency. In fact, the merger implementation committee met last week and discussed the proposal that the new agency would handle its own market research and that it would work towards doing market research for all other Government departments and agencies.

I am advised that the view of Mr Killick and his committee was that the new agency did not have the expertise to handle its own market research let alone the market research for other Government departments and agencies. However, I am told that a Mr David Abfalter, who is the principal adviser to the Minister of Public Infrastructure, Mr Klunder, has intervened and told Mr Killick and the committee that both he and the Minister are insisting that this proposal be implemented. Some members of this committee are understandably very angry at this interference by a ministerial adviser into the operations of a committee which is meant to be considering the arguments for and against such a proposal. My questions to the Minister are:

1. Is it the intention of the Government that the Southern Power and Water agency will carry out its own market research and also the market research for other Government departments and agencies?

2. Does the Minister believe that when merger implementation committees are established to consider the costs and benefits of merging certain operations it is appropriate for ministerial advisers to be giving directions to these committees before they conclude their work?

The Hon. C.J. SUMNER: Mr President, I do not know whether Mr Abfalter gave directions or, indeed, whether he was in a position to give directions to this committee. Obviously, the committee will produce a report that would be considered by the Minister and then by Government if necessary. So I cannot say whether what the honourable member says is correct or not. Certainly, as far as I know, the Government has not considered the issue of whether or not Southern Power and Water should carry out its own market research and do market research for other Government departments.

The Hon. R.I. Lucas: Power and water and market research.

The Hon. C.J. SUMNER: It could be. It is very entrepreneurial and commercial; that is true. What that will end up as when the final decisions are made, I cannot say. I am not aware of this particular issue that has arisen. I suppose I could refer it to the Minister and get a response.

One aspect of public sector reform is in fact to have different agencies of Government contracting their services to other agencies of Government so that not all agencies have to have the same functions and carry out the same functions. One of the aspects of bringing together the 30 departments into 12 operational departments is to enhance the sharing of, in particular, corporate services and the like. There will be instances, particularly amongst some of the smaller agencies, where they will contract out their corporate services to larger agencies. That particular aspect of it—

The Hon. R.I. Lucas: To their area of expertise?

The Hon. C.J. SUMNER: If it is corporate services presumably anyone has expertise in that area. You would contract out your corporate services to another Government department where that was considered appropriate and cost

effective. Rather than having your own corporate services area, if the department or agency was relatively small, that department or agency could contract in the provision of those services from another larger agency. That aspect of contracting out and contracting in amongst Government bodies is an aspect of public sector reform and it may be appropriate to apply it to market research as well in some circumstances. I only make that as a general proposition; I do not know whether that is what is envisaged in this case, but I will attempt to find out for the honourable member.

The Hon. R.I. LUCAS: As a supplementary question, is the Minister suggesting that in relation to this contracting out proposal—which is part of public sector reform as he has indicated—some of the larger agencies, for example, the Education Department and the Health Commission, may well contract out or be able to provide, for instance, the payroll or personnel services for smaller Government departments—of the 12 that we are now talking about—so that the payroll, personnel and those sorts of corporate functions might be done by the Education Department or the Health Commission for those other agencies?

The Hon. C.J. SUMNER: That is possible, although I think once the 12 agencies are brought together they will be large enough then to have their own corporate services. However, there may be other agencies or even some statutory authorities that might contract in particular services. The Courts Administration Authority is one that has been mentioned. This has not been raised with the authority, so it will probably object to it, as the Hon. Mr Griffin knows. It is independent, of course, but it might find it more cost effective to contract its corporate services to the Ministry of Justice when it is established.

Each case would have to be looked at on its merits to determine whether or not it is cost effective. Where there is a small agency—and there will still be some small commissions and agencies around even after this process is completed—it may be that it is more cost effective for those smaller agencies not to run their own corporate services but to contract them in from a larger agency. Theoretically, it can happen and it may happen in certain circumstances.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: That is a different issue and I have already answered that question. I have said that I do not know whether what the honourable member has said about that is correct. I do not know whether Mr Abfalter would have purported to direct the committee on this matter or indeed whether he was in a position to. I have already said that, but I will attempt to get the honourable member an answer to the matters that he has raised. That is the specific issue.

I only raise the general issue by way of explanation to say that part of public sector reform involves the sharing of functions amongst the different agencies, if it is more efficient to do it. So, the Health Commission can carry out corporate services or perhaps market research for another smaller agency if that is appropriate.

MABO

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

Leave granted.

The Hon. K.T. GRIFFIN: In February and March of this year I asked the Attorney-General to make available all the advice and submissions received by the Government on the Mabo High Court decision and the consequences for South Australia. On those two occasions the Attorney-General said that he would have a look at it and get back to me, but so far it appears that the Government has ignored the requests.

Yesterday the Premier's ministerial statement was tabled in the Legislative Council. Regrettably, it told us very little about where the State Government was going on the issue, except to follow the Commonwealth line.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: It did. Since early this year the public has been waking up to the potential consequences of the Mabo decision and a great deal of concern has been expressed by a wide range of interests. That concern has developed partly from the heavy-handed centralist way the Federal Government has handled the matter and, in South Australia, partly from what appears to be a back seat position adopted by Premier Arnold and his Government in negotiations with the Commonwealth Government. I would suggest that yesterday's statement did not allay the concern.

The Premier's statement yesterday sets out fundamental principles the Government says it has adhered to. One of these is, 'that any doubts as to the security of existing interests in land must be removed and such titles protected'. It goes on to talk about freehold titles, perpetual leasehold and pastoral leasehold, but it treated mining interests differently. While mining leases create interest in land, they are not to be accorded the same status as, for example, pastoral leases which last for 42 years, and there is a convention in relation to those pastoral leases that, at the end of each term, they are most likely to be renewed. This means that the reasonable expectation of the holders of the 50 year Roxby Downs mining leases, for example, that they will get a renewal at the end of that period, is unlikely to be met by one of the principles to which the Premier's statement referred.

The Hon. C.J. Sumner: Rubbish!

The Hon. K.T. GRIFFIN: They have a 50 year lease.

The Hon. C.J. Sumner: It didn't say that.

The Hon. K.T. GRIFFIN: It did. The Premier's statement also talks about the requirement for fair and efficient means of determining the validity of claims and assessing compensation. In that context the Premier says that the South Australian Government is considering a specialist native title court or tribunal. As I understand it, the Commonwealth, under its proposals for tribunals, is proposing to give no rights to people other than native title claimants to make application to any court or tribunal or to appeal from any decisions. So, it is very much a one way street.

There is also concern about any new system of tribunals to resolve complex issues of native title and override rights which other citizens believed they had. These are issues which, in the view of many people, ought to be dealt with through existing court structures with appropriate appeal procedures in place because there are important issues at stake. My questions to the Attorney-General are:

1. When will he make available all the reports, advice and submissions to Government about the consequences of the Mabo case, both the favourable and unfavourable advice?

2. Will he make available to the Parliament the Prime Minister's letter to the Premier outlining the Commonwealth's base lines for draft legislation, a letter referred to yesterday by the Premier in his ministerial statement?

3. How will the Government propose protecting mining leases in cases such as Roxby Downs when the existing leases expire?

4. What specifically has the South Australian Government proposed as the most desirable legislative structure to resolve issues, guarantee titles and, where necessary, pay compensation, and to what extent has the South Australian Government participated in and contributed to the negotiations with the Commonwealth?

The Hon. C.J. SUMNER: The Premier and the Premier's office have been responsible for dealing with the Mabo issue from a policy point of view, although it is obvious that the Crown Solicitor has participated in providing advice to Government on the legal aspects of the issue. The honourable member has quite correctly drawn my attention to the fact that earlier this year he raised the question of whether or not certain advice could be provided to him on the issue. That is a matter that I am still pursuing with the people who are responsible for advising the Premier on this matter. In any event, I know the honourable member has made an FOI request in relation to the topic.

The Hon. K.T. Griffin: We will get it in one way or another.

The Hon. C.J. SUMNER: I am not sure the FOI request will actually get very far because under the FOI legislation if it is legal advice to Government from the Crown Solicitor then the normal professional privilege applies and it is precluded from an FOI request, as it is everywhere in Australia. However, I have been discussing the matter with the Premier's officers with a view to seeing what information can be made available to the honourable member and the Parliament to inform the debate on this topic. Part of the problem is that to some extent it has been a bit of a moving feast, so that initial views, after further consideration, have had to be modified.

However, I will certainly pursue that first question asked by the honourable member and make available to him whatever the Government deems can be made available. In any event, I would have thought, from reading the extensive coverage of this matter in the newspapers and elsewhere, that the honourable member would be reasonably familiar with the issues that the Mabo case have given rise to. As to the second question, I will ask the Premier whether the letter from the Prime Minister can be made available.

The Government will be introducing legislation to deal with the Mabo issue and that was announced in the Governor's speech yesterday. As the honourable member knows, that legislation is still being prepared but when it is introduced the honourable member can debate it and see whether or not, in his view, it adequately deals with the situation. However, there has been a lot of fear and loathing created around the Mabo case, in my view fear and loathing that has been largely unjustified, caused I believe on the one part by those people who want to make some political capital out of the Mabo decision.

In particular, of course, that has occurred in Western Australia, no doubt the Western Australian Government responding to its constituency in that State. Mr Court I think went so far as to say that he wanted the Mabo decision reversed. Well, that was not the position of the Federal Government, nor was it the position of the South Australian Government and nor ought it to be the position. It is interesting to note, while on this topic, that the New South Wales Government has generally been supportive of the propositions put up by the Prime Minister. Indeed, eventually the Northern Territory Government came on board with the general principles put up by the Prime Minister.

So, the issue is not one that has divided the community on purely Party political lines. The New South Wales Government together with Queensland, South Australia, the Federal Government, and now the Northern Territory are I think a fair way along the track to some sort of agreement. Mr Kennett has introduced his own legislation in Victoria but I think some further negotiations are still going on there. There is little doubt that on one side of it some exaggerated statements have been made about the effect of Mabo, things like: your backyards will be taken away, etc. Mabo makes it quite clear that native title has been extinguished by freehold title, by leasehold title in most circumstances.

So, the fears that have been raised by some people who have wanted to criticise Mabo have been unjustified on the one hand. The fear and loathing also, I think, has, to some extent, been helped along by some claims to native title which have been exaggerated and which are unlikely to succeed. I think that is regrettable.

In my view the Mabo situation is eminently resolvable by the exercise of goodwill and commonsense if people can be brought to the conference table on these matters. That is what the South Australian Government has been attempting to do through Commonwealth-State forums in conjunction with those Governments which I have mentioned: the Federal Government, the New South Wales Government, the Queensland Government and the Northern Territory Government, in particular. I think there is not much doubt that those Governments will be able to reach a reasonably uniform position. It is my personal view and that of the Government that in order to get investor certainty and confidence around this issue it should be dealt with on a national basis, on a basis that is consistent across the nation, so that people who deal with Australia know what the law is and where we stand. That was one of the first principles that the South Australian Government brought to discussions on the topic.

Secondly, it is the Government's view that existing entitlements—mining leases and the like, such as Roxby Downs indentures—and other rights that have been granted on the basis of the law as it was thought to exist should be validated.

The Hon. Diana Laidlaw: Forever?

The Hon. C.J. SUMNER: I am just giving the general principles. If there are doubts about the Roxby Downs indenture or the Stony Point or the Cooper Basin indenture they should be resolved so that where things happened based on the law as we thought it was the validity of those actions should be put beyond question.

As to the future, obviously there must be a system to deal with claims to native title that might exist. Unless we are to repudiate Mabo and legislate to overrule the Mabo decision we must deal with the possibility of native title arising in some circumstances in the future. The Government does not under any circumstances accept that the Mabo decision should be overruled, although that position has been put on occasions by some people and, I believe, by the Western Australian Premier.

The Government believes that for the future a system of tribunals should be established, that a tribunal is a better way to resolve this issue than leaving it to be worked through the courts system over many years, which I believe would increase uncertainty and would not be desirable in terms of getting this issue resolved. So, the Government supports the establishment of some system of tribunals to deal with native title. If you have a tribunal system as opposed to a regular courts system situations can be dealt with more expeditiously

and they can involve processes of conciliation and mediation. Of course, the tribunals would have the capacity to deal with compensation as well.

As to actions that occurred after 1975 when the Racial Discrimination Act came into being, the Commonwealth's eventual proposition, as I understand it, was that actions that occurred after that date, which may have been invalid or which may have given rise to compensation, should be validated but that compensation should be payable to any native title holders who were adversely affected by that action.

In other words, the Commonwealth Government's position was that the integrity of the Racial Discrimination Act should not be affected. Again, I do not think that is an unreasonable proposition, because if the Hon. Miss Laidlaw's property was confiscated by the Government at any time—in particular if it was confiscated after 1975—she would have received compensation under the regular laws of the land and the Land Acquisition Act.

The courts have established that native title may exist. If certain land was taken after 1975 without compensation and a native title claim could be established to that land, then surely the argument is that compensation should flow to those native titleholders if they establish their right to that land, just as the Hon. Miss Laidlaw or anyone else who has had their land compulsorily acquired is entitled to compensation. So, that is the other issue that had to be resolved.

As I recollect it—and no doubt this can be clarified when the Bill is being debated—the Prime Minister's ultimate proposition on that was that the Commonwealth was prepared to pay the compensation to deal with that issue. But that still was not acceptable to the Western Australians. So, that is, in very general terms, the Government's position. The Government's position, I believe, is a sustainable one: it is agreed by the major players around Australia, including the Federal Government, in broad terms. The details have to be worked out, but the Government is committed to ensuring that the Mabo decision is dealt with so that security of title is fixed up but also to ensure that it is done in a way that recognises now that the law of this land is that native title can exist in certain circumstances.

The Hon. K.T. GRIFFIN: As a supplementary question, in relation to the Attorney-General's earlier reference to some statements which had been made in Australia about one's backyard being at risk, he did respond by referring to the fact that freehold title was secure. Will he confirm that what he meant was that, without special legislation, freehold titles issued only up to 31 October 1975 are secure and that, subsequent to 31 October 1975, validating legislation will be necessary even to validate freehold title?

Secondly, in relation to his statements about Roxby Downs mining leases, will the Attorney acknowledge that, on the basis of the Commonwealth's drafting instructions, on the conclusion of a mining lease—and in this case 50 years for Roxby Downs—native title interests revive, and say how he expects to deal with that?

The Hon. C.J. SUMNER: Again, these matters will be fully spelt out when the legislation is introduced. I am happy to have a debate about it so far as we can prior to that. I do not think it is clear that all freehold title post-1975 would involve the granting of compensation—

The Hon. K.T. Griffin: Where there is the potential it would.

The Hon. C.J. SUMNER: Well, it may or may not. There might be some circumstances, but that was the point that I made: that the Commonwealth, as I understand it, in dealing with post-1975 situations, was prepared to pay compensation for native title that had been adversely affected or extinguished by Government, Parliament, or Executive action since that time. But, that is one of the issues that has to be resolved. I should have thought that most fair-minded people in the community would see that as being not an unreasonable approach to it.

As I understand the mining lease position—and again a lot of fear and loathing has been thrown around about that—the situation is—

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: Yes, that's right. Well, I have actually. As I understand it, the position is that a mining lease is just that: it is a mining lease. It is not a grant of freehold title and, once the mining activity has finished, it reverts to the Crown. In the case of a possible claim to native title, once the mining activity is finished, then the possibility of a native title claim can be revived. I would not have thought that was a problem. As I understand it, if the particular—

The Hon. Diana Laidlaw: It may not be until well after the lease.

The Hon. C.J. SUMNER: There will be another lease granted, presumably. So they are the matters that have to be examined. But, as I understood the Commonwealth's position, it is that, once the mining is finished, the potential for a native title claim can be revived. I do not see that that is a particular problem, because the mining lease is just that: it is a mining lease. It is not a lease to hold the land by the company forever. But no doubt that is another issue that can be clarified and expanded on when the legislation is introduced.

In answer to the first question again and what I said about there being no threat to backyards stands, obviously the freehold title in the urban areas and country towns of Australia for the most part has been freehold title granted many years ago.

HINDMARSH ISLAND BRIDGE

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Attorney-General a question about the Hindmarsh Island bridge.

Leave granted.

