LEGISLATIVE COUNCIL

Thursday 14 April 1994

The PRESIDENT (Hon. Peter Dunn) took the Chair at 2.15 p.m. and read prayers.

QUESTION TIME

COMMON LAW DAMAGES

The Hon. C.J. SUMNER: I seek leave to make a brief explanation before asking the Attorney-General a question about the capping of common law damages.

Leave granted.

The Hon. C.J. SUMNER: There has been considerable debate in recent times about whether legislation should be introduced to place a cap on the amount of common law damages that can be awarded following a suit for negligence against various professions or, indeed, people driving cars and the like. The general argument, in particular, by the professions and others, is that the premiums that have to be paid for insurance are becoming prohibitively expensive and cannot keep pace with the pay-outs and the amount of coverage that is needed by the professions if they find themselves sued and have judgment awarded against them for damages at common law.

Representations have been made at various times by builders, architects and accountants, and local government has from time to time expressed concern about this matter. Indeed, the Council of Professions, representing all the professions, has also expressed a view on it.

Some years ago the then Attorney-General of New South Wales, Mr Dowd QC, introduced legislation in that Parliament to place a cap on common law damages in some circumstances. I understand that an inquiry by the Law Reform Commission in Western Australia into this matter is currently proceeding, and it has been on the agenda of the Ministerial Council for Securities in recent times and that of the Standing Committee of Attorneys-General. I understand that the matter is still on the agenda, and I believe that it would have been discussed at the most recent meeting of either MINCO or SCAG, which met some few weeks ago. My questions to the Attorney-General are as follows:

1. Does the present Government support the capping of common law damages and, if so, in what circumstances?

2. What view did the Attorney put on behalf of the South Australian Government on this topic at the meetings of SCAG or MINCO?

The Hon. K.T. GRIFFIN: The capping of common law damages for negligence is a very vexed question because it really means that somewhere along the line someone will have to bear the cost of negligence actions. On the one hand, if someone is injured and there is a limit on the amount which he or she can recover, Governments will ultimately pick up the tab for any deficiency, even though there may be some damages awarded.

On the other hand, if there is no cap, professional indemnity insurance premiums, for example, will undoubtedly keep going up, and it may be that ultimately the community bears the cost of that, so it is a vexed question. It is certainly an issue to which I have given some consideration, particularly in the context of the Standing Committee of Attorneys-General meeting and the Ministerial Council meeting.

When it was drawn to my attention immediately after the election, a number of options were being presented from various levels of government. I think at the Commonwealth level there seemed to be a preference for some limitation on the joint and several liability issue, so that in an accountancy firm, for example, there should be a division of responsibility between the various members according to the amount of work which they had undertaken in relation to, say, an audit, and the degree of responsibility which they took for that work.

I took the view that, in respect of that, it becomes particularly cumbersome and places an even greater onus on the person or groups which may have lost significantly as a result of a defective audit. So, it seemed to me that that did not necessarily represent a solution in the best interests of the community, although it may certainly have worked in favour of auditors seeking to share responsibility.

Another option was to allow incorporation and, as I understand that, it even moved well towards limited liability. Again, it did not seem to me that it served the public interest particularly well. So, the proposition I put to the Ministerial Council I think it was, or the Standing Committee of Attorneys—they both ran one after the other so it is hard to remember which is which—was that there ought to be a fundamental look at what we are trying to achieve with an audit. No-one had gone back to say, 'We expect an auditor to undertake these functions for this purpose to achieve a particular goal.' Everyone was dealing with the issue at the end after the auditor had undertaken his or her—

The Hon. C.J. Sumner: Not just auditors.

The Hon. K.T. GRIFFIN: No, I know, but it was in the context of auditing at the Ministerial Council, and that is what I am referring to now. No-one had gone back to look at the basic issue, so it was agreed that, in addition to a further examination of the joint and several liability question (I think Justice Andrew Rogers is undertaking a review of that), there should be an examination of the basic issue to see if, through accounting standards or some other mechanism, it was possible to identify the task that the community wanted to set for auditors, and whether that might more clearly define the limits of an auditor's liability. At the moment that is being examined.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: I am coming to that. You asked the question yesterday that got an even longer answer than I am giving now, so you cannot blame me for taking just a couple of minutes. In relation to the broader issue, if one seeks to cap liability for auditors, necessarily one has to look at what that means for other professionals right across the community. What sort of precedent would that establish?

I know in relation to compulsory third party bodily injury liability there has been a limitation which acts against the interests of those who are injured, but nevertheless reflects in lower premiums across the range of insurance available to motorists. But someone has won and someone has lost. There the loss was sustained by individuals who suffer injury, loss and damage as a result of motor vehicle accidents. It raises the issue of whether the medical profession, the legal profession, the accounting profession, the auditing profession and architects, engineers and a whole range of other people, as well as those at the local government level, have liability for negligence. Certainly, the Government has not made any decision about the principle at the Federal level.

I have indicated the approach that is presently being examined but, regardless of what happens there, if one is to

move down the track of a significant capping of liability without considering the consequences of that for other professions and groups within the community, then we are inviting trouble not just as a Government but as a community. We need to have a fundamental review of what we expect out of the law of negligence—

The Hon. C.J. Sumner: You are opposed to it?

The Hon. K.T. GRIFFIN: As a Government we have not made any decision. As a Minister, I have grave concerns about doing it for auditors without examining the consequences for everyone else in the community, not only looking at the professionals but looking at those who are going to sustain the loss. Another issue one has to address is the question of accountability. If we limit liability for auditors, for example, how do you make them fully accountable for the work that they are doing? That is why, in respect of auditors, I took the view that we have to go back to fundamentals and ask what sort of work are we seeking to have auditors undertake. That is the fundamental issue that needs to be addressed, as it is an issue that needs to be addressed across the board in other areas where the law of negligence imposes both a liability and presents an opportunity to those who suffer loss, as a result of negligent acts and omissions, to recover damages.

ROAD FUNDING

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Minister for Transport a question about road funding.

Leave granted.

The Hon. BARBARA WIESE: During the last election campaign the Liberal Party made a range of promises on roads, the sum total of which was extravagant to say the least in view of current commitments. They included a $80 million third arterial road over four years to commence in 1995, an extension of the sealed road network in rural areas, with a detailed list of those roads that would be sealed within a particular period of time, an upgrade of tourism roads, a new bridge over the River Torrens in the north eastern suburbs and traffic signals at Old Noarlunga.

The only indication of any new road funding was a promise to offset an additional $10 million per year from fuel taxes. My advice at the time was that the total Liberal package was around $200 million, to be spent over a period of about 10 years, with about $125 million of that to be spent in the first four years. That did not even include the promise to build a bridge at Berri, which would cost at least another $25 million. In the road funding area there is very little room for discretion when you take into account the need for maintenance of existing roads, projects already commenced and the road projects that are federally funded under particular criteria. According to calculations provided to me, expenditure on Liberal promises would exceed anticipated income by approximately $20 million per year for the first four years, despite the $10 million per year increase from fuel excise.

My questions to the Minister are: now that she is in Government and has the advantage of reliable advice on road costs, has she sought that advice from the road transport agency about these promises and, if so, what is it? Does she agree that she will be unable to meet her promises without cancelling or reducing expenditure on other road projects, and will she detail which projects she will cease to fund in order to fund her promises?

The Hon. DIANA LAIDLAW: The Liberal Party indicated that we would make a number of long overdue commitments to road sealing and maintenance in this State, and in the context of road funding in general I think it is worth recalling the former Government's decision 10 years ago in 1982-83 to freeze real franchise fees to highways funds to $25.7 million. Until that time, under the former Tonkin Government, 100 per cent of fuel franchise fees had gone to the highways fund for road construction and maintenance purposes. With that decision of the Bannon Government, continued by the Arnold Government, we found that, by 1993-94, only 17.74 per cent of fuel franchise fees was directed to the Highways Department for road construction and maintenance purposes, and it is not surprising therefore that South Australia, whether it be rural arterial roads that have not been sealed or long overdue infrastructure reforms including broken promises to the south over many years in respect to the third arterial road, is way behind in road infrastructure.

For that reason the Liberal Party made a commitment which we will keep, and that is that there will be an increase in road funding by $10 million indexed of funds from the highways fund for road construction purposes in the future. We made a commitment in terms of rural arterial roads that all those roads would be constructed and sealed over a 10 year period. In the context of road funding we also indicated that there would be a strategic plan for transport which would look at our long term needs not only in road but also in public transport infrastructure. The costings produced by the Liberal Party were accurate, and it is not the position, as suggested by the honourable member, that now I am in Government and have access to the department I will be revising my figures. That is not so. We remain committed to our road funding road construction agenda.

The Hon. Barbara Wiese: All of it?

The Hon. DIANA LAIDLAW: Yes, of course we are. We will be pursuing that agenda and honouring that timetable. Discussions to that effect are going on at the present time in the budget context, as members would realise. As a Liberal Party, we have always had a very strong commitment to road funding and maintenance. That is reflected in our policies and it will be reflected in our programs in Government over the next four years and for many more years to come.

The Hon. BARBARA WIESE: As a supplementary question, the Minister did not respond to my question relating to whether or not she had taken advice from the Road Transport Agency about these costs. I ask her whether she has and if she agrees with the assessment that was made for me last year that she will be some $20 million a year short, notwithstanding her commitment to add $10 million in fuel excise to road funding in meeting the objectives that she has set for herself.

The Hon. DIANA LAIDLAW: I have sought the advice from the Road Transport Agency. That is a logical thing to do. The agency was made aware almost the day after I became Minister to prepare for the implementation of Liberal policy. The roads will be funded, as I have indicated. There will be savings made within the Road Transport Agency, but the $20 million is not a figure that has been brought to my attention. I am not sure whether it was produced for the former Minister for political purposes during the campaign, but it is certainly not a figure that has been brought to my attention.

ADELAIDE AIRPORT

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Transport a question about the Adelaide Airport.

Leave granted.

The Hon. CAROLYN PICKLES: In its transport policy, the Government made a commitment to establish a forum of interested persons to promote the Adelaide Airport and to lobby the Federal Government for increased funding. My questions to the Minister are: has the Minister established a forum and, if so, who are the members and what are its terms of reference? If not, why not, and when is it planned to establish the forum?

The Hon. DIANA LAIDLAW: A strategy for the development of the Adelaide Airport has been considered and approved by Cabinet. The Premier wrote to the Prime Minister about this matter I think earlier this week. We have also met with Qantas and we are meeting with other airlines. It is of tremendous, in fact critical, importance to the State that South Australia no longer is left as the poor cousin in airport infrastructure. We have the sad record of having the shortest runway in the nation for a capital city airport, and that is a severe disadvantage to manufacturing, horticultural and agricultural industry in this State, and also for the tourism industry. Our focus is not only the development of facilities at the international and domestic airports, but also for the extension of the runway.

I should point out that, following the Kelty report on regional development, the Government made a submission to the Federal Government indicating that one of our top priorities for development in this State was the airport and that we would be keen to pursue the issue of privatisation of the Adelaide Airport. We believe very strongly that, if the Federal Government in the forthcoming industry statement or in the Federal budget indicated a go ahead in fulsome or tentative terms for privatisation of airports, Adelaide Airport is the prime size for privatisation initiatives.

If we are not the first candidate for privatisation in Australia for our airport we will in fact be even more severely disadvantaged because the funding will continue to flood to the Eastern States. We must free ourselves—this is at least the opinion of the Government—from the handicap of the Federal Airports Corporation, which is not directing funds to South Australia. 88 per cent of Federal capital funds for airports is directed to Sydney, Melbourne and Brisbane. In the last financial year South Australia received only $1.3 million in funds from the Federal Airports Corporation for capital infrastructure at the Adelaide Airport, and all of that went to the domestic airport.

We are severely disadvantaged under the current structure and funding arrangements for the Adelaide Airport and in that context we have been discussing with two consortiums the purchase and operation of the Adelaide Airport. As part of those discussions a forum is being developed. As part of not only those discussions but the strategy I mentioned earlier that has been approved by Cabinet we are discussing the formation of that forum. I should be in a position to announce that in a couple of weeks, including the terms of reference. The whole concept of the forum and our program for the development of the Adelaide Airport has been endorsed by employer representatives who are keen to participate. Discussions are also to be held with the Adelaide City Council.

NATIVE VEGETATION COUNCIL

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, questions in relation to the Native Vegetation Council.

Leave granted.

The Hon. M.J. ELLIOTT: My questions relate to the intention of the Minister for Primary Industries regarding the Native Vegetation Council currently administered by the Minister for Environment and Natural Resources. This council, which controls the preservation, enhancement and management of our native vegetation is presently independent of the Minister. I have been told that the Primary Industries Minister, an extensive landowner who also has relatives on the land, has instigated moves to change the Native Vegetation Act, to move the council or some of its powers or functions under his discretion and to limit the council to becoming an advisory body only. I ask the Minister for Primary Industries:

1. Is it true that the Minister now wants to change the Native Vegetation Act to move the council or some of its powers or functions under his discretion, and to limit the council to becoming an advisory body only?

2. Is it correct that his brother, Dean Baker, has been prosecuted by the council for illegal broadacre land clearance to plant a potato crop with centre pivot irrigation?

3. Does the Minister accept that as a landowner and with relatives involved in the industry his personal interest in the issue precludes him from having control over this area?

4. Will the Government make public any documentation from the Department for Primary Industries or the Department for Environment and Natural Resources which deals with these proposals?

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

EDUCATION FUNDING

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about staffing and teachers.

Leave granted.

The Hon. A.J. REDFORD: Yesterday in the Chamber the Leader of the Opposition asked the Minister a question about discussions to cut 1 800 permanent teachers from the South Australian teaching work force. He alleged that the Government had been negotiating with the South Australian Institute of Teachers for a cut of 1 800 permanent teachers from the Education Department's work force. In response to that answer, and on a number of occasions, the Minister said that the Government had not taken a decision to cut 1 800 teachers from schools.

The Liberal education policy, released well before the State election, clearly stated:

> The Liberal Party recognises that staffing policies of the [former] Government have caused significant problems in providing a quality education in schools. There will therefore need to be a complete review of the present staffing policies. A Liberal Government will—
>
> · abolish the current 10 year limited placement policy
> · consider major recommendations of the Ernst & Young review of staffing policies
> · seek to move a staffing policy where principals are able to select the majority of their staff to suit the particular needs of school

- consider a 'rejuvenate the work force' program, where older teachers at high school are offered targeted separation packages
- consider implementing successful overseas schemes which will allow teachers to work for four years at 80 per cent of salary and then take leave in the fifth year at 80 per cent of salary.

In answer to the honourable member's question yesterday, the Minister on eight separate occasions stated that the Government was not negotiating with the South Australian Institute of Teachers to cut 1 800 teachers from our schools. Notwithstanding that, certain elements of the television media led with a story to the effect that the Government was proposing to cut between 1 800 and 2 000 teachers. The allegation was made by the President of the South Australian Institute of Teachers.

At the declaration of the poll in January 1994 for this place the current President of the South Australian Institute of Teachers, who in addition was an unsuccessful candidate for a position in this place, indicated that she did not have any regrets about standing. She said that, as a consequence of the South Australian Institute of Teachers having a candidate, education was fairly and squarely an issue at the previous State election and that everybody was aware of Liberal Party and Labor Party policies. She went on to say that the South Australian public had been made fully aware of the Liberal Government's policies and that the matter had clearly been made an issue at the State election. She also said that, as a result, South Australian people knew precisely what the current Liberal Government was proposing should it take office. In the light of this, my questions to the Minister are as follows:

1. Has there been any change in the comprehensive 26-page policy released by the Liberal Party prior to the last State election?

2. Has any indication been given to the South Australian Institute of Teachers about staffing cuts?

3. Does the Minister have any views as to why the South Australian Institute of Teachers would be making these allegations to the media at this time and to members opposite?

The Hon. R.I. LUCAS: I thank the honourable member for his questions. As members will know, the Leader of the Opposition claimed in this Chamber on Tuesday, and followed it up by a question yesterday, that he was able to reveal that the Liberal Government was about to cut 1 800 teachers from our schools.

The Hon. C.J. Sumner: That's not what I said.

The Hon. R.I. LUCAS: Yes, that is what you said. The Leader of the Opposition then went out to the media and indicated to all and sundry that the Liberal Government was negotiating with the Institute of Teachers to cut 1 800 teachers from our schools. The Leader of the Opposition knows—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Well, that wasn't right, either. You do not negotiate unless you have made a decision.

The Hon. C.J. Sumner: Of course you do.

The Hon. R.I. LUCAS: You don't negotiate. You don't understand the process.

Members interjecting:

The Hon. R.I. LUCAS: And we were not negotiating.

