LEGISLATIVE COUNCIL

Wednesday 30 November 1994

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

PAPER TABLED

The following paper was laid on the table:

By the Minister for Education and Children's Services (Hon. R.I. Lucas)—

Enterprise Investments Limited—Financial Statements 1993-94

STATUTORY AUTHORITIES REVIEW COMMITTEE

The Hon. L.H. DAVIS: I bring up the interim report of the committee and move:

That the report be printed.

Motion carried.

LEGISLATIVE REVIEW COMMITTEE

The Hon. R.D. LAWSON: I bring up the committee's report on the Courts Administration (Directions by the Governor) Bill and move:

That the report be printed.

Motion carried.

The Hon. R.D. LAWSON: I bring up the fourteenth report (1994-95) of the committee.

QUESTION TIME

BASIC SKILLS TESTING

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 basic skills testing.

Leave granted.

The Hon. CAROLYN PICKLES: Yesterday I tabled a copy of a basic skills test report, including advice sent to parents on how to interpret the results of basic literacy and numeracy tests. I pointed out that advice given to the parents on the literacy test was written in such a way that the majority of parents, particularly those from non-English speaking backgrounds, would be unable to understand the document. Clearly on the issue of advice to parents, the introduction of basic skills testing has failed its first test.

The second issue relates to how the results of these tests will be used by the department to improve educational outcomes. The Minister told the Estimates Committee:

What we have to do is put more resources into doing something with the information.

The Minister also told the Estimates Committee that the basic skills testing program was expected to cost about $300 000, and that this was only a best estimate. It was not made clear whether this was the cost of the trial for 41 schools or the annual cost of testing in all schools.

Another important issue relates to the source of funds for this purpose and whether any program has been cut to fund these tests. Clearly, the Government has not allocated additional funds for this purpose, given the education budget cut of $22 million. It would be important to know whether the new program was being funded by cutting other areas such as special education. My questions are:

1. What reports are to be provided by the New South Wales Education Department on the results of the basic skills testing trial, and will they include an analysis of students' strengths and weaknesses?

2. Will the Minister release for public information any reports from New South Wales on the overall results of the tests?

3. Will the Minister's department conduct any evaluation of the results and, if so, will New South Wales provide access to all raw data for this purpose?

4. What has been the cost of the basic skill trials in 41 schools?

5. What will be the annual cost of conducting these tests in all primary schools, and in which area of the budget funds for these tests were additional funds made available and, if not, which funds were cut?

The Hon. R.I. LUCAS: I will have to take some of those questions on notice and bring back a reply. I am sure the honourable member will be delighted to know that the figure to which she referred relates to an estimate of the total cost of basic skills testing for all year three and five students for next year. I will get a final estimate for the honourable member so that she is in a better position to make a judgment about the total cost of the program. The $300 000 refers not to the program in 41 schools but to testing for all year three and five students from August of next year.

In relation to what the Government intends to do with the results of the program and indeed other aspects of assessment of performance in literacy and numeracy, again I am sure the honourable member will be delighted to know that the Government has committed over $10 million for the next three or four years for new programs in the important areas of early years. The department has been working on the development of a new early years strategy, which will be released probably before the end of the year, but certainly no later than the start of 1995. That will include additional funding for assessment services, speech pathology services, training and development for classroom teachers in the important area of identification of students with learning difficulties (and then providing them with the skills to do something about it), and for early intervention programs such as the reading recovery program and other early intervention models.

I am sure the honourable member will be delighted to know that additional resources will be going to these areas. Certainly, in the discussions we have been having with the Junior Primary Principals Association executive and a range of other representative organisations in relation to the early years strategy, the Government's approach has been warmly received and indeed warmly endorsed. For the first time a Government is recognising the all important area of the early years of education, but more importantly putting in the dollars and resources to do something about it rather than just talking about it as previous Governments perhaps did.

Certainly, again, the Leader of the Opposition will be delighted to know that there is no cutback in special education funding as she sought to imply in part of her explanation and that perhaps part of the money for the early years strategy would come from some cutback in other areas such as special education. As I indicated in the budget documents that were released (so that the honourable member could really refer to

those publicly released documents), there would be no cutback in special education.

Indeed, there has been a very small (I acknowledge that) increase in funding for the critical area of special education. In response to that question, the answer is a flat 'No.' There will be no reduction in the extra tier-two salaries. We are devoting some 406 tier-two (full-time equivalent) salaries, which is over $20 million worth of salaries, to the important of area of special education for those students with particularly severe problems and disabilities. In relation to those questions, the answers are clear, but in relation to other specific detail I will take these questions on notice and bring back a reply as soon as possible.

FISH, CONFISCATED

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about compensation for confiscated fish.

Leave granted.

The Hon. R.R. ROBERTS: I received correspondence today, and I have had a number of telephone calls, from a Mr Des Slattery, a licensed net fishermen who processes his own fish. Mr Slattery is a great supporter of sashimi-quality fish and has advocated in many forums the need for regulations for icing down fish when they are caught at sea. His dedication to the fishing industry is well-known.

Last year, Mr Slattery, in trying to improve his own business and his ability to produce sashimi-quality fish, bought a premises that had belonged to another fish processor. However, when he bought those premise, he was told by the Fisheries Department that he would have to have a fish processor's licence for which he would have to pay the balance of $525 owing for last year. On 19 May, a regulation was passed that a $2 000 fee be introduced for the 1994-95 processing year. All the time Mr Slattery has protested that he is not required under the Fisheries Act to pay those fees. During his protracted arguments with the Fisheries Department, Mr Slattery, after a night's fishing on the 21st, arrived home late with 131.5 kilograms of large snapper, 41 kilograms of small snapper, nine kilograms of tommy ruff, five kilograms of salmon and some other assorted fish. It was in the early hours of the morning when the fishermen returned to their boat at the premises where they process their own fish and they were raided by Fisheries Department officers, who confiscated those fish.

Mr Slattery has protested most strongly that, despite the fact that he keeps a book in which to record the fish that he has taken into his premise, he was not required under his licence to do so. His protests again fell on deaf ears. On 27 July, after having received a number of pieces of correspondence, Mr Slattery received from the Department of Primary Industries the following letter:

> Under the regulations, fishery licence holders are not required to register as fish processors if they process fish taken pursuant to their licence only. If they process fish taken by other licence holders, then they would need to be registered as fish processors.

There is further correspondence that I do not want to go into at the moment. There has now been an admission that Mr Slattery's assertions were correct, despite the fact that he has lost $1 867.75 worth of fish and that he has also paid out the balance of the $525 fee for last year and $2 000 for a processing licence this year. My questions to the Minister are:

1. Given that Mr Slattery's case has now been proved, will the Minister apologise to him and compensate him for the $1 867.75 worth of fish confiscated?

2. Will he return the balance of the 1993-94 processor's fee that Mr Slattery paid and the $2 000 that he has been incorrectly charged for the 1994-95 processing period?

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

WATERWAYS POLLUTION

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about waterway clean-up.

Leave granted.

The Hon. T.G. ROBERTS: On Thursday 24 November the Premier put out a press release headed 'Exciting environmental initiatives to clean up the Patawalonga, Torrens and other metropolitan waterways'. I am afraid the media were not as quick to pick it up and give it publicity as I thought they would be, and it has taken quite a bit of digging to get hold of the press release. I thank the Premier's office for providing it. I thought it was an initiative that may have been supported more by some of the media outlets than it has been.

The Hon. R.I. Lucas: It's a good news story.

The Hon. T.G. ROBERTS: It's a good news story; perhaps that is right. But it does have a little bit of bad news in it; there is a levy to be struck. I will be giving both parts of the press release some qualified support and the press may pick it up from the question. The challenge is there. In the press release the Premier states:

> The proposed catchment authorities [which will be set up within a reasonable time frame] will implement other important environmental measures such as the use of wetlands to clean surplus surface water, the recharge of underground aquifers [such as those launched at Regent Gardens yesterday] and the installation of trash racks.

The proposal has been around for some time. In fact, the previous Government had been negotiating with local government over how to proceed with this matter. The media release continues:

> It's time to accelerate action if we are going to stop further environmental damage from water pollution. The river catchment authorities will apply in rural areas where appropriate.

The intentions have been supported, in the main, by the community. Local government is in support of particularly the intentions to clean up the Patawalonga and to get the rubbish out of the river and out of those streams that feed into the river. The only point that needs to be raised in this Chamber in relation to the setting up of the authority is that many questions are being asked on how the rate is to be struck. The statement goes on:

> . . . A new stormwater levy to be raised by catchment levies through councils within a particular catchment for application in that catchment area.

But there is not a lot of detail as to what form the levy will take. My questions are:

1. What consultation agreement has the Government entered into with local government authorities on the form that the stormwater levy will take?

2. Will the levy be in the form of a rate evaluation percentage?

3. Will it apply to all metropolitan area households?

4. What consideration will be given to those councils that already use rate revenue for stormwater and flood water

mitigation programs, such as those suburbs in the northern areas?

5. What levies will be raised and spent in rural areas deemed to be appropriate?

The Hon. R.I. LUCAS: It is indeed disappointing that, on occasion, visionary announcements by the Government and the Premier do not attract the publicity they deserve, and I acknowledge the comments of the honourable member. The *Advertiser* tomorrow may well lead with the story 'Roberts supports Brown's visionary plan for the future', or something to that effect. We can only suggest that to representatives of the *Advertiser* and the media. We cannot, of course, dictate to or even seek to influence the independent members of the fourth estate who make these judgments for themselves as to what is newsworthy and what is not.

Nevertheless, I welcome the shadow Minister's support for the Premier's announcement. That is newsworthy in itself and merits some publicity. It is, indeed, a visionary plan that has been announced by the Premier and the Ministers who have been involved in the proposition. With respect to the detail of the questions that the honourable member has put to me, I will be only too pleased to refer them to the Premier and bring back a reply as soon as possible.

FUEL SUPPLIES

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Premier a question about oil and other fuel supplies in South Australia.

Leave granted.

The Hon. M.J. ELLIOTT: I had an opportunity to have some discussions with a few people in relation to fuel supplies in South Australia following the recent events in this State where rationing was applied. I was surprised to be told that it appears that South Australia has run short on a few occasions even when the public has not been aware of it. I was told that last year in late December, due to a breakdown in the plant itself, supplies had got so low that it actually had in storage on site only a day's supply. Of course, there was still fuel out in sites as well. On 30 December, as I understand, there was a procedure that had never been done in South Australia before of a ship to ship transfer of urgently needed fuel. A tanker that had arrived could not be handled by our port facilities and so had to transfer to a smaller ship which then off-loaded at Port Stanvac. I am told that there have been a number of occasions where our inventories in South Australia have been very low: possibly even lower than they were when the Minister intervened to put restrictions on fuel. The information I have been given is that perhaps the oil company itself brought pressure to bear and the Minister himself was not given the full information.

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: That is what I have been told, that perhaps the Minister was not given fully accurate information of the situation from Mobil. I have also been told that there was still a significant amount of unleaded fuel in stock, and that two days after the strike commenced a large load of leaded petrol left our port to go to Pacific islands. That was the major reason why leaded supplies then started to run short subsequent to that. The more important point is that it appears that, using just in time principles, although South Australia has the largest potential single storage of fuel in the southern hemisphere, those stocks have been run down much of the time to very low levels. That makes us susceptible not only to strike action but to breakdown. As recently as last weekend I believe there were two fires or explosions which could have been more serious than they turned out to be. My question to the Premier, in the first instance, is: does he have any knowledge as to what sorts of stocks are normally kept in store in South Australia, what sort of inventories are maintained, and does he have a view as to what size the inventory should be for the protection of the South Australian economy?

The Hon. R.I. LUCAS: The level of stock that is held in any business, particularly in this important business of supplying the petrol and fuel supplies for the State, involves an important balance of a range of issues, one of which, of course, is the costs of actually holding on to what might be an excess level of fuel stock in supply. There are costs involved for the companies that are associated with this process. Equally, I acknowledge that there are issues about the future of the economy and the State, and we therefore need a balance. I will certainly refer the honourable member's question to the Premier and bring back a reply as to the Premier's opinion about whether that balance is about right at the moment.

TEACHER PLACEMENTS

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about teacher placements.

Leave granted.

The Hon. G. WEATHERILL: The Department of Education has a target to advise all teachers in the placement process this year, by letter, of their status for next year, prior to 9 December. It is understood that the placement process has proceeded to the point where all 'A' and 'B' vacancies, covering appointments for indefinite periods, and appointments for one year have been fulfilled. Consequently, it is understood that the department has decided that all teachers will get a letter, even if it means throwing all the 'must be placed teachers' into temporarily placed teacher positions at the last minute, with a chance that they may be upgraded during December and January. My questions to the Minister are:

1. How many teachers were not placed at the end of the placement process for the 'A' and'B' vacancies?

2. On what basis are the teachers being temporarily placed?

The Hon. R.I. LUCAS: In relation to the precise numbers, I will refer the honourable member's question to my departmental officers and bring back a reply as quickly as possible. The assessment by the people in charge of the personnel process is that the placement of teachers in vacant positions is going as well as in any other year. With respect to the placement of permanent teachers in temporary positions, which I think was part of the honourable member's question but I will check *Hansard*, if that is what we are talking about, the reason so many permanent teachers are having to be placed in temporary positions is because of the industrial agreement which the previous Government entered into with the Institute of Teachers regarding staffing policies for schools.

So, at the moment, as a result of the policy which provides that only 2 per cent of our total teaching numbers shall be on contract, about 1 100 teachers are having to be placed in permanent against temporary (PAT) positions. They are being used as relief teachers all over the place as teachers go on sick

leave or for whatever reason cannot teach in a particular school. If that is the question that the honourable member put to me, the simple answer is that it really is the end product of the agreement which the previous Government entered into with the Institute of Teachers, a matter on which we are currently having discussions and soon will have negotiations with the Institute of Teachers to try and change so that we can develop a more sensible teacher staffing and placement policy for South Australian schools for the 1996 school year.

PROSTITUTION

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for the Status of Women and the Attorney-General, representing the Minister for Correctional Services, a question about prostitution.

Leave granted.

The Hon. A.J. REDFORD: I draw the attention of members to a letter dated 7 October 1994 from a Mrs Faye McLeod to all members in this place concerning the issue of prostitution. I, like many other members in this place, responded to that letter, and I subsequently received a telephone call from Mrs McLeod who gave me further information on this topic. I understand that the name 'Mrs Faye McLeod' is a pseudonym. Since that letter was circulated, Mrs McLeod has spoken to a number of members including the Hon. Bernice Pfitzner, the Hon. Barbara Wiese and the Hon. Carolyn Pickles about a number of issues associated with prostitution. Indeed, Mr Brindal, in another place, has been reported as saying that he will introduce a private member's Bill on this topic in the new year.

What particularly concerned me was the level of interest shown by the police in the activities of Mrs McLeod and, in particular, regarding the conduct of a business at premises in the city square. As a consequence, a number of complaints have been made about the police as far as their activities are concerned. Mrs McLeod has provided me with a list of dates and times when the police have visited the premises in question. She has also provided me with a list of dates upon which she or her co-workers have made complaints to the Police Complaints Authority. Some of that information can be corroborated. I seek leave to have these two lists inserted in *Hansard*.

The PRESIDENT: Are they of a statistical nature?

The Hon. A.J. REDFORD: Yes.

Leave granted.