The Hon. DIANA LAIDLAW: The deed between the Minister of Transport Development, the District Council of Port Elliot and Goolwa and Binalong Pty Ltd for construction of the bridge to Hindmarsh Island provides that, following completion of the proposed bridge, all who purchase land on the island will contribute to the cost of the bridge—either by an up front payment or by instalments. To collect these contributions from all new ratepayers, clause 11 specifically provides for the council to declare a separate rate. Yet clause 11.2 questions the legal capacity of the council to strike a separate rate or a differential separate rate for this purpose and speculates legal action on this question. Clause 11.2 states:

> If a court of competent jurisdiction determines that it is beyond the power of the council to declare a said separate rate or a differential separate rate, whether because the council is not empowered to declare such a rate or because it would constitute an exercise of power by the council for an improper purpose, then the following provisions will apply:

The provisions referred to in this deed relate to refunds of payments. The consequence of clause 11.2 is that a court

could find that the council had no power to strike this rate and, therefore, the basis upon which the Government is seeking to recoup funds from ratepayers would be invalid. Therefore, I ask the Attorney-General:

1. Did he sight and approve the deed before it was signed by the Minister of Transport Development?

2. Does he share the misgivings expressed in the deed about the legal capacity of the council to impose a form of levy or separate rate upon new ratepayers as the means to recoup costs associated with constructing the bridge?

3. Why has the separate rate or differential separate rate been incorporated in the deed when the Government itself—and this is indicated by the Minister of Transport's signing of the deed—is not confident that this method of recouping funds is a legally valid option?

The Hon. C.J. SUMNER: I was not involved with the preparation of documentation, but I will attempt to get a response for the honourable member.

TIMBER INDUSTRY

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General, in the absence of the Minister of Transport Development, representing the Minister of Primary Industries, a question about the timber industry in the State's South-East.

Leave granted.

The Hon. M.J. ELLIOTT: I have been made aware that the State Government recently approved the export of 5 000 cubic metres of unprocessed saw log from privately-owned forests in the South-East and that 40 000 cubic metres of unprocessed saw log is being sought annually for export. This decision has been described by people in the South-East as the biggest threat yet to confront the timber industry there. It comes at a time when there is a shortage of soft wood not only in Australia but world-wide, when the value of pine is increasing and when the value of processed pine is rising even more rapidly. It also comes at a time when the State Government is calling for us to increase our wealth by value adding.

When I met with representatives of the timber industry in Mount Gambier last month I was told of predictions that as many as 600 jobs would be lost in the South-East of the State in the foreseeable future due to mechanisation and rationalisation of mills. I was also told that the Woods and Forests Department had a policy of being too conservative in the removal of logs from its own forests for processing. This was confirmed by leading experienced foresters.

If those logs were made available, I was told, it would allow the mills to put on extra shifts and expand, and this would soak up much of the expected job loss that would occur in other circumstances. There is a feeling in the area that if the private stocks are being sent overseas unprocessed, and there is no acceleration of the release of public timber, the Government is dooming the South-East to job losses without any offset.

Industry sources believe that growth of the processing sector industry through value adding is imperative to compensate for the expected unemployment through mechanisation and rationalisation. I ask three questions of the Minister:

1. Why has the Government allowed such a large quantity of log from private forests to be exported unprocessed? That needed Federal approval and was done on the advice of the State Government.

2. Why has there been no attempt to value add when there is a clear demand from the mills, when prices are good and when sawmills face significant job losses due to rationalisation and mechanisation?

3. Does the Government intend to reassess the number of logs removed from its own forests for processing to allow for greater job creation to offset those predicted 600 job losses?

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

333 COLLINS STREET

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Attorney-General a question about 333 Collins Street, Melbourne.

Leave granted.

The Hon. L.H. DAVIS: In July 1991 the SGIC was forced to exercise a put option for 333 Collins Street, Melbourne, and was required to pay $465 million for this property, which had 54 000 square metres of space. The property was immediately written down by $70 million to $395 million and then last year, effectively to prevent SGIC from being faced with a massive financial crisis—and if it had been a private insurance company that arguably would have meant going belly up—the South Australian Financing Authority provided $350 million to SGIC, $36 million to the compulsory third party fund in compensation for the disadvantage suffered by the fund from some illegal inter-fund transactions which had been identified by the Government Management Board review, following continual questioning by the Liberal Party, and $314 million of debt owed by SGIC, which was effectively forgiven. SAFA took over SGIC's exposure to 333 Collins Street at an agreed value of $250 million. All the returns and outlays in future will go through SAFA's account.

That SAFA/SGIC deal with respect to 333 Collins Street was announced in the 1992-93 State budget nearly 12 months ago. However, in answer to a question which I asked last session—and on which I received an answer during the session (and the Government, of course, never comes back and puts them in *Hansard* because the bad news is best kept out of sight), the Government confirmed—

The Hon. C.J. Sumner: What are you saying?

The Hon. L.H. DAVIS: If you ask a question, say, in March and the answer comes back in June, you never put the answer in *Hansard*.

The Hon. C.J. Sumner: Yes, we do. Ms Levy did it yesterday.

The Hon. L.H. DAVIS: That is right.

The Hon. C.J. Sumner: If you request it, it goes in.

The Hon. L.H. DAVIS: But I think you should do it as a matter of course.

An honourable member interjecting:

The Hon. L.H. DAVIS: I think it is a reasonable presumption. However, in answer to the question which I asked last session I received, much later, a Government reply which confirmed that 333 Collins Street currently has only 36 per cent occupancy. That was in sharp contradiction to earlier claims by the Government that occupancy was at 45 per cent and increasing. Indeed, an article in last Friday's *Financial Review* confirmed this 36 per cent occupancy to be the case.

Mr President, there are six major landmark office towers in Melbourne with 50 000 square metres of space or more. Three of these offices are now more than 90 per cent leased, two have leasing of 70 per cent or more and a long last is—

yes, you have guessed it—333 Collins Street, Melbourne, bringing up the rear with just 36 per cent.

Real estate agents in Melbourne have heavily criticised the way in which SGIC and SAFA have handled the leasing of this financial monster. Their approach has been described to me as arrogant, high handed and unrealistic. This is certainly reflected in the fact that little more than a third of the building's 54 000 square metres are now occupied. It also reflects the fact that the building's lower floors have massive spaces, huge columns, no views and are, as someone put it, not exactly a letting agent's dream.

However, SAFA and the State Government not only have a problem with the fact that little more than a third of 333 Collins Street is let. Property values in the central business district of Melbourne have continued to decline over the past 12 months. There have only ever been in the history of Melbourne two sales of property valued at $100 million or more. The current estimate is that prime central business district property in Melbourne is worth about $3 000 a square metre.

Two agents to whom I have spoken have confirmed this figure, which puts a value of only $162 million on 333 Collins Street—that is a massive $303 million lower than SGIC paid for this building just two years ago.

On top of this there are interest costs of over $30 million in this financial year just passed associated with carrying this property. The few tenants that are located at 333 Collins Street have very favourable terms, so there is little rental income. My questions to the Attorney are:

1. Will the Government confirm that there will be a further write down of the property at 333 Collins Street in the year ended 30 June 1993?

2. Will the Government confirm that the current value of this property is certainly no more than $200 million and arguably less, which means a write down of at least $50 million in the 12 months to 30 June 1993?

3. Will the Government explain why 333 Collins Street is so poorly let when compared with other Melbourne landmark office buildings?

The Hon. C.J. SUMNER: Mr President, it may be that the SGIC was relying on the Kennett Government to inspire confidence in Victoria and lead to an increase in land prices in the metropolitan area of the central business district of Melbourne, but obviously 12 months or so has not been enough for that to occur. But we can only hope.

I will refer the question to the Treasurer and bring back a reply. If the honourable member would like inserted in *Hansard* his other questions that were replied to during the session then I am happy to do that, too. The other option, of course, is that we leave the questions until we come back to Parliament and then put them in in the normal way, but as a matter of courtesy, I thought trying to do the right thing by the honourable member and honourable members opposite, we sent them the replies by letter.

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: That is fine. The Hon. Mr Griffin asked me if I would put them in. I said, 'Yes, sure, that is no problem.' It has not actually been the practice, as far as I am aware, necessarily to put in responses that have been provided during a parliamentary recess unless it has been requested by the honourable member. So when it is requested there has never been a problem.

BENEFICIAL FINANCE

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question about Beneficial Finance, a wholly owned subsidiary of the State Bank.

Leave granted.

The Hon. J.F. STEFANI: On 11 March 1993 I asked a question of the Treasurer about the shadow payments made to a group of senior executives within the State Bank group. I asked the Treasurer to confirm or deny that such payments had occurred and had been received by a select number of executives. In his reply the Treasurer advised me that he had no knowledge of any shadow payments made to any officer of Beneficial Finance or the State Bank group. Clearly, Mr President, this is in contradiction to the findings by the Auditor-General, who, in his second report, has identified that this was an extensive and inappropriate practice adopted by a group of senior executives within Beneficial Finance.

I now wish to refer to another matter that has been referred to me. It deals with the practice adopted by Beneficial Finance concerning the issuing and cashing of cheques through the Adelaide Casino by executives of Beneficial Finance. I am advised that hundreds of thousands of dollars in cheques were transacted by this method by executives of Beneficial Finance. My questions to the Minister are:

1. Will the Treasurer confirm or deny that this practice occurred?

2. Will he have this matter investigated as a matter of urgency and establish the purpose and the reasons for these transactions and provide a report to Parliament?

3. Will he advise the name or names of the executives involved, the dates and amounts of cheques drawn by Beneficial Finance and transacted through the Adelaide Casino or any other casino and the period of time over which these transactions occurred?

4. Finally, will he provide complete details of the improper or corrupt practice that may have occurred concerning the issuing and cashing of these cheques and what actions he intends to take?

The Hon. C.J. SUMNER: In early 1991, following the revelations of the situation in the State Bank, the Government established a royal commission and an Auditor-General's inquiry into the collapse of the State Bank and Beneficial Finance. Those inquiries have gone on for the past 2½ years. The final term of reference of the royal commission is in the process of being completed. One of the issues that was specifically referred to in the terms of reference was whether there was any illegal behaviour involved in the bank or Beneficial Finance prior to that time. The honourable member, 2½ years later, comes into Parliament making further allegations. I would have thought—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: Sure, well there may well be, but I would have thought—

An honourable member interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I would have thought that the honourable member would refer these matters to the Auditor-General or to the royal commission for inquiry and examination, because the terms of reference of the royal commission and the Auditor-General's inquiry covered matters of potential illegality or improper behaviour in the bank. So, these matters could have been referred to the inquiries.

However, the honourable member continues to raise the matters in the Parliament. I am not quite sure how long he will continue to do these things. It has cost over $30 million to carry out extensive investigations into the circumstances surrounding the State Bank and Beneficial Finance. I would have thought that the honourable member would refer those matters to those inquiries. However, he has now raised the matter in the Council and I can only refer it to the Treasurer for a response. However, if he does have any evidence of illegal behaviour it is quite available to him to report that to the appropriate authorities. Whether he has done it to the royal commissioner or Auditor-General is not—

The Hon. J.F. Stefani: It didn't have the time to pursue all the issues.

The Hon. C.J. SUMNER: Okay, then if you have any—

An honourable member interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: Then that just emphasises the point that I made. We have established an inquiry, which took 2½ years and cost $30 million, and the honourable member still comes into the Parliament and raises questions of this kind when the matters should have been referred to the Auditor-General and the royal commission and should have been examined by them. If they were not then I assume they were not examined for a reason, perhaps because there is nothing in them.

But, in any event, if the honourable member thinks that illegal activity has occurred then he can refer it to the appropriate authorities for investigation if he wishes to. However, as the question has been raised, I will refer it to the Treasurer, but it is not the Treasurer's role to investigate whether there has been any illegal activity in these organisations. That is why the elaborate and expensive process of the royal commission and Auditor-General's inquiry was set up and that is why we have in place in this community the Australian Securities Commission, the police and the directors of public prosecutions, who all make decisions about whether there should be prosecutions for illegal activity.

ELECTRICITY TRUST

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister for the Arts and Cultural Heritage, representing the Minister of Public Infrastructure, a question about ETSA and its television advertising.

Leave granted.

The Hon. I. GILFILLAN: In recent weeks ETSA has undertaken a large and expensive television advertising campaign, which independent sources have told me has probably cost the State hundreds of thousands of dollars. It is running a series of high quality TV ads in prime time spots on all commercial channels that essentially deliver the message that electricity is the energy source of the future. There are at least three different versions of the commercials, which consist of warm and colourful images of all the benefits that electricity supposedly offers to both domestic and commercial consumers. It promotes electricity as clean and efficient despite the fact that a large proportion of South Australia's electricity is widely known to be produced from burning the most polluting and dirty form of coal.

The ads are bathed in a textured orchestral soundtrack with a glossy voice over. While there is little doubt about the high quality of the production, it is obvious that this advertising campaign by ETSA, the sole provider of electricity in South Australia, has cost a lot of money. The campaign raises a number of questions, especially relating to the efficiency and environmental suitability of coal-generated electricity and the need for a very expensive campaign to promote the only electricity utility in the State. It also raises questions about the real agenda of ETSA, which appears to be to convince consumers to use more fossil fuelled energy at a time when this Government claims to be committed to reducing energy consumption and CO_2 emission levels. My questions to the Minister are:

1. Why is ETSA running such an expensive campaign and how much taxpayers' money has been spent producing the television commercials?

2. How much has ETSA spent on buying TV advertising time?

3. How long will the campaign run?

4. What other advertising campaigns are there and at what cost will ETSA undertake these campaigns this financial year?

5. Are the consumers receiving a true picture of electricity generation in South Australia as a clean and efficient energy source?

6. This question is emphasised: what justification does ETSA have for trying to persuade South Australians to use more fossil fuel electricity?

The Hon. ANNE LEVY: I will refer those questions to the Minister of Public Infrastructure and bring back a reply.

LAKE EYRE BASIN

In reply to **Hon. PETER DUNN** (30 April).

The Hon. ANNE LEVY: The Minister of Environment and Land Management has provided the following response:

1. The South Australian Government has decided that a scientific survey and feasibility study into the environmental values of key parts of South Australia's portion of the Lake Eyre Basin should be undertaken. The study would establish the most appropriate conservation management regime for those sites, compatible with current and future economic activities in the region.

2. Public interest and public concern will be taken into account through a public consultation process. Discussions with the pastoralists have emphasised the Government's commitment to them and other interest groups' involvement in the process of undertaking the study.

HOUSING TRUST OFFICE ACCOMMODATION

In reply to **Hon. J.F. STEFANI** (23 April).

The Hon. ANNE LEVY: The Minister of Housing, Urban Development and Local Government Relations has provided the following response:

1. The total amount paid by the Housing Trust to lease the premises at Riverside, including rent and all other charges up to 31 March 1993 is $14 187 714.00.

2. Charges and outgoings incurred by the Housing Trust on the Angas Street site for the period from January 1990 through to 31 March 1993 amount to $396 930.00. This sum is mainly for Council and Engineering and Water Supply rates, maintenance of fire equipment and building security.

3. The Housing Trust is continuing to pursue the sale of the Angas Street site in an extremely difficult CBD office market.

4.(a) In selecting successful repairers for the crash repair of Housing Trust vehicles, a panel comprising two Trust managers and two external experts in the industry analysed submissions from firms using the following criteria, namely that they must meet the requirements of the Trust Specification for workshops and must be a member of the Motor Trade Association.

In addition, repairers must agree to:

- work on a 'labour only' basis, with parts provided by direct debit from the nominated distributor to the Housing Trust
- guarantee all repair work for two years from the time of vehicle release

- charge an agreed hourly rate, no greater than the current industry standard for all repairs
- complete all repairs to exact and original manufacturers technical specifications for each respective vehicle
- provide priority service to Trust vehicles in order to ensure minimum downtime
- all work be undertaken by qualified trades people or by supervised indentured trade apprentices
- have valid insurance cover for both vehicle damage/loss and public liability
- all equipment and premises must comply with relevant sections of the Occupational Health, Safety and Welfare Act, 1986

On this basis, the Housing Trust called for submissions from members of the Motor Trade Association on 24 March 1992 and on 27 May 1992 advised the following firms that they had been selected as nominated repairers, subject to review in 1994:

- Allen Doyle Crash Repairs
- C.W. Robinson & Co. Pty Ltd
- Caddle Crash Repairs
- Clayton Auto Refinishers
- Graham Edwards Crash Repairs Pty Ltd
- John Walker Panel Repairs
- Max Medhurst Crash Repairs Pty Ltd
- Morphett Vale Crash Repairs Pty Ltd
- Rosenthal Motors Pty Ltd
- Serge's Crash Repairs
- Slapes Crash Repairs
- Smithfield Motor Co.

Prior to this call (1992), the Trust used the services of the following:

- C.W. Robinson & Co. Pty Ltd
- Cole Motors
- John Walker Panel Repairs
- Morphett Vale Crash Repairs
- Smithfield Motor Co.

The Housing Trust has always used the services of independent licensed loss adjusters (currently SGIC) to assess repair costs and requirements prior to the commencement of work.

4.(b) The triennial review conducted by Price Waterhouse will be released.

MEMBER'S LEAVE

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

That one week's leave of absence be granted to the Hon. J.C. Burdett on account of illness.

Motion carried.