The Hon. C.J. Sumner: It is bizarre. No-one in the world—

The Hon. R.I. LUCAS: You have a negotiating position. I indicated on Tuesday and Wednesday that that was not correct and that the Leader of the Opposition had been making incorrect statements in relation to this matter. I want to place on public record, as a result of two days of to-ing and fro-ing in the public media and in this Parliament, that the President of the Institute of Teachers, late yesterday afternoon, was forced to issue a media release under her name, Clare McCarty, on behalf of the institute on this issue on which questions had been raised by the Leader of the Opposition and the Audit Commission. The statement from the Institute of Teachers says:

> And in the Legislative Council Mr Lucas stated that negotiations were not under way to cut teacher numbers. This is certainly true. The Minister is refusing to negotiate anything until after the Audit Commission recommendations are presented.

As I said, after two days of to-ing and fro-ing in relation to the claims that had been made in this Chamber by the Leader of the Opposition, the President of the Institute of Teachers has been placed in the position of having to issue a clarifying statement indicating that what I had said in this place about there being no negotiations under way to cut teacher numbers was certainly true and that I have refused to negotiate on a whole range of issues until a variety of other factors have been taken into account.

That clearly indicates that the impression given and the statements made by the Leader of the Opposition in this Chamber on Tuesday, and followed up again yesterday, have been proved to be demonstrably false and that the Government's position and the statement—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Well, you have misled in relation to that as well.

The Hon. C.J. Sumner: Read it.

The Hon. R.I. LUCAS: Let us have a look at the SAIT Journal then. Come in spinner. It is on page 4 of the SAIT Journal.

The Hon. C.J. Sumner: Read it out.

The Hon. R.I. LUCAS: Mr Ken Drury, who has been saying a whole variety of different things in relation to this issue over the past two days, under the heading, 'The Big Picture Unfolds', which is a statement on negotiations by Ken Drury, Vice President, talks about 1 800 permanent teacher positions to go. What the Hon. Mr Sumner did not read out is:

> . . . backfilling of the aforementioned 1 800 positions with younger contract employees!

That is a replacement of 1 800 teachers with another 1 800 teachers. What the Leader of the Opposition sought to portray in this Chamber was that the Government and the Minister had taken a decision to cut 1 800 teachers from our schools. Of course, being deliberately deceptive, he did not read out the rest of the article by Mr Ken Drury, which says:

> . . . backfilling of the aforementioned 1 800 positions with younger contract employees!

I should have thought that even the Leader of the Opposition would understand the notion of backfilling with 1 800 positions. Quite simply, it means that you replace 1 800 teachers with a particular classification with different teachers with a different classification status. It is the same number of teachers—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: It is the same number of teachers—no cut of 1 800 teachers. So, again, the statements made by the Leader of the Opposition have been proved to be demonstrably false. As I said on Tuesday, and again yesterday, and as I confirmed in a statement that I gave to the *Advertiser* last evening, there have been and will continue to be some discussions with the Institute of Teachers about the classification status—

The Hon. C.J. Sumner: Negotiations.

The Hon. R.I. LUCAS: No; discussions at this stage about the classification status of teachers within our schools. That brings into question the notion of the 98 per cent and 2 per cent mix that we have at the moment. The current system means, as I said yesterday and will not repeat in detail, that we have over 1 000 permanent teachers who have been shuffled around the jigsaw puzzle of schools that we have in South Australia in temporary positions. This notion of the 98 per cent and 2 per cent mix within the total number is an issue that will be discussed.

In relation to the question from the honourable member about rejuvenating the work force scheme, what we have indicated is that—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: We indicated in our policy statement that we would be looking to rejuvenate the work force scheme whereby older and more experienced teachers, if they took targeted separation packages, might be replaced by younger teachers in the work force.

The Hon. Anne Levy: Inexperienced teachers.

The Hon. R.I. LUCAS: There are two issues to that. The genesis of this scheme was first raised with me in Opposition by Clare McCarty on behalf of the Institute of Teachers. She raised the concept that we had an ageing teaching force and that the Government ought to look at replacing some of our older and more experienced teachers with younger teachers.

The Hon. C.J. Sumner: Not younger contract teachers?

The Hon. R.I. LUCAS: No, certainly the original position of the Institute of Teachers was that they be replaced by younger permanent teachers. In relation to the genesis of the idea about rejuvenating the work force, one adaptation of that is that you replace them with permanent teachers and another could be that you replace them with contract teachers. However, the notion of rejuvenating the work force in the original form, as suggested by the Institute of Teachers, was raised with me some 12 months ago in one of a series of meetings that I had with the Institute of Teachers in the development of the Liberal Party's education policy.

The third aspect of the question from the honourable member relates to the Ontario scheme, the five over four scheme, on which I have made some public statements recently. The honourable member is correct in saying that that scheme was announced as part of the education policy document in that we would look at it as an option for schools. That document also indicated that we would look at trying to give principals more say in hiring their teachers. Those schemes have been part of the public record since last year; I have repeated them on a number of occasions; and I am somewhat surprised to see the front page of the SAIT *Journal* indicating that there have been no discussions with the Institute of Teachers about both of these schemes.

On at least two separate occasions I have discussed both schemes with the President of the Institute of Teachers—late last year and early this year—as part of an ongoing series of discussions I have had with the Institute of Teachers. So, the front page report in the South Australian Institute of Teachers *Journal*, which indicates that no discussions have taken place, is incorrect.

The Hon. C.J. SUMNER: I have a supplementary question, Mr President. In the light of the fact that the article by Mr Ken Drury, Vice President of the South Australian Institute of Teachers—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I am happy to debate it with you any time you like, mate. If you want to, I am happy to debate it.

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: I will. Just hang on a minute. I am happy to debate it with you any time you like. All right? Move a motion and I will debate it with you. Otherwise shut up.

An honourable member: It's up to you.

The Hon. C.J. SUMNER: Sure. I am quite happy to do it.

The PRESIDENT: Order!

The Hon. Diana Laidlaw: You need more self control.

The Hon. C.J. SUMNER: You have got to be joking.

The PRESIDENT: The honourable member is asking a supplementary question. I suggest that he ask his question and not enter into debate.

The Hon. C.J. Sumner: What about him?

Members interjecting:

The Hon. C.J. SUMNER: I tell you what: I learnt well over the past 10 years, with you clowns. Mr President, the South Australian Institute of Teachers *Journal* contains an article by Mr Ken Drury, Vice President, entitled 'The Big Picture Unfolds' which states:

> SAIT has already formed an ad hoc reference group of activists to monitor and advise the SAIT negotiators who are dealing with this 'big picture'.

In light of that article, how can the Minister say that he or SAIT has not entered into negotiations?

The Hon. R.I. LUCAS: I can say it quite clearly because the President of the Institute of Teachers in a statement released yesterday said:

> In the Legislative Council Mr Lucas stated negotiations were not under way to cut teacher numbers. This is certainly true. The Minister is refusing to negotiate anything until after the Audit Commission recommendations are presented.

OUTWORKERS

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Minister for the Status of Women a question about women in the work force.

Leave granted.

The Hon. R.R. ROBERTS: In the *Recorder* newspaper, which is published in the city of Port Pirie where I live, an article entitled 'Work reforms benefit women' recently appeared. This article was sent to me by my colleague, who is the organiser of the Australian Workers Union in Port Pirie, who informed me that almost all of the article was wrong. I am disappointed with that, as the article was an accurate account of press releases that were jointly put out by the Minister for the Status of Women and the Minister for Industrial Relations, the Hon. Mr Graham Ingerson.

Mr Girdham advised me that almost all the points referred to under the general heading 'It's the first time' were incorrect. I have now taken advice from other people in the

industrial relations area, and I believe that some of those points need to be refuted. Mr Ingerson asserted in the article that:

> Many aspects of the existing industrial relations system were tailored around male, blue-collared occupations, and these inflexible awards failed to reflect the modern demands of the South Australian work force, including women.

Most of the industrial laws in this State refer to all workers, and there is no discrimination between women and men. The article further states:

> The Government realises that working women require a flexible industrial relations system—one which enables them to integrate work needs with parental and social demands.

Mr President, I agree that that is true. The article goes on:

> For the first time, working women in both unionised and non-unionised businesses will be able to negotiate enterprise agreements.

I am advised that women have that right now under the existing industrial relations system; there is no ambiguity in that, and, on the advice that has been provided to me, that is incorrect. It also states:

> For the first time, working women will be able to negotiate flexible employment contracts as well as new options for part-time work, fixed-term contracts and flexible work rosters.

Again, I am advised that that is not true; all those options are available under the existing legislation. The article goes on:

> For the first time working women will be guaranteed by a State Act of Parliament equal pay for work of equal value in all awards, and enterprise agreements.

Mr President, the industrial laws are very clear in relation to that topic: equal pay for equal work. I am advised that some awards do not have that provision, but you have to dig a very deep hole in our industrial relations records to find them. The article further states:

> Mr Ingerson said working women would have guaranteed rights to annual leave, sick leave, maternity leave and adoption leave.

Those options are available in many awards at present. Mr Ingerson also claims in the article that women will have access to the employee ombudsman. As the Opposition well knows, the employee ombudsman will not have any part to play where working women are concerned unless there is evidence of coercion under this new legislation. The article further states:

> For the first time, women who are outworkers—

and this is the interesting part—

> working from home will be able to use the employee ombudsman to investigate their conditions of employment and advise them of their legal rights.

Under the legislation, he can only provide that service where coercion is involved. It has been put to me by my advisers that the ombudsman is indeed not an ombudsman at all; he is under the direction of the Minister. The article goes on:

> For the first time the South Australian law will recognise the right for enterprise agreements to extend sick leave to allow working women to care for ill children, spouses, parents and grandparents.

Mr President, that is indeed not correct. Under many awards that is a wellknown practice, and it can be written into any agreement at the present time. Under the new legislation the Minister has the opportunity under section 113 to intervene. In fact, he is the only person who can intervene to stop it from happening now. In fact, it does happen now. The article further states:

> Working women will have access to fairer and faster justice in unfair dismissal claims and for the first time will be able to rely upon new legislated rules governing the termination of employment, and guaranteeing employees fair treatment in dismissal matters.

It has been claimed consistently by members of the Government that the unfair dismissals legislation in this State has been too easy to access. In fact, they have legislated to make it more difficult for people to get unfair dismissals, and the only way—

An honourable member interjecting:

The Hon. R.R. ROBERTS: It is clear from the documents and from the advice given to me that the only way that the process will be sped up is that, instead of having 21 days to apply for unfair dismissal, these people will now have only 14 days.

Members interjecting:

The Hon. R.R. ROBERTS: I am explaining to the Council the advice that has been given to me. This is not my opinion. The article goes on and quotes the Minister for the Status of Women. The article continues:

> She said that in contrast [to the previous Labor Government] the Government was acting to improve the industrial relations system for women, rather than merely mouthing platitudes. She said women had been disadvantaged for too long under the existing industrial relations system which had failed to cater for their real needs. Ms Laidlaw said the Government's Industrial Relations Bill was a major step forward and implemented many of its pre-election promises to address the social and economic needs of South Australia's working women.

In the light of all that, my questions are as follows:

1. Will the Minister for the Status of Women support outworkers who are not classified as employees under existing legislation and/or the proposed legislation and who are now classified as contract workers and do not have rights to agreements or awards by now supporting the proposal for outworkers legislation that failed in this Chamber last year?

2. Will the Minister move amendments to the Industrial Relations Bill to provide a minimum 12 months parental leave to workers—both male and female—as a minimum standard for enterprise agreements and awards in this Year of the Family?

The Hon. DIANA LAIDLAW: I suggest to the honourable member that he seek another adviser. I understand that the honourable member has a background in industrial relations and I hope that, when representing his members in the past, he did not misrepresent the situation as he has on this occasion, because he has confused two issues, and deliberately so it would appear. The honourable member has failed to acknowledge that the press statement released by my colleague and myself referred to aspects that are in the Bill, which we would wish to see passed through both Houses.

We propose that all these measures be incorporated in the legislation. That is not the case in industrial legislation in this State. The provisions may be in awards but they are not in the legislation and it is that that we are guaranteeing in terms of legislation. Therefore, in terms of enterprise agreements and the like, they are the minimum standards guaranteed by legislation and they are important initiatives for women in the workplace in this State. It is also important to recognise that so many women, in fact the majority of women in the workplace in huge numbers, have chosen in the past not to be part of the union structure. I will not put forward all the reasons for that. I will advance them—

The Hon. Anne Levy: That would be debating the issue, wouldn't it?

The Hon. DIANA LAIDLAW: Well, unlike the honourable member, I will address this issue in the second reading and Committee stages of the Bill. It is important to recognise

that because the former Government did not allow for people not in unions, including women who comprise the majority of people who are not in unions, to register awards in court, any enterprise agreement that they may have negotiated and freely negotiated that was in their best interests, the former Government would not allow to be registered. We have said in this industrial legislation that those agreements can be registered, whether a person is within a union or not, whether their workplace is unionised or not. That is an enormous advance for women taking control of their work situation and making their home lives something that they can readily accommodate because they are actually in their own best interests.

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: The Bill is a major advance for women in the industrial area in this State.

EDUCATION FUNDING

The Hon. C.J. SUMNER: My question is directed to the Minister for Education and Children's Services as follows: Given the Government's and the Minister's long espoused commitment to freedom of information, what were the names of the people from the Department for Education and Children's Services who met with the South Australian Institute of Teacher's negotiating team on three separate occasions, the last being 29 March? Secondly, did any of these people keep notes of the discussions or negotiations with the institute? Thirdly, in view of the conflict between the Minister and the institute, and within the institute, over the nature of these discussions, will the Minister table the notes taken so that this issue can be clarified, particularly so that the issue of whether the question of a reduction in the number of permanent teachers was discussed can be resolved? If the Minister will not table the notes of the conversations, negotiations or discussions, why not?

The Hon. R.I. LUCAS: I will get the detailed answers to those questions. I know the Director of Personnel, Ms Marilyn Sleath, was present at those discussions, but which other officers and which officers represented the Institute of Teachers at that meeting, I will ascertain.

The Hon. C.J. Sumner: Three meetings.

The Hon. R.I. LUCAS: I will look at that. It may be interesting to have the names of the institute negotiators, discussers, or participants I suppose is the best word.

The Hon. C.J. Sumner: You said negotiators.

The Hon. R.I. LUCAS: I said 'participants'. It will be interesting to look at the institute's participants as well in that round of discussions. As to the other questions, I will take them on notice and bring back a reply.

SPEED CAMERAS

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Emergency Services, a question about speed cameras.

Leave granted.

The Hon. G. WEATHERILL: I have recently received a number of complaints about speed cameras on the South Road between Marion Road and Sturt Road where the police seem to be having a ball picking up people driving at about 70 kilometres an hour. Travelling along South Road before Sturt Road and after Marion Road are signs saying 80 kilometres an hour and 70 kilometres an hour, but in this area there are no signs whatever on the eight lane highway (four lanes each way), yet people are being picked up and charged for doing 70 kilometres an hour. Will the Minister have the speed cameras cease checking this area until the road is properly signed?

The Hon. K.T. GRIFFIN: I will refer the question to my colleague and bring back a reply.

AFFIRMATIVE ACTION

In reply to **Hon. ANNE LEVY** (8 March).

The Hon. DIANA LAIDLAW: The Government is currently reviewing all areas of policy affecting women in South Australia, including the affirmative action policy in regard to contract compliance introduced by the previous Government. Any policy which requires this State to act as an enforcer or regulator of Commonwealth legislation, be it affirmative action legislation or otherwise, demands prudent consideration. There are some doubts about how relevant, appropriate and useful this policy has been. I am advised that the Governments of Queensland, Western Australia, the ACT, Tasmania and the Northern Territory do not have similar policies. While Cabinet has not yet considered the issue, I would expect that some practical changes will be recommended in the near future.

OLYMPIC DAM

In reply to **Hon. CAROLYN PICKLES** (15 February).

The Hon. R.I. LUCAS: The Premier has supplied the following response.

1. See my answer to an identical question asked in the House of Assembly on 15 February 1994.
2. I am satisfied that Western Mining Corporation responded responsibly in informing Government agencies.
3. Western Mining Corporation has employed AGC-Woodward Clyde as consultants to investigate, inter alia, the time it will take to remove the material.
4. I am not aware of any non-compliance with statutory requirements in the construction and operation of the tailings retention system which occurred while the former Labor Government had ultimate responsibility for the administration of the Roxby Downs (Indenture Ratification) Act and all State approvals necessary for the project to proceed. The project will continue to be subject to detailed environmental assessment and monitoring.

URANIUM ENRICHMENT

In reply to **Hon. T. CROTHERS** (15 February).

The Hon. R.I. LUCAS: The Premier has provided the following response. I refer the honourable member to my replies to questions on this matter in the House of Assembly on 15 February 1994.

HARNESS RACING

In reply to **Hon M.J. ELLIOTT** (23 March 1994).

The Hon. DIANA LAIDLAW: The Minister for Recreation, Sport and Racing has provided the following information:

In response to this question, the Minister for Recreation, Sport and Racing refers to a media release issued on 10 March 1994, in which the Minister clarified his position in relation to a recent report which assessed the structure of the harness racing industry in South Australia.

