LEGISLATIVE COUNCIL

Thursday 27 October 1994

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

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. CAROLINE SCHAEFER: I bring up the report of the committee in relation to the Canadair CL415 inquiry.

INDUSTRIAL APPOINTMENTS

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

> That, pursuant to sections 29, 30, 34 and 58 of the Industrial and Employee Relations Act 1994, the nominee of this Council to the panel to consult with the Minister about appointments to the Industrial Commission of South Australia and the Employee Ombudsman be the Hon. C.A. Pickles.

Motion carried.

AUDIT COMMISSION

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of the ministerial statement made by the Premier in another place on the subject of the Government's response to the report of the Commission of Audit. I also seek leave to table a copy of the Government's response to the Commission of Audit recommendation.

Leave granted.

QUESTION TIME

CHILDREN'S SERVICES

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about CSO promotions.

Leave granted.

The Hon. CAROLYN PICKLES: I would like to pose to the Minister a situation similar to that occurring in 92 preschools before asking a question relating to staffing. I ask the Minister to suppose that one is posted to preschool centre X, which is experiencing a decline in enrolments. The teacher has been in the centre for six years, and there is a contract early childhood worker. They are a cohesive team with excellent skills. The centre is fully staffed, comprising as it does three staff. One is then informed by the regional coordinator that the centre will experience a staff reduction. One has 15 minutes to develop a strategic plan which will manage the situation to achieve an effective outcome at all levels, that is, corporate, community, centre, family and child. My questions to the Minister are:

1. Is the Minister aware that this task has been set this week for Children's Services teachers being interviewed for promotion, and does he think this is an appropriate question?

2. Does the Minister agree that a capacity to develop plans for cutting staff is the appropriate qualification for promotion as a preschool director?

The Hon. A.J. REDFORD: I rise on a point of order, Mr President. As I understand the Standing Orders, that is a hypothetical question and, as such, ought to be ruled out of order. I refer to Standing Order 109, which states:

> In putting any question, no argument, opinion or hypothetical case shall be offered. . .

The PRESIDENT: Order! There is no point of order. I do not believe it is a hypothetical case. The Minister has the right to determine that.

The Hon. R.I. LUCAS: The easiest way to determine whether or not it is a hypothetical question is for me to issue an invitation to the honourable member to provide me with the details of the case, if it exists, and the name of the kindergarten or preschool. I do not need the name of the officer. If the honourable member is prepared to provide me with that detail I will follow the issue through with the Department for Education and Children's Services and endeavour to bring back a reply.

Strategic plans take a bit longer than 15 minutes to develop, so the notion that I fully develop in 15 minutes a comprehensive strategic plan for either a preschool or a school would be difficult. As I said, the test of whether or not it is hypothetical is for the honourable member to provide me with the details of the preschool or kindergarten involved, and I will undertake to—

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: I said that if the honourable member would provide me with the detail of the preschool involved I would undertake to investigate it. I indicate that people in all our preschools will not be asked to develop strategic plans in 15 minutes.

FISH PROCESSORS

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General a question about fish processors' fees.

Leave granted.

The Hon. R.R. ROBERTS: Just last week the majority of this Council decided to reject a regulation that was brought into this place on 19 May. I point out that that was one day after the session finished. That regulation, brought in under section 10AA(2) of the Act, increased fish processors' fees from $525 per year to $2 000 per year. Under the normal rules that apply with respect to subordinate legislation, one would expect that those regulations could be rejected within 14 sitting days. Members would be aware that with a two month break that took some time. However, because of the reasons that were given at the time of the discussion as to whether this regulation ought to be disallowed, this Council rejected the motion.

Since that discussion there has been a reorganisation within the fish processors' industry and a great degree of consultation has taken place. In fact, only yesterday the working party of processors determined to recommend to the Minister that the base fee for a fish processor in the scale fish industry ought to be $550, with an integrated fee of $750 for processors who handle crayfish, prawns and abalone. This will result in a licence fee of some $2 800, and this recommendation was reached after a lot of consultation.

Clearly, many of these processors will remain in the scale fishery only but, at the end of the day, the Minister will receive more in fees than he proposed at that time. I am advised that, despite the fact that this Council rejected the

regulation, a technique is being implemented to apply those fees to fish processors in South Australia.

Most members would think that if the regulation had been disallowed it would have been disallowed from the day on which it was instituted. However, I am advised that the fish processors are being told that, as it is five months since the regulation came in (and I believe this is the claim from Fisheries), Fisheries should be able to claim five-twelfths of the $2 000, which would result in an obligation to pay $833.35, and seven-twelfths would be refunded, which would be $1166.65.

Now, Fisheries claims that seven-twelfths of the $525 ought to be added to the fees paid, which would result in the fish processors, whether they be in the scale fish processing industry or in the other three areas that I have previously mentioned, being liable for a fee of $1139.65 for this licensing year. Clearly, there appears to be some vindictive element in this proposal. I point out that, as I said yesterday, the processors have this proposal and they are prepared to put it to the Minister. My questions to the Minister are:

1. Is the Minister aware of this proposal?
2. Did he endorse it and, if he did not endorse it, will he stop this juvenile process and pursue a proper resolution of this dispute with the new working party of the processing industry?

The Hon. K.T. GRIFFIN: I will refer the question to my colleague the Minister for Primary Industries in another place and bring back a reply.

CRIME STATISTICS

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General a question about sentencing.

Leave granted.

The Hon. T.G. ROBERTS: In August, the Correctional Services Minister in another place made a statement that the prison population is likely to increase by approximately 40 per cent by the year 2000. The Minister issued a statement on Tuesday, 18 October 1994, stating that crime is down and that there are encouraging downward trends in crime in South Australia. I am not making any assumptions, but I know that the good sense of members opposite and that of my colleagues means that they could work out that the two statements, when compared, do not make any sense.

In the absence of any total social breakdown in society, will the Attorney-General change the sentencing system to match the expectations of the Minister? Is he contemplating a change in penalties, and can he envisage any social circumstances that will match the expectations of the Minister for Correctional Services for these figures?

The Hon. K.T. GRIFFIN: The two are not inconsistent. The projection made by the Department for Correctional Services, as I understand it, is that there will be an increasing number of persons who are held in the prison system. A number of those obviously relate to remand and to those who are serving a prison term as a result of default in payment of fines. As members should know, there have been decisions taken by the Government to provide other alternatives for those who are in default in payment of fines to work out their fines other than by spending time in gaol.

The Hon. T.G. Roberts: They ruled that out as an option.

The Hon. K.T. GRIFFIN: That is not ruled out; that is nonsense. The number of remand prisoners fluctuates and there is a number of remandees in the prison system. South Australia has had the reputation of having the highest number of remandees of any of the States. The trends indicate that that is showing some pleasing downturn. The projections from within Correctional Services indicate that there will be an increase in prisoners, partially because of the impact of the so called truth in sentencing legislation passed last session. That factor is not inconsistent with crime trends. It depends very much on the nature of the criminal acts that have occurred, whether they be crimes of violence, serious property crimes, fraud or whatever. You cannot, simply by looking at a statistical downturn in offenders brought to justice, say that that means there will be more or fewer prisoners. Crude statistics do not reflect the nature of the offences and the reasons for people being in the prison system. The two are not inconsistent. They may be quite compatible. I do not have all the figures.

The Hon. T.G. Roberts: But 40 per cent is a dramatic increase over six years.

The Hon. K.T. GRIFFIN: It is a significant increase; there is no doubt about that.

Members interjecting:

The Hon. K.T. GRIFFIN: They are not inconsistent. I do not have the detail with me, but I will have inquires made and bring back a reply in relation to the statistics and their relationship to the projections for prisoners within the prison system. In terms of sentencing, from time to time legislation may be brought up dealing with particular offences where penalties are either increased or varied in some other way, but there is presently no intention for any wholesale changes to the sentencing legislation. A number of options are presently available to the courts and there may be more in future. That is the sort of flexibility that ought to be available to the courts system in dealing with offenders who come before it. In relation to other matters, I will give further consideration to the detail and bring back a reply.

WOMEN'S AND CHILDREN'S EMERGENCY HOSTEL AND RESOURCE CENTRE

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for the Status of Women a question on the Women's and Children's Emergency Hostel and Resource Centre at Port Lincoln.

Leave granted.

The Hon. SANDRA KANCK: The Port Lincoln Women's and Children's Emergency Hostel was established some 16 years ago in response to increasing public awareness of the incidence of domestic violence in the community and the need to provide safe and secure accommodation for at-risk women and children. Now, because of new award rates of pay for staff, the centre will need an extra $60 256 annually if the current 24 hour staff service is to be maintained. This figure is made up of $50 242 in actual salaries and $10 014 in oncosts, including superannuation. The Chief Administrator's new salary will be just $41 331.

Up until now employees at the shelter have sacrificed some of their pay so that extra casuals can be employed, but they are no longer able to do this. At this stage the joint State and Federal funding body has not been able to ensure extra funding to cover these increases and thus there has been increased pressure for the management committee to close down the current out-of-hours staffed service. The shelter would still be operating, but with no staff present at night. The management at the Port Lincoln centre is concerned about this pressure and I have been informed that the centre

has corresponded a number of times with the Minister for Family and Community Services. However, the standard reply has focused on the fact that the centre already receives the greatest level of funding.

I am informed that the 24 hour staffing service is very important for the following reasons: first, the need for an out-of-hours service. During the eight week period from 21 August to 16 October 1994, out of 15 new admissions five were admitted during normal work hours and 10 occurred out of hours. As recently as yesterday a women and a young child fled a violent situation at home and arrived at the shelter at 1 o'clock in the morning.

The second point concerns security. Not only are staff required for counselling at the time of out-of-hour admissions but staff on night duty play a large role in providing security at the shelter. There have been a number of reported incidents in which a staff member on night duty has averted potential further violence to a woman seeking refuge at the shelter. A submission that the management committee made to the Minister for Family and Community Services states:

> The shelter has been stoned, doors have been kicked in, windows broken, phone lines cut, a child kidnapped, and on two occasions perpetrators have forcibly entered the premises with one women being bashed by her partner until the staff person on duty responded to the emergency as other clients were too traumatised to do so.

In larger cities, women's shelters can be located at confidential locations; however, in a relatively small community such as Port Lincoln this obviously cannot occur. Given that, if the shelter is not staffed at night, there could be a further security risk to the women and children residing at the centre. Members can imagine the consternation of a battered wife opening the door of the shelter upon hearing a knock and finding that the person outside is the man who battered her.

The third reason for the need for this shelter to operate 24-hours a day is that there are no other alternative services. The 24-hour service is very important because, unlike in the metropolitan area, this shelter is the only service of its kind available to women who require emergency services for their protection at night. To add to its importance the shelter is also relied upon by FACS when it is unable to find a placement for children requiring urgent care at night. My questions to the Minister are:

1. Is the Minister aware of the funding squeeze being imposed upon the emergency hostel and resource centre at Port Lincoln following the new award decision?

2. Does the Minister accept the rationale that the Port Lincoln shelter requires a 24-hour staffed service because of lack of backup or alternative services?

3. If funding cannot be assured so that the centre can continue the 24-hour staffed service, what alternative service will be provided to the women and children of Port Lincoln who currently use the service to ensure their safety?

The Hon. DIANA LAIDLAW: I am aware that for some years the Port Lincoln shelter, as have all shelters, has been concerned about the implications of award wages to its general funding base and services. I recall asking questions probably of the Hon. Anne Levy when she was Minister for the Status of Women about the Port Lincoln shelter and its 24-hour operation. Prior to the last State election I visited the shelter and indicated my sympathy for continuing the operation on a 24-hour basis. A number of those cases that the Hon. Sandra Kanck raised today were raised with me, and I suspect with all women members of Parliament in the past as well. Generally, I think we are familiar with the excellent work undertaken by the shelter and its need for funds.

The shelter is funded under a joint Federal-State (SAAP) funding program. I have been in contact with the Minister for Family and Community Services, then shadow Minister, indicating my sympathy for the plight of the Port Lincoln shelter. I do not personally fund the shelter. I can do no more than I have done in indicating the important service that it provides for women generally. In this area it is the prerogative of the Minister for Family and Community Services and the Federal Minister (Senator Crowley) to work out the arrangements for funding shelters. As I say, that is their prerogative. I have indicated my interest in the matter. It has been a long term interest, and I will express the interest again.

ABALONE

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about abalone fishers.

Leave granted.

The Hon. G. WEATHERILL: There was an interview recently with a poacher of abalone. When this person was questioned about what was happening in the abalone industry in Australia, he pointed out that in respect of quite a number of people the following happens. He said, first, that if you are caught stealing abalone you get a fine, but it is not recorded on a criminal record. Therefore, after two years you can apply for a licence to be an abalone fisher even though you have been caught poaching. There are no restrictions on professional abalone fishers: they can fish in any area they wish all over the State, unlike prawn fishers, who have designated areas in which they must fish. These people seem to have open slather. This person also stated in this interview that when professional fishers have a low yield of abalone but have to keep up with exporting these fish, they buy from poachers and then get a backhander after these fish have been sold. The abalone industry is a million dollar export business, and apparently it is a million dollar business for poachers in Australia who sell to the different nationalities which prefer to eat abalone. Will the Minister look into this matter and bring back a reply.

The Hon. K.T. GRIFFIN: I will refer the honourable member's question to the Minister for Primary Industries and bring back a reply.

GOVERNMENT CONTRACTS

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Attorney-General a question about accountability in contracting.

Leave granted.

The Hon. BARBARA WIESE: This Government, in common with Governments around Australia, is embarking on an extensive program of contracting out Government services. The skills required for contractual management are very different from traditional forms of public administration. Some Government agencies may have that sort of experience, but others will not, at least not in the development and management of major projects and contracts. Recently, Government authorities in other parts of Australia have encountered difficulties in this area, most notably Australia Post, which misunderstood its legal position in seeking to abdicate responsibility for damage caused by one of its contractors to a client's property, and the New South Wales Road Traffic Authority, which encountered difficulties with

respect to its dealings with the private sector in relation to the construction and maintenance of the Sydney Harbour tunnel and two tollways. In this case, the New South Wales Auditor-General has produced a report in excess of 600 pages which examines the issues involved.

The report culminates in a small number of recommendations for future procedures, which seem to be obvious prerequisites to effective contracting policy but which apparently were not in place in New South Wales. They include the following ideas: that the authority should develop a formal policy with respect to contracting; that underlying assumptions contained in the financial projections should be demonstrably robust; that the tender process should be submitted to public scrutiny; and that the authority should assess and quantify risks and benefits in relation to each project. As I said earlier, there is some experience in South Australia in contracts and tendering; however, if the Government becomes involved in major private sector funded public projects, particularly major infrastructure projects that go beyond current experience, as it indicates it will, the public will need to be assured that these issues will be handled properly and that the problems that have emerged interstate will not arise here. My questions to the Attorney are:

1. Is the Government actively monitoring practices interstate and, in particular, reports prepared by Auditors-General and State and Federal Ombudsmen concerning contracting practices?