STANDING ORDER 14

The Hon. C.J. SUMNER (Attorney-General): I move:

That for this session Standing Order 14 be suspended.

Motion carried.

GOVERNMENT MANAGEMENT AND EMPLOYMENT ACT REGULATIONS

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

That the various regulations under the Government Management and Employment Act made on 24 June 1993 and laid on the table of this Council on 3 August 1993 be disallowed.

This motion is a follow-up to a debate we had earlier this year in relation to the Government Management and Employment Act. It is my view that this series of regulations that we have before us is an example of the duplicity and petulance of the Government in relation to this matter which deals with appeal rights for public servants in South Australia. Early this year we had a long debate in this Chamber and in another place about the appeal rights public servants should have within the Public Service under the Government Management and Employment Act.

As members will remember, it was the Government's intention to give them the chance of almost completely removing appeal rights under all provisions of public servants with the stroke of a pen. That is, by issuing a proclamation, the Government would have had the power to remove appeal rights for public servants down to as low a level of classification within the Public Service as they wished, and the Parliament would not have had a say in that matter at all. As you and other members would know, Mr President, the Liberal Party was not prepared to accept that position, and through a series of amendments managed to achieve the support of a majority of members in this Chamber to change that position that the Government had intended. The arrangement that we had arrived at, only in March or April this year, not very many months ago, was that all appeal rights would disappear on the basis of merit appeal. That is, if a particular public servant was unsuccessful for a particular position, that public servant could not appeal against that decision on the basis that the unsuccessful public servant believed that he or she was better or more meritorious for that position than the successful public servant. So, the merit appeals were removed and there was agreement from all members in this Chamber for that provision.

However, the Liberal Party, as I said, took the view that there ought to be a protection within the Government Management and Employment Act against nepotism, patronage and abuse of process of appointments within the Public Service. On a number of occasions, I, my colleague the Hon. Diana Laidlaw, and others have instanced examples of abuse, of nepotism and patronage that have existed and do exist occasionally within the Public Service in relation to the appointment process. The Liberal Party's firm view was that there needed to be some protection remaining within the Government Management and Employment Act to protect public servants in these situations from examples of nepotism, patronage or abuse of process.

So, the scheme of arrangement that was arrived at in the end was that any change could only be achieved by regulation and not by proclamation, so the Parliament in the end could retain a right to have a say in any particular change that might be envisaged by any Government. What we see in the regulations before us at the moment is an attempt by the Government to achieve through the back door what it was seeking to achieve back in the early part of this year. What the Government wants to do by this regulation is to remove the appeal rights of up to, and this is an estimate, some 2 500 to 3 000 further public servants, even on the basis of an allegation of nepotism, patronage or abuse of process. What the Government wants, and what the Government members sitting opposite me this afternoon want, is to remove those appeal rights from public servants. They want to be able to say to those public servants in this category, perhaps 2 500 to 3 000 of them, even if they believe there has been nepotism, even if they believe there has been patronage, even if they believe there has been some gross abuse of the selection panel process, that there shall be no appeal right against that particular decision.

The Hon. Peter Dunn: Very un-Westminster like.

The Hon. R.I. LUCAS: Very un-Westminster like, and I would have thought in the good old days it would have been very un-Labor like and very un-union representative like, for the likes of the Hon. Terry Roberts and the Hon. Ron Roberts, with their backgrounds steeped in union history, allegedly representing the interests of workers, to be adopting the position as they do at the moment in relation to this matter, to say, 'a curse on your house, public servants; we do not believe you should have appeal rights, even if you believe there has been a gross abuse of process, or even if you have evidence that there has been nepotism or patronage with a particular selection panel process.

The Hon. Diana Laidlaw: So, they are getting rid of the checks and balances?

The Hon. R.I. LUCAS: As my colleague indicates, they are getting rid of some of the checks and balances for this group of public servants. The checks that the Liberal Party instituted by way of those amendments will remain for that remaining category of public servants below this category that is instanced in the regulation, but the intention of the Government is clear. It tried early this year. This is the next bite, another 2 500 to 3 000 public servants to lose their appeal rights. If members opposite are allowed to get away with it, and if we are unfortunate enough to still have this Government in power for long enough for them to do something about it, there is no doubt they will continue to eat away at the rights of workers, at the rights of public servants in relation to this matter, and remove further those appeal provisions.

I stand before members this afternoon moving this motion for a disallowance of these regulations on the basis of the debate that we had earlier this year. We believe that there was a sensible arrangement arrived at by members in this Chamber early this year in relation to appeal rights. We did remove those appeal rights on the basis of merit appeal alone, and I supported that strongly. We believe, however, that the arrangement that we have before us at the moment is a sensible compromise, unless practice shows over a period of time that in some way a loophole is established or found and that these sensible appeal provisions are being abused in some way or another by unions or public servants. Then we would of course need to reconsider our position. But, at the moment, we are only some few months into this new arrangement, and the Liberal Party view is that there should be at least a period of some 12 months or 18 months where the new appeal arrangements are allowed time to operate. We should not be making this pre-emptive strike as the Government and the Minister are attempting to do at the moment to further restrict the ability of public servants to appeal against nepotism and patronage.

So, the Liberal Party view very strongly is that we on this occasion should strongly oppose this particular set of regulations. We believe that a sensible period of time, perhaps 12 or 18 months, should be allowed to elapse and at the end of that period a review should be conducted to see whether or not the current appeal arrangements have been sensible and have proved to be effective from all viewpoints.

As I say, a Liberal Government would conduct such a review and if matters progressed sensibly then we would not envisage any need for change. But if there were, as I said, examples of a loophole being established or a significant increase of numbers of appeals for whatever reason, then the Liberal Party would need to reconsider its position and, in those circumstances, might be prepared to consider some further minor modifications. But it should only be in that circumstance that we ought to be, as a Parliament, or as a Government, considering a change to the set of arrangements that we established only some few months ago.

The other matter that I place on the record is a personal view in relation to where this appeal right cut-off level ought to be within the public service classification structures. At the moment we have a situation where executive level officers EL2 and EL3 do not have appeal rights under any grounds within the Government Management and Employment Act. As the Ministers would know, there are three executive level officer classifications, EL1, 2 and 3, and it is only those executive level officers at levels two and three who have had their appeal rights removed for some period. The executive level officer one positions do retain these restricted rights of appeal.

As a personal view, I would not be opposed to a classification cut-off coming down at that executive level officer range so that all executive level officers, whether they be level one, two or three, would be treated similarly and that all public servants under this arrangement beneath the executive level classifications—taking in all the ASO classifications, in particular, and other classifications—would retain these restricted rights of appeal. Certainly, personally, if there was to be a reconsideration of this particular regulation, assuming that it might be defeated in this Chamber, which provided for a cut-off point between the executive level and the administrative level classifications within the Public Service and under the Government Management and Employment Act, then that may well be a discussion that the Government and the alternative Government could have on this particular matter and perhaps some sort of compromise position might be reached.

Of course, in relation to regulations at the moment there is not the power to amend by this Chamber. It is a question of either allowing them to proceed or moving to disallow and therefore the Liberal Party and I, on behalf of the Liberal Party, have taken the decision to move the disallowance in this Chamber to seek the majority support in this Chamber for a disallowance of the regulations and a reconsideration by the Government of this particular matter. Mr President, I urge members to support this disallowance motion.

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

CRAIGBURN (ACQUISITION) BILL

The Hon. M.J. ELLIOTT obtained leave and introduced a Bill for an Act to vest certain land in the Corporation of the City of Mitcham; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

It is most unfortunate that things have come to pass and this legislation has become necessary. The whole question of the development of the land, Craigburn Farm, has been one which has been very badly handled. It is a matter which was looked at by the Environment, Resources and Development Committee which recommended some changes. Those changes were largely ignored and so this legislation became necessary. It might be useful to do a quick excursion through the history and later I shall centre very much on the present.

The land that Minda owns known as Craigburn Farm straddles both sides of Sturt Creek. Much of the land south of Sturt Creek was developed well over a decade ago by consent from the Government and most local people at the

time had an understanding that the land north of the creek was not going to be developed. I will not start a major legal argument at this stage but it does appear that the way the supplementary development plan for the area north of the creek was drawn up there was some question as to whether or not Minda did or did not retain a right to develop. I suspect that, indeed, they may have retained the right for some form of development but, nevertheless, that now has become a matter of conjecture because things have proceeded beyond that.

Minda wished to further develop the land and made it plain to the Government and it appears that people working in the planning section of the old Department of Environment and Planning set about resolving the matter as they saw best. I think that is an important point: it was as they saw best. They undertook fairly lengthy consultation with Minda without local government or local residents being aware that this consultation was proceeding. The first that Mitcham council really knew about the development plan was when the Minister released it using powers which the Minister should use only in the most extraordinary of circumstances. Anyone who examines the Minda situation would realise that the extraordinary circumstances that one would normally expect simply were not there. Any supplementary development plan for the area of Craigburn Farm rightly should have gone through normal processes. Local Government should have been involved from the beginning and that would have also allowed local residents proper involvement. As I said, that simply did not occur.

Minda's rights for development were certainly very firmly entrenched by then and the form of the development was by then entrenched. Minda, itself, lodged proposals to develop the land within 24 hours of the development plan coming in and therefore entrenched their right not only to develop but also entrenched the actual form of the development at that point. So, once again the council was effectively locked out of making any determination as to what sort of development best suited its own area.

Aside from questions as to consultation there are a number of other issues around this development which deserve consideration and which were given consideration by the ERD Committee. They were, firstly, a recognition that the infrastructure in the Blackwood area is not well developed, in particular the road infrastructure is not well developed and it barely copes with traffic movement now. When one considers that there is still further development happening further to the south, when one considers that the total development of Craigburn Farm will increase the population of the Blackwood area by a further 25 per cent and when one considers the Government is also contemplating selling another 50 acres of land at a place called Blackwood Forest, one realises that the road system will break down totally. It simply will not cope. It will mean the Government will then spend multi-millions of dollars trying to get that infrastructure to work.

It will also have to spend significantly on other infrastructure, such as schools. The Coromandel Valley School had two extra classrooms put on this year and six extra classrooms will be put on next year, and that is before we see Craigburn or the Blackwood Forest land come on stream as development land. So, there will be significant cost to the community, to Government and to local government in relation to the development.

It is not just an issue of people wanting green space but it is an issue that is perhaps worth considering. If it were not for the foresight of people a little over 100 years ago the Belair National Park would not be a national park. In fact, there would probably be housing, at least through the flatter parts of that area, but someone back then did have foresight. Living as I do quite close to the Belair National Park there are two comments worth making. First, that land is not used just by locals. Early in the morning you will see locals walking their dog or jogging, and I occasionally ride my bike through there for a bit of exercise away from the roads, but on the weekend there are wall to wall people, and they come from all over the southern half of Adelaide.

It is open space which is used by the whole of the community. But it is not capable of coping with any more people. Adelaide's population will inevitably rise. We must show the same sort of foresight that was shown 100 years ago in terms of the remaining open space that we now have left within easy commuting distance of the city. I argue that Craigburn Farm is such a space. It is not about locals being selfish about their view, although I am sure that there are locals who are worried about that; it is about recognising that green space is important for all the metropolitan area, and green space is something that we will not get any more of. Once it has been built over it has been lost forever. Areas such as Craigburn Farm are important, and we should seek to maintain as much of that area in open space as we can.

The current development proposal also foresees quite dense development; in fact, as small as 200 square metre blocks. That is appropriate in many parts of the city, but I question its appropriateness in an area that is situated in the catchment of a creek that is already heavily polluted. All the problems that the Government currently faces with the Patawalonga relate to development upstream, and here we are going to put thousands of more people quite close to a prime part of the catchment of the Sturt Creek. By putting them in small blocks which will be largely paved, the amount of run-off will be significantly increased and that will, therefore, significantly increase the sorts of contamination problems that we are already struggling to cope with.

So, dense housing will create problems in terms of water quality in the Sturt Creek catchment. Dense housing will also exacerbate the problems that I discussed earlier in terms of infrastructure: it will put a far greater stress upon it. Good planning requires one to look beyond the site itself and ask what the off site effects are: economically in terms of the cost of infrastructure, environmentally and socially. That simply has not happened in relation to Craigburn Farm. I think there are some good reasons, although not defensible, why that good planning has not occurred. That is because Minda's rights to develop were pretty firmly established, at least late in the piece, by a number of actions, which I have in part touched on but which have been referred to in earlier debates in this place.

Minda needs the money because it wants to carry out some important developments regarding accommodation for elderly disabled. Everyone acknowledges that. Unfortunately, the Government at this stage is not in a financial position to buy Minda out. It has been suggested that stage one itself might cost up front anywhere between $10 million to $13 million. So the Government in some ways was pleased with itself having so far negotiated a certain amount of open space, although most of that is on the steeper land that is not suitable for building houses anyway. It therefore believes that it has limited the amount of housing. However, as I have said, particularly because of housing density, the population impact

in that area will still be dramatic. I believe that the form of development is inappropriate.

That is a fairly quick potted history of how we have got to where we are and what some of the problems are as I see them. I believe there is a way around these problems. From speaking with a number of members of the Mitcham council I know that they have already done some preliminary work which suggests that they may be able to buy stage one land and develop it themselves. While they would prefer to keep it all as open space, and there are many good reasons for doing that, they simply cannot afford to do so. If they had the opportunity to purchase, they would, first, seek to put in much larger blocks, which would reduce the number of people and therefore reduce the run-off effects and the pressure on infrastructure.

That would make good sense on a couple of grounds that concerned me earlier. If they are able to generate a profit and if the Craigburn Trust, which is fundraising, can generate money and if they can find other alternative uses they will be in a position to divert some of the land that is currently earmarked for housing to other uses. That option simply does not exist at this stage because unfortunately Minda has given first right of refusal to a development company, Craigburn Properties, which is largely Pioneer Homes. At this stage, I understand that their prime interest, of course, is in the building of homes. I do not attack that interest, but I do not think that at this point that is in the interest of the State.

So, as I understand it, Mitcham council is prepared to do something but is precluded from doing so by an existing legal agreement. What the council wishes to do is in the best interests of the State, the council itself and the local residents. The council which so far has been denied all realistic say in how that land might be developed would at last have some say. As an aside, I believe that what little say it has left is about to be taken away because I understand that Minda is about to take Mitcham to court to have its planning powers totally refused because they are seen to be biased in relation to this development. I see that as being most unfortunate.

If we look at the Bill we see that it is very short. It allows the council to acquire the whole or any part of the subject land by agreement or compulsorily under the Land Acquisition Act. I hope that members will note that I believe that Minda must receive full value for the land and that this will allow that to occur. That is important. I do not want to see Minda as the loser in this case. If as things currently continue Mitcham council can see that there is no realistic option that there is likely to be any change in the form of the development of stage one, it could be in a position to step in and buy stage one and develop it wholly itself or it may decide that there are parts of stage one that cause it particular concern and it may purchase just those parts. For example, if the council looks at a part purchase, those areas that contain very small blocks (200 square metres) are causing particular concern because that is where the greatest number of the population will be squeezed into the smallest area.

If the Mitcham council or the Craigburn Trust can find money to purchase some of the land to increase open space they will be in a position to acquire those parts that they wish to keep in that way. If the council can find other alternative uses that will have lower impact in the various ways to which I have alluded, it might be able to carry out a part purchase. In other words, the council would be in a position to give us a better development. At the moment there is no prospect of that. We have set in concrete by legal agreements as they currently stand a development that is not in the best interests of the State, the council or the residents.

I regret that it has come to the point of legislation. There is only one negative, as I see it, in relation to this legislation, and I am sure it will be raised in this place at a later date, that is, the fact that it breaks an existing legal agreement. That is something that I do not do lightly, but it seems to me that we are balancing two wrongs here: we are balancing the wrong of the breaking of the legal agreement against the wrong of allowing a development which is totally inappropriate and which will have many costs for all of us. I believe that, if you look at the balance of those two, you would have to fall in favour of supporting the legislation. As I said, it is an unfortunate move, but I believe at this stage it is a necessary one. There is no way out. I have noted that the Liberal Party are giving promises at this stage that they will not allow stage two to proceed, but stage two is still seven or eight years away, and I believe we could still find our way around that in time, anyway.

At least the Mitcham council and the community are on notice about that development, and it is far enough away that they can develop alternatives. However, the particular proposal really came out of left field; they never had all the information; and they were never fighting from a position of full knowledge of what was going on. In fact, I do not believe that the council or the local residents knew the full picture until a few months ago. I think exploring who was responsible for that is probably not productive at this stage. What we must do is face the existing problem—whatever the cause—and seek to find a solution. I urge all members of the Council to support the Bill.

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

CONSTITUTION (PARLIAMENTARY TERMS) AMENDMENT BILL

The Hon. I. GILFILLAN obtained leave and introduced a Bill for an Act to amend the Constitution Act 1934. Read a first time.

