LEGISLATIVE COUNCIL

Wednesday 3 August 1994

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

LEGISLATIVE REVIEW COMMITTEE

The Hon. R.D. LAWSON: I bring up the first report 1994-95 of the Legislative Review Committee and move:

That the report be read.

Motion carried.

The Hon. R.D. LAWSON: I bring up the second report 1994-95 of the Legislative Review Committee.

STATE FINANCES

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of a ministerial statement made in another place today by the Treasurer on the subject of the impact of higher interest rates on State finances.

Leave granted.

TRAMS

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to make a ministerial statement in relation to tram maintenance and safety issues.

Leave granted.

The Hon. DIANA LAIDLAW: This ministerial statement is presented in response to questions asked by the member for Spence in the other place yesterday on tram maintenance and safety issues. As background, I want to indicate that over the past two years the State Transport Authority (STA), now TransAdelaide, has undertaken extensive organisational restructuring in three areas: operations, administration and maintenance.

Maintenance is carried out in two ways, these being at TransAdelaide's Regency Park workshops and at local depot level. Specifically, tram refurbishment takes place at Regency Park workshops and day-to-day maintenance is undertaken at the Glengowrie tram depot.

Refurbishment takes the form of engine overhauls, frame construction and reconstruction, electrical rewiring and major paint works. Day-to-day maintenance consists of regular brake checks, wiring, car furniture and mechanics. At depot level, work teams are assigned individual trams (by number), so there is a very personal relationship between tramcar and maintenance efforts.

Over the past 12 months Regency Park workshops have progressively reduced staff in all work areas, including maintenance. This has been as a result of recommendations from independent consultants, INDEC Pty Ltd, who, in their comprehensive report, suggested that the rate of productivity and internal efficiencies could be improved by restructuring, staff shedding and subsequent reorganisation.

The report clearly indicates that maintenance refurbishment of STA (now TransAdelaide) vehicles, including trams, would in no way be affected by staff downsizing. As there was excess capacity in the first instance, multi-skilling is now used to ensure a team approach to repair and maintenance. At a depot level, Glengowrie maintenance staff numbers have remained constant for many years. The team of 15 was reduced to 14 over the past six months as a result of the Government's targeted separation package program and subsequent refilling by TransAdelaide.

Three maintenance staff accepted TSPs: the Servicing Manager, a qualified tradesperson, and one a non-qualified tradesperson. In their place the Glengowrie depot now employs a Servicing Manager with a more comprehensive set of responsibilities and a different reporting structure, in addition to another fully qualified tradesperson. In summary, no evidence exists to support the claim that tram maintenance has in any way suffered. In response to the specific instances, as mentioned by the member for Spence, I am able to advise that there is no substance to the claim that the current 100 point maintenance check has been reduced to a 30 point maintenance check.

A check of servicing sheets at the Glengowrie depot reveals that the 100 point service is still in operation and no change has been made to maintenance procedures. In fact, a recently introduced vehicle maintenance computer system has vastly improved the record keeping capabilities at the depot.

With regard to trams losing their brakes in King William Street on 25 July 1994, it is true that tram 374 had a near miss with a motor vehicle on King William Street and that the operator reported failed brakes as the reason for this incident. However, on investigation by fitters the brakes were tested and found to be in perfect working order. During this check a small leak was noted in the emergency brake valve and the gasket was replaced as a precautionary measure. Trams are fitted with an electric override and, if the brakes did fail, the emergency brakes would have automatically cut in.

In regard to claims that a tram went through a red light at Brighton Road recently, it is true that the incident occurred. However, by admission of the operator she misjudged the T-light at Brighton Road, which changed to red. In reporting the incident, using the correct procedures, the operator indicated she had too much speed and overshot the signal. The brakes on the tram were checked and found to be in working order.

In regard to the claim that water seeped into tram 365 during recent rains, there is no record of this occurring. However, there was water leakage on trams 351 and 370 on 29 July 1994. I have maintenance records in this respect. Both of these trams were immediately taken out of service and repairs were carried out. They are now back in service. TransAdelaide is continuing its refurbishment program of trams and at this stage eight trams have been fully refurbished out of a fleet of 21. A further two trams are currently undergoing refurbishment.

In summary, reductions in staffing levels have taken place but the remaining staff have increased productivity and changed work practices to ensure that safety is not compromised. The staffing levels at the Glengowrie depot, where the trams are serviced, have not been significantly reduced because of the age of the vehicles. These vehicles need constant maintenance because of their age. They are currently being refurbished to extend their life. All reductions in staffing levels have been independently monitored to ensure that safety standards are maintained and all staff are dedicated to achieving a safe and reliable service delivery.

The Hon. C.J. SUMNER: I rise on a point of order. The copy of the ministerial statement which I have and which was read by the Minister contains the statement 'maintenance reports attached'. They are not attached. I ask the Minister if she will table them in the House.

The Hon. DIANA LAIDLAW: I do not have them with me but I will ensure that they are tabled.

QUESTION TIME

NATIVE TITLE

The Hon. C.J. SUMNER: Given the fact that yesterday, in a ministerial statement relating to native title, the Premier said that South Australia's intervention will focus on several important constitutional points directed at the power of the Commonwealth and further that the Government had received eminent legal advice, my questions to the Attorney-General are:

1. Who has provided the eminent legal advice referred to by the Premier?

2. Precisely what sections of the Commonwealth Native Title Act will be challenged and what will be the basis of the challenge in each case?

3. How precisely does the South Australian challenge differ from that of Western Australia?

4. What advice does the Government have about the effect of the South Australian challenge? That is, could the South Australian challenge lead to total invalidity of the Commonwealth Native Title Act because it will not be possible for the High Court to sever the sections under challenge and still keep the Native Title Bill intact?

The Hon. K.T. GRIFFIN: The eminent legal advice is the Solicitor-General and the Crown Solicitor. There has been no external advice in the context of the constitutional challenge. The second question relates to the sections on which the Government will be seeking to address argument. They include section 12 of the Commonwealth Native Title Act which seeks to make the common law relating to native title the common law of the Commonwealth by enactment of a Federal statute. That is something like two lines, as I recollect, that will make that the common law. It is, of course, a novel approach to the common law and it is also a novel approach so far as the Commonwealth exercise of jurisdiction is concerned, because the common law is really the common law of the States. In terms of native title, the Commonwealth was not around when native title was understood to have been established.

There are a number of other sections, and I will get them. Maybe by the end of Question Time I will have that detail in front of me. They relate certainly to that issue, and to the extent to which the Commonwealth is able to direct the legislative and executive acts of the State and determine which are valid and which are not valid. There is a requirement in the Native Title Act for certain State procedures to be approved by the Commonwealth Minister—not by the Commonwealth Government but by a Minister of the Commonwealth—which quite obviously means that this State's legislative and executive power is subserviant to the authority of a Commonwealth Minister, and we find that particularly offensive.

There are two other areas which are the subject of intervention, but again they relate only to these issues of the extent of the power of the Commonwealth to become involved in what are essentially State matters. What we have decided as a Government is that we will not challenge the whole framework of the Commonwealth Native Title Act. If we wanted to do that, we could have either joined with Western Australia in that respect or we could have instituted our own challenge which would deny the authority of the Commonwealth to legislate with respect to native title. We have not done that. What we have said is there are issues of broader constitutional implication and consequence, for South Australia in particular and the States in general, relating to the way in which the Commonwealth has undertaken the task of legislating for native title, and it is that broad constitutional area that is of concern.

The question is how that differs from the approach of Western Australia. I thought it would have been quite clear from what the Premier had said that intervention means only on certain limited grounds and not to challenge the whole underlying framework of the—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: We are not intervening. If that is the Leader of the Opposition's uncertainty I can tell him here—and it has already been made known publicly—that we are not challenging the underlying framework of the Native Title Act.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: The Leader of the Opposition does not seem to understand that there are—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: You do not understand. This has very serious ramifications for South Australia. It will extend the negotiation process for an inordinately long period of time. The Commonwealth will be able to overturn particular State responsibilities. For example, no attention is given to what happens if an issue arises in the Supreme Court which involves a common law issue but which coincidentally raises an issue of native title.

Those sorts of arguments occur in the criminal jurisdiction, for example in relation to fishing, where the question arises: do the fishing laws of South Australia apply to those who might claim native title? It may well be a defence raised by a defendant that the native title which he or she has vested in him or her will preclude the operation of the State fishing laws. That is an issue which arises not in the context of native title claims but in the context of the criminal law and the big question is to what extent the Native Title Act overrides the jurisdiction of the State to deal with that particular issue. It also arises in other respects in the civil jurisdiction but it has not been adequately addressed at the Commonwealth level.

The Government has said right from the outset when it announced its policy position in April of this year that it believes that there is a need for significant change to the Native Title Act to make it workable, to make it less complex, less confusing and to give it more certainty. The Government's approach would be one of attempting to negotiate that not only with the Commonwealth Government but with other States and Territories as well as with Aboriginal groups, farming groups, mining groups, others with an interest in that area and even with the Federal Coalition Parties to endeavour to ensure that if there was a consensus on amendments they would pass through the Senate without the significant debate which occurred in December 1993.

However, it is clear from correspondence received from the Prime Minister, who was made aware of the changes that this Government believed were necessary to achieve that goal, that no changes would be made at least in the foreseeable future. So the Government took the decision strategically that the next step was to try to force the Commonwealth back to the Senate by at least having certain aspects of the legislation, which directly affected South Australian interests

and its constitutional position, declared to be invalid. That is the direction the Government is now taking. In terms of what might be the consequence of a success in respect of those limited areas the advice is that, in several of those at least, the Commonwealth may be able to legislate to overcome the invalidity, but at least it would then get the Commonwealth back to the Senate and to the House of Representatives because it would have to amend the Act. It is important to recognise that even the Federal Native Title Commissioner, Justice French, has proposed some amendments to the law in relation to native title.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Sure, but he may or may not be successful. The Leader of the Opposition talks about challenge. Nowhere has the Government or the Premier talked about a challenge. We have talked about an intervention on limited grounds and that is where it rests.

The Hon. C.J. Sumner: It is a challenge to some sections. What are you talking about?

The Hon. K.T. GRIFFIN: It is a challenge to some sections but not to the whole framework upon which native title rests. We have acknowledged also that we do not in any way resile from the High Court decision that native title is part of the common law of Australia and the States.

In the process that we have adopted, which was made clear again in the Premier's ministerial statement in April, we had been proceeding with a range of amendments to State legislation to ensure that the State legislation was not inconsistent with the Racial Discrimination Act or the Commonwealth Native Title Act, and legislation was introduced in the last sitting. There have been some discussions about it in the interim period, the Commonwealth Government has made some responses, rather belatedly, and we are giving consideration to those now. In addition to that, over the recess, officers have been working through a whole range of other legislation to propose amendments to about 75 State Acts where necessary to ensure that the same policy principle is addressed. They will be introduced into the Parliament in an omnibus Bill in the foreseeable future. The Government's position is quite sustainable; it is not to be taken as being in the same category as the challenge by the State of Western Australia to the whole framework of the Native Title Act, but is on limited grounds.

The Hon. C.J. SUMNER: As a supplementary question: will the Attorney-General give attention to the last question that I asked, in particular, whether the eminent legal persons to whom he referred have addressed the question of whether the challenge being taken by the South Australian Government to certain sections could lead to the whole of the Native Title Act being struck down? If so, what is that advice?

The Hon. K.T. GRIFFIN: I thought I had addressed that. The Commonwealth may be able to legislate in a different way to address any invalidity, but our advice is that it will not mean that ultimately the whole framework of the native title scheme will fall to the ground.

The Hon. C.J. Sumner: Have they addressed this issue?

The Hon. K.T. GRIFFIN: They have addressed the issue.

The Hon. C.J. Sumner: What's the risk?

The Hon. K.T. GRIFFIN: I do not think anyone can assess what the risk is.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: On constitutional issues you do not assess whether the risk is 10 per cent, 20 per cent or 50 per cent; of course you do not. What you do is determine whether you have a good chance of success on the arguments.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: No; all you get is whether it is a good chance, a reasonable chance, an excellent chance or a poor chance. The Government will not be pushing to intervene on the basis of a poor chance.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: We do not believe that that makes good sense either constitutionally or politically, or that it is in the interests of South Australia but, on those grounds on which we are proposing to intervene, the argument—

The Hon. C.J. Sumner: What's the advice?

The PRESIDENT: Order!

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order! The Leader of the Opposition had a chance to ask his question. The Attorney-General.

The Hon. K.T. GRIFFIN: It is not a question of settlements. It is a question of whether—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: No, it is not.

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: That is nonsense. This does not go to the heart of the whole scheme. The advice that we have is that, on those arguments which we are proposing to put direct to particular sections, if those sections are declared to be invalid it does not bring down the whole of the Native Title Act. They will continue in place but, if our arguments are successful, then it may well be within the competence of the Commonwealth to find an alternative means by which they can deal with the issues which are held to be constitutionally invalid by the Commonwealth. I do not know what more I can say to the Leader of the Opposition. I have addressed the issue. If those provisions which we seek to challenge are invalid, they are invalid; the rest of the scheme stands. What more do you want?

The Hon. T. CROTHERS: I wish to ask a supplementary question with respect to the statements made by the Attorney-General. He has told the Council that his Government intends only to challenge the whole of the Mabo Bill in part, and has touched only fleetingly on the question which I will now address. It is: will the Government enact the necessary complementary legislation in this State in respect of all other parts of the Mabo legislation, other than that which he has challenged, given that the court hearing into the twin challenge by South Australia and Western Australia may be long and tedious?

The Hon. K.T. GRIFFIN: I am not sure what the honourable member was leading to in his introduction to his so-called supplementary question when he said that I indicated that we were going to challenge 'the whole of the Native Title Act in part'. That does not make any sense. I did not say at any stage that we were challenging the whole of the Native Title Act. I said that we were asserting that there were certain sections of the Act which were constitutionally invalid and certainly not in the interests of South Australia.

If the honourable member had an opportunity over the recess to read the legislation that we introduced in the House of Assembly in the last session and had read the Premier's then ministerial statement, he would see that what we were seeking to do was to set up a procedure within South Australian law that was consistent with the Racial Discrimination Act, that is, that no part of our law was invalid as a

result of the application of the Commonwealth Racial Discrimination Act. That is the first point.

The second point is that we were also endeavouring to ensure that if the Native Title Act were valid, our procedures were consistent with that Act, but our provisions were to be valid whether or not the Commonwealth Native Title Act is valid. We put into place a framework in relation to mining and exploration activities that recognise the right to negotiate but which put in place a framework that gave more certainty to the process than exists at the present time under the Commonwealth Native Title Act.

With the Land Acquisition Act we were seeking to accord to native title interests the appropriate notification of land acquisition. Where the acquisition was of interest in native title, which was akin to freehold, then it equated with freehold and the native title holders were given the same rights as those who held freehold title. So, right through the framework of the legislation, which is already on the table in the public arena, there is a mechanism for addressing issues of native title without prejudice to those who might have a claim, and in a framework that provides a greater level of certainty.