That report, prepared by Messrs Evans and Mules of the University of Adelaide, is an independent report, without Ministerial status. It was initiated by the Breeders', Owners', Trainers' and Reinspersons' Association and was commissioned by the South Australian Harness Racing Board.

Following the publication of the Report, the Board requested comments from all harness racing clubs in relation to the matters raised, and any other matters affecting the industry. Clubs were requested to forward their comments to the Board by 30 March 1994. The Board has indicated that it expects to reach its final decision on the recommendations at its meeting in April 1994.

The Board has undertaken to keep the Minister fully informed of any proposal which it may develop, which would impact upon the future of the industry. The Minister's only involvement to date has been to approve the Boards' request to transfer the two remaining

race meetings of the Franklin Harbour Club, for the current season, to Whyalla on the basis of safety, following a report from the Stipendiary Stewards.

The Minister has made it clear that he wants the opportunity to consider all recommendations the Board may make concerning the future registration of clubs, including the issue of the allocation of racing dates.

The Honourable Member's question refers to an additional $200 000 being available for harness racing this year, and that none of this has gone to country areas. The fact is that the harness racing code will receive the same amount this financial year as it received in the previous year, due to supplementary distributions being made available from the TAB Capital Fund and the Racecourses Development Board. Country clubs will receive no less than the allocations received last year.

STATUTES AMENDMENT (COURTS) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Criminal Law Consolidation Act 1935, the District Court Act 1991, the Enforcement of Judgments Act 1991, the Magistrates Court Act 1991, the Summary Procedure Act 1921 and the Supreme Court Act 1935. Read a first time.

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

That this Bill be now read a second time.

This Bill contains minor amendments to the legislation which was enacted in 1991 to restructure the courts system and improve efficiencies in the courts. As is to be expected with major legislative change, experience will show that fine tuning of the legislation is required. The opportunity has been taken to include some other amendments which do not arise directly out of the operation of the 1991 legislation.

The first Act to be amended is the Criminal Law Consolidation Act 1935. Appeals in criminal matters from the District Court are provided for in Part XI of the Criminal Law Consolidation Act 1935. Appeals from the District Court are to the Full Court of the Supreme Court. Orders made on appeal are enforceable by the Supreme Court. Provision is made to give the District Court the authority to enforce any conviction or order made on appeal as if it had been made by the District Court.

These amendments are made to the District Court Act 1991. The first inserts a new section 14A providing for granting a judge leave without remuneration. A judge of the District Court who wishes to take leave without remuneration should, provided it is convenient for the court, be able to do so. The legislation as it is now prevents this. The District Court Act provides in section 14 that a judge of the Court is entitled to leave on the same basis as a judge of the Supreme Court. The Supreme Court Act 1935 is silent in relation to leave other than pre-retirement leave. The two Acts are silent in relation to leave generally. The effect is that a judge is entitled to be remunerated whether he or she is working or not. In fact, judicial leave is governed by administrative arrangements rather than by legal rules deriving from Acts or other legislative instruments.

The amendment goes on to provide that any leave taken under the section will not be taken to be judicial service within the meaning of the Judges' Pensions Act 1971. It is necessary to provide for this as a judge who takes unremunerated leave would continue to accrue pension entitlements as the judge would still be taken to be in judicial service within the meaning of the Judges' Pensions Act 1971. A similar amendment is made to the Supreme Court Act 1935 by inserting a new section 13A.

The second is to section 24. Section 24 requires orders for the transfer of proceedings between the Supreme Court and District Court to be made by a judge. The Chief Judge has requested an amendment to enable such orders to be made by a master also. Most interlocutory applications in each court are heard by masters. An application for change of venue may well be made in conjunction with some other interlocutory application and should be able to be disposed of at the same hearing.

The third amendment to the District Court Act is to section 43. Section 43 provides that appeals against decisions of District Court masters in interlocutory judgments go to a judge of the District Court. The Chief Judge has requested an amendment to provide that all appeals from masters are to a District Court judge. Most matters dealt with by the District Court masters are interlocutory matters, but they can give a judgment which finally disposes of an action in certain circumstances (e.g. where a party is in default or where an application is made for summary judgment because there is no merit in the defence filed).

At present, an appeal in respect of such a decision has to be taken to the Full Supreme Court. That is an unnecessarily expensive way of resolving the matter. All appeals against decisions of a District Court master should be to a judge of the District Court. A further right of appeal would lie to the Full Supreme Court if such an appeal were warranted.

Section 7 of the Enforcement of Judgments Act 1991 is amended to make it clear that the Sheriff can seize money and bank notes. Section 7 of the Enforcement of Judgments Act deals with warrants of sale and provides for the seizure and sale of personal and real property of the judgment debtor. An argument could be mounted that the section does not authorise the Sheriff to seize money or bank notes. The matter needs to be put beyond doubt.

Two amendments are made to the Magistrates Court Act 1991. First, section 40 subsection (1a), which provides that there are no appeals against interlocutory judgments given in summary proceedings, was wrongly inserted in section 40 and should be in section 42. The second amendment is also to section 42. Appeals in criminal matters from the Magistrates Court are instituted pursuant to section 42 of the Magistrates Court Act. Previously the appeal provisions were in Part VI of the Justices Act and included section 170(1) which provided that where any conviction or order was affirmed, amended or made upon any appeal, the justices from whose decision the appeal was brought, or any other justice, could enforce the conviction or order as if it had not been appealed against, or had been made in the first instance. There is no similar provision in the Magistrates Court Act and this has resulted in enforcement proceedings such as applications for estreatment of bonds imposed by the Supreme Court being brought in the Supreme Court for enforcement.

Several amendments are made to the Summary Procedure Act 1921. Section 5 of the Act classifies offences into summary offences and indictable offences. Section 5(6) provides that where an offence may be either summary or indictable according to the circumstances surrounding the offence the circumstances will be conclusively presumed to be such as to make the offence a summary offence. Some offences are summary or indictable depending on whether the offence is a first or subsequent offence. Sometimes the previous convictions of offenders are not discovered until the

offender is being sentenced. The court may then be faced with the dilemma that the offence is not a summary offence. This problem can be solved by providing that the antecedents of the offender will be conclusively proved to be such as to make the offence a summary offence in the same way as the circumstances surrounding the offence are conclusively proved to make the offence a summary offence. Section 5(7) is a similar provision in relation to minor indictable and major indictable offences and is amended in the same way.

Section 102(2) and (3) of the Summary Procedure Act 1921 provide that summary offences can be included in an information with indictable offences and that the summary offences are to be tried in the same manner as the indictable offences. If summary matters are committed for trial along with one or more indictable offences there is the possibility that the DPP may choose not to include them on his information (for any one of several reasons), they may be severed by the court or the accused may plead guilty to the indictable offences. In any of these instances, in the absence of a plea of guilty, the only way the summary offences can be disposed of is by trial in the superior courts. There is no machinery to remit them to be tried in the Magistrates Court. An amendment is made to allow the court to transfer the offences for trial as summary offences in the Magistrates Court.

It has long been the law that it is desirable, except in exceptional circumstances, that two or more persons charged with having committed a crime jointly should be tried together. The interests of justice demand that the court should have the whole of the picture presented to it. As the law is at present, where the offence is a minor indictable offence one accused may opt for trial in the Magistrates Court and the other may opt for trial by jury in the District Court. Section 122(3) of the Justices Act (now repealed) gave the Magistrate the power, in appropriate circumstances, to commit a defendant to trial notwithstanding that he or she had failed to elect to take that course. The provision was commonly used where two persons were jointly charged and only one elected for trial by jury and the court considered that the interests of justice demanded a joint trial.

Finally a new section is inserted in the Supreme Court Act 1935. Section 25 of the District Court Act and section 20 of the Magistrates Court Act authorise those courts to issue a warrant for the arrest of a witness who disobeys a subpoena. The Supreme Court judges have requested a similar provision be inserted in the Supreme Court Act and this has been done by inserting a new section 35. I seek leave to have the detailed explanation of clauses included in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

PART 1

PRELIMINARY

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

AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935

Clause 4: Amendment of s. 5—Interpretation

Clause 5: Amendment of s. 274—Interpretation

Clause 6: Amendment of s. 285c—Notice of certain evidence to be given

Clause 7: Amendment of s. 299a—Orders as to firearms and offensive weapons

Clause 8: Amendment of s. 348—Interpretation

Clause 9: Amendment of s. 352—Right of appeal in criminal cases

Clauses 4 to 9 do not effect any substantive changes to the principal Act but merely bring the terminology up to date by deleting all references to a District Criminal Court and, where necessary, substituting references to the District Court.

Clause 10: Insertion of s. 356A

Clause 10 inserts a new section 356A into the principal Act to allow the District Court to enforce convictions and orders affirmed, amended or made on appeal to the Full Court of the Supreme Court.

Clause 11: Amendment of s. 358—Judge's notes and report to be furnished on appeal

Clause 11 does not effect any substantive change to the principal Act but merely changes the obsolete reference to the District Criminal Court to a reference to the District Court.

Clause 12: Amendment of s. 368—Rules of court

Clause 12 does not effect any substantive changes to the principal Act but substitutes a new subsection (5) which refers to the District Court and uses language which is in line with modern drafting style.

PART 3

AMENDMENT OF DISTRICT COURT ACT 1991

Clause 13: Insertion of s. 14A

Clause 13 inserts a new section 14A into the principal Act allowing Judges of the District Court to apply for special leave without pay. Periods of leave under this section are to be granted by the Governor, on the recommendation of the Chief Judge. The new section also provides that any such period of unpaid leave is not 'judicial service' within the meaning of the Judges' Pensions Act 1971 and therefore will not count in the calculation of pension entitlements.

Clause 14: Amendment of s. 24—Transfer of proceedings between courts

Clause 14 amends section 24 of the principal Act by striking out the reference to a Judge of the Supreme Court and substituting a reference to the Supreme Court or a Judge or Master of the Supreme Court.

Clause 15: Amendment of s. 43—Right of appeal

Clause 15 amends section 43 of the principal Act by striking out the reference to an interlocutory judgment given by a Master and substituting a reference to a judgment given by a Master or the Court constituted of a Master.

PART 4

AMENDMENT OF ENFORCEMENT OF JUDGMENTS ACT 1991

Clause 16: Amendment of s. 7—Seizure and sale of property

Clause 16 amends section 7 of the principal Act by inserting a new subsection (7). New subsection (7) provides that where the sheriff seizes a bank note or money in pursuance of a warrant of sale the sheriff must, unless the bank note or money has a value greater than its face value, hand it over to the judgment creditor in full or partial satisfaction of the judgment.

PART 5

AMENDMENT OF MAGISTRATES COURT ACT 1991

Clause 17: Amendment of s. 40—Right of appeal

Clause 17 strikes out subsection (1a) from section 40 of the principal Act.

Clause 18: Amendment of s. 42—Appeals

Clause 18 inserts new subsections (1a) and (6) into section 42 of the principal Act. New subsection (1a) provides that an appeal does not lie to the Supreme Court against an interlocutory judgment given in summary proceedings.

New subsection (6) is an equivalent provision to proposed section 356A of the Criminal Law Consolidation Act 1935, providing for the Magistrates Court to enforce orders made on appeal.

PART 6

AMENDMENT OF SUMMARY PROCEDURE ACT 1921

Clause 19: Amendment of s. 5—Classification of offences

Clause 19 amends section 5 of the principal Act by substituting new subsections (6) and (7). New subsection (6) deals with offences which may be classified as either summary offences or minor indictable offences according to the circumstances surrounding the commission of the offence or to the antecedents of the defendant. New subsection (7) deals with offences which may be classified as either minor or major indictable offences according to the same considerations. Proposed new subsection (6) provides that where the complaint charging the offence designates it as a summary offence then both the circumstances and the defendant's antecedents will be conclusively presumed to be such as to make the offence a summary offence, and proposed new subsection (7) makes an equivalent

provision for offences which may be either minor or major indictable offences.

Clause 20: Amendment of s. 102—Joinder and separation of charges

Clause 20 inserts a new subsection (3a) into section 102 of the principal Act and makes a consequential amendment to subsection (3) of that section. New subsection (3a) gives a superior court power to remit summary offences which have been joined in an information with indictable offences to the Magistrates Court for trial.

Clause 21: Amendment of s. 103—Procedure in the Magistrates Court

Clause 21 amends section 103 of the principal Act by inserting a new subsection (4). New subsection (4) gives a Magistrate power to commit a defendant charged with a minor indictable offence to a superior court for trial, even though that defendant has failed to elect for trial in a superior court, where a co-defendant has elected for trial in a superior court.

PART 7

AMENDMENT OF SUPREME COURT ACT 1935

Clause 22: Insertion of s. 13B

Clause 22 inserts a new section 13B into the principal Act. The proposed new section is an equivalent provision to proposed section 14A of the District Court Act 1991, providing for the Governor, on the recommendation of the Chief Justice, to grant special leave without pay to judges of the Supreme Court.

Clause 23: Insertion of s. 35

Clause 23 inserts a new section 35 into the principal Act giving the Supreme Court powers to compel the attendance of witnesses and the production of evidentiary material equivalent to those given to the District Court under section 25 of the District Court Act 1991 and to the Magistrates Court under section 20 of the Magistrates Court Act 1991.

The Hon. ANNE LEVY secured the adjournment of the debate.

MOTOR VEHICLE INSPECTION

Adjourned debate on motion of Hon. Diana Laidlaw:

That the Environment, Resources and Development Committee be required to investigate and report on the issue of compulsory inspection of all motor vehicles at change of ownership.

(Continued from 24 March. Page 302.)

The Hon. BARBARA WIESE: I oppose this motion. I must say that I was rather surprised to learn from the contributions made to this debate by the Hon. Mr Elliott and the Hon. Mr Terry Roberts that this matter may have been introduced to the Legislative Council unnecessarily because, as they indicated, the Minister had already referred it to the Environment, Resources and Development Committee of her own volition, as she is entitled to do. However, I have heard since that it may have been a Clayton's reference to the committee because I understand that the Minister has since claimed that she has not really referred the matter, she has just provided background information for the committee in anticipation that the Legislative Council will refer it. If that is so, then this is a very cynical exercise indeed.

We have heard already the claims that the Government promised the Motor Trades Association to consider compulsory motor vehicle inspections in return for an election campaign donation. Although no-one opposite has claimed knowledge of it, we now seem to have the Minister responsible introducing the topic to Parliament for an investigation by a parliamentary committee with every likelihood that it will be rejected. Presumably then she will go to the Motor Trades Association and say, 'Sorry boys, I tried, but the Parliament does not agree with this proposition.' As I say, it is a very cynical exercise. If I were the Motor Trades Association and had made a donation to the Liberal Party on the basis of it, I would cancel my cheque.

That aside, at least some of us in the Parliament feel free to consider the issue of compulsory vehicle checks on its merits. Based on current available information, there appears to be no obvious reason to introduce them at this time. Consideration of the need for compulsory vehicle checks is not new. The first Australian system of roadworthiness inspections was introduced in New South Wales in 1946-47. I understand that the South Australian Automobile Chamber of Commerce, now known as the Motor Trades Association, began promoting the idea of annual re-registration inspections in South Australia as early as 1973. Those who advocate compulsory vehicle inspections usually do so on the grounds that there will be an improvement in road safety by improving the roadworthiness of vehicles. However, available information thus far does not support this.

The South Australian Office of Road Safety figures show that for the three years 1989 to 1991, brake failure and other vehicle faults apparently caused less than 1 per cent of fatal and casualty collisions. In other words, roadworthiness of vehicles appears to be a minor factor in vehicle accidents. In other States where compulsory inspections exist, it would appear they have had little impact from a road safety perspective. Currently compulsory annual inspections for re-registrations are required in New South Wales for all vehicles; in the Northern Territory for vehicles over three years old, and there is a somewhat complex scheme which also operates in the ACT dependent on the age of the vehicle, while Victorian and Queensland authorities require a roadworthiness inspection at change of ownership.

I should say that none of these schemes has been comprehensively evaluated to determine the benefits in a road safety context. However, there have been some studies undertaken which provide some interesting results. For example, a survey undertaken by the NRMA last year indicates that despite annual vehicle inspections the majority of vehicles had tyre faults that would reduce their performance. The survey of over 3 000 tyres on cars in Sydney, Newcastle and Wollongong found that only 17 per cent were at the correct pressure and had no other faults, two thirds of the tyres checked were at the incorrect pressure, whilst 27 per cent showed evidence of uneven wear. One fifth of the tyres inspected had at least one problem with the tyre wall, for example, cuts, cracks, bubbles and scuffs, and 11 per cent of the tyres showed evidence of tread damage.

From this we can see that, despite compulsory vehicle inspections, many problems affecting the roadworthiness of vehicles remain undetected or at least appear between inspections and are not attended to. Furthermore, a State comparison of the number of fatalities per 100 million vehicle kilometres indicates that the fatality rate in New South Wales is not significantly better than in other States. In fact in 1992 the New South Wales fatality rate of 1.5 was higher than the South Australian and Australian average, which were both 1.3. My understanding of the Motor Trades Association position has been that it advocates compulsory inspections for two reasons: first, to improve road safety, and secondly, to address the problem of backyard or illegal car dealers.