The Hon. I. GILFILLAN: I move:

That this Bill be now read a second time.

It seeks to achieve two things which are closely connected but not inextricably so, the first of which is to determine the date of the next State election. The Bill seeks to do that by fixing 27 November as the day of the next State election. Clause 4, which I will explain in a little more detail in a moment, determines that. The earlier part of the Bill seeks to establish set election dates every four years. It is a qualified, fixed term.

The qualifications are relatively minor, and I will describe them in a little more detail in a moment. However, quite clearly, the aim is that we cut out the second, third, fourth and maybe twentieth guessing on election dates: the election date will be known for the full four-year period prior to the election and, unless it is altered in the meantime, it would be known each four year term on indefinitely.

The public discussion on this subject has shown a lot of sympathy from the people of South Australia, in certain quarters from the commenting media, and from some members of Parliament in both Chambers. The explanation of the clauses is brief and, instead of having them included without my reading them, it is appropriate that I do read them.

Clause 1 is the short title, and that is just a formality. Clause 2 involves the amendment of section 6 of the Constitution Act, and it deals with the place and time for holding sessions of Parliament. It provides:

> This clause amends section 6 of the principal Act. The amendments are consequential to the amendments effected by clause 3 of this Bill.

Clause 3 is the nub of the first part of the Bill and involves the substitution of section 28 of the principal Act, involving the term of the House of Assembly. It provides:

> This clause repeals sections 28 and 28a of the principal Act and substitutes a new section 28. Subclause (1) provides for general elections of the House of Assembly to be held on the second Saturday of March (if the last general election was held in the first half of the calendar year, in the fourth calendar year after the calendar year in which the last general election was held and, if the last general election was held in the second half of a calendar year, in the fifth calendar year after the calendar year in which the last general election was held).

The Hon. Anne Levy: Can't you stagger it out of Festival years? You've really got it in the middle of the Festival.

The Hon. I. GILFILLAN: The interjection is an appropriate one to pick up, because the Minister is pointing out that the second Saturday of March every second year would add an extra level of excitement, one could say, to the Festival—perhaps an undesirable one. Without being facetious about it, I believe that the main issue is to accept the basic concept of four-year fixed terms. I was intending to make this comment, and the Minister (if she can concentrate on what I am saying; I apologise for the background noise) will realise—

The Hon. Anne Levy interjecting:

The Hon. I. GILFILLAN: I was considering your ability to hear what I was saying: it concerns me quite a lot. It is very appropriate for this Parliament to consider which is the most appropriate date for an election on a regular basis. It has been put to me—in fact today—by a senior member of the Opposition that the fourth Saturday in November every four years would be a more satisfactory date.

On the other hand, the Speaker of the House of Assembly has said to me today—to use his colourful phrase—that he would shed blood for me to achieve the second Saturday in March every four years. So, quite clearly, there is a divided opinion on that matter. I would like to urge this Parliament, and this Chamber in particular at this stage, to accept the principle of four-year terms and to constructively look at the date which best suits the people of South Australia on a regular basis.

I put up the second Saturday in March because it is the date that was chosen by New South Wales. Obviously, New South Wales does not have the complication of the Adelaide Festival, so there may well be a sensible alternative to the second Saturday in March that we should look to. Just as an aside as to how the timing could come into place, the Minister could recognise that, by skipping a step, we could almost put it out of sync with the Festival for a substantial period. The explanation continues:

> Subclause (2) provides for the date of a general election to be changed to the first or third Saturday of March of the year in which it is due if a Federal election is to be held on the second Saturday.
>
> Subclause (3) provides that the Governor can only dissolve the House of Assembly if a general election of the House is due within two months of the date of dissolution, if a vote of no confidence on the Government is passed in the House and no alternative Government is formed within seven days or if the dissolution is authorised by section 41 (that is where there is a deadlock).

A deadlock is where (in our case) the Legislative Council defeats a Bill which the Assembly passes. This can be determined as a deadlock, and our current Constitution Act allows opportunity for the Premier of the day to call an election. I am not seeking to interfere with that. That remains in place.

Clause 4—and this is the separate matter which is the election date for the House of Assembly of the Forty-Eighth Parliament, the one that we are due to have before the end of this year, allowing for a four-year term to elapse—provides:

> If the current House of Assembly is not dissolved by 31 October 1993, then the House of Assembly will be dissolved on 31 October 1993 and an election held on 27 November 1993. The Governor will be restricted as to when she may dissolve the House of Assembly in the meantime and, if the House of Assembly is dissolved before 31 October 1993, the general election must be held no later than 27 November 1993.

That clause does not add a soft edge to 27 November. As hard as I can put it in legislative form, this Bill will insist on the election being on 27 November this year. However, because our Constitution Act does already have incorporated in it these two opportunities of an earlier election—specifically the ones I mentioned before, namely, that the governing Party loses a vote of confidence in the Assembly or, secondly, there is a deadlock between the two Chambers (and they are in place now; I am not making any change to that; I am just recognising that that is a very remote possibility)—quintessentially this Bill puts down the date of the next State election as 27 November this year.

Reverting to the argument for the fixed four-year terms, it is encouraging to have—apart from the earlier support that I mentioned from a senior Liberal member and also from the Speaker, and I am sure there are many others—

The Hon. R.I. Lucas: Is that senior Liberal member from this Chamber or the other Chamber?

The Hon. I. GILFILLAN: I do not feel I am at liberty to disclose that, Leader. I would suggest that you do a quick plebiscite around your colleagues to find out.

The Hon. R.I. Lucas: They all say they didn't talk to you.

The Hon. I. GILFILLAN: They shout at me, usually. In *Fixed Term Parliaments, Proceedings of the Third Annual Meeting of the Australasian Study of Parliament Group*, 1982, the then shadow Attorney-General, Senator Gareth Evans—a long-time proponent of four-year terms—made these two comments in this exhaustive debate on the advantages of fixed terms:

> To have the fixed four-year terms for Opposition would remove the power of the Prime Minister—

as he referred to it, but in our case it would be the Premier—

> to manipulate election dates for his own partisan advantage.

Very well put. It is exactly one of the major arguments for fixed terms and against the current procedure we have got proposed by Senator Gareth Evans in 1982. It continues:

> Secondly, it would be likely to result in a reduction in the number of elections held over a given period which by and large would appear to be popular.

I would say there is no doubt that it would be extremely popular with the people of South Australia. The second very senior ALP politician is none other than our current Attorney-General in this place, the Hon. Chris Sumner, and he is quoted in the New South Wales Report of the Joint Select Committee on Constitution Fixed-Term Parliament, Special Provisions Bill 1991. This report is dated December 1991 and was printed on 3 December 1991. I quote from chapter 5, headed 'Some Australian States' Experiences', as follows:

5.1 South Australia. The Constitution Act Amendment Bill (No 2) was given its second reading speech on 5 December 1984. According to the Attorney-General, the Hon. C.J. Sumner, the Bill was designed to '. . . implement the policy of the Government in relation to fixed terms for the House of Assembly. . . the present section 28 of the Constitution Act, 1934, refers to the term of the House of Assembly which is three years from the day on which it first meets for the dispatch of business. . . '.

The Attorney-General referred to recent elections in South Australia and stated that in the past 10 elections the following figures have resulted from early elections:

I do not intend to read that. It was relative to the debate in 1984, but it pointed out that there were terms as low as one year and just over 10 months, up to three years, and most of them not much over two years. The quotation continues as follows:

The Attorney-General also quoted an Australasian Study of Parliament Group Workshops which identified a number of benefits associated with fixed term elections as support for his argument, the benefits being:

(1) Protection of a Government which enjoys the confidence of the Lower House.
(2) Guaranteeing tenure for the Government and helping to ensure that the Government has the requisite amount of time to effectively govern.
(3) Assisting the Parliamentary committee process by allowing more in-depth analysis to occur and, in particular, more analysis of complex issues.
(4) Allowing more systematic servicing of the electorate by members of Parliament.
(5) Reducing incentives for parliamentary procedural manoeuvres.
(6) —

and I emphasise this—

Removing the partisan advantage employed by incumbents in their choice of election date.

Exactly the same argument Senator Gareth Evans used, if honourable members will recall. It continues:

(7) Reducing the number of elections and ancillary costs (both monetary and administrative).
(8) More effective planning of the parliamentary timetable by the incumbent Government.

According to the Attorney-General, however, the real advantages are:

'the removal of the potential for cynicism and opportunism from the decision-making processes that apply to elections. Acute uncertainty very often reigns even from the early life of a new Parliament. Rational planning in both the private and the public sectors becomes very difficult. Short-term *ad hoc* political advantages will not hold sway with a decision to go to the people.'

Mr Acting President, you can see from that that I can with great justification expect the Attorney-General to support this move for a fixed four-year term. There are clearly well recognised advantages for it and I look forward to a crisp and productive debate in this Chamber. I repeat once again in concluding my second reading remarks that the actual specific date included in the Bill for the fixed four-year terms on the second Saturday in March is not a factor of the Bill to which I am inseparably wedded. That is a relatively minor matter compared to the principle of having fixed four-year terms with a predictable election date that falls four years ahead.

I would like to emphasise in conclusion the substantial reason for picking 27 November as the appropriate date for the next State election. First, the decision will be made and not left to the whim of a Premier who, for all sorts of reasons, may choose a date less satisfactory than 27 November. It is appropriate for the Parliament to choose that date.

Secondly, the Government is in place now. It is inevitable that the Government will introduce a budget. It is irresponsible of this Parliament or any political Party or politician to urge for an election before that budget is properly processed through this place. It does not serve the people of South Australia well to forestall, or prematurely terminate, the Estimates Committees which involve the penetrating and detailed questioning of the costings of the budget and the post-budget legislative period which allows for the follow-up legislation and the debate on the questions in this place.

There is no point in the Opposition arguing that it is good for South Australia to go to an election before 27 November, because it patently is not. It cannot avoid inheriting a Labor budget. It is much better that that budget be widely analysed and questioned, and it is to their own advantage, if they do take over the reins of Government, for that budget to have been publicly criticised before they are landed with it.

On the other hand, there is no point in an extension past 27 November. It is almost exactly to the day the fourth anniversary of the last State election. We wanted four-year terms; we are giving the people of South Australia and this Government a four-year term. Mr Arnold cannot justify any extension past that date. Four years is what we have accepted in this Parliament and 27 November is the four years given to the Premier.

The people of South Australia should not be drawn through any extenuated torture past that date through to a date in 1994 purely for the comfort or convenience of the incumbent Government of the day. It would be a morally corrupt decision for the Premier to extend the date for the election beyond the end of November this year. It will be clear of Christmas; it will allow time for the elected members of this place to do the legislative business properly. It gives a predictable date for the people of South Australia to prepare for an election and to have their voice heard. I urge members to study this Bill and to support it. I invite constructive discussion and debate, particularly on the possible repetitive four-year date.

The Hon. R.R. ROBERTS secured the adjournment of the debate.

STATUTES AMENDMENT (ABOLITION OF COMPULSORY RETIREMENT) BILL

The Hon. Anne Levy, for the **Hon. C.J. SUMNER (Attorney-General)**, obtained leave and introduced a Bill for an Act to amend the Adelaide Festival Centre Trust Act 1971, the Construction Industry Long Service Leave Act 1987, the Cooperatives Act 1983, the Correctional Services Act 1982, the Dentists Act 1984, the Education Act 1972, the Equal Opportunity act 1984, the Government Management and Employment Act 1985, the Institute of Medical and Veterinary Science Act 1982, the Medical Practitioners Act 1983, the Nurses Act 1984, the Optometrists Act 1920, the Parliament (Joint Services) Act 1985, the Police Act 1952, the Police (Complaints and Disciplinary Proceedings) Act 1985, the Renmark Irrigation Trust Act 1936, the South Australian Health Commission Act 1976, the Starr-Bowkett Societies Act 1975, the Supreme Court Act 1935, the Technical and Further Education Act 1975, the Veterinary Surgeons Act 1985 and the Workers Rehabilitation and Compensation Act 1986. Read a first time.

The Hon. ANNE LEVY: I move:

That this Bill be now read a second time.

This Bill seeks to amend various State Acts to remove references to compulsory retiring ages in accordance with the

report of the working party reviewing age provisions in State Acts and regulations. The working party identified a number of provisions in Acts where age is used as the basis for retirement. Some provisions deal with the strict employment relationship, while others relate to membership of boards and so on.

It should be noted that even with these amendments a number of people will still be subject to compulsory retirement ages in South Australia. Persons employed under Commonwealth Acts or pursuant to a Commonwealth award may continue to be subject to compulsory retirement provisions. The issue of retirement ages in State awards is being examined in consultation with the Minister of Labour Relations and Occupational Health and Safety.

In addition, in accordance with the recommendations of the working party, compulsory retirement ages will be retained for judges and masters appointed under the Supreme Court Act and the District Court Act, magistrates employed under the Magistrates Act and the President, Deputy President and Industrial Commissioners employed under the Industrial Relations Act. This is warranted on the basis that the mandatory retirement age is fundamentally linked to the principle that the judicial system must be and must be seen to be completely independent from the Executive arm of Government and the political process.

With respect to the positions of Valuer-General, Solicitor-General, Auditor-General, Electoral Commissioner, Deputy Electoral Commissioner and Ombudsman, the working party has recommended a review as to whether or not it continues to be appropriate to impose a compulsory retirement age. In reaching this decision, the working party took into consideration the fact that similar principles apply to these positions as to the judiciary regarding the requirement of independence from control by the Executive. In particular, this is reflected in the procedures for removal from office, which contain similar characteristics to that of the judiciary.

The working party recommended that the Police Act 1952 be amended to remove the retiring ages for the Commissioner, Deputy Commissioner and police officers. The Police Department and Police Association oppose the recommendation for various reasons, all of which are contained in the report. I accept the working party's argument with respect to police officers generally, but consider that special considerations apply to the Commissioner and Deputy Commissioner. It is arguable that their positions correspond to those of the Solicitor-General and so on, as discussed above. Therefore, I do not propose to deal with these positions at this time, but will include them in any subsequent review of statutory office holders.

During the last parliamentary session an amendment to the Equal Opportunity Act 1984 was passed to extend the sunset period within which compulsory retirement is allowed to remain as an exemption to the general provisions prohibiting discrimination on the basis of age. The sunset period was extended until 31 December 1993. The extension was made so as to allow for legislation dealing with public sector employees to be amended so that the abolition of compulsory retirement for public sector employees occurs at the same time as for private sector employees.

This Bill also makes an amendment to the Equal Opportunity Act to prevent the Equal Opportunity Tribunal from granting an exemption to an employer who wishes to impose a compulsory retirement age on his or her employees. In order that the issue of compulsory retirement is resolved well in advance of 31 December 1993, I think it is preferable to deal with these issues separately so that the compulsory retirement amendments are passed at the beginning of the parliamentary session. Amendments arising from the remainder of the report can be dealt with later in the session. I commend the Bill to members and seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides that the measure comes into operation on 1 January 1994.

Clause 3: Interpretation

This clause is the standard interpretation provision used in statutes amendment legislation.

PART 2

AMENDMENT OF ADELAIDE FESTIVAL CENTRE TRUST ACT 1971

Clause 4: Amendment of section 6—Composition of the Trust

This clause amends section 6 of the principal Act so that a trustee of the Adelaide Festival Centre Trust may be appointed for a term that continues after the trustee has reached the age of 70 years.

PART 3

AMENDMENT OF CONSTRUCTION INDUSTRY LONG SERVICE LEAVE ACT 1987

Clause 5: Amendment of section 17—Cessation of employment

This clause amends section 17 of the principal Act so that there is no prescribed retiring age for a construction worker.

PART 4

AMENDMENT OF CO-OPERATIVES ACT 1983

Clause 6: Amendment of section 29—Certain persons not to manage co-operatives

This clause amends section 29 of the principal Act so that a person who has reached the age of 72 years may be appointed as a director of a registered co-operative.

PART 5

AMENDMENT OF CORRECTIONAL SERVICES ACT 1982

Clause 7: Amendment of section 55—Continuation of the Parole Board

This clause amends section 55 of the principal Act so that a retired Supreme Court or District Court judge of or over the age of 70 years may be appointed as a member of the Parole Board of South Australia.

PART 6

AMENDMENT OF DENTISTS ACT 1984

Clause 8: Amendment of section 6—Membership of the Board

Clause 9: Amendment of section 23—Membership of the Tribunal

Clause 10: Amendment of section 29—The Clinical Dental Technicians Registration Committee

These clauses amend the principal Act so that the office of a member of the Dental Board of South Australia, the Dental Professional Conduct Tribunal or the Clinical Dental Technicians Registration Committee does not become vacant when the member reaches 70 years of age.

PART 7

AMENDMENT OF EDUCATION ACT 1972

Clause 11: Amendment of section 25—Retiring Age

This clause amends section 25 of the principal Act so that an officer of the teaching service is not required to retire on reaching 65 years of age.