2. Has the Government developed a comprehensive formal policy for the guidance of Government authorities and agencies?

3. Is the Attorney-General satisfied that sufficient commercial and legal expertise exists within his department and elsewhere in Government to ensure that contractual management practices are adequate to meet current and future requirements and to ensure the best possible terms and the highest levels of accountability in Government contractual arrangements?

The Hon. K.T. GRIFFIN: There is no doubt that, as Governments around Australia embark upon more extensive contracting out, there needs to be expertise within Government to manage adequately that process and to manage the actual performance of the contract. As far as I am aware, within various agencies which are more active in the area of contracting out, they are developing the appropriate expertise, and they are doing that in conjunction with the private sector, either through consultants or in other respects. In relation to the detail of the question, I will have to make some inquiries and bring back a detailed reply.

Certainly this Government places a high priority upon accountability and on ensuring that there is transparency in both the processes that relate to that and the ultimate accountability. Quite obviously, the Auditor-General is very much involved in monitoring that process. Even before we came to government, the Auditor-General was particularly active in looking at processes within Government agencies, whether administrative units or statutory authorities, to ensure that they did have proper mechanisms in place to ensure accountability.

So far as the Attorney-General's Department is concerned, members should recall that the Economic and Finance Committee undertook an inquiry into consultancies, not just in the Crown Solicitor's Office but in other agencies across Government. It was demonstrated as a result of that report that there were significant inadequacies in the way in which consultancies had been let and entered into by the previous Government. One of those was a focus upon the Crown Solicitor's Office, but my understanding was that the Economic and Finance Committee did not find any substantial difficulty with the processes within that office.

However, what the inquiry did prompt was a survey by the Crown Solicitor (it started before I became Attorney-General) into the provision of legal services to the agencies of Government, and the information which was gathered showed a very diverse range of experiences within agencies, of prices that were being charged, as well as of contractual arrangements.

In some agencies there was no formal basis upon which contracts let to private sector lawyers were made and the performance of the contract monitored. The rates varied quite dramatically, and in many instances there was no clear enunciation of the work that was required to be done. As a result of that survey, the Crown Solicitor put together a package which I and the Government have approved and which would seek to monitor more effectively the contracting out to the private legal profession.

That involves establishing a series of five panels on which various legal firms may wish to be represented, and agencies that do not have a legal manager, other than those required to deal with the Crown Solicitor, are entitled to engage their legal work from legal practitioners on that panel. The fee charged in relation to each panel is a fixed fee—a blended rate, I think it is called in the United States—which does not distinguish between the work done by partners, clerks, employed solicitors, and so on.

The management of the contract is with the agency but under the final supervision of the Crown Solicitor. That has just been implemented, and it is to be reviewed in 12 months. Certainly, that will tighten up on the procedures by which legal assistance is provided to the Crown from the private sector within Government.

Also, the honourable member has raised a question about whether there is sufficient expertise within the Crown Solicitor's Office to deal adequately with the contracting out functions. I am sure that the honourable member would know from her experience in government that the Crown Solicitor is particularly diligent in ensuring that a proper range of services is available to Government, and under the previous Government the State Bank Civil Litigation Task Force was established and it drew on a range of experience from the private sector where the Crown Solicitor brought in either services on a contract basis or seconded staff from the private sector to that office. There are occasions when that has happened—industrial relations is another—but we have brought in services to provide the necessary back up. That occurred with the information technology assessment of the primary tenderers, IBM and EDS. So, we are drawing on private sector experience as the occasion arises to provide the appropriate legal services to the Crown.

In relation to other areas of Government, I will do some more work on the issues raised by the honourable member with a view to bringing back a more comprehensive reply.

HIV TRANSMSISSION

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister for Health a question about HIV/AIDS testing.

Leave granted.

The Hon. BERNICE PFITZNER: A Sydney obstetrician, who had and has HIV, was identified by the New South

Wales Health Department. In testing the 140 women upon whom he had operated, one was found to be HIV positive. It was further reported that investigations showed that the doctor did not infect the woman but that the onus was on the doctor if he wanted to pursue the possibility to prove that he was infected by the woman. There are many other examples of health workers infecting patients, and the reverse could happen.

We are talking about a viral disease which is the most lethal virus that this century has ever seen or experienced. Infection with this virus is really a death sentence, and there is no cure for this disease. It is contracted from human secretions passed from human to human, and in short it is a communicable disease of the most dangerous kind.

Other communicable diseases are able to be identified, traced, tracked down, tested for and reported upon; for example, hepatitis B, TB and, to a lesser extent, typhoid, cholera, etc. But in the case of HIV/AIDS, we are not able to divulge any detail for the protection of those who are uninfected. There is a voluntary testing and, if the test is positive, in the name of confidentiality, there the information ends—with the diseased person.

We have proposed guidelines being put to the New South Wales Health Department requiring doctors to have at least 12 monthly testing for HIV/AIDS. There does not seem to be a similar requirement for patients being operated upon to have similar HIV/AIDS testing. Universal precaution strategy does not seem to be fully effective. My questions to the Minister are:

1. Will the Minister look into guidelines for the HIV/AIDS testing for doctors and dentists who are involved in exposure prone procedures?

2. Will the Minister investigate guidelines for HIV/AIDS testing for high risk patients who are to undergo operations and, if not, why not?

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

ARTS FUNDING AND COMMITTEES

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for the Arts a question about funding of and committees in the arts.

Leave granted.

The Hon. ANNE LEVY: The Arts Task Force, which reported some couple of months ago, made a number of recommendations about funding and boards for arts groups in this State. It indicated that consideration should be given for triennial funding for organisations. Since that time, the State Opera of South Australia has indicated that it has received a guarantee for triennial funding, although my reading suggests that it is more indicative funding than guaranteed triennial funding, although I may be wrong.

No other bodies have been told that they are to receive triennial funding. One would think that a large number of bodies would come into the same category as State Opera: I mention the State Theatre, the History Trust, perhaps the Jam Factory, the Film Corporation and others which are recipients of large grants each year and which also have long lead times in their planning which could be greatly assisted by triennial funding.

The Arts Task Force further recommended a procedure of committees to choose committees which, if carried to the extreme, would mean that there would not be enough arts people in South Australia. There are at least 25 boards and committees appointed by the Minister and, if each one had to have a committee to choose a committee with at least three arts representatives, we would be running out of people for committees. The Minister did indicate that consideration would be given to which organisations would have their boards chosen in this way.

This procedure was followed for the new Festival Board, and those involved apparently felt that it was an extremely successful and valuable exercise. Of course, the Festival Board was being elected *de novo*, all at once, whereas with many boards and committees not all members retire at the same time: one or two people retire at the one time while the rest of the board continues. In those circumstances this committee for a committee would probably have less relevance. My questions are:

1. Which organisations will receive indicative or triennial funding as has been received by State Opera?

2. If the major organisations I mentioned are not to receive triennial funding, why not?

3. Which boards and committees to which the Minister appoints members will have committees appointed to appoint the committees, as recommended by the Arts Task Force?

The Hon. DIANA LAIDLAW: It is correct that the Government has come to an agreement with State Opera about a new multi-year funding base, and that multi-year is over a three year period. We have indicated to other major arts companies that we are keen to pursue this same form of funding base with them. As the honourable member would be aware, major arts companies in South Australia have been seeking triennial or longer-term funding for a number of years. The honourable member, when Minister, did start negotiations with State Opera. We have been able to implement a system now to the satisfaction of all.

I have written to Tandanya, and I think to the State Theatre Company and the ADT, enclosing performance agreements which have been reached between those organisations and the department, and indicating that we would be keen to work with them on a multi-year or triennial funding base. So, those discussions are proceeding between the various organisations and the department at the present time. For the next full funding year I anticipate that triennial funding or multi-year funding will be available to all our major arts companies.

The Hon. Anne Levy: The Film Corporation? The History Trust?

The Hon. DIANA LAIDLAW: Yes, I would be aiming to work with all of them. It depends whether a conclusion is reached to the satisfaction of all parties. We are having discussions in terms of performance agreements. We want to know what their plans are before we make such forward commitments. With the State Opera, we wanted to make sure that there was 'Opera in the Park', and there were other conditions in terms of audience access that we were not satisfied had been addressed adequately in the past. It is only when we have reached a performance agreement to the satisfaction of all that we will reach agreed terms for triennial/multi-year funding.

In terms of the selection committee system for the appointment of members to boards, the honourable member has raised this in the past, both in the form of a question and perhaps it was her Address in Reply contribution.

The Hon. Anne Levy: No, it was in the Estimates, but not from me.

The Hon. DIANA LAIDLAW: But I remember that it has been raised twice by the honourable member in this place. We are now looking at the implementation of all the recommendations of the task force report and are putting a priority on them. It is fundamental that we address very quickly funding for the Festival Centre, and we are having tense negotiations about that now. There are other issues in relation to which we do not have the same pressure about making a decision, and we have the opportunity to address those matters in the longer term.

The selection system, which nominated members for the Festival Board, according to those who were on the selection committee, who were selected and who were interviewed and were not selected, was an outstanding success. I think that that is particularly important. To bring in this new concept in the arts in Adelaide, where people have to put themselves forward and go through an interviewing process to be judged whether they should serve on an arts board, was an experiment. We were overwhelmed with the number, quality and commitment of people who wanted to be on the Festival Board. Only about two or three were not prepared to be interviewed, and they have not been considered.

We are now looking at the application of that same selection system to major boards. It would certainly not be appropriate for the 25 boards and committees that the honourable member acknowledges require appointment from time to time in the arts. Because many senior appointments must be determined for January next year, what we have to do now—and it will be determined very shortly—is decide to which boards or committees this will apply, if it applies at all, and how this will operate on a longer term basis, as not all board members retire at the same time and we have to take account of casual vacancies. We will call for expressions of interest from people to serve on arts boards generally, so that they have an understanding of the Government's expectations of the importance of the arts to the State and also so that they have an understanding of the Government's increased expectation of boards to manage the business and not run to the department and get it to make decisions for them, as this has been a matter of concern to a number of boards and senior management in the arts over the past 12 months.

In fact, over the past 12 months, as I have progressively met the boards, I have been told that they have not been operating to their maximum potential or necessarily in the best interests of the organisation of the arts overall. We have to sort out the arrangements between the department, the management, the boards and me. We are having those discussions now. There has to be a greater clarity of roles and, as the task force itself said, greater discipline and responsibility by the management of the boards in terms of the operations of those companies. I can assure the honourable member that I am aware that this decision must be made in the very near future, and it will be.

CANNABIS

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Attorney-General a question about cannabis use.

Leave granted.

The Hon. R.D. LAWSON: There was recently reported the results of data compiled by the National Drug and Alcohol Research Centre. That data showed that the proportion of South Australians who admit to using cannabis climbed from 25.7 per cent in 1985 to 37.8 per cent last year. The data showed that usage by South Australians was the highest of any Australian State, although usage in both Territories was somewhat higher. The results of this information compiled by the National Drug and Alcohol Research Centre showed that usage of cannabis in South Australia has outstripped that in all other States and Territories since the introduction of cannabis expiation notices in 1987. My questions to the Attorney-General are:

1. Are the reported figures a matter of concern to the Government?

2. Will the Attorney-General examine the report with a view to determining whether there is any link between the introduction of expiation notices and the rising incidence of cannabis use in the State?

The Hon. K.T. GRIFFIN: The responsibilities in this area cut across a number of ministerial portfolio areas. One is the Minister for Health, who has the responsibility for the Controlled Substances Act; obviously, the Minister for Emergencies Services in respect of policing; and me in relation to aspects of the law and prosecutions. I noted the report at the time. I do not have any particular detail, other than what was in the media. I will refer the report and the questions, in particular, to the Director of the Office of Crime Statistics, which is within my office but nevertheless operates relatively independently in undertaking research on issues like this. Certainly, when expiation notices were introduced, a number of people expressed concern about it and there was an increase in the number of recorded reports—

The Hon. T.G. Roberts: All other States are looking at it.

The Hon. K.T. GRIFFIN: I am not arguing about that; I am talking about the figures. However, as I said, I will undertake some more detailed research on the issue and the report through the Director of the Office of Crime Statistics and bring back a reply.

TRANSADELAIDE TOUR BUSES

In reply to **Hon. M.S. FELEPPA** (26 October).

The Hon. DIANA LAIDLAW:

1. In the light of the public transport system being re-focused to accommodate competitive tendering, not privatisation, TransAdelaide is actively pursuing greater community exposure through innovative promotional programs.

TransAdelaide identified a niche market that it could operate economically and was not being serviced by the private operators. This is an example of how competition has stimulated change to the benefit of the community.

TransAdelaide has my support in these competitive initiatives, and in the new era of competition will actively pursue opportunities to satisfy customer needs. This will ensure that both private and public operators have equal access to business opportunities.

The issue is not one of charter. The TransAdelaide/Tea Tree Gully Mystery Tours were not commissioned on a hire basis in that they were not hired for use. They were a key component of a month-long promotion as part of TransAdelaide's overall Community Connections program.

This promotion is totally justifiable as it forms part of TransAdelaide's ongoing promotional activity.

2. On the basis that the TransAdelaide/Tea Tree Gully Mystery Tours constituted a joint promotion with that local council, the concept of tendering does not apply. To use an analogy, TransAdelaide's Crows Express services were a similar joint promotional concept with the SANFL.

If a private bus operator chooses to approach commercial or non commercial organisations to work out similar promotions, they are free to do so. That is the basis of competitiveness.

3. TransAdelaide/Tea Tree Gully Mystery Tours were scheduled in the interpeak periods, thus utilising spare bus and driver capacity.

This in fact provides additional revenue that would not normally be collected, and is not a drain on the taxpayer's purse.

As this is not a charter or did not fall within tender provisions and does not constitute a basis for tendering, the costing was submitted to TransAdelaide's Corporate & Business Development Branch which is responsible for corporate promotions. It is not my role to approve or check on every promotion undertaken. That is the role of TransAdelaide management which ensures that policy is followed and no loss is suffered.

Not only was the venture financially justified but provided much needed market research and community support.

4. As already mentioned, TransAdelaide/Tea Tree Gully Mystery Tours do not fall into the category of charter services. They were undertaken to show locals and visitors the area in which they live. There are no long term plans to provide regular mystery tours that translate into normal route activity, but if the need arises, ad hoc tours will be scheduled on demand.

Such demand has already been demonstrated without the benefit of advertising and a mystery tour, which is already fully booked, is scheduled for 24 November 1994. Subsequently, there is no intention to develop a tour service and then offer it for competitive tender.

TAFE EQUAL OPPORTUNITY UNIT

In reply to **Hon. ANNE LEVY** (25 October).

The Hon. DIANA LAIDLAW: DETAFE has a strong and ongoing commitment to equal opportunity, and in particular as it relates to female staff and students.

In Institutes of TAFE, 40 per cent of directors are women, while 47 per cent of all students are female. The Minister for Employment, Training and Further Education is strongly committed to increasing these percentages, especially for women in the 'non-traditional' areas of training.