However, recently on the Barry Ion show on radio station 5AA, Mr Flashman, the Executive Director of the association said the following:

The circumstance quite simply is the MTA does not believe that there is going to be an enormous road safety result from this.

He was referring there to compulsory inspections. It continues:

I have to make that quite clear because the opponents of the concept continually bring that skeleton out of the cupboard and try and claim that it has no effect whatsoever. What we are saying is that we know from computer checks that we are doing that there are hundreds of people posing as private individuals selling cars through classified ads who are in fact illegal dealers.

He goes on to say:

These people provide no consumer protection whatsoever to car buyers and in many cases they are selling cars that have been made from a number of rebuilt wrecks and the things are being rebuilt. There has been no checks on them to see whether they are roadworthy, safe or even the proper repair method being carried out.

So, it would appear from these comments made by Mr Flashman that the association now no longer believes, if ever it did, that there are significant road safety advantages in having compulsory vehicle checks. It is saying that consumers will get a safer vehicle if they purchase from a registered dealer rather than an illegal operator. However, evidence from Victoria would suggest that compulsory checks there have not been effective in stamping out the so-called backyard dealers.

Recently, the Victorian Automobile Chamber of Commerce released results from a survey indicating that 74 per cent of cars privately purchased had some mechanical fault. It then used that information to encourage people to purchase cars only from licensed dealers claiming, 'consumers are being ripped off by unlicensed dealers'. In other words, the $45 or $50 fee that currently applies in Victoria—an impost put upon Victorian motorists for vehicle inspections—is not having the desired effect or the effect advocated by the South Australian Motor Trades Association. The question of what to do about unlicensed dealers is a separate issue, and I understand that the MTA is already addressing it in other ways.

A third reason, which is sometimes put forward to justify the need for compulsory vehicle inspections, is that they will assist in detecting stolen vehicles. The Minister, in her second reading speech, talked about this and pointed out that in this State vehicles considered to be in vehicle theft high risk categories are already subjected to identity inspections. The Minister indicated that there was a low recovery rate of stolen vehicles in this State, which had prompted the Vehicle Theft Reduction Committee to investigate the issue. The Minister said:

The committee has recommended that compulsory vehicle identity inspections at first registration and at change of ownership would be of significant benefit and would provide positive benefits to the community as an anti-theft measure.

I was surprised to hear that that committee had made such a recommendation since, for many years, the advice provided to Government by the Road Transport Agency and others has been that compulsory inspections cannot be justified on a cost benefit analysis.

On 10 March I therefore placed on notice a question requesting that the advice from the Vehicle Theft Reduction Committee and the Road Transport Agency be tabled. Thus far that question has not been answered, but I have ascertained that the Vehicle Theft Reduction Committee, although having discussed this issue, has not in fact made a recommendation on it, the reason being that, if formal consideration were to be given to this question of the introduction of compulsory vehicle inspections as an anti-theft measure, the committee would in fact be split on the issue. The Minister clearly seems not to be convinced either, which adds to my view that the raising of this issue has been a cynical exercise on the Government's part, since she pointed out in her own speech that on the question of cost benefit analysis it has been calculated that in New South Wales the annual inspection scheme costs double the assessed community savings it is supposed to bring.

The Hon. Diana Laidlaw interjecting:

The Hon. BARBARA WIESE: It seems that the only people to benefit have been the 6 500 authorised inspection stations, which may explain why the Motor Trades Association has been such a long time advocate of the system. A report prepared by Heyworth and McLean in 1986 for the South Australian Road Safety Division, as it then was, concluded that such an inspection scheme could not be justified for this State on cost effective grounds and, as far as I know, there has been no new information since that time that would suggest otherwise.

As the Minister has noted, the RAA opposes its introduction. It has certainly been very vocal in its opposition and has provided a great deal of information on the issue from interstate practice and performance. To sum up the Opposition's position on this matter, I can say that we can see no good reason to proceed with this issue. If the Government wants to do so then it must take responsibility itself for pursuing the matter and provide justification to the South Australian public and be judged on that. The Opposition opposes the motion.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

SUPPLY BILL

Adjourned debate on second reading.

(Continued from 9 March. Page 200.)

The Hon. C.J. SUMNER (Leader of the Opposition): I wish to deal with three issues in this debate on the Supply Bill. The first concerns the reduction in accountability, which is implicit in the new procedures now being introduced by the Government to deal with Supply matters. That is a significant reduction in the opportunity for Parliament to ensure the accountability of Government to the Parliament and the people for the expenditure of funds appropriated to it. I would hope that all members in this Chamber would be interested in this topic.

The Liberal Party in Opposition made much of accountability, and one hears from time to time, even now in this debate, how much more accountable the Liberal Government will be than the Labor Government was. One hears Liberal spokespeople talk about the supposed lack of accountability under the previous Government, despite the fact that a completely revamped committee system, for instance, was established by the former Government. However, when it comes to actually doing something about the situation, what does the Liberal Government do? It introduces this Bill and it is clear from the terms of the Bill that this will be the only Supply Bill introduced during the course of a parliamentary year.

Members know that supply Bills have generally been introduced in February or March, which would allow Supply until July and August, that is, for the beginning of the new financial year and then a second Bill, Supply Bill (No. 2), would be introduced in early August of the next session, and that would provide Supply right through until November when the main Appropriation Bill was passed. What the Parliament does not seem to realise now is that this year, for

the first time, this Supply Bill was introduced in February, which will provide sufficient appropriation through until November.

There is now no need for a Supply Bill (No. 2). Of course, Supply merely gives spending authority of a certain number of millions—it runs into billions in this Bill. It is the authority for the Government to spend in the next financial year; to expend at no greater than the appropriation limits provided in the previous budget. That has been the practice in this State, certainly for as long as I have been in Parliament. The proposition to have only one Supply Bill was put up to the previous Government and rejected by us. However, this Government has now decided to reduce parliamentary accountability for the expenditure of funds by having only one Supply Bill.

Supply Bills provide the opportunity for the debate we are having now; they provide the opportunity for scrutiny of Government spending and, of course, in the House of Assembly, in particular, they provide the opportunity for what is called a grievance debate, where members can talk at large on issues. That traditionally in this Parliament has occurred on two occasions during the year. From here on it will only occur on one occasion.

In my view, that represents a significant reduction in the accountability of the Government to Parliament, and in Committee I shall certainly be pursuing questions with the responsible Minister as to why the Government has agreed to that reduction in accountability.

The next issue is the forthcoming commission of audit. The Audit Commission report will be released next week. Much of what it will say is already known. The danger is that the Government will try to turn complex financial issues into simple cliches. Before debate on the commission of audit is overtaken by the inevitable rhetoric that will emanate from the Government in particular, I should like to explode some of the myths before they are propagated and outline the position of the State's finances under the Labor Government and the work that had already been put in train to deal with the State's financial situation.

The Government's tactic in this respect is clear. In Victoria and Western Australia the Audit Commissions were established following the election of Liberal Governments. Then they were used as a pretext by those Governments to assert that things were much worse than anticipated, and this in turn was used as an excuse to enable those Governments to break their pre-election commitments. I believe that the Parliament and the public need to know that that will not work in the South Australian context. Twice bitten, thrice shy!

No matter what the Audit Commission says, the Government in Opposition knew what the situation relating to the State's finances was before it came into government. It had a clear statement of information about the State's finances in the 1993-94 budget. The election campaign itself concentrated to a significant extent on State debt and, therefore, State finances. At that time, the Government, and in particular the Premier, Mr Arnold, pointed out that lowering or maintaining tax rates, increasing services and lowering debt, which was the promise from the Liberal Party, would not work. In that respect, there is little doubt that the Audit Commission will justify the position taken by the Labor Government in the election campaign.

What are the key myths that this new Liberal Government will try to purvey to the South Australian public? The myths are that Government finances did not disclose the full story; that the South Australian public sector is large and inefficient; that State debt is out of control; that South Australia is a high taxing State; and that debt can be reduced by a further $1 billion without increasing taxes or cutting services. None of those assertions is true.

The first myth that will be propagated by the Liberal Government is that Government finances do not disclose the full story. It will suit the Government's purpose to pretend that vital information about the State's finances was unavailable or deliberately concealed. It may even try the old cliche, 'Things are much worse than we first thought.' However, it is widely acknowledged that South Australia's budget papers were one of the most full and complete in Australia. There is a wealth of independent statistics and comment to support this view. I will quote just one person who has been critical of the Labor Government from time to time. Professor Graham Scott, in the *Australian Financial Review* of 9 March 1994, said:

> An Audit Commission was established only days after the election to examine what is probably the best kept set of books in the country.

That is an economist, Professor Graham Scott of Flinders University, describing the books kept by the Labor Government as the 'best kept set of books in the country'.

The reality is that over recent years at least, and in the last decade, there have been substantial improvements in reporting on the State's finances. Under Labor the South Australian Government published the first balance sheet of the State's assets and liabilities. It instructed all departments to establish asset registers; it commenced work on improving the valuation of all assets; it participated in developing national uniform guidelines for the valuation of the assets of Government trading enterprises; it improved the accounting of departments to ensure that financial reports covered all the activities of the reporting entity; it commenced the implementation of accrual accounting in the public sector and signed in May 1991 a national agreement which ensured that complete and comparable figures on Government debt and finances were included in the State's budget papers, and figures conforming to these standards were included in the 1993-94 budget.

There will always be room for improvement in Government accounts. For instance, the Opposition acknowledges that more work should be done on recording the level of the State's contingent liabilities and looks forward to the recommendations of the commission of audit in that regard.

However, we should beware of a Government that will try to claim that the previous Government concealed debt and other problems and shrouded the State's finances in secrecy. That is simply untrue. This claim will be the excuse, however, on which the Government will break its election promises. We should remember those promises: no new taxes or increase in rates; no further cuts to work force numbers; and reduction of debt by a further $1 billion.

In addition, increases of expenditure in some areas were promised before the election. In education there is a specific commitment to increase funding in the 1994-95 budget and to provide $240 million over the next three years for the development and maintenance of our schools.

In addition, prior to the election the Liberal Party made specific commitments on increases in funding for the police. Today, in this place, the Minister for Transport also reaffirmed the Liberal Party's commitment prior to the election to upgrade transport, that is, increased funding for transport. So, we have no new taxes or increases in rates—beyond the

CPI, that is—no further cuts in work force numbers; reduction of debt by a further $1 billion; and significant increases in recurrent expenditure in the areas of education, police and transport. That simply does not add up, and it will be seen not to add up when the Audit Commission reports.

Two years ago South Australia was in a debt trap, where a growing proportion of the State's revenue had to be spent on interest costs to service the debt, and the debt was threatening to increase exponentially. That is not the situation today. The Government will not be able to claim that debt is out of control. In fact, it is interesting to note, and should be placed on the record, that the South Australian public sector net indebtedness in 1982-83—the year that the Labor Government was elected—was 23 per cent of gross State product. By 1989-90 that had been reduced to 15.2 per cent of gross State product, which in 1990-91 went back up to 23.4 per cent of gross State product because of the bail-out of the State Bank.

The Hon. R.I. Lucas: Are you saying that we do not have to reduce the debt?

The Hon. C.J. SUMNER: No. In just a minute you will get on to what I am saying. From 1982-83 to 1989-90 there was a reduction from 23 per cent to 15.2 per cent in public sector net indebtedness to gross State product. We all know, of course, that that then increased to 23.4 per cent in 1991 because of the State Bank, and as a result South Australia was running into a debt trap.

It is also true that, if corrective action had not been taken, the level of real debt would have increased to close to $9 billion by June 1996, or around 27.5 per cent of gross State product. That clearly was unacceptable and that is why the former Government took action to deal with the debt problem. Following the Government's Meeting the Challenge statement in April last year and the 1993-94 budget, debt is forecast to decline to $7.577 billion in real terms by June 1996, that is, back to 21.9 per cent of gross State product.

The last estimates released by the former Government show that State debt, as at 30 June 1993, was $7.869 billion or 22.8 per cent of gross State product. If we look at the State's debt servicing ratio we see the extent of the progress made. Debt servicing ratios measure the proportion of net income that the State has to put aside for interest payments on debt. The latest ABS statistics show that South Australia's net interest paid as a proportion of revenue and grants will decline from 17.2 per cent in 1991-92 to an estimated 13.5 per cent in 1993-94. This will be the third lowest net interest to revenue ratio of all the States after Queensland and New South Wales.

It is quite clear from these figures that the former Government took decisive steps to reduce debt to more sustainable levels. The budget strategy implemented by the Labor Government, if adhered to, will see a reduction of net State budget outlays by 1 per cent in real terms in each of the next three years; the elimination of the recurrent deficit on the budget by 1995-96; real reduction in the State's net debt; and reduction in net State debt as a proportion of gross State product.

In a nutshell, South Australia's debt is now under control. More work can always be done to reduce debt further, but this would be at the expense of services and employment. The new Government will not be able to substantially reduce debt without reducing the number of teachers or expenditure on health and law and order. We have to understand that the Government's promise in the area of debt reduction is to take debt $1 billion below the Labor target, that is, to $6.577 billion by the end of 1997. The Liberal Government's target is an extra $1 billion—a slightly longer time of some 18 months is allowed—or $6.577 billion by the end of 1997. The reality is that—

An honourable member: You caused the debt.

The Hon. C.J. SUMNER: I have already dealt with that, Mr President. At the time of the election campaign this issue was clearly debated. The Liberal Party's debt reduction strategy, as I have said, is a target of $1 billion less than that which was outlined by Labor in its last budget; the Liberal Government has to find $1 billion less if it is to meet its target. It was the subject of debate—

The Hon. R.I. Lucas: Do you want us to?

The Hon. C.J. SUMNER: No, I do not want you to meet that commitment if it means a reduction in employment, in services and in the number of teachers and the like, because—and it is quite clearly on the record—our debt reduction strategy was there, as I have outlined, but it did not involve a wasteland approach to the Public Service which will be necessary if the Liberal Government wants to meet its $6.57 billion debt target by the end of 1997.

This issue of debt and State finances was fully debated during the election campaign. The Liberal Government now cannot claim that it did not know: the fact is that it did; it was debated fully; the Liberal Party put out its targets; and the Government of the time, through the Hon. Mr Arnold, responded. He said there were only three ways in which Mr Brown could remedy the shortfall: increase taxes, cut spending on essential Government services and undertake undisclosed asset sales of vital public holdings such as ETSA. Mr Arnold said:

> The Government's analysis leads inescapably to the conclusion that the only thing the Opposition's debt plan does add up to is pain—pain that will be inflicted on South Australia through cuts in important services that will be necessary for the Opposition to meet its unrealistic debt target.

So the Government—

Members interjecting:

The Hon. C.J. SUMNER: The Government has been elected and it is entitled to govern; I am not arguing about that. All I am telling Government members—and they will have to admit it some day, so I would not worry about the interjections at this stage—is that it just does not add up. The Government cannot reduce debt by $1 billion while, at the same time, maintaining and increasing services, as the Government committed itself to do prior to the last election, and at the same time not increase taxes, maintaining taxes as they are, or reducing taxes. It does not work. It will not add up. I can tell members of the Government now. They can come and see me after my retirement, or whenever they like, and discuss it with me, but what will be eminently clear to everyone is that what I am saying today is absolutely correct. It does not add up; it cannot add up; the Audit Commission will not make it add up; and the Liberal Party knew that before the last election, because of the budget that Labor brought down last year and because this was one of the key issues that was debated in the election campaign.

I move to another of the myths that will be attempted to be perpetrated, and that involves the area of taxation. The Government, when in Opposition, continually claimed that South Australia was a high-tax State. Any independent analysis shows that South Australia is about the middle of the range as a taxing State in terms of its tax burden. Latest ABS figures show that South Australians still pay about $350 less each year in State taxes than people living in New South

Wales and almost 13 per cent less than the national average. Grants Commission figures show that South Australians had the second lowest severity of taxes in Australia in 1991-92. South Australia's taxation effort was comparable with that of Western Australia and the two Territories at 1 per cent above average, but well below Victoria and New South Wales, which were 4 per cent above average and Tasmania, which was 11 per cent above average.

Despite increases in some tax rates in recent times in South Australia, its taxes, whether on a per capita or on a proportion of gross State product basis, are still in the middle of the range, depending on which view you take—towards the higher end of the range on proportion of gross State product or I think No. 4 on the latest figures on a per capita basis. So, that myth needs to be laid to rest before the Audit Commission reports on it.

I turn now to services. The Audit Commission has been asked to compare South Australia's public sector with that in other States. The commission undoubtedly will be recommending substantial cuts to the size of the Government. It will recommend reducing public sector expenditure as a proportion of gross State product to levels similar to or below those in other States.