Date	Time	Incident	Complaint
Friday 13 August 1993		Bag and warrant checks	
Friday 3 September 1994		One girl arrested in room	
Thursday 16 September 1993		Alarms queried	
Friday 17 September 1993	11 p.m.		
Saturday 18 September 1993	day	One arrest—on premises	
Thursday 23 September 1993	10.30 p.m.	ID checks	
Friday 24 September 1993	3.30 p.m.	ID & bag checks/don't lock doors	
Thursday 7 October 1993	8.30 p.m.	Two arrests—next time all will be	
Friday 15 October 1993	10.30 p.m.	Three arrests to close us—all officers (8)	
Wednesday 27 October 1993	2.50 p.m.	Four arrests to close us	
Friday 26 November 1993	10.20 p.m.	Four arrests to close us	
Monday 13 December 1993	7.45 p.m.	Five arrests to close us	
Monday 27 December 1993	10.38 a.m.	Four arrests to close us	
Tuesday 28? December 1993	11.30 a.m.	Phone call—police questioning clients outside—did not come in	Complaint re bruising
1994 New System			
Friday 21 January 1994	9.25 p.m.	Warned that all will be summonsed each visit	Complaint 8th
Thursday 10 February 1994	4 p.m.	Four summonsed	128 Wright Street
Thursday 24 February 1994	8.15 p.m.	Four summonsed	
Thursday 24 March 1994	8.30 p.m.	Four summonsed, one arrest r.m.	
Thursday 14 April 1994	9.25 p.m.	Five summonsed, one arrest r.m.	
Friday 29 April 1994	9.15 p.m.	Three summonsed, two arrested r.m.—all officers (8)	Complaint 3rd
Friday 6 May 1994	8.50 p.m.	Outdoor—no charges—told to go back in, refused	
Thursday 26 May 1994	7.30 p.m.	Three summonsed, one aid & abet r.m.	
Thursday 9 June 1994	12.15 p.m.	Three summonsed	
Friday 10 June 1994	11.15 p.m.	Three summonsed	
Friday 17 June 1994	10.40 p.m.	Three summonsed—searched a bit	Complaint 28/6
Thursday 30 June 1994	7.10 p.m.	Two summonsed	
Friday 1 July 1994	9.20 p.m.	Three summonsed—searched well	
Thursday 7 July 1994	9.30 p.m.	Two summonsed—warrant checks/searched, harassed because 'large parlour'	
Tuesday 19 July 1994	1.30 p.m.	Five summonsed	Complaint x 2, 21/7
Thursday 21 July 1994	8.15 p.m.	Two summonsed	Complaint 5/8
Monday 8 August 1994	day	No. summonsed, searched well, took rent book (no receipt)	

Date	Time	Incident	Complaint
Monday 8 August 1994	9.45 p.m.	No. summonsed, return rent book, 'must do things by the book or a complaint will be made'	
Tuesday 9 August 1994	2 p.m.	No. summonsed, photographed and searched all rooms	Complaint 17/8
Thursday 18 August 1994	4.50 p.m.	Arrested—on premises, others summonsed, one arrest r.m.	
Saturday 20 August 1994	5.15 p.m.	Closed, one lady summonsed, warrant check, she was cleaning (cleaning things everywhere)	
Monday 29 August 1994	4.15 p.m.	Arrested—on premises, no. summonsed, one arrest r.m.	
Thursday 1 September 1994	night)	Looking for a girl using false ID, all summonsed, arrests?	
Friday 2 September 1994	night)	No. summonsed	
Wednesday 21 September 1994	Early afternoon	On premises—arrested/bail conditions—court in handcuffs no. summonsed	
Thursday 13 October 1994	Late afternoon	On premises & aid & abet r.m., bail conditions signed	
Thursday 3 November 1994 Anzac Highway	10.30 p.m.	Three summonsed—carry papers on all girls to have records at hand, comments on Sylvia and her big mouth & complaints	
Tuesday 8 November 1994	2.45 p.m.	One arrested on premises—no conditions—Darlington stayed outside about 15 minutes sending clients away	
Friday 11 November 1994	9.30 p.m.	Three summonsed—stayed inside about 40 minutes/seven officers, two cars	

POLICE COMPLAINTS

Complaint Date	Incident Date	Complaint	Location
9-2-94	4-2-94	Girl requested to lift top	South Road, Ashford, South Australia
4-5-94	29-4-94	Unfair policing—PCA complaint	Wright Street, Adelaide, South Australia
27-6-94	26-6-94	Magistrate's Court—Evidence	Angas Street, Adelaide, South Australia
21-7-94	10-2-94	Christine from Patriot attending premises—entrapment, resulting in procuring charge	Wright Street, Adelaide, South Australia
	19-7-94	Visit by Patriot following withdrawal of keep brothel charge	Wright Street, Adelaide, South Australia
27-7-94	21-7-94	Victimisation/Unfair Policing	Wright Street, Adelaide, South Australia
3-8-94	26-6-94	Magistrate's Court, Adelaide	
16-8-94		Harassment and entrapment	Wright Street, Adelaide, South Australia
17-8-94	10-2-94	Unfair Policing	Wright Street, Adelaide, South Australia

The Hon. A.J. REDFORD: Mrs McLeod has observed that the complaints made to the Police Complaints Authority have increased attention and harassment by the police at the premises which she attends. A cursory examination of these lists shows that police have attended the premises on 14 occasions in the four months to December 1993 and on 28 occasions this calendar year. She has complained to me that there was always increased harassment by way of raids within two or three days after a complaint had been lodged. I invite the Minister to consider the tabled lists.

She has advised me that a complaint to the Police Complaints Authority, so far as she is concerned, is almost futile and inevitably causes increased harassment. She has also complained that the police have seized property or taken property from the premises and no receipt for that property has been given.

The items seized include rent books, postcards, clothing, and so on, and on one occasion a client's wallet that had been left there for some time. I understand that they used to seize condoms, but the recent AIDS epidemic has led to the cessation of that practice. I am also told that often property is seized by police, and no person on the premises claims any ownership. As a consequence, the police believe that they have no obligation to provide receipts for items seized in these circumstances.

There are also a number of complaints where people who are going about their lawful business on those premises are being harassed by the police. This includes requesting women who attend the premises (not for the purposes of prostitution) being asked to lift up their tops for the purpose of a search. She also told me that, in early 1994, the police visited a number of premises. They were told of the new policing practice in this area. I understand the title of the policing exercise is Operation Patriot. It has been a longstanding program.

The women working at those premises were told that they would be summonsed rather than arrested for being on premises frequented by prostitutes. They were informed that, upon receipt of 10 summonses, the women would generally be arrested. I have been informed that this procedure has continued throughout 1994. In other words, the process is that police attend on 10 occasions, issue summonses and, on the

eleventh occasion that a person is seen at a brothel, they are arrested. Usually they are granted bail by police on the condition that they do not return to the premises. If they do return, they are arrested for being in breach of their bail conditions and, in some cases, are incarcerated.

I appreciate that securing sufficient evidence for a conviction for prostitution-type offences is difficult and that the police are in an unenviable situation. However, I remind members that the maximum penalty for being on premises frequented by prostitutes is a fine of $500. Therefore, the Parliament has said that gaol is not an option for this offence. I also understand that, despite enormous police attention, it is exceedingly rare for a court to incarcerate a person convicted of receiving money in a brothel, or indeed for other offences associated with prostitution (with the exception of procuring someone). In other words, it may be suggested that the police are seeking to get around the effect of court sentencing decisions by the use of breaches of bail conditions relating to repeated acts of prostitution. In view of this, my questions to the Minister are as follows:

1. Will the Minister investigate the possibility that complaints made by these women to the Police Complaints Authority do not inevitably lead to increased police activity directed towards the complainants? What are the guidelines where complaints are made to the Police Complaints Authority not to interfere with the complaint process or retaliate by the use of increased police activity?

2. What are the procedures adopted by police when they seize property from premises so as to document properly the goods seized, and is property properly receipted in that regard?

3. Will the Minister confirm whether Mrs McLeod's explanation of how the police are currently enforcing prostitution laws (that is, 10 summonses followed by arrest) is correct? Are the police seeking to get around court sentencing practices by the use of the Bail Act and bail conditions? Why are their customers not being arrested?

4. What are the objectives of the police action curiously known as Operation Patriot? If it is to close all brothels in South Australia, what will be the effect of such a closure? When did the operation commence, and when is it likely to finish? What has been the effect of Operation Patriot?

5. To what extent does child prostitution exist in this State?

6. Has the Minister seen the January 1994 report entitled 'A police assessment of (1) contemporary prostitution in South Australia, (2) the proposed prostitution Act 1991 and (3) current prostitution laws,' by detective Adrian Ransom?

7. What is the attitude of the Office for the Status of Women on the manner in which the laws are currently being enforced?

The Hon. DIANA LAIDLAW: That is a long series of questions, most of which I will have to refer to the Minister for Emergency Services. However, I add that Mrs McLeod sought see me some weeks ago and, because I was unable to see her as quickly as she wished, she met at some length with members of my staff.

Mrs McLeod made many of the same allegations that she has made to the honourable member, a number of which have been followed up by my office. I have not received full replies to all the matters. One matter that did concern me considerably, as it concerns the honourable member, is the allegation that the police increased their vigilance or harassment of the place where Ms McLeod works following a complaint a few days earlier to the Police Complaints Authority. I did follow up this matter with the Police Complaints Authority. I think this issue has to be looked at a little more thoroughly in terms of how the Police Complaints Authority works in association with the Investigations Branch within the whole police area.

I was told that most complaints that had been filed under Operation Patriot were referred straight to the Police Investigations Branch, so that the police themselves were alerted as soon as a complaint was lodged, just as Mrs McLeod had lodged a complaint. Looking at some of these matters, I suggest that there is some concern as to conflict of interest. That is a further matter which I intend to take up with the Minister for Emergency Services.

In terms of the attitude of the Office for the Status of Women, as a matter of course it would support the law which applies in this State. From time to time the office has made remarks. Recently the Director has suggested that she believes the laws should be changed. That is a view I share. I believe that prostitution is a victimless crime and that at least as far as the clients are concerned—and presumably they are willing participants—they cannot be charged with an offence. It seems to me that we have very confusing state of the law with regard to this matter. Not only is it a victimless crime but also it occurs between consenting adults. This matter will be addressed again in this Parliament next year. It is already before the Social Development Committee.

The other very serious allegations that the honourable member has raised in this place I will refer to the Minister and bring back a reply. As I indicated, I am seeking a reply to a number of those matters myself.

TRANSPORT FARES

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

Leave granted.

The Hon. BARBARA WIESE: Members will recall that over two months ago the Opposition obtained a copy of a submission which the Minister had taken to Cabinet and which proposed the introduction of a new system of public transport fares based on distance. This means that people living in the outer suburbs of Adelaide would pay most. It also proposed very large increases for people living in most outer zones and travelling to the city, because the price of a multi-trip ticket would go up from just over $14 to just over $20. Pensioners, too, were to be hit very hard by the proposed increases.

In the event, Cabinet showed a rare display of good sense and knocked the Minister's submission on the head. Even the Minister herself, after the event, tried to back away from her submission, saying that she was not really committed to it, anyway. But she still insisted that fares would rise and that the distance-based fare structure would form the basis for future increases. Since that time we have heard little more from the Minister about this matter, until last Friday when once again she promised that fares would rise.

Yesterday in another place the Premier declined to give an assurance that such an announcement regarding fare increases would be made before Parliament rises. He said that this was because the matter had not yet come before Cabinet. In view of the widespread community concern about fare proposals and the Minister's previous statement that new fares would apply from January 1995, will the Minister say

when she will take a new submission to Cabinet and what will be the substance of her new proposal?

The Hon. DIANA LAIDLAW: It is a good try. The honourable member may recall that when we were debating the Passenger Transport Bill the Passenger Transport Board was provided with some very specific functions. One was to review, assess and set fares. Essentially today it is the responsibility of the Passenger Transport Board to set fares for users of passenger transport services in this State, both in terms of taxis and—

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: No, actually the Act doesn't say that. The Act says that I can direct and control the Passenger Transport Board. Several months ago I received a recommendation from the board, its having assessed fares and the like, which did form the basis of a submission which, as a matter of courtesy, I took to Cabinet. I was not obliged to take it to Cabinet.

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: No, I wasn't. As I said, you were part of—

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: I suspect that the honourable member would generally wish to tell some of her colleagues what was going on in the area—

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: Yes, you definitely would if you were Minister. As I said, the Act to which she agreed places the responsibility for fares with the board. I however happen to take an active interest in the reforms that are being proposed by the Passenger Transport Board in a whole range of areas, including fares.

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: No, I am not distancing myself. I am just putting the facts: that the honourable member and I were party to changes to the Passenger Transport Act which gives this responsibility to the board. I have said quite frankly here that I take a very keen interest in all areas of reform that have been proposed by the Passenger Transport Board, and that includes fares.

When asked by the two television stations, when I was being interviewed about another matter, what might happen with fares, I indicated that a statement would be made within the month. So, a statement will be made now within three and a half weeks.

ADELAIDE TO DARWIN RAILWAY

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport a question about the completion of the Adelaide to Darwin railway.

Leave granted.

The Hon. SANDRA KANCK: I refer the Minister to an article in today's *Advertiser* entitled 'Outback smelter plan for South Australia', which details plans for the establishment of a large iron ore smelter and power plant at Arckaringa in the State's north and suggests that the plant has positive implications for the completion of the Adelaide to Darwin railway. I remind the Minister that in February this year I introduced a motion to the Council seeking to establish a non-partisan secretariat, jointly with the Northern Territory Parliament, to actively promote the construction of the railway. My motion was amended to include support for the Government's submission to the Wran Committee. The Premier has committed his Government to providing $100 million over five years to the project and the Northern Territory Government has pledged the same amount. The problem for South Australia now remains the dragging heels of the Federal Government.

The South Australian Government has made a submission to the Wran committee but, without wanting to pre-empt its findings, I point out that it is likely, given its terms of reference, that the Commonwealth will concentrate more on the development of enterprise zones and other smaller ticket items. Indeed, even if the committee recommends for the railway's construction, it is likely that the railway's $1 billion price-tag will make it an unattractive proposition, given the current pressure on the Commonwealth to reduce its budget deficit.

My question to the Minister is: In light of the current plans for the construction of a smelter and power plant at Arckaringa and the imminent tabling in Federal Parliament of the Wran committee report, does the Minister believe that it is now an appropriate time to establish a non-partisan secretariat to lobby for Federal funding for the completion of the Adelaide to Darwin railway and, if not, why not?

The Hon. DIANA LAIDLAW: When I was given a briefing about this new iron and steel project to the north of the State, it was interesting to note that the proximity of the mining sites to the railway was a very important consideration. Many of the assessments of viability were on the basis that the product could come south to Adelaide for export through the Port of Adelaide, but there would be additional benefits if it could go north. So, the railway is an important consideration in this whole project. First, the Government has announced that it will see whether the technology can be adapted to make the project viable. We have agreed to invest $1 million into a $10 million project for this purpose.

Until we are satisfied that the technology is capable of generating the heat that would be required with the lower grade coal and ore available on site, it is difficult to argue that this exciting project will go ahead. While we certainly will continue to advocate to the Wran committee and through Federal sources that the mineral deposits in the north of the State, if processed, will add enormous value to the railway in terms of business that could be generated, we cannot give specific details at this time. The honourable member can be assured that at all times and at all opportunities the Wran committee and the Federal Government are given plenty of reason to support the Alice Springs to Darwin railway. I understand that the final Wran committee report will be delivered in the first quarter of next year. My advice is that feelings on the committee fluctuate between considerable support to lukewarm support and likewise the Federal Government's support has waned from lukewarm to little. That is all to unfold next year and in the meantime we will continue lobbying for that railway, which we consider to be important not only to the future of rail but to the State's economic development.

The Hon. SANDRA KANCK: Will the Minister advise me, in addition to lobbying, what else the Government is doing to ensure that this railway line is built?

The Hon. DIANA LAIDLAW: It is interesting to ask what I can do to ensure that the line is built. The current proposal requires between $500 million and $700 million from the Federal Government. I am impressed that the honourable member believes that I can ensure that the Federal Government would spend that on any project that I or the State thought was important. All that I and the State can do

is continue to lobby and pressure at every opportunity and to highlight the merits of the project. The Hon. Ms. Kanck will be pleased to know that part of our support for this project involves study being undertaken with BHP to assess future prospects for the line in terms of business. This is the first time that a private sector company, especially one of the status of BHP, has become involved in such an assessment, so that is a breakthrough in the work being done by the State Government and the Northern Territory Government on this project.

The Hon. T.G. ROBERTS: As a further supplementary, will the $1 million that the State Government is putting into the project be in the form of equity or a grant?

The Hon. DIANA LAIDLAW: I have consulted, but will consult further and bring back a reply.

ASIAN TOURISTS

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Minister for Education a question about teaching of Asian languages by the South Australian Department of Education.

Leave granted.