DETAFE supports many programs that promote opportunities for women, including Tradeswomen on the Move. The Minister recently opened the Women and Vocational Education conference, a major initiative by the department for the Centenary of Women's Suffrage.

A process of devolution which began in 1993 under the previous Government has continued, with equal opportunity officers placed at each of the 10 institutes to ensure they are close to their client group. The department also has significant equity-based programs for Aboriginal people and people from non-English speaking backgrounds.

Contrary to the misinformed assertion by the Hon. Anne Levy, the Minister takes a personal and strong interest in matters of access and equity for all staff and students and has a vigorous commitment to equal opportunity principles and practices.

Planning and reporting on access and equity matters is a required component of institute and divisional performance agreements and program plans. This ensures that central monitoring can occur in a more efficient manner, while implementation issues are the responsibility of equal opportunity officers in institutes.

A position of Assistant Director, Access and Equity, has been created and is in the process of being filled permanently. This person will provide advice to the Chief Executive Officer and executive, and participate in national and State decision-making forums.

A system-wide focus on equity will be maintained by the establishment of an executive committee which will report to the Minister through the Chief Executive Officer.

So it can be seen that far from devaluing and closing the Equal Opportunity Unit the unit has been enhanced.

WORKCOVER

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Industrial Affairs, a question about medical charges for WorkCover recipients.

Leave granted.

The Hon. M.J. ELLIOTT: My question follows correspondence from a service station owner who had a staff member injured while at work. The staff member was burnt while removing a radiator cap and sought medical treatment. The doctor admitted her to a nearby public hospital and she was required to stay overnight. The hospital charged WorkCover $1 865 for one overnight hospital stay, which WorkCover paid.

However, I have been told that a private patient requiring an overnight stay in the same circumstances in hospital would be charged $191. The hospital has defended the charge, saying that the injured worker was a compensable patient charged at a diagnostic related grouping as set out by the South Australian Health Commission. It appears that this person had a relatively minor injury and was charged that $1 865 for one night's observation in hospital. My questions to the Minister are as follows:

1. Is this discrepancy in the charges faced by a private patient and a WorkCover recipient an isolated case? If not, how often does it occur?

2. What is the total cost to WorkCover of these higher charges?

3. Will the Minister investigate whether this system of billing can be changed to ensure a more equitable system of charging WorkCover for medical services?

4. With the Government now proposing to cut benefits to workers, does the Minister consider it reasonable that this occurs to subsidise the health system?

The Hon. K.T. GRIFFIN: I will refer those questions to the Minister for Industrial Affairs and bring back a reply.

GAMBLING

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

That the Social Development Committee be required to inquire into and report on:

1. The extent of gambling addiction that exists in South Australia and the social and economic consequences of that level of addiction;
2. The social, economic and other effects of the introduction of gaming machines into South Australia; and
3. Any other related matters.

This motion has a long history in the Parliament. Those members who have been around for 12 years or so will recall that, back in 1982, 1983 or 1984, the then Premier, Mr Bannon, indicated support for and a commitment to the introduction of an inquiry into the general availability of gambling in the community in South Australia. It was at the time of the debate of the introduction of the Casino in South Australia and the general view from many in the community was that it would be the beginning of the end of the world as we knew it then and that there would be significant problems for the South Australian community as a result of the introduction of the Casino.

For those members who went through a vigorous debate on the introduction of gaming machines in South Australia, I assure them that for the members who went through the debate about the introduction of the Casino back in the early 1980s the debate was equally as vigorous and the opposition from some parts of the community was equally as strong to the introduction of the Casino. On reflection, the overwhelming majority of the South Australian community now accepts the Casino as an important and ongoing part of the South Australian community, certainly as part of our tourism program, in attracting interstate and international visitors to South Australia, but also as part of the lifestyle of South Australians. A night out at the Casino or a number of hours there through the day is a part of the lifestyle of many South Australians.

That was a commitment or promise from the then Premier, Mr Bannon, that never came to pass and that inquiry was never established into gambling in South Australia. When we debated the gaming machines legislation, which I think from recollection was back in May 1992, again there was some discussion on the notion of having some form of inquiry into gambling. There was a view in the community, and certainly reflected in the Parliament from some members, that the introduction of gaming machines would lead to increased community and social problems and an increased number of persons addicted to gambling. Those members and others in the community who supported that view were of the opinion that the 10 year old commitment from the Hon. Mr Bannon should be dusted off and this Parliament ought to take upon itself the responsibility of establishing some form of inquiry into not only gaming machines but the total question of the extent of gambling addiction that exists in the State and the social and economic consequences of that level of addiction.

In May 1992, on behalf of a number of members and as then Leader of the Opposition, I moved for the formation of a select committee of the Legislative Council to inquire into and report on the extent of gambling addiction that exists in South Australia, the social and economic consequences of that level of addiction and the social, economic and other effects of the introduction of gaming machines into South Australia and any other related matters, and that would cover a variety of issues that might relate to gambling. Some of my colleagues have been lobbied in relation to a number of specific issues that they believe would come within these terms of reference and ought to be covered by any select or standing committee inquiry into the extent of gambling addiction and any other related matters. If the Parliament was of the view to agree to this motion, paragraph 3, in its reference to any other related matters, would allow the standing committee to investigate those matters.

In May 1992, I moved for that select committee on gambling. It was supported by all members in the Legislative Council and was one of the few issues during the debate on the gaming machines which in the end was supported by all members here. That may well have been because it was moved at 8.3 a.m. the morning after the night before of an all night sitting. It may have had something to do with the fact that it was one of the few issues, if not the only issue, that all members supported, namely, the establishment of the select committee. One of the problems for the operation of the select committee was that we were leading up to an election. I understand that it did, albeit in a limited fashion, commence its work, which was to be a big task, but all members' eyes were on the issue of an impending State election and, as I understand it (I was not a member of the committee), it did not get too far into its brief to look at this important issue.

I am now moving on behalf of my colleagues that the reference not be to a separate select committee but that the Social Development Committee be asked to look at this most important issue. Represented on the Social Development Committee are my colleagues the Hon. Bernice Pfitzner and Messrs Scalzi and Leggett from the House of Assembly, as well as Mr Atkinson from the Labor Party. I know he would love to get his teeth into this issue. Mr Atkinson may want to discuss the issue of two-up on Anzac Day, which is an issue of great concern to him. We do not agree on everything, but it is one issue on which we share similar views, namely, that two-up ought to be allowed in certain circumstances on Anzac day. Variously while in Opposition, me in the past and he presently, have fought various battles for two-up to be played on Anzac Day and perhaps other days. Mr Atkinson may raise that issue as part of that inquiry also.

I urge members to give due consideration to this motion and hope that in the not too distant future there may be support for this reference to the Social Development Committee and, hopefully, we can see much productive work come from the committee in relation to measuring the extent of addiction that already exists in South Australia with perhaps some mechanism for ongoing monitoring, and an investigation of the economic, social and other consequences of the introduction of gaming machines into South Australia.

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

SOUTH AUSTRALIAN WATER CORPORATION BILL

Second reading.

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

This Bill establishes South Australian Water Corporation as a public corporation to undertake the functions currently performed by the Engineering and Water Supply Department (E&WS). It also makes consequential amendments to the *Sewerage Act 1929* and the *Waterworks Act 1932*.

The corporatisation of E&WS accords with the recommendation of the South Australian Commission of Audit. That recommendation has been accepted by the Government. Members will recall that the Treasurer, in his Financial Statement to this House on 31 May 94 said:

> The Government is committed to the principle that Government owned enterprises operate in a commercially oriented environment, with the aim of improving overall efficiency and financial performance. The E&WS is the only major water authority in Australia which is a Government department. This arrangement is not conducive to a commercial approach.

Micro-economic reform in the Australian utilities industry has been proceeding for some years. In 1989, the Industries Assistance Commission Report Government (Non-Tax) Charges recognised the impact which Commonwealth and State public utility charges had on the cost structures of industry. In 1992, The Industry Commission Report Water Resources and Wastewater Disposal promoted the need for a commercial approach to service provision, improved performance measurement and reporting and the freedom to use outside contractors where this approach offered better value. More recently in 1994 the Council of Australian Governments (COAG) supported a strategic framework for the efficient and sustainable reform of the Australian water industry on the following basis—

- that water services should be delivered as efficiently as possible, that inter-agency performance comparisons be further developed and that service providers seek to achieve international best practice; and
- that service delivery organisations in metropolitan areas in particular should have a commercial focus.

The Independent Committee of Inquiry into National Competition Policy chaired by Professor Hilmer added another dimension to the debate. The Hilmer report (August 1993) promoted the use of competition in both the public and private sectors as a means of forcing down prices and generating national wealth.

Within the water and sewerage industries which are natural monopolies, two broad models of introducing competition are being followed. In Victoria, for example, the Victorian Rural Water Corporation is being divided into a number of different corporations. A similar approach is being adopted for Melbourne Water. Under this model, competition is achieved by comparing the performance of corporations providing similar services.

The model being adopted in South Australia is different. It seeks to achieve competitive cost structures, to deliver quality services to

the community and also to facilitate State economic development. This involves opening up the E&WS to the private sector in a very substantial way to create a water industry in South Australia which is exposed to competition and which can broaden its vision beyond the local market; one which can become an aggressive participant in the overseas infrastructure market.

The Government expects the South Australian Water Corporation will support the economic development of the State in two ways—

- by contracting out its major functions, it will ensure extensive, strong and genuine competition for those functions, thereby lowering cost structures and achieving best practice efficiency.
- by involving the private sector in its business, it will facilitate growth of the South Australian economy. A viable, combined public and private sector water industry will have a much stronger capacity to compete and take advantage of the emerging market for infrastructure services in the Asia and Pacific region. It is well recognised that infrastructure services in China, the Philippines, Thailand and Indonesia are stretched to capacity.

After a comprehensive review of E&WS by its consultants, the SA Commission of Audit has made a range of recommendations aimed at improving the performance of the department. In the report of the Audit Commission it is acknowledged that E&WS has made significant improvements in its performance—

> Over the last two and a half years, E&WS has achieved substantial improvements in labour productivity with staff reductions of over 900 employees (equivalent to a 24% reduction). This rationalisation has been achieved concurrently with maintaining or improving service levels.

Since January 1994, further substantial performance improvements have been achieved: the work force has been reduced by an additional 600 employees (representing a further 23% reduction) and comprehensive restructuring of E&WS operation is underway to meet the Government's financial and economic objectives.

The aim of corporatisation is to put in place an institutional form and operating systems which provide the potential to maximise competitiveness and efficiency and contribute to the growth of the State economy.

Experience demonstrates that business operates best when it has clear and non-conflicting objectives. The corporation's charter and its performance statement, as required by the *Public Corporations Act,* will set out the requirements of the Minister and the Treasurer in clear terms. In turn the Corporation will be required to develop appropriate strategic and business plans that are consistent with its charter and performance statement. The discipline of these processes combined with the rigorous accountability of Directors under the *Public Corporations Act* will promote the most efficient and effective management of the corporation.

The restructuring program for E&WS includes—

- Corporatisation of the E&WS department.
- Outsourcing the following major functions of E&WS, subject to favourable tender prices being received—
  - — operation and maintenance of metropolitan water and sewage treatment plants;
  - — operation and maintenance of the Adelaide water and sewer mains network;
  - — access to and extensions of the Adelaide water and sewer mains network; and
  - — provision of logistic support services based in the metropolitan area.
- Improvement of the retained functions.
- Introduction of BOO (build own operate) or BOOT (build own operate and transfer) schemes for major new capital works.

The combination of these initiatives will transform E&WS into the South Australian Water Corporation— new, invigorated and commercially focussed government business operating at international best practice levels of efficiency. The Corporation will operate in partnership with the private sector to achieve a water industry which adds to the growth and competitiveness of the South Australian economy.

The legislative framework governing the water industry is in need of review with the provisions of the *Sewerage Act* and the *Waterworks Act* reflecting the requirements of a bygone era. Accordingly the Government has directed that a comprehensive review of the legislation should be undertaken in consultation with interested stakeholders. In the meantime, it is appropriate that many of the powers contained in those Acts, particularly those dealing with operational matters, should be held by the Corporation. In this way, the Corporation will have the necessary operational powers to undertake its functions and can be held properly responsible and accountable for them. Schedule 2 of the Bill sets out those powers which are to be exercised solely by the Corporation and those which will be exercised jointly by the Corporation and the responsible Minister.

Attention it drawn to clause 2(1) of Schedule 1 of the Bill which transfers the property, rights, powers, liabilities and obligations held by the Minister under the *Sewerage Act* and the *Waterworks Act* to the Corporation. The *Irrigation Act* will be dealt with in a different way. Negotiations started some time ago with irrigators along the River Murray for the self-management of some Government Irrigation Districts. These may result in the transfer of the infrastructure assets to Trusts formed under that Act. Accordingly, there is no purpose in transferring those assets to the Corporation at this time. All interested parties may be assured, however, that the Corporation will take over the responsibilities currently undertaken by the E&WS and will continue to provide excellent service. It is intended to delegate to the Corporation similar powers and obligations under the *Irrigation Act* as those currently delegated to officers of the E&WS.

The Government has dealt with the transfer of employees from the E&WS to the Corporation in a sensitive way. It has sought to ensure that no employee will lose any rights as a result of corporatisation. Reference to clause 5 of Schedule 1 of the Bill will indicate that the rights of employees have been preserved and can only be varied by agreement under existing processes, such as variation or amalgamation of awards or enterprise agreement. At the same time, under section 17 of the Bill, the Corporation is empowered to create or restructure particular jobs and to employ other employees on such terms and conditions as it determines. This gives an equitable outcome: the Corporation is given flexibility in the area of employment without compromising the rights of existing employees.

Subject to the Parliamentary process, the Government intends that this legislation will be proclaimed to take effect on 1 July 1995. Apart from the benefit of being the commencement of a new financial year, this date will allow sufficient time to undertake the significant preparation for setting up the corporation. Activities include, for example, the selection of the best available directors to make up the Board, the preparation for the change in corporate identity, the development of the Corporation's charter and Performance Statement (as required by the *Public Corporations Act*), activities associated with the financial requirement such as valuation of assets, financing and determination of community service obligations. The Government is confident that all these activities will be finalised within the target date.

Members may be interested in the way in which the name of the corporation was selected. A widely representative team was established within the E&WS to research and identify potential names for the corporation. After applying basic selection criteria, a short list of nine names was prepared. Market research consultants surveyed residential, industrial and commercial customers of the department as well as its employees. The results were weighed up having regard to the selection criteria and the emerging trends within the water industry. The Government was pleased to accept the recommendation of the E&WS that the name South Australian Water Corporation be selected.

I commend this Bill to the House.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Object

The object of this proposed Act is to establish a statutory corporation as a business enterprise with the principal responsibility of providing water and sewerage services for the benefit of the people and economy of South Australia.

Clause 4: Interpretation

This clause contains definitions of words and phrases used in the proposed Act.