PART 8

AMENDMENT OF EQUAL OPPORTUNITY ACT 1984

Clause 12: Amendment of section 92—The Tribunal may grant exemptions

This clause amends section 92 of the principal Act to prevent the Equal Opportunity Tribunal from granting an exemption that would have the effect of allowing an employer to impose a compulsory retiring age.

PART 9

AMENDMENT OF GOVERNMENT MANAGEMENT AND EMPLOYMENT ACT 1985

Clause 13: Amendment of section 63—Retirement from the Public Service

This clause amends section 63 of the principal Act so that a Public Service employee is not required to retire on reaching 65 years of age.

PART 10
AMENDMENT OF INSTITUTE OF MEDICAL AND VETERINARY SCIENCE ACT 1982

Clause 14: Amendment of section 7—The Council

This clause amends section 7 of the principal Act so that a person of or above 70 years of age is eligible for appointment or re-appointment as a member of the council of the Institute of Medical and Veterinary Science.

Clause 15: Amendment of section 10—Removal from and vacancies in office

This clause amends section 10 of the principal Act so that the office of an elected member of the council does not become vacant when the member reaches 70 years of age.

PART 11
AMENDMENT OF MEDICAL PRACTITIONERS ACT 1983

Clause 16: Amendment of section 7—Membership of the Board

This clause amends section 7 of the principal Act so that a person of or above 65 years of age is eligible for appointment or re-appointment as a member of the Medical Board of South Australia.

Clause 17: Amendment of section 24a—Removal of appointed member from office, vacancies, etc.

This clause amends section 10 of the principal Act so that the office of an appointed member of the Board does not become vacant when the member reaches 65 years of age.

PART 12
AMENDMENT OF NURSES ACT 1984

Clause 18: Amendment of section 6—Membership of the Board

This clause amends section 6 of the principal Act so that the office of a member of the Nurses Board does not become vacant when the member reaches 65 years of age.

PART 13
AMENDMENT OF OPTOMETRISTS ACT 1920

Clause 19: Amendment of section 5—Members of the board

Clause 20: Amendment of section 10—The Optical Dispensers Registration Committee

These clauses amend the principal Act so that the office of a member of the Optometrists Board or the Optical Dispensers Registration Committee does not become vacant when the member reaches 65 years of age.

PART 14
AMENDMENT OF PARLIAMENT (JOINT SERVICES) ACT 1985

Clause 21: Amendment of section 14—Retirement

This clause amends section 14 of the principal Act so that an officer is not required to retire from the joint parliamentary service when he or she reaches the age of 65 years.

PART 15
AMENDMENT OF POLICE ACT 1952

Clause 22: Repeal of section 11aa

This clause repeals section 11aa of the principal Act so that a member of the police force is not required to retire on 30 June next after the member reaches 60 years of age.

Clause 23: Amendment of section 19—Resigning without leave

This clause amends section 19 of the principal Act to remove the reference to 'the retiring age prescribed by law'.

PART 16
AMENDMENT OF POLICE (COMPLAINTS AND DISCIPLINARY PROCEEDINGS) ACT 1985

Clause 24: Amendment of section 7—Term of office

This clause amends section 7 of the principal Act so that a person appointed to constitute the Police Complaints Authority may be appointed for a term expiring after the person reaches 65 years of age and so that a person of or above 65 years of age may be appointed or re-appointed to the office of the Authority.

PART 17
AMENDMENT OF RENMARK IRRIGATION TRUST ACT 1936

Clause 25: Amendment of section 12—Qualified persons compellable to serve

This clause amends section 12 of the principal Act so that a person of or over 60 years of age who is qualified to serve as a member of the Renmark Irrigation Trust may be compelled to serve as a member.

PART 18
AMENDMENT OF SOUTH AUSTRALIAN HEALTH COMMISSION ACT 1976

Clause 26: Amendment of section 11—Removal from, and vacation of, office

This clause amends section 11 of the principal Act so that the office of a member of the South Australian Health Commission does not become vacant when the member reaches 65 years of age in the case of a full-time member, or 68 years of age in the case of a part-time member.

PART 19
AMENDMENT OF STARR-BOWKETT SOCIETIES ACT 1975

Clause 27: Repeal of section 52

This clause repeals section 52 of the principal Act which prevents a person of or above the age of 72 years from being appointed as a director of a society and provides for the office of a director to become vacant when the director reaches the age of 72 years.

PART 20
AMENDMENT OF SUPREME COURT ACT 1935

Clause 28: Repeal of section 13b

This clause repeals section 13b of the principal Act which is a spent provision.

PART 21
AMENDMENT OF TECHNICAL AND FURTHER EDUCATION ACT 1975

Clause 29: Amendment of section 25—Retiring age

This clause amends section 25 of the principal Act so that an officer under the Act is not required to retire on reaching 65 years of age.

PART 22
AMENDMENT OF VETERINARY SURGEONS ACT 1985

Clause 30: Amendment of section 6—Members of the Board

This clause amends section 6 of the principal Act so that the office of a member of the Veterinary Surgeons Board does not become vacant when the member reaches 65 years of age.

PART 23
AMENDMENT OF WORKERS REHABILITATION AND COMPENSATION ACT 1986

Clause 31: Amendment of section 79—Membership of the Tribunal

This clause amends section 79 of the principal Act so that a person appointed to the Workers Compensation Appeal Tribunal does not cease to be a member when he or she reaches 65 years of age.

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

EMPLOYMENT AGENTS REGISTRATION BILL

The Hon. Anne Levy, for the **Hon. C.J. SUMNER (Attorney-General)**: I move:

That the Employment Agents Registration Bill be restored to the Notice Paper as a lapsed Bill, pursuant to section 57 of the Constitution Act 1934.

Motion carried.

CORRECTIONAL SERVICES (CONTROL OF PRISONERS' SPENDING) AMENDMENT BILL

The Hon. Anne Levy, for the **Hon. C.J. SUMNER (Attorney-General):** I move:

That the Correctional Services (Control of Prisoners' Spending) Amendment Bill be restored to the Notice Paper as a lapsed Bill, pursuant to section 57 of the Constitution Act.

Motion carried.

ENVIRONMENT PROTECTION (SEA DUMPING) (CONSISTENCY WITH COMMONWEALTH ACT) AMENDMENT BILL

The Hon. Anne Levy, for the **Hon. BARBARA WIESE (Minister of Transport Development)**, obtained leave and introduced a Bill for an Act to amend the Environment Protection (Sea Dumping) Act 1984. Read a first time.

The Hon. ANNE LEVY: I move:

That this Bill be now read a second time.

The Commonwealth Government is a signatory to the 1972 International Convention on the Dumping of Wastes at Sea (commonly referred to as the London Dumping Convention). The convention prohibits the deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other artificial structures and any deliberate disposal at sea of vessels, aircraft, etc except in accordance with the convention provisions.

The *Environment Protection (Sea Dumping) Act 1981* of the Commonwealth gives effect to the convention. That Act came into operation on 6 March 1984. Under the Commonwealth Act the Commonwealth Minister may declare that the Act does not apply in relation to coastal waters of the State if the Minister is satisfied that the laws of the State make provision for giving effect to the convention in relation to its coastal waters.

The *Environment Protection (Sea Dumping) Act 1984* was enacted so that equivalent State law would govern the dumping of wastes in coastal waters. The Act was not brought into operation due to protracted negotiations with the Commonwealth concerning the administrative arrangements for its operation, and the application of the Act to the placement of artificial fish reefs. In 1991 the Act was amended to extend its application to waters within the limits of the State (that is Spencer Gulf, St Vincent Gulf and historic bays), to ban any dumping of low level radioactive wastes (to complement a 1986 amendment to the Commonwealth Act) and to increase penalties.

This amending Bill seeks to address various issues raised by the Commonwealth concerning consistency of the South Australian legislation with the Commonwealth legislation. Once consistency is achieved, administrative arrangements between the State and the Commonwealth will be formalised.

The matters addressed in the Bill are as follows: the timing of the imposition or variation of conditions of permits to dump; the publication of information in the *Gazette* relating to permits; the removal of any time limit on prosecutions for offences against the Act; expansion of the evidentiary provision relating to evidence of analysts; and an increase in the fine that can be imposed for an offence against the regulations.

I commend the Bill to the Chamber and seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1. Short title

Clause 2. Commencement

Clause 3. Amendment of s. 17—Conditions in respect of permits

Section 17 enables the Minister to impose conditions on a permit for dumping at sea, or loading for dumping at sea, waste or other matter or for incineration at sea of wastes or other matter. The amendment sets out when a condition (or a revocation, suspension, variation or cancellation of suspension of such a condition) takes effect—namely, at the date notice is served on the holder of the permit or at a later date specified in that notice.

Clause 4. Insertion of s. 19A

New section 19A requires the Minister to publish certain information in the *Gazette* relating to applications for permits and the granting or refusal to grant conditional or unconditional permits.

Clause 5. Substitution of s. 32

Section 32 of the Act provides that offences against the Act are minor indictable offences. This provision is repealed leaving the classification of offences to the general law under the *Summary Procedure Act 1921*.

The new section 32 provides that there is no time limit on prosecution for an offence against the Act.

Clause 6. Amendment of s. 34—Evidence of analyst

Section 34(2) is an evidentiary provision relating to a certificate of analysis of a substance being prima facie evidence of the matters certified. The amendment expands the matters that may be certified by an analyst.

Clause 7. Amendment of s. 37—Regulations

Section 37(2)(b) allows the regulations to impose a penalty not exceeding $500. The amendment increases this to $1 000 in the case of a natural person and $5 000 in the case of a body corporate.

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

MOTOR VEHICLES (DRIVING WHILST DISQUALIFIED—PENALTIES) AMENDMENT BILL

The Hon. Anne Levy, for the **Hon. BARBARA WIESE (Minister of Transport Development)**, obtained leave and introduced a Bill for an Act to amend the Motor Vehicles Act 1949. Read a first time.

The Hon. ANNE LEVY: I move:

That this Bill be now read a second time.

This Bill seeks to establish two penalty levels for the offences of 'drive while licence suspended' and 'drive while disqualified from holding or obtaining a licence'.

A person's licence may be suspended as a result of incurring 12 or more demerit points, under the Points Demerit Scheme, or a person may be disqualified for a breach of learner or probationary conditions. Alternatively, the person may be disqualified by order of a court.

At the present time the *Motor Vehicles Act 1959* makes no distinction between a first time offender and a person who repeatedly and deliberately drives while suspended or disqualified.

The use of suspensions and disqualifications as a sanction is intended as an aid in the enforcement of road law.

A person who drives while his or her licence is suspended or while disqualified undermines this system.

Persons who repeatedly and deliberately disobey a suspension or disqualification should be subject to a greater penalty.

The need for a greater penalty for a second or subsequent offence was expressed in a recent decision of the Supreme Court.

Therefore, the two penalty levels proposed by this Bill are division 7 imprisonment (six months), which corresponds with the present penalty, and division 5 imprisonment (two years) for a second or subsequent offence. I seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1. Short title

This clause is formal.

Clause 2. Amendment of s. 91—Effect of suspension and disqualification

Section 91(5) prohibits a person from driving a motor vehicle on a road while the person's licence is suspended or while the person is disqualified from holding or obtaining a driver's licence and prescribes a maximum penalty of division 7 imprisonment (six months). This clause increases the maximum penalty for a second or subsequent offence to division 5 imprisonment (two years).

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

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I move:

That the Consent to Medical Treatment and Palliative Care Bill 1993 be restored to the Notice Paper as a lapsed Bill, pursuant to section 57 of the Constitution Act 1934.

Motion carried.

TOBACCO PRODUCTS CONTROL (MISCELLANEOUS) AMENDMENT BILL

The Hon. ANNE LEVY: I move:

That the Tobacco Products Control (Miscellaneous) Amendment Bill 1993 be restored to the Notice Paper as a lapsed Bill, pursuant to section 57 of the Constitution Act 1934.

Motion carried.

MURRAY-DARLING BASIN BILL

The Hon. ANNE LEVY: I move:

That the Murray-Darling Basin Bill 1993 be restored to the Notice Paper as a lapsed Bill, pursuant to section 57 of the Constitution Act 1934.

Motion carried.

LOCAL GOVERNMENT (VOTING AT MEETINGS) AMENDMENT BILL

The Hon. ANNE LEVY: I move:

That the Local Government (Voting at Meetings) Amendment Bill 1993 be restored to the Notice Paper as a lapsed Bill, pursuant to section 57 of the Constitution Act 1934.

Motion carried.

STATUTES REPEAL AND AMENDMENT (PLACES OF PUBLIC ENTERTAINMENT) BILL

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage) obtained leave and introduced a Bill for an Act to repeal the Places of Public Entertainment Act 1913; to amend the Adelaide Show Grounds (By-laws) Act 1929, the Classification of Theatrical Performances Act 1978, the Liquor Licensing Act 1985, the Noise Control Act 1977, the Summary Offences Act 1953 and the Tobacco Products Control Act 1986. Read a first time.

The Hon. ANNE LEVY: I move:

That this Bill be now read a second time.

This is a Bill to repeal the Places of Public Entertainment Act 1913 and to make provision in other legislation for a limited number of sections in the repealed Act which it has been thought necessary to continue. In mid 1992 the Places of Public Entertainment Act 1913 was reviewed by a working party consisting of representatives from the Department of Public and Consumer Affairs and the Office of Business Regulation Review. The working party advertised widely for submissions and contacted certain interest groups specifically affected. Some 39 submissions were received and subsequently a green paper was produced and circulated for further public comment. A further 15 submissions were received for the green paper. As a result of the review it was determined to repeal the legislation but it was also recognised that some of its safety provisions should be placed in other more modern and appropriate pieces of legislation.

The Places of Public Entertainment Act was first introduced to protect the public from injury through fire in picture theatres. As such it established a licensing regime for theatre firemen and for projectionists who were, at that time, handling flammable nitrate film. It is proposed that this regulation will cease as modern technology has made such controls redundant. Also to be deregulated are controls over patrons in drive-in theatres and the regulation of operating hours on Sunday, Christmas day and Good Friday with the exception of operating hours for the Adelaide Showgrounds where regulations will be set under relevant legislation prohibiting trading on Sunday before 10 a.m.

It is proposed that safety controls for temporary structures such as circus tents and fire safety provisions for fixed seating in cinemas will be controlled under the new Building Code of Australia and the regulation of amusement devices will become the responsibility of the Occupational Health and Safety Commission. Smoking in auditoriums which was prohibited in the Places of Public Entertainment Act will be subject to the authority of the Minister of Health through the Tobacco Products Control Act. There will be consequential amendments to the Liquor Licensing Act 1985, the Classification of Theatrical Performances Act 1978, the Noise Control Act 1977 and the Summary Offences Act 1953 to delete references to the Places of Public Entertainment Act 1913 while maintaining the effect of those provisions in those Acts.

Finally, a public order power previously vested in the Minister of Consumer Affairs will be placed under the jurisdiction of the Police Commissioner pursuant to existing provisions in the Summary Offences Act. The Bill has much to recommend it as an example of sensible and considered deregulation and the removal of outmoded legislation, which at the same time continues to ensure that the public remain properly protected. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short Title

Clause 2: Commencement

Clauses 1 and 2 are formal.

Clause 3: Interpretation

Clause 3 is a standard clause for Statute Amendment Bills.

PART 2
REPEAL OF PLACES OF PUBLIC ENTERTAINMENT ACT 1913

Clause 4: Repeal of Places of Public Entertainment Act 1913

Clause 4 repeals the Places of Public Entertainment Act.

PART 3
AMENDMENT OF ADELAIDE SHOW GROUNDS (BY-LAWS) ACT 1929

Clause 5: Amendment of long title

Clause 5 amends the long title of the Adelaide Show Grounds (By-laws) Act 1929 to include the regulation-making power of the Governor.

Clause 6: Substitution of s. 1

Clause 6 changes the short title of the Adelaide Show Grounds (By-laws) Act 1929 to Adelaide Show Grounds (Regulations and By-laws) Act 1929.

Clause 7: Insertion of s. 2a

Clause 7 inserts section 2a into the Adelaide Showgrounds (Regulations and By-laws) Act. The proposed section provides that the show grounds must be closed to members of the public at the times prescribed by regulations made by the Governor. However, the Society may, with the written approval of the Minister, open the showgrounds at times when they are required to be closed by the regulations provided the Minister's approval is published in the *Gazette* at least 14 days before the showgrounds are opened.

PART 4

AMENDMENT OF CLASSIFICATION OF THEATRICAL PERFORMANCES ACT 1978

Clause 8: Amendment of s. 17—Places where restricted theatrical performances may take place

Clause 8 is a consequential amendment to remove the reference to the Places of Public Entertainment Act 1913.