Members interjecting:

The Hon. C.J. SUMNER: Because I know what it is going to recommend. It will recommend reducing public sector expenditure in this State as a proportion of gross State product to levels similar to or below those in other States. That is what it will do. Members of the Government can come and tell me if I am wrong after the report is presented, but that is what they will find. Statistics show that South Australia's public sector expenditure, as a proportion of gross State product, is around 20 per cent, excluding the interest costs of the State Bank compared to a level of around 17 per cent for the national average.

The level of public sector expenditure in South Australia is due to two key factors: the higher cost of providing services in South Australia, which is common to other smaller States because of lower economies of scale and other geographic and demographic reasons and which is taken into account by the Grants Commission in its policies of equalisation around Australia.

The second factor involved is the higher level of services in South Australia. We provide a higher level of public services in this State in a number of areas, and that is documented, too. Grants Commission figures show that about 50 per cent of the additional public sector spending in South Australia is due to the additional cost of providing services in South Australia. This increased expenditure is not a concern in itself because the Grants Commission, as I said, compensates the State for such cost disadvantages arising from geographic or demographic factors.

However, Grants Commission figures also show that the remaining 50 per cent of extra public sector expenditure in South Australia results from a conscious policy decision by the Government to have better services in the State. For instance, Grants Commission figures show that South Australia spends $130 per head more on social and community services than the standard level of service. South Australia has the most police per capita in Australia: one police officer for each 400 people, compared with one police officer for each 480 people in Queensland and one police officer for each 450 people nationally. Of course, when the Liberal Party's commitments on this are met, that proportion will improve even more.

The State also spends $50 per person above the standard level on education and in the area of health it also has to some extent expenditure levels higher than the national standard. All this means is that, if the Government is to reduce public sector expenditure levels to levels similar to the national average, it will be left with no choice but to cut expenditure in areas such as health and education, which account for almost half the State budget.

One cannot reduce public sector expenditure in South Australia and achieve reductions in recurrent expenditure and debt unless one touches those areas. It is interesting to note in that regard that the Government will try to claim that it will achieve savings through better management.

The Hon. J.F. Stefani interjecting:

The Hon. C.J. SUMNER: I am sorry, but the Hon. Mr Stefani is not going to get from better management the billion dollars worth of savings that the Government needs. I am quite happy to tell you here today: that will not happen. If the honourable member and the Liberal Party think they can do that, then they are grossly deluding themselves, just as they deceived the people of South Australia prior to the last election.

Importantly, the same better management approach to resolving all the problems was talked about in Victoria and New South Wales, but we know what better management meant in New South Wales and Victoria, and that is how it will be translated and interpreted here—it has to be—unless the Government changes its policy from that advanced prior to the election. Better management there meant increased taxes and fewer jobs. They are both areas involved with commitments that the Liberal Party gave prior to the election, namely, that there would be no increased taxes and no cut beyond that planned by Labor to public sector employment.

That is the fact of the matter. The reality is that while efficiency gains can and will be made in the public sector, as has occurred over recent years, there will come a time when the Government will have to face the hard decisions and decide whether it wants to reduce debt by a further $1 billion as promised, whether it wants to maintain service levels or whether it wants to ensure that South Australia remains a relatively low taxing State. The Government cannot have it all ways. It cannot honour all those three promises. One or more promises must be broken.

As to whether the Liberal Party knew that this was the situation before the election, I point out that the figures relating to South Australia's public sector and areas such as education, law and order and social and community services, which were above the standard, were no secret. They were known. They were in the Grants Commission reports to which the Opposition had access, but more particularly they were in the Ernst and Young consultancy prepared as part of the A. D. Little exercise on the public sector's role in economic development. All those factors were there and so we know what Ernst and Young said about the public sector in South Australia. They said we were spending in those areas more than the Grants Commission standard. They said that those public sector expenditures should come down. Will they change their mind because they are now reporting for a Liberal Government as part of a consultancy for the Audit Commission on the Education Department? Of course they will not.

Unless they change their mind, they will recommend reductions in expenditure and the Liberal Party knows that now, which is why the Hon. Mr Lucas will not give any commitments on education expenditure in the future. I note

that the Hon. Ms Laidlaw is happy to give them, but she obviously is a slow learner. But the Hon. Mr Lucas refuses to give commitments in this Council about expenditure commitments on education made prior to the election, because he knows it will not happen and will not work: he knows it does not add up. He also knows, and the Liberals knew before the election, that it did not add up, but it did not stop them making commitments.

I turn now to privatisation. The Audit Commission will advocate increased private sector involvement in the delivery of services, as well as privatisation of some State assets. The Liberal Government has already stated that it plans to reduce debt by a further $1 billion over Labor's target based solely on the sale and privatisation of Government assets. Again, I doubt very much whether that will work either, but it plans to sell the Pipelines Authority of South Australia, SGIC, the Adelaide Entertainment Centre and the Central Linen Service, $260 million of land and property, Enterprise Investments and the Urban Land Trust.

The Government is of the view that privatisation will be the panacea to reduce debt. It is choosing to swap a future income stream for a one off cash gain. This will mean a short-term gain, but in the long term it may result in a loss of future income to the State. There will be occasions—

The Hon. J.F. Stefani interjecting:

The Hon. C.J. SUMNER: Just a minute—when the benefits of privatisation do outweigh the financial and economic cost. For instance, proceeding with the sale of the State Bank was a net benefit to the State, but largely because of the $647 million tax compensation and other subsidy provided by the Commonwealth to the State to facilitate that sale. But that sort of compensation is not available for the privatisation of other entities. That situation is not the case for PASA and other assets that the Government wishes to sell. The sale of PASA, for instance, would net between $70 million and $120 million, less than the revenue stream from PASA is worth to the State. This should come as no surprise. The Government, when in Opposition, wanted to float SAGASCO rather than have a trade sale and this would have lost the State $72 million. Now the Government wants to float the State Bank, rather than have a trade sale. Based on advice which was available previously and which is available to the Government from Baring Bros, this could lose the State a further $500 million.

This is an issue with which the Government will have to wrestle when the Audit Commission comes down but, in my view, the Brown Government will gladly pursue privatisation for ideological reasons, regardless of the financial, economic or social cost. The fact is that in some cases privatisation is a benefit to the State. In some cases, because of the income stream lost, it is simply not a benefit to the State.

I now turn to contracting out. The Audit Commission will no doubt cite contracting out as a means of saving money in the public sector. Experience in the United States and the United Kingdom shows that the estimates of cost savings from contracting out are often exaggerated. Case studies in the United States have revealed that contracting out can in the longer term lead to higher costs, poorer quality services and lack of accountability. However, that matter will have to be dealt with by the Government.

Before concluding, I would like to add some further remarks on the actions taken by the previous Labor Government in this and related areas of economic development. Undoubtedly, the new Liberal Government will try to paint a picture that it is responsible for economic recovery in South Australia and that nothing was done by Labor in the area of economic development and State finances. The fact is that the stabilisation of the State's finances was well advanced under Labor, as I have described, through the last budget and through the Meeting the Challenge package. During the past year or two of that Government the Economic Development Board and the Economic Development Authority was established.

In April last year the then Premier, Mr Arnold, released his major economic blueprint, Meeting the Challenge, which contained a package of policies to generate jobs, reduce debt and develop economic stability without cutting community services. In brief, the plan announced at that time included: a three year cycle to reduce State debt; help to industry through a cut in financial institutions duty to .065 per cent; a boost to tourism and associated industries through a 2 per cent cut in the tax on alcohol; two new export incentive programs; enterprise zones at Whyalla and MFP sites offering 10 year tax breaks; a further $40 million of economic development investment following $40 million announced in 1992; asset sales of $2 billion including the State Bank and the Government's holding in SAGASCO; and the most far-reaching reforms in the public sector in South Australia's history which were linked to 3 000 job reductions.

The 1993-94 State budget included detailed programs to reduce State debt while preserving essential services and giving further emphasis for the Government's continuing social justice agenda. The Labor Government also initiated the most far-reaching reform and restructuring of the public sector in decades. In fact, I had the privilege to be appointed Minister of Public Sector Reform, and what was done in the 12 months or so that I was Minister did see the beginnings of a significant change to the structure of the public sector. Regrettably, a number of those reforms, which would also have produced savings in the public sector, were reversed by the Government when it came to power and indeed, as far I can make out, it has no structure in place to deal with public sector reform. Certainly, the Office of Public Sector Reform, which was established under the Arnold Government, is no more. There is no Minister for public sector reform and perhaps it has been incorporated somewhere else in Government programs, but certainly it does not have the same high profile and commitment that was given to it by the Arnold Government. To conclude on this topic, the Liberal Government has inherited a moderate level of State debt with a debt reduction strategy which will see the recurrent deficit eliminated by 1995-96.

Members interjecting:

The Hon. C.J. SUMNER: The reality is that it is a moderate level of State debt. It is the same level of State debt as a proportion of gross State product as the Labor Government inherited in 1982-83 from the Tonkin Government.

The Hon. J.F. Stefani interjecting:

The Hon. C.J. SUMNER: Do you want to have a look at it? Here it is. It is in the budget papers. It just confirms the figures I mentioned before. At the request of the Hon. Mr Stefani I seek leave to have inserted in *Hansard* a table of a statistical nature entitled 'South Australian public sector net indebtedness 1949-50 to 1992-93'.

Members interjecting:

The Hon. C.J. SUMNER: It is all there; I have already described it in my speech.

Leave granted.

Table 7.4
South Australian Public Sector Net Indebtedness 1949-50 to 1992-93

	Nominal Prices	Real Terms (a)	Per Capita (b) (Real Terms)	Percentage of GSP (c)
	$m	$m	$	%
1949-1950	284	4 431	6 246	61.2
1959-1960	752	6 581	6 962	56.9
1969-1970	1 473	9 370	8 091	49.6
1979-1980	2 242	5 043	3 855	23.7
1980-1981	2 397	4 903	3 718	22.8
1981-1982	2 600	4 725	3 550	22.6
1982-1983	2 943	4 935	3 667	23.0
1983-1984	3 283	5 135	3 776	21.3
1984-1985	3 425	5 074	3 701	19.7
1985-1986	3 700	5 121	3 704	19.0
1986-1987	4 038	5 187	3 725	19.5
1987-1988	4 000	4 806	3 421	17.5
1988-1989	4 165	4 616	3 254	16.1
1989-1990	4 303	4 518	3 155	15.2
1990-1991 (d)	6 773	6 934	4 794	23.4
1991-1992	7 373	7 456	5 119	25.0
1992-1993 (e)	7 869	7 869	5 375	25.7
1993-1994 Est	8 110	7 860	5 340	25.1

(a) Real terms adjustment based on the Non-farm Gross Domestic Product deflator rebased such that June 1993 = 100
Source: Australian Bureau of Statistics (Cat. No. 5206.0 and 5204.0).

(b) Population figures as at June each year.
Source: Australian Bureau of Statistics (Cat. No. 3101.0 and Treasury estimates.

(c) Gross State Product at Market Prices.
Source: Australian Bureau of Statistics (Cat. No. 5242.0 and Treasury estimates.

(d) Adjusted for a significant post balance day event in particular, a further payment of $1.7 billion in August 1991 to State Bank under the Government's indemnity arrangement with the Bank.

(e) At the time of preparation of this table, all the accounts of State Semi-Government authorities had not been finalised accordingly some estimates have been used.

The Hon. C.J. SUMNER: In fact, it could have been exceptionally good—

An honourable member: But for the State Bank.

The Hon. C.J. SUMNER: But for the State Bank, absolutely dead right; I am making no apology for that.

Members interjecting:

The Hon. C.J. SUMNER: I said before, you couldn't have been listening: in 1982-83 it was 23 per cent of gross State product; by 1989-90 it was down to 15.2 per cent of gross State product and then went back up to 23.4 per cent in 1991 as a result of the State Bank. It is the same proportional level of debt as the Labor Government inherited in 1982-83. So, I repeat: a moderate level of state debt with a debt reduction strategy in place which will see also the recurrent deficit eliminated by 1995-96; an economy growing at about 3 per cent; a public sector which has been substantially restructured and is in the process of significantly increasing efficiencies and service; an economy with taxation levels below or at least around the national average; and service levels above the national average.

The Audit Commission will draft the map of South Australia's finances but it will be up to the Government to plot the course. The Government will try to blame the former Government for having to break its election promises and for cutting services. That stunt is employed by almost every incoming Government. The time has come for the Government to stop blaming everything on the former Government and start taking responsibility for some of the tough decisions. The Audit Commission report, although dealing with complex financial issues, has a very human face. The common thread of conservative governments, however, is that people and families will be left out of the equation and will be the victims of the Government's financial goals.

The Audit Commission will confirm what Labor said before the election about the Liberal's election promises. They simply do not add up, they cannot all be kept, and something has to go. The Audit Commission will undoubtedly confirm that. What will also be clear is that the Liberal Party knew that that was the situation prior to the last election and chose not to reveal it to the public. The fact is that the budget papers for 1993-94 outlined the State Government's financial position: according to Professor Scott, we had one of the best kept set of books in the country.

As part of the A.D. Little report on the public sector the Ernst and Young consultancy clearly outlined the facts and figures that I have mentioned to the Council today and finally, although the critics after the election have said it was not a very smart move by Labor to raise issues of debt during the campaign, and perhaps it was not smart electorally, the fact is that debt became an issue in the campaign, and the Liberal Party can have no excuse for saying it did not know before the election. It was told before the election in no uncertain terms that its strategy of reducing debt by $1 billion, maintaining and increasing services and not increasing taxes would not work. And it will not work. However, it made those commitments and it knew, or certainly should have known, that it could not keep those commitments and it will not keep them.

However, because of the transparency of the situation prior to the election and the knowledge that the Liberal Party had, the Parliament and the public ought not to allow the Audit Commission to get it off the hook. It cannot be got off the hook by this Audit Commission: it will confirm what the Labor Party said and it will clearly tell the public of South Australia that what the Liberals promised prior to the last election cannot be achieved. Something has to go. If the debt targets that were established by the Liberal Party are continued and it adheres to those debt targets, the fact is that it will create a wasteland in the public sector, something which the Labor Government was not prepared to do, which is why it had a more gradual approach to the reduction of debt—still a debt reduction strategy—than the Liberal Party's and why we had the same approach to reduction in the recurrent deficit.

The final issue I wish to deal with is to foreshadow some questions I will be pursuing in the Committee stage. The first relates to Public Service changes that have occurred, and in particular, the policy of the Government with respect to the structure of ministerial offices, the new approach to the appointment of political appointees to Public Service positions and having public servants report to those political appointees, the new so called Chiefs of Staff system (which is certainly a new concept in South Australia) and which I believe needs to be explored through this debate, and undoubtedly will be explored further.

The second issue I wish to deal with in the Committee stage is the question of what is the situation now with the 1993-94 budget. Members will know that the Liberal Party made a number of election commitments prior to the election. It has since re-announced a good number of them, and a number of these add to the 1993-94 budget. What I want to know from the responsible Ministers is: what are the items which the Liberal Government has agreed to, over and above those included in Labor's budget and which have been added and therefore added to the expenditure of the budget in 1993-94.

I have noted a number of things but the Government will have to explain where it is with these. There were a number of election policy spending commitments that have been confirmed by the Brown Government since the election: the Lake Eyre Basin, $1 million in the first two years; Patawalonga clean-up, $4 million for a permanent solution to pollution; $6 million annually to reduce waiting lists—announced in the House of Assembly (*Hansard* page 129, 17 February). It announced a jobs package of $28 million on 6 January (*Hansard* page 11, 10 February); $750 000 support for a tourism centre for McLaren Vale (House of Assembly *Hansard* page 23, 15 February); and the third arterial road, $80 million over four years, confirmed by the Premier in the House of Assembly (*Hansard* page 423, 22 March).

Other additional spending includes the Deregulation Unit, $150 000—which is an increase in funds from $250 000 to $400 000 (announced in the *Advertiser* on 14 February 1994), Public Service payouts totalling $1.179 million to retrenched chief executive officers (House of Assembly *Hansard*, 8 March, page 287); and salary increases to new Public Service CEO's, $86 000—that is the infamous payments to the new under Treasurer, Mr Boxall, and to the new head of the Premier's Department, Mr Schilling, who were not prepared to work for the rates paid under the Labor Government. Mr Schilling, as everyone knows, wanted some $65 000 more than the base rate for the Premier's Department. There is a further $200 000 plus for two extra committees of the Parliament; $2.5 million for the first stage of Parliament House refurbishment; $700 000 for the Hindmarsh Island bridge, relating to the inquiry and payment to the contractor for the delays in the construction of the bridge. There was also an announcement for $2.5 million for infrastructure for the Wilpena Pound.

The Government has made a number of other financial commitments since the election, expenditure commitments over and above the budget agreed to by the Labor Government. That is just my rough list that we have been able to ascertain from *Hansard* and the *Advertiser*. I know that Treasury is able to produce to the Government within hours in fact a comprehensive list of expenditure commitments over and above the budget. Providing the list will not be a problem for the Leader of the Government in the Council or the person representing the Treasurer in this Council, because I know it is available. You can always ask the Treasury, 'Do you have a list of the commitments we have made over and above the budget, and can you provide them?'