PART 2

CORPORATION

Clause 5: Establishment of South Australian Water Corporation

South Australian Water Corporation is established and has perpetual succession and a common seal, is capable of suing and being sued in its corporate name and has the functions and powers assigned or conferred by or under this proposed Act or any other Act.

Clause 6: Application of Public Corporations Act 1993

The Corporation is a statutory corporation to which the provisions of the *Public Corporations Act 1993* apply.

Clause 7: Functions of Corporation

The Corporation's primary functions are to provide services—
- for the supply of water by means of reticulated systems;
- for the storage, treatment and supply of bulk water;
- for the removal and treatment of wastewater by means of sewerage systems.

The Corporation may also—
- carry out research and works to improve water quality and wastewater disposal and treatment methods;
- provide consultancy and other services within areas of the Corporation's expertise;
- develop commercially and market products, processes and intellectual property produced or created in the course of the Corporation's operations;
- advise users of water in the efficient and effective use of water;
- encourage and facilitate private or public sector investment and participation in the provision of water and wastewater services and facilities;
- carry out any other function conferred on the Corporation.

Clause 8: Powers of Corporation
The Corporation has all the powers of a natural person together with the powers specifically conferred on it by this proposed Act or any other Act.

Clause 9: Corporation to furnish Treasurer with certain information
The Corporation must furnish the Treasurer with such information or records in the possession or control of the Corporation as the Treasurer may require in such manner and form as the Treasurer may require. Subsections (2), (3) and (4) of section 7 of the *Public Corporations Act 1993* apply in relation to such a requirement of the Treasurer in the same way as to a requirement of the Minister under that section.

Clause 10: Common seal and execution of documents
A document is duly executed by the Corporation if the common seal of the Corporation is affixed to the document in accordance with this proposed section or the document is signed on behalf of the Corporation by a person(s) in accordance with an authority conferred under this proposed section.

PART 3
BOARD

Clause 11: Establishment of board
A board of directors consisting of 5 members appointed by the Governor is established as the governing body of the Corporation. The board's membership must include persons who together have, in the Minister's opinion, the technical and commercial abilities and experience required for the effective performance of the Corporation's functions and the proper discharge of its business and management obligations.

Clause 12: Conditions of membership
The Governor may remove an appointed director from office on the recommendation of the Minister (on any ground that the Minister considers sufficient).

Clause 13: Vacancies or defects in appointment of directors
An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

Clause 14: Remuneration
A director is entitled to be paid from the funds of the Corporation such remuneration, allowances and expenses as may be determined by the Governor.

Clause 15: Board proceedings
Subject to the proposed Act, the board may determine its own procedures. The proposed section includes provision for a quorum of the board, the chairing of meetings of the board, voting at meetings and the minutes of proceedings to be kept by the board.

PART 4
STAFF

Clause 16: Staff of Corporation
The chief executive officer of the Corporation will be appointed by the board with the approval of the Minister. The Corporation may appoint such other employees as it thinks necessary or desirable on terms and conditions fixed by the Corporation.

PART 5
MISCELLANEOUS

Clause 17: Delegation to Corporation
The Minister may delegate any of the Minister's powers or functions under any Act to the Corporation. A power or function delegated under this proposed section may (if the instrument of delegation so provides) be further delegated by the Corporation. A delegation under this proposed section—
- must be by instrument in writing;
- may be absolute or conditional;
- does not derogate from the power of the delegator to act in any matter;
- is revocable at will by the delegator.

Clause 18: Regulations
The Governor may make such regulations as are necessary or expedient for the purposes of this proposed Act.

SCHEDULE 1
Transitional Provisions
This schedule contains provisions of a transitional nature.

SCHEDULE 2
Consequential Amendments to Other Acts
This schedule contains amendments to the *Sewerage Act 1929* and the *Waterworks Act 1932* consequential on the passage of the Bill. In the main, these amendments strike out references to the Minister and substitute references to the Corporation in the relevant Act.

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

ELECTRICAL PRODUCTS (ADMINISTRATION) AMENDMENT BILL

Second Reading.

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

This Bill, entitled the Electrical Products (Administration) Amendment Bill 1994, amends the Electrical Products Act 1988. This Act provides for certain electrical products to be tested and energy labelled before being offered and/or advertised for sale or hire. Additionally, the Act requires that any unsafe or unregistered products are removed from sale, and provides for the prosecution of offenders who fail to comply with the requirements of the Act.

The current Act vests in ETSA the responsibility to administer and regulate activities in relation to certain proclaimed electrical products in South Australia. These products include items such as fridges, freezers, air conditioners, washing machines and clothes dryers. The testing of all proclaimed electrical products manufactured and/or imported into this State are administered by ETSA to ensure they comply with the appropriate standards and are safe for release to the general public. Additionally, ETSA is responsible for the investigation of any reported incidence of an unsafe or unregistered product. Such policing may involve the removal from sale of the offending product and also requires notification to the manufacturer and/or importer of the problem and consultation with them to determine any necessary remedial action. These activities relate to new products only; second-hand products are not subject to this Act.As part of the approval process, products are required to be tested to Australian Standards Association standards ideally in a National Australia Testing Association (NATA) accredited testing facility. There are several of these facilities in the State. Testing fees currently apply and are set out in Regulations under the Act. There is reciprocity between States, such that a product approved in one State does not need to be re-tested before being released for sale in another State.

ETSA has reduced its capacity to undertake product testing. There are private laboratories in this State that are interested in this business. The proposed Bill allows, with Ministerial approval, any authorised body to carry out product testing to Australian Standards Association standards and to issue the appropriate certification. With the removal of ETSA's subsidy, the fees for product testing are likely to increase market rates and will reflect real costs.

Energy labelling is part of a nationally agreed program aimed at increasing energy efficiency with the possibility of minimising energy performance standards. These standards are regulated nationally through agreement at the Australian and New Zealand Minerals and Energy Council (ANZMEC).

ETSA will focus on its primary function to generate, transmit, supply and trade in electricity. ETSA will divest itself of industry regulatory roles in general and specifically the administration of the Electrical Products Act 1988. ETSA's administration of this role is

a cost burden reflected in tariffs that, in a national competitive electricity supply market, would more appropriately be borne by a government department.

In line with national trends to allow supply authorities as public enterprises to maintain competitiveness, it is intended that ETSA divest itself of this industry regulatory role and transfer the administration of the Electrical Products Act 1988 to the Minister.

I commend this Bill to honourable members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 4—Interpretation

This clause provides for the striking out of the definition of 'the Trust' and of any reference to 'the Trust' in any other defined term.

Clause 4: Amendment of s. 5—Labelling of electrical products

Clause 5: Amendment of s. 6—Prohibition of sale or use of unsafe electrical products

These clauses provide for the striking out of 'Trust' or 'Trust's' wherever occurring in these sections and substituting, respectively, 'Minister' or 'Minister's'.

Clause 6: Insertion of ss. 6A and 6B

Proposed section 6A provides that, if the Minister is satisfied as to certain matters, the Minister may make an arrangement with a person conferring on the person a specified role in relation to testing, and authorising the labelling of, electrical products for the purposes of section 5(1) or (2). Proposed subsection (2) provides that such an arrangement must be in writing and sets out what may be dealt with in the arrangement which may be terminated by the Minister at any time. The Minister must, within six sitting days after execution of an arrangement, cause a copy of the arrangement to be laid before both Houses of Parliament.

Proposed section 6B provides that in any proceedings, a certificate executed by the Minister certifying as to a matter relating to an certain matters under the Act, constitutes proof, in the absence of proof to the contrary, of the matters so certified.

Clause 7: Amendment of s. 8—Regulations

A substituted proposed subsection (2)(c) provides that the regulations may fix, or provide for the Minister to fix, administration or application fees and provide for the waiver or refund of fees.

Clause 8: Transitional provision

It is provided that an authority or notice given of published by the Electricity Trust of South Australia and in force under the principal Act immediately before the commencement of this proposed Act continues in force as an authority or notice given or published by the Minister under the principal Act as amended by this proposed Act.

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

CONSUMER CREDIT (CREDIT PROVIDERS) AMENDMENT BILL

In Committee.

(Continued from 26 October. Page 600.)

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. ANNE LEVY: Clause 2 provides that the Act will come into operation on a day to be fixed by proclamation. I presume that the intention would be to proclaim it in the not too distant future. When are the next licence fees due to be paid? In other words, will this Bill be proclaimed at such a time that the current credit providers who apply for and receive their annual licence will not have to pay a 12 month fee?

The Hon. K.T. GRIFFIN: It is the Government's intention to proclaim the legislation to come into effect as soon as possible. There may be some finetuning changes necessary to regulations but we expect those to be dealt with expeditiously either at the end of this year or early next year. The licence or renewal date is 30 September each year so obviously that time has now passed and licenses are thus current. This will come into effect before the next licence renewal period comes up.

The Hon. ANNE LEVY: I am even more mystified then as to why this legislation is before us. If the credit providers paid their licence fees by 30 September and if the Bill is not passed by then they would not have to pay it again until 30 September next year. If by 30 September next year the uniform credit laws are in operation under which the credit providers will not have to have a licence, it does not seem to me that they are being saved one cent. It makes even more strange the fact that we have this legislation prior to having the uniform credit legislation which we expect at any time. It is not saving the credit providers one dollar.

The Hon. K.T. GRIFFIN: The object of the Bill is to put in place a regulatory framework which will apply under the new uniform credit code. There obviously will be further finetuning amendments next year when we have the uniform regulations under the uniform credit code. The Government took the view that, as we were reviewing all licensing responsibilities right across the consumer affairs area, we should address the question of consumer credit licensing. It may be that, in the intervening period, there will be applications for new licenses from those who presently are required to be licensed under the Act with new businesses or whatever. So, in that sense there will be no obligation to licence. As I said in my reply, the Government takes the view—and I agree—that we should endeavour to sweep away as much as possible of the licensing regime in consumer affairs, and consumer credit is one such area. It may be that it will not save many credit providers very much, but the issue is that—

The Hon. Anne Levy: Most of them nothing.

The Hon. K.T. GRIFFIN: Well, it may save some if they have to apply. The goal is to have the new code in operation on 1 September 1995. Representations have been made to all Governments that it should not come into operation until all the regulations have been made, so that industry is aware of all the legal framework within which it operates. In fact, industry put a submission to Ministers only a month or six weeks ago, as I recollect, which sought to encourage Governments to defer the date of operation from 1 September. As far as I know, no Government has acceded to that request. We think it unwise to put off the day when the uniform code comes into operation. This may be on the Ministers' agenda, if not formally, informally, when we meet again towards the end of November. If it is put off beyond 1 September, there is not much point in trying to amend the legislation at short notice.

We take the view that, as far as practicable, we ought to be ready for 1 September or, if it is deferred, for that deferred date. If it is deferred beyond the end of September, quite obviously this will have some benefits for credit providers. It is a matter of judgment as to whether we pursue this matter at this stage or defer it until the beginning of next year. The fact of the matter is that, because of changes in the budget program, we would have to deal with it early in the new year anyway. So, we take the view that, as we keep resolving consumer affairs legislation reviews, we ought to bring in legislation and not put it off until next year.

Clause passed.

Clause 3 passed.

Clause 4—'Interpretation.'

The Hon. ANNE LEVY: I move:

Page 2, line 6—Leave out all words in this line.

Obviously this amendment relates to all the other amendments I have on file. The Opposition believes that the Commercial Tribunal should maintain its role in consumer credit (credit providers) legislation as we believe it should maintain its role for land agents, conveyancers, valuers and, as is obvious from the amendments I have on file, second-hand motor vehicle dealers. I am sure that the Attorney does not want to hear again the reasons I have previously advanced in this place, but in this respect this Bill is obviously part of the same package, and we feel that the Commercial Tribunal should be retained and be able to continue its extremely important work in this as in other areas.

I could perhaps reiterate what I said previously that we appreciate that the Government wishes to streamline and save money. If this can be achieved through collocation of the Commercial Tribunal by putting it under the Courts Administration Authority for administrative purposes, we feel that any savings which could otherwise be made could be made in that way, but we feel it is important that the Commercial Tribunal be maintained with its cheap, efficient and specialised knowledge and procedures. This is the first amendment which would achieve that aim for consumer credit as well as for land agents, conveyancers and valuers.

The Hon. SANDRA KANCK: I indicate, as I did in my second reading speech, my concern about moving these matters to the District Court. I support the Hon. Ms Levy's amendment and subsequent amendments in this regard.

The Hon. K.T. GRIFFIN: I thought there may be some consistency of approach between the Opposition and the Australian Democrats. I do not intend to call for a division if my opposition to the amendment is not successful, but I want to reiterate what I have said on each of the other occasions on which this issue has been raised. We have taken a considered decision in relation to the Commercial Tribunal in respect of each piece of legislation. I have endeavoured with each piece of legislation to draw to the attention of the Committee and the Council the occasions when the Commercial Tribunal has been used. It is just not a fact that this tribunal is regularly accessed by consumers. I hope that when we come to a conference on this Bill, if it gets that far or even before that with a bit of luck, I will be able to persuade members that what we propose will not prejudice the rights of citizens and, in particular, consumers, and will not lead to a high cost jurisdiction but will, in fact, enhance the delivery of services.

I acknowledge that the Hon. Anne Levy is prepared to make a concession that it could be collocated under the umbrella of the Courts Administration Authority, but I suggest that that does not go far enough. We will have an opportunity to discuss that issue later. The fact of the matter is that we believe there needs to be flexibility, that all matters arising out of each piece of legislation in which consumers are involved should be dealt with in the one jurisdiction and not as occurs at the moment with part in the Commercial Tribunal and some in the ordinary court system. We have, in fact, provided that there will be informality as much as it is possible to achieve in any jurisdiction, recognising that in the Commercial Tribunal there is a significant amount of informality. Although except in disciplinary matters the Commercial Tribunal is not bound by the rules of evidence and must act with equity and good conscience, the fact of the matter is that, very largely, it has followed the processes of courts and the rules of evidence which can be technical and not allow a great deal of flexibility. It is important to recognise in the context of this Bill that in the financial year 1993-94, the Commercial Tribunal heard only four matters relating to credit; three of which related to the tribunal's limited civil jurisdiction and one of which was a licensing matter. There were no objections to licence applications and no disciplinary matters at all against those who hold a credit provider's licence.

So, there is a very limited jurisdiction. It was very rarely activated in the 1993-94 financial year. That is generally the pattern that I have been reflecting as we have dealt with each of the Bills. I ask members to note those matters. I am not seeking to have an extensive debate on this issue again, because the issues have been explored. But I hope that, in the course of both the discussions on the range of consumer Bills, members will accept that, whilst the perception may be that the Commercial Tribunal is a so-called low cost tribunal and easily accessed by consumers, the contrary has generally been the case—rarely accessed by consumers, mostly by the Commissioner for Consumer Affairs, whether in disciplinary or other matters, and a whole range of disputes have had to go to the ordinary courts, because there has been no jurisdiction in the Commercial Tribunal to deal with those.