Regardless of what happens at the Commonwealth native title level, our objective is to ensure that there is a framework in place to address adequately the rights of Aboriginal people to make claims and to have them properly and fairly resolved. That is the issue. There are a few others issue that I could address if you want me to in relation to compensation.

The Hon. T. Crothers interjecting:

The PRESIDENT: Order! The Attorney-General.

The Hon. K.T. GRIFFIN: I am happy to talk all afternoon about native title.

The Hon. Anne Levy: Make a ministerial statement.

The Hon. K.T. GRIFFIN: I don't want to. You asked the questions, you want the answers.

The Hon. Anne Levy: Not for half an hour.

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! The Attorney-General.

The Hon. K.T. GRIFFIN: So it is not important to take a little time to talk about native title and answer your questions? That shows what little interest you have got.

The PRESIDENT: Order!

The Hon. Anne Levy: It's important enough for a ministerial statement.

Members interjecting:

The Hon. K.T. GRIFFIN: What about yesterday?

Members interjecting:

The PRESIDENT: Order! The Attorney-General.

The Hon. Anne Levy: If it's that important, use a ministerial statement.

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: The Hon. Mr Crothers raised the question whether the Government was proposing to legislate more broadly.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: All I can say to reflect all the issues in respect of native title—

An honourable member interjecting:

The Hon. K.T. GRIFFIN: I am sorry. I am not sure what more he is asking. The fact is that the High Court has decided that there is native title as a matter of common law. We are not doing anything to refute that. It is a question of how we recognise native title, and the Commonwealth has set in place a framework. I have said that our legislation, which relates to mining and exploration, land acquisition and the establishment of a State tribunal, will also deal with a range of other issues in more legislation yet to come and in which we will seek to put in place a framework which recognises rights and provides a mechanism for addressing the resolution of claims based on those rights.

That is the issue from a State perspective and that is what we are doing. We have had discussions with a whole range of interest groups about it, and all the legislation so far is on the table. If the Hon. Mr Crothers wants a briefing, I can arrange for him to have one with any of his colleagues. His colleague in another place, Mr Clarke, has already had available to him one preliminary briefing for about an hour and a half, and I have indicated to the Opposition that my officers are available to talk through these issues and the Bills at times that are mutually convenient. We do not want to treat it on a partisan basis. We are making information available on the basis that it is complicated, and we are prepared to try to put in place a mechanism which addresses the issues about which the community is concerned.

HINDMARSH ISLAND BRIDGE

The Hon. C.J. SUMNER: Does the Minister for Transport still oppose the construction of the Hindmarsh Island bridge?

The Hon. DIANA LAIDLAW: The Government determined that it was required to build the bridge and honour the contracts that it inherited from the former Government. That particular bridge is now off the agenda because Mr Tickner has banned its construction.

LISTENING DEVICES

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General a question about the Listening Devices Act and the Commonwealth Telecommunications (Interception) Act.

Leave granted.

The Hon. A.J. REDFORD: In yesterday's *Australian* it was reported, '. . . the prosecution (that is, the Director of Public Prosecutions) revealed that investigators had tapped more than 18 000 telephone calls on warrant, although some would have been only electronic pulses or other non-calls.' My inquiries reveal that 18 627 calls were tapped in Australia during the period 2 March 1994 to 27 July 1994. On the face of it, that is an extraordinarily large number of interceptions and is potentially a substantial intrusion on the lives of ordinary Australians. That is so when one considers that only 1 300 of those calls were of later interest to the police.

Since reading that report I have perused the annual reports provided by the Commissioner of Police to the Attorney-General on the use of listening devices pursuant to section 6 of the Listening Devices Act. They reveal that in the years ending 30 June 1991, 1992 and 1993 there were 95 applications made to South Australian courts for the use of listening devices, of which four were refused. This led to 75 arrests. In addition, 10 warrants were issued to the National Crime Authority for the use of those devices.

Pursuant to the provisions of the Telecommunications (Interception) Act, applications are made to the Federal Court for approval to intercept or tap telephones. I presume that the interceptions referred to in the court on Monday were carried out pursuant to that Act.

I have also noted with some interest the allegations made by Mr John Elliott, who is currently the subject of a prosecution concerning the nature and extent of phone tapping so far as he and his advisers are concerned. I say no more than that as it is a matter before the court.

I also note that pursuant to section 7 of the Listening Devices Act there is no requirement to obtain court approval for the use of a listening device by a person where the device is used to overhear a private conversation to which that person is a party and in the course of that person's duty in the public interest or for the protection of the lawful interests of that person.

I remind members of the situation that developed in relation to the recording of a conversation by a police officer with a former President of this place. However, in the light of all that, I ask the following questions:

1. Can the Attorney-General advise on the success or otherwise of the 75 arrests or prosecutions arising from intercepts or listening devices for the years ending 1991 to 1993?

2. Can the Attorney-General advise why only four out of 95 applications were refused?

3. Is this level of refusal greater or less than refusals by courts of police applications for search warrants?

4. Can the Attorney-General advise whether any of the devices in relation to the Listening Devices Act were used to tap the telephones of the press, members of Parliament or legal practitioners and, if so, how many?

5. In relation to the Telecommunications (Interception) Act, can the Attorney-General advise whether any of the telephones of the press, members of Parliament or legal practitioners were tapped to his knowledge and, in the case of lawyers, how many of those interceptions could be said to be a breach of or an interference with legal professional privilege?

6. Can the Attorney-General, or alternatively the Minister for Emergency Services, advise the Council of the number and nature of occasions on which listening devices have been used by the police pursuant to section 7 of the Listening Devices Act?

The Hon. K.T. GRIFFIN: I do not have all that information available.

The Hon. C.J. Sumner: What?

The Hon. K.T. GRIFFIN: I can talk at length on native title but when it comes to listening devices there are constraints of the law. In any event, I do not keep all the detail on that at my fingertips. I will have some inquiries made. It may be that in some respects I will not be able to obtain the information because of the operation of the Act.

The only other point that can be made is that if warrants are issued by courts for the use of telephone intercepts one can only presume that the courts are acting in accordance with the authority and the provisions of the statute which confers the authority to do so. I doubt whether an Attorney-General or any other person is able to make a judgment as to whether the exercise of the authority of the court was fair or reasonable in the circumstances. That is one reason why in a number of areas we require that sort of infringement of personal liberties to be the subject of a warrant issued by a judicial officer who is independent from the executive and law enforcement arms of Government. In terms of the specific questions, I will make some inquiries and see whether I can bring back some replies.

HINDMARSH ISLAND BRIDGE

The Hon. BARBARA WIESE: I seek leave to make an explanation before asking the Minister for Transport a question about Hindmarsh Island bridge.

Leave granted.

The Hon. BARBARA WIESE: Over a very long period of time now the Minister has made numerous statements, both inside and outside Parliament, opposing the construction of a bridge to Hindmarsh Island. Among these statements have been some that I should like to quote from *Hansard*. As far back as 10 February 1993, she said:

> I would argue that there is no urgency for this bridge to go ahead. The agenda has changed since the bridge was first proposed.

Later that day she said:

> The development does not seem to be warranted by the facts.

On 12 April 1994, after the Jacobs' inquiry, she said:

> The Government, however, is legally bound to build the bridge. . . that is why the Government has indicated that, while the bridge is not the Government's preferred option, we have inherited this legal obligation and it is something of an albatross around our neck at the present time. . . We wish we were not in such a position but that is not the case.

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: Later she said:

> Neither I nor the Government has ever considered that the bridge is the preferred option to improve access to the island.

Again, on 19 April, she said:

> The Government has reluctantly agreed that this bridge must proceed.

On 3 May 1994, following the decision by her colleague the Minister for Aboriginal Affairs to allow the bridge to proceed, she said of him:

> It causes him no pleasure, and I know that it has in fact caused him a great deal of anguish—

The Hon. C.J. Sumner: Anguish! What—to allow the bridge to go ahead?

The Hon. BARBARA WIESE: Yes, indeed. She said of the bridge:

> I have made every endeavour to get out of the contracts.

And, at the time of her press release in March—

The Hon. C.J. Sumner: She tried to get out of the contracts. Now she wants to go ahead with it.

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —announcing the results of her review of the bridge, she said:

> I am extremely bitter about the position this Government has inherited.

So, for almost two years we have seen the Minister on almost every available occasion express her opposition to the bridge. She has indicated that the Premier and the Minister for Aboriginal Affairs also opposed the bridge. They have all made it clear that if it were not for the possibility of litigation they would terminate the contracts and scrap the bridge. In view of these statements and their wailing and hand-wringing over a very long period, it was then with some considerable surprise that I learnt of their reaction to the announcement made by the Federal Minister for Aboriginal and Torres Strait Islander Affairs to stop construction of the bridge for at least 25 years.

The Liberals had been saying for two years, 'We do not want this bridge.' The Federal Minister delivered their wish,

and what did they do? They attacked him viciously. They said that it was an outrage. They said it was a disaster for developers—

Members interjecting:

The PRESIDENT: Order!

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! The Minister for Transport will come to order.

The Hon. BARBARA WIESE: In future, they said, planning approvals will mean nothing because of the decision that had been taken. Today, under questioning, the Minister has indicated that the Government thinks the bridge should happen but that it is no longer on the agenda because of the Federal Government's decision. But, yesterday, in response to a question from the Hon. Mr Elliott, the Minister said that it is the Government's view that the Federal Minister's edict prevents building 'the' bridge but not 'a' bridge, clearly implying that the Government now wishes to build a bridge after its chest beating of the past two years, and is probably exploring the options.

Today, however, the Minister says that it is not on the agenda. It is not clear exactly what the Government is doing with respect to this matter, but what she has said is that it is looking at options for building a bridge. Given that previously the Minister indicated reluctantly that the Government had agreed to proceed with the Hindmarsh Island bridge, only because she said that the State would have to pay compensation, and given that the State now does not have to pay compensation, why has she made an about-face by agreeing to support investigating the building of a bridge? And, if the Minister claims no about-face, does that explain why she has been silent during the past few weeks while the Premier and the Minister for Aboriginal Affairs have made fools of themselves in the media, espousing views diametrically opposed to the position they had previously put forward on this matter?

The Hon. DIANA LAIDLAW: I am not too sure what the honourable member means when she says 'making fools of themselves', since they were certainly fully supported by the Leader of the Opposition, Mr Arnold, in protesting against the intervention by Mr Tickner in this matter. I have been consistent in this matter all along. I have always indicated that the Government reluctantly accepted these contracts that it inherited from the former Government.

There is no argument on that issue: we accepted those contracts, and we did so reluctantly because we inherited those contractual agreements. Only at enormous risk to the taxpayers of this State could we ever be released from those contracts. At the time, based on reports from Mr Jacobs, I indicated that compensation sought would be a minimum of $12 million. It may have escaped the honourable member's attention but Binalong, which I now concede is in liquidation (although the liquidators may well take up the same sum) are seeking over $40 million in compensation. That is from one party alone in respect of a bridge which, in terms of the contract signed by the former Government, would cost $4.5 million. So, it did not seem very good arithmetic—

An honourable member interjecting:

The Hon. DIANA LAIDLAW: I have never said that the Government was ecstatic about this bridge. We agreed to the contracts with reluctance. That has been our consistent line all the way. You signed those contracts. I remember, as shadow Minister, calling on you—because we were coming up close to the election—to defer the signing of those contracts. You went ahead, without regard to Aboriginal womens' views and environmental concerns because—

The Hon. Barbara Wiese: That is not true.

The Hon. DIANA LAIDLAW: Well, what advice did you receive? The honourable member says it was not true that she ignored Aboriginal women's advice. What advice did you get? Tell us. What advice did you get, and then did you disregard—

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: No, you said this has been critical to Mr Tickner's view—

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: —and the ban on this bridge. The professed outrage from members opposite is because Aboriginal women's views were not taken into account. Now, the honourable member says that she did take them into account. So, what were you told and what did you ignore? What did you not think was important?

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: What did you think was not important that the Aboriginal women told you? It is interesting.

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: The honourable member said that she consulted but she clearly ignored and did not think the Aboriginal women's views were important, and look at the mess we are in today.

Members interjecting:

The Hon. DIANA LAIDLAW: Because she signed the contract and Mr Tickner, her own Federal colleague, said that the contracts ignored Aboriginal women's views. Just as Independent senators from Western Australia have commented on this issue, the Labor Party in this State got us into the mess and it had to get us out of it. Perhaps that is what they said and perhaps they—

Members interjecting:

The Hon. DIANA LAIDLAW: Our mess? You signed the contracts. Our mess—

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: I do not know if members opposite are all on long service leave like the Leader of the Opposition has been, but I am not sure how anybody could suggest that this is our mess. We inherited contracts from a Labor Government; the Federal Labor Government says that the State Labor Government did not listen to Aboriginal women and therefore they banned the bridge. Now, the former Minister of Transport Development said that she did hear from Aboriginal women but she actually ignored them. So I do not know—

The Hon. Carolyn Pickles: That is not true.

The Hon. DIANA LAIDLAW: It is not true? What: that she did not hear from them or that she did not ignore them? The Hon. Carolyn Pickles said it is not true. I do not know what the women opposite are talking about. They are saying a lot but I do not think they listened to the Aboriginal women. If they did, they ignored them. Anyway, I have said all the time in terms—

Members interjecting:

The Hon. DIANA LAIDLAW: We want to know, if you listened to Aboriginal women, if they told you what you said they did, why you didn't listen to them. Why did you put us

in the position where Mr Tickner had to intervene in these circumstances? I have said in terms of this bridge that the Government has always had to honour those contracts with reluctance.

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: The honourable member said, and I quote, 'This Government does not now have to pay compensation.' I am not sure from where she has obtained her legal advice. There are difficulties in terms of the legal advice that I and the Government have received, because Mr Tickner has put a temporary ban of 25 years on the bridge, not a permanent ban. That makes it a different matter, as the shadow Attorney would know in terms of the law and in terms of our position with respect to compensation.

The other distinction is the fact that Mr Tickner has put a temporary ban on 'the' bridge, not 'a' bridge. When Mr Jacobs reported on this matter, he highlighted that Mr Bannon, as former Premier, had said to Westpac, when he got the additional money from Westpac, that the obligation was to build 'a' bridge. In terms of Westpac, the obligation is still to build 'a' bridge. Mr Tickner has not indicated that he has banned 'a' bridge, so I am not sure from where the honourable member has obtained her advice, and perhaps she might like to speak to the shadow Attorney-General. I certainly would appreciate his advice, because the advice that I have received—

Members interjecting:

The Hon. DIANA LAIDLAW: I do not know what it is worth, but I would certainly be interested to hear what his comments are, since it was he and his Government that got us into this situation. I said yesterday in answer to the Hon. Mr Elliott that all these legal questions abound. It is certainly not clear. Perhaps the honourable member can give me her legal advice. It is certainly not clear that we are not obliged to pay compensation to any party. That is not clear so, as I indicated yesterday, we have written to Mr Tickner seeking his reasons and seeking an explanation and clarification on a number of matters. That will help us sort out the remaining issue of how to improve access to Hindmarsh Island.