The Hon. K.T. Griffin: Did you have Treasury prepare them when you were in office?

The Hon. C.J. SUMNER: From time to time.

The Hon. J.F. Stefani: Would you have made them available to us if we had asked for them?

The Hon. C.J. SUMNER: If you had asked it would have been made available. The Treasury would not be doing its job if it did not know. It may be that some of these commitments are not in this financial year; some may be in a subsequent financial year. Nevertheless, these commitments have been made. I want them identified, as to where there are additions to this year's budget or what the financial implications are down the track and in which budgets those commitments will be made.

The Hon. G. WEATHERILL secured the adjournment of the debate.

CONSTITUTION (MEMBERS OF PARLIAMENT DISQUALIFICATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 April. Page 430.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contributions on this Bill which is a Bill of importance not only for the Parliament but for the community. There are just a few matters that the Hon. Mr Sumner raised during the course of his debate to which I will reply. He indicated that he considers that persons to be qualified for election to Parliament should be Australian citizens, and I do not have any violent disagreement with that at all. The concern of the Government was to ensure that those who presently have some rights do not have those rights removed, but in the course of the Committee stage of the consideration of the Bill, we will address the amendment that the Hon. Mr Sumner has proposed.

At present, British subjects, although not Australian citizens, who have been on the electoral role prior to 1984, are eligible to be members of Parliament. I think if one is to move to Australian citizenship being the requirement for being elected to the South Australian Parliament, I would certainly want to be assured that no member of the South Australian Parliament is affected by the change and that any amendment does not affect the right of non-Australian citizens to remain on the electoral roll and vote in elections.

I note that there is no proclamation clause in the Bill, and if the Hon. Mr Sumner's amendment is subsequently moved and is successful then it will be necessary to address the issue of proclamation, because if any members are affected by the amendment which he foreshadowed then they should be given the opportunity to comply with any requirement to be an Australian citizen.

In relation to the Government contracts amendment, the Hon. Mr Sumner refers to the Western Australian report, which proposed a standing privileges committee be established to consider questions of conflict. He made the observation that we ought to have a privileges committee as well. I have made some inquiries about the Western Australian position and I am informed that such a standing privileges committee has not been set up in that State, notwithstanding the recommendation in the report. The Hon. Mr Sumner also suggests that the Members of Parliament (Register of Interests) Act should be amended to require all contracts with the Crown—perhaps above a prescribed monetary limit—be declared. He gave me a copy of a possible amendment for some further consideration. I can indicate to the Council that I am not unsympathetic to the Leader's proposition.

In fact, before recommending to the Government that the Bill be introduced I endeavoured to find some means by which we could at least continue to maintain some disclosure about contracts which are entered into. However, I think that the proposition which the Hon. Mr Sumner puts has the same difficulties as the present provisions which have really led to this Bill and which have been highlighted by some of the members who have spoken on the Bill. I think the difficulty is that members may be contracting with the Crown without being aware of it, or without adverting to the constitutional requirements.

Of course, the failure to comply with the Members of Parliament (Register of Interests) Act is not as drastic as the failure to comply with the constitutional provisions, but it is an offence with a maximum penalty of $5 000. If one were to consider at least the initial proposition, which was drafted for the honourable member, it referred specifically to the disclosure in the Register of Interests of contracts by the member or a person related to a member with the Crown over a particular limit having to be disclosed. The difficulty I see with that, apart from the difficulty to which I have already referred, is that in the Members of Parliament (Register of Interests) Act, a person related to a member is defined as a member of the member's family, and that is a spouse or putative spouse and, 'a child of the member who is under the age of 18 years and normally resides with the member'. A 'family company' of the member is defined as:

> . . . a proprietary company—
>
> (a) in which the member or a member of the member's family is a shareholder—

that is, a spouse or a child under 18 years residing with the member—

> and
>
> (b) in respect of which the member or a member of the member's family, or any such persons together, are in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the company.

A person related to a member means a trustee of the family trust of the member. A family trust is a trust other than a testamentary trust, 'of which the member or a member of the member's family is a beneficiary and which is established or administered wholly or substantially in the interests of the member or a member of the member's family or any such persons together.'

During the course of the debate from Opposition, when we were last considering amendments to this Act in 1993, we endeavoured to ensure that only those matters were disclosed of which the member was aware and which were not in the ordinary course of commercial business. We picked up that reference because I made the point that a member may be a shareholder in a proprietary company, or the member may be a shareholder in a trust, or it may even be the member's spouse or a child under 18. It may carry on a business. It may be a hardware business; it may be some other business where there is constant turnover and where it would not be uncommon, particularly in country areas, for a Government agency to drop in from time to time and buy a quantity of product at a discounted price, perhaps because it was being acquired by Government or maybe even consistently with the normal practice of that company or trust in the ordinary course of business for purchases of large quantities of product.

One cannot suggest to me that there is any particular advantage to the member in discounting to a Government agency a product which would be sold to members of the public at a higher price. I suppose the only advantage is that the member would at least have the business, but it is discounted at a discounted price. The problem is that if there is a manager of that business the member may not be aware of the transactions which occur on a day-to-day basis. So, even if you have a limit of $2 000 or $2 500, it creates a problem. You may in fact have someone who is a big gambler. Presently under the provisions of the Constitution Act if you hold your bet with the TAB then, as a member of Parliament, you are protected from forfeiting your seat.

If you are a big gambler—and I do not know whether we have any in this place or the House of Assembly—and you were to wager $2 500, which may be over a prescribed amount, then you would be caught because you are entering into a contract with an agency of the Crown. Those sorts of practical problems create some concern. I do not think at least the initial draft, which the Hon. Mr Sumner made available to me, really answers the practical day-to-day problem which members of Parliament are confronted with in dealing with the ordinary commercial activities of the community, and, as I say, if they carry on a business in the context of that business.

Whilst I indicated, in Opposition, to the then Attorney-General that I thought that the area was a difficult one and that I would be inclined to move towards a joint select committee to try to explore the issues and to try to find some satisfactory solution, I have had the benefit of the information which was available in the Attorney-General's office, and having thought about it further I do not see how we can practically resolve the problem, even by the sort of amendment to which the Hon. Mr Sumner was referring in his second reading contribution. It is a problem and my present inclination is not to support the amendment which he is proposing because it is unlikely to be practicable for members of Parliament. It is likely to be even more difficult to address than the automatic disclosure provision presently in the Constitution Act and so that is an issue of concern.

The final matter raised by the Hon. Mr Sumner was whether membership of the Army Reserve was an office of profit under the Crown within the meaning of section 45 of the Constitution Act. I do not understand that the honourable member is proposing that we should deal with this question now, but I will have it looked at. It raises interesting questions about the indivisibility of the Crown and the Crown in

right of the State and the Crown in right of the Commonwealth. It also raises interesting questions given that the provision in our Constitution Act has been there since before Federation, when there was no Commonwealth Crown. Now that there is a Commonwealth Crown one has to ask whether some part of the Crown's identity in the context of the State has somehow been split off to the Commonwealth and whether the Constitution Act covers that as well as the State Crown. It is an interesting issue. In that same context—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: I have indicated that I did not understand you to be moving anything in the context of this debate. As it is complex, I will have it looked at.

The Hon. C.J. Sumner: What about Mr Meier; is he all right?

The Hon. K.T. GRIFFIN: I understand that Mr Meier is okay. It is his son who is under 18, and the Education Department is no problem because it is his wife. So, it is quite straightforward. If you look at mine, you will find a reference to the Education Department, but that is not me; that is my wife.

The Hon. C.J. Sumner: That is why you should put in 'spouse'.

The Hon. K.T. GRIFFIN: I do not want to get into a debate as to whether one should disclose individually which member, spouse or child has certain interests. I think we can discuss that on another occasion.

The Hon. Mr Sumner raised the issue of legal practice, and I suppose the same could apply to medical practice. I did not make a secret of the fact that I was never an equity partner in Baker O'Loughlin.

The Hon. C.J. Sumner: Did you pay all the costs?

The Hon. K.T. GRIFFIN: Which costs?

The Hon. C.J. Sumner: The costs of your office.

The Hon. K.T. GRIFFIN: No. I had an office at Baker O'Loughlin and I was a senior associate consultant. That was deliberate, because the firm, even before I was there, had some business which involved agencies of the Crown. But I certainly never participated in that. The advice that I received, which was the advice that the Hon. Mr Redford received, was that if one remained in partnership, because of the laws of partnership, I would have been tainted with the—

The Hon. C.J. Sumner: You should have declared it.

The Hon. K.T. GRIFFIN: No.

The Hon. C.J. Sumner: Were you paying full market rates for the room and all that?

The Hon. K.T. GRIFFIN: I do not think you have to disclose all that.

The Hon. C.J. Sumner: It could be gifts.

The Hon. K.T. GRIFFIN: There are some interesting issues. There was no secret about my association with Baker O'Loughlin. The point is that, in relation to equity, it was very clear that I could never be an equity partner in that firm if I wanted to remain a member of Parliament, because there would have been automatic forfeiture of the seat the moment the firm entered into any arrangement with the Crown. That was because of the nature of the partnership law.

I understand that the Leader of the Opposition may wish to give some further consideration to the matters that I have raised in the light of my indication that I am not enamoured of the proposal that he was putting forward. I can indicate that we will not be dealing with the Committee stage today.

Bill read a second time.

PETROLEUM (SUBMERGED LANDS) (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 April. Page 385.)

The Hon. SANDRA KANCK: I am aware that this legislation is similar to, if not identical with, legislation which has been passed at Federal level and which is being pursued by other State Parliaments. I am also aware that it is traditional, by gentlemen's agreement, that such legislation should not be amended. But I am not a gentleman and I reserve my right to amend it in Committee.

I have two major concerns. One is a general concern about the protection of marine parks. I have had a briefing today by officers from the Department of Mines and Energy, who explained that when somebody applies for an exploration licence they have, first, to provide a declaration of environmental factors and that, in turn, is sent by the Minister for Mines and Energy to appropriate Ministers, such as Fisheries and Environment and Planning, for comment. Again, I think it might be in the gentlemen's agreement league—I am not sure whether this is mandatory, and I am still pursuing it to see whether that is the case—but it seems to me that where we have marine parks in this State (and there are precious few of them) we need to ensure that they are protected from petroleum exploration or mining. I will pursue that with further investigation, and if I am not happy I shall be introducing an amendment on that matter.

The second area of concern is clause 51, which inserts a new section 96a. My concern is about the two types of licences. Section 96a(1) provides that the holder of a permit, lease, licence or pipeline licence must maintain insurance against expenses, liabilities or whatever might occur if something goes wrong. Subsection (2) refers to the conditions subject to a special prospecting authority or access authority such that the Minister 'may' require a company to have insurance. In my opinion, 'may' is not good enough in this subsection. The special prospecting authority and access authority should probably be included with the permit, lease, licence or pipeline licence.

Officials from the Department of Mines and Energy assured me this morning that the special prospecting authority or access authority would not include any actual drilling for oil, that it would be exploration of a seismic or aeromagnetic nature, and that this would not cause any real damage. However, I am not convinced by their reassurances at this stage. It seems to me that seismic exploration could have a damaging effect on, for instance, whales or any marine animals that require sonar.

The department has said that it will provide to me a research paper on this topic, which I understand should reach me this afternoon. Again, as with my concern about the general protection of marine parks, after looking further at information that I am able to obtain, I will decide whether to introduce any amendments in Committee. I support the second reading.

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

JURIES (JURORS IN REMOTE AREAS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 March. Page 300.)

The Hon. ANNE LEVY: The Opposition supports the second reading of this Bill, but it is concerned about some of the wording in the legislation. I have a couple of amendments on file, the purpose of which will be explained in my second reading remarks. I am not a lawyer but I do hold very strongly indeed to the principle of having juries and the very important role they play in our criminal and civil justice system. The whole principle of having juries dates back many centuries, and the principle behind having them is that there is peer assessment: that the judging of whether or not someone has committed an offence is determined by one's peers and not by lawyers, judges or experts. Our whole legal system is based on this principle.

Many people may not realise that it is only 29 years ago that women obtained the right to sit on juries in this State. From the time that South Australia was established, for 129 years, trials were conducted before male only juries. It was only in 1965 that women obtained the right to sit on juries. A long fight took place to obtain that right for women in this State, led very strongly by the League of Women Voters under the very capable steering of Miss Eleanor Walker, who was a member of that organisation and who deserves greater recognition than that which she has received for the many women's causes taken up by her.

I understand that another very active campaigner in the fight to obtain the right for women to sit on juries was none other than Dame Roma Mitchell, who is now our Governor. She was one of those who argued very strongly that women, as well as men, should have the right to sit on juries in this State, so that the question of guilt or innocence would be determined by peers chosen from the whole of society and not just from half of society.

This Bill, in effect, removes from some people the right to sit on juries, and that cannot be condoned by this Parliament. I can certainly appreciate the problems that arise in some areas of the State where, if people's names come up on the electoral role for jury service, it can be extremely inconvenient for them to undertake that jury service if they have to travel very long distances. I would not want anyone to think I am unsympathetic to the problems experienced by these people.

However, this Bill does more than just grant an exemption to people who live far from a court on the ground of distance: it removes from the list of potential jurors everyone who lives more than 150 kilometres from a court. This deprives people of the right to undertake jury service, even though they may be prepared to travel long distances to undertake that duty.

I am well aware that some people do not welcome jury service, but I am also well aware that many people do welcome it on the basis that it is not only a right but also a responsibility of a citizen to be available for and to undertake what is a most important role in our civilised society, that is, jury service: to be one of the peers who judge the guilt or innocence of an accused.

In introducing the legislation the Attorney-General certainly indicated that some problems had arisen with the current system, and he quoted figures for a nine month period which indicated that over 100 people who resided in remote areas had been, by the luck of the draw, called up for jury service in their area. I am certainly pleased to see that, under the current legislation, people can be excused from undertaking jury service on reasonable grounds, and having to travel a long distance is regarded by the Sheriff as one such ground. The vast majority of people who live in remote areas and who contact the Sheriff are granted exemption from jury service on the reasonable ground that it would be highly inconvenient for them either to live away from home for a potentially long period or to travel very long distances each day while undertaking their jury service.

The Attorney-General clearly indicated that part of the problem arises from the fact that some people in remote areas are called up for jury service but do not apply for an exemption, even though they would get one, and they do not attend court to apply for an exemption at the time of the hearing. Approximately 20 per cent of people living in remote areas fall into this latter category.

I can appreciate that this causes some problems for the Sheriff in drawing up jury lists. However, it has been suggested that, on the basis of statistics such as this, the Sheriff can make allowance for that problem when sending out summonses for jury service, and that he can also expect about 20 per cent of people who either will not respond or will not attend. I am sure that the Sheriff would be quite capable of making this allowance when sending out the summonses for jury service.

However, I appreciate that even making such statistical analysis there might be some concern on the part of the Sheriff and that it is not unreasonable to write into the Act that long distances are a reasonable ground for exemption from jury service.

Even though other reasonable grounds for exemption are not spelt out in the legislation and doubtless rely on the Sheriff's discretion, I have never heard any suggestions that the Sheriffs have not used that discretion wisely and granted exemptions on what are obviously reasonable grounds. I reiterate that jury service is part of the civic duties of citizens, and I do not like the idea of whittling away at the number of people who can do jury service. It is suggested that this reasonable ground for exemption should be written into the Act. I hope that this is not the beginning of a long line of reasons for exemptions for jury service that are going to be written into the Act.

We certainly do not want to return to the situation of many years ago when virtually anyone could get an exemption from jury service if they had a professional occupation, so that juries were made almost exclusively of one class of person. That continued even after women only 29 years ago were permitted to do jury service in this State. As I say, while I feel it is certainly a reasonable ground for exemption from jury service that people live a long way from the court where the case is to occur, I would certainly not like this to be the first of a long list of exemptions being written into the Act. It is much better to leave it to the discretion of the Sheriff to accept reasonable grounds for exemption in appropriate cases, rather than trying to detail all possible cases.

I object most strongly to one of the effects of the Bill before us, which is to exclude from the possibility of jury service people who live in remote areas. It is one thing to say that they may get an exemption and it is quite another to say that they may not be on a jury service. This is excluding people who may well wish to undertake their civic responsibility of being on juries, and to remove such people from the list of potential jurors is, I think, a denial of their civic rights. One should not assume that just because people live in remote areas they do not wish to exercise those civic rights and undertake jury service.

I will move amendments in Committee to ensure that people living in remote areas can be excused from jury service if they live more than 150 kilometres from where the

court case is to be heard but (and it is a very important but), if people in remote areas wish to be on the roll as potential jurors, they can undertake jury service and will not be automatically excluded as potential jurors merely because they live more than 150 kilometres away from where the court case is to take place.