What we hope to be able to do within the courts structure, because there is now an Administrative Appeals Court, a General Division and a Minor Claims Division, is focus the court in relation to these sorts of administrative and licensing matters upon the issues in a specialist way but also being able to deal with the other matters which might arise in respect of which the Commercial Tribunal has no jurisdiction. I put those matters on the table and on the public record for members to consider.

As I indicated, it does not look as though I will win the debate on this amendment—at present at least—and I will not, therefore, divide on any of those amendments which are on file because, as I said, they all relate to the Commercial Tribunal.

The Hon. ANNE LEVY: I do not wish to prolong this debate, but I should reiterate a comment I have made before: it may be true that not many consumers go to the Commercial Tribunal; it is usually the Commissioner taking an action on their behalf, and I congratulate the Commissioner for so doing. This is a very important consumer protection measure that we have in this State—that the Commissioner can so act on behalf of consumers. However, there are consumers who go to the Commercial Tribunal and, apart from that, it must be realised that the other party to the dispute which goes before the Commercial Tribunal is often a small business person: a local land agent, valuer or car dealer. The benefit of the Commercial Tribunal is not only for consumers—although doubtless it is very strong there—but also for the other party who is a small business person and who will certainly welcome the informality, the fact that he or she does not have to get legal representation, with all the expense that that involves, and the whole matter can be settled speedily, efficiently and by people with expertise.

The Hon. SANDRA KANCK: I just wonder whether the Attorney-General could satisfy my curiosity. I assume that the rationale for getting rid of the tribunal and putting these matters into the hands of the court will be a cost saving one. How much does the Government expect to recoup as a result of this?

The Hon. K.T. GRIFFIN: With respect, that is not correct: it is not just a cost saving issue. It may be a cost saving measure in the sense that it will be more efficient, but that is not the primary motivation. The primary motivation is to bring them under the umbrella of the courts—and the Hon. Anne Levy said earlier, 'You can do that by perhaps

some collocation.' With respect, that is not sufficient. It does not give the flexibility that may be needed where the Chief Judge, for example, will allocate a judge to the particular jurisdiction to undertake that work according to the work flow of the court.

As I said in respect of one of the other Bills, the previous Chairman of the Commercial Tribunal (Judge Noblett) was periodically spending a week or so across in the District Court because there was insufficient work to keep him fully occupied in the Commercial Tribunal. What we want to see is a better use of those resources, and I suppose to that extent one could call them cost saving. But it revolves around a better use of resources. It also revolves around more flexibility, potentially good service to those who wish to bring disputes before whatever body it is that has the power to resolve the disputes, and also to enable those matters which are not within the jurisdiction of the Commercial Tribunal to be dealt with concurrently with those matters which are within its jurisdiction where they arise out of one and the same matter. So, we are addressing those sorts of issues as part of the process of taking the jurisdiction across to the District Court.

Amendment carried; clause as amended passed.

Clause 5 passed.

Clause 6—'Substitution of Part.'

The Hon. ANNE LEVY: I move:

Page 3—
Line 2—Leave out 'District Court' and insert 'Tribunal'.
Line 6—Leave out 'District Court must' and insert 'Tribunal may'.
Line 9—Leave out 'District Court, the Court' and insert 'Tribunal, the Tribunal'.
Line 16—Leave out 'Court' and insert 'Tribunal'.
Line 18—Leave out 'District Court' and insert 'Tribunal'.
Line 29—Leave out 'District Court' and insert 'Tribunal'.
Page 4—
Line 8—Leave out 'District Court' and insert 'Tribunal'.
Line 19—Leave out 'District Court' and insert 'Tribunal'.
Line 25—Leave out 'District Court' and insert 'Tribunal'.
Page 5, line 3—Leave out 'District Court' and insert 'Tribunal'.

These are all consequential on the amendment that the Committee has just passed.

Amendments carried; clause as amended passed.

Clause 7—'Form of credit contract.'

The Hon. ANNE LEVY: We oppose this clause.

Clause negatived.

Clause 8—'Form of contract that is a sale by instalment.'

The Hon. ANNE LEVY: We oppose this clause.

Clause negatived.

Clause 9 passed.

Clause 10—'Harsh and unconscionable terms.'

The Hon. ANNE LEVY: We oppose this clause.

Clause negatived.

Clause 11 passed.

Clause 12—'Relief against civil consequences of non-compliance with this Act.'

The Hon. ANNE LEVY: We oppose this clause.

Clause negatived.

Clause 13 passed.

Schedule.

The Hon. ANNE LEVY: I move:

Page 7, line 7—Leave out 'District Court' and insert 'Commercial Tribunal'.

This is consequential.

Amendment carried; schedule as amended passed.

Title passed.

Bill read a third time and passed.

SECOND-HAND VEHICLE DEALERS BILL

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

The Hon. ANNE LEVY: I move:

Page 2, after line 15—Insert:
'Tribunal' means the Commercial Tribunal established under the Commercial Tribunal Act 1982;.

This amendment re-establishes the jurisdiction of the Commercial Tribunal regarding second-hand vehicle dealers. This is a jurisdiction in which the Commercial Tribunal has had more activity than it has had with the credit providers—and doubtless it will continue to do so given the normal commercial relations that occur in the second-hand vehicle market. This amendment reinserts the definition of 'Tribunal'. Although I have four pages of amendments, a very large number of them are consequential on the insistence of the continuing involvement of the Commercial Tribunal.

I place on record my apologies for not being able to provide either the Minister or the Australian Democrats with my amendments until a short time before the debate began. They were drawn up without knowledge of the amendments that the Attorney has on file. Therefore, in some cases I may seek to move my amendments in an amended form to take account of amendments which the Attorney will move, so that there is consistency between them.

The Hon. K.T. Griffin: You had my amendments though, didn't you?

The Hon. ANNE LEVY: I had your amendments, but Parliamentary Counsel had my instructions before I had your amendments. The pressure of time has led to this happening. I do not think it occurs very often, and I offer my apologies for the fact that it will occur.

The Hon. K.T. GRIFFIN: I appreciate the honourable member's apology. We are now up to speed, I hope. While the majority of the honourable member's amendments relate to the tribunal, there are several issues of substance that have not yet been explored in other Bills. We should be able to deal efficiently with those in Committee. If inconsistencies happen to creep in as a result of some oversight, they will be fixed up in another place or when we have further discussions about how a number of the issues common to all these Bills are finally to be appropriately addressed.

I do not support the amendment relating to the Commercial Tribunal, but I am realistic enough to acknowledge that the numbers are not with me. This issue will be revisited at a later stage.

The Hon. SANDRA KANCK: The Attorney-General will not be surprised to hear that the Democrats will remain consistent on this. This is the sixth Bill in a row with which I have dealt where tribunal matters have been transferred to the court, and I have expressed my concern on all occasions about that matter. Accordingly, I will be supporting this amendment and subsequent amendments.

Amendment carried; clause as amended passed.

Clauses 4 to 6 passed.

Clause 7—'Dealers to be licensed.'

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

Page 4, line 9—Leave out 'who is licensed as a credit provider under' and insert 'lawfully carrying on business as a credit provider within the meaning of'.

The amendment arises as a consequence of the introduction and now the passing of the Consumer Credit (Credit Providers) Amendment Bill. Under this Bill, credit providers will no longer be required to be licensed, and this is therefore essentially a drafting amendment.

The Hon. ANNE LEVY: We support the amendment.

The Hon. SANDRA KANCK: The Democrats also support it.

Amendment carried; clause as amended passed.

Clause 8 passed.

Clause 9—'Entitlement to be licensed.'

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

Page 5, lines 1 and 2—Leave out this paragraph and insert the following paragraph:

(e) has not, during the period of five years preceding the application for the licence, been a director of a body corporate wound up for the benefit of creditors—

(i) when the body was being so wound up; or

(ii) within the period of six months preceding the commencement of the winding up; and

This is a drafting amendment to more clearly spell out the proper connection or relationship between the directorship and the winding up of a body corporate. It has regard to the date at which the body corporate was wound up as this date relates to the date when the applicant for a licence was a director of the company. It also prevents an unscrupulous director from avoiding the provisions of the Bill by resigning as a director in the months before the body corporate is wound up.

The Hon. ANNE LEVY: I am happy to support the amendment.

Amendment carried.

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

Page 5, lines 16 and 17—Leave out this subparagraph and insert the following subparagraph:

(iii) has, during the period of five years preceding the application for the licence, been a director of a body corporate wound up for the benefit of creditors—

(A) when the body was being so wound up; or

(B) within the period of six months preceding the commencement of the winding up; and.

This amendment is in identical form to that to which I have just referred.

Amendment carried; clause as amended passed.

Clause 10—'Appeals.'

The Hon. ANNE LEVY: I move:

Page 5—

Lines 21 and 22—Leave out 'Administrative Appeals Division of the District Court' and insert 'Tribunal'.

Line 24—Leave out 'Court' and insert 'Tribunal'.

Lines 31 and 32—Leave out 'Court' (wherever occurring) and insert, in each case, 'Tribunal'.

Line 34—Leave out 'Court' and insert 'Tribunal'.

Line 36—Leave out 'Court' and insert 'Tribunal'.

These amendments are consequential on the amendment that the Committee has just passed.

Amendments carried; clause as amended passed.

Clause 11—'Duration of licence and annual fee and return.'

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

Page 6 line 18—Leave out ', with the consent of the Commissioner,'.

This is a drafting amendment and has arisen as a consequence of the consultation process which has occurred since the introduction of this Bill to Parliament. The consent of the Commissioner is not required before a licensed dealer may surrender his or her licence. No obligations under the Act are avoided by the surrendering of a licence and disciplinary action may be taken against a dealer or former dealer under the Bill.

The Hon. ANNE LEVY: I am happy to support the amendment, although I wish to raise with the Attorney the fact that a dealer will no longer have to obtain the consent of the Commissioner before surrendering their licence. However, I presume that the act of surrendering must mean some notification to the Commissioner so that the Commissioner will be aware of the surrendering of the licence. This obviously becomes relevant in terms of insurance, warrantees and other such matters.

The Hon. K.T. GRIFFIN: I would envisage that the actual form of that will be prescribed by regulation. This is for those circumstances where there is a dealer who voluntarily surrenders, for example. It is to recognise the fact that some people go out of business, prefer not to continue in business and to remain licensed and therefore surrender the licence. Of course, you can cancel the licence, but that involves other connotations. I would expect that the form of the surrender and the procedure will be prescribed.

Amendment carried; clause as amended passed.

Clause 12—'Requirements for insurance.'

The Hon. ANNE LEVY: I move:

Page 6 after line 25—Insert the following subclauses:

(3) A licensed dealer must lodge with the Commissioner a certificate in the manner and form required by the Commissioner evidencing the dealer's insurance coverage as required by this section—

(a) on or following the grant of the dealer's licence; and

(b) when lodging the annual return under section 11.

(4) Without limiting the effect of subsection (2), a dealer's licence will be taken to be suspended for any period for which a certificate has not been lodged with the Commissioner in a manner and form required by the Commissioner certifying that the dealer has insurance coverage as required by this section.

In the second reading debate, I expressed my concern that the indemnity system that currently applies was being abolished in favour of a compulsory insurance scheme on the part of the dealers. My concern related to what the insurance would or would not cover. The Attorney was certainly reassuring in his response to the second reading speech, where he indicated that it was certainly intended that there would be no excess payable by a consumer and that the conditions in regulations set out for the insurance would cover all the matters that are now covered by the indemnity fund. With that reassurance, the Opposition is quite happy to accept the insurance scheme as opposed to the existing indemnity scheme.

However, our concern was that there could be a licensed dealer who allowed his insurance premiums to lapse, perhaps because he was under some financial difficulties, but who continued to trade and in consequence if someone bought a vehicle from him which was then returned for repairs if the dealer were not financially able to undertake the repairs himself the insurance would no longer be operative because the premiums had been allowed to lapse.

This was a matter of concern to us and we felt that one way to ensure that this cannot occur is to provide that, before receiving a licence for the forthcoming 12 months, the dealer must prove that he has insurance for the next 12 months; in other words, for the period for which he is getting his licence. So, even if he runs into financial difficulties during that period, any warrantees that accompany any cars sold by that dealer during that time can certainly be covered by the insurance because the insurance policy will be up to date.

I realise that the Bill before us (clause 51, dealing with regulations) suggests that regulations can be made to require dealers to lodge certificates regarding their insurance cover. However, we feel that this is so important as a matter of consumer protection that it should not be a matter of regulation but should in fact be within the body of the Bill. So, anyone reading it knows that any secondhand vehicle dealer, if he has a current licence, must be insured for the period of that licence. So there can be no question of any warranty not being honoured, either by the dealer or the insurance company, during the period of that licence. We felt that this was so important that it should be within the body of the Bill and not relegated to regulations.

The Hon. K.T. GRIFFIN: I oppose the amendment. I understand the points that have been made by the Hon. Ms Levy. The Government had intended to maintain flexibility by dealing with this in a comprehensive scheme under the regulations. To some extent that depends on the sorts of negotiations which I outlined in my reply and being satisfied that there is a proper framework in place for providing insurance which is to be maintained. In my reply, I referred to the Builders Indemnity Insurance Scheme.

It was intended that evidence of current insurance had to be produced not just at the time of application for or grant of the licence, but periodically. Whether that will be with the annual return or more frequently remains to be seen. We had envisaged constant monitoring to ensure that the insurance was current and had not been avoided by surrender or other processes. Members should note that clause 12 provides:

(1) A person must, at all times when carrying on business as a dealer, be insured in accordance with the regulations.

(2) A dealer's licence is suspended for any period for which the dealer is not insured as required under subsection (1).

There are consequences for trading without being licensed. There are substantial penalties—a Division 5 fine—which would be a deterrent to allowing insurance to lapse. The Government's preference is to have the flexibility which the promulgation of a scheme in regulations would allow. I assure the Committee that the issues raised by the honourable member will be addressed coherently in the proposed regulations.

The Hon. ANNE LEVY: What the Attorney-General has said is interesting, but it in no way puts me off persisting with my amendment. I know that there is a penalty for a dealer who trades without insurance. However, if he lets his premiums lapse and monitoring is not occurring every day, there could be a period of some weeks when he is not insured and this has not been detected by the monitoring done by the Commissioner. If it is detected, I realise there is a penalty on the dealer, but that is not of much use to the consumer, and it is the consumer about whom I am principally concerned. The dealer may suffer a penalty, but the consumer will be left with a vehicle with a worthless warranty. If the dealer is unable to pay for the repairs required and the insurance has been allowed to lapse so that the insurance will not cover the repairs, the consumer will suffer. The dealer will suffer, as he should, but the consumer, the innocent party, should not be penalised by not having access to resources to pay for repairs under the warranty.

My amendment would ensure that the dealer can get his licence only if he proves that the insurance premiums have been paid. In that way he will not be able to trade without insurance, and that is the protection for the consumer. When there was an indemnity fund, it did not matter whether a dealer went broke and could not afford to pay for repairs under a warranty, because the indemnity fund was there to protect the consumer and pay for those repairs, and the consumer was not out of pocket. Unless we have something like this in the Bill, the consumer could suffer as well as the dealer. I am very concerned that that should not happen. The consumer should have the protection of knowing that when he deals with a dealer that dealer has insurance.