The Hon. C.J. SUMNER: As a supplementary question, is it now Government policy to support the building of a bridge to Hindmarsh Island, yes or no?

The Hon. DIANA LAIDLAW: The Government has indicated that we are assessing all the options at the present time.

FAR NORTH CONSULTATIVE COMMITTEE

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for the Environment and Natural Resources, a question about the Far North Consultative Committee.

Leave granted.

The Hon. CAROLYN PICKLES: I understand that the Minister has released a list of appointees to the Far North Consultative Committee for the next two years. The Far North Consultative Committee provides consultation with the Department of Environment and Natural Resources concerning parks and wildlife management. Parks and wildlife management are principally conservation issues, so I am concerned that the committee seems to lack adequate conservationist representation. Only one person from the conservation movement has been appointed to the 13 person committee. The conservation movement in South Australia represents over 60 000 active participants, and conservation in South Australia is considered by the majority of people as having a high priority.

I understand that a representative of Western Mining Corporation has been regarded as being a representative of the conservationists. The conservation movement of South Australia is not happy with this decision and feels that there is an under representation of conservationists on the committee and has offered the expertise of the Conservation Council of South Australia to help address the imbalance on the committee. My questions to the Minister are:

Does he consider that there is an imbalance on the committee? What are the qualifications and expertise of the committee members, particularly with respect to the issues of conservation, and will he accept the offer of the Conservation Council of South Australia?

The Hon. DIANA LAIDLAW: I will refer the honourable member's question to the Minister and bring back a reply.

TRANSADELAIDE

The Hon. DIANA LAIDLAW: I seek leave to table TransAdelaide work sheets referring to water leakage on trams 351 and 370 on 29 July 1994 as requested by the shadow Attorney-General earlier today.

Leave granted.

HINDMARSH ISLAND BRIDGE

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Transport a question about Hindmarsh Island.

Leave granted.

The Hon. M.J. ELLIOTT: I have certainly been approached by a number of people who have become increasingly confused by the Government's stand on Hindmarsh Island. I attended a public meeting in Goolwa where there were at least 300 or 400 people present, when the Premier indicated that the Government would be exploring the contracts to see whether there was any way they might be avoided. As has been indicated in this place, the Minister for Transport seemed to have a fairly clear position both before and after the election.

Following the response yesterday by the Minister for Transport, the confusion really has grown. In her reply, the Minister said, in part:

> I highlight that what appears to be clear from Mr Tickner's judgment is that he has banned the building of 'the' bridge, not 'a' bridge.

The Minister has repeated that comment in this place today. I bring to the Minister's attention the report prepared by Professor Cheryl Saunders for the Federal Aboriginal Affairs Minister, Mr Robert Tickner. In section 5 of the report, entitled, 'The extent of the area that should be protected', it says:

> The problem presented by the bridge is presented by any bridge, not merely the current proposal on its current alignment.

The Hon. K.T. Griffin: Are you saying that Saunders made the decision, not Tickner?

The Hon. M.J. ELLIOTT: Saunders's advice was sought, and that is the advice on which Tickner acted. The advice is quite explicit in that regard. Certainly Mr Tickner

had a particular proposal put before him, and of course the ruling was on that basis, but what Professor Cheryl Saunders had to say was absolutely unequivocal. When one considers that this report has been available since 11 July, one wonders why the Minister with prime responsibility for this matter is not aware of this most basic piece of information. Has the Minister read the report by Professor Cheryl Saunders and why is the Minister so badly informed on this matter?

The Hon. DIANA LAIDLAW: I have read the report. I am aware of the information. I did make representations on behalf of the Government to Professor Saunders when she was in Adelaide. It is true that Professor Saunders said that the problem that she highlighted would relate to any bridge. Yesterday I also referred to the fact that, when distinguishing between 'a' bridge and 'the' bridge, there are still the problems of Aboriginal spirituality and Aboriginal significance throughout that whole area. There is no conflict between Professor Saunders and me in that regard. So, Mr Tickner is explicit in his declaration, and that is the issue about 'the' bridge.

The Hon. C.J. Sumner: Why are you trying to build another bridge?

The Hon. DIANA LAIDLAW: I will tell you why: because in his letter to Mr Fowler of confirmation of the meeting with Westpac Mr Bannon agreed to build a bridge.

The Hon. C.J. Sumner: Now you're looking to build another bridge?

The Hon. DIANA LAIDLAW: I am looking at all options because Westpac has a letter from the former Premier, Mr Bannon, to build a bridge.

Members interjecting:

The Hon. C.J. Sumner: Keep going.

The Hon. DIANA LAIDLAW: What is so difficult for the Hon. Mr Sumner? His friend, his mate, his old hero agreed with Mr—

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: I do not need your encouragement. He agreed with Westpac and wrote this letter. The mess that the former Minister for Transport Development got into with this bridge arose because of this letter. This letter indicates that the State is obliged to build 'a' bridge. Mr Tickner has explicitly banned 'the' bridge. So our legal obligation, which was inherited from an understanding between Mr Bannon and Westpac, remains for a bridge.

The Hon. C.J. Sumner: Now you want another bridge?

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: It is not what I want or do not want. All I am saying is what we have in terms of access issues arises because of Mr Bannon, the Hon. Mr Sumner's friend and mate. We are trying to unravel this situation because it is unclear what Mr Tickner will now accept or not accept in terms of improving access. We still have over our head this commitment by Mr Bannon, as former Premier, to Westpac to build a bridge. All these matters are before the Government and are being assessed as I would expect any responsible Government to do in the circumstances. All these options must be assessed.

An honourable member: Even though you were opposed to the bridge before.

The Hon. DIANA LAIDLAW: I have never made a secret of either my personal views or the Government's views in this regard. I have always stated that, with reluctance, the Government accepts it and is now sorting through all the issues, legal and otherwise, in terms of improving access to the island.

The Hon. M.J. ELLIOTT: I have a supplementary question. Knowing that Mr Tickner acted on Professor Saunders's advice, which is quite explicit, why does the Minister seek to protract something which could go on for another year seeking alternative bridge sites, knowing that, at the end of the day, it has to fail on the advice that has been given to the Minister?

The Hon. C.J. Sumner: Because they now want the bridge.

The Hon. DIANA LAIDLAW: There is no basis for such a statement. The Government is looking at all its options and that is absolutely—

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: The honourable member should not be too smug since the former Government got us into this mess. The Hon. Ms Wiese is the one who a moment ago said that she heard from Aboriginal women but did not even listen to them. If she had listened to them or consulted them we might not be here today. I agree that Professor Saunders's advice is general—

The Hon. M.J. Elliott: It is specific.

The Hon. DIANA LAIDLAW: Her advice is general about the problems across the area.

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: Yes, that is right. Mr Tickner is quite explicit in respect to the area on which he has made a ruling. As a responsible Government we have to go through all these options including discussions with Westpac in terms of our obligations.

The Hon. C.J. Sumner: To build another bridge

The Hon. DIANA LAIDLAW: There are many options. All I have said is that anybody has a responsibility to improve access to the island. If you are in fact held up by the ferries you have to—

Members interjecting:

The Hon. DIANA LAIDLAW: The Government has always been concerned about access to the island and in terms of addressing that access it has inherited these contracts which it has accepted with reluctance.

The Hon. BARBARA WIESE: I have a supplementary question. Earlier in response to the question asked by the Hon. Mr Elliott the Minister indicated that she had made—

Members interjecting:

The Hon. K.T. Griffin: You have to ask a question.

The PRESIDENT: Order! Please ask the question.

The Hon. BARBARA WIESE: The Government is a bit sensitive about this issue, is it? It doesn't want anything said that might give anybody a fair break.

Members interjecting:

The PRESIDENT: Order! There will be no debate.

The Hon. BARBARA WIESE: I will remember that. Mr President, will the Minister make available the submission which she made on behalf of the Government to Professor Saunders?

The Hon. DIANA LAIDLAW: Yes, I will speak to the Premier, as it was prepared in both our names, and I will gauge his view.

ADOPTIONS

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister representing the

Minister for Family and Community Services a question about the review of the Adoption Act.

Leave granted.

The Hon. SANDRA KANCK: I have been contacted by a group of people who are concerned about, first, the instigation of the governmental review of the Adoption Act 1988 and, secondly, the selection process of those chosen by the State Liberal Government as suitable members to sit on the review panel.

Shortly after the election the incoming Liberal Government announced that it intended to review the Adoption Act. Such an announcement was quite unexpected as it was not outlined in any pre-election policy and there appeared to be no pressure by the community to look into the Act. The Government's reason for reviewing the Act was simply stated 'because it is due'. However, the terms of reference state that the review will consider only selected parts of the Adoption Act rather than a review of the entire Act. The selected parts are those surrounding the right or otherwise of adopted children to meet their natural parents.

Under the current Act a natural parent or their offspring can put a stop on any identifying details being given to the other. However, this stop must be reviewed every five years. Some natural parents have argued for their need to have a lifetime stop on their children ever meeting them, thereby denying adopted children the opportunity to meet their natural parents. The people who have lobbied me have argued that such a provision would be a violation of basic human rights. Those people are also concerned about the selection process of members of the review panel. They have expressed the view that an academic who is involved in the Adoption Privacy Protection Group has direct and regular access to one of the members of the panel. My questions to the Minister are:

1. Given that there has been no general community support for a review of the Adoption Act, who are the interest groups who have successfully lobbied the Government in pushing for a review of the Adoption Act to support the interests only of the natural parents?

2. If, as the Minister has said, the reason for the review is simply that it was due, why are only selected parts being reviewed?

3. Did the selection process of individuals to the review panel include a requirement that all prospective appointees first provide a statutory declaration outlining in detail the nature and extent of their interest in adoption? If it did not, did the Minister question the background of the members of the committee?

The Hon. DIANA LAIDLAW: I will refer the question to the Minister and bring back a reply.

STANDING ORDER 14

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I move:

That for this session Standing Order 14 be suspended.

This procedure has been adopted in recent times to allow consideration of other business before the Address in Reply has been adopted.

Motion carried.

SELECT COMMITTEE ON THE STRUCTURE OF GOVERNMENT IN SOUTH AUSTRALIA

The Hon. C.J. SUMNER (Leader of the Opposition): I move:

1. That a select committee of the Legislative Council be established to consider and report on the structure of government in South Australia and its accountability to the people with particular reference to:

(a) recognition of the original inhabitants of the State;

(b) the relations (including financial relations) with the Federal Government and:

(i) whether powers should be referred or transferred to the Federal Parliament and/or Government;

(ii) whether powers should be referred or transferred from the Federal Government and/or Parliament to the State Parliament and/or Government;

(c) whether responsibilities and powers should be devolved on local government;

(d) the sources of funding for the three tiers of government;

(e) the modernisation of the South Australian Constitution Act, including the role, functions and structure of the Executive Government and whether it should be recognised in the Constitution Act;

(f) the entrenchment in the Constitution of the independence of the Judiciary;

(g) the accountability of the Judiciary;

(h) the appointment and powers of the Governor including the need for a Head of State;

(i) the need for a bicameral legislature and the number of members of Parliament;

(j) the implications for South Australia's constitutional structure of proposals for Australia to become a republic;

(k) the desirability of the establishment of a Charter of Rights for South Australians to be incorporated in the Constitution Act and the desirability or otherwise of entrenching such a Charter;

(l) the education of members of the community (including school children) in issues relating to the constitution and government, and civil rights and responsibilities.

2. That Standing Order 389 be suspended to enable the Chairperson of the committee to have a deliberative vote only.

3. That this Council permits the select committee to authorise the disclosure or publication, as it thinks fit, of any evidence or documents presented to the committee prior to such evidence being reported to the Council.

4. That Standing Order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

This motion is the same as that which I moved on 11 May 1994 but which was not proceeded with because of the pressure of other business at the end of that parliamentary session. I do not intend to re-read the speech made at that time. It is contained on page 898 of *Hansard* and I again commend it and the reasons for moving this motion to members. Since I moved the motion there have been some developments which emphasise the importance of the South Australian Parliament proceeding with an examination of the issues referred to. First, the republican debate continues apace and it is highly likely that this issue will be at the forefront of political debate over the next few years. The Federal Government's committee on the republic has produced a report which provides a basis for discussion. It would be quite derelict of the South Australian Government and/or Parliament to ignore the issues raised in this debate, and my motion provides the vehicle for them to be examined.

Secondly, there is continuing debate about Commonwealth-State relations, including financial relations, and just yesterday the Premier in another place made a ministerial statement on recent and ongoing developments in Commonwealth-State relations. He pointed out that the Premiers and Chief Ministers of the States met in Sydney last Friday and discussed issues relating to Commonwealth-State relations. It is interesting that a number of these issues were foreshadowed in the speech that I gave when introducing this motion

on 11 May. It is pleasing to see that the Premier and the Government have acknowledged that the issues that I raised in moving this motion in May do need to be examined. Again, it would be derelict of the Parliament to ignore these issues, which are clearly going to be the subject of ongoing debate.

I repeat what I said on 11 May, namely, that this proposal involves the establishment of a select committee of the Upper House, but it could be pursued by way of a joint select committee or by some other means if the Parliament felt that appropriate. Whatever means is chosen to deal with these issues is a matter for the Parliament, but in my view we would not be fulfilling our responsibilities to the South Australian community if we did not examine these issues. In my view, a parliamentary forum is the best means of doing this. I commend the motion to the Council.

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

WOMEN'S HEALTH CENTRES

The Hon. CAROLYN PICKLES: I move:

That this Council—

1. Supports the retention of stand-alone Women's Health Centres at Noarlunga, Elizabeth, Adelaide and Port Adelaide; and

2. Opposes any move by the Liberal Government to integrate these existing facilities into the mainstream health services.

I move this motion with some dismay, because it seems to me that it is like a number of things that occur with women's issues and things that we have fought for over the years. We seem to take one step forward, we get some good facilities and good services, we relax a bit and think we can move forward, and then we find to our cost that we cannot, because they will be taken away from us. I believe that the Government has been somewhat devious in its responses to the women's health centres in relation to this issue. On 21 July in response to a press statement that I put out, the Minister for Health, Dr Armitage, said:

He totally rejected claims by Ms Carolyn Pickles that he was 'downgrading women's health centres'. 'I have not made any directions or any proposals concerning women's health centres,' Dr Armitage said. 'Women's health centres will not be downgraded. I am sure that the centres are aware of the need to be efficient. One centre on their own initiative suggested a couple of ways that they see as possible to make administrative savings while at the same time continue to provide quality services to women in their area. As a result of those initiatives the South Australian Health Commission has had preliminary discussions with some centre directors and board members. While I am aware of the initiative and of the discussions taking place, no formal proposal has been put forward for my consideration yet. I understand discussions are still at a very preliminary stage, and I will be concerned that whatever is decided that the services women's health centres provide will not suffer.'