The Hon. T. CROTHERS: An article on page five of the *Advertiser* dated Tuesday 29 November and headed 'Strip search warning' states that the Taiwanese Government warned yesterday of a tourism backlash against Australia after an embarrassing strip search of a woman, which resulted in a Taiwanese visitor aged 24 being hospitalised as a result of a nervous breakdown that resulted from the strip search that was conducted. The tourist in question released herself from hospital after two days and chose to abandon her holiday in Australia and fly home. A spokesperson for the Taiwanese tourist bureau, Mr Tang, said that the incident could have disastrous effects on the 108 000 Taiwanese tourist visitors Australia has each year. He also said that this incident in his view could have a disastrous impact on Taiwanese tourists to Australia. He said that he suspected that the fault lay in a language barrier between the tourist in question and officers of the customs service who were processing her arrival.

In another article in the *Advertiser* of Monday 28 November and headed 'South Australia has huge potential for Asian tourism' a Mr Loy Hean Heong said at the launch of a $30 million first stage of a planned 10 year $200 million development at Wirrina Cove resort, that the project was aimed at the booming Asian travel market with a special emphasis on the Fleurieu Peninsula, which he said had high potential as a holiday destination for two billion Asians.

Indeed, further on in the article he said that more Asians were now able to travel abroad and he emphasised that about two billion were looking for somewhere new to visit. Also at the launch was the Premier, the Hon. Dean Brown, whose contribution to this event was to state that his Government had agreed to spend $13 million over a 2½ year period on infrastructure, 'mainly roads, water and sewerage', with no mention at all of the language training necessary to cater for such an influx of additional tourists.

I know that the Education Department has some teaching facilities for Asian languages, but it is believed by many in the industry that they would be stretched to bursting point to service any more Asian tourists in order to prevent the sort of incidents occurring that I have described in my opening remarks. I know from past experience that Governments and their departments require the odd dose of wake-up medicine when it comes to forward planning. The example I give of this was when my union, through me some 12 years ago, suggested to our tourism training schools that we should be embarking on the teaching of Asian languages and other necessary skills we were looked upon as people who had perhaps just finished a stint at Glenside. Needless to say, such courses were introduced some 2½ years later.

Having said all that, and knowing that infrastructure for tourism encompasses more than roads, water and sewerage, and what with the gloom and doom news that is delivered by the Minister for Education and Children's Services about cutbacks and cessation of educational services, I put the following questions to the Minister:

1. Does he agree that to maximise the tourism success story in South Australia more people are needed who have fluency in the Asian languages?

2. Will he give this Council a guarantee that he will not cut funds that are presently allocated in South Australia for the teaching of Asian languages?

3. Is he prepared to institute a program to ensure that a greater number of South Australian students undertake and complete suitable Asian language courses?

4. How much more money will the Minister be prepared to spend on Asian language courses in order to ensure that South Australia is geared to deal with the greater influx of Asian tourists that is being forecast by most knowledgable commentators in this area?

5. Does the Minister believe that to complement Asian language courses he will also have to ensure that suitable courses on Asian culture are also introduced into the South Australian education curriculum?

The Hon. R.I. LUCAS: I think the answers to questions two, three, four and five are: 'No', 'Yes', 'Lots' and 'Yes'. I will have to refresh my memory and check to see that I have the sequence right. I must confess that I cannot remember the first question. As I said, certainly there is a commitment from the Government to encourage more students to study Asian languages, to increase the number of students studying Asian languages, and not only to the study of Asian languages but also to the study of Asian culture as an important part of any language education program.

In relation to the amounts of money, I summarised the answer by saying 'Lots', and that is over a considerable period of time. A strategy is being developed to take us into the early part of the next century as part of discussions under the umbrella of COAG. The States and the Commonwealth are talking about agreements. It is a question of acknowledging, first, the considerable sums of money we already spend. We are hoping to get some Commonwealth acknowledgment of that, because I think that we in South Australia probably do more than many other States—if not all other States—in this important area. Certainly, over the next 10 years or so, which is the next 10 years of the Language Development Policy, we will have to spend a lot of extra money. I am unsure whether we will be able to quantify the sum for the honourable member at this stage, but we will have a look at that. However, it will have to be a lot of extra money—

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: You would be happy with lots. I am sure that we all would be. This is an important part of the education program. I will bring back a considered reply for the honourable member in due course.

The PRESIDENT: I wish to make a comment. Recently explanations to questions in some cases have been extremely long. I refer members to Standing Order 109. I do not think

it helps in any way to have very long explanations. Members seek leave to make only a short explanation, in most cases. It does not help in any way having long explanations prior to questions. By the same token, I might say that Ministers need not answer questions in a very verbose manner. If this Question Time is to be productive, I think we can shorten both the questions and the answers. That would be more productive and helpful to all.

STATUTORY AUTHORITIES REVIEW COMMITTEE: ELECTRICITY TRUST

The Hon. L.H. DAVIS: I move:

That the interim report of the Statutory Authorities Review Committee on the review of the Electricity Trust of South Australia be noted.

I have much pleasure, as the Presiding Member of the committee, in bringing down this interim report of the committee. This committee was established only six months ago in amending legislation to the Parliamentary Committees Act. The first meetings of the committee were held only in July of this year. We have, as members would be aware, decided to conduct a comprehensive review of the Electricity Trust of South Australia, the largest commercial operation in the public sector in South Australia in revenue terms.

This report covers, in particular, the structure of the ETSA board. The Statutory Authorities Review Committee has attempted to undertake an analysis of the membership of boards of the various electricity supply companies around Australia. I should emphasise that this report in no way passes judgment on the performance of the ETSA board, past or present, but rather we are seeking in this report to look at what we believe are appropriate guidelines for the appointment of persons to the ETSA board.

We have made a number of recommendations as a result of the benchmarking of the various boards in electricity supply companies around Australia. Some of the findings may be styled as controversial, but I think they are well merited and certainly are based on fact. It is worth looking at the most recent public findings on the importance of boards of statutory authorities in South Australia. The Hon. Samuel Jacobs QC, in examining the operations of the State Bank following the $3.1 billion loss of that institution, made the following remarks in one of his reports—this was in 1993—when he said:

> The composition and membership of the board [that is, of the State Bank] is obviously of critical importance, for it is the board which is responsible to the Government for the proper administration of the bank.

The Auditor-General, in his examination of the State Bank of South Australia, also had something to say. He was very harsh—in fact, he was scathing—when he discussed the bank's board of directors as follows:

> They lacked both banking experience and, in most cases, hard-headed business acumen.

In what I think is a model statement of what is the expectation of a board of directors, particularly in a commercial undertaking, the Auditor-General went on to say in his report about the State Bank:

> There is nothing esoteric about asking questions, seeking information, demanding explanation and extracting further details. There is nothing unduly burdensome in expecting each director, to the best of his or her ability, to insist on understanding what was laid before them, even at the risk of becoming unpopular. Both the law, and a basic sense of duty and responsibility, demand it.

The committee in fact wrote to the Auditor-General to ask whether he had any views on the board with respect to the Electricity Trust of South Australia. I have to make quite clear, of course, that when we are talking about the Electricity Trust of South Australia we are not putting it in the same bracket as the State Bank of South Australia, but we are using the references made to the duties and responsibilities of board members which, of course, were commented on during the inquiry into the State Bank. But the Auditor-General in a specific written response to our committee made the following comments:

> 1. a board member should actively seek to understand the directions being pursued by executive management and ensure alignment to the strategic and business goals [of] the entity;
> 2. a board member should be able to effectively monitor the progress of executive management in meeting strategic and business plan goals/performance targets. . .
> 3. a board member must be cognisant of the financial exposures which may arise from pursuing various strategies, and be proactive in shaping these. The individual must be prepared to instigate corrective action and take appropriate decisions regarding key management personnel to address unfavourable trends or developments;
> 4. a board member should ideally be able to contribute specific skills to the board and may assume specific 'portfolios' (for example, positions on subcommittees to the board) in recognition of these skills;

They were some of the very pertinent comments that the Auditor-General made in response to the committee's inquiry of him. Recently, the South Australian Commission of Audit also had something to say specifically about the ETSA board. In the Commission of Audit Inquiry report, which was a public document printed in 1994, it made the following comments:

> In addition to restructuring, organisational reform is required to provide a commercial environment for ETSA that is conducive to achieving best practice. ETSA is currently a statutory body managed by a board appointed by the Government. These arrangements are inadequate. For example, in the past, the board has tended to be appointed on the basis of representation rather than commercial expertise, and the relative responsibilities of the board and Minister have been unclear.

That is the most recent public comment by an independent body on the affairs of ETSA. It is quite clear that as we speak there is an intensive review, reform and restructuring of the electricity industry around Australia. The 1988 Industries Commission report on the national electricity industry for the first time exposed the gross inefficiencies and lack of productivity in the electricity industry. For the first time we realised that the electricity industry, not only here but in other States, fell well short of world best practice. To become competitive in an international environment all electricity industries in each State of Australia have moved very rapidly over the past six years to become more effective, more efficient and more productive. That is reflected in the fact that the Electricity Trust of South Australia has slashed its employment by 45 per cent in just six years, from some 5 900 employees in 1988 down to just over 3 200 as at 30 June 1994.

Of course, that is also true of all other States. All other States have reduced employment and moved very rapidly to make their electricity industry more efficient. Western Australia and Victoria are moving to disaggregate their electricity industry; to divide generation, transmission and

distribution. In fact, Victoria has established five distribution companies, which will effectively compete against each other.

I am conscious that there is currently before this Council a Bill that seeks to restructure the Electricity Trust and give the Government of the day the potential to segregate generation, transmission and distribution; that currently there is a working party of Premier and Cabinet examining the options available for the electricity industry in South Australia; the Statutory Authorities Review examination is continuing; and, of course, there are the pressures of the Hilmer report and the demands of the national grid, which is designed to take effect as of 1 July 1995. It is an industry that is under a very intense microscope.

It was with this background that the committee examined the board of the Electricity Trust and compared it with the board memberships of the other electricity supply industry organisations in each State around Australia. We found that the level of female membership of boards generally around Australia was quite low. Of the responses that we obtained, only about 10 per cent of board members were female. In fact, there is no member of the Electricity Trust board at this time who is female. We found that the Electricity Trust had by far the highest level of representation of ex-politicians of any State in Australia. In fact, as I will elaborate later, over the past 20 years there have always been ex-politicians on the ETSA board. In one year, up to three members of the board were ex-politicians, and there have never been fewer than two.

That was quite at variance with the practice in other States. A clear tradition has been established to appoint an ex-Liberal and an ex-Labor State member of Parliament to the ETSA board, a practice that has been followed by both Liberal and Labor Governments. This practice also appears to have been followed when the appointments to the State Bank of South Australia board were made. There is no parallel in any other State for this practice. We examined the level—

Members interjecting:

The Hon. L.H. DAVIS: I think 'Radiant Ron' would probably become the presiding member of the Prawn Board.

The PRESIDENT: Order!

The Hon. L.H. DAVIS: I am sorry; I was diverted. He continues very unwisely to interject, Mr President. We also examined board remuneration and sought to establish the level of remuneration in the various electricity organisations around Australia. Again, there was no doubt whatsoever that the Electricity Trust of South Australia board remuneration was lower than any of the other boards on which we received information. That includes the Hydro-Electric Commission of Tasmania which, of course, has a far smaller population, a population of less than one third the size of South Australia. The board fee for a member of the Electricity Trust of South Australia is currently $10 893; the Chairman's fee, $15 429. That is well below the average level of remuneration received by other boards around Australia.

To look specifically at the recommendations, as a result of the evidence we took and from the evidence that we received from interstate, the committee noted that only one woman had been appointed to the ETSA board in the last 20 years. There have been 23 appointments of board members but only one appointment of a woman which represented only 4.3 per cent of all appointments made during the 20 year period. So we recommended that an increase in the number of women on the board of ETSA in the short term is mandatory.

We also recommended that the level of remuneration paid to board members be increased to be commensurate with the responsibilities associated with the position, remembering that ETSA is one of the top six commercial operations in South Australia in the public or private sector. The point was made quite accurately by the Chairman of ETSA, shortly to retire, Mr Robin Marrett (a former General Manager of the Trust), when he said that the level of remuneration that would have been received if a person was a board member of a comparable company listed on the Australian Stock Exchange would be a factor of three to four times that which they are currently receiving in the Electricity Trust.

The number of ex-politicians appointed to the board of ETSA over the past 20 years was eight out of 23 appointments. This represents a staggering 35 per cent of all appointments made during the period. More than one-third of all board appointments to the Electricity Trust have been ex-politicians. As I have mentioned, the committee, in what in fact are unanimous findings in all respects—all these recommendations are unanimous—does not support the ongoing unquestioned practice of at least two decades of appointing one ex-Liberal and one ex-Labor State member of Parliament to the board of ETSA.

That is something which Governments of all persuasions have done. It is a practice that we cannot condone. The committee recommends that, unless an ex-politician possesses specific qualifications and/or experience that will enable him or her to effectively contribute to the performance of the trust, he or she should not be considered for appointment to the board. Furthermore, the committee believes that experience as a Minister or member of Parliament should not necessarily be considered as appropriate experience when considering suitability as potential board members.

It was quite clear in taking evidence and seeking information that no specific guidelines exist for the appointment of board members to statutory authorities. The Auditor-General, in his helpful written evidence to the committee, suggested that consideration be given to contracting out the search for board candidates to independent professionals to be undertaken against specific criteria approved by the Minister and/or Government. He argued as follows:

> The adoption of this strategy would likely result in a higher calibre of board members for Government and increase the confidence of the public in the management of Government bodies.

The committee thought that was a helpful suggestion but believes that the resources of Government, together with community consultation, should be sufficient to develop a register of persons suitable for appointment to boards such as ETSA. But they accept that the Auditor-General's proposition, namely, appointing independent professionals, consultants, to search out suitable candidates, may be relevant if, for example, you are looking for the appointment of a board member to ETSA who has appropriate experience in the interstate electricity industry.

That was a recommendation of the committee. We believe that a board member should be appointed with suitable interstate expertise of the electricity supply industry, given that we now have a national market and that we will be competing with other suppliers of electricity. From 1 July 1995 the present schedule is that the national grid will take effect, and the larger users of electricity in South Australia will be free to take electricity from sources on the grid other than ETSA. It will be a competitive situation and I think it

will be important that the board has members at board level with a familiarity, with an expertise, in the electricity supply industry at that national level.

The recommendations of the committee, as I said, are unanimous. We would like to think that, even though some of these recommendations have in fact been taken up in the legislation currently before the Council, there are a number of other useful recommendations which have a direct applicability to the Electricity Trust of South Australia in its present form and which also will have relevance if ETSA is disaggregated as may well occur as a result of the legislation now before the Council.

Finally, on behalf of all committee members, who, of course, are Legislative Councillors, we have admired and enthused over the very constructive and diligent work of the Secretary to the committee, Vicki Evans, and the Research Officer, Mark Mackay. I think that the Statutory Authorities Review Committee, along with the other five Parliamentary committees, has a vital role to play in ensuring that Parliament retains its supremacy over the Executive, and that it is not merely something which we give lip service to in the textbooks on Parliamentary democracy: it is something that we actually practice. The Statutory Authorities Review Committee is hard at work trying to demonstrate that, and I thank all members of the committee for the contribution they have made to date.

The Hon. T. CROTHERS: I indicate that I, too, as a member of the Statutory Authorities Review Committee, support the report brought down today by its Chairman, the Hon. Legh Davis. I probably will not be able to make the hearts and flowers contribution that the Hon. Mr Davis made within what he had to say in respect of the gender bias of the board, but I will try later on to add a little something to that. The Statutory Authorities Review Committee is made up of three members from the Government benches and two members from the Opposition benches from this Council and it is probably appropriate that the report has been introduced today when the Electricity Corporations Bill is before this Council, which is likely to pass with some slight amendments in respect of that which Minister Olsen in another place seeks to do.

At this stage I pay a tribute to Ms Evans and Mr Mackay who were most competent and most obliging and who went out of their way to help and assist us in what was a complex case study conducted by the Statutory Authorities Review Committee, under the very able chairmanship of the Hon. Mr Davis, who was fair most of the time that he was in the Chair. That was much appreciated, particularly by myself. It was one of those committees rather like the house full of rooms. The more we knew about ETSA the more we realised how complex an organisation it was, and the more we did not know.

ETSA first became a public authority under the leadership of the then State Liberal Country League Premier, Sir Thomas Playford. He had had to fight that issue through his own Party in respect of the public ownership of what was then the Adelaide Electric Company and as such had got the electricity generation capacity as it related to the State at that time in private hands. It was his view at the time that it was essential to have State ownership of electricity generation capacity so that, in respect of the enormous industrial programs he was about to embark on, he could guarantee on behalf of South Australia that that type of industrial basis being laid for South Australia would have ready access to a guaranteed supply at all times in respect of electricity supply for South Australia.