The Hon. SANDRA KANCK: Because of the removal of the indemnity fund, I think some protection has to be built into the legislation. I am always much happier when I find that protection is built into the legislation rather than the regulations. Accordingly, I shall be supporting the amendment.

The Hon. K.T. GRIFFIN: I do not intend to divide on this amendment. We will give further consideration to this matter. I do not think that this in itself will stop the problem outlined by the Hon. Ms Levy. I have indicated that the Government's intention, through the regulations, is to put in place a scheme, by negotiation with the insurer, which will cover all contingencies, including a provision that the insurance cannot be avoided in the event of death, insolvency or default. That may still be possible under this amendment, but it was certainly the Government's intention to guard as far as possible against the sorts of circumstances to which the honourable member refers. For the moment I acknowledge that the majority of the community will support the amendment and we will further consider it.

Amendment carried; clause as amended passed.

Clauses 13 to 15 passed.

Clause 16—'Notices to be displayed.'

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

Page 8, lines 22 and 29—Insert 'in which the dealer is licensed' after 'name'.

This is a drafting amendment to clarify one of the particulars required to be incorporated by a dealer in the notices to be displayed on cars offered or exposed for sale. This amendment will require the name under which the dealer is licensed to be incorporated into the notice and will overcome the uncertainty which sometimes occurs when a dealer states a business name rather than the name in which the dealer is licensed, and will enhance the rights of consumers in their dealings with second-hand vehicle dealers. If a dealer incorporates his or her business address into a contract or a notice and a dispute subsequently arises, the purchaser is forced to find out who is the owner of that business. If the business is not registered, it can be difficult to establish who is responsible for it.

The Hon. ANNE LEVY: I am happy to support the amendment.

Amendment carried.

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

Page 9—

Line 1—Leave out 'if the last owner of the vehicle is not a dealer'.

Line 2—Insert 'of the vehicle who was not a dealer' after 'owner'.

Line 3—Insert 'who was not a dealer' after 'owner'.

These three amendments are interrelated and again are drafting amendments. They will add an extra protection for consumers by ensuring that the name and address of the last owner of the vehicle who was not a dealer will be stated on the notice to be displayed on a vehicle that is offered or exposed for sale. The name and address of the previous owner of the vehicle is important as it allows a potential purchaser of a vehicle to make inquiries of the previous

owner about the history of the vehicle. The current wording of the clause requires that the notice disclose the name and address of the last owner only if the last owner of the vehicle is not a dealer. This wording may allow an unscrupulous dealer, who has two licensed companies, one of which buys the vehicles and transfers them to the other for sale, to avoid the requirement to state the name of the last owner who was not a dealer, hence the need for the amendment to be made.

The Hon. ANNE LEVY: I am happy to support this group of amendments. I never cease to be surprised by the way that some people can think up ways of getting around the law. I suppose it provides perpetual jobs in the Parliament as we have to keep chasing and closing all the loopholes as fast as people determine them, but I appreciate the desirability of this group of amendments and I am happy to accept them.

The Hon. K.T. GRIFFIN: I am sure the Hon. Anne Levy will recognise that, wherever the written word is employed, there will always be people who will dissect and argue about interpretation. It is a feature of the English language, I suspect.

The Hon. Anne Levy: Yes, but they are not necessarily trying to get around it. Some people are happy to be law abiding.

The Hon. K.T. GRIFFIN: Well, sometimes people are law abiding and wish to find out what their legal obligations are. I misled the Committee in saying that all four amendments related to the same issue. The first three do, and perhaps if we deal with them, we can deal separately with the last amendment to clause 16.

Amendments carried.

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

Page 9, lines 21 and 22—Leave out 'from the owner referred to in paragraph (d)' and insert 'from the last owner of the vehicle who was not a dealer'.

This amendment is a matter of drafting. It will result in the disclosure of the odometer reading at the time the vehicle was acquired by the dealer as opposed to the current drafting of the clause which requires disclosure of the odometer reading at the time the vehicle was acquired from the owner. This amendment clarifies potential confusion which might arise from the current drafting. I suspect it is one of those matters to which the honourable member has only just referred about people wanting to get around the law and finding a means by which they can reinterpret particular words.

Amendment carried; clause as amended passed.

Clause 17—'Form of contract.'

The Hon. ANNE LEVY: I move:

Page 10, line 22—Leave out 'particulars' and insert 'information'.

On the face of it, this amendment appears to be fairly inconsequential. It relates to the form of contract which is signed between a dealer and a purchaser of a secondhand vehicle, new to the purchaser. But it relates to new clause 18A which provides for a cooling off period. It is a drafting requirement to have 'information' rather than 'particulars' at this point if there is to be a cooling off period. I would suggest that we can probably debate the desirability or otherwise of the cooling off clause and use this vote as the test for that principle.

The Opposition wishes to insert the right of a cooling off period for people who are making purchases of secondhand vehicles. I know there are many people who feel that considerable wrongs have been done because a cooling off period does not apply. In fact, the Hon. Mr Roberts might wish to indicate some from his experience. As a general principle, when purchasing items of large monetary value—and that is not an absolute sum, of course, it is relative to the income and responsibilities of the individual—we do have cooling off periods for the purchase of real estate, which is probably the most expensive purchase that most people in the community ever make.

Second only to real estate will be the purchase of their vehicle. To many people it is a large sum of money relative to their income which they are laying out on a car. We all know that there can be considerable pressure put on people to, if you like, 'Sign here and everything is lovely; you will be able to afford these repayments because it is really quite simple; you really like that vehicle don't you; just sign here.' People can be pressured into making purchases which they subsequently regret or find they are just not capable of meeting. They should really have time to consider this away from the pressures of the moment.

It is for this reason that the Opposition is moving the series of amendments relating to a cooling off period. The Opposition is suggesting that, when someone buys a second-hand vehicle, they have a three day cooling off period and at any time during those three days they can in writing indicate that they do not wish to continue with the purchase of that vehicle. If they do this they will get back any money they may have paid in the form of a deposit and any trade-in which may have been provided. Any contract for credit for the purchase which relies on the contract of sale will likewise be discharged, and any security interest in the vehicle will be extinguished: in other words, back to square one.

Cooling off periods of this type exist in Victoria for second-hand vehicles. They were brought in by a Labor Government, and with the change of Government there was no move to remove that cooling off period for second-hand vehicles. As in Victoria, my amendment proposes that the cooling off period can be waived if the purchaser wishes to have the new to him vehicle there and then. This also applies in Victoria and it may well be that a very large number of people will waive the cooling off period, because possibly in so doing they may be able to get the vehicle at a cheaper price. The dealer may suggest that if the cooling off period is waived he will lower the price a bit. This sort of bargaining goes on in dealers' yards, relating to this and other matters. It would be unreasonable to suggest that the cooling off period be mandatory and could never be waived, because there would be occasions when people purchasing a vehicle need it that day and would certainly not welcome being told, 'Well, you can sign the contract today but you cannot actually have the vehicle for three days until the cooling off period is over.'

The Hon. K.T. Griffin interjecting:

The Hon. ANNE LEVY: The amendment that I am proposing on cooling off does not attempt to regulate that. That would be something to be discussed between the dealer and the purchaser. The purchaser may say, 'Well, I want the cooling off period, but I want to keep my current car for the next three days and, if you do not accept that, the deal is off.' These are matters which can be settled in the market. The dealer could say, 'Well, I will give you so much as a trade in, but if you have a prang over the weekend or during those three days obviously we would have to reconsider the trade-in value.' These are matters which can be discussed between the dealer and the purchaser. It may well be that a number of purchasers will waive their rights to a cooling off period.

I suppose there is only so much that legislation can do to protect consumers, but there certainly are consumers for whom a cooling off period would be highly desirable and who would benefit enormously from being able to consider the financial and other implications of the contract. As with real estate, the time for consideration of these matters is extremely desirable and I am sure will be very beneficial to some people. Consequently, we propose a number of amendments putting in a cooling off period. It is not a mandatory cooling off period, but it will be a consumer's right to have a cooling off period and we feel that many consumers will benefit from it.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. This will really become a bureaucratic nightmare for dealers in particular, as well as consumers, for no perceived benefit. The Hon. Anne Levy has said that it is not mandatory. It is not mandatory if the consumer signs the waiver. I can imagine what will happen, having just been through the business of trading in a car and buying another one, and looking at all the paper work, that there would be a distinct incentive, if one wants to get the car now rather than waiting maybe for five days because, if it is three clear business days that means if you enter into the contract on the Thursday three clear business days will be the Friday, the Monday and the Tuesday. So you cannot take delivery until the next Wednesday under the cooling off period. I can imagine what will happen. It will not be necessarily an advantage—

The Hon. Anne Levy: Thursday afternoon, you can take it Tuesday afternoon.

The Hon. K.T. GRIFFIN: No, you cannot—three clear days. Three clear business days is what you have got. Three clear business days legally does not include the day you make the deal and the day you take delivery.

The Hon. M.S. Feleppa interjecting:

The Hon. K.T. GRIFFIN: We will not talk about shopping hours. That is not my portfolio of responsibility, except in relation to retail leases. That is for another day. The fact is that it will become impossible to administer, particularly if one has to give notice of the right for a cooling off period. Let us take a real life situation: you have a vehicle you want to trade in. You go to a motor vehicle dealer. You have done your shopping around, and you have got your good price on the vehicle you want to buy and the vehicle you want to trade in.

The Hon. Anne Levy: You might be talked into it.

The Hon. K.T. GRIFFIN: You might be talked into it, but you cannot hold everyone's hand all the time. It is all very well to be talked into it, but they will also be talked into signing a waiver.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: There will be, because in a house—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: You won't find much for $20 000 in the housing area. The fact of the matter is that for a house there is a mandatory cooling off period. You cannot waive it with a house. I am not proposing by way of my argument that there should be a mandatory cooling off period, but I am saying that it is subject to waiver. Just as you may have a motor vehicle sales person putting pressure on you to buy a car, there may well be pressure to waive the right to a cooling off period. And what have you achieved? Nothing.

Take the following real life situation: you have shopped around and found the deal you want and you have a trade-in vehicle. You must go through a whole process. You must get the contract signed—and that will include signing the transfer of registration and the registration of both vehicles. You may require finance in relation to both the vehicle that you have traded in and the vehicle that you are buying. You must get approval from the financier regarding the vehicle you want to buy. All that paper work will have to be done.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: No, I don't want lawyers. You will need lawyers to unscramble it. The fact of the matter is that you will need all this, and then what happens? The dealer says, 'I've agreed to buy your car. You have three days cooling off. I'm not going to let you have the car that you've bought because there may well be problems with insurance if you prang it. I need to have your trade-in here because if you drive your trade-in away there is no guarantee that it will come back to me after three clear business days in the same condition or that I will be adequately protected.'

If that happens, will there be exceptions in the contract if the vehicles are allowed out of the dealer's possession on the one hand and the trade-in comes under the protection of the dealer on the other? What happens if there is an accident or if the person has been drinking while driving and the comprehensive insurance is avoided? How do you manage that situation?

The Hon. R.R. Roberts: The contract is void.

The Hon. K.T. GRIFFIN: If the contract is void, who suffers? The dealer suffers, particularly if the new car has been taken away and has been crashed.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: The other car, too? The same thing applies. It is voided. The dealer has been through the paperwork, put everything in place, presumably helped to arrange finance and to cancel finance on the vehicle that is being traded in, and gone through the registration process. What happens if the trade-in vehicle is not in the same condition, perhaps not through an accident but it has another 5 000 kilometres on the clock? I know that would mean a very long trip, but these things happen. In those circumstances what should the dealer do? He might say, 'I bought it with this particular reading on your odometer and it was in such and such a condition. We will avoid the contract.' You could go around in circles. Or he might say, 'We'll do you a deal. We will knock a further $200 off your trade-in in order to take it.' Do you enter into a new round of negotiations with a new contract, and do you have a new cooling off period? I suggest that it is a bureaucratic nightmare, and it is unnecessary. It will not provide the protections which the honourable member seeks for the consumer because there is the potential for waiver. The same pressures will apply to the consumer as will apply to buying the motor vehicle, so I strenuously oppose this parcel of amendments relating to the cooling off period.

The Hon. R.R. ROBERTS: The Attorney-General provoked me into making a contribution to this debate when he talked about what happens in real life in the marketplace. Recently, I had first hand experience of a consumer who wanted to avail himself of a second-hand motor vehicle. The constituent, whose name I am not about to mention, had some trouble with financial matters and, because of that problem, sought the services and advice of his brother, who was competent in financial matters. They went along to one motor vehicle dealer who said, 'Take the car for a drive. Take it for a couple of days and see what you think. We will not make a contract. Take it and try it.' So, that addresses a little of the

problem about dealers allowing people to take a vehicle off the block. Most people who buy a vehicle take it off the block and, on many occasions, they are offered the opportunity to take it for a day or two days to see what they think and then return it.

Whilst the brothers were driving around in the vehicle under consideration, the brother who was proposing to buy the vehicle spotted in a different caryard another vehicle which took his fancy. The two brothers went to the dealer to discuss the price, etc. The vehicle was in a much higher price range than that which was being considered when the initial request for finance had been made by the second brother on behalf of the first brother.

However, the first brother took a liking to the vehicle, but some agreement had been reached that the vehicle they were test driving would be back at the other car dealer's premises at 5 o'clock because someone else had expressed an interest. Brother two, the adviser, said, 'I will take the vehicle back but do not sign anything, whatever you do,' because he was aware of the disability that his brother had in considering financial matters. He made very clear to the dealer that nothing was to be signed. He delivered the vehicle and walked back to the caryard, and, as he walked into the office, the dealer said, 'Sign here', the first brother having already signed the contract.

A family dispute arose over the matter, and further inquiries were made of a financial institution as to whether finance would be available to cover the difference in the cost of the two cars. As the matter proceeded, the first vendor eventually advised the brother that he ought to stick with the first vehicle because he did not have the finance to buy the second vehicle. Having signed the contract on the more expensive car, the brother went back to the dealer and said, 'Look, I cannot really afford this.' That is when it became nasty, because he then received an account from the dealer for between $1 200 and $2 000 for the trouble and loss of profits to this dealer, plus storage costs, etc, which was purely an actuarial calculation.

The dealer forwarded his account on the basis of his experience of similar cases where the Department of Consumer Affairs had determined an actuarial arrangement where the dealer could make these claims. The truth of the matter was that there had been no losses; the car was in exactly the same spot the next day and was subsequently sold within days. The brother who had financial difficulties in the first place paid for the vehicle he had bought from the other vendor and then received a bill for $2 000, the ultimate result being that he paid more than the price of the original car, and he could not afford this.