PART 5

AMENDMENT OF LIQUOR LICENSING ACT 1985

Clause 9: Amendment of s. 4—Interpretation

Clause 9 strikes out the definition of 'place of public entertainment' as it is obsolete.

Clause 10: Amendment of s. 83—Rights of intervention

Clause 10 amends section 83 by repealing subsection (3) as it is obsolete.

Clause 11: Amendment of s. 113—Entertainment on licensed premises

Clause 11 is a consequential amendment to remove the reference to the Places of Public Entertainment Act 1913.

PART 6

AMENDMENT OF NOISE CONTROL ACT 1977

Clause 12: Amendment of s. 6—Interpretation

Clause 12 replaces paragraph (e) of the definition of 'non-domestic premises'. The substituted paragraph defines a place of public entertainment rather than referring to a place licensed under the Places of Public Entertainment Act 1913.

PART 7

AMENDMENT OF SUMMARY OFFENCES ACT 1953

Clause 13: Amendment of s. 4—Interpretation

Clause 13 replaces the definition of 'place of public entertainment' to remove the reference to the Places of Public Entertainment Act 1913.

PART 8

AMENDMENT OF TOBACCO PRODUCTS CONTROL ACT 1986

Clause 14: Amendment of s. 3—Interpretation

Clause 14 amends the Interpretation section of the Tobacco Products Control Act 1986 by inserting definitions of 'entertainment' and 'place of public entertainment'. Entertainment is defined as meaning (1) all kinds of live entertainment, including a lecture, talk or debate, and (2) the screening of a film.

Place of public entertainment is defined as being a building, tent or other structure in which entertainment is provided for the benefit of the public and in which the audience is seated in rows.

Clause 15: Insertion of s. 13a

Clause 15 inserts section 13a into the Tobacco Products Control Act. The proposed section provides that a person attending a place of public entertainment must not smoke a tobacco product in the auditorium of the place of public entertainment at any time before the entertainment commences, during the entertainment or after it has concluded.

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

ADDRESS IN REPLY

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage), on behalf of the Attorney-General, brought up the following report of the committee appointed to prepare the draft Address in Reply to Her Excellency the Governor's speech:

1. We, the members of the Legislative Council, thank Your Excellency for the speech with which you have been pleased to open Parliament.

2. We assure Your Excellency that we will give our best attention to all matters placed before us.

3. We earnestly join in Your Excellency's prayer for the Divine blessing on the proceedings of the session.

The Hon. CAROLYN PICKLES: I move:

That the Address in Reply as read be adopted.

Her Excellency the Governor has noted in her speech that 1994 is the year in which we celebrate 100 years of women receiving the right to vote and 100 years of women having the right to stand for Parliament. The former Premier, John Bannon, last year set up the Women's Suffrage Centenary Committee to plan activities for 1994, with an initial grant of $200 000 and a later grant this financial year from the Minister for the Status of Women, the Hon. Anne Levy, of $310 000 plus secretarial assistance. The Government has demonstrated its commitment to the celebrations for this year. An amount of $200 000 has been set aside to fund community activities and in June this year the Hon. Anne Levy announced a successful grant application for the first $100 000 and the second round is now under way and is expected to be announced some time in October.

The Federal Government has made a grant of $50 000 to the Centenary Suffrage Committee. As a member of the centenary committee and also of several subcommittees, including the executive, the Conference Committee and PR and Sponsorship Committees, I have been heavily involved with plans for 1994. As a member of the Sponsorship Committee I have been involved with seeking donations from the corporate sector and I must say that the generosity of many South Australian companies in very difficult times has been overwhelming and I would like to take this opportunity to say thank you on behalf of the women of South Australia.

To date, we have managed to obtain in the region of $500 000 in cash donations and in kind sponsorship and given the present difficulties I can only attribute our success to a great team effort by our committee. Other members on the Sponsorship Committee are the Hon. Jennifer Cashmore, Mrs Joan Hall and the chair, Mary Beasley.

In working on the centenary committee it has been very interesting for me to catch up on South Australia's early history. As a British born and educated migrant I was never taught anything about Australia except where it was. However, I have been amazed at the number of women and men who were educated in Australia who say that they also only had access to British history in their education experience. I hope 1994 will change all that. The Hon. Susan Lenehan, Minister of Education, Employment and Training will provide, as her department's donation to 1994, a curriculum package on the women's suffrage for all schools in South Australia. This package will be prepared by the Women's Studies Resource Centre. The Hon. Anne Levy has also called for all departments to sponsor special projects for the year, and already many departments have responded well.

If we look back to the last century we can see that women have had some tremendous gains, but there are also some inequalities and injustices that are as prevalent in 1993 as they were in the 1800s. I would like to address a few interesting points about the life of women last century. In the 1850s South Australian women were legally subject to their fathers until they married and then they were subject to their husbands. They had no right to own property. A married woman's inherited property became that of her husband, and even from the time of betrothal the husband to be had authority to interfere with any gifts the prospective bride made of property that she owned as a single woman.

The woman in paid employment had no right to her own income. Once married that income was the property of her husband. Women had no custodial rights to the children they bore in wedlock; the rights of custody belonged to the father alone. In the world of public office, higher education and professional life, women were denied participation either by explicit rules or laws or by biased interpretation of apparently neutral laws and rules by courts where all judges were male and laws were read to deprive women of participating in lucrative work in the polity or from holding positions of power. However, in South Australia the University of Adelaide opened its doors to women in 1881. Not a great step

forward has been made in this area, some would say. Women are still under represented in positions of power in this State and in this country, particularly in higher positions of office in universities in this country.

Jocelyn Scutt in her book *Women and the Law* writes:

That the legal system has been used to deny women rights can hardly be contended. Yet women (and some men) have not accepted this denial. Women have a long history of protest and concerted efforts to extend to themselves and their sisters rights and privileges defined as male.

And we are still doing it! Increasing concern during the nineteenth century led to the passing of laws which gave women some control over their persons, their property and their children. The Married Women's Property Act (1883-84) gave women the right to acquire, hold and dispose of their own property. This important Act acknowledged that the woman was a person in her own right. Divorce was difficult to obtain in the nineteenth century, especially for women who had to demonstrate two grounds for divorce, including adultery, while men had to show only one. In 1896 it became possible for a woman to apply for a judicial separation on the basis of cruelty, adultery, desertion or wilful neglect to provide maintenance. It was not until 1918 that the law was changed so that the grounds for divorce were the same for men and women.

One of the more extreme examples of women's lack of rights is cited in Alison McKinnon's *Fresh Evidence, New Witnesses.* It refers to a newspaper article in the *Adelaide Observer* of 17 July 1847, which shows how the nineteenth century position of women in family relationships and in the eyes of the law could be abused. The report is entitled 'Nothing more nor less than the sale by auction of a wife by her husband' and states:

A novel, and happily in the annals of South Australia, unusual occurrence took place at Hindmarsh on the evening of Tuesday, being nothing more nor less than the sale by auction of a wife by her husband. . . The well known capabilities of the maids and matrons of the locality as a medium of disseminating information was considered a sufficient announcement, without having recourse to the more expensive process of the printing press; and strange and diverse were the opinions respecting the same. Some affirmed that the affair was nothing more than a hoax—while others doubted the process of our fair heroine and went so far as to affirm that she would not be forthcoming.

However, soon after the sun disappeared below the horizon, all these surmises were at once set to rest by the appearance of the fair one—a smart and comely dame apparently of the age of five and twenty, accompanied by her ignoble lord wending their way to the appointed place—viz. the back parlour of the Land of Promise on the Port Road. . . All things being ready, the heroine was led by a halter tied round her waist, the tether end being held by her worser half, into the midst of the assembled throng. A sharp, but short competition ensued until the biddings reach two pounds seven shillings and sixpence. . . The fortunate purchaser was declared to be one Charles Goble. . . The bargain and sale being so far settled, the cash was handed over by the purchaser and duly attested documents signed by all the parties concerned were formally exchanged. During the drawing out of the duplicate documents, the 'fair one' requested that the date might be correctly attached, which having done, the vendor delivered his bargain to the purchaser. . .

Nineteenth century mothers had, as already mentioned, no rights in relation to their children. They were expected, however, to be fully responsible for their children's upbringing. I do not think much has changed. This apparent contradiction came to be debated more and more, and in 1887 the South Australian Guardianship of Infants Act was passed making it possible to override the total rights of the father in common law and to give the mother guardianship of the child. It was not until 1940 in South Australia that mothers were accorded equal rights with fathers in relation to children.

For Aboriginal mothers the situation was even worse. Society did not even recognise the rights of Aboriginal people to their own culture and the so-called 'Europeanising' of Aboriginal people meant that part Aboriginal children were removed altogether from their Aboriginal environment. In 1844 in South Australia the Protector of Aborigines was made the legal guardian of, and thus had authority over, every part Aboriginal child. Mothers of illegitimate children had the responsibility for their children but little assistance in carrying it out. They were often rejected by their families on moral grounds. The Destitute Persons Act of 1881 hinted that fathers of illegitimate children had some responsibility—probably more out of concern for the children than for the mother.

So, what has changed for women from 1894 to 1994? Well, a great number of things, and under a Labor Government over the past 10 years there has been a proud record of achievement. I would like to mention a few of these in passing, but as I do not wish to take up the time of the Council I think the list should be recorded in *Hansard*, and I seek leave to have it inserted in *Hansard* without my reading it.

Leave granted.

Employment and Training:

In the 10 years to February 1992 the South Australian participation rate of women in the labour force increased by nearly 6 per cent from 45.4 per cent to 51.2 per cent.

Jobs for women increased by 10 per cent in the public administration and defence industries and in the finance property and business services industry.

South Australia led the way in an historic overhaul of the country's industrial legislation and awards to remove provisions which discriminated against women. The Equal Opportunity Act effectively repealed sex discriminatory award provisions.

Amendments to industrial legislation to provide protection to many forms of outwork.

South Australians adopting young children gained a right to adoption leave similar to maternity leave.

Ten years of funding for the Working Women's Centre which provides advice, information and advocacy for working women.

Women's Employment Strategy created to ensure women's needs addressed in training reform and labour market programs.

Women's adviser appointed to the Minister of Labour and Equal Opportunity Unit established in DETAFE.

Tradeswomen on the Move education project has promoted career opportunities in the trades to thousands of schoolgirls.

Child care centres established at major TAFE colleges.

Tripartite Women's Advisory committee to Occupational Health and Safety Commission.

Education:

School retention rates of girls now equal or are higher than those of boys.

All selection for teachers now based on merit thus ending historical discrimination against women teachers in a seniority-based system.

Ongoing and comprehensive programs foster the education of girls, particularly in the maths, sciences and technology.

Health:

Four fully Government-funded women's community health centres.

Child care centres established at major teaching hospitals.

Statewide mammography screening program.

Joint funding with the Commonwealth for programs under the National Women's Health Program.

Children and child care:

Establishment of Children's Services Office to coordinate and plan the provision of early childhood education; the provision of before and after school care and vacation care programs across the State.

A sustained program of provision of child care places.

Establishment of Judith House Residential and Outreach Service for young women survivors of sexual abuse.

Establishment of Children's Interest Bureau to advocate for children.

Violence:

Emphasis on victim support services in Police Department.

Community policing strategy.

Establishment of Domestic Violence Prevention Unit and policies within housing/welfare/law enforcement agencies to ensure domestic violence victims receive priority assistance.

Establishment of Domestic Violence Counselling Service.

Establishment of Migrant Women's Emergency Support Service, regional women's shelters and Aboriginal women's shelter.

First State to make restraint orders available from magistrates to restrain individuals threatening violence. Police may apply for orders by phone.

Cancellation of gun licences for domestic violence offenders.

Reform of rape law including changes to law of evidence to ease plight of rape victims in court.

Abolition of unsworn statement.

Information:

Women's Information Switchboard began 10 years of radio programs providing information for migrant women.

South Australia was the first State to have a 'Women's Budget' Paper requiring State Government departments and authorities to analyse and report on the impact of their expenditure on women.

Rural Women's Information Service set up.

Women's Agricultural Bureau established.

Women's Information Switchboard provided a (008) free telephone service for country women and expanded outreach services for Aboriginal and Vietnamese women and to country women in regional centres.

Needs of special groups.

Older Women's Advisory Committee established and has conducted annual speak-outs for older women for seven years.

Major Aboriginal Women's Forum looked at the need of Aboriginal women and an advocacy position for Aboriginal women's issues was established.

General:

Appointment of Anne Levy as Minister for the Status of Women.

Notable increase in the appointment of women to senior positions in Government, including appointment of women as chief executive officers.

Legislation of a comprehensive and effective Equal Opportunity Act providing for the first time legal protection against sexual harassment and the opening up of many clubs, associations and recreational activities to women on a non-discriminatory basis.

Introduction of gender-neutral wording in legislation.

Introduction of register of names of women willing to sit on Government boards and the establishment of targets for women's representation on boards.

Sport:

Women's adviser on sport and recreation.

Women's Consultative Committee to Minister of Recreation and Sport, established in 1987.

Annual Women's Week focusing on sport and recreation for women.

Housing:

Development of rent relief to assist those in need.

Development of housing cooperatives.

Prioritising of housing needs of women fleeing domestic violence.

Women's housing policy currently being developed.

The Hon. CAROLYN PICKLES: I would like to highlight one or two areas. In the 10 years to February 1992 the South Australian participation rate of women in the labour force increased by nearly 6 per cent, from 45.4 per cent to 51.2 per cent. South Australia led the way in an historic overhaul of the country's industrial legislation and awards to remove provisions which discriminated against women. The Equal Opportunity Act effectively repealed sex discriminatory award provisions. There have been 10 years of funding for the Working Women's Centre, which provides advice, information and advocacy for working women. School retention rates of girls are now equal or higher than those of boys. We have ongoing and comprehensive programs to foster the education of girls, particularly in maths, science and technology. We now have four fully Government funded women's community health centres. We have statewide mammography screening programs.

We have established the Children's Services Office to coordinate and plan the provision of early childhood education, the provision of before and after school care and vacation care programs across the State. We have established the Children's Interest Bureau to advocate for children. We have established the Domestic Violence Prevention Unit and policies within housing/welfare/law enforcement agencies to ensure domestic violence victims receive priority assistance. We have established the domestic violence counselling service. We are the first State to make restraint orders available from magistrates to restrain individuals threatening violence. Police may apply for orders by telephone. There has been cancellation of gun licences for domestic violence offenders. Unfortunately, for some women that has come too late. The Women's Information Switchboard began 10 years of radio programs providing information for migrant women. South Australia was the first State to have a women's budget paper requiring State Government departments and authorities to analyse and report on the impact of their expenditure on women.

A major Aboriginal women's forum looked at the needs of Aboriginal women, and an advocacy position for Aboriginal women's issues was established. We were the first State to have a Minister for the Status of Women (Hon. Anne Levy). Legislation of a comprehensive and effective Equal Opportunity Act was drafted providing for the first time legal protection against sexual harassment and to facilitate the opening up to women of many clubs, associations and recreational activities on a non-discriminatory basis. The women's adviser on sport and recreation was appointed. We have prioritised housing needs of women fleeing domestic violence.

I would like especially to refer to some areas where we have made gains for country women. Women living in the country often have problems compounded by their isolation and lack of access to programs which are readily available for city women. Over the past 10 years, the Labor Government has established child care centres for TAFE colleagues in Port Lincoln, Whyalla, Port Augusta, Light and Mount Gambier. Colleges which do not have their own centres access places from other local providers. Since 1989-90, most of the funding for the national women's health program, a Commonwealth-State initiative, has been committed to establishing women's health services in rural areas of the State, with funding of over $3 million. The Country Women's Health Service and the Women's Health Advisory Committees have contributed substantially to the achievements to date.

We have established State-wide mammography programs, and a second mobile breast X-ray unit will be established for country areas towards the end of 1993, or early 1994. We have joint funding with the Commonwealth for programs under the national women's health program. As I indicated earlier, the Children's Services Office coordinates and plans the provision of early childhood education, the provision of before and after school care and vacation care programs across the State. We have established domestic violence counselling and/or action services across the State, including Ceduna, Kadina, Port Pirie, Port Augusta, Berri, Victor Harbor, Clare, Murray Bridge, Mount Gambier, Whyalla and Port Lincoln and established six women shelters in country regions at Whyalla, Port Lincoln, Berri, Mount Gambier, Port Augusta and Ceduna and an Aboriginal women's shelter.

The Rural Women's Information Service establishment works in close collaboration with the Women's Information Switchboard which, in turn, provides a 008 free telephone service for country women and expanded out-reach services for Aboriginal and country women in regional areas. The Women's Agricultural Bureau was established.