That is all very well and good but, in response to a question in another place yesterday, from the member for Napier, Ms Hurley, namely: 'Does the Minister for Health recognise the need for stand-alone centres for women's health services?' the Minister, Dr Armitage, replied as follows:

I thank the member for Napier for this very important question, particularly representing the area that she does. It is important that the facts be known. A number of community health centres and women's health centres are based in Adelaide. There is a campaign at the moment based on the belief that the Government is pushing the amalgamation line. The fact is that a number of the women's health services in the immediate vicinity of the Napier area believe they can provide more services by amalgamating administration. That is an effort that is coming from the bottom up, not proposed by me or by the commission; it was a movement from within the women's health centres and the community health centres.

I tell all South Australians that if people come to me with innovative plans for cutting administrative costs and allowing the provision of more services to people in South Australia, as the Minister for Health, obviously, I am interested in that.'

That is a very interesting response, too. In a letter of 2 August to the Minister for Health, the Chairperson of the board of management responded to the Minister, and I quote, in part:

At its meeting held on 2 August the board of management of the Elizabeth Women's Community Health Centre was informed of your statement of this day made in the House of Assembly that the women's health centre in the Napier electorate had approached you with a proposal to integrate women's health in the northern area into community health centres. The board and director express their complete rejection of this statement and put on record that such a decision/discussion has not taken place, nor has such a decision been made by this organisation.

They go on to say:

On a number of occasions the various options for women's health centres were discussed. No firm proposals were made or accepted, nor was any proposal outlined in the planning document presented to your office. The board was extremely dismayed to learn of your statement in the House and can only assume we have been misrepresented in this matter or, alternatively, that you have been misinformed.

Another alternative is that the Minister is fudging the issue and intends to do something with women's health centres that the community will not like. I wish to place on the record some of the history of women's health centres because they have been in place in South Australia for a long period and have been most successful. It is important that members who may be new to this place know the history of these centres.

In 1973-74 Commonwealth grants were made to women's health centres in Darwin, Melbourne, Sydney and Perth and other women's shelters were established under this program. It was in this climate that Women's Liberation House organised a meeting in 1974 to consider the question of a women's health centre for Adelaide. There was considerable support for the idea and a decision was made to apply to the Commonwealth for funding. In February 1976 the first centre was officially opened in Hindmarsh, I believe in Mary Street, and the Hon. Ms Levy will recall that.

The provision of a service for individual women which incorporated treatment with education and information about how women's bodies work, how conditions developed and how they may be prevented was undertaken. Attention was also given to the social and environmental circumstances that could be relevant to treatment and prevention. At that time they took a rather holistic approach, which was very unusual, in attempting to address the needs of the whole person, rather than just symptoms of specific parts of the body. Self help and discussion groups in which women learnt and shared information with other women were recognised as important, particularly in relation to developing confidence amongst women in their perceptions of their health needs. Their approach also involved an understanding of the importance of taking action in and with the community in an attempt to ensure that the health system would be more responsive to the demands of women and that other aspects of the social environment, which had an impact on women's health, could be addressed.

As a result of numerous events incorporating much public and parliamentary debate in 1976 the South Australian Health Commission Act came into force and provided a framework for reorganisation. As set out in the Act, the commission's charter was:

To achieve the rationalisation and coordination of health services in South Australia; to ensure the provision of health services for the benefit of the people.

Its main objective and responsibility was:

To promote the health and well-being of the people of this State.

It was to be accountable to the Government, through the Minister, for funding, resource allocation and for planning and development of appropriate and effective services. It was also to be accountable to the community and the people through a system of advisory committees. It was this Act which provided the framework for the establishment of the Adelaide Women's Community Health Centre in 1980 and later for the Elizabeth, Southern and Dale Street Centres set up in the northern, southern and western metropolitan regions respectively.

The Adelaide Women's Health Centre was created in the image of the first women's health centre at Hindmarsh, but it did have some modifications. It retained nearly all of the Hindmarsh workers and all of the positions, including the salaried medical officers, but there were a number of differences in the organisational arrangements and services provided by the new centre. It had clearly structured levels of responsibility. There was a management committee, the majority of whom were appointed by the Minister of Health. The members were all women who had demonstrated an interest in women's health or related issues. It was accountable to the Minister for the management and administration of the centre.

A coordinator was appointed to undertake the delegated management and administered responsibilities entailed in the day-to-day running of the centre. The decision making structure was participative, but there was a rejection of the idea of collectivity. Workers were granted status as Health Commission employees but the centre retained the right to employ its own staff. Any sharing of medical skills with non-medical staff was discontinued. The firm and visible commitment to the feminist principles was tempered. The centre gained respectability in the State and status. Within the system it was beginning to seek and find a new legitimacy and voice. That information comes from 'Women's Health Centres in South Australia: A Case Study in State Health Service Legislation' by Jocelyn Auor, July 1988.

I now wish to outline some of the benefits that I and most women who have had anything to do with women's health centres in this State believe to be important. The principal functions of women's health centres are:

1. To provide a model of service to women which would be complementary to existing services.
2. To act as a catalyst for changes within the broader health system.

Centres would provide core services as follows:

- clinical and preventive health services to individual women.
- educative and preventive health services to individual women.
- development of health information and health promotion programs for women and for use by other health workers and organisations.
- system change functions.

This last category includes the following:

- development of models of service delivery which demonstrate alternative, effective approaches specific to women's health needs.
- provision of a model service to women who are then able to use that experience in their interaction with the broader health system.
- advocacy on behalf of women's health interests at policy and planning levels within the broader health system.
- monitoring and responding to policy documents to ensure a proper inclusion of women's health interests.

One of the principal functions of the women's health centres is to develop and demonstrate a model of care which is appropriate, sensitive and responsive to the needs of women. Such demonstrations enable a body of knowledge and practice to be established which creates a community recognition of the desirability of such services being offered within the mainstream, mixed gender health services.

During the past 16 years the South Australian Women's Health Centres have collectively developed a body of knowledge, practice and experience that enables them to claim status as centres of excellence in this area of women's health in South Australia in the following areas:

Promoting better recognition and response within the general health system to women's needs, particularly in the areas of domestic violence, eating related disorders, use of minor tranquillisers, child sexual abuse, endometriosis, post-natal depression, pelvic inflammatory disease, menopause and, in later years, the whole issue of silicone breast implantation.

Women's health centres have functioned as examples of successful community based health services and have provided technical advice and training to individual health workers as well as to secondary and tertiary institutions. I believe that they are a model for consumer oriented health care. Community based women's health services, in consultation with women in the community, have developed and implemented participative health care models, which I believe have been most successful in this State.

They have also carried out the important role of health promotion. Women's health centres have had a significant focus on illness prevention and the promotion of health through the development of innovative and appropriate health promotion campaigns. The centres have also provided expert advice to various organisations whose health promotion campaigns are targeted specifically towards women. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

REPUBLIC

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

That, in the opinion of this Council, it is inevitable that Australia will become a republic, and that this Council therefore—

1. endorses statements by the Premier (Hon. D.C. Brown) that a republic is 'inevitable';
2. as a consequence, calls for a wide-ranging community debate on the options for constitutional change; and
3. respectfully requests the concurrence of the House of Assembly thereto.

The debate is important and is as relevant at State as it is at Federal level. It is important that the debate be non-partisan. Some people express concern that there are other more important issues. It is fair to say that some people cannot stand up and chew gum at the same time. My view is that debates on many important issues can run concurrently. Some Federal politicians on both sides of politics can be accused of allowing this to become a diversion. I do not see that as necessary or even likely in South Australia.

The Premier's statements last year give me hope that the debate in South Australia at least will not become Party political. I draw the Council's attention to the comments of the Premier as reported in the *Australian* on 31 March last

year. Under the heading, 'Liberal Leader backs republic', the articles states:

> South Australia's Opposition Leader, Mr Brown, yesterday became the first Liberal Party Leader to openly declare his support for Australia becoming a republic. Mr Brown went further than the Liberal Premiers of New South Wales, Mr Fahey, and Tasmania, Mr Groom, and the Chief Minister of the Northern Territory, Mr Perron, who said this week that they believed a republic was inevitable.

A little later in that article it is reported:

> Mr Fahey's proposal at the weekend for a constitutional convention on the issue has been supported by Mr Groom, Mr Peron and Mr Brown, the Premier of Western Australia, Mr Court, and the Queensland Liberal Leader, Ms Sheldon. Mr Brown said yesterday he supported an Australian republic if all constitutional problems could be resolved and there was a consensus of view within South Australia. He also said, 'My personal view is that Australia will move towards becoming a republic.'

Mr Brown, on the steps of State Parliament, said:

> There are, though, enormous constitutional problems to resolve for South Australia. Provided those constitutional problems are resolved and there is a consensus of view within South Australia, then I support becoming a republic.

Asked about his personal reasons for supporting a republic, Mr Brown cited Australia's independence and a growing focus in Asia. So, Mr Brown was clear and unequivocal in saying that he saw it as inevitable and that he supported it, provided that certain matters could be overcome.

I see Australia's becoming a republic as inevitable. Polling trends clearly show that public sentiment is moving in that direction. Interestingly, polling indicates that Britain may cut its ties from the monarchy even before Australia does. The major value of the monarchy to Britain appears to be tourism.

Logic tells us that the monarchy is inconsistent with the fundamental beliefs of a modern society. The only real arguments put forward in defence of the monarchy are that it has provided stability and that we could have constitutional chaos. This is nonsense. There are minimal changes necessary which would resolve anomalies associated with the monarchy without changing the fundamental functioning of our democracy. I will return to this later.

As we approach our centenary of nationhood it is a source of mystery to other nations that we should have a head of State from another nation at the other end of the earth. It is not a matter of denying our parentage; it is a matter of having a mature relationship with our parent, although it is also worth noting that in relation to the real parentage of the Australian population it is increasingly likely that the parentage is from another nation than Britain. In fact, for a majority that is now the case. Although my own ancestry is predominantly British, it includes Portuguese and German.

In a modern society one has to ask how it is that we accept a monarch as head of State when that monarchy is based upon inherited power. Inherited power should be anathema to a democratic nation. We have to ask how it is that we accept a monarchy that will only accept a member of the Church of England and who may only marry a person of the same faith. That is a contradiction in terms and is again clearly unacceptable in a modern State which preaches tolerance and equality of all, regardless of religion.

It is a monarchy which is also based upon gender. Given a choice, the monarch should be a male, the eldest son being first in line and any other sons preceding any daughter. That would be directly in contradiction of both Federal and State legislation in relation to sex discrimination, yet we allow these laws to be breached by the head of State. That is clearly nonsense. As I said, logic tells us that in a mature nation we will no longer accept a head of State from another nation and a head of State based on inherited power who must be of a particular religious faith and whose position may also be dependent upon gender.

My personal view is that as we look to constitutional change and change within South Australia that change can be quite minimal. It need not create the great constitutional chaos that some people suggest. That is not to say that major constitutional change may not be considered. I am arguing that it is not necessary, and I do not see a great need for it. The minimalist approach would allow us to continue as the Commonwealth of Australia and to have a Governor-General who largely has the powers of the present Governor-General. If anything, some of those powers may be further prescribed.

The major question is how not to politicise the position of head of State. If that position becomes political and if an elected person is in a position to veto legislation—something that we may care to limit or curtail in some sense—there will always be a temptation for the position to become highly political.

It is my view and that of the Australian Democrats senators that the Governor-General should be elected by the Parliament itself and should be elected—perhaps on the nomination of the Government—by a two-thirds majority of each of the Houses. If such a condition existed then the nominee would clearly be a person who was likely to be acceptable to the two larger political groupings in Australia. It is also likely, as much as one can hope for, to be a non-Party political person, or at least a person who would be deemed to behave in a non-Party political fashion.

In any case, as I said, I believe the minimalist approach would clearly be to limit the powers of the Governor-General. In reality the powers of the Governor-General in Australia are not all that great, anyway. Of course, if one chooses to take that minimalist approach, we do have a change of monarch and the head of State. We could be in the position where we had a head of State nationally, that person now being an Australian, but the head of State for South Australia could technically still be answerable to the Crown. I think that would be something of a nonsense. Clearly, there must be a debate also about the position of Governor at a State level.

I would lean toward retaining that position and filling that position in exactly the same manner as I propose for the Governor-General, and that the powers similarly should be clearly set out for that position. It is true to say that some people, including some Democrat senators, have suggested many more radical changes. Some people have asked whether or not States should continue and, if they do, whether the current State boundaries are the correct ones. I would argue that that debate is quite separate from the question as to who is our head of State.

I would hope that as we move, as I think we inevitably are, toward a referendum on the question whether or not we become a republic that question be kept quite separate from many other constitutional changes that are being put forward. History shows us that achieving constitutional change in Australia is very difficult. The more changes we try to achieve at once the less likely it is that any of those changes get through. And, if at any stage the debate becomes Party political, to run a full 'No' campaign—as happened at the last attempt at constitutional change—is an easy thing to do.

I would hope that as this debate proceeds, while we may argue many issues of constitutional change as we approach our centenary we should separate the issue of Australia as a republic from many other constitutional changes that some

people would like to see. I would certainly hope that as those matters are being debated we will vote for them at a different time. I must say that I would hope for at least a two year separation between having a referendum on the question of Australia's becoming a republic and any later referenda on other matters affecting the Constitution.

I earnestly believe that a mature debate in a mature nation can be achieved. Those who start arguing complexity and more important issues are simply attempting to cloud the debate and realise that their position is indefensible. It is certainly not beyond our wit to change the system, and to suggest otherwise is an insult to the country and to the State. I urge all members to support this important motion. We must take part in the debate at a State level as well. I hope that when it passes this place the motion will have similar support in the House of Assembly.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

FILM AND VIDEO CENTRE

The Hon. ANNE LEVY: I move:

That this Council condemns the Minister for Arts for closing the South Australian Film and Video Centre, contrary to informed recommendations, without prior consultation with the Film Corporation Board, the Libraries Board, the centre itself or its customers, or anyone else, so destroying a most valuable South Australian cultural resource and causing disruption and difficulties for its hundreds of thousands of users.

In moving this motion, I want every member of this Council to realise the vandalism of South Australian cultural institutions which is obviously about to occur, beginning with the closure of our Film and Video Centre, which is over 20 years old and which is highly regarded not only in South Australia, not only in Australia, but throughout the world. Indeed, the National Film Board of Canada has referred to our Film and Video Centre as a model that should be followed elsewhere in the world. It has provided a superb service to hundreds of thousands of South Australians for many years, and we now have this vandalism that closes this important cultural institution.