We support the second reading of the Bill but, for the reasons I have outlined, we believe that amendment is required to enable people in remote areas who wish to undertake jury service to be able to do so. This is an important principle for all who live in remote areas, but it is of particular relevance to the Aboriginal community in South Australia, a very large proportion of whom live in remote areas. They are registered on the electoral roll and could well be chosen for jury service. It would do much for our courts if there were more Aboriginal people who served on juries, rather than Aboriginal people mainly being seen in our courts as defendants.

As we all know, Aborigines are vastly over-represented as defendants in our courts and to have more Aboriginal representation on juries would be highly desirable in the interests of justice in this State. But the measure before us would automatically exclude a large proportion of the Aboriginal community in South Australia from even being potential jurors and that is highly undesirable. I will move amendments in the Committee stages. I have two amendments on file and obviously only one can be adopted by this Parliament. I would certainly welcome in his reply any comment from the Attorney about which amendment he feels would be the more appropriate way of amending the Bill to achieve the aim that I am expressing of allowing people in remote areas to undertake jury service if they so wish.

The other parts of the Bill are consequential on changes to the court system in this State and are in no way controversial. We certainly support them. Also, I express some surprise that the bringing of this Bill before us has not been used at the same time as an opportunity to correct the language of the Jurors Act, which is far from gender neutral. In recent years an amendment to an Act has been used as an opportunity, by means of a schedule, to amend the language of an Act and make it more modern in its approach. I am sorry the same opportunity has not been taken with the Jurors Act now that we have a Bill to amend the Act. Could the Attorney-General consider adding to the Bill a schedule to achieve the aim which everyone in this Parliament supports of having all our Acts in gender neutral language? I support the second reading.

The Hon. K.T. GRIFFIN (Attorney-General): I thank the honourable member for her contribution to the Bill. She has made some very good points about the Bill. As to the last point, I am very sensitive to gender neutral language in legislation. In fact, I am probably the first to pick it up in a number of contexts but, on this occasion, I did not, because I did not look at the principal Act.

I looked at the Bill, and the honourable member knows how difficult it is to read everything that comes before you even though you try to do it, and you do not necessarily go back to the Act. I would certainly like to get this Bill through the Council today, but I will undertake to have that issue addressed before the Bill passes in the House of Assembly. The point is well taken: the issue needs to be addressed. It should have been done and it was not. I take the honourable member's point and will see that it is addressed.

In relation to the substantive issue of the Bill, I would like to relate some of the history of the issue about entitlement to be called up as a juror. I acknowledge that it is an important civic right. There are many people who would object if they were not somewhere on the list, but the principal Act itself excludes a wide range of people from being entitled.

The Hon. Anne Levy: A pretty narrow range.

The Hon. K.T. GRIFFIN: Well, it's a fairly wide range, if one looks at it.

The Hon. Anne Levy: It would not be more than 1 or 2 per cent of the population.

The Hon. K.T. GRIFFIN: I am not sure what percentage of the population it is but it is certainly a significant number of people: the Governor, the Lieutenant-Governor and their spouses; members of Executive Council and their spouses; members of Parliament; members of the judiciary or magistracy and their spouses; justices of the peace who perform court duties and their spouses; legal practitioners actually practising as such; members of the Police Force and their spouses; persons employed in the department of the Government whose duties of office are connected with the investigation of offences, the administration of justice or the punishment of offenders; persons employed in the administration of courts or in the recording or transcription of evidence taken before courts—so there is a reasonable spread of people involved.

The Hon. Anne Levy: It wouldn't be more than 1 or 2 per cent.

The Hon. K.T. GRIFFIN: I do not know what the percentage is, but there is a reasonable spread. I acknowledge that it is an important civic right, but the difficulty is that in some areas (and we have chosen a 150 kilometre radius) it is difficult for citizens to attend, and I have given an example of the nine month period in the northern circuit.

The Hon. Anne Levy: If they want it.

The Hon. K.T. GRIFFIN: Only two actually attended, out of 150 people. Let me go back to history. In 1985, after the 1983 redistribution, the northern jury district did not comprise all people in the north of South Australia; it comprised Custance North, Stuart and Whyalla subdivisions in the House of Assembly districts of Custance, Stuart and Whyalla, so it was a very limited area from which people were drawn.

The Hon. Anne Levy: How do you justify that?

The Hon. K.T. GRIFFIN: The justification was that the distance was so great. That applied to 1991. If you go back to 1974 after the 1973 redistribution, the northern jury district comprised only Whyalla and Stuart subdivisions in the electorates of Whyalla and Stuart respectively.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: 1927, the circuit court of Port Augusta comprised the subdistricts of Port Augusta, Carrieton and Quorn being part of the Legislative Council division of Newcastle.

The Hon. Anne Levy: And males only in 1927.

The Hon. K.T. GRIFFIN: That is fine. A lot of good women at that stage were out there working in the bush, opening up the country. I do not resile from that: I am not critical about it at all. But the point is that for at least 65 years of South Australia's recent history a number of people have not been on the role to be called up as jurors. The Government believes that we ought to maintain the *status quo* except for the period since 1991 to the beginning of 1994.

The point of the problem is that there are a substantial number of people who do not bother to answer a jury summons. At the moment the Sheriff writes to prospective

jurors who may find it difficult to attend, remembering that they are chosen at random; they are not selected because they live in certain places. For those who are randomly selected and who appear to be living a far distance from Port Augusta, he writes to prospective jurors inviting them to be excused from jury service. His problem is that they are not responding and are not turning up for jury duty.

The Hon. Anne Levy: 20 per cent of them.

The Hon. K.T. GRIFFIN: It is still a reasonable percentage, and it makes it very difficult to manage the empanelling of jurors for the purpose of conducting the business of the court and providing a jury for the—

The Hon. Anne Levy: Statistically you can work on it.

The Hon. K.T. GRIFFIN: Maybe you can work on it statistically, but it adds more work with no greater prospect of success. So, when we get to the amendments in Committee I will oppose them on the basis that neither of them addresses the issue we are seeking to deal with. That is the problem of the management of the lists and the fact that very few of the people who live beyond that radius of 150 kilometres even bother to respond, or, if they do respond, are prepared to turn up for jury duty. I thank the honourable member for her indication that she will support the second reading of the Bill, but I indicate that when we get to Committee those amendments will not be supported.

Bill read a second time.

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

A quorum having been formed:

LIMITATION OF ACTIONS (RECOVERY OF TAXES AND SUBSTANTIVE LAW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 March. Page 301.)

The Hon. C.J. SUMNER (Leader of the Opposition): The Opposition supports the second reading of this Bill. It is an amendment to a Bill that I introduced last year limiting the period that taxes found invalid can be claimed back by people who have paid them. When my Bill was introduced last year, I should point out that the shadow Attorney-General was not very happy about my Bill to introduce this limitation of actions into the Parliament. In fact, it is worth noting that the Hon. Mr Griffin said:

> One must ask seriously in the circumstances of this legislation why, if the period is three years or six years, citizens should not be able to recover amounts which have been paid even voluntarily but under a law which subsequently is determined to have been invalid or where the payment has been required to be made on the basis of an *ultra vires* claim. So, whilst we will not oppose the second reading of the Bill, there are some issues to be explored both in the reply and the Committee stage. If I could identify those by way of summary: we have no difficulty with the six year period—

as it turned out, that was not in dispute—

> we have no difficulty with the elimination of the distinction between mistake of fact and mistake of law; and we believe that Governments should be put in no better or worse position than organisations and individuals which operate in the private sector. It may be of course that, in consequence of that position, the best thing is to defeat the Bill. However, because of the complexity of the issue. . .

So they voted for the second reading. The basic proposition that the then shadow Attorney-General started from was that there should be no distinction between Government and citizens in terms of limitation of actions. In the end—

The Hon. M.J. Elliott: *Hansard* is a good thing!

The Hon. C.J. SUMNER: *Hansard* is very necessary, yes. In the end, the proposition of the Government, the proposition I brought forward which was passed, was to have a 12 month limitation on actions to claim taxes determined to be invalid or taxes that were *ultra vires*, although the original proposition of the then shadow Attorney-General was that the limitation period should be the same against a Government as it was against a private citizen, which was a period of six years. However, 12 months for invalid taxes was agreed to, but I do note now that the Bill introduced by the now Attorney-General does not go back to six years as the same standard as between citizen and citizen, but in fact reduces the 12 months which we had agreed to just 12 months ago to six months.

So, any action cannot be taken back further than six months under the Attorney's proposal. I just make that point to indicate that things are different when they are not the same, and that Government is a very sobering experience for many people. In this case, it has obviously changed the honourable member's view of life, no doubt because he has grave concerns about the effect on the Treasury of a tax being declared invalid and then citizens who paid the tax being able to claim back for six years. So, his proposition is to change the agreed position of last year from a limitation period of 12 months to six months. I do not support that, and will be moving an amendment to reinstate the current Act, which is a 12 month period.

I do not believe it is necessary to reduce it to six months. The second reading explanation states that one of the reasons for reducing the period is to avoid the problem of windfall gains, and I can understand the problem of windfall gains where a company, for instance, has collected a franchise fee from a consumer, that franchise fee is then held to be invalid, but obviously the company could not repay the fee to all the consumers it has collected it from, but would be entitled to claim the tax back, and would therefore get a windfall gain. It was interesting when this matter was being debated last year that the Hon. Mr Gilfillan interjected and said that, if it was a petrol franchise fee, perhaps they could reduce their prices for a while to make up for the windfall gain. That obviously was said in a jocular fashion, but it does point up the problem. I do not think you need a six months limitation period to overcome the windfall gain problem, because the Bill deals with windfall gains in another way. To use the argument of windfall gains to reduce the period is not valid because there is another way of overcoming the windfall gains. In fact, windfall gains are specifically dealt with by a section of the Bill.

I also note that the Government wants to reduce the period from 12 months to six months, citing the Northern Territory, ACT and Tasmania as having done it, but the major States—Victoria, New South Wales, Queensland and Western Australia—have not done it. They have a limitation period of 12 months, and I think for the moment at least we should stick to 12 months. If the other States move and there is a national standard, perhaps we can reconsider it.

I would raise the question where the Attorney-General refers to the model Bill agreed to by a standing committee where he says New South Wales has included a provision similar to the 1993 South Australian amendment, but Victoria has not. Why has Victoria not done so? Is there any reason for that? The other point I wish to make is that the amendments apply to causes of action raised before commencement of the amendment but not to proceedings instituted before the commencement, so there is obviously a provision in here

which is a retrospective provision. Once again I note the approach of the now Attorney-General when he was shadow Attorney-General on the issues of retrospectivity. He used to fight tooth and nail against retrospectivity on those topics in this Parliament, but here he is introducing a Bill which does have retrospective effect. Given my more reasonable approach to the topic, I do not intend to oppose it but just make the point that things are different when they are not the same.

I sent the Bill to the Law Society, which made a number of comments. I will not read those comments into the *Hansard*. I have provided a copy to the Attorney-General and have arranged informally with him for him to sight the comments and then cite his response. That way, time can be saved and we do not read them into *Hansard* on more than one occasion and therefore unnecessarily prolong the debate. There are a couple of questions in that plus the Law Society comments that I expect the Attorney-General to respond to.

The Hon. K.T. GRIFFIN (Attorney-General): I thank the honourable member for his contribution on the Bill. I must say that when I first had the proposition put to me about this Bill I had very clear recollections of what I was saying in Opposition when the principal Act was up for review last year.

The Hon. C.J. Sumner: It won't be the last time.

The Hon. K.T. GRIFFIN: I am sure it won't be, but one tries—

The Hon. C.J. Sumner: Very jolly.

The Hon. K.T. GRIFFIN: Well, I am being open about it. I had some reservations about it in the context of reducing the 12 months to six months, but I was persuaded that notwithstanding the fact that I would probably end up getting a couple of whacks around the ear in this place by reference to *Hansard*, which the Hon. Mr Elliott says is certainly a good thing, and notwithstanding the whacks around the ear occasionally I think it still is a good thing to have it. You can probably use it to your advantage more times than it is used against you.

The Hon. C.J. Sumner: Only when you are in Opposition.

The Hon. Anne Levy: Are you going to make a habit of retrospectivity now?

The Hon. K.T. GRIFFIN: No.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: I do acknowledge that there was some concern about the reduction in the period of 12 months to six months, but on the basis of the potential effect of the High Court decision in relation to a particular franchise fee it was felt that public responsibility should be directed towards reducing the 12 months to six. As the Leader of the Opposition indicates it is quite likely that the other precautions which are included in the Bill may be sufficient to deal with the issue of a windfall gain.

In so far as New South Wales is concerned, it has left it at a 12 month period, but it did amend its Limitation of Actions Act to address the passing on requirement which is, of course, included in this Bill. The burden of proof was imposed upon the claimant but New South Wales also provided that no refund was to be available if the invalidity resulted from a non-legislative change in the law, that is, if it resulted from a court decision. That is not in our Bill. I think one must express some concern about that; that there is to be no refund if the invalidity resulted from a non-legislative change in the law, that is, if it resulted from a court decision. It seems to me to be a rather bizarre proposition which is in the New South Wales legislation and which I doubt would withstand very close scrutiny by the High Court.

Notwithstanding that, I will certainly persist with the Bill, but I recognise that there are reasonable arguments for the propositions put by the Leader of the Opposition. One has to remember, of course, that the amendment is concerned with the recovery of invalid taxes, which have been imposed in this case by the State of South Australia; it has all been taken into consideration as part of the budget. One, I suppose, can never predict what will happen with the courts in terms of rulings on issues of taxation and, therefore, if a tax is invalid and amounts have to be repaid there obviously would in the future be no alternative than to either increase levels of other taxation or introduce a new tax to make up for what would have then been an unforeseen shortfall in taxation revenue. Be that as it may, the Government as a whole believes that the proposal in the Bill is appropriate and I commend the Bill to members.

The Law Society Criminal Law Committee has written through its Chairman, and I quote:

> I assume that the proposed section 38A, by which 'limitation law' is made substantive law of the State, will not affect the plaintiff's right to obtain an extension of time to sue in the appropriate case under section 48 of the principal Act. Section 38A would operate in a way which would mean that a recovery action instituted, for instance, interstate where the law of South Australia was the applicable law could invoke the ameliorative extension of time provisions of the South Australian Act, rather than be subjected to the law of the forum being otherwise a matter of procedural law as opposed to substantive law.
>
> It is the writer's understanding that the South Australian Limitation of Actions Act 1936 is in respect to out of time plaintiffs one of the most generous in the Australian jurisdictions.
>
> The committee would want the extension of time provisions to remain available to deserving plaintiffs and we trust the writer's interpretation of the proposed amendment does not limit this availability in any way.

The President of the Law Society writes in a similar way. My understanding is that the current amendment does not prevent claims for invalid taxes being made and for the ameliorative provisions of the South Australian law being applied in the circumstances referred to by the Law Society.

Bill read a second time.

In Committee.

Clause 1—'Short title.'

The Hon. K.T. GRIFFIN: In respect of the other issues raised by the Law Society, I am seeking some advice on those. What I would suggest is that we might deal with the amendments of the Leader of the Opposition and by the time we get to the last part of the Bill I may end up having to report progress. As much as I do not want to have to do it I think it only fair that, the Law Society having raised the issue with both me and with the Leader of the Opposition, it be answered before it finally passes from the Council.

Clause passed.

Clauses 2 and 3 passed.

Clause 4—'Limitation on actions for recovery of money.'

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

> Page 2, line 8—Leave out 'six' and insert '12'.

I explained this amendment in my second reading speech.

The Hon. M.J. ELLIOTT: I suppose there is not a great deal in it either way. The Government has made much of insisting that policy should always be complied with. I would have thought that where a stated position has been taken by the Government that is very close to policy. That aside, I do not believe that 12 months is an unreasonable period. We

shall be supporting the amendment.

The Hon. K.T. GRIFFIN: I indicate opposition to the amendment, but I know where the numbers are.

Amendment carried.

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

Page 2, line 12—Leave out 'two' and insert 'eight'.

This is a consequential amendment.

Amendment carried; clause as amended passed.

Clause 5—'Limitation laws are substantive laws.'

The Hon. K.T. GRIFFIN: The Leader of the Opposition has raised a question about the letter from the President of the Law Society. I have already addressed the issue relating to the Criminal Law Committee's observation and indicated the Government's position. Regarding the remainder of the issues raised by the Law Society, I do not think much turns on them in terms of this Bill. I was reluctantly prepared to acknowledge that the Bill could be deferred, although I would prefer to have it in the House of Assembly and have it sorted out there. I hope that the Leader of the Opposition is prepared to accept an assurance that I will have the matters examined and provide him with a response before the matter is dealt with in the House of Assembly and, if an issue of substance arises there, I will be prepared to give further consideration to addressing that issue. It would certainly facilitate consideration of the legislation in the other place if we could do it in that way, and I am prepared to give that assurance.

Clause passed.

Clause 6 and title passed.

Bill read a third time and passed.

CRIMINAL LAW CONSOLIDATION (SEXUAL INTERCOURSE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 30 March. Page 361.)