Like the Hon. Mr Davis, I have noted that ETSA has become leaner and meaner over the past five to 10 years or so. I guess the ginger in respect of that matter is the Hilmer report, to which I will return in a moment. In rough numbers, ETSA has just about halved its work force from in excess of 6 000 some eight to 10 years ago to slightly in excess of 3 000 on today's employee count. I must add, at this stage, that I was impressed by many of the senior management employees of ETSA who gave evidence to the committee in respect of those duties for which they were responsible and the functions they discharged whilst in ETSA's employ.

However, there can be little or no doubt that the Hilmer report (a Federal Labor Government report) is the catalyst for many changes that will eventuate in respect of governmental utilities and public ownership. Who is to judge whether they are acting in wisdom? Perhaps with hindsight we could say that they did not, but there is no doubt that the Hilmer report and the way in which the Prime Minister recently attacked the efforts of the States relative to Australia's economic position is more than suggestive to me of what path the current Federal Government intends to move down regarding the States playing a role and shouldering a burden similar to that which Keating believes his Government shouldered in relation to Australia's future economic well-being.

When one looks at matters in that light, one becomes very concerned about ETSA's capacity in the future to compete with the States of the eastern seaboard, particularly Victoria and New South Wales, because we are told that we have the worst quality coal in respect of its utilisation for generating electricity of any State or Territory (I do not know about the ACT). We are told that natural gas is by far and away the best mineral product that can be utilised to generate electricity. When one looks at Western Australia, in spite of its isolation, and the Northern Territory, in spite of its vastness, and their access to natural gas supplies of a much greater volume than anything to which we have access, one can see the problem that we, above all other States and Territories, with the exception perhaps of the ACT, will be beset with when it comes to our electricity authority being able competitively to pit itself against other authorities throughout Australia which are, as the Hon. Mr Davis said, rapidly moving to a position where they are ready to corporatise themselves and engage in the national grid.

I do not know whether the national grid will come into effect on 1 July 1995, but that is the time that has been set, and we have unearthed nothing that gives us any doubt that that is when the agreement will come into force, and I think South Australia will be a party to that agreement. That will place ETSA in inordinate difficulties in competing against the cheaper type of electricity that will be produced by the States of New South Wales and Victoria, and no doubt Tasmania with its access to hydroelectricity—and I guess Canberra with its access to electricity produced by the Snowy Mountains scheme.

So, the future does not augur very well in respect of other huge deposits of coal that lie scattered about in our hinterland. At Arckaringa, for instance, there is probably enough coal in the ground to sustain the current level of electricity generation needs for about 250 years or more. The same is true of Lochiel, Bowmans and other deposits. However, with those exceptions deposits are at a very low level in respect of the generation of electricity and, as such, that continues to put us at a significant disadvantage in respect of the cost of

generating electricity in comparison with other States and Territories of Australia.

There is no doubt, as I have said, that sooner or later it will be necessary—and on this we all agree—for ETSA in South Australia to corporatise itself and place itself in a position similar to the other States so that it will not be at a competitive disadvantage in that respect. I want to issue a note of caution, for the same reasons that Sir Thomas Playford obviously grasped some 50 years or more ago, and that concerns the essentiality of South Australia's having absolute control at all times.

The Hon. L.H. Davis: I love that word!

The Hon. T. CROTHERS: Essentiality? Did you like that? I will come over and spell it for you after and broaden your knowledge a bit more.

The Hon. L.H. Davis: I think you will have to because I do not think I will find it in the dictionary.

The Hon. T. CROTHERS: Once you get beyond 'to' and 'and', you would have lexicographical problems.

The PRESIDENT: Order! I suggest that the honourable member come back to the subject.

The Hon. T. CROTHERS: I will spell that one as well for the honourable member, if he likes.

The PRESIDENT: Order! I suggest that the honourable member return to the subject.

The Hon. T. CROTHERS: I am very sorry, Mr President; the Hon. Legh Davis put me off the track. I believe that ETSA must be corporatised. There is a Bill on the Notice Paper today which I think will go through this place and produce this effect. I reiterate that there is a cautionary side to the tale, and it is that if electricity generation were the property of the Federal Government one would not have to worry too much about whether one had access and rights to electricity supply, although we have seen in South Australia what can happen to the quality of our water when we have only partial control of those waters under the River Murray Agreement, and the Federal Government has a part in that agreement. This certainly acts to our detriment most of the time, certainly with respect to water quality. As far as I am concerned—and I speak only for myself—corporatisation is one matter and privatisation another. I as an individual would have some trepidation if the recommendations in this committee's report were to go adrift in the near future.

The Hon. L.H. Davis: I concede that 'essentiality' is a word.

The Hon. T. CROTHERS: Absolutely marvellous. How is Jan's dictionary?

The Hon. L.H. Davis interjecting:

The Hon. T. CROTHERS: It is Jan's lexicon, is it?

The Hon. L.H. Davis interjecting:

The Hon. T. CROTHERS: Splendid. My concern is that reports such as the Hilmer report and the Audit Commission report, etc., our own report and the present Bill might take us down the privatisation track. If that happens, I would be fearful because of the competitive nature of the States which, one would assume, would still control the generation of their electricity, and, because of their competitive nature and their ability to attract industry and thereby secure employment, I would have extreme difficulty in grappling with that matter. That was a view that was certainly expressed by at least one or two other members of the committee.

I will not touch too much on the board structure. Suffice for me to say that, irrespective of what the Audit Commission said, I cannot understand how the Audit Commission was able, with any quality or with any verbosity in the statements it later made, to address all the component parts of State Government activity in the short space of time it had. I point out to the Council that even the Almighty had to rest on the seventh day, and it would be a *lese-majesty* with the Audit Commission than it would be with Yahweh.

I do not wish to comment on those matters. As far as we could see, the board of ETSA has done nothing wrong either now or previously. Perhaps it has got meaner and leaner, because it has been forced to. The present board has done a reasonably good job. It is true what we all agreed about expollies: we cannot afford to be seen as old retired gents with our snouts in the trough, irrespective of any contribution that they may be able to make.

With respect to the State Bank I, unlike Mr Davis, intend to say nothing on that matter; I understand it is *sub judice*. At some later time I may well be constrained to say a thing or two and mutter into my beard about it, but whilst it is *sub judice* I will follow the traditions of the Parliament and say nothing relative to the matter.

I commend the report to the Council. It is a very comprehensive report. I hope that, in the short frenzied burst of attention—and it was frenzied—we have given it, we have done justice to it; I think we have. However, as I said, there are still many more things to look at with ETSA. Minister Olsen in another place is doing that. The report is the first step. Those steps that we have recommended really ought to be hard looked at by the Government, with a view to putting them into practice. Again, I pay tribute to Ms Evans and Mr McKay, those officers from ETSA and those people from other areas who gave us their time to give relevant evidence with respect to the areas that they represented. I commend the report to the Council.

The Hon. R.D. LAWSON secured the adjournment of the debate.

LEGISLATIVE REVIEW COMMITTEE: COURTS ADMINISTRATION

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

That the report of the Legislative Review Committee on the Courts Administration (Directions by the Governor) Bill be noted.

It is with pleasure that I speak in support of this report, which was tabled today and which arises from a reference to the committee of a Bill introduced in another place by the Hon. Frank Blevins. The Bill itself is short and 'empowers the Executive Government, through the Governor, to give such directions as the Governor considers necessary and appropriate to ensure that the participating courts are properly accessible to the people of the State'. The direction is one that is given to the Courts Administration Authority under the terms of the proposed Bill.

The stated purpose of this Bill was to restore the system of resident magistrates which had operated in South Australia for some years and which, by direction of the Chief Magistrate, ceased operation in February this year. Although the reference is specifically to the terms of a rather short Bill, in the course of examining that Bill it was necessary to examine the system of resident magistrates in some detail. The report itself deals separately with two issues: namely, the provisions of the Bill themselves and, secondly, the matter of resident magistrates.

I will deal, first, in these brief remarks with the system of resident magistrates. I should tell the Council that in South Australia since 1976, three magistrates have been based at

Whyalla, Port Augusta and Mount Gambier. Those magistrates serviced the magistrates courts in those cities and also in some adjoining areas. Other non-metropolitan parts of South Australia are served by visiting or circuit magistrates based in Adelaide. So most of country South Australia is and has always been served by circuit magistrates.

In February 1994, after considering the matter for some six months or so and after consulting widely with the Chief Justice, the Law Society, local legal practitioners, local communities and others, the Chief Magistrate published a paper in which he outlined the factors which led him to reach the decision to withdraw resident magistrates.

The major factors were—and I will not deal with them all—first, a reduction in the court workload, particularly in Whyalla and Port Augusta. It meant that there was insufficient work in those cities to justify the continued provision of two full-time magistrates. Secondly, by decision of the previous Government in July 1993, the numerical strength of the magistracy in South Australia was reduced from 38 magistrates to 36. That fact made it necessary for the Chief Magistrate to review the deployment of magistrates generally. Thirdly, the Chief Magistrate considered that having a single magistrate servicing a town resulted in an inferior service in comparison with services in the metropolitan area because litigants there have available to them pretrial conferencing, conciliation conferencing and certain other facilities which are simply not available in a city where there is only one magistrates serving.

Fourthly, the Chief Magistrate indicated that his decision was not a cost cutting exercise, and the cost of actually operating circuit magistrates would be marginally higher than that of maintaining the residencies, and certain offsetting factors could be employed if the magistrates were redeployed. Fifthly, the Chief Magistrate stated that magistrates undertaking resident service undertook considerable hardship in relation to matters such as accommodation, the cost of commuting, disruption of children's education, limitations on social life of the magistrate and his family, and the inability of the magistrate to remain anonymous due to the relatively small size of the cities in which the magistrates were stationed. Finally, the Chief Magistrate had the view that resident magistrates do not provide necessarily the degree of detachment which is appropriate for the proper discharge of judicial functions.

These factors were considered in detail by the committee, which sat here at Parliament House in Adelaide and also visited Mount Gambier, Whyalla and Port Augusta and conducted public hearings in those cities and received evidence there from citizens, legal practitioners, local government authorities and police officers. The committee also received some 20-odd written submissions from, amongst others, the Chief Justice and the Chief Magistrate. In all, it received oral evidence from more than 20 witnesses.

As a result of that evidence and its consideration of the matters, the committee found itself unable to accept some of the propositions advanced by the Chief Magistrate for withdrawing the resident magistrates. For example, the committee could not accept that hardship to individual magistrates was of sufficient magnitude to call for the withdrawal of resident magistrates. The committee noted that all the magistrates who had been appointed since 1976 had given, as a condition of their employment, an undertaking to serve as a resident magistrate for two years. At the time when the residencies were withdrawn, there remained six magistrates with an unfulfilled obligation to serve.

The committee found it somewhat ironic that some of the most vociferous opponents of residencies were amongst those who had obtained their appointment on the faith of an undertaking to serve as a resident magistrate and who, according to the evidence of the Chief Magistrate, would not have been appointed if they had not given that undertaking. As he noted, a number of excellent candidates had been deterred from accepting appointment by reason of the obligation to serve in the country.

The committee took the strong view that the social and other supposed disadvantages of serving as a resident magistrate were much overstated. The committee noted that many police officers, teachers, bank officers and other private sector employees are required by the terms of their employment to work in non-metropolitan areas, many in places far more remote and less congenial than the three cities in which resident magistrates were stationed. So the committee did not regard hardship to magistrates as a sufficient reason in itself to warrant withdrawal of the magistrates.

It was also suggested, both by the Chief Magistrate and in correspondence by the Chief Justice, that judicial detachment might be compromised by reason of the fact that a magistrate lives in a city of the size of Mount Gambier, Port Augusta or Whyalla. The committee did examine this question in some detail. It was glad to note that no case was placed before it where it was demonstrated that any South Australian resident magistrate had compromised his or her office by a lack of detachment from a local community. So the committee remained unconvinced by that reason, although it does accept that in certain circumstances a perception might arise of want of judicial detachment, especially where a magistrate becomes overly friendly with the local legal practitioners, police prosecutors or the like.

The committee concluded on the subject of resident magistrates that the Chief Magistrate, who, under the Magistrates Act, has the sole responsibility in relation to the allocation of magistrates, subject to the direction of the Chief Justice, was acting reasonably in taking into account at least three factors in withdrawing the resident magistrates. First, the reduction in case loads particularly in Port Augusta and Whyalla, and the fact that that meant that there was insufficient work in those courts to keep two magistrates fully engaged. Secondly, there was, as I have already mentioned, the reduction by Government decision in August 1993 of the overall and numerical strength of the magistracy. Lastly, there was his belief, which has since been confirmed by experience, that withdrawal of the magistrates could be covered adequately by a system of visiting circuit magistrates from Adelaide, similar to that which applies in other country regions of the State.

The factors which I have just mentioned made it inevitable, in a sense, having regard to current court work loads and the current strength of the magistracy, that the decision had to be made. The committee, however, does not regard such a decision as immutable and would not regard there being any reason in principle for not restoring the resident magistrates in the future if need should arise and circumstances change.

The Bill itself was strongly opposed by the Chief Justice, the Hon. Justice King. In fairly firm and blunt language he expressed that opposition to the committee in a written submission, and I quote it briefly:

> My basic submission is that the Bill is objectionable in principle and dangerous and impracticable in practice. The principle of the separation of the judicial arm of the State from the legislative and

Executive arms, which is fundamental in our constitutional arrangements, is directly attacked by the provisions of the Bill. . . The principle of subjecting the courts system and the judiciary to political direction is to be condemned. Indeed, the title which includes 'Directions by the Governor' constitutes its own condemnation. The committee is urged to recommend rejection of the Bill.

The committee accepted and adopted the proposition that the principle of judicial independence is of fundamental importance in a free and democratic society, and the committee would have been opposed to any measure which compromised that independence. However, the committee was not opposed to the Executive Government having some power to give directions to the Courts Administration Authority in relation to the exercise of administrative, as opposed to judicial, functions. So, the committee was not inclined to adopt unquestioningly the general proposition contained in the Chief Justice's letter.

The Hon. T.G. Roberts: Was that unanimous?

The Hon. R.D. LAWSON: That was the unanimous view of the committee. However, the committee—again unanimously—did consider that there were some problems with the Bill, in particular, the breadth of its language. As I mentioned, the Bill does give to the Governor power to give directions to the Courts Administration Authority but the power in the Bill was not clearly limited, and the committee regarded this provision as a possible threat to judicial independence. The committee considered that the Bill as drafted was too broad, and expressions such as 'the court should be properly accessible to the people of the State', whilst a worthy sentiment, was not entirely clear in its meaning from the Bill itself.

The Bill did contain a provision which would have given the Executive Government power to direct that court registries be maintained at particular places. The committee did not regard that as any threat to judicial independence and, in fairness, neither did the Chief Justice. The Bill also contained a provision which would empower the Governor to give a direction to the Courts Administration Authority requiring judicial officers to be resident in specified parts of the State. The committee did not regard that provision with favour. It considered that it was inconsistent with section 7 of the Magistrates Act, which gives to the Chief Magistrate the power to allocate particular courts and duties to magistrates. The committee supported the retention of the requirement in the Act that magistrates serve in such places as the Chief Magistrate directs, which did not include a direction specifically relating to the place at which the magistrate has his or her residence.

One problem identified in the evidence by the Chief Magistrate in the withdrawal of resident magistrates arose because of the provisions of the Bail Act, which allow telephone applications for bail or bail review to occur in certain limited circumstances and, in particular, when the accused person cannot be brought before a court within a short period. That means that the right to make an application for telephone bail or bail review is limited. In particular, if the court might be comprised of justices of the peace, it is considered that accused persons might suffer some prejudice and detriment in the way in which their case is reviewed. The Chief Magistrate takes the view that telephone applications ought to be permitted in a wider class of circumstances and the committee in its recommendations has included a recommendation that the Attorney-General closely examine that issue.

The committee also concluded that, although it was satisfied with the current state of the lists in the cities affected, the situation ought to be monitored by the State Courts Administration Council, which ought to publish in its annual reports details of its monitoring. The committee was anxious to ensure that there be no diminution in services to country areas.