I stress the lack of consultation which has occurred and which is occurring contrary to informed recommendations. Last year a review of the Film Corporation was set up by me, with an extremely competent review panel. The panel decided to do the review in two sections, the first being the production and distribution arm of the Film Corporation and subsequently a review of the Film and Video Centre. The panel completed the first part of its task well before the election. It gave me the report, which I made available. I publicly released the report so that everyone could read it, and I then proceeded to implement its recommendations with regard to the production and distribution arm.

The panel continued its work but had not completed its work of reviewing the Film and Video Centre before the election occurred. Obviously, great change has occurred. The panel completed its work and presented its report to the Minister, but she has never released it. Secrecy is obviously the order of the day. The review team—

The Hon. Diana Laidlaw: It has been available for two months.

The Hon. ANNE LEVY: It has never been publicly released.

The Hon. Diana Laidlaw: It has been available. People have had it.

The Hon. ANNE LEVY: It has not been sent to me or to any member of Parliament. It is not available in the Parliamentary Library, as it certainly should be. It has not been tabled in this House; it has not been presented to the library.

The Hon. Diana Laidlaw: Have you come to my office and sought a copy?

The Hon. ANNE LEVY: I shouldn't need to.

The Hon. Diana Laidlaw: Have you?

The Hon. ANNE LEVY: If it is publicly released, it should be available in the Parliamentary Library. It is not available in the Parliamentary Library.

The Hon. Diana Laidlaw: You haven't sought a copy?

The Hon. ANNE LEVY: I have a copy.

The Hon. Diana Laidlaw: You haven't sought one from me. You have a copy because it is available publicly.

The Hon. ANNE LEVY: It was not publicly released and secrecy was the order of the day. This review, conducted with the assistance of an expert consultant, came to a conclusion and produced 13 different recommendations regarding the Film and Video Centre. The first recommendation was that the South Australian Film and Video Centre continue to operate. That is the considered advice and recommendation from the informed people who have studied this matter carefully. So, we have the Minister going quite contrary to the informed recommendations of her expert committee. This report states:

The South Australian Film and Video Centre makes a unique and valued contribution to South Australian cultural life and to the film and television industry in this State through the collection, exhibition, distribution, dissemination and promotion of film and video and related resources. The Film and Video Centre has a substantial client base for its services and the State's collection of films and videos is a significant cultural, educational and industry resource.

That is clearly stated in this report. It is a significant cultural, educational and industry resource which is now being abolished, abandoned, vandalised and destroyed by a Minister who takes no notice of informed recommendations which are made to her.

Furthermore, the report considers possible options for the Film and Video Centre and discusses each of them, and so carefully justifies its ultimate recommendations. One of the matters it considers is the effect of closing the Film and Video Centre, which is in fact what the Minister is doing. But this review by experts states that closing the Film and Video Centre would be:

. . . the loss of a major cultural, educational and recreational resource for South Australians and the loss of a major resource for the South Australian film and television industry. Disposal or breaking up the collection would result in the destruction of this unique resource. Storage would involve additional expenses. Some broad functions would still remain, for example, the liaison with the National Film and Video Archives.

The review from which I am quoting and which states that it would be a destructive thing to do to close the centre consulted very widely indeed. There is a list in the report of the number of people who were consulted, and there are several pages of groups and individuals who were consulted, both within South Australia and interstate, where different opinions could be obtained regarding our famous Film and Video Centre.

However, the Minister then made her decision to close the centre with no consultation whatsoever. She certainly did not consult the board of the South Australian Film Corporation, which had the responsibility of running the centre. She arrived there one day and told them she was going to close it. There was no consultation with them whatsoever. Her

initial statement said that the smaller part of the collection, the 8 000 videos out of a total of 28 000 items, would be made available through the public library system, but before this announcement there was certainly no consultation with the Libraries Board. They were told that they would have the responsibility of distributing the 8 000 videos through the public library system. There was no consultation; they were just told that this is what they would be doing.

The Hon. Diana Laidlaw: They have been wanting it for years.

The Hon. ANNE LEVY: They were told, not consulted at all, I reiterate. The centre itself was not consulted as to whether any changes required could be implemented or were feasible, or as to why the Minister was discarding all the recommendations of her expert committee. There was no consultation with any of the users of the centre, and they are many and varied from every section of the community, from all walks of life. They range from schools to film groups to educational institutions—hundreds of thousands of users throughout South Australia. None was consulted before decisions were made.

The original announcement said that the 8 000 or so videos would be available through the public libraries system, and of the 22 000 films it was said some might go to the Mortlock, those that were South Australian, without making clear that the Mortlock is not a borrowing library but a reference library only, and to this day, far more than a month later, it is still not known what will happen to the extensive film collection. The initial press release said that other functions of the Film and Video Centre, such as some of its educational programs, seminar workshop programs, special film showings and festivals could be taken over by the Media Resource Centre. There was no consultation with the Media Resource Centre. As far as I know, the Media Resource Centre still only knows about it through the media. No approach has been made to them as to whether they would wish to take on this function, and what extra resources they would need to take on this function, because they could hardly take it on without resources to undertake all this activity. The Media Resource Centre is not even given the courtesy of a visit from the Minister to tell them they are to have a new function. They learned about it through the *Advertiser*.

The Hon. Diana Laidlaw: Who said they would be having a new function?

The Hon. ANNE LEVY: You said they would be taking over some of the educational, workshop, seminar and festival functions which the Film and Video Centre has been undertaking. Certainly the Media Resource Centre have never been contacted about it. This absolutely crucial decision affecting one of our major cultural institutions in this State was taken with no discussion, no consultation with anybody, and contrary to the recommendations which the Minister had received from an expert committee only a few weeks beforehand. This is not the way to run the arts in this State.

A great deal of uncertainty still exists as to just what is happening. What resources are being transferred? The Minister says that this is going to save money. The videos are being transferred to and will be available through the public library system. Thanks to the efficiency of the Libraries Board that seems to have been worked out, and as from 10 days ago the videos which had previously been booked are available through the Hindmarsh offices of the PLAIN service, which is also taking bookings for the videos. All prior bookings for videos are being honoured. However, certainly no public announcement has been made as to what resources have been transferred to the Libraries Board to enable it to undertake this function. I would be very interested to know from the Minister what resources the Libraries Board will be getting to undertake this important function.

The expert review indicated that, regarding closure of the Film and Video Centre, if material was merely transferred resources would have to be transferred also and the savings would be minimal or non-existent and that it would be causing enormous upheaval for no purpose. I would stress that a collection such as this is not a static collection. It constantly needs working on; it needs updating; it needs collection development and managing; and specialist care of the material.

A film and video library requires skills which are totally different from those necessary in normal library work, as it is far more specialised. It is a specialist function to develop a catalogue such as the Film and Video Centre has done most efficiently for many years. Its various catalogues have been widely distributed and have been used by hundreds of groups throughout South Australia. Is the Public Library Service to likewise prepare catalogues of videos and distribute them widely? There will not be much point in distributing them to film clubs because films will not be available: only videos will be available. Certainly a market exists for the videos and one could ask: will there be the same distribution of video catalogues and what resources will be required for this?

If the Media Resource Centre is not to undertake them what is going to happen to the other functions of the Film and Video Centre, such as its conferences, seminars, festivals, special screenings and a whole host of other activities which it undertakes regularly? This would not be a function that the public library sector could take on. What resources will be required? Will those activities still be occurring? There has been no information on that and the arrangements are still very much up in the air.

I have been approached by many teachers who have relied considerably on the Film and Video Centre as an important and integral part of their curriculum presentation for the courses they give the students in our schools. The teachers who have spoken to me are dazed and shocked by the decision. They have built courses and curricula on the collection and the catalogues which have been distributed about the collection. This involves not just videos but also films. These materials have been particularly used in Australian studies, media studies and history courses. The first thing the teachers were told was that there would be no more borrowing or no more booking for the future, and that completely destroyed courses half way through a term, courses which had been built on the availability of these videos and films. This decision has now been modified to allow for videos to be made available through the public library system and for future bookings to be made through PLAIN. This still leaves questions in the mind of many teachers. They were extremely happy with the existing system. They stressed to me how they could book materials for up to 12 months ahead; that materials always arrived punctually on the day required; that they were delivered to the school itself; and collected from the school after they had been used.

Initially teachers understood that they would have to obtain videos through the public library system. Not all schools happen to have public libraries next door. In fact many schools are quite a distance from the nearest public library. The well-serviced schools would be the 43 country

schools who have joint community school libraries because the public library is on site at the school. However, that applies to only 43 out of nearly 800 schools in this State so there could be considerable difficulties for those other schools. Only last week the schools were told that the education courier service can continue to be used for the video distribution through the public library system so teachers will not have to find the public library, go down there and hope that the films have arrived; they will still arrive through the previous delivery system, and that has certainly relieved the mind of many teachers. However, this has occurred six weeks after the initial announcement. The teachers have had six weeks of worrying about how they are going to obtain these videos. That is another example of decisions being made on the run before any implications have been worked out and before any decisions have been made as to how the effects of this vandalism will be minimised.

The question of film is much more serious. The film collection is much larger than the video collection—over three times as large—and is used by many specialist groups. Those groups were told initially that there would be no more borrowing after 21 July; that no more bookings would be taken after 21 July; and in fact that as at 21 July film borrowing would just stop. Full stop! No more films! Obviously, owing to pressure from many people who have been extremely upset by this decision, the Minister has now changed her tune.

Just a few days ago the Minister indicated that films would be available if they had already been booked for the rest of this year. There was no information as to what is to happen next year, but those bookings which had previously been made for later this year would be honoured through the Film Corporation. I would very much like the Minister to tell us what extra resources the Film Corporation will receive to be able to handle this, because such activity does require resources, and they would need to be supplied to the Film Corporation. I stress that no further bookings for film are to be taken. No-one is taking bookings for that large film collection. There is no way that any availability of the film is to continue, other than bookings which were made prior to 26 June or whatever date it was that the Minister lowered the axe.

The latest information that has been sent to borrowers is that there is still an assessment of future options for the film collection. They still do not know what they will do with that incredible film collection: it is still not known. They make the decision to close the centre, and six weeks later they still do not know what they will do with those films. They are now telling people that it will take them three months to make up their mind what to do with the films but are giving no indication that, even when they have made up their mind, the films will be available for people to book or borrow. When I say 'people' I include groups such as many film groups throughout the community, not only schools.

The University of the Third Age is very concerned that it will no longer be able to continue many of its courses built around the resources of the Film and Video Centre, particularly as they need to program them up to 12 months ahead and need the certainty of bookings and knowing that the films and videos will turn up on the appropriate day. It will be three months before we know whether films will even be available, so how can people start planning their programs for next year, as they usually do at about this time of the year, if it will be three months before they even know if they can make these bookings? How can they possibly plan their year's activities for 1995 when they will not know until almost the start of 1995 whether these films will be available?

One piece of advice from the Minister was that it might be possible to copy the films onto videos so that they could then be made available through the public library system. I would certainly like an indication from her as to the cost that would be involved in such an activity; I understand that copying films onto videos is a most expensive undertaking and, in any case, videos are not suitable for some of the uses to which these films are put. They need the wide screen and can properly be appreciated only as a film, not a video.

The Minister is destroying an asset which is worth $5 million. It is being done at the whim of the Audit Commission, which recommended its sale. The Minister has not followed this advice, but neither has she followed any other advice. The Audit Commission certainly consulted nobody before making its recommendation. It obviously knows absolutely nothing about film and video, and I doubt whether the members of the Audit Commission have a cultural thought between them. They come up with recommendations like this with no consultation with people who know something about the area, and—

The Hon. R.R. Roberts: Put Mark Brindal in charge of it.

The Hon. ANNE LEVY: He would know a great deal more about film and video than do the members of the Audit Commission, that is for sure. It would not be difficult. Members may not be aware that the Kennett Government in Victoria tried to close the film centre there, which was the equivalent of our Film and Video Centre. There was such an outcry that the Premier was forced to back down. The film centre in Victoria continues in existence and is maintained by the State Government in Victoria. It is not as generously funded as it was in the past, but it still exists and is able to carry out many of its important functions. I would suggest that the Minister should admit that she has made a ghastly mistake in closing the centre, and follow Jeff Kennett's example and reverse her decision. She said before the election that she wanted to enhance the Arts in South Australia and also that she would maintain real term funding for them. Those were her promises before the election.

Instead, I would maintain that with this action she is giving Victoria a considerable cultural edge on us and that she is beginning a process of dismantling our cultural institutions. One wonders what will be the next one. Is it going to be savage financial cuts to all the institutions on North Terrace? Is it going to be savage cuts to the recurrent resources for all our institutions on North Terrace? That is the rumour which I am hearing, and this will be revealed to us on 25 August. Is the closure of the Film and Video Centre the first step in dismantling other cultural institutions? Is it to be death by slow cuts or are they to be axed and completely dismantled? It is obvious that her promises cannot be trusted and neither can her so-called commitments to the Arts.

The Hon. Diana Laidlaw interjecting:

The Hon. ANNE LEVY: I take exception to that interjection. I did deliver the Art Gallery extensions, despite what some writer in the *Australian* said. I got them through Cabinet, they were promised and the first funding of it was in the 1993-94 budget, as any examination of the budget papers will show. So, to suggest that I did not get approval for extensions to the Art Gallery and did not budget for it is completely erroneous. I certainly did not undertake death by slow cuts to the recurrent budget along North Terrace, which, as I say, is rumoured to occur on 25 August. I would suggest

that the Minister's so-called commitment to the Arts is words only, if she continues to make flat-footed, insensitive and damaging decisions as she has done with the Film and Video Centre, with no prior consultation with anyone beforehand.

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

LEGISLATIVE PROGRAM

The Hon. SANDRA KANCK: I move:

That for this session Standing Orders be so far suspended as to provide—

That unless otherwise ordered, where a Bill is introduced by a Minister, or is received from the House of Assembly, after 3 November 1994 and before the Christmas adjournment, and a motion is moved for the second reading of the Bill, debate on that motion shall be taken to be adjourned and the Bill shall not be further proceeded with until Parliament resumes in February 1995.

I am moving this motion to prevent a recurrence of the fiasco of the last week or two of the last session, in particular, to prevent the recurrence of that unprecedented 47-hour weekend sitting, to put an end to legislation by exhaustion. I recall that when we were going through that process last session every honourable member to whom I spoke expressed disgust about the way business was being managed and I hope that, given the various comments that were made both on and off the record, I will get widespread support for this motion.

At the time when we were going through the 47-hour sitting, some of us argued about the possible impact this could have, that we could have legislation creeping through with errors. Indeed, that has occurred and I am aware that the relevant Minister has found to his dismay some of the amendments that went through on that occasion did not have the impact he expected, or at least have a different interpretation than he intended.

The Democrats have some history with this form of motion in the Senate where, for a number of years, the Democrats moved this motion. It was first introduced by the former Deputy Leader of the Democrats, Senator Michael Macklin, and the process became such a part of the Senate that it became known as the Macklin motion. The motion works and it has been seen in the Senate over a number of years that it works. Last year the Greens Party got in ahead of the Democrats and introduced the Macklin motion themselves but added a little twist. As well as a cut-off date for the introduction of legislation into the Senate they also introduced a cut-off date for legislation introduced into the House of Representatives.