On 25 May 1993, the Hon. Minister of Health, Mr Martyn Evans, released a press release as follows:

> A new rural health reference group has been set up to ensure that people who live in country South Australia have a say on rural health issues. The reference group will engage the broader rural community in consultations on health issues for rural South Australians. Membership of the group will include the following organisations: the South Australian Community Health Association, the Rural Doctors Association, Australian Nursing Federation, Hospital and Health Services Association, Local Government Association, Aboriginal Health Council, Commonwealth Department of Health, Housing and Community Services, Country Women's Association, Health and Social Welfare Council, South Australian Farmers Federation and representatives from the Health Commission's Country Health Services Division, including the Executive Director, John Blackwell.

While we have made these changes and reforms, there is still a long way to go. A quote in the *Advertiser* article of 6 February 1993, taken from a United Nations report, stated:

> It will take nearly 1 000 years for women to gain the same economic and political clout as men.

I know it has been a struggle, but I do not think I can wait another 1 000 years for equality, and I am not quite as pessimistic as that report. However, to look in the future we should refer to the past. Yesterday, we swore in another woman to the Legislative Council, and I welcome the Hon. Mrs Schaefer to the ranks of women MPs; we are an illustrious few.

South Australia was the first place in the world to grant women the right to stand for Parliament. It took 65 years to get the first ones there, the Hon. Jessie Cooper and Joyce Steele in 1959, and up until yesterday there have been only 15 women in total in 100 years, and from yesterday 16—hardly a brilliant record. If our democracy denies access to half the population for whatever reason, then we are not a true democracy.

I hope that 1994 will bring about a recognition that women must take their rightful place in the Parliaments of our nation and that all political Parties and the community will recognise that a true democratic Government reflects the community it serves, and more than half that community are women. So, I hope that honourable members will all enjoy the celebrations of 1994, but I trust that they will also remember what it represents and let us move forward so we do not have to wait 1 000 years for equality.

I would like to turn now to another area which was mentioned by Her Excellency in her speech to another group of citizens of this nation who have not yet been granted true equality, that is, our Aboriginal people. In the Mabo debate, I have been appalled at the misrepresentation, lies and racist comments that have abounded since the Mabo decision was handed down in June 1992. I do not believe that the public debates have always been sensible or accurate, and our local paper, the *Advertiser*, has done very little to help. In the *Advertiser* of 31 December 1992, the headline stated, 'City sites may face land claims'. Whatever gave rise to this statement, the facts are these:

The High Court said that native title has been extinguished on all freehold and certainly the vast majority of leasehold land. Media reports of so-called Mabo-style claims, such as those over the Brisbane central business district, the Australian Capital Territory and vast areas of New South Wales have no legal foundation whatsoever.

The High Court set down in the Mabo decision the broad conditions on which land could be claimed under Mabo principles. Aboriginal people cannot successfully claim land over which freehold or leasehold interest has been granted. Further, to be successful, the native title claimants must have continuously maintained their traditional association with the land claimed. Clearly, those conditions rule out any possibility that private land could be successfully claimed under Mabo. It is highly likely that the Mabo decision will only be of direct application to a small percentage of Aboriginal people and will apply mainly to remote Australia. Because there is no legal basis for such claims, there is no excuse for continued scaremongering on supposed threats under the Mabo decision to private interests in land.

The *Advertiser's* headline of 11 June 1993 stated, 'South Australian taxpayers may fund Mabo claims', and on 22 June 1993 there was a further headline which stated, 'South Australian Liberals vow to block Mabo compo'. Other statements have been made that Mabo will mean huge compensation payouts to Aboriginal people for the historical dispossession of all Aboriginal people from their land. The facts are:

The High Court has said that Aboriginal and Torres Strait Islander people have no legal right to compensation for native title that was extinguished between 1788 and 1975, when the Racial Discrimination Act was enacted. Adelaide *Advertiser* headlines of 30 March 1993 stated 'Mabo may halt projects.' Again the facts are:

Aboriginal people have continually stressed that they are not anti-mining. However, they do wish to protect sacred or significant sites which are an integral and central part of their spiritual beliefs. Any fair-minded Australian would agree that Aboriginal people's spiritual beliefs should be accorded the same respect as the spiritual beliefs of other Australians.

The Commonwealth Government and the Council for Aboriginal Reconciliation are looking at ways to facilitate mining on Aboriginal land through processes of consultation and negotiation with Aboriginal people.

On 2 June 1993, the *Advertiser* headlines screamed, 'Aborigines could claim 83 per cent of South Australia.' On 9 July 1993 the *Advertiser* headline was, 'Huge South Australian land claim', and, similarly on 10 July, 'Surge in tribal holdings'.

The facts are that almost all farming and grazing land in Australia is held under freehold, perpetual leasehold or long-term leasehold titles. As a result of the High Court's decision, these lands cannot be successfully claimed because the grant of these titles extinguishes any native title. There are some pastoral leases (in Western Australia, the Northern Territory and parts of South Australia) which are subject to a reservation in favour of Aboriginal people. These reservations entitle Aboriginal people traditionally associated with a particular lease to hunt and gather traditional foods and to have access to their sacred sites. The presence of such reservations means that native title may co-exist with the pastoral lease, but they do not mean that a successful claim of ownership can be made over that leased area.

The Mabo decision does not mean that Aboriginal people are given any land, only that they may keep the land they already have, and where their families have lived uninterrupted for tens of thousands of years. All Australians have the right to inherit property from their families. The High Court

said specifically that it would not hear any challenge to sovereignty. To suggest otherwise is to ignore the specific findings of the High Court.

The *Advertiser*'s headline of 14 June 1993 read 'Mabo Stone Age Fear' and quoted mining analyst Mr Rob Davies from the investment banking house Lehman Brothers International as follows:

> . . . the High Court's ruling must be reversed if Australia wanted to be a modern economy . . . if this decision stands, Australia would go back to being a Stone Age culture of 200 000 people living on witchetty grubs.

What a sickening comment! I assume that Mr Davies' ignorance arises from the fact that he is not a native of this country.

There is a myth that the claims of Aboriginal people to a special attachment to the land have no basis. Let me apprise members of the facts. There is a vast and incontrovertible body of anthropological and other evidence recognising the existence of the special attachment of Aboriginal people to their land. The dispossession of Aboriginal people from their land has been identified by both Aboriginal people themselves and a number of authoritative Government reports endorsed by all political Parties represented in the Australian Parliament as central to the social, economic and physical problems experienced by Aboriginal and Torres Strait Islander people since colonisation. These reports include the Royal Commission into Aboriginal Deaths in Custody and the Woodward Aboriginal Land Rights Commission.

Additionally, it should be stressed that the Australian Parliament has unanimously supported the process of reconciliation between indigenous and non-indigenous Australians as a key national objective leading to the centenary of the Australian Federation in 2001. The Parliament unanimously supported the Council for Aboriginal Reconciliation Act 1991, initiating the process which provides that:

> . . . as a part of the reconciliation process, the Commonwealth will seek an ongoing national commitment from Governments at all levels to cooperate and to coordinate with the Aboriginal and Torres Strait Islander Commission as appropriate to address progressively Aboriginal disadvantage and aspirations in relation to land. . . in the decade leading to the centenary of Federation, 2001.

The *Advertiser* editorial of June 1993, 'We are one nation and we are one people,' stated:

> This is no time for hand-wringing confessions of guilt or exaggerated acts of atonement by the innocent.

The Mabo decision has nothing to do with guilt and everything to do with justice. The High Court of Australia overturned the myth of *terra nullius* and held that Australia's common law recognises a form of native title which survived European settlement. As the Governor-General, the Hon. Bill Hayden, said on 4 May 1993 at the official opening of the Australian Parliament:

> The Mabo judgment is, in the Government's view, recognition of an historic truth and creates the best chance we have ever had for a nationally agreed and durable settlement. The Government considers that this decision must, therefore, lead to us entering the 21st century with the fundamental relationship between the nation and its indigenous people rebuilt on fair and just foundations. . . [and]. . . the nation's response to the decision is of fundamental importance to Aboriginal and Torres Strait Islander people, and to the process of reconciliation.

These rather inflammatory headlines from our local paper should be compared with an editorial comment in the *Weekend Australian* of 31 July to 1 August 1993, 'The Mabo debate, continued', where it quoted Hal Wootten, former Supreme Court judge and one of the Royal Commissioners who explored why hundreds of Aboriginal detainees killed themselves while in police custody. In the reported text of an address to the Evatt Foundation this week, Mr Wootten had this to say:

> Mabo simply recognised that this continent once belonged to many Aboriginal peoples, each part being occupied by a particular group who had customary rights to it. Over two centuries most of it had been irretrievably taken from them piece by piece without compensation. Where this had happened, it could not now be undone. But, through all the travail of 200 years, some groups had managed to maintain their connections with their land, usually because it was in a remote area and was so economically uninviting that no white person wanted it. Simple justice required that the law respect their rights, no less than it respects the rights of other Australians who have inherited land.

The editorial goes on to say:

> With these remarks Mr Wootten neatly encapsulates the meaning of Mabo. Reading them, fair-minded Australians should have little trouble understanding the judgment and accepting it. After all, who really believes those Aborigines who can lay claim to an uninterrupted habitation of tribal land throughout the 205 years of white settlement, not to mention the thousands of years before that, should not be allowed a form of secure title now?

Mr President, there has been a great deal of uncertainty, fear and hysteria over Mabo, and members of the Liberal Party across the country, including Dean Brown, share in this deliberate misrepresentation of the truth. I believe that yesterday in another place, and today, the Premier and the Attorney-General made the Government's position quite clear. I would like to quote from the Premier's speech to the House of Assembly yesterday, when he said:

> Mr Speaker, as I have indicated, my Government believes that it is important that there be complementary action between the Commonwealth and the States in dealing with the Mabo decision. My Government is keen to ensure that this State retains to the greatest extent possible the power to determine land management and development issues within its own borders. We also wish to ensure that the State receives the support of Commonwealth legislation assisting the validation of titles already granted in South Australia. To that end, we are continuing discussions with the Commonwealth on the implications of the Mabo decision. In the light of these ongoing discussions, it would be unwise to finalise at this stage legislation that will need to be introduced in this Parliament.

I have been disgusted at the way in which this debate has been carried on so far. I believe that we have generated in this country racial tensions that were quite unnecessary—gross distortions of fact and deliberate misrepresentations of truth. I would like to place on the record what the decision of Mabo meant, as follows:

In Australia, the High Court determines the law of the country. State and Territory Governments have no discretion and must conform to the law once it has been determined by the High Court. State and Territory Governments cannot simply legislate to overturn a High Court decision of this kind or ignore it. If they embarked on such a course, it would only lead to further legal challenges to the High Court, which would result in such legislation being overturned. In June 1992 the High Court determined the law in relation to Aboriginal native title. Because it is the law, the Government must now give practical effects to the High Court's decision through legislation.

What a pity Mr Kennett and Mr Court have ignored this fact. I wonder if Mr Dean Brown would have ignored the fact if he were in power. Mr Acting President, today I have addressed two areas where in the past and, unfortunately, still in the present, gross acts of injustice have occurred. If we

cannot as a nation address injustices I do not believe we are fit to call ourselves a democracy.

Fortunately for women, past injustices have been recognised and the right to equality before the law is a fact of life. I sincerely hope we can view the decision of the High Court on Mabo as an opportunity to redress a gross injustice in a sensible, constructive and non-racist manner.

The Hon. M.S. FELEPPA: I second the motion moved by my colleague for the adoption of the Address in Reply and in doing so I wish also to extend my personal appreciation to Her Excellency the Governor for officially opening this new session of Parliament.

I wish to take this opportunity to join the Premier and the Leader of our Party in this Council as well as the Leader of the Opposition in supporting the words being said in relation to one of the members who has recently resigned from this Council, the Hon. Dr Ritson. I remember Dr Ritson to be at all times courteous towards everyone, not only to me. He will be remembered for his distinctive kindness and manners.

However, it was sad yesterday to notice the absence of the Hon. John Burdett. Even though he has indicated to us that he intends to resign at the next election it was a little premature not to see him present with us. Knowing the reason why he is not with us I hope that members will join me in spending a few minutes in prayer for his health.

On a happier note, I join with my colleagues who have already extended a very warm and personal welcome to the new member, Ms Schaefer. I am sure that she will enjoy a long political career as did her father, whom we all remember for his fine qualities as an individual.

The Hon. R.I. Lucas: It is a good speech so far, Mario.

The Hon. M.S. FELEPPA: And I will continue to deliver a good speech. I also join Her Excellency in expressing my sympathies to the relatives of the late Lieutenant Governor and former member of Parliament as well as other former members of this Parliament: the Hon. Richard Geddes, the Hon. Berthold Teusner and the Hon. Hugh Richard Hudson.

Today I will address the substance of my speech, as has the Hon. Ms Carolyn Pickles, to the International Year of Indigenous People and, in particular, to the Aboriginal people of Australia, who are the indigenous people of our country. Behind the observations that I will be making this evening is simply one word, that is, 'Mabo'.

I ask members to forgive me if I go through a long preamble because I intend to remind the Council of some of the aspects of history that are very relevant to the issue. What has already greatly upset us has been the very untrue things—very false indeed—that have been reported by the media, some of which have already been mentioned by my colleague the Hon. Ms Pickles, but I will quote some facts she did not.

The following myth was reported some time ago by the media:

> The Mabo decision means my backyard isn't safe from an Aboriginal land claim. . . The Mabo decision allows Aboriginal people to gain ownership of Australia's farming and grazing land.

I am sure that this will not worry or concern the wonderful farmers that we have in this Council, such as the Hon. Peter Dunn, the Hon. Jamie Irwin or the new member who was nominated to this Council yesterday, Ms Caroline Schaefer. The other myth states:

> The Mabo decision means that Aboriginal people will be given land for nothing, while other Australians have to buy it.

Further, it is stated that:

> The Mabo decision means that Aboriginal and Torres Strait Islander people will 'lock up' Australia's mineral wealth causing disaster for the economy.

Finally—and this has already been mentioned—an anonymous letter was circulated weeks ago and at the foot of it appears the name and the title of the Lands Titles Division. It states:

> Mabo is the recognition of rights of the Aboriginal inhabitants of certain territories of land and the appreciation of its historical significance. What this means to you is that should an Aboriginal person choose to enter upon your property then you will be restricted by law from removing them.

What rubbish! What nonsense! This sounds very racist.

I draw members' attention to the package that has been distributed for the International Year of Indigenous People, which has as its objective a new partnership. It is hoped that a new partnership will indeed be formed with the indigenous people of Australia as a result of this year. To appreciate the problems that the non-Aboriginal people and the Aboriginal people have in their present relationship we need to look for a few moments at the past. The continent of Australia was formerly known as *Terra Australis*, which as we all know means the Great South Land. It is a great south land which was occupied for thousands of years by a people who were in my view quite misunderstood when Captain Cook first sighted Australia and when the first fleet came to occupy this great continent.

The people they found were a people who had learned to live in harmony with the environment without over-populating the land, denuding its resources and spoiling the ecology. They did this with a minimum of technology which made it appear as if they were living meagrely and under constraint and hardship. However, the truth is the opposite: they were living in a kind of comfort—not our kind of comfort but in conditions that were suited to the climate and to an extent that met expectations.

When Captain Arthur Phillip and the new arrivals looked at the Aborigines they failed to see that they had established for themselves a social contract with its social compact, as Jean Jacques Rousseau called it. Within their social contract they lived together for the benefit of one another according to laws and administration that were upheld by the will of the community. Within the social contract they experienced a kind of civil liberty. Each had a place in it; each had rights in it; each had obligations in it.

The rights and obligations were guaranteed and reinforced by their culture and religion. By their culture, the community expressed itself and reinforced its beliefs in the way the world is. By their religion, the community expressed its relationship with the spiritual and with the moral obligations that devolve upon each individual and on the community as a whole. None of this was recognised in the time of Cook and Phillip. It was decades before the new settlers began to see the developed society of the Aborigines. They were blinded by their own prejudices.

The land of the Aborigines was divided amongst the different groups. Each group held the land as a corporate body. The title was recognised by neighbouring groups and confirmed by deference to the title holders, if the land was to be crossed, harvested in times of shortage or used for sacred purposes. Groups of title holders met from time to time, agreeing and disagreeing as much as any neighbours would. But these groups held together knowing that neighbour needed neighbour for marital relationships, religious reasons

and survival, much as States have interests in common in our world today.

They held together as a loose or ripple federation, interrelated with one another. The ripple of federation was strongest close-by, weaker at a distance and weakest in the far distance. Not even an inkling of this complex society was seen by the new settlers when they came in contact with the Aborigines. Even if the first settlers had realised how well the Aborigines were organised for survival in such a harsh country, it would have made no difference to the intention of the new arrivals because the First Fleet arrived well determined to occupy the land for the establishment of a penal colony.