The final and most significant recommendation of the committee—and again a unanimous recommendation—was that the Bill in its present form be not supported. Finally, I pay tribute to members of the committee for their diligence and attention to an interesting matter which occupied some considerable amount of time and involved the committee's visiting a number of centres. I also pay tribute to the assistance and work of the secretary and research officer in producing the report.

The Hon. M.S. FELEPPA: I wish to make some general comments about the report that has just been tabled, so that the committee's task and the approach it took can be understood by members of this Council. First, I place on the record my personal congratulations and those of my colleagues in this Council, the Hon. Barbara Wiese and the Hon. Ron Roberts (a former member of the Committee), to the Presiding Member for his conduct as chairperson of the committee and for the way in which he guided the committee all along in the deliberations of this inquiry. I found Mr Lawson an excellent Presiding Member and I am pleased and honoured to serve on that committee under his chairmanship.

I also thank all those people who made submissions to the committee and so willingly gave evidence at various times, all of which has been considered by the committee in its deliberations. Without their contributions and without the valuable help of the *Hansard* staff, the research officer (Linda Graham) and the secretary (David Pegram), and the diligent work they performed for the committee, we could not have completed our task as we did.

The report just tabled endeavours to address the issues of how best we should administer the courts system in South Australia. On the one hand regard must be given to the powers and responsibility of the Parliament and the Executive in the administration of the courts, and on the other the powers and independence of the judiciary in the administration of the courts. The committee was empowered to make any other recommendation on matters that arose during the course of its inquiry and this it did in recommendation 5.3.3 of the report concerning, as already mentioned by the Hon. Mr Lawson, the Bail Act 1985 on the suggestion of the Chief Magistrate.

The committee was required to look at the content and implication of the Bill as it came to this place from the House of Assembly. The committee therefore generally was not specifically required to make a recommendation as to disposal of the Bill. That is my view, but is a decision for the Parliament to make. There was no mention in the Bill of resident or circuit magistrates, but a preference one way or the other was part and parcel of the issues considered.

The removal of resident magistrates was the issue that brought the Bill before the Parliament. The committee was required to consider whether the terms of the Bill would fulfil the intention for which the Bill was drafted and fulfil it in the best possible way. The committee also had to consider whether the Bill was expressed in unequivocal terms. In one submission to the committee Professor Thomas W. Church of the State University of New York in Albany is quoted. He

compares the lack of concern for the clientele of the courts in the English speaking world as opposed to the concern and courtesy shown by department stores and professional organisations for their customers. He holds that the courts should be consumer oriented in their attitude towards the public. His criticism was not of the judiciary as such or of the court staff, who are under considerable pressure due to budget cutting: his criticism was of the court system, but the comparison that he made was not one of equals. The court system is not expected to attract customers or to generate repeated business.

The courts are places that people prefer to avoid. Seldom, if ever, do the courts give complete satisfaction to those who use them. However, in general, the public has a right to feel that the court system and the services provided within that system are performed in the most efficient and satisfactory manner. That is the area in the which the courts should be client oriented: they should be seen to be serving, not being served.

If members of the community are not generally satisfied with the service that is given by the courts, obviously they can petition Parliament or complain to their elected representatives, who are held responsible if the service that the people expect is not forthcoming. I hold the view that the Executive has responsibility for provision of judicial services—and mention has already been made of that by the Presiding Member of the committee—just as it has similar responsibility for the provision of education, health and housing, for example.

The independence of the judiciary is the unique difference in the provision of judicial services. The Parliaments provide the legislative framework within which the Executive and the judiciary have to work. As things stand, the people have no way of complaining directly to the Courts Administration Authority if they feel that a decision or an action of the State Courts Administration Council is not in their best interests. Nor does the authority, I believe, have to justify to the people its actions or the way that it may affect the people. As I said, the judiciary is unique in that it is one of the three bodies that administer the State and our Constitution, and its independence should be sacrosanct in its judicial function, as well as there being a measure of independence in the actual administration of the courts.

The Executive, at the same time, is responsible for providing the means by which the judiciary functions through the Courts Administration Authority. Because of this responsibility, it is the Parliament and the Executive that are accountable to the people. Therefore, the Parliament and/or the Executive should have input into some of the decisions for which they will be held accountable, as I have already mentioned.

The spirit of the Bill seeks to do this, but the Bill, as already pointed out by the Presiding Member, does not appear to be the best way in which the influence of the Executive can be exercised. The extent of such powers needs to be clearly defined. The terms of the Bill are very broad and are very wide, which may erode, if not threaten, the independence of the judiciary. What the draft of such a Bill should do, however, is for the Parliament to decide. The committee has simply provided the facts and pointed out some of the implications upon which the Parliament can come to its decision.

Finally, the report summarises 13 specific conclusions from the evidence that was received, as well as making three recommendations upon which Parliament may act. It is therefore for the Parliament to decide how the Bill is to be disposed with the various parliamentary options available. Even those options are for the Parliament to decide, according to the regular functioning of the forum of this place. I have much pleasure in recommending the report to the Council.

The Hon. A.J. REDFORD secured the adjournment of the debate.

WASTE MANAGEMENT

Adjourned debate on motion of Hon. M.J. Elliott:

That the Environment, Resources and Development Committee be instructed to investigate and report on waste management practices in South Australia and that it pay special attention to—

1. location of dumps;
2. design, operation and monitoring of dumps;
3. disposal of dangerous substances, including toxic and radioactive materials;
4. recycling;
5. container deposit laws;
6. waste generation,

to which the Hon. T.G. Roberts had moved the following amendment:

After Paragraph 6 insert—

7. Commonwealth responsibilities for transport, storage and dumping of Commonwealth generated waste.

(Continued from 23 November. Page 895.)

The Hon. CAROLINE SCHAEFER: I rise to support this motion. There has been some discussion within the Environment, Resources and Development Committee prior to this motion's being moved and general acceptance of this idea was floated and agreed. In fact, we agreed that we would look into this matter in the new year, anyway. Of course, in the meantime, the Minister for the Environment and Natural Resources, the Hon. David Wotton, has brought down a report in answer to questioning in the other place in which he has identified that a new draft strategy began in August and was, I believe, completed in September of this year. A preliminary seminar, which will be the beginning of public consultation for the development of this draft strategy, is timed for February 1995.

The draft strategy will encompass a broad range of issues including an assessment of the following: existing practices, population and land use, waste transportation, solid waste quantities, solid waste disposal methods, waste reduction, litter management, economic factors, management systems and financial policies, and integrated waste management. Therefore, I would suggest that the Government is looking at these issues.

However, the Hon. Michael Elliott's motion is somewhat broader than that and he has asked that, amongst other things, the locations of dumps be investigated. In his speech on this motion, the Hon. Terry Roberts drew to the attention of this Council the placement of the Canunda dump in the South-East being at the entrance of a national park. I attended an inspection of that dump with the other members of our committee and I must say that it appeared to be a particularly well managed dump. However, of course, that does not alter the fact that it is right at the entrance of a national park and it would seem to be an unfortunate choice of position. Of course, many of the dumps in rural areas, like Topsy, just tended to grow.

I guess that we as a State need now, with further education, to have a look at the positioning of many of these dumps

and, particularly, as is mentioned in the honourable member's motion, with a view to the fact that we are handling continually more dangerous and toxic substances. It has also been suggested that container deposit laws be looked at. There is a great deal of discussion on that sort of thing at the moment. Of course, recycling also needs to be looked at in the broad context of this motion.

Perhaps we can also look at some flexibility for management of dumps in smaller areas. I know that in my own area there has been constant consternation among people in my town since the dump was enclosed. When it was an open dump, people sorted their own waste material into various areas and it ran very well. Now that we have an enormous fence around that dump, people unfortunately dump most of their refuse outside, and papers and rubbish blow all over the main highway. Perhaps we can look at some commonsense management of dumps on a Statewide basis while we deal with Mr Elliott's motion.

I would suggest that perhaps we also need to look at an economic method of recycling throughout the State, because at the moment, as members would be well aware, the cost of recycling in remote areas precludes us from doing that and we run the risk of having ever-increasing landfill in areas where it is neither necessary nor desirable—if indeed it is necessary or desirable anywhere, which is, again, arguable. So I indicate that I support this motion as I believe will everyone on the Government side.

The Hon. M.J. ELLIOTT: I rise to close the debate on this motion. There has been some comment, both within speeches and by way of interjection, in relation to the possibility of this being a term of reference having been discussed in committee and, therefore, what was the point of this motion. Having been involved in this committee since its inception I can tell this Chamber that, when the committee was first formed, of its own volition it adopted several terms of reference that it considered to be very important. To this day those terms of reference have never been treated, because there is an obligation on committees to give priority to terms of reference that have been referred to them by either Chamber of this Parliament. In the circumstances the committee, with the best will in the world, having decided that something is very important, can never treat that issue if other terms of reference are continually referred to it. I could make further comment on some of the things that were said, but that is the most important point.

I do not think that anything else that has been said particularly needs a response, because there is broad support for the setting up of such an investigation. Not only is this one of the most important environmental issues but it is also a development issue, because industry is increasingly being challenged by people who are concerned about the waste that it produces and how that waste is to be handled. A failure to tackle the waste issue, to treat it seriously, is not only endangering the environment but also is a significant impediment to development itself. We simply cannot believe that the issue will go away; it will be increasingly important as time goes by.

The only other comment I want to make is in response to the amendment that has been moved by the Hon. Terry Roberts. I argue that the terms of reference as I had already drawn them up should have adequately covered the issues. That is not to say that I do not have some concerns, which is why I am treating the amendment seriously. We have problems in South Australia in relation to waste that is being generated elsewhere, although not necessarily by the Commonwealth itself. I have very grave concerns that South Australia is not only about to become the repository for radioactive waste from the Eastern States but could also be targeted as a repository for large quantities of intractable wastes that are held in the Eastern States. In particular, Botany in Sydney has literally thousands upon thousands of tonnes of highly toxic and intractable waste stored in rusting 44 gallon drums.

My expectation is that the same political pressures that caused the radioactive waste to be removed from Lucas Heights might also be brought to bear on those responsible for these other intractable wastes and they will go looking for somewhere to put it, and it appears that, since South Australia has been very attractive for radioactive waste, it might be seen as the quick fix for getting rid of waste that has accumulated in Sydney, in particular, but also in Melbourne and Brisbane, to a lesser extent. I am gravely concerned that we have waste that has been accumulating for many decades, for the disposal of which, at this stage, no proper solution has been found, and we might simply be seen as the easy way out.

To that extent, there are some issues at a Commonwealth level, although they are not Commonwealth Government problems. The radioactive waste is, I suppose, but some of these other intractable wastes are not the responsibility of the Commonwealth Government itself but are generated by other States in the Commonwealth, and we need to be aware of the threat that they present. I suppose it could be a Commonwealth threat in so far as we have at the moment a Federal Government that is willing to trample over States willy-nilly. Since the Labor Party holds a great number of seats in New South Wales, particularly around Sydney, for reasons of its own constituency it might become over-eager to shift the waste to an area that electorally is far less important to it. I guess on balance, whilst I felt that what the Hon. Terry Roberts had moved may have been covered, in case there is any doubt about that, I am willing to accept his amendment. With that, I urge all members to support the motion.

Amendment carried; motion as amended carried.

RETAIL SHOP LEASES BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act regulating the leasing of certain retail shops; to amend the Landlord and Tenant Act 1936; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

The Retail Shop Leases Bill 1994 is introduced to regulate the leasing of retail shops in this State. The Bill replaces Part IV of the Landlord and Tenant Act 1936 which currently regulates commercial tenancy agreements and the means by which disputes arising under commercial tenancy agreements are resolved.

A review of the area of retail tenancies was long overdue. The Landlord and Tenant Act came into operation in 1936 and has been amended only periodically since that time with the last major amendments occurring in 1990. The focus of Part IV of the current Act is upon commercial tenancies and not retail tenancies, which form the majority of the leases covered by the Act. The Bill focuses upon retail lease agreements and recognises the need for a regulatory framework which is fair to both landlords and to retail tenants. The Bill acknowledges the special relationship which exists

between landlords and retail tenants by housing the provisions in a separate Bill.

There has been considerable consultation with industry in the preparation of this Bill. Both landlords and retail tenants were anxious for the legislation to be reviewed and have made a valuable contribution as a unified group to the review process. They have met with the Government and have worked together to reach a significant measure of agreement on the Bill. There were a mere handful of matters which could not be agreed upon and the Government has made its decision on these. I commend the representatives of landlords and tenants who have spent so much time and effort in negotiations to reach what is largely an agreed Bill.

A number of the provisions of the Bill reflect provisions contained in the New South Wales Retail Leases Act 1994, which was passed earlier this year after an extensive consultation process over 18 months with key stakeholders from the retail tenant sector and the landlord sector. The review of the Landlord and Tenant Act 1936 and legislation covering the area of retail tenancies in other States has shown that there are many issues and concerns which are commonly shared by the retail sector throughout Australia.

There are six key features of the Retail Shop Leases Bill. These are, first, the requirement for the preparation of compulsory written lease agreements and disclosure statements. Secondly, the Bill prohibits the inclusion of ratchet clauses in retail lease agreements. Thirdly, the Bill provides for more detailed information to be given by landlords to lessees in relation to outgoings on the part of the landlord. Fourthly, the Bill contains a significant new provision which prohibits lease agreements from preventing or restricting lessees from joining, forming or taking part in any activities of a tenants' association.

Fifthly, the Bill contains a provision which entitles a lessee to be accompanied by another person when conducting negotiations with the lessor (this fundamental right was previously not available to lessees). Sixthly, the Bill contains greater rights on the part of lessees in relation to the receipt of information, notification and also in relation to their ability to obtain compensation under the Bill for such matters as misrepresentations made on the part of a landlord at the time the lease was being negotiated.

The Bill also preserves a number of important provisions that are contained in the current Act, such as the prohibition on the payment of key money, the regulation of security bonds, the warranty of fitness for purpose of the premises, the prohibition preventing a retail shop lease agreement from requiring a lessee from being required to pay land tax or to reimburse the lessor for the payment of land tax and the requirement for a minimum five year term for a lease, and it retains the procedures in relation to abandoned goods.

The Bill introduces a new and improved system for the payment and retrieval of security bonds by lessees and lessors. The payment of security bonds will be made direct to the Commissioner for Consumer Affairs rather than the tribunal and the Commissioner will have the power to pay out bonds in an over the counter payment where the consent of both parties has been obtained.

The Bill also establishes the Retail Shop Leases Fund which will be kept and administered by the Commissioner. This fund will replace the existing Commercial Tenancies Fund.

Another new provision contained in the Bill is one which relates to the trading hour provisions contained in a retail lease. These provisions will provide protection and certainty for lessees of shopping complexes in the area of trading hours, and recognises the difference between and the special needs of outward facing shops in a shopping complex.

The Bill also contains new provisions for the assignment of leases and clarifies the rights of the respective parties when assignment occurs. Should this Bill be passed by Parliament, it is proposed that the former legislation will continue to apply to leases entered into before the date of proclamation, subject however to modifications prescribed by regulation. The modifications anticipated to be prescribed by regulation are a number of provisions from the new Bill. An example of such a modification will be a provision which will bring existing tenancies under the regime for settling disputes contained in the new Act. The modifications will not, however, include any of the commercial arrangement provisions contained in the new Act. I seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

Clauses 1 and 2 are formal.

Clause 3: Interpretation

Clause 3 sets out the definitions required for the purposes of the new Act.

Clause 4: Application of Act

Clause 4 deals with the application of the Act. It excludes from its application leases where the rent exceeds $200 000 per annum and leases where the lessee is for example a public company or financial institution which may be presumed well able to look after its own interests without statutory assistance.

Clause 5: This Act overrides leases

Clause 5 provides that the new Act overrides inconsistent provisions of a lease.

Clause 6: When the lease is entered into

Clause 6 establishes the date on which a lease is taken to have been entered into.

Clause 7: Copy of lease to be provided at negotiation stage

Clause 7 requires the lessor to make available a copy of the proposed lease to a prospective lessee who enters into negotiations with the lessor.

Clause 8: Lessee to be given disclosure statement

Clause 8 requires the lessor to provide the lessee with a disclosure statement setting out relevant information about the lease and the lessee's obligations under it.