This caused quite an uproar. The Prime Minister reacted and said it was appalling that they should be dictating to the Government about how it should introduce legislation in that House. In fact, it is not just such a stupid idea and, if other members are interested in attempting to amend my motion, I would consider it favourably. For example, my motion basically says that we would not be accepting legislation after 3 November but, if the motion was extended to provide that we would not accept legislation that had not been introduced in the House of Assembly before 20 October, it would mean that any legislation introduced by that date, even if it did not get into the Council by 3 November, could be debated.

If legislation has been in the House of Assembly for three weeks, then it is legislation that has been available to us all. I am open to my motion being amended. I do not believe that a cut-off motion such as this has been introduced previously and I am willing to consider what other members have to say about the motion. Some members might believe that 3 November is too early and might prefer a later date. During those final weeks if urgent matters occur, the Council will be able to debate any such urgent matters if it was the opinion of the Council that such matters be dealt with by leave of the Council. That is my belief. If passed, the motion will remove the need for all night sittings; it will allow proper time for both preparation and consideration of amendments because in the rush that occurred in the last session there were a number of cases where I would have liked to have amended some of the Bills that came through but simply through lack of time I was not able to get amendments prepared.

If passed, the motion will allow more time for community input. As members of the Legislative Council we must remember that we are answerable to the whole State: we are not here just to push our own agendas. We need to hear what the community has to say about legislation and, if legislation is introduced only within a couple of weeks the session's conclusion, the opportunity for community input is very much retarded. If we have conferences of managers, they will be much more easily fitted in within the legislative program. It will certainly be good for the health and well-being of all honourable members.

The Hon. M.S. Feleppa interjecting:

The Hon. SANDRA KANCK: Yes, last but not least, it will allow the support staff in this Council to be treated in a humane way. I commend the motion to the Council.

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

CRIMINAL LAW CONSOLIDATION (MENTAL IMPAIRMENT) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Criminal Law Consolidation Act 1936 and to repeal the Mental Health (Supplementary Provisions) Act 1935. Read a first time.

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

That this Bill be now read a second time.

The special provisions of the criminal law dealing with major issues which arise when a person suffering from a mental illness comes before the courts of this State are to be found almost entirely in the common law. In general terms, the two major issues are the law concerning what is known as 'fitness to plead' and the law dealing with what is generally known as the 'defence of insanity'.

The rules about 'fitness to plead' are rules which deal with the situation where a person accused of a crime cannot give full answer and defence or instruct counsel to do so. This is generally linked to a capacity to understand legal proceedings, but not invariably so. It is usually the case that the reason why the accused cannot give full answer and defence and hence is not fit to plead is due to a mental illness of some kind. But, again, that is not invariably so. A person with a severe intellectual disability may also be in that position. Recently, a court in South Australia ruled a person unfit to plead due to severe physical illness. Moreover, there are cases on record where an accused has been found unfit to plead due to a combination of strong language and cultural differences.

The rules about when a person is or is not 'fit to plead' have not caused great difficulty and are preserved in this Bill. The same, however, cannot be said of the consequences of being found unfit to plead.

The 'defence of insanity' deals not with an existing mental illness or impairment suffered by the accused at the time of trial but with an existing mental illness or impairment suffered by the accused at the time at which the accused is alleged to have committed the offence. The rules dealing with the question of criminal responsibility are still taken from an English judgment of 1843, referred to as the McNaughten rules. In addition, in this State, there are some legislative provisions concerning detention contained in the Mental Health (Supplementary Provisions) Act 1935 which were derived from the English Criminal Lunatics Act 1800.

The test for legal 'insanity' and criminal responsibility, the court procedures by which this matter is dealt with and the outcome of a successful defence have all occasioned increasing disquiet and dissatisfaction in recent times. So far as the test is concerned, it has remained unchanged in form since 1843. Varying interpretations by the courts since that time have held that a severe anti-social personality disorder is not, or may not be, a mental illness, while, on the other hand, psychomotor epilepsy has been held to be a mental illness. In the code States of Queensland and Western Australia, a mental illness leading to a complete inability to control behaviour may lead to a defence of insanity, but not in the common law States.

The fact that the defence of insanity must be put to the jury as a part of the general issue of guilt or innocence has occasioned judicial criticism of the procedures by which the issue is tried as this is, at best, confusing for the jury.

In addition, the common law is that if a person is found unfit to plead, or is found to be not guilty by reason of insanity, the only outcome can be detention at the pleasure of Her Majesty—that is, indeterminate detention. As a consequence, it is only those charged with the gravest of crimes who elect to invoke these legal procedures. For example, who would risk being labelled as criminally insane and confined for an indefinite period when the allegation is one of, say, common assault, carrying a maximum penalty of two years' imprisonment?

There has been general agreement for many years that the law on these subjects is unsatisfactory. The Commonwealth enacted substantial legislation in 1989 and New South Wales made major amendments to its law in 1990. The Victorian Law Reform Commission recommended substantial change to the common law in that State in 1990, and in England reforms of a similar kind were enacted in 1991.

The defects of the common law may be summarised as follows:

(1) The current law operates badly—
- accused people avoid the defence of insanity except where the offence is very serious indeed, because the result of a 'successful' defence is indefinite detention;
- the legislation is archaic and offensively worded and is, in many respects, ignored in practice;
- those detained as mentally ill under the criminal law have few effective rights.

The result of all of this is that the role of mental impairment and intellectual disability in the criminal justice system is massively understated with consequent personal and systemic injustice.

(2) Other jurisdictions in this country have acted to reform their laws on the subject. While the results cannot be described as uniform, there are common themes. Most importantly, the Commonwealth enacted substantial reforms in 1989 and, unless South Australia acts to achieve some kind of consistency, it will result in drastically different treatment for State and Federal detainees. The Government is not urging complete uniformity but some degree of fair consistency is highly desirable.

(3) It is highly likely that the current law in this State is contrary to the International Covenant on Civil and Political Rights. In addition, the current state of the law does not conform to the UN Draft Guidelines and Principles for the Protection of the Mentally Ill. These matters have been detailed with considerable force by the Burdekin report.

In this State, the first major statutory reform to the system was by the Criminal Law Consolidation (Detention of Insane Offenders) Amendment Act 1992. This Act was introduced as a private member's Bill by the Hon. R.J. Ritson. In general terms, it did three things—

(1) it removed decisions about the release on licence of detainees from the Governor in Council and gave the decision to the relevant court;

(2) it provided for the notification and consultation of next of kin and victims in decisions about release on licence; and

(3) it required the formulation of 'treatment plans' for detainees.

The Bill was passed by Parliament with the support of all Parties and stands as a testament to the interest and tenacity of Dr Ritson.

In the meantime, the whole set of issues had been taken up by the Standing Committee of Attorneys-General and referred to a subcommittee of officers, known then as the Criminal Law Officers Committee. That committee produced a report to the Standing Committee in December 1992 which contained recommendations generally consistent with the trend of reform, both in this country and overseas. This Bill has been drafted in order to take up those recommendations.

In general terms, the Bill is intended to achieve the following reforms—

(1) It defines 'mental illness' using the words chosen for the purpose by the High Court. In particular, the definition includes severe personality disorders for the purposes of ascertaining criminal responsibility and to encompass the situation in which the accused is unable to control his or her conduct due to mental illness;

(2) It defines the roles of judge and jury;

(3) It isolates the question of fitness to plead or mental impairment from other questions which may be at issue in the case so that the judge and jury may concentrate on the issues affecting those fundamental questions;

(4) It ensures that if the question of fitness to plead or mental impairment is raised, the court must first be satisfied that there is sufficient evidence available that the accused actually committed the acts in question;

(5) It empowers a court which finds that the accused is unfit to plead or was not criminally responsible (due to mental impairment) to make the most appropriate disposition with respect to each accused, including detention or a community based treatment program;

(6) It requires a court to set a limit to the exposure of the accused to any supervision order made, the limit being fixed in relation to the penalty

which would have been applicable had the accused been found guilty of the offence with which he or she is charged;

(7) It retains the 1992 reforms sponsored by the Hon Dr Ritson, with some tidying up and clarification of the roles and responsibilities of those participating in the system who have legal responsibilities in relation to such people.

These reforms have been the subject of extensive consultation both within Government and in the general community. They have been overwhelmingly supported. The Government hopes that, as with the reforms of 1992, these long overdue reforms will attract the support of all Parties.

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

Leave granted.

Clause 1: Short title

Clause 2: Commencement

Clause 3: Insertion of Part 8A—Mental Impairment

DIVISION 1—PRELIMINARY

269A. Interpretation

This provides for definitions of words and phrases used in the Bill. The definition of mental illness is derived from the majority judgment of the High Court in *R v Falconer* (1990) 171 CLR 30 and mental impairment is defined to include senility, intellectual disability, mental illness and severe personality disorder. For the purposes of new Part 8A—

- the question whether a person was mentally competent to commit an offence is a question of fact;
- the question whether a person is mentally unfit to stand trial on a charge of an offence is a question of fact;
- the question whether a person acted in self-defence is to be regarded as a question going to the subjective, rather than the objective, elements of an offence.

The subjective element of an offence means voluntariness, intention, knowledge or another mental state that is an element of the offence while the objective element means an element of an offence that is not a subjective element. In new Part 8A, an offence must be comprised of at least one element that is a subjective element.

269B. Distribution of judicial functions between judge and jury

An investigation by a court into—

- a defendant's mental competence to commit an offence or a defendant's mental fitness to stand trial; or
- whether elements of the offence have been established,

is—unless the defendant elects to have the matter dealt with by a judge sitting alone—to be conducted before a jury. Any other powers or functions conferred on a court by new Part 8A are to be exercised by the court constituted of a judge sitting alone.

DIVISION 2—MENTAL COMPETENCE TO COMMIT OFFENCES

269C. Mental competence

A person is mentally incompetent to commit an offence if, at the time of the conduct alleged to give rise to the offence, the person is suffering from a mental impairment and, as a result—

- does not know the nature or quality of the conduct; or
- does not know that the conduct is wrong; or
- is unable to control the conduct.

269D. Presumption of mental competence

It is to be presumed that a person is mentally competent to commit an offence unless the person is found, on an investigation under this Division (*ie* Division 2 of new Part 8A), to have been mentally incompetent to commit the offence.

269E. Reservation of question of mental competence

If the question of a defendant's mental competence to commit an offence is raised at his or her trial, the court must proceed to determine, in the first instance, whether the objective elements of the offence have been established. If the court is satisfied beyond reasonable doubt (that is, the standard of proof required by the criminal law) that the objective elements of the offence have been established, the court must record a finding to that effect and then proceed with an investigation into the defendant's mental competence to commit the offence. If the court is not satisfied beyond reasonable doubt that the objective elements of the offence have been established, the court must record a finding that the defendant is not guilty of the offence.

If the question of a defendant's mental competence to commit the offence arises at a preliminary examination of a charge of an indictable offence, the question must be reserved for determination by the court of trial.

269F. Investigation of defendant's mental competence

A court investigating a defendant's mental competence to commit an offence must hear any relevant evidence put to the court by the prosecution or the defence. In the course of such an investigation, the court may call evidence on its own initiative and require the defendant to undergo an examination by a psychiatrist or other appropriate expert.

If the court is satisfied, on the balance of probabilities (that is, the standard of proof required by the civil law), that the defendant was, at the time of the alleged offence, mentally incompetent to commit the offence, the court must record a finding that the defendant is not guilty of the offence, and declare the defendant to be liable to supervision under new Part 8A. (The defendant would then be treated in accordance with the provisions of Division 4 of new Part 8A (sections 269L to 269S).)

If the court is not satisfied, on the balance of probabilities, that the defendant was, at the time of the alleged offence, mentally incompetent to commit the offence, the court must proceed to consider whether the evidence establishes the subjective elements of the offence beyond reasonable doubt (*ie* the standard of proof required by the criminal law) and—

- if satisfied that the subjective elements of the offence are established—must record a finding that the defendant is guilty of the offence and proceed to deal with the defendant as if a finding of guilt had been made in the normal way; or
- if not satisfied that the subjective elements of the offence are established—must record a finding that the defendant is not guilty of the offence.

The court may, if the prosecution and defence agree, dispense with or terminate an investigation into a defendant's mental competence and declare that the defendant was mentally incompetent to commit the offence, record a finding that the defendant is not guilty of the offence and declare the defendant to be liable to supervision under new Part 8A. (The defendant would then be treated in accordance with the provisions of Division 4 of new Part 8A (sections 269L to 269S).)

DIVISION 3—MENTAL UNFITNESS TO STAND TRIAL

269G. Mental unfitness to stand trial

A person is mentally unfit to stand trial on a charge of an offence if the person's mental processes are so disordered or impaired that the person is unable—

- to understand the charge or the consequences of being convicted on the charge; or
- to make a rational response to questions about the circumstances of the case; or
- to follow the evidence or the proceedings in a general way.

269H. Presumption of mental fitness to stand trial

It is to be presumed that a person is mentally fit to stand trial unless it is established, on an investigation under this Division (*ie* Division 3 of new Part 8A), that the person is not so.

269I. Reservation of question of mental fitness to stand trial

If there are reasonable grounds to suppose that a person is mentally unfit to stand trial, the court may reserve the question of the defendant's mental fitness to stand trial for investigation under this new Division. If the question of a defendant's mental fitness to stand trial arises at the preliminary examination of a charge of an indictable offence, the question must be reserved for determination by the court of trial. If a court of trial decides that the question of the defendant's mental fitness to stand trial should be investigated after the trial has begun, the court may adjourn or discontinue the trial and proceed with such an investigation.

269J. Preliminary prognosis of defendant's condition

Before the court begins an investigation into a defendant's mental fitness to stand trial, the court must obtain assessment of the mental condition of the defendant from an expert such as a psychiatrist. The court should adjourn the investigation for a period not exceeding 12 months if it appears from the assessment that, while the defendant is presently mentally unfit to stand trial, there is a reasonable prospect that the defendant will regain the necessary mental capacity over the next 12 months. If, after such

an adjournment, the court is of the opinion that the grounds on which the investigation was thought to be necessary no longer exist, the court may decide not to proceed with the investigation and the proceedings for determination of the charge will then be resumed.

269K. Investigation into mental fitness to stand trial

A court investigating the mental fitness of a defendant to stand trial must, in the first instance, determine whether the evidence for the prosecution is sufficient to establish the objective elements of the offence beyond reasonable doubt and must then—

- if not satisfied that the evidence for the prosecution is sufficient to establish the objective elements of the offence—discontinue the investigation, record a finding that the defendant is not guilty of the offence charged, and order that the defendant be discharged; or
- if satisfied that the evidence for the prosecution is sufficient to establish the objective elements of the offence—proceed with the investigation into the defendant's mental fitness to stand trial.