The land claimed by Cook was called New South Wales. With the reading of the proclamation, New South Wales extended from the eastern coast of the continent to the 135th line of longitude which takes in half or more of South Australia and some of the Northern Territory, and that is according to *Historical Records of Australia 1914-1925* by F. Watson. The line is just east of Elliston on Eyre Peninsula and east of Milingimbi in the Northern Territory. The proclamation made Captain Arthur Phillip Governor of New South Wales, with powers to make laws under sovereignty and the radical title to the land. English sovereignty and radical title was invoked by the government of King George III.

Sovereignty is the right to make laws under a social contract and confers radical title to land. Radical title to land upholds sovereignty and empowers a Government to administer the land but it does not confer beneficial title or outright ownership. Sovereignty is a right; radical title is a power. This notion of titles and sovereignty can be gleaned from extracts from *A Dictionary of English Law* by L.B. Curzon.

Trouble between the Aborigines and the non-Aborigines commenced from the very first. The Aborigines did not want the new arrivals to land, and demonstrated against them as the ships sailed through Sydney Heads and arrived at the landings. After landing, what help the Aborigines gave was given in the hope that the non-Aborigines would soon be on their way again, as had happened in the past. However, when the Aborigines realised that the settlers had come to stay, the intrusion was resented and they were frustrated in their efforts to drive out the invaders. The Aboriginal point of view in all this is detailed in Eleanor Dark's sensitive book *The Timeless Land.*

There was a particular thinking in the eighteenth century that blinded the new arrivals to the qualities of the Aborigines as a people. That thinking said that white people were superior, those who were not white were inferior and black people were degenerate, pagan and almost beyond salvation. There was no thought of tolerance or compassion. The thinking also said that, if they did not build houses, till the land with a plough, work six days a week from dawn to dusk and administer harsh punishments in the name of justice, they were not civilised. That thinking has come down to us today and still lurks in the communal mind in prejudices against the Aboriginal way of thinking about land, the ownership of land and the use of land.

The Aborigines recognise a relationship with the land. In the terms of Rousseau's Social Contract, the land holds sovereignty over the people and the people administer the land according to laws given them by the traditional ancestor, whose spirit resides in the land. It is a kind of second-level theocracy. Having looked in some measure at the Aboriginal point of view, I will now turn to the point of view of the non-Aborigines.

When the first settlers came to Australia, they brought with them their social structure, their culture, religion, form of government, laws, arms and their attitudes first and foremost towards non-white peoples. There was also at that time growing and developing colonial aspirations, in competition with other European powers.

At the bottom of all the overlay that was called civilisation there was a factor called the economy. In the eighteenth century the economic principle was mercantilism which fuelled the colonial aspirations. Everything else was made subject to the economy factor, including the rights of all, the monarch and the people, domestic and foreign relations, rights and power.

This is the way the social contract came to be interpreted. The feature at the apex of the social contract is sovereignty which, as I have said already, is the right to make laws. It is a universal concept where peoples band together for common benefits, to maintain their society and to assure survival. Even sovereignty is subject to the economic factor. If the right to make laws in any way hinders the continuity or stability of the economy, sovereignty may be bent to suit the circumstances, even if there is some injustice lurking in the issue. Justice gives way to expediency. That is the modern civilised approach.

Economic considerations can override individual and community rights, if it is thought expedient to do so. Under the cloak of sovereignty, laws can be made to support an injustice. Having the right to make the law makes the law just—or does it? It cannot be doubted that the economy is a most important factor in the structure, stability and progress of society and the State. To underrate the importance of the economy is to court national disaster.

To overrate the importance of the economy can put the peace, happiness and harmony of the community under stress and strain. The stress and strain, the suffering and hardship endured by the people of the European States, England and the New World colonies is a legend for everybody to remember. Revolution and war was the pathway to territorial expansion, national development and the ambition of kings. The individual mattered little. The people suffered and the welfare was left to religion.

That was the background of the thinking and the practices of those who arrived with the First Fleet. The thinking and practices of the non-Aboriginals was so different from that of the Aboriginals that it was almost impossible to avoid a conflict. Since the arrival and the takeover by the non-Aboriginals, the Aboriginal people have striven to come to terms with the changes they had to face and to accommodate themselves to the foreign circumstances. Their efforts to accommodate themselves to the so-called civilised condition has been hindered by their strong ties to their traditions, particularly their ties to the land.

An even greater hindrance has been the rejection of the Aboriginals as a people by the non-Aboriginal governments of Australia and by the community generally. Most of the Aboriginals have continued to search out a way to meet these changes. Some have failed and these have been highlighted by the media. Many have succeeded to a greater or lesser degree to fit themselves to both cultures and to the economy without betraying one or other of the cultures. These are not highlighted by the media.

In more recent times, the year 1988 was taken as a milestone in the history of non-Aboriginal settlement of

Australia. This bicentennial year was marked by display and the celebration of non-Aboriginal accomplishments over the past 200 years. It was a success but it was a success only for non-Aborigines. The Aboriginals were drawn into only the fringes of it. The question put by Aborigines about their place in the celebrations was: what have the Aborigines to celebrate after two hundred years of non-Aboriginal occupation?

Honourable members would recall that during my Address in Reply speech in the bicentennial year I referred to this very fact. There was little worthy of celebration that the non-Aborigines could point to as an achievement for the benefit of Aborigines, benefits in real terms either economic or heartfelt.

Assimilation and elimination had been foisted on the Aborigines. Policies and practices had been proposed, implemented, varied and cancelled over the years. In 1967 a referendum transferred from the States to the Commonwealth the powers to make laws concerning the Aborigines as a race. Aborigines were to be counted in the national census. Only peripheral benefits flowed to the Aborigines from these changes. One benefit, of course, is the Racial Discrimination Act, which has been referred to by the Attorney-General in answering some of the questions this afternoon, which can be invoked for the benefit of the aboriginal people. This law is a two edged sword. It is as simple as that. It can be used if the Aborigines are discriminated against but it may also be used against the Aborigines if it can clearly be shown that as a race they are being favoured by discrimination against other people.

Down the years, parades and protests have worked both for and against the Aboriginal cause. Court actions have been tried but mostly lost. The bicentennial year, 1988, did not bring any great relief from the troubles experienced by the Aborigines but it was marked by one small success. Six years before in 1982 Eddy Mabo and James Rice challenged the annexation of the Murray Islands by the Queensland Government of 1879. The High Court determination of 1988 is a complicated and difficult document to read but the outcome was a successful challenge to the Queensland Government concerning a certain kind of a title to the Murray Islands. The challenge was upheld four to three. However, the High Court was limited in what it could determine because the case put by the Murray Islanders was not prepared in a way that the High Court could deal with it. It was a milestone in Aboriginal litigation but it was passed over in the bicentennial celebration and nothing was made of it in the media. What a shame. The case had to go back to the High Court in the correctly prepared form and it was dealt with over a period of a year.

In 1992, the High Court gave its determination. The outcome of this second case was that at the time when Captain Cook claimed Australia for the British Crown and when the First Fleet arrived to colonise the country, the land was occupied by the Aboriginal people, who were living under their own customs and tradition. The High Court also said that at the time of colonisation sovereignty of the Crown and the radical title came into existence. With the powers to make laws under sovereignty the Crown could disperse of land by freehold or lease. Land that was not held freehold or leased clearly would fall under a title held by the Aborigines. The title is called 'native title'—a term which we have heard perhaps a hundred times in the past few months.

For native title to exist the Aborigines would have to be living on their traditional land or not have lost their connection with the traditional land and they must have descended from those who had occupied the land from before 1788. The court said no more than that, but it went to great lengths to say it. That is the substance of the determination.

One issue the High Court did not determine is whether a State or Government could now extinguish native title by an Act of Parliament or an administrative act, but the court made it quite clear that it would be very difficult to extinguish native title in the face of racial discrimination of the Commonwealth. Again that was referred to by the Attorney-General this afternoon. The determination has come under attack ever since it was made known. There has been criticism of the High Court for not taking into account the economic and social consequence of its determination. In a legal action the High Court can deal only with the issue before it and the hypothetical consequences are not, in my view, a province of the court. Mr Justice Dawson said:

> If traditional land rights (or at least rights akin to them) are to be afforded to the inhabitants of the Murray Islands, the responsibility, both legal and moral, lies with the legislature and not with the courts.

That is quite clear. Another criticism is that, by the Mabo determination the High Court has made new laws, whereas those laws should be made by the Parliament. The High Court is usurping the powers of Parliament. What such a criticism overlooks is that whenever the High Court gives a determination it makes a law and having made a law concerning the particular circumstance of a case if those circumstances recur exactly in another case the same determination must be given.

A law has arisen from the Mabo case, and that law now stands firm. Almost the exact circumstances can be multiplied in a number of instances, and the Mabo law will apply to those cases. Unless the circumstances of another case are different, then not to apply the Mabo law would be to deny justice to the Aborigines.

Sir Arvi Parbo has another approach to the Mabo determination. He is reported as saying that he would like to see the Mabo ruling overturned and a referendum held to determine whether native title should be reconsidered. To follow such a course would be to reflect on the competence of the High Court to make a proper and just judgment. Of course, if there were such a successful referendum it would be open to the High Court to say that it has sufficiently considered the matter already and the judgment stands whether or not it is palatable.

The implications of the determination have caused more than enough unfounded speculation as to what its effects may be. The media have suggested exaggerated claims to some Aborigines who have taken the suggestions as offers. Others have themselves made some exaggerated claims and these have been published as the firm intention of all Aborigines, and the media have thrived on these wild speculations.

The mining industry has taken the line that there will be dire consequences following from the Mabo determination, and the media have been signalling these to the rest of Australia. At the same time, the mining industry has been predicting a downturn in overseas investment and again signalling this to potential investors overseas. It is a self-fulfilling prophecy which will hurt local investors in mining much more than the economy as a whole. The mining industry seems to have taken this course to denigrate the High Court determination and to raise resentment towards Aborigines. If not, why should they want to hurt themselves? With the panic that is setting in there is an urgent need in my view to find some kind of solution or at least a basis upon which a resolution can be found. There are thinking Aborigines among the entire community of Aborigines who want to

make only reasonable claims that accord with the determination of the court and who have no intention I would imagine of claiming suburban lots and established areas as has been falsely reported by the media.

What can be done? There is no point in looking back to the cause of the problem which occurred almost out of ignorance in the eighteenth century. That would foster tension, hostility and guilt. There are here and now descendants of those Aborigines who were scattered over the whole of Australia when the First Fleet arrived. There are here and now descendants of the first non-Aborigines to colonise Australia and others who have arrived since the first settlement. Instead of looking back to the past, both these descendants should in my view look to the future in the firm hope of finding a resolution of the tension between Aborigines and non-Aborigines. We non-Aborigines have no intention, of course, of abandoning our homes in Australia. It is unthinkable that we should. If we did, the Aborigines would not survive without the modern technology they have come to depend upon. Most have lost their survival skills of the old days and have learned new skills that depend on new ways.

Aborigines will not cease to be Aborigines because in their heart they have beliefs and practices, hopes and desires that bind them together. This bond should never be dissolved; this bond should never be loosened. This bonding, in my view, will remain for hundreds of years as it has remained between the Irish people in Ireland, the Scottish people in Scotland and the Welsh people in Wales. We know from British history that these bonds are still there and in some ways are stronger in spite of all the pressures and campaigns, wars and persecutions to make them English.

The tensions that exist between the non-Aborigines and the Aborigines are not between two different peoples ranged against one another. The problem can be likened to the tensions between an older line of a family and a younger and more recent line of the same family. The older line of the family thought themselves firmly entrenched in their possession of the estate which had been theirs for thousands of years. The younger branch of the family came onto the scene promoting their own interests, asserting their possession of the whole estate and overriding or perhaps ignoring the interests of the older branch of the family. The older branch of the family did not give up the struggle. It seemed that they might simply disappear but they survived and are now increasing in number.

For a time some thought it best to deny their Aboriginality, but they now proudly admit their Aboriginal descent. A few are of full descent from Aboriginal forebears while others are proud to claim a partial linkage with the Aborigines. Any settlement that is to be made is to be made between both lines of this family to which I referred. For this to be a solution I believe we must find a universal principle that is derived from clear reason and with which both the Aboriginal and non-Aboriginal people agree and on which can be built above all an agreement in sentiment and practice. There is such a universal principle. In his *History of England*, Thomas Babington Macaulay implies this universal principle three times, but I will quote the most general of the three expressions that imply that principle, as follows:

> The government which had sprung from the revolution might. . . be fairly called a settled government, and ought therefore to be passively obeyed till it should be subverted by another revolution and succeeded by another settled government.

The same principle can be restated in broad terms with a universal application in the following words:

> Where there is a social and political upheaval and there is a change in the form or practice of government followed by a period of settled government to which the people acquiesce by an act of submission, by the exercise of a vote or by accepting a favour from the government, the people are morally bound to obey that government and its administration for the sake of order and good government so that the people can live industriously, in harmony and at peace with one another, until there is a similar upheaval and change of government followed by another period of settled government.

If we look today at what was the former Soviet Union, we can easily see States in the process of forming settled government. Looking to the past, we can see many examples of the formation of settled government after a struggle of some kind. The United States, for example, struggled and succeeded in gaining its independence and changing its Government, its systems and its loyalties, but regained its former association with the old branch of the family from which it sprung. That is just one of the many examples.

A revolution in Government took place in Australia in 1788 when the first fleet arrived. It was not, of course, a violent revolution such as that in the United States or France—or China for that matter—but it was, nevertheless, a revolution. There was some violence by the Aborigines when they attempted to hinder the takeover of Australia. There was violence by the settlers as they moved out to more distant parts of New South Wales. But there was no massed violence with opposing armies and cannons, strategies and tactics. The revolution was by gradual displacement of the Aborigines and the gradual encroachment of the settlers. Physical, social and legal displacement of violence have continued down to the present times, and tension still remains.

The universal principle I have just suggested does not deal with the cause of the tension: it deals with the effect of history and the conditions of the present day. One effect is that the settled Government ought to be obeyed. The Government being settled has the power to act and ought to act.

Another effect is that the present day Aborigines and the present day non-Aborigines are bound together in a social contract under a settled Government that has been in place for 200 years. The non-Aborigines accept the Government by implication of the social compact and have simply made a submission to the settled Government by exercising their vote.

The Aborigines have come to accept the settled Government by exercising their recently acquired right to vote or by rightfully accepting some kind of favour from the Government. It might be argued that the Aborigines have accepted favour from the Government out of necessity. That would be quite true, and the Government was meeting its moral obligation. But accepting the favour or exercising a vote does show that the Aborigines recognise that a settled Government is in power.

So, the principle does not solve the problem and the tensions, but it does provide a hook upon which to hang a solution. It is the framework within which there is the right and the power to legislate, where rules for negotiation can be set up and where the process of settlement can take place.

There are different groupings of Aboriginal people; there are different groups of non-Aboriginal interests. Sectionally, they are divided but all are united under the Federal Constitution and the Federal Government.

To solve the implications of the Mabo determination, unity can be expressed and powers exercised under the two sections of the Federal Constitution. While the States and Territories have power to legislate regarding their lands, the

Federal Government has superior powers to legislate for people under section 51 of our Constitution.

First, the Federal Government can make laws for peace, order and good government of the Commonwealth as a whole with respect to the people of any race—Aboriginal or non-Aboriginal races—for whom it is deemed necessary to make special laws. Again, this can be seen under section 51(26) of our Constitution.

Secondly, when a law of a State or Territory is inconsistent with the law of the Commonwealth, the law of the Commonwealth shall prevail, and the law of the State or Territory is invalid to the extent that it is inconsistent with the law of the Commonwealth. Again, I invite members to see section 109 of our Constitution. So, power resides with the Commonwealth Government if it chooses to exercise that power to exclude the powers of the States and Territories. although land, in this case, is an important issue in the Aboriginal struggle for just recognition. The High Court leaves the moral and legal issue raised by the Mabo determination for the settled Government to resolve. That is how it should be.

The Governments of the States and Territories have the power to extinguish native title, but to do so now would be seen as an injustice against the Aboriginal people and to give economic favour to certain interests. Such a favour could be seen as racial discrimination, and the favour could be challenged under the Commonwealth's Racial Discrimination Act.

A solution now lies amongst the scattered legal facts (that is our opinion) which will have to be drawn together and set in order. Out of the clear understanding of the legal facts and the social and economic necessity, legislation can be enacted. What is enacted will undoubtedly have to contain a compromise to some extent on the part of both branches of our Australian family partnership.

If the matter is approached, in my view, in an atmosphere of calm commonsense and, above all, good intention, then both Aborigines and non-Aborigines may seem to lose something in the settlement. But a settlement in good faith would bring harmony at the end and prosperity for all, forming a new partnership, to which I referred at the beginning of my contribution and which is the fundamental theme of the International Year of the World's Indigenous People.

The Hon. J.C. IRWIN secured the adjournment of the debate.

ADJOURNMENT

At 5.53 p.m. the Council adjourned until Thursday 5 August at 2.15 p.m.