If there was a cooling off period of at least 24 hours—and I know my colleague, the Hon. Anne Levy, proposes an extension of that—the problems experienced by my constituent with respect to finance would have been satisfied, and he would not have been hit with a bill—

The Hon. K.T. Griffin: He could have been persuaded to sign a waiver. If he was persuaded to sign a contract he might have been persuaded to sign the waiver, too.

The Hon. R.R. ROBERTS: That would have been a separate exercise.

The Hon. K.T. Griffin: It's all part of it.

The Hon. R.R. ROBERTS: If he decided to take a waiver, he had the choice to do that, and it offered him what I believe would have been a reasonable protection which we give to all sorts of other things. If somebody comes to your house and wants to sell you a vacuum cleaner at the door for $300, you have the right to change your mind. That applies to a whole range of areas.

In most instances, we are talking about the second biggest purchase that many consumers will make in their lifetime, because not everybody can go and buy new motor vehicles. These days, many second-hand motor vehicles are up around the $20 000 mark. We are talking about significant sums of money, and pursuing my colleague's point $20 000 to a rich lawyer may not be a big part of his income. However, for people who work on minimum rates in arduous industries, it represents about three-quarters of their income, and in many cases a higher percentage than that. So it becomes an important consideration.

You may well say, 'Oh what a feeling!' when buying a motorcar, but it does not always come out that that feeling is a good one: it may well be a bad feeling. I am certain that the case to which I have referred is not an isolated one; I have knowledge of at least one other occasion where it has happened to me personally. But the circumstances of this case indicate clearly the sorts of problems and burdens and cost imposts that can occur as a result of not being able to consider properly high pressure salesmanship, or one's inability to understand precisely in a short space of time the consequences of the deal one is making. As I said, we can change our mind with a vacuum cleaner and a house but not with a motor vehicle.

The Hon. ANNE LEVY: I am sure many of us could provide examples of people who have succumbed to high pressure sales techniques and who have regretted it very much subsequently. This would apply not only to houses and cars but also I presume to a lot of other items, particularly in any area where hard sell is the norm. The Parliaments in this country have long recognised that people need some protection, particularly when the item is very expensive to them and where the financial consequences can be disastrous. The cooling off period does serve to allow some mature reflection. I certainly have come across examples of that, and I am sure other members would have, too.

Earlier, the Attorney spoke about someone not being able to get their car for five days if a weekend intervened, and he said that they might need it before then. The cooling off period is a maximum of three days. The person wishing to buy the car could always return within those three business days and sign a waiver at that stage. So that reduces the time but still leaves some cooling off period in which to consider the matter more fully.

I would also like to comment on the Attorney's question how, if the trade-in vehicle had been in some way damaged or driven 5 000 kilometres during the time, this would affect trade-ins and so on. Would one then have a new contract and a new cooling-off period?

I am sure that this does not apply. For example, if the consumer kept his old vehicle for the three days, then returned to pay the purchase price, trade in his old vehicle and take the new one, and if it was discovered that the trade-in car had been driven 1 000 kilometres—I think 1 000 kilometres is more realistic than 5 000 kilometres—the dealer could well say, 'I will not avoid the contract, but I am going to pay you $200 less for the trade-in because of the extra use of the trade-in vehicle which has occurred.' If the purchaser agrees, that would not mean a new contract but a variation of the terms of the contract. It is not a new contract; it is merely a variation of the old contract, so any suggestion of going around and around in circles is fanciful, to say the least. The cooling off period for vehicles does work in Victoria and

other places, and there is no reason at all why it cannot work in South Australia and provide consumers with that extra protection.

The Hon. SANDRA KANCK: I am leaning towards supporting this amendment, but could the Attorney advise me whether there are other areas of consumer protection where there is a cooling off period, other than in relation to the purchase of a house and door to door sales? Also, in his capacity as the Minister for Consumer Affairs, the Attorney-General would obviously be in contact with departments in other States. Is the Attorney-General aware of any problems that have been experienced with the Victorian legislation?

The Hon. K.T. GRIFFIN: My understanding is that in respect of the purchase of a house and in respect of door to door sales there are cooling off rights. Door to door sales is a quite obvious example, where the sales person is at the door and meets you in your home or on the front doorstep, which is quite different from you going to a department store or to some other place and making the decision in the shop, because in the shop you can walk away; in the home, if you have a sales person on the doorstep or in the lounge room, it is often impossible to get rid of that person. So, the cooling off period is designed to provide an element of protection, because it is within your home and you cannot back away from it.

So, I am only aware of those two areas, and they have their own special characteristics. If you go along and buy a garage to be erected on your land, as I understand it, there is no cooling off period; if you buy a boat, there is no cooling off period; and with any of those sorts of items there is no cooling off period. If people try to sell them at your door, they then become door to door sales people and those provisions of the Fair Trading Act relating to door to door sales come into operation. In relation to the position in other States, I have been informed that in Victoria—I did refer to this in my second reading reply—the Victorian Motor Traders Act 1986 contains a three day cooling off period.

A recent review of that Act revealed that, even though a cooling off period has existed for some time, many consumers are unaware of their cooling off rights, and others believe that they are legally obliged to waive their rights prior to taking delivery or they will not be given access to finance. Further, while it is stated that the three day cooling off period is reasonable, suggestions have been made by sections of industry to reduce the cooling off period to one day, although there is no general agreement on that.

The Hon. Anne Levy: It is not the consumers making the suggestions; it is the industry.

The Hon. K.T. GRIFFIN: The result of the review is that very few seem to be taking advantage of it. I come back to the point that it is messy, it provides no real benefit and, if a salesperson persuades you to buy a motor vehicle in the example given by the Hon. Ron Roberts, equally that salesperson can persuade the customer to waive their rights. I would suggest that, where it can be waived, there is no protection. I am not advocating a cooling off period at all. It either has to be mandatory or there has to be no cooling off period. It will add a significant amount to the price consumers are required to pay without any commensurate benefit if it is to be applied to motor vehicles.

I urge the Hon. Ms Kanck not to support the amendment. Whilst superficially a cooling off period is attractive, when one analyses the way it would or could operate, for the amount of money likely to be involved in terms of additional cost or benefit and the fact that it can be waived, there is no significant advantage to consumers in imposing another burden on dealers. The Hon. Anne Levy claims that Governments around Australia have enacted legislation to provide various rights to protect consumers. The Bill is designed to provide protections for consumers. It is one of the reasons why we are maintaining licensing; and it is one of the reasons why we have provided other protections as in some of the amendments I moved earlier. In my explanations I indicated that they are there for the purpose of expanding the protections for consumers.

I see no advantage in moving to impose this provision on the motor vehicle industry. Superficially it is attractive but upon analysis it provides no discernible benefit. Information I have indicates that so far as I am able to ascertain in South Australia there are no other instances of cooling off periods, except for domestic dwellings and in relation to door-to-door sales.

The Hon. SANDRA KANCK: The difficulty of dealing with an amendment like this—and the Hon. Ms Levy has apologised for the delay in our receiving it—is that I have not had time to research it and I am having to make a decision on the run. Certainly, I see merit in what the Attorney is saying: either we have it without the waiver or we do not have it at all. I have some sympathy for a cooling off period because there is no doubt that car salesmen are consummate persuaders, and no doubt that is where part of their bad reputation comes from. I would like to be able to say that people are going to be protected. The Attorney says that the Bill provides protection for the purchaser of a second-hand vehicle, but perhaps I missed something in the Bill. Is there anything else in the Bill that provides the same protection as this provision?

The Hon. K.T. GRIFFIN: In addition to the licensing regime, which has been tightened up, particularly in relation to directors and insolvent companies, we propose to remove the provision that presently exists that enables the Commissioner for Consumer Affairs to give a waiver in relation to the warranties that are expressly provided in this legislation. That is a significant difference.

The Hon. R.R. Roberts: Especially for the dealer.

The Hon. K.T. GRIFFIN: It is of significance. You can presently waive the warrantees. What we have said is that we do not believe that that ought to be permitted. It has not been used for the purpose for which it was originally established and so we are removing it. This avoids the pressure which, again, is likely to come from a dealer who says, 'If you are prepared to obtain a certificate in relation to a warranty then you will get a better price.' In fact, the dealers do want the waiver of warranty retained and we have said 'No.'

The Hon. ANNE LEVY: I think the Attorney is not pointing out that this Bill provides virtually nothing extra for consumers compared to what they have had in the past; they have had an indemnity fund in the past which will now be replaced by insurance, hence our concerns that the insurance be valid insurance all the time. The Attorney is proposing to reduce the number of years for which a warranty will apply, though the Opposition is certainly opposing that.

Other than the inability to waive rights to a warranty, there is nothing new at all for consumers in this legislation. In fact, it would remove the protection of a warranty for a very large number of people—all those who buy cars that are between 10 and 15 years old. I think that the Attorney is being disingenuous if he pretends that this Bill is a great step forward for consumers. It may not be a great step backwards, but it is certainly not a great step forward. Certainly, I feel

that this provides extra protection, which some people—not everyone—will benefit from by having a possible cooling-off period. This is a small step that will benefit some, if not all, consumers. Because of this, the Parliament should take the opportunity of doing so.

The Hon. SANDRA KANCK: I know that the Attorney-General is anxious to complete this today. He has made some reference to the possibility of this Bill's ending up eventually in conference or perhaps some other negotiation going on. With that in mind, because I do not have an opportunity now to research this fully, I will support it for the time being and we can look at some other negotiations afterwards.

Amendment carried.

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

Page 10, after line 22—Insert the following subparagraph:
(ai) the name in which the dealer is licensed and the business address of the dealer;.

This amendment incorporates new information to be contained in the contract of sale. This amendment will benefit consumers in that it will be clearly apparent to the purchaser from the contract the name in which the dealer is licensed and will also state the business address of the dealer. In some respects this is consequential upon the amendment we have already passed in relation to clause 16.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 10, line 22—Insert the following subparagraph:
(bi) the right of the purchaser to rescind the contract under section 18A;.

This amendment is consequential on the amendment we have just passed.

The Hon. K.T. GRIFFIN: It is consequential and I will not oppose it at this stage.

Amendment carried.

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

Page 10, after line 27—Leave out 'together with a description of each such' and insert '(being fees or charges payable to the dealer or of a kind prescribed by regulation) together with a description of each such fee or' after 'purchaser'.

This is designed to overcome the ambiguity that exists as to whether the words 'any other fees and charges payable by the purchaser' mean only those fees and charges payable to the dealer or alternatively whether they include fees and charges for such things as registration, transfer of registration and stamp duty, for example. The Government is of the view that all relevant information pertaining to the purchase of a vehicle, including statutory charges, should be incorporated into the contract for sale so that the consumer is aware of the total cost of the contract and can make an informed decision about the purchase. It is proposed that the fees and charges other than those payable to the dealer will be identified in the regulations.

The Hon. ANNE LEVY: I am happy to support the amendment.

Amendment carried.

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

Page 11, after line 1—Insert the following paragraph:
(e) contain a statement to the effect that a purported exclusion, limitation, modification or waiver of the rights conferred by this Act is void.

This is an amendment to the drafting of the clause. It will further clarify the rights of consumers and place in black and white for all to see that a purported exclusion, limitation, modification or waiver of the rights conferred by this Act is void.

The Hon. ANNE LEVY: I think for consistency I will have to move an amendment to the Attorney's amendment so that it will provide:

(e) contain a statement to the effect that a purported exclusion, limitation, modification or waiver of the rights conferred by this Act is void unless expressly provided for by this Act.

Under the cooling off period there is the possibility of waiving the cooling off period, so for consistency this clause must allow for that.

The Hon. K.T. GRIFFIN: I will move my amendment in the amended form. I move:

Page 11, after line 1—Insert the following paragraph:
(e) contain a statement to the effect that a purported exclusion, limitation, modification or waiver of the rights conferred by this Act is void unless expressly provided for by this Act.

I do not necessarily adopt the principle, but I move it for the sake of consistency.

Amendment as amended carried; clause as amended passed.

Clause 18 passed.

New clause 18A—'Cooling off.'

The Hon. ANNE LEVY: I move:

Page 11, after line 29—Insert new clause as follows:

18A. (1) Subject to this section, a purchaser under contract for the sale of a second-hand vehicle may, by giving the dealer written notice of the purchaser's intention not to be bound by the contract before the expiry of the cooling-off period, rescind the contract.

(2) Subsection (1) does not apply if the purchaser immediately before accepting delivery of the second-hand vehicle signs the prescribed form waiving the right to rescind the contract.

(3) If a contract is rescinded under subsection (1), the purchaser is, subject to subsection (5), entitled to the return of money paid under the contract.

(4) Where a contract is rescinded under subsection (1)—
(a) the dealer must return to the purchaser any second-hand vehicle given in satisfaction of any part of the purchase price; and
(b) any collateral contract for credit is discharged to the extent that it was entered into for the purposes of the payment for the vehicle to be supplied under the contract; and
(c) any security interest in the vehicle arising under the collateral contract for credit is extinguished to the extent that it secures the payment of a debt or other pecuniary obligation or performance of any other obligation under the collateral contract.

(5) A dealer who, before the expiry of the cooling-off period, demands or requires payment of an amount greater than $100 or 1 per cent of the purchase price under the contract (whichever is the greater) by the purchaser in respect of the sale of the second-hand vehicle is guilty of an offence.
Penalty: Division 7 fine.

(6) A dealer must not use, dispose of or otherwise deal with a second-hand vehicle given by a purchaser under a contract for the sale of another second-hand vehicle in satisfaction of part of the purchase price during the cooling-off period.

(7) In proceedings for an offence against subsection (5), if it is proved that the defendant received money from the purchaser, it will be presumed, in the absence of proof to the contrary, that the defendant demanded or required the payment of that money.

(8) A purchaser is not entitled to take delivery of a second-hand vehicle purchased from a dealer unless—
(a) the purchaser has waived the right to rescind the contract under subsection (2); or
(b) the cooling-off period has expired.

(9) In this section—
'cooling-off period', in relation to a contract for the purchase of a second-hand vehicle, means the period of three clear business days commencing on and including the day on which the contract is made.

We have already discussed this at some length.

The Hon. K.T. GRIFFIN: I oppose it but will not divide.

New clause inserted.

Clause 19 passed.

Clause 20—'Notices to be displayed in case of auction.'

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

Page 12—
Line 21—Insert 'in which the dealer is licensed' after 'name'.
Line 29—Leave out 'if the last owner of the vehicle is not a dealer'.
Line 30—Insert 'of the vehicle who was not a dealer' after 'owner'.
Line 31—Insert 'who was not a dealer' after 'owner'.

Page 13, line 13—Leave out 'from the owner referred to in paragraph (c)' and insert 'from the last owner of the vehicle who was not a dealer'.

These amendments are all consequential or similar to amendments we have moved previously in relation to other clauses; the principle is the same.

Amendments carried; clause as amended passed.

Clauses 21 and 22 passed.

Clause 23—'Duty to repair.'

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

Page 15, lines 15 to 18—Leave out paragraph (c) and insert the following paragraphs:

(c) the sale of a vehicle (other than a motorcycle)—
(i) with a year of first registration more than 10 years before the year in which the sale is made; or
(ii) that has been driven more than 160 000 kilometres; or

(d) the sale of a motorcycle—
(i) with a year of first registration more than five years before the year in which the sale is made; or
(ii) that has been driven more than 30 000 kilometres.