If the court proceeds with the investigation into the defendant's mental fitness to stand trial, the court must hear any relevant evidence and representations put to it by either side and may call evidence on its own initiative and require the defendant to undergo an examination by an expert such as a psychiatrist.

If, during such an investigation, the court finds, on the balance of probabilities (*ie* the civil standard of proof), that the defendant is mentally unfit to stand trial, the court may declare the defendant to be liable to supervision under new Part 8A.

The court may, if the prosecution and defence agree, dispense with or terminate an investigation into the mental fitness of a defendant to stand trial and declare that the defendant is mentally unfit to stand trial and is liable to supervision under new Part 8A.

DIVISION 4—DISPOSITION OF PERSONS DECLARED TO BE LIABLE TO SUPERVISION UNDER THIS PART

269L. Supervision orders

The court by which a defendant is declared to be liable to supervision under new Part 8A may release the defendant unconditionally or make a supervision order committing the defendant to detention in an approved treatment centre or releasing the defendant on licence.

If a court makes a supervision order, the court must fix a limiting term equivalent to the period of imprisonment or supervision (or the aggregate period of imprisonment and supervision) that would have been appropriate if the defendant had been convicted of the offence of which the objective elements have been established. A supervision order in force against the defendant under this Division lapses at the end of the limiting term.

269M. Variation or revocation of supervision order

The court may, at any time during the limiting term, on the application of the Crown, the defendant, Parole Board, the Public Advocate or another person with a proper interest in the matter, vary or revoke a supervision order. An application by or on behalf of a defendant for variation or revocation of a supervision order cannot be made for six months (or such greater or lesser period as the court may direct) after the court has refused any such application.

269N. Report on mental condition of the defendant

The Minister for Health must, within 30 days after the date of a declaration that a defendant is to be liable to supervision under new Part 8A, submit to the court a report on the mental condition of the defendant containing a diagnosis and prognosis and a suggested treatment plan prepared by an expert such as a psychiatrist.

For the duration of a supervision order, the Minister for Health must arrange to have submitted to the court (at intervals of not more than 12 months during the limiting term) a report containing a statement of any treatment that the defendant has undergone since the last report and any changes to the prognosis of the defendant's condition and the treatment plan for managing the condition.

269O. Report on attitudes of victims, next of kin, etc.

To assist the court in determining proceedings under this Division, the Crown must provide the court with a report setting out the views of the next of kin of the defendant and the victims of the defendant's conduct. A report is not required if the purpose of the proceeding is to determine whether a defendant who has been released on licence should be detained or subjected to a more rigorous form of supervision or to vary, in minor respects, the conditions on which a defendant is released on licence.

269P. Principles on which court is to act

The court must apply the principle that restrictions on the defendant's freedom and personal autonomy should be kept to the minimum consistent with the safety of the community when deciding whether to release a defendant under this Division, or deciding the conditions of licence.

269Q. Matters to which the court is to have regard

The court should have regard to—

- the nature of the defendant's mental impairment; and
- whether the defendant is, or would if released be, likely to endanger another person, or other persons generally; and
- whether there are adequate resources available for the treatment and support of the defendant in the community; and
- whether the defendant is likely to comply with the conditions of a licence; and
- other matters that the court thinks relevant.

The court cannot release a defendant under this Division, or significantly reduce the degree of supervision to which a defendant is subject, unless the court—

- has obtained and considered the reports of at least three experts on the mental condition of the defendant and the possible effects of the proposed action on the behaviour of the defendant; and
- has considered the report most recently submitted to the court by the Minister for Health; and
- has considered the report on the attitudes of victims and next of kin; and
- is satisfied that the defendant's next of kin and the victims of the offence with which the defendant was charged have been given reasonable notice of the proceedings (where possible).

269R. Cancellation of release

A court that released a defendant on licence under this Division may, on application by the Crown, cancel the release if satisfied that the defendant has contravened, or is likely to contravene, a condition of the licence. If a defendant who has been released on licence under this Division commits an offence while subject to the licence and is sentenced to imprisonment for the offence, the release on licence is cancelled and the detention order is suspended while the defendant is in prison serving the term of imprisonment.

269S. Supervisory responsibilities

Supervisory responsibilities arising from conditions on which a person is released on licence are to be divided between the Parole Board and the Minister for Health. The Minister is responsible for monitoring the mental condition of the defendant and the Parole Board is responsible for all other supervision in respect of the defendant.

DIVISION 5—MISCELLANEOUS

269T. Counsel to have independent discretion

Counsel may act in what he or she genuinely believes to be the defendant's best interests if the defendant is unable to instruct counsel on questions relevant to an investigation under new Part 8A.

269U. Power of court to deal with defendant before proceedings completed

If a question of a defendant's mental competence, or mental fitness to stand trial, is reserved for investigation under new Part 8A, the court may release the defendant on bail or commit the defendant to some appropriate form of custody until the conclusion of the investigation. Prison is to be used for custody only where the court is satisfied that there is no practicable alternative.

Where a court declares a defendant to be liable to supervision under new Part 8A but unresolved questions remain about how the court is to deal with the defendant, the court may release the defendant on bail or commit the defendant to some appropriate form of custody until some subsequent date when the defendant is to be brought again before the court. Again, prison is to be avoided except where the court is satisfied that there is no practicable alternative.

269V. Counselling of next of kin and victims

If an application is made under Division 4 of new Part 8A that

might result in a defendant being released from detention, the Minister for Health must ensure that the defendant's next of kin and the victims of the offence with which the defendant was charged are provided with counselling services in respect of the application. A person does not, in disclosing information about the defendant during the course of providing counselling under this section, breach any code or rule of professional ethics.

269W. Exclusion of evidence

This clause is declaratory and makes it clear that a finding made on an investigation into a defendant's fitness to stand trial is a finding for that time and for that purpose only. In any proceedings taken against a defendant (whether civil or criminal) subsequent to such an investigation but arising from the same set of circumstances, evidence of a finding made during that investigation is not admissible.

269X. Arrest of person who escapes from detention, etc.

A person who is committed to detention under this Part who escapes from detention, or who is absent without proper authority from the place of detention, may be arrested without warrant, and returned to the place of detention, by a member of the police force or an authorised person.

A Judge or other proper officer of a court may, if satisfied that there are proper grounds to suspect that a person released under a new Part 8A licence may have contravened or failed to comply with a condition of the licence, issue a warrant to have the person arrested and brought before the court.

Clause 4: Repeal of ss. 292, 293 and 293A

Clause 5: Repeal of Mental Health (Supplementary Provisions) Act 1935

The repeal of these sections and of the *Mental Health (Supplementary Provisions) Act 1935* is consequential on the insertion into the principal Act of new Part 8A.

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

MOTOR VEHICLES (LEARNERS' PERMITS AND PROBATIONARY LICENCES) AMENDMENT BILL

The Hon. DIANA LAIDLAW (Minister for Transport) obtained leave and introduced a Bill for an Act to amend the Motor Vehicles Act 1959. Read a first time.

The Hon. DIANA LAIDLAW: I move:

That this Bill be now read a second time.

This Bill was first introduced on 12 May, in the last days of the last session. The Bill seeks to vary the penalties for failing to carry a learner's permit and a probationary driver's licence. However, it will still be compulsory for learner and probationary drivers to carry their permit or licence at all times when driving. This requirement is considered necessary as an aid to the police in the enforcement of learner and probationary conditions.

Under existing legislation, a learner's permit or probationary driver's licence is cancelled and the holder disqualified for a period of six months if the driver fails to carry the permit or licence when driving. In addition, the driver is liable to an expiation fee of $42. The Government considers that the present penalty is out of proportion to the offence. This view is strongly supported by the community. The Bill removes the compulsory carriage requirement from learner's permit and probationary licence conditions and establishes the requirement under a separate provision.

From a national perspective, South Australia is presently out of step with other licensing authorities. In New South Wales, Victoria, Queensland and the Australian Capital Territory, where it is also compulsory to carry the learner's permit and probationary licence, only a monetary fine is prescribed for failure to do so. In Tasmania, Western Australia and the Northern Territory, there is no requirement for a permit or licence to be carried. A consequential amendment to the Summary Offences (Traffic Infringement Notice) Regulations 1981 will establish a penalty of $46 for the offence of failing to carry a learner's permit or probationary licence.

The offence will not cause the permit or licence to be cancelled and will not result in disqualification being imposed. This approach is considered to be far more equitable and will have the effect of bringing South Australia into line with most other licensing authorities. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 75a—Learner's permit

Clause 3 removes from section 75a of the principal Act the requirement for the holder of a learner's permit to carry that permit at all times whilst driving a motor vehicle. This section currently makes that requirement one of the conditions of holding a learner's permit, which means that a person who contravenes the requirement is liable, upon conviction, to cancellation of the permit and six months disqualification under section 81b. The requirement to carry the learner's permit is now to be placed in new section 98aab.

Clause 4: Amendment of s. 81a—Probationary licences

Clause 4 removes from section 81a of the principal Act the requirement for the holder of a probationary licence to carry that licence at all times when driving a motor vehicle. Like section 75a this section currently makes that requirement a condition of holding a probationary licence so that cancellation and disqualification under section 81b apply where the requirement is contravened. The requirement to carry the probationary licence is now also to be placed in new section 98aab.

Clause 5: Insertion of s. 98aab

This clause inserts new section 98aab mentioned above. The new section provides that the holder of a learner's permit or a probationary licence must carry that permit or licence at all times whilst driving a motor vehicle, and must produce it to the police upon request. A division 10 fine is prescribed for contravention of these provisions.

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

ADDRESS IN REPLY

The Hon. R.I. LUCAS (Minister for Education and Children's Services) brought up the following report of the committee appointed to prepare the draft Address in Reply to Her Excellency the Governor's speech:

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

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

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

The Hon. R.D. LAWSON: I move:

That the Address in Reply as read be adopted.

I thank Her Excellency the Governor for the speech with which she opened this Parliament and again pay tribute to the dedication, enthusiasm and accomplishment with which Her Excellency is discharging her functions to the benefit of the South Australian community. I join with Her Excellency in expressing regret on the death, since the last session, of a former member of the House of Assembly, Mr Keith Plunkett, and I join with all members in expressing appreciation of his service to the Parliament, and I extend my sympathy to his family.

The author of yesterday's editorial in the *Advertiser* neatly summarised the challenge facing the Government, as follows:

The strategic job of the South Australian Government in the final years of the twentieth century is to reverse the perception of this as a declining State of diminishing population and too narrow a resource base destined to be the least populous and least consequential mainland State in the foreseeable future.

The speech of the Governor outlined some of the achievements of this Government to date and other measures which will be undertaken in this parliamentary session. The measures do address the problems of the State. The Government is reversing the perception which developed during the final term of the former Government that this State is in terminal decline.

No-one denies that it will be a difficult process. The Brown Government was elected on a four-fold commitment: to rebuild jobs; to reduce debt; to return standards of excellence to our State services; and to restore confidence in the institution of Government. The Government is honouring those commitments. The Government has shown courage and firmness in the pursuit of its goals.

As the Leader of the Government in this House said yesterday, in answer to a question from the Opposition, the task has not been easy. It would have been easier and more comfortable for the Government to shirk the task of saving this State from bankruptcy by sitting on its hands, doing nothing and blaming those opposite who contributed so handsomely to this State's plight.

But, the Brown Government was elected to take appropriate, responsible and decisive action and that is what it has done. In the field of rebuilding jobs the Government, through its initiative and enterprise, has secured investment decisions to boost jobs in our State. The decisions by Motorola, Australis, Mitsubishi and AWA and others provide a promising beginning. So, too, the commitment to extend the Wirrina tourist facility.

An additional 7 200 full-time jobs were created in this State between January and June. This is a steady beginning from an economy which was sapped of all confidence by the performance of our predecessors. More important than the raw number of new jobs is the fact that the Government is adopting initiatives which will facilitate and encourage new growth in the economy. Initiatives such as the creation of an Economic Development Advisory Board under the chairmanship of Mr Ian Webber, the restructuring of the Economic Development Authority and the new exporters' challenge scheme are all welcomed.

The new industrial relations regime will facilitate enterprise bargaining and encourage economic growth. So, too, the WorkCover reforms which came into effect on 1 July. Those reforms will result in savings of $20 million without adversely affecting appropriate compensation for injuries which are truly work related.

The Tourism Commission has been restructured and the Government has provided encouragement for a vigorous program of marketing and infrastructure support. A network of tourism marketing boards is being established to enhance promotion of regional tourism.

As recently as last week the Premier launched the Council for International Trade and Commerce. This Council will establish a centre for country specific chambers of commerce to promote bilateral trade relations between this State and the many nations from which migrants have come. No-one suggests that the task of rebuilding jobs can be achieved overnight. The enormity of the task was acknowledged in the Arthur D. Little report, but this Government has made a good start and ought be commended for it.

The second commitment of the Government was the reduction of State debt. The Audit Commission clearly showed the debt position of this State and pointed to the need for a number of measures, including staff reductions in the public sector. It appears that the Government will be able to achieve its target through voluntary separations rather than by compulsion. Again this is a matter for which the Government deserves commendation for its determination and for the expedition with which it has moved.

The Opposition has taken a very blinkered view of this State's debt situation. This was well illustrated in the speech of the Leader of the Opposition in this place on the debate on the Supply Bill in April. He adhered to the supposed prescriptions of the Arnold Government's inaptly titled and ill-fated 'Meeting the Challenge' statement. It would have been more correctly entitled 'Avoiding the Challenge'. In that debate the Opposition argued that the Liberal Government had inherited only '. . . a moderate level of State debt'. Some others have pointed out that South Australia's level of State debt *per capita* is not as high as that of Victoria or Tasmania. But the point I make is this: a large part of South Australia's public sector debt is dead money. It represents moneys paid, in effect, to satisfy the State Bank guarantee. It does not represent money borrowed for the purpose of building schools, hospitals or other infrastructure. It represents funds which were squandered as surely as if they had been poured down the drain.

The Brown Government's third commitment was to return standards of excellence to our State's services. This promise can be achieved only if the State's financial position is put on a sound footing. Some in the public sector seem to argue that the pruning of any staff, or any reduction in resources, inevitably lead to a reduction in standards. This is clearly not the case. Sensible cutting of cloth to match available resources will preserve and enhance services.

Fourthly, the Brown Government committed itself to the restoration of confidence in the institutions of government. There is no doubt that by the end of 1993 the South Australian public had lost all confidence in the Labor Government. It was a Government paralysed by its past and it inspired no confidence. In stark contrast, this Government is getting on with the job. It is taking the hard decisions and adopting measures which will restore confidence. Measures such as the domestic violence legislation and its associated programs, reforms within the Correctional Services area, reforms in the public transport sector and measures in relation to educational standards are just a few of the innovations which will win back the trust and confidence of South Australians.