Clause 9: Lessee not required to pay undisclosed contributions

Clause 9 provides that a lessee is not required to pay or contribute towards the cost of finishes, fixtures, fitting, equipment or services unless the requirement to make the payment or contribution is disclosed in the relevant disclosure statement.

Clause 10: Lease preparation costs

Clause 10 limits the extent to which the lessee may be required to pay costs associated with the preparation of a lease.

Clause 11: Premium prohibited

Clause 11 prevents the lessor requiring the payment of a premium *ie* an up-front payment sometimes described as "key-money" for the grant of a lease.

Clause 12: Lease documentation

Clause 12 requires the lessor to provide the lessee with a copy of the executed lease.

Clause 13: Minimum 5 year term

Clause 13 provides for a minimum term of five years for a retail shop lease. However, this does not apply to a lease for a term of six months or less, or if the requirement is excluded by the lease and a legal practitioner explains the effect of the exclusion to the lessee before the lease is entered into.

Clause 14: Warranty of fitness for purpose

Clause 14 provides a statutory warranty of fitness for purpose.

Clause 15: Security bond

Clause 15 limits the amount of the security that may be required under a security bond to 4 weeks' rent under the lease. The security is to be paid to the Commissioner for Consumer Affairs.

Clause 16: Repayment of security

Clause 16 provides for the repayment of the security at the end of the lease.

Clause 17: Payment of rent when lessor's fitout not completed
Clause 17 suspends the lessee's liability to pay rent until the lessor has completed carrying out fitout obligations under the lease.

Clause 18: Restrictions on adjustment of base rent
Clause 18 limits the frequency of changes to base rent (*i.e.* the component of rent that consists of a fixed amount).

Clause 19: Reviews to current market rent
Clause 19 deals with the review of rent where the lease provides for the rent to be changed at periodic intervals to current market rent. It provides for the appointment of an appropriate valuer and for liability for the costs of valuation.

Clause 20: Turnover rent
Clause 20 deals with turnover rent. It limits the categories of payment that may be brought into account as "turnover".

Clause 21: Special rent—cost of fitout
Clause 21 provides that a retail shop lease may provide for the payment of a special rent to cover the cost of fitout, fixtures, fittings and equipment installed by the lessor at the lessor's expense.

Clause 22: Recovery of outgoings from lessee
Clause 22 provides that outgoings cannot be charged to a lessee unless the lease sets out the nature of the outgoings and the basis on which they will be charged.

Clause 23: Capital costs not recoverable from lessee
Clause 24: Depreciation not recoverable from lessee
Clauses 23 and 24 provide that a retail shop lease cannot require the lessee to contribute towards capital costs or depreciation.

Clause 25: Sinking fund for major repairs and maintenance
Clause 25 provides for the proper administration of a sinking fund by the lessor to cover major items of repair or maintenance.

Clause 26: Land tax not to be recovered from lessee
Clause 26 prevents the recovery of land tax directly from the lessee.

Clause 27: Estimates and explanations of outgoings to be provided by lessor
Clause 27 provides for estimates and explanations of outgoings to be provided by the lessor.

Clause 28: Lessor to provide auditor's report on outgoings
Clause 28 provides for an auditor's report on outgoings for each accounting period under the lease.

Clause 29: Adjustment of contributions to outgoings based on actual expenditure properly and reasonably incurred
Clause 29 requires an adjustment between the lessor and the lessee for each accounting period to take account of under-payment or over-payment of outgoings.

Clause 30: Non-specific outgoings contribution limited by ratio of lettable area
Clause 30 provides for outgoings that are not referable to specific premises to be apportioned in accordance with lettable areas of the retail shops to which they relate.

Clause 31: Determination of current market rent under options to renew
Clause 31 deals with the determination of market rent under an option to renew.

Clause 32: Opportunity for lessee to have current market rent determined early
Clause 32 provides an option to have market rent determined early so that the lessee can decide in advance whether to exercise the right of renewal.

Clause 33: Lessee to be given notice of alterations and refurbishment
Clause 33 requires the lessor to give notice of major alterations or refurbishment if there is likely to be an adverse effect on the lessee's business.

Clause 34: Lessee to be compensated for disturbance
Clause 34 creates rights of compensation for the lessee if the lessor unreasonably disrupts the lessee's business or fails in obligations of maintenance and repair with consequent loss to the lessee.

Clause 35: Demolition
Clause 35 requires at least 6 months notice of termination if the lessor proposes to demolish the retail shop to which the lease relates.

Clause 36: Damaged premises
Clause 36 provides for abatement of rent in the case of damage to the retail shop premises.

Clause 37: Employment restriction
Clause 37 prevents the lessor from interfering with the lessee's discretion to employ persons of the lessee's own choosing to run the shop.

Clause 38: Refurbishment and refitting
Clause 38 provides that a retail shop lease cannot require the lessee to refurbish or refit the shop unless the lease gives reasonable details of the nature, extent and timing of the required refurbishment or refitting.

Clause 39: Grounds on which consent to assignment can be withheld
Clause 39 limits the grounds on which a lessor may refuse consent to the assignment of a retail shop lease. If the lessor in fact refuses consent, the lessor must state in writing the reasons for the refusal.

Clause 40: Premium on assignment prohibited
Clause 40 prohibits the lessor requiring the payment of a premium for consenting to an assignment.

Clause 41: Procedure for obtaining consent to assignment
Clause 41 regulates the procedure to be observed where approval of the assignment of a retail shop lease is sought.

Clause 42: Lessor may reserve right to refuse sublease, mortgage
Clause 42 empowers the lessor to reserve a right to refuse approval, in the lessor's absolute discretion, to the subletting of the premises or a similar transaction.

Clause 43: Notice to lessee of lessor's intentions at end of lease
Clause 43 requires a lessor to give a prior indication of whether the lessor intends to offer a lessee a renewal of the lease and, if so, on what terms.

Clause 44: Unlawful threats about renewal or extension of lease
Clause 44 prohibits a lessor from threatening not to renew a lease if the lessee exercises rights under the new Act.

Clause 45: Premium for renewal or extension prohibited
Clause 45 prohibits the lessor from requiring a premium for the renewal or extension of a lease.

Clause 46: Part applies only to retail shopping centres
Clause 46 provides that Part 7 (Additional Requirements for Retail Shopping Centres) applies to shops in retail shopping centres in addition to the other provisions of the Act.

Clause 47: Confidentiality of turnover information
Clause 47 requires the lessor to keep information about the lessee's turnover confidential.

Clause 48: Statistical information to be made available to lessee
Clause 48 requires a lessor to make statistical information available to a lessee if the lessee has contributed to the cost of assembling the information.

Clause 49: Advertising and promotion requirements
Clause 49 provides that a retail shop lease cannot require the lessee to undertake advertising or promotion of the lessee's business.

Clause 50: Marketing plan for advertising and promotion
Clause 50 provides that if a retail shop lease requires a lessee to contribute to advertising and promotion expenses incurred by the lessor, the lessor must make available to the lessee proper information about the proposed expenditure on advertising and promotion.

Clause 51: Advertising and promotion expenditure statement to be made available to lessees
Clause 51 requires the lessor to provide, at the end of each accounting period, information about the expenditure actually incurred during the accounting period on advertising and promotion.

Clause 52: Lessor to provide auditor's report on advertising and promotion expenditure
Clause 52 requires the lessor to give the lessee an audited report on the expenditure on advertising and promotion for each accounting period.

Clause 53: Unexpended advertising and promotion contributions to be carried forward
Clause 53 requires the lessor to carry forward unexpended contributions towards advertising and promotion and apply them towards future advertising and promotion of the shopping centre.

Clause 54: Relocation
Clause 54 gives the lessee certain protections where the lessor proposes to exercise a right under the lease to relocate the lessee's business.

Clause 55: Termination for inadequate sales prohibited
Clause 55 provides that a retail shop lease cannot provide for termination of the lease on the ground that the lessee has failed to achieve a specified level or sales or turnover.

Clause 56: Geographical restrictions
Clause 56 prevents a restrictive covenant preventing a lessee from setting up business outside the shopping centre either during the term of the lease or after its termination.

Clause 57: Associations representing lessees
Clause 57 provides that a lessee cannot be prevented from joining an association to represent or protect the interests of lessees.

Clause 58: Trading hours
Clause 58 limits the extent to which a retail shop lease may regulate trading hours.

Clause 59: Special provision for strata shopping centres
Clause 59 prevents the articles of a strata corporation being used for the purpose of imposing requirements or limitations that could not be imposed by the terms of the retail shop lease.

Clause 60: Functions of the Registrar
Clause 61: Mediation of disputes
Clause 62: The nature of mediation
Clause 63: Duty of Tribunal or court to stay proceedings
Clause 64: Statements made during mediation
Clauses 60 to 64 deal with the settlement of tenancy disputes by conciliation.

Clause 65: Jurisdiction of the Tribunal
Clause 65 sets out the jurisdiction and powers of the *Tenancies Tribunal* to deal with actions relating to retail shop leases.

Clause 66: Substantial monetary claims
Clause 66 provides for the transfer of proceedings involving a monetary claim for more than $60 000

Clause 67: The Fund
Clause 68: Application of income
Clause 69 : Accounts and audit
Clauses 67 to 69 deal with the *Retail Shop Leases Fund*.

Clause 70: Abandoned goods
Clause 70 deals with the disposition of abandoned goods left on the premises at the end of the lease.

Clause 71: Exemptions
Clause 71 gives the Minister and the Tribunal power to grant exemptions from the application of the Act in appropriate cases.

Clause 72: Annual reports
Clause 72 requires the Commissioner for Consumer Affairs to report annually on the operation of the Act.

Clause 73: Time for prosecutions
Clause 73 deals with the time for commencing prosecutions under the Act.

Clause 74: Regulations
Clause 74 is a regulation making power.

Clause 75: Amendment of the Landlord and Tenant Act
Clause 75 provides for the repeal of Part 4 of the *Landlord and Tenant Act 1936* and deals with transitional problems.

The Schedule sets out the form of the disclosure statement that is to be given to a prospective lessee before the lease is signed.

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

MAGISTRATES COURT (TENANCIES DIVISION) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Magistrates Act 1991. Read a first time.

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

That this Bill be now read a second time.

This Bill establishes a new division of the Magistrates Court. It is the Government's intention that the Tenancies Division will become a specialist body for the hearing of both commercial and residential tenancy matters.

The Tenancies Division will provide a forum for the hearing of matters arising under the Retail Shop Leases Bill 1994 and it is also anticipated that the Tenancies Division will replace the existing Residential Tenancies Tribunal as part of a review of the Residential Tenancies Act 1978. In addition, the Tenancies Division will acquire jurisdiction to hear claims arising from tenancies granted for residential purposes by the South Australian Housing Trust which are currently heard and determined by the Supreme Court of South Australia. The Bill provides that the new Division will be able to be referred to as the "Tenancies Tribunal".

This scheme will also enable the tribunal to acquire jurisdiction to hear matters which formerly were not regulated under existing legislation, as in the case of boarders and lodgers, and to acquire jurisdiction to hear disputes arising between the administering authority and residents of retirement villages under the Retirement Villages Act 1987.

The introduction of this Bill is the result of a review which was conducted by the Legislative Review Team established in January 1994 to review all legislation which is the responsibility of the Office of Consumer and Business Affairs. The team reviewed the powers, procedures and functions of the Residential Tenancies Tribunal and the Commercial Tribunal, as part of its overall review of the Residential Tenancies Act 1978 and the Part IV of the Landlord and Tenant Act 1936. At the present time there are two different forums for the hearing of commercial and residential tenancy matters.

Many complaints have been received by this Government, both in opposition and whilst in office, from landlords and tenants in connection with the operation of the Residential Tenancies Tribunal. There are also concerns about the costs and efficiencies of having two different forums for the hearing of matters which arise out of a common field, namely, tenancy related issues.

The Tenancies Division will therefore join together under the one umbrella, a number of diverse forums for the hearing of residential and commercial tenancy matters. This is in keeping with the Government's aim to rationalise the number of tribunals in this State.

A magistrate will be assigned to be the Supervising Magistrate of the Tenancies Division for a term of not more than five years. This period of tenure will facilitate the development of expertise in the field of tenancies on the part of the Supervising Magistrate and, as appropriate, allow for periodic rotation of magistrates holding the position.

The wide coverage of magistrates' courts within this State will result in both country and metropolitan proceedings being heard expeditiously and economically. The Tenancies Division will become a discrete and separate division of the Magistrates Court and, accordingly, there will be no diminution in terms of access to justice for the public.

The Bill establishes a system which facilitates conciliation and mediation and provides mechanisms for the resolution of matters informally, which is in line with the policy of this Government to encourage alternative dispute resolution where it is appropriate. For example, it is proposed that all contested proceedings before the Tenancies Division will be referred, in the first instance, to a compulsory conference of the parties to explore the possibilities of resolving the matter at issue by agreement. These conferences will usually be presided over by a Registrar or Deputy Registrar of the Magistrates Court.

In addition, the court has the power to interview the parties in private (either with or without the person representing or assisting them) if before or during the hearing of proceedings it appears to the tribunal, either from the nature of the case or from the attitude of the parties, that there is a reasonable possibility of matters in dispute between the parties being settled by conciliation.

In July 1994, a draft Tenancies Tribunal Bill 1994 was released for the purpose of public exposure and to facilitate public comment during the recess of Parliament. The Bill was widely circulated and the Legislative Review Team received a large number of submissions on this Bill.

As a consequence of the consultation process the Government reviewed the proposal to establish a Tenancies Tribunal under its own Act and has decided to put in its place a new Division of the Magistrates Court. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will come into operation on a day (or days) to be fixed by proclamation.

Clause 3: Amendment of s. 3—Interpretation

It is intended that the term "Tenancies Tribunal" may be used for the Tenancies Division of the Magistrates Court. The jurisdiction of this Tribunal will extend to tenancy matters that would otherwise be small claims.

Clause 4: Amendment of s. 7—Divisions of Court

It is intended that there will be a new Division of the Magistrates Court, namely the Tenancies Division.

Clause 5: Amendment of s. 10—Statutory jurisdiction

The jurisdiction of the Tenancies Division will be the jurisdiction conferred by statute.

Clause 6: Amendment of s. 15—The Court, how constituted

This is a consequential amendment.

Clause 7: Amendment of s. 19—Transfer of proceedings between Courts

These amendments will facilitate the transfer of relevant jurisdictions between the various Courts in appropriate cases.

Clause 8: Insertion of new Part 5A

It is intended to place a new Part in the Act dealing with the Tenancies Division of the Magistrates Court. A magistrate will be assigned by the Chief Magistrate, with the concurrence of the Attorney-General, to the office of Supervisory Magistrate of the Tenancies Tribunal. A magistrate will be able to hold that office for up to five years. Other magistrates will also be able to constitute the Tribunal. A Registrar (appointed to the Tribunal) will also be able to exercise the jurisdiction of the Tribunal in certain (prescribed) matters. The Tribunal's proceedings will be conducted with the minimum of formality and the Tribunal will not be bound by evidentiary rules and procedures.

Section 39F will provide for the reference of certain matters, at first instance, to a conference of the parties. It will be possible for a Registrar of the Court to preside at a conference. A party may be required to disclose at the conference details of his or her case. A settlement reached at a conference will be binding on the parties. Evidence of anything said or done at a conference will be inadmissible in proceedings before the Tribunal except by consent of the parties.

The Tribunal will be required to attempt to hear and determine any proceedings within 14 days but in any event as expeditiously as possible.

The Tribunal will be given specific powers to cure irregularities, grant interim injunctions, and make interlocutory orders. In a manner similar to the *Residential Tenancies Act 1978*, it will be possible to appoint special bailiffs of the Tribunal to assist in the enforcement of orders of possession.

Clause 9: Insertion of new Division

There will be an appeal from an order or decision of a Registrar to a magistrate, and an appeal from an order or decision of a magistrate to the District Court unless a monetary judgment in excess of the prescribed amount is involved, in which case the appeal will be to the Supreme Court. The Tenancies Tribunal will be able to reserve questions of law for determination by the Supreme Court.

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

CORPORATIONS (SOUTH AUSTRALIA)(JURISDICTION) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Corporations (South Australia) Act 1990 to provide for the jurisdiction of lower courts in civil matters arising under the Corporations Law; and to make other amendments of a minor or consequential nature. Read a first time.

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

That this Bill be now read a second time.