The Hon. C.J. SUMNER (Leader of the Opposition): The Opposition supports this Bill, which is to clarify the law and ensure that the original intention of Parliament is reinstated, notwithstanding a ruling of the High Court which clearly did not express the intent of Parliament on this topic. The topic has been fully canvassed in the Attorney-General's second reading explanation, so I will not repeat it.

The only issue to which I will address some brief remarks is that of retrospectivity. The Government has decided not to make the provisions retrospective.

The Hon. M.J. Elliott: I think it should have done.

The Hon. C.J. SUMNER: That is an interesting point because I was going to say something similar.

The Hon. M.J. Elliott: Where the intent of the law has always been quite clear.

The Hon. C.J. SUMNER: The Hon. Mr Elliott interjects that the intention of the law has always been quite clear. The situation is similar to the case which came about when I was in Government and which was referred to by the Attorney-General—*Dube v. Knowles*. The High Court made a decision which, on any reading of *Hansard* or the situation, was contrary to the intention of the Parliament.

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: No, I have not, but I am not sure that I will necessarily support it. Let us kick it around a bit. I was not proposing to put an amendment on file on the issue of retrospectivity; I was just going to make some general remarks about it. If an amendment is put on file, I shall have to consider it. I am not necessarily indicating that I would support it at this stage, but I may because I think the matter needs to be addressed. If the Democrats want to consider it, I am prepared to facilitate an adjournment of the matter so that the Hon. Mr Elliott's proposition can be considered.

I want to address some remarks to what I think is an inconsistency in the second reading explanation. On this question of retrospectivity, the second reading explanation contains two potentially inconsistent things at least, but perhaps the Attorney-General can reconcile them. One statement is:

> There can be no doubt that, if the change in definition is not made retrospective, there will be problems.

Then towards the end of the second reading explanation we have the statement:

> After anxious consideration, the Government has taken the view that the general principle must prevail over the theoretical possibility that an unknowable number of cases may be harder to try in the future.

On one reading there can be no doubt that there will be problems and on another reading the principle must prevail over the theoretical possibility. They cannot both be correct in my view. I think that, if in fact there are real problems with not making the law retrospective, the Parliament has to consider it. If there are going to be real problems, if victims are going to be disadvantaged significantly, if prosecutions are going to be made more difficult and complex and it is a real problem, I think the Parliament is obliged to squarely face up to the question of retrospectivity and do something about it.

I say that in the context of the *Dube v. Knowles* case and other situations where courts rule against the clear intention of the Parliament, as happens from time to time. It involves not just the clear intention of the Parliament but the fact that it has been generally accepted in the law for many years (since 1985) that the intention of the Parliament was being given effect to.

So, all the law and all the court decisions are based on what Parliament intended. Then the High Court comes along and says, 'Sorry, that is not what the legislation says,' and we have to introduce an amendment, as has happened in this case, and then the argument is whether we should make that amendment retrospective.

We have to be cognisant of the principles that are set out in the Attorney's second reading speech about the importance of there not being retrospectivity, particularly in the criminal law. In other words we should not make a criminal offence today by legislation something which was not a criminal offence 10 years ago, and so on, and all that is understood. However, commonsense must come into these situations. In *Dube v. Knowles* and in this case we have had legislation passed by the Parliament where everyone operating at the State level, such as the lawyers, the courts, the Full Court, the Court of Criminal Appeal has understood it. The Parliament is happy with it; it sees how it is operating; it does not intervene and say, 'Look, that is not what we expected to happen—

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: Obviously some defendants are not happy about it, but the legislators were happy about it. When the Full Court decision was made on this topic in the case of *Randall*, the Court of Criminal Appeal—

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: Just a minute; let me finish. The Court of Criminal Appeal expressed the opinion that the

word 'vagina' should be given the meaning plainly intended by Parliament and not the technical physiological meaning, and that was in 1991. One assumes that, if the Parliament or the Government of the day had been unhappy with that interpretation of the phrase, it would have introduced legislation to correct it then. This is giving weight to what I am saying: that in that Full Court case, which was heard locally, the Court of Criminal Appeal expressed what Parliament had intended, and what everyone operating within the criminal justice system, including the Parliament, the prosecution and the prosecutors understood to be the case.

Obviously it does not mean that a defendant, or counsel acting for an accused person who sees a possible avenue to challenge the law, cannot come in and take it to the High Court. Obviously, that is what happened in this case, and the High Court, as it did in *Dube v. Knowles*, decided to interpret the law differently, but certainly interpret it in a manner that was totally contrary to what Parliament intended. That is why we are dealing with this situation; that is why we are dealing with the case of *Dube v. Knowles*; and that is why the Government of the day in *Dube v. Knowles* tried to make it retrospective. However, the Opposition opposed it—

The Hon. K.T. Griffin: So did the Democrats.

The Hon. C.J. SUMNER: And the Democrats—and it was not made retrospective at the time. It meant that a whole lot of people were released from prison earlier than had been intended by the Parliament, and I think where we have a situation like this we have to look at the question of retrospectivity. Obviously, we are not going to make it retrospective to re-convict the accused person who may have been acquitted by the High Court in the instanced case, but I think there is a case for making it retrospective to pick up prosecutions that might occur in the future.

That is really what we are talking about here. In fact, we could make it retrospective in that sense, so that in prosecutions in the future the law that is applicable is that which the Parliament intended in the period between 1985 and 1993. I do not find anything particularly offensive about that, I must say. It would be offensive if we were making something retrospective to deal with a situation in the past which Parliament had intended and we were changing it, but here we have a situation where Parliament's intention was obvious at least to the Parliament and to our courts in South Australia but it now has been overruled by the High Court. In those circumstances there is some case to consider retrospectivity. I think the issue really needs to be looked at in this light.

If it is just a theoretical possibility that a problem might arise in one or two cases, maybe we would not do anything. However, if substantial problems arise, if prosecutions are going to be mucked around, if victims are going to be mucked around, if the length of trials is going to be increased, and so on, on balance we might argue that retrospectivity in this sort of situation could be sustained. I did not intend to put an amendment on file, but I was going to put these matters to the Attorney-General to resolve what I think is a conflict in the second reading explanation, and then to take the matter from there.

The Hon. A.J. REDFORD: I did not intend to speak on this Bill, but I will do so in the light of the comments made by the Leader of the Opposition. His comments have merit, and it is a very vexed issue when we start bringing the subject of retrospectivity into criminal conduct. I will go on record as saying that under no circumstances should retrospectivity ever be brought into the area of criminal conduct. A number of practical problems can arise, whether or not it is made retrospective.

First, if it is made retrospective, what will the High Court do with a piece of retrospective criminal legislation? Given the High Court's attitude in relation to interfering with legislative intent over the past few years and the direction in which it appears to be headed, there is a real risk that the High Court would strike down the retrospective aspect of that legislation in any event.

The Hon. C.J. Sumner: They wouldn't do it if it was clear.

The Hon. A.J. REDFORD: Well, I would disagree with you on that point. There are a number of united nations—

The Hon. C.J. Sumner: They shouldn't do it, or we are living in a pretty bodgie society.

The Hon. A.J. REDFORD: Well, that may be the case. Sometimes the High Court suits us when it strikes down legislation on advertising, and other times it annoys us when it gives us a Mabo problem. It depends which side of politics you are on.

The Hon. C.J. Sumner: Supremacy of Parliament is still a pretty important constitutional principle. If Parliament makes its position clear, the High Court shouldn't be—

The Hon. A.J. REDFORD: But so is the rule of law. The Hight Court sets the law and the rule of law should apply. The High Court has not hesitated in the past—

The Hon. C.J. Sumner interjecting:

The Hon. A.J. REDFORD: No, they didn't. The precise reason in that case was that there was no retrospective element in the legislation, but if there had been you can rest assured that the lawyers would have said—

The Hon. C.J. Sumner: There was an element of retrospectively in that.

The Hon. A.J. REDFORD: There is a real risk that the High Court will say that this will breach various conventions that Australia has entered into and refuse to allow it to be retrospective. There are two practical aspects: first, those who have been convicted under the legislation as it currently exists; and, secondly, those people who have yet to be accused of conduct that is either happening now or has happened post-1985. In relation to those who have already been convicted, I asked the Attorney when we were discussing this legislation whether any notices of appeal had been lodged, whether any indication had been given on the part of any convicted people that they were going to lodge an appeal, or whether an issue had been taken by any convicted person on this point of the definition of 'vagina'. He referred that to the Director of Public Prosecutions, and the Director came back and said that he could think of no such example.

So, in that sense, from a practical point of view, to make it retrospective would not appear to affect any convictions that have already occurred in this State. Certainly, I do not know of anyone who has suggested to me in my travels around the criminal law fraternity, of which I am a member, 'Look, we ran a case, and the issue was that there was no sexual intercourse because the vagina as medically defined had not been penetrated.' The only other aspect is what is happening—

The Hon. C.J. Sumner: But couldn't they challenge him?

The Hon. A.J. REDFORD: They could, but it is theoretical.

The Hon. C.J. Sumner: Are there no cases where it was an issue?

The Hon. A.J. REDFORD: There have been no cases where it has been brought to my attention that the definition

of 'vagina' was an issue before the court, other than in the case of *Barr v. Holland*. But that was not in this State anyway: that is a New South Wales issue. So, by not making the legislation retrospective, the second problem that arises is those offences which may be occurring or which may have occurred since 1985 and which have not been brought to the attention of the authorities and no prosecution has commenced. The answer for the prosecuting authorities in that case is purely and simply to charge an attempted offence, in other words, to charge an attempted rape or an attempted unlawful sexual intercourse. The penalties are precisely the same.

In my view, the mischief can be sorted out by the prosecution laying more carefully the charge they wish to raise. In the case of *Barr v. Holland*, the High Court approved of the trial judge leaving it to the jury, because the trial judge came up with this interpretation of 'vagina', leaving it to the jury to ascertain the charge of attempted sexual intercourse. He was convicted of that charge and ultimately Mr Holland got his just deserts. Really, it was a moot point. At the end of the day, making the measure retrospective will not change matters very much from a practical point of view because the prosecuting authorities can charge an attempt and, at the same time, if we make it retrospective, we are really going against a very important principle, that is, that no person should be charged with a criminal offence other than on the law that exists at the time that the offence was committed.

To make it retrospective this time might well be convenient. Certainly, I do not believe there will be weeping in the streets if we do make it retrospective. Where do you draw the line? Probably at this stage it is easier to draw the line and say, 'Let's not make it retrospective; there are other ways around it.' Certainly on my understanding, the Director of Public Prosecutions does say that there are other ways around it. However, no doubt the Leader of the Opposition knows the Director of Public Prosecutions better than I do.

The Hon. M.J. ELLIOTT: Most of the remarks that I was about to make have been covered by the contribution of the Hon. Mr Sumner. I might just touch on the question of retrospectivity and then come to specifics in relation to this legislation. I have put this view on the record in this place before, but I will do so again.

I do not have problems with retrospectivity in certain circumstances, and those circumstances are where the law was clearly understood by all reasonable persons within the community. That is one of the tests I would apply before considering the question of retrospectivity. What has happened here has involved a technicality within the law and probably some judge who does not even understand fundamental biology has got caught up in some technicalities and has made what I consider to be a bizarre decision.

The Hon. C.J. Sumner: Just like all of us.

The Hon. M.J. ELLIOTT: That is right. The closer we get to the High Court, the more trouble we are in.

Members interjecting:

The Hon. M.J. ELLIOTT: Yes, I am talking about lawyers. Where they get into very technical areas and start deserting common sense and what every reasonable person in our society understands, there is a case for retrospectivity. There are other tests in terms of what are the consequences if you do and if you do not. As to this issue, I do not believe that in committing a rape a rapist decides, 'Have I or have I not entered the vagina or have I only got to the *labia majora*?' I do not think that thought process is gone through. It is quite distinct from retrospectivity in terms of company law. If we shift the boundaries in that case, people might work to the edge of the law, but they know where the law is.

When we talk of matters of sexual intercourse, I do not believe there are deep and meaningful thoughts going on in the mind of the rapist at the time. A judge or judges have created a ridiculous situation: they have gone beyond commonsense and what any reasonable person would understand was sexual intercourse. Without making a commitment at this stage, if we did consider retrospectivity, it would probably not be unreasonable in the circumstances unless it created some other problems of which I am not immediately aware. Before we go into Committee, I lean towards retrospectivity, although I would hate to think that other people would get away with something—and that is precisely what we would be allowing, in some cases.

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: They may get away in terms of particular convictions on the basis of arguing whether or not they have penetrated the vagina.

The Hon. A.J. Redford: Then they are convicted of attempt: it is precisely the same penalty.

The Hon. M.J. ELLIOTT: There is the commonsense of the law. A moment ago I raised with the Minister outside the Chamber another concern, and I mention it on the run at this stage because it may be worth considering. In Australia it is rare for radical circumcision of women to occur and it is illegal, but nevertheless it does occur. I suspect in those cases radical circumcision may involve the removal of the *labia majora* and, if that is the case, a women could not be raped under the definitions that we are putting into the legislation. The chances of that are pretty small and I may be wrong in my understanding, but at the very least it raises a question that deserves further attention. It shows that, as we try to solve one problem, we end up with another one and perhaps we may have to look more carefully at the definition we are amending. Although the chances of this occurring are small, nevertheless it may be a real problem. The Democrats support the Bill.

The Hon. R.D. LAWSON: In the contributions of the Leader of the Opposition and the Hon. Mr Elliott there has been criticism of the interpretations of the courts of these provisions which, in my view, is unjustified. What the High Court held in the case of *Holland* was that 'vagina', a well-known term used in the law for hundreds of years and found in every dictionary, means exactly what it says—'vagina'. The former Attorney-General said that that was totally contrary to what Parliament intended. What Parliament enacted was 'penetration of the vagina'. Parliament chose to use a word which had a common and well understood meaning. The High Court said, 'Parliament must have intended what it said—namely, 'vagina' means 'vagina'—if you want to make it mean something else, you have to say so.' If you want to make it mean 'genitalia' then call it 'genitalia', but if you use legally accepted terms you can only expect that the courts will apply those terms.

The Hon. C.J. Sumner: The Full Court here understood what we meant—Cox and Matheson.

The Hon. R.D. LAWSON: That was a majority view, not a unanimous one.

The Hon. A.J. Redford interjecting:

The Hon. R.D. LAWSON: Yes, that is right. There is a great deal of criticism of the High Court and of courts generally in Parliament which is not always justified. Take,

for example, the definition of 'sexual intercourse' under section 5 of the Criminal Law Consolidation Act, the section we now seek to amend. Under section 5 'sexual intercourse' means penetration of the vagina, etc., or fellatio or cunnilingus. Neither of those two last mentioned are in fact sexual intercourse in accordance with any commonly used or accepted use of the language. We in Parliament define 'sexual intercourse' to mean things that clearly it is not. It is the Parliament not the courts that creates the problems. Then the Hon. Michael Elliott says that it is a bizarre result, deserting commonsense with reliance upon technicalities. What the courts have, in fact, applied is the clear meaning of plain language.

Having said all that, I only wish to make the point that it is unfair to criticise the courts. However, we have a problem that clearly must be rectified. The Hon. Mr Elliott suggests that this may be a case in which it is appropriate to amend this criminal provision with retrospective effect. I oppose that on general grounds. It is an important principle which no doubt has been often espoused in this Chamber regarding the undesirability of retrospective legislation. I need not repeat the arguments relating to that; however, it should be said that in relation to criminal provisions Parliament should be extremely reluctant to apply retrospectively any criminal provisions.

It might be true if the result were as bizarre or as hypertechnical as it has been suggested this provision is. However, it is not; it is a perfectly reasonable and, in a sense, inevitable decision of the court which must be altered. It is not to the point to say, 'I intended that "sexual intercourse" meant "penetration of the genitalia"' or that everyone in Parliament intended that. The members of Parliament did not even apply their minds to the question of what it meant. The courts cannot be blamed for applying the strict meaning of provisions. If we wish to make declarations of other intentions—

The Hon. C.J. Sumner: It is the golden rule.

The Hon. R.D. LAWSON: Indeed. The mischief aimed at in that provision enacted in 1985 was to include within the definition of 'intercourse', 'penetration of various orifices with any part of the body or other object'. That is what the definition was designed to achieve; that was the clear intention of Parliament. There is no suggestion in any of these decisions that the courts were departing from that intention.

The Hon. C.J. Sumner: Blame Parliamentary Counsel; that's what we usually do.

The Hon. R.D. LAWSON: I certainly would not blame Parliamentary Counsel, because Parliamentary Counsel used a commonly accepted word, found in the dictionary or any law book. Anybody would have known what the word meant.

The Hon. C.J. Sumner: Exactly. Why did the court not come to that conclusion?

The Hon. R.D. LAWSON: The court applied some commonsense, which is apparently lacking here. I support the second reading.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

ADJOURNMENT

At 6.23 p.m. the Council adjourned until Tuesday 19 April at 2.15 p.m.