There is another general matter which I consider ought be touched upon at this stage. It is the question of constitutional change. Although we are still seven years from the centenary of the Australian Federation and of the Commonwealth Constitution, that event is exciting many calls for constitutional change. This is neither the place nor the time to debate these issues. There will be ample opportunity for that in this session. But I would make this observation: our country is governed by a complex raft of constitutional and governmental arrangements; some are legal, some political, some financial. Given the complexity of the arrangements, it is curious that the present Prime Minister should seek to have public attention focused on one aspect only of our constitutional structure, namely that aspect represented by the head of State.

I venture to suggest that the constitutional monarchy is the one aspect of our constitutional and governmental arrangements which has given least cause for concern. The monarchy has given infinitesimal cause for real concern. Compare it with the subject of Commonwealth-State relations. Compare it with the heat engendered by the Commonwealth Government arrogating power to itself by the device of employing its exclusive foreign affairs and treaty making powers. That is a device, an artifice. It might be a clever legal manoeuvre, and it has received the sanction of the High Court, but it is not a manoeuvre which the Federal Government ought to employ, save in the most exceptional circumstances. The use by the Commonwealth of this device has undermined the relationship which ought to exist between central and State Governments.

If the Commonwealth took the view years ago that the prevention of the flooding of the Gordon below Franklin was crucial to the well-being of the nation, the Commonwealth might possibly have been justified in taking extraordinary measures to achieve its desired result. But the extraordinary measures have now become common place. Experience shows that once the power was exercised, it became addictive. The Commonwealth now employs this artifice at the drop of a hat. For example, the Commonwealth used it in its industrial relations legislation and as a political stunt to have the Lake Eyre Basin given world heritage listing. That decision was not made for the purposes of preserving the well-being of the nation. It was a transparent political ploy to appeal to so-called environmentalists. The exercise of such a power ultimately leads to the sort of arrogance displayed by the Federal Government in relation to the Hindmarsh Island bridge affair, a topic to which I will return later.

There are other aspects of Commonwealth-State arrangements which are proving unsatisfactory. The duplication of services and bureaucracies and the whole question of financial relationships have become running sores. Given the problems we have in these areas, it is a paradox that our Prime Minister chooses to attack the non-existent problem of a monarchy and to sweep the real issues aside. The Hon. Michael Elliott appears to have been seduced by this diversion. His remarks to the Chamber today suggest that he considers that, if a republic is inevitable, we ought to embrace it. But we do not embrace everything that can be characterised as inevitable. Death is inevitable. An individual does not seek to hasten his or her death on the grounds that it is inevitable.

The political issue is not whether change is inevitable; the issue is what change, if any, ought be made, and the onus surely lies upon the proponents of change, and they have been singularly reluctant to produce their proposals. As the weeks and months pass, the community is coming to realise that the issue of the monarchy is a cynical diversionary tactic. It was gratifying to see some bipartisan consensus emerging from the meeting of Premiers and Chief Ministers in Sydney last week. It was gratifying to read also in our Premier's Ministerial statement yesterday that our Government is committed to rebuilding an effective Australian federation by the year 2001. Once again, the Government deserves our support in that task.

The question of intergovernmental relations leads to the Hindmarsh Island bridge fiasco with which those opposite appear to be becoming obsessed. I propose to make some brief comments on that subject. Since the last session of this Parliament, the Federal Minister for Aboriginal and Torres Strait Island Affairs has taken the extraordinary and unprecedented step of issuing a declaration under section 10 of the Aboriginal and Torres Strait Islander Heritage Protection Act which has the effect of preventing the construction of the Hindmarsh Island bridge. He has unveiled yet another unhappy chapter in this unfortunate saga.

The Government's attitude to the Hindmarsh Island bridge is well known. It has been well expressed in this Chamber on a number of occasions by the Minister for Transport. When the Liberal Party was in Opposition, it was highly critical of the secret deal the former Premier did in relation to the bridge. It was one of a number of deals which the previous Government had facilitated or approved and which have cost this State dearly. The Royal Commission into the State Bank contains a catalogue of deals which went sour. The Remm-Myer Centre and 333 Collins Street, Melbourne are two which are etched in the minds of South Australians. The Hindmarsh Island bridge deal was made by the previous Premier for the wrong reasons and the Liberal Party never regarded the bridge as an appropriate priority, given the State's budgetary difficulties.

Soon after this Government was elected it appointed the Hon. S.J. Jacobs to examine the alternatives then available to the Government. Mr Jacobs suggested some options which were closely examined but which were found to be impracticable. The Government then resolved to proceed with the bridge because it had no alternative. To abandon the bridge at that stage could not be justified. When the Minister for Transport announced that decision she made it clear that it was one which had been arrived at reluctantly. However, once the decision was made by the State Government to proceed with the bridge the Government should have been permitted to get on with a job.

If this were a case in which Aboriginal interests had been ignored by the State authorities there might have been some justification for interference by the Federal Minister. However, Aboriginal interests were not ignored. When the previous Government approved the Hindmarsh Island development in October 1989 an environmental impact statement was required. As part of that process, in April 1990 the State Aboriginal Heritage Branch gave authorisation to Binalong Pty Ltd under the State Aboriginal Heritage Act. The branch stated:

> No Aboriginal sites of archaeological or anthropological significance will be affected by the development.

In May 1992 the manager of the Aboriginal Heritage Branch informed consulting engineers that there was no archaeological objection to the realignment of the bridge to Brooking Street in Goolwa.

Again, in November 1993 the Department of Aboriginal Affairs wrote to the consulting engineers a letter which concluded:

> With respect to the requirements of the South Australian Aboriginal Heritage Act 1988, there are no objections to the bridge construction proceeding. . .

subject to certain conditions. When the Brown Government came to examine the position it appeared that the developers had received all necessary legal approvals and that there was no objection from the State department charged with the responsibility of protecting the legitimate interests of Aboriginal people.

In fairness to the Aboriginal community it should be mentioned that since about October of last year some members of that community began expressing concern about the potential impact of the bridge on Aboriginal sites on the

island, and later they began to call into question the thoroughness of the State department's earlier inquiries. But the fact remains that the developers had at the time received all necessary approvals.

The Liberal Party in this State has a proud record in relation to resolving issues relating to Aboriginal association with the land. The Pitjantjatjara Land Rights Act was negotiated and passed by the Tonkin Government. Bipartisan support was given to later land rights legislation. The Brown Liberal Government has been at the forefront in seeking a genuine and workable resolution to native title issues arising out of the Mabo case.

However, the cause of good relations between white and Aboriginal communities has not been advanced by the actions of the Federal Minister in this matter. Federal Government platitudes about cooperative federalism and reconciliation are hollow indeed in the face of the decision by the Federal Minister. I commend the motion to the Council.

The Hon. CAROLINE SCHAEFER: It is a pleasure to second the motion that the Address in Reply be adopted. I thank Her Excellency for her speech and again pay tribute to the fine way in which she carries out her duties as the acting head of state in South Australia.

This time last week it was my grave fear that when I gave my Address in Reply speech the entire State would be in the grip of a severe drought. I thank God that good rains fell over most parts of South Australia during last weekend and at least restored some hope to rural areas. It must be remembered, however, that almost the whole State, including the metropolitan area, has had a late break and a well below average annual rainfall to this stage.

It must be realised that plentiful rain from now on as well as a late cool finish is needed for even average cereal yields. This time, however, it is not just a matter of concern for so-called whingeing farmers. Adelaide's water supply is also dangerously low for this time of the year. It has always concerned me that in the driest State of the driest continent on earth more attention is not paid to saving water. I have never understood, for instance, why all houses are not required to have a rainwater tank. Even if the water is too polluted to drink—and my own experience is certainly to the contrary—a relatively small tank would supply most households with not only washing water but also some garden water and would effect considerable savings in both State water consumption and domestic water rates.

The problem of drought has beleaguered this State and indeed this nation since settlement and even earlier. There is ample evidence of our earliest settlers, the Aborigines, shifting from place to place following ever dwindling supplies of water. People in marginal areas such as mine, the upper Eyre Peninsula, have always budgeted for one drought in approximately every five years. In sounder economic times they were able to absorb that loss with profits from better years. They were able to farm more frugally in the bad years and conserve capital and soil.

We hear much about land degradation from city-based conservationists but the reality is that there is no greater enemy to conservation than poverty. People cannot afford conservation practices such as sowing back perennial grasses and bush to at-risk areas because they cannot afford the fencing required. During hard times in the bush the problem of rural poverty comes to the surface. It is always there, too often hidden away and not talked about, but I wonder how many really understand why so many people have been affected in latter years.

We all hear about a run of dry years exacerbated by out of control inflation, but added to that rural producers are the first in the line. They are the only ones who cannot build increased costs into their end products. They must sell overseas but buy in a protected internal market. Gross value of farm products according to ABARE in 1988-89 was $23 022 million but in 1993-94 it was $23 223 million, which is a rise of only $200 million in that period in spite of rampant inflation at that time.

Put simply a tonne of wheat will just about purchase a pair of sneakers for one child in the family or it will just about cover a weekly grocery bill, provided that freight costs and so on are not too high. I realise this is going back some time but I think it is interesting to compare the following figures: in 1951-52 the average price for a bale of wool in real terms, allowing for a clean per kilogram price, would have been equal to $4 000 in 1992-93. The price indicator last year was 627 cents per kilo clean. This gives an approximate clean wool bale price today of $1 066. I have a graph which shows farm average weekly income in 1954 as level with the average wage at the same time, and that was $100 per week. By 1990 the average weekly wage was over $200 whereas farm income had fallen to below $50 per week.

I have no doubt that the same graph would show the gap widening even further now. Farm commodity prices show little rise and, in real terms, a fall in the 10 years between 1982-83 and 1992-93 but, by comparison, boarding school fees at the colleges I have surveyed, a necessity for many rural families, have risen by approximately $4 000 per year in the same 10 year period.

Beef has been recognised as one of the most stable commodities over the past few years but, again, a quick survey shows that the price to the grower has risen by 93¢ per kilo in the 10 year period between 1982-83 and 1992-93, while the cost to the consumer has increased by $3 per kilo. The cold hard facts are that farmers have lived off their wits and their invested capital for at least the past 10 years. This nation must soon make up its mind whether it wants a farming sector. If the answer is 'Yes', then drastic steps need to be taken to restore equilibrium.

I applaud this Government on its initiatives. Exemption from stamp duty for inter-generational farm transfers, exemption from mortgage stamp duty for rural debt financing and exemption from stamp duty for registration of tractors and farm machinery represent a commitment of millions of dollars in forgone revenue. We have also committed $7 million over three years to the Young Farmers' Incentive Scheme and have now made it retrospective to 11 December 1993. New agricultural and veterinary chemical legislation and self-regulation in meat processing have also been greeted with enthusiasm by the rural sector.

The recent announcement of up to $300 000 in interest rate subsidy to the South Australian Farmers' Federation to assist with its overseas market development plans has also been seen as a real initiative to help farmers who are trying to help themselves. In a time of economic crisis, this Government has given a clear signal to rural South Australia that it does understand and that it does have a real commitment to maintain a rural industry. However, we must also address the overwhelming debt, so any further initiatives must of necessity have financial commitment from the Federal Government.

I am also delighted that the Premier has initiated talks with the Prime Minister on setting more realistic provisions for special finance during drought, including the ability for major regions to be declared drought stricken rather than the need for the whole State to be in a drought before funding can be sought. This is a commonsense approach which I hope will gain bipartisan support.

Rural people and small business are doing their best to diversify, at the suggestion of successive governments, and we are beginning to see the positive results of new industries such as emu and quandong farming. This nation has a wealth of national resources, which are more and more appreciated by those overseas. Many conservationists also recognise the value of farming native species as a method of saving those species, for example, the crocodile farming now taking place in the Northern Territory.

With this in mind, I urge this Government to inquire into the feasibility of licensed farming of kangaroos and licensed and controlled exporting of native fauna, particularly birds. Some members may have watched the recent sickening television program, which showed our native parrots being stuffed into poly-pipes with only small air holes, then put into a suitcase and smuggled out of Australia. Mr President, you know as I do that there is certainly no shortage of galahs or corellas in this State; in fact, they are a pest in many areas. Surely, licensing their export and the export of many other species would stop the senseless, cruel and lucrative black market which we all know has been carried out over many years. Kangaroo is an increasingly popular meat in South Australia and at the moment the culling of wild animals adequately supplies the demand, but the time may well come when this is not so or when some sort of quality control is required for export. When this time comes, I hope South Australia is the innovator, the first into the market, not just a follower of our eastern neighbours.

Two other issues of great importance to me and I believe to the State are the Mabo decision as it affects our State and the proposed world heritage listing of the Lake Eyre Basin. These issues, while crucial in their own right, also raise the question of States' rights. I am horrified by a centralist Federal Government that feels it has the right to override State law and State decisions and to impose its will on the people of this State. A recent Premiers' Conference communique, co-signed by all Premiers, states in part:

> Premiers and Chief Ministers of all States and Territories commit themselves to building a new Australian Federation based on the following principles:
>
> · that the Federation enable government to be close to the people and responsive to local and regional needs;
>
> · that the Federation enhance the cohesiveness of the Australian nation by being responsive to the needs of regional diversity, rather than being dismissive of that diversity;
>
> · a Federation in which the States are dedicated to the delivery of quality services to the Australian people;
>
> · a Federation which delivers cost-effective services for our taxpayers and which removes duplication between the various levels of Government;
>
> · a Federation that fosters a competitive national economy based on the fundamental principle of 'competitive Federalism';
>
> · a Federation in which there is a guaranteed revenue base for the States and Territories that matches their expenditure responsibilities;
>
> · a Federation which continues to be accountable to the people through their Parliaments.

I believe implicitly in the rights of the States, and I commend the Premiers on their stand. I would also like to take this opportunity to commend the Government on joining the Western Australian Government in some areas of its High Court challenge to native title legislation. Perhaps no-one in this place has more regard and respect for Aborigines than I. As a child I grew up with Aborigines, working and living on our property and in our home. But, as many Aborigines themselves will tell you, this legislation is vague, divisive and discriminatory. It has the potential to cost each State and many individuals billions of dollars in legal costs, with the only winners being lawyers. I hope to live long enough to see one undivided, multicultural Australia, with equal rights and respect for all, regardless of race. This legislation divides; it does not unify and as such should be condemned.

Finally, today is the first anniversary of my being sworn into the Parliament and I take the opportunity to thank my colleagues on both sides of the Chamber for their help and friendship over the past 12 months. I would also like to pay particular tribute to the staff, including *Hansard* staff. In the time I have been here I have received nothing but courtesy and good humour, in spite of at times some gruelling working conditions. Finally, I thank my family for their tolerance and my personal assistant, Francesca French, without whom I could not manage. I hope to serve this Parliament for many years, and I commend the motion to members.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

SESSIONAL COMMITTEES

The House of Assembly notified its appointment of sessional committees.

STANDING COMMITTEES

The House of Assembly notified its appointments to standing committees.

ADJOURNMENT

At 5.36 p.m. the Council adjourned until Thursday 4 August at 2.15 p.m.