The Corporations Law (enacted by the Commonwealth) applies as a law of South Australia by virtue of the Corporations (South Australia) Act 1990 ("the South Australian Act"). Recent amendments to Commonwealth laws have impacted on the operation of the Corporations Act 1989 of the Commonwealth affecting references in the South Australian Act. The South Australian Act must be amended so that the Commonwealth amendments can apply in South Australia.

The Ministerial Council for Corporations has voted to approve the introduction in each State and Territory of legislation amending each of the relevant Corporations Acts so that the national scheme for the administration and regulation of companies and securities in Australia continues to operate consistently. The Corporations Acts must be uniform in each jurisdiction.

The object of this Bill is to amend the Corporations (South Australia) Act 1990 so as to—

- confer jurisdiction on lower courts to hear civil matters arising under the Corporations Law and to enact consequential savings and transitional provisions;
- make an amendment that is consequential on the Corporate Law Reform Act 1992 of the Commonwealth;
- make an amendment that is consequential on the proposed Evidence Act 1994 of the Commonwealth;
- make a minor amendment to clarify the powers of the Commonwealth Director of Public Prosecutions in relation to offences under the former companies and securities co-operative scheme laws (the Companies (South Australia) Code and related laws).

The Bill, in conjunction with parallel amendments made to the Corporations Acts of the other States and the Territories and complementary amendments to the Corporations Law, will confer jurisdiction in civil matters arising under the Corporations Law on lower courts (that is, courts that are not superior courts) throughout Australia. The superior courts (that is, the Federal Court of Australia, the Supreme Courts of the States and Territories, the Family Court and the State Family Courts) already have jurisdiction in civil matters arising under the Corporations Law by virtue of existing cross-vesting provisions in the Corporations Acts of the States and Territories.

The Bill's conferral of jurisdiction on lower courts will not extend to "superior court matters" (that is, matters that the Corporations Law reserves to the jurisdiction of the superior courts) and will be subject to the monetary limits for civil claims which apply in the lower courts concerned. I commend the Bill to honourable members and seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 40—Operation of Division

The proposed amendment to this section is of a minor drafting nature only.

Clause 4: Amendment of s. 41—Interpretation

This proposes to insert new definitions used in the Bill (such as "lower court", "superior court" and "superior court matter").

Clause 5: Insertion of s. 42B

42B. Jurisdiction of lower courts

This inserted clause vests jurisdiction in all Australian lower courts in respect of civil matters arising under the Corporations Law (except

superior court matters). This new clause parallels existing provisions of the Act which "cross-vest" civil jurisdiction arising under the Corporations Law in superior courts. (See also new clause 44AA.)

Clause 6: Amendment of s. 43—Appeals

Clause 7: Amendment of s. 44A—Transfer of proceedings by Family Court and State Family Courts

The amendments to these clauses are consequential on the amendments conferring jurisdiction on lower courts to hear civil matters.

Clause 8: Insertion of s. 44AA

44AA. Transfer of proceedings in lower courts

This clause provides for the transfer between courts of civil matters arising under the Corporations Law (except superior court matters). This new clause parallels existing provisions of the Act which "cross-vest" civil jurisdiction arising under the Corporations Law in superior courts. (See also new clause 42B).

Clause 9: Substitution of s. 44B

44B. Further matters for a court to consider when deciding whether to transfer a proceeding

Clause 10: Amendment of s. 44C—Transfer may be made at any stage

Clause 11: Amendment of s. 44D—Transfer of documents

Clause 12: Amendment of s. 45—Conduct of proceedings

Clause 13: Amendment of s. 46—Courts to act in aid of each other

Clause 14: Amendment of s. 47—Exercise of jurisdiction pursuant to cross-vesting provisions

Clause 15: Amendment of s. 50—Enforcement of judgments

Clause 16: Amendment of s. 51—Rules of the Supreme Court

The amendments to these clauses are consequential on the amendments conferring jurisdiction on lower courts to hear civil matters.

Clause 17: Amendment of s. 60—Interpretation of some expressions in the ASC Law, and the ASC Regulations, of South Australia

This amendment proposed to the definition of "officer" will update a reference to an official manager of a body corporate and is consequential on the *Corporate Law Reform Act 1992* of the Commonwealth which replaced the official management provisions of the Corporations Law with provisions for voluntary administration of bodies corporate. The term "official manager" is therefore redundant. The Bill replaces "official manager" with "administrator" and "administrator of a deed of company arrangement".

Clause 18: Substitution of s. 75

75. Application of Commonwealth Evidence Act

Section 75 of the principal Act as currently in operation provides for the application of certain provisions of the *Evidence Act 1905* of the Commonwealth under the Corporations Law. This amendment is consequential on the proposed enactment of the *Evidence Act 1994* of the Commonwealth and updates references to provisions of the 1905 Commonwealth Act with references to the equivalent provisions of the proposed 1994 Commonwealth Act.

Clause 19: Amendment of s. 91—Conferral of functions and powers in relation to co-operative scheme laws

The proposed amendment to section 91 of the Act is to clarify the powers and functions of the Commonwealth Director of Public Prosecutions ("DPP") in relation to offences under the former Companies Codes (and the other legislation of the former co-operative scheme for companies and securities). The section currently operates to confer powers and functions on the Commonwealth DPP in relation to those offences by reference to the powers and functions conferred on the Commonwealth DPP by the *Director of Public Prosecutions Act 1983* of the Commonwealth ("the DPP Act") in relation to offences against the Corporations Law (and other national scheme laws). There may be a concern that the *DPP Act* does not directly confer powers and functions in relation to offences under national scheme laws (and instead does so as a result of those laws being treated under the national scheme as laws of the Commonwealth). To address that possible concern, it is proposed that the section be amended to provide that the powers and functions which are conferred by the section are those that the Commonwealth DPP has under the *DPP Act* in relation to offences against the laws of the Commonwealth.

Clause 20: Insertion of schedule

SCHEDULE

Savings and Transitional Provisions

The schedule contains provisions of a savings and transitional nature.

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

ELECTRICITY CORPORATIONS BILL

Adjourned debate on second reading.

(Continued from 29 November. Page 974.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank members for their contribution to the second reading of this debate. It is indeed an important piece of legislation. I am aware that considerable discussions have been held over recent days to try to accommodate members' and Parties' attitudes to the legislation. I wait with hopeful anticipation for the Bill to go into Committee, because I understand some agreement has been reached on the broad principles to be followed during Committee. I will leave that for when the Bill is in Committee, and I will offer any further comment at that stage.

Bill read a second time.

In Committee.

Clauses 1 to 4 passed.

Clause 5—'Interpretation—Electricity generation corporation and functions.'

The Hon. SANDRA KANCK: I move:

Page 2, after line 11—Insert:

(ba) carrying out research to develop greater use of renewable energy sources;.

I indicated in my second reading speech yesterday my disappointment that, in the functions described for the three parts of the Electricity Corporation, at no stage was there a mention of the development and use of renewable energy sources. I also reminded the Government of its election commitment that it made for South Australia to be using them in a far greater amount than we currently do. As a consequence I now have this amendment. I look forward to having the support of the Government, because that would be in line with its election promises.

The Hon. R.I. LUCAS: I am advised that ETSA has been actively involved in alternative energy development; for example, through a $3.6 million program over five years aimed at developing fuel cells, wind, solar and hybrid wind, diesel, and solar systems for remote areas. Therefore, the Government has indicated that ETSA is already heading down this broad direction and the Government is prepared to support the amendments. It is a confirmation of existing action by ETSA and the Government, consistent with its policy. For those reasons, we do not intend to oppose the Hon. Ms Kanck's amendment.

I am also advised that ETSA is currently promoting its business energy, efficiency and productivity program, that business has come forward with energy management programs which involve over $6 million worth of expenditure to which ETSA will contribute almost $1 million. Again, it is another indication that, consistent with the sorts of intentions of the honourable member's amendments, ETSA is heading in that broad policy direction. I am sure the Hon. Ms Kanck would be supportive of those directions. She would probably want to see more done, and we acknowledge that. Nevertheless, I am sure that she would be happy that the Electricity Trust is already heading in that direction, consistent with the Government's policy commitments and philosophy. Therefore, we are prepared to support the honourable member's amendment in a spirit of reasonableness and compromise, as is always the case with this Government.

The Hon. R.R. ROBERTS: The Opposition will support this amendment for the reasons put forward by both speakers.

First, it was a commitment by the Government, as the Hon. Sandra Kanck has pointed out, and the Minister has pointed out that ETSA itself has been doing it. It is the Government's policy. This will ensure that it will remain policy, and it should expand the knowledge of the State in this area.

The Hon. M.J. ELLIOTT: I would like to ask a question of the Minister—and I note the Government and Opposition support for this amendment. I do not have the passage of this Bill, so I have not gone through the finer detail of it. However, I had some concern about the ramifications of the legislation overall, both economically and environmentally. With regard to the environmental aspect of renewable energy, I have spoken to some people who work within ETSA, and they have expressed to me the view that the Port Augusta power station is unlikely to survive very long. In terms of cost of generation of power, it would be blown out of the water by Yallourn. The station at Torrens Island would have some hope of surviving if some new currently available technology, which more efficiently uses gas than the current technology, was installed. At that point, it would be competitive, although the question is whether or not that investment will be made. If it is not made and it finds itself in direct competition, although it has the potential to compete, it would not be able to compete.

Having made all those comments and recognising there will be a great deal of financial stress, I wonder, at least in the generating area, despite the fact that this amendment might be accepted, what position we will be in if the corporation simply does not have the money to carry it out, because it is actually running at a loss due to interstate competition. They may be battling to find enough money to guarantee their own existence. They will have lost Port Augusta, and Torrens Island will have to spend a great deal of money to make itself competitive with new technologies. Despite the fact that we are talking about carrying out research, will the money ever be found? How does the Minister feel the money will be found to do that research in the likely economic circumstances in which the corporation will find itself?

The Hon. R.I. LUCAS: The advice provided to me is that the circumstances the honourable member outlined are unlikely to occur and that we are not likely to have the Electricity Corporation of South Australia generating losses as a result of whatever activities it is that it happens to undertake. I guess the honourable member may well have a different view to that and believe that—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Well, if the honourable member would like to tell who the senior people in ETSA are.

The Hon. R.R. Roberts: Such an innocent question.

The Hon. R.I. LUCAS: We are here only to assist. I must say the advice to me is that no senior persons in ETSA are suggesting views of that ilk at all, certainly to the Minister or the Government or others involved in this process. If senior persons within ETSA are putting that point of view to the Hon. Mr Elliott, perhaps he would like to give their names in confidence so that I can explore that issue with the Minister and those senior members to find out the nature of the advice that they are providing to Mr Elliott but to not the Minister. It is very difficult when members list unnamed sources when advice being provided to the Minister and to the Government is quite contrary to the claims being made by the Hon. Mr Elliott.

In the end, unless we are in the position to be able to explore further with the people who are allegedly making these claims the reasons why they are making claims and provide alternative advice to the Government and the Minister, it leaves the Government in a difficult position as to how we can explore that claim. All I can say is that the advice that is provided to the Government is contrary to the advice which the Hon. Mr Elliott claims to have received from senior officers of ETSA. The circumstances that he has outlined are unlikely to occur and, therefore, there will be the capacity to continue the good work that ETSA has already commenced in this important area.

The Hon. M.J. ELLIOTT: I did not make those comments lightly. The information I was given was not as a consequence of political lobbying, either. I happened to be in discussion in quite a different context with these people and, amongst other things, we talked about this. I want to make one point quite clear: these people did not raise it in a political context. They were very matter of fact about it. They said, 'There is no doubt that this is what will end up happening.'

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: It simply will not be competitive in some regards. Logic will tell you that, if you compare the Yallourn operation with the operation at Port Augusta-Leigh Creek, Yallourn has a rotating excavator, a huge thing, which on site strips it from the face, puts it on a belt and delivers it straight to the boilers. We have a deposit which is much more difficult to mine. There are many difficulties at Leigh Creek. We load it into a train and take it huge distances to another power station. That process in itself tells you that Port Augusta logistically has enormous disadvantages, no matter how hard we try to make it work efficiently. I have no doubt that within the constraints available it is probably running a very efficient operation.

The logic of it tells you this, despite the fact that both operations are appalling sources of energy. The brown coal that they both use is not particularly good and, from an environmental perspective, it is absolutely disastrous. A simple understanding of the mining and generation operations would tell you that Yallourn would be able to blow Port Augusta-Leigh Creek out of the water any time it likes in terms of the cost of the generation of power. Of course, you also need to recognise that what they are generating is baseload power. Gas turbines can be switched on and off. You do not turn the coal operations on and off. There is no doubt that the Port Augusta operation will be at a significant disadvantage to Yallourn.

The Hon. R.I. Lucas: If that is a compromise, do you argue that this Bill makes it worse?

The Hon. M.J. ELLIOTT: No, what I am saying is that I was asking the question in the context of we are saying, 'Yes, we are willing to spend money on renewable energy resources.' As things currently stand with ETSA as a standalone operation, in the absence of that direct competition from Yallourn, ETSA can say, 'We will spend a certain amount on renewable energy research because we think it is worth doing,' but if you are in direct competition with somebody else who is under-cutting you in price, that obviously has an effect on your bottom line. It could actually have quite a disastrous effect on your bottom line to the extent you will sit there and say, 'We would like to do some renewable energy research; we simply do not have the money to do it.' Even though theoretically legislation says that they will do so, they will not do it. That is not a criticism. That will be an economic reality.

The Hon. R.I. Lucas: What is the point you are making?

The Hon. M.J. ELLIOTT: The point I am making is that the Government has said that it will agree to this being incorporated in the legislation, but what I am saying is that the final impact of the legislation is that it will not actually happen.

The Hon. R.I. LUCAS: I was not really clear on the point the Hon. Mr Elliott was making in that what we are saying is that here is something which the Government agrees is worth doing. We are supporting the amendment being moved by his colleague the Hon. Ms Kanck. We are not opposing it; we are supporting it. We are saying this is your intention. The Hon. Mr Elliott then outlines the cost problems that Port Augusta has vis-a-vis Yallourn and other generators. I would have thought that if that was correct—and I am clearly not the expert in this area—that is a problem that exists at the moment irrespective of whether the legislation passes or whether the amendment of his colleague the Hon. Ms Kanck passes. If that is a problem, that is something that the Electricity Corporation will have to confront at some stage. I do not see the passage of the legislation, or the support by the Government of the amendment, will create a problem in any way. In fact, the Government will clearly argue that the corporation will make the enterprise a more efficient generator and hopefully reduce its costs and enable it to compete against other producers in the marketplace. That is for the future, and that is why the legislation has been moved and, I understand, is being supported by Parties in this Chamber and during this debate.

As I said, the Government, in an attempt to be reasonable, in relation to this and to compromise, was prepared to accept the amendment being moved by the Hon. Ms Kanck. I do not know whether there is much more we can do. I acknowledge the views that the Hon. Mr Elliott has, although I do not accept them. I do not know whether in the Committee stage he and I are going to be able to resolve a differing opinion as to whether or not there will be the money there in the future to do this.

The Hon. R.R. ROBERTS: I do not want to prolong this, but this does have a very important part to play in power generation in South Australia. From my own experiences in northern South Australia, one of the very important things we are talking about here is not necessarily research into renewable energy to go into the main grid that will be interconnected with Victoria. One of the problems you have got is transmission costs. That is where the high costs are, and the voltage drop with transmitting over large distances.

The amendment of the Hon. Sandra Kanck requires ETSA to look at renewable sources of energy. Therefore, we would be talking about systems that would provide energy sources, particularly in some of the more remote areas. Whether the electricity is generated at Port Augusta, Torrens Island or interstate, the cost of building the transmission lines and the energy losses over those long transmission distances make the equation much more complicated. I think it is extremely important that this function is developed by ETSA so we can provide on site, not necessarily in the grid, because, at the end of the day, the South Australian Government is responsible for regional development or development of our State's resources.

I think this is extremely important. I think the Hon. Sandra Kanck ought to be commended for making sure that this commitment is written into the legislation because, even with the adjunct of being able to tap into the Eastern States, we will still have those responsibilities in the northern parts of our State. We have all heard the reports this morning about a proposed mine in the north of the State and a power station. Well that power station obviously will not necessarily be renewable energy, but these are the sorts of things that are being investigated. Some of the landmarks in Coober Pedy these days are the wind generated power things.

I do not believe we need to worry about these, but I think we need to recognise the importance and the potential of this clause going into the legislation. Without any further ado, the Opposition will be supporting the amendment.

The Hon. T. CROTHERS: I think this is a research and development amendment. Has it been accepted by the Government?

The Hon. R.I. LUCAS: Yes.

The Hon. M.J. ELLIOTT: I will use this clause as my opportunity to participate in the debate, but I do not intend to buy into every clause. When I raised that issue before I clearly was not criticising the amendment or the Government; I really wanted to get into this whole question, first, of renewable energy research, not just in the context of this clause and the legislation but in the context of the whole change we are seeing in energy delivery in Australia.

I would not disagree with the comments made by the Hon. Ron Roberts, either, but make the point I make is that the Hilmer report and various things that have grown from it will have a whole lot of consequences because of its narrow economic focus, and one is that Australia is likely to do a lot less work in the area of energy research. One of the leading areas in which energy research was happening previously was in the various State energy instrumentalities. Victoria was doing a huge amount of work, but Kennett has stopped that since he got in and has been gearing up the electricity people there for corporatisation and privatisation as part of the national scheme.

Energy research, at least through the old State instrumentalities, is likely to dry up, despite the best intentions in the world of all political parties. When you see that in the context that the Federal Government is increasingly reluctant to give money for pure research to such places as the CSIRO and other bodies likely to do that work, it means that renewable energy research in Australia, which already by world standards is low, is likely to diminish. I make those comments not just in relation to the amendment but in the context of what is happening in electricity generation nationally. The legislative changes in part are a reaction to that.

I will use this clause to explore a couple of other things and then I will not participate in debate on any other clause. It appears that there will be some significant economic losses as well in following the current approach. Even if one accepts privatisation, it is worth looking at what has happened in the United States where private utilities supply particular areas and individual companies are finding that they can decrease the cost of electricity and increase their profits by not getting caught in the trap of building further power stations because one of the biggest costs of electricity generation is the construction of the power station itself. So, the longer you can supply your customers from existing generation infrastructure, the cheaper electricity gets and the better the profits get.

That is so true in the United States that you find that individual utilities there are paying people to install energy conservation devices, to insulate their homes and so on, which is a partner to the whole concept of renewable energy. Here we have private instrumentalities increasing profit and decreasing costs for consumers by not getting caught in the

trap of building further stations. What is likely to happen in the Australian context as we go into privatisation, particularly the national grid, is that whoever builds the most recent power station will be able to deliver the cheapest power, so there will be an incentive to build new power stations. Whoever builds the latest power station will be making good profits, but what does it mean for the overall economy of Australia?

It means that there has been a massive investment not only in the most recent power station but also in all other power stations. There is an increasing pressure to continue building stations, so that you have the most recent station, which may be more efficient in terms of the cost at which it can generate a particular quantity of electricity but it does not recognise the fact that the economy as a whole has paid for all the other generating infrastructure that is sitting there unused but is suddenly uncompetitive.

The short term apparent economic gain is creating a much larger cost for the overall economy. Long term there will be no incentive to save energy and there is an incentive to put in more and more generating power which, at the end of the day, the whole community will pay for indirectly. They will not pay for it directly through the cost of electricity, but the cost of all existing infrastructure that will be either under-utilised (or we will be encouraged to use more electricity rather than less) will be an ultimate cost. There is a great deal of economic fallacy in the idea of setting up a national network and encouraging individual generators to plug in and supply electricity, and whoever supplies it the cheapest will create a benefit for us all. It will not create an overall benefit for the economy because all the other generating infrastructure will be paid for one way or another.

I have grave concerns that the direction we have taken will be both economically and environmentally very damaging for us both as a State and as a nation. It is deeply disappointing that people get trapped by rhetoric and people even get economics degrees based on rhetoric, and the current generation of economists are doing us a grave disservice. We are seeing some of that in the fact that we are debating this legislation at this stage.

The Hon. T. CROTHERS: I was not going to enter the debate, but I feel that I must. I listened carefully to the contribution of the Hon. Mr Elliott and, whilst he and I agree that the amendment should go in, we differ somewhat as to why. I believe it is essential to the Bill, and I commend the Hon. Ms. Kanck for moving it. I commend the Government and Minister Olsen in another place for the manner in which they, and the Leader in the Council, have handled this delicate Bill. They have listened to people, not totally but more so than is the case normally when Governments and Oppositions differ. I commend them for that and I am pleased that they have accepted the amendment.

However, there is a plethora of reasons, not only environmental, as to why this amendment has to go in. Let me try to enumerate them. Victoria at the moment is sitting on something like 500 kilowatts of electricity generating capacity more than it needs, even at peak. That is likely to be the case for a number of years. It can only but supply South Australia's needs at peak. My fear lies in the Hilmer report, which is why we have to keep up research and development here as well as matters environmental. In addition to that, to further flesh out that necessity, we have the position where we have what is described, either currently at Leigh Creek or in other deposits that have since been found, some of the worst chemically composed coal in the world with respect to its capacity to generate electricity for South Australia's needs as cheaply as better grade coal.

That, in my humble view, makes us the State worst placed at this point in technical time with respect to being able to compete with the other States where they have coal grades that are bituminous, much more clean, capable of producing more power per tonne of coal burned and consumed, and it will not be possible on a national grid for us to compete effectively most of the time and to get us down to a price level that will put us in a position where it will be just as cheap for us to produce our own electrical generation as it would be if we did not have a power station here and brought all of our stuff, if possible, from the eastern States, assuming that the national grid is hooked up by 1 July 1995. I have the suspicion it may be somewhat later.

There are plentiful supplies of coal, both in Victoria and in New South Wales, to get an ongoing continuance of that. In addition, if Tasmania hooks into the national grid, there is plenty of surplus hydro-electrically generated power that is more than competitive with us. Western Australia has the capacity to power the generators by gas. Queensland, of course, has coal to burn. These are all better grade coal than we have, either at Leigh Creek, Arckaringa, Bowman, Lochiel or anywhere else and, therefore, all cheaper.

If we build another power station, which would be operated by coal-fired plants, I would assume, or perhaps be capable of both burning coal and using natural gas, it would cost $1 billion. Again, if the necessity arose for us to build that, which it will in about the year 2003 by current projected demand statistics, then we will be in a position of having our energy costing us even more to produce than it does currently. My fear is that fear which lies in the other national matter to which are a party—and, in my view, it runs parallel to this—that is, the Murray River, to which I referred in an earlier contribution. We see Queensland, New South Wales and Victoria particularly doing what they like, almost certainly aided and abetted by the Federal Government of the day, whether it be Labor or Liberal. That is because in a Federal election South Australia does not have much to offer to the Federal Labor Party or the Federal Liberal Party. We have 11 or perhaps 12 Federal seats. It is New South Wales, Victoria and Queensland where Federal elections will be won or lost.

So, I believe it is essential for us to have a fall-back position whereby we can produce electricity at a cost at least competitive enough for us to attract industry into this State so that we can ensure that, in as maximum a fashion as possible, we can provide employment for our population. Even at our low rate of growth, over the past five years we expanded by 68 000. Nonetheless, in the age of the two-income family, that still means that South Australia has to produce almost 14 000 new jobs per year in order to employ gainfully the population for which we are responsible.

I believe that that is the reason, more than anything else, for the Federal Government, with this national grid development, getting its dirty big toe into the national grid bath water—and it will. It does not matter whether it is Keating or Downer who is in power: we will still be the little fly at the bottom of the bottle. Electorally, in the Federal sense—and this is the pragmatics of it—in general terms we count for nothing. It is Queensland with its population of three million, it is New South Wales with its population of 6.5 million and it is Victoria with its population of 4.5 million against our 1.52 million people that will benefit. It is for those States that Federal Governments, of whatever political colour, will

endeavour to engineer themselves into a position where it appears that they are giving more out of the Federal purse.

So that is my fear. If the national grid gets up and running, I do not think there is less reason for us to spend money on research and development. I think there is a greater reason. With our vastness and the capacities that we have already seen happen down at Flinders University and at Adelaide University in respect of solar research, we must keep that going. In addition, I might add in conclusion, a Frenchman has recently developed a better way to entrap solar rays; he is doing it with glass tubes. It is at such a stage where I understand that money is now being sought to build a 500 kilowatt power station in the United States, powered solely by that. As I understand it, the system is 12 times more efficient than the current method of using solar mirrors and silicates to produce the solar mirrors in respect of solar powered electrical generation.

We have to be at the forefront of all of that because we have massive distances to traverse. We have small centres of 4 500 and 5 000 people that are many hundreds and, indeed, in some cases thousands, of kilometres from our sources of power. We have to be developing matters both macro and micro in respect of the better capacity to develop other ways and means of power generation. I support the amendment and I commend Ms Kanck on moving it, not only for matters environmental but also, and even more importantly than that in my view, for the matters that I have outlined to the Council in my contribution. I again commend Minister Olsen in another place—I think he is still there—for the manner in which he has handled the Bill, and I commend the Leader in this place for the manner in which he has ably represented the Minister.

The Hon. A.J. Redford interjecting:

The Hon. T. CROTHERS: I do not needed any 'Hear, hears' from the Hon. Mr Redford. There are no second prizes in these debates, you know. But I commend them on this occasion. No doubt there will be other occasions when my comments will be not so commendable. However, where commendation is due, then give it by all means, and when you have to criticise then your criticism has more validity and is more genuine. For those reasons, I support the amendment. I do not think it is necessary to have too much more debate, even from the mover, the Hon. Ms Kanck. I commend the amendment to the Council.

The Hon. SANDRA KANCK: I thank all the speakers for their support of this amendment. My colleague the Hon. Mr Elliott made the point that even if we put it in it might not make a difference. That is possibly true, but at least if it is in there it gives us some stick to be able to go back to the Government and to the electricity generation corporation, when it exists and ask, 'Why aren't you doing it?' Maybe the Government will turn around and say, 'It wasn't our fault: it was the Hilmer report.' Then we might have the pyrrhic victory of being able to say, 'We told you so.'

Amendment carried; clause as amended passed.

Clause 6 passed.

Clause 7—'Interpretation—Electricity distribution functions.'

The Hon. SANDRA KANCK: I move:

Page 3, line 8—Before 'advising' insert 'carrying out research and works directed towards energy conservation and actively encouraging,'.

This is along the same lines as the amendment to clause 5. Again, it is important to have this up-front commitment written into the functions of the electricity distribution aspect of the corporation.

The Hon. R.I. LUCAS: For the same reason, the Government supports the amendment.

Amendment carried; clause as amended passed.

Clauses 8 to 13 passed.

Clause 14—'Establishment of board.'

The Hon. R.R. ROBERTS: I move:

Page 5, lines 14 and 15—Leave out these lines and insert—

(2) The board consists of—

(a) four members appointed by the Governor; and

(b) the chief executive officer.

This is a simple amendment dealing with the construction of the board. It requires that there be four members appointed by the Governor, the other being the chief executive officer. This is mirrored by an amendment proposed by the Hon. Sandra Kanck. I understand that discussions have been taking place and I think there is broad agreement.

The Hon. SANDRA KANCK: I have the same amendment, and I asked that it be prepared because I was concerned, as I mentioned yesterday, at these very top-heavy structures that were starting to emerge with a board of seven members for each part of the corporation, and a CEO. This makes it slightly leaner and, therefore, in terms of what the Government is asking for, slightly more efficient.

The Hon. R.I. LUCAS: The Government's preferred position was as outlined in the Bill, that is, for a board of somewhere between five and seven. However, again in the interest of seeing the Bill through and in a spirit of reasonableness and compromise, as evidenced by the Minister in charge of the Bill (Hon. John Olsen) who, in the discussions, has indicated that he is prepared to compromise on this issue, the Government is prepared to support this amendment.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 5, after line 18—Insert—

(3a) At least one member of the board must be a woman and one a man.

This amendment is one that the Hon. Anne Levy has moved on numerous occasions when any corporations and boards are being set up. In her absence, I have pleasure in moving the same amendment.

The Hon. R.R. ROBERTS: I am happy to support the amendment on behalf of the Australian Labor Party. It falls in line with our policy and is consistent with what we were trying to do in Government: to see that there is participation by gender in all areas of administration within government. I am happy to support it and request that the Government consider doing the same thing.

The Hon. R.I. LUCAS: The Government would not generally support these sorts of provisions in legislation such as this, I am told. The Government has a policy of ensuring that we a appoint as many capable men and women as we can to boards, and of trying to ensure reasonably equal gender representation on Government boards and authorities. That is the Government's preferred course of action, although I have not had a chance to speak with the Minister in relation to this aspect. This escaped my eye when looking at the amendments. However, I acknowledge that the numbers in the Chamber are sufficient to ensure passage of this provision. Whilst it travels between here and another place I will have a discussion with the Minister.

I guess that our position would be that, if this is the one remaining issue of difference of opinion between the parties, it is unlikely to mean deadlock conferences and the like. On

that basis, I indicate my broad understanding of the Government's position. I acknowledge the numbers, and I will have a discussion with the Minister after the Bill leaves this Chamber and before it is discussed in the House of Assembly.

Amendment carried.

The Hon. R.R. ROBERTS: I move:

Page 5—
Line 19—After 'director' insert '(who must not be the chief executive officer)'.
Line 20—After 'director' (first occurring) insert '(who must not be the chief executive officer)'.
Line 23—Leave out 'a director' and insert 'an appointed director'.

These amendments are reasonably self-explanatory.

The Hon. R.I. LUCAS: They are consequential, and thus accepted.

Amendments carried; clause as amended passed.

Clause 15—'Conditions of membership.'

The Hon. R.R. ROBERTS: I move:

Page 5—
Line 29—Leave out 'a director' and insert 'an appointed director'.
Line 30—Leave out 'a director' and insert 'an appointed director'.
Line 32—Leave out 'a director' and insert 'an appointed director'.

These amendments are of a consequential nature.

Amendments carried; clause as amended passed.

Clause 16 passed.

Clause 17—'Remuneration.'

The Hon. R.R. ROBERTS: I move:

Page 6, line 9—Leave out 'A director' and insert 'An appointed director'.

This amendment falls into the same category.

Amendment carried; clause as amended passed.

Clause 18—'Board proceedings.'

The Hon. R.R. ROBERTS: I move:

Page 6, lines 12 and 13—Leave out 'one-half the total number of its members (ignoring any fraction resulting from the division) plus one' and insert 'three members'.

This is also consequential.

Amendment carried.

The Hon. R.R. ROBERTS: I move:

Page 6, line 20—After 'director' insert '(who must not be the chief executive officer)'.

This amendment also would be consequential.

Amendment carried; clause as amended passed.

Clauses 19 to 27 passed.

Clause 28—'Establishment of board.'

The Hon. R.R. ROBERTS: I move:

Page 9, lines 20 and 21—Leave out these lines and insert—
(2) The board consists of—
(a) four members appointed by the Governor; and
(b) the chief executive officer.

This reflects the clause 14 amendments.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 9, after line 24—Insert—
(3a) At least one member of the board must be a woman and one a man.

This is the same argument as for the previous amendment.

Amendment carried.

The Hon. R.R. ROBERTS: I move:

Page 9—
Line 25—After 'director' insert '(who must not be the chief executive officer)'.
Line 26—After 'director' (first occurring) insert '(who must not be the chief executive officer)'.
Line 29—Leave out 'a director' and insert 'an appointed director'.

Amendments carried; clause as amended passed.

Clause 29—'Conditions of membership.'

The Hon. R.R. ROBERTS: I move:

Page 9—
Line 35—Leave out 'a director' and insert 'an appointed director'.
Line 36—Leave out 'a director' and insert 'an appointed director'.
Page 10, line 1—Leave out 'a director' and insert 'an appointed director'.

Amendments carried; clause as amended passed.

Clause 30 passed.

Clause 31—'Remuneration.'

The Hon. R.R. ROBERTS: I move:

Page 10, line 13—Leave out 'A director' and insert 'An appointed director'.

Amendment carried; clause as amended passed.

Clause 32—'Board proceedings.'

The Hon. R.R. ROBERTS: I move:

Page 10—
Lines 16 and 17—Leave out 'one-half the total number of its members (ignoring any fraction resulting from the division) plus one' and insert 'three members'.
Line 24—After 'director' insert '(who must not be the chief executive officer)'.

These amendments are a reflection of earlier clauses and are therefore consequential.