Depending on what happens with the Hon. Anne Levy's amendment, this amendment may have to be moved in two parts, one dealing with vehicles other than motorcycles and the other in relation to the sale of a motorcycle. This amendment alters the provisions dealing with the exclusion of vehicles by reducing the kilometres that a vehicle has been driven from 200 000 to 160 000. The amendment will bring the provisions relating to vehicles which are covered by warranty more closely in line with legislation currently in place in New South Wales and the Northern Territory. In those States, vehicles are not covered by warranty if they are more than 10 years old and have travelled more than 160 000 kilometres. I understand that a number of other States are also considering amending their legislation in a similar manner.

When a vehicle is subject to warranty, an additional cost is passed on to the consumer to cover the warranty. The Government's proposal will mean that there will be a cost saving to consumers on the purchase price of vehicles which fall outside the 10 year, 160 000 kilometre, range and the possibility of a consumer buying a newer vehicle than might have been possible on their budget should warranty provisions have applied to the vehicle they were considering buying. Apart from this legislation, there are no statutory warranties that explicitly cover second-hand goods. Provisions relating to merchantable quality always take into account the age of the item. Motor vehicles depreciate as they get older and become more expensive to repair. Therefore, consumers who purchase older vehicles cannot expect to acquire them in the same condition as a person who acquires a new vehicle.

As I indicated in my second reading explanation and reply, the move to bring motorcycles within the scope of the legislation is designed to protect consumers. The Hon. Sandra Kanck has expressed her curiosity in relation to 'the instances of motorcycle dealers going bankrupt and leaving their customers in the lurch'. I did not answer that when I replied because I did not have the information readily available. However, there is a significant example of such a happening in this State.

The proprietor of the motorcycle dealership Kawasaki City, Mr Ian George, closed the doors of his premises for the Christmas holidays in December 1989, never to reopen. By early January 1990, concerned consumers began realising that something was amiss with the showroom locked while stocked with new and used motorcycles.

Consumer concern was soon apparent because a large number of them had paid deposits or had left their motorcycles or parts with the dealer to be repaired or sold on consignment. A large crowd of angry clients (or customers) gathered at the premises in a threatening manner, attracting the attention of radio and television crews and culminating in police intervention and the positioning of security officers at the premises. Officers from the Department of Consumer and Business Affairs were also stationed at the premises to advise and, where appropriate, to take complaints of the business.

Bridge Wholesale Acceptance Corporation (Australia) Limited, financiers and mortgagees of the company, took possession of all stock, including consignment stock, and appointed an accounting firm to act as agent for the mortgagee in possession. It was subsequently ascertained that the trader had sold a number of the consignment bikes without paying the consigners, who lost title to their machines. Fortunately, a large number of other bikes on consignment were recovered. In all, there was a total of 90 complaints in connection with this incident, and 57 were resolved satisfactorily. The remaining complainants were referred to the provisional liquidator or advised to seek legal advice.

In relation to the complaints received by the Office of Consumer and Business Affairs, during the period 1 July 1992 to 30 June 1993 the Office of Consumer and Business Affairs received 19 complaints in connection with both new and used motorcycles. During the period 1 July 1993 to 30 June 1994, I understand that 40 complaints were received by the same office. So, it can be seen from this information that concerns and problems are being experienced by the general public in connection with motorcycle dealers.

I will deal with several other matters. *Prima facie*, motorcycles fall within the definition of 'vehicle' and, on the first draft of the Bill, the exclusion provisions for vehicles would have meant that motorcycles of 10 years of age and 200 000 kilometres would have been excluded from the warranty provisions. During the consultation process, it became apparent that there was a need to make specific provision for motorcycles, given the different considerations that apply to motorcycles compared with cars. Provision was needed to reflect the different age and distance travelled by the two different types of vehicle.

It is proposed in my amendment that clause 24 not apply to the sale of motorcycles with a first year of registration more than five years before the year in which the sale is made or those ridden more than 30 000 kilometres. These age and distance calculations are based on similar provisions to those contained in the New South Wales Motor Dealers Act 1974 and in Northern Territory legislation dealing with the sale of second-hand vehicles and motorcycles.

The Hon. ANNE LEVY: I wonder whether we could agree that the Attorney's amendment be put in two parts because, while I have my own amendment for the first part, the second part of the Attorney's amendment I support in

principle but want to change the figures in it. Again, my apologies as my amendments were drawn up without knowledge of the Attorney's amendments, otherwise I would have prepared amendments to his amendments.

I deal first with a vehicle other than a motorcycle: the Attorney is proposing that there be no cover by warranty if it is more than 10 years old, and he wants to reduce the previous limit of 200 000 kilometres to 160 000 kilometres. I certainly oppose the reduction from 200 000 kilometres and believe that that is the appropriate distance figure, and I certainly oppose the reduction to 10 years from what is the current law, namely, 15 years old. I can see no valid reason whatsoever for reducing the age of a vehicle that will not have a warranty from 15 years to 10 years. What has happened in the past 10 years that this legislation has been in operation which means that the warranty should not apply on a vehicle between 10 and 15 years old when they have been covered by warranty for the past 10 years? Vehicles today are better made than they were 10 or 20 years ago; they last longer—

The Hon. K.T. Griffin: That is a matter of judgment.

The Hon. ANNE LEVY: It is certainly true on average. Modern technology results in higher quality vehicles. One does not have to consider Rolls Royce vehicles. The ordinary vehicles that ordinary people buy are better made today than 10 or 20 years ago, and they can be expected to last longer and perform better. It is most unreasonable to suggest that for some reason we should reduce the age of vehicles that are covered by warranty. The RAA provides the information that the average age of all cars in South Australia is 11.3 years. That is the average age, so what the Attorney is proposing would mean that the average car and more than half the cars on the road in South Australia when sold second-hand would no longer be eligible for a warranty.

It would only be cars younger than 10 years that could get a warranty. There are thousands and thousands of good 10 to 12 year old cars on the roads. One might quote a 1983 V8 Holden Commodore, a very popular car, used a great deal, and selling for quite high prices, from $5 500 to $6 000. Why should a vehicle such as this, which has provided and will provide good service to thousands of people in our community, not be covered by warranty? I am not quite sure how we can achieve what I would like to achieve as opposed to what the Attorney wants to achieve. Obviously we vote on the lot, but I do not want the reduction to 160 000 kilometres, and I want to increase the 10 years, which is currently provided in the Bill, to read 15 years. Accordingly, I move to amend the Hon. Mr Griffin's amendment as follows:

Paragraph (c)(i)—Leave out '10' and insert '15'.

The Hon. SANDRA KANCK: I have a car that is 15 years old and is actually on its third time around the clock, so it would not qualify under any circumstances, no matter which amendment I vote for, but it is a car that has a lot of life left in it.

The Hon. R.R. Roberts interjecting:

The Hon. SANDRA KANCK: No, people actually look at my car and think it is quite new, and they are very surprised when they find out it is 15 years old. Knowing how it has performed, had I wanted to sell that car five years ago, when it was 10 years old, it would have been worthy of having some sort of warranty to go with it. So, I do not support the Attorney's amendment. I think it is important that we keep it at 15 years.

Amendment to amendment carried; new paragraph (c)(i) as amended inserted.

The Hon. ANNE LEVY: I move to further amend the Hon. Mr Griffin's amendment as follows:

Paragraph (d)(i)—Leave out 'five' and insert '10'.
Paragraph (d)(ii)—Leave out $30 000 and insert $60 000.

I appreciate that it will be of considerable advantage if we have motorcycles covered by warranties and that, given the nature of motorcycles, it is fair that the same distance and age qualification should not apply for them as apply for cars. But, a very prominent and reliable figure in the motorcycle industry has certainly advised the Opposition that the cut-off limits suggested by the Attorney in his amendments are really far too low; that many of the large bikes which are on the market, or which are used and sold, are between five and 10 years old and have done well over 30 000 kilometres; and that these bikes are selling for prices between $5 000 and $10 000. They are not cheap bits of nonsense by any means and deserve to have a warranty.

I am sure that people paying that sort of money for a motorcycle deserve to have protection, in the same way as people buying cars for that sort of money deserve protection by warranty. While I certainly approve of having the amendment relating to motorcycles, I would like it to read 'the year of first registration more than 10 years before the year in which the sale is made or which has driven more than 60 000 kilometres'. There was an interjection that some bikes would never get to that distance. This may well be true for some small bikes which are not anywhere near so robust, but in that case they are most unlikely to be selling for $3 000.

Let us not forget that the warranty provisions do not apply for any vehicle, car or motorbike which sells for less than $3 000. So, the clapped out bike, which should not get a warranty, will not be eligible for it, regardless of its age and distance, because it will not be selling for $3 000. But, it is the people who are paying much larger sums of money, as I say in the $5 000 to $10 000 range, for vehicles which are seven, eight, nine years old, who deserve to have a warranty and should be eligible for it.

The Hon. SANDRA KANCK: From what I have seen of motorcycle riders, most people purchase motorcycles with the intention of riding them hard. Very few people handle them in a sedate way, and I just do not know what a cycle's lifespan would be. I had assumed it would be fairly low, but those resale figures which the Hon. Miss Levy has given indicate that maybe they have a far greater life than I expected they would have.

The Hon. Anne Levy interjecting:

The Hon. SANDRA KANCK: Yes. I think, as with the way I handled the cooling off periods, that I would like to look at this a little further. For instance, I have a brother-in-law who is quite passionate about motorbikes and has had a number of them, and I might find it useful to speak to him about it. I think what I will do is support it at the present time, and if we go to conference I am prepared to look at it again later.

The Hon. K.T. GRIFFIN: I do not accept the amendment, but I understand where the numbers lie for the moment. We have adopted the New South Wales limits, which I understand were worked out on the average number of kilometres run by motorcycles over five years. That seems to me to be not unreasonable. There are some very expensive motorcycles, but the majority of them are at the lower end of

the range and, as the Hon. Sandra Kanck has said, most are bought to be ridden hard.

Amendments to amendment carried; paragraph (d) as amended inserted; clause as amended passed.

Clause 24—'Enforcement of duty to repair.'

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

Page 18—
Lines 5 to 11—Leave out this subclause and insert the following subclause:
(4) If agreement is reached at a conference under this section, the agreement must be recorded in a written instrument signed by the parties to the agreement and the Commissioner and a copy of the instrument given to each of the parties.
Line 16—Leave out 'despite reasonable attempts to secure agreement,'.
After line 26—Insert the following paragraph:
(f) an order enforcing the terms of an agreement reached at the conference.

My fourth amendment to clause 24 has been overtaken by the honourable member's amendment to reinsert 'tribunal'. My amendments arise as a consequence of the consultation process following the introduction of the Bill into Parliament. They are designed to streamline the procedures and to ensure that proceedings for enforcement of the duty to repair will involve a cheaper and simpler procedure. The requirement for leave to be obtained for an agreement reached at a conciliation conference has been removed.

Amendments carried.

The Hon. ANNE LEVY: I move:

Page 18, line 20—Leave out 'Magistrates Court' and insert 'Tribunal'.

Amendment carried.

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

Page 18, after line 26—'Insert the following paragraph:
(f) an order enforcing the terms of an agreement reached at the conference.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 18—
Line 29—Leave out 'Magistrates Court' and insert 'Tribunal'.
Line 30—Leave out 'Court' and insert 'Tribunal'.
Line 35—Leave out 'Magistrates Court' and insert 'Tribunal'.
Page 19—
Line 19—Leave out 'Magistrates Court' and insert 'Tribunal'.
Line 25—Leave out 'Magistrates Court' and insert 'Tribunal'.
Line 27—Leave out 'Magistrates Court' and insert 'Tribunal'.

Amendments carried; clause as amended passed.

Progress reported; Committee to sit again.

VOCATIONAL EDUCATION, EMPLOYMENT AND TRAINING BILL

Received from the House of Assembly and read a first time.

MOTOR VEHICLES (CONDITIONAL REGISTRATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 October. Page 600.)

The Hon. DIANA LAIDLAW (Minister for Transport): I thank members for their contributions to this Bill. With respect to the Hon. Barbara Wiese's contribution, I thank her for her acknowledgment that the Opposition supports not only the measure but also, in principle, the extension of conditional registration to other forms of vehicles that use our roads. She noted that her support for this matter in principle—

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: Well, you may have more knowledge than the former shadow Minister, after all your years of experience as Minister. The honourable member noted that she agreed in principle that there should be a way of recording on some sort of database all those vehicles which must have access to the roads at some time or other and have a scheme which ensures that all vehicles using our roads are subject to third party insurance.

This matter of third party insurance was also referred to by the Hon. Sandra Kanck, who recommended that vehicles registered under the Bill be required to carry compulsory third party bodily insurance. I am able to advise that the Motor Vehicles Act requires that every application for registration must be accompanied by the payment of an appropriate third party insurance premium to the Registrar of Motor Vehicles. This applies to all categories of vehicle registration, including permits and conditional registration.

The Third Party Premiums Committee determines the insurance premium; and the cost of the premium reflects the risk associated with the relevant category of vehicle. The insurance premium for left-hand drive vehicles is expected to be set at $40. The conditional registration fee to be prescribed by regulation has been recommended at $20. Accordingly, the total cost for registration and insurance is proposed at $60, which is well under what people would have to pay for any other vehicle that would not be accepted in this category of conditional registration.

Also I would like to clarify the points raised by the Hon. Barbara Wiese in her speech. These notes come from the department. It must be the department's impression that there is some slight misunderstanding by the honourable member, although I have to acknowledge that I did not pick that up. Nevertheless, I will read what I have been given. Vehicles eligible to be registered under the historic vehicle registration scheme must be manufactured prior to 1 January 1962. The historic vehicle registration scheme provides for both right-hand and left- hand drive motor vehicles. This Bill will allow left-hand drive motor vehicles manufactured between 1 January 1962 and 31 December 1973 to gain limited access to the road system under similar conditions to those for vehicles currently registered under the historic vehicle registration scheme. Owners of these left-hand drive vehicles can pay an annual fee instead of paying for a series of single-journey permits to take part in organised club events.

I thought the honourable member made those points quite well, actually. Nevertheless, I will proceed. Left-hand drive vehicle owners will still need to apply for a single-journey permit if the vehicle is to be used in other circumstances. I have read those notes because they have been provided to me, but it is my view that the honourable member understood the Bill and spoke to it well.

Bill read a second time.

In Committee.

Clauses 1 to 6 passed.

The CHAIRMAN: I point out that clause 7, being a money clause, is in erased type. Standing Order 298 provides that no question shall be put in Committee upon any such clause. The message transmitting the Bill to the House of

Assembly is required to indicate that this clause is deemed necessary to the Bill.

Title passed.

Bill read a third time and passed.

ADJOURNMENT

At 6 p.m. the Council adjourned until Tuesday 1 November at 2.15 p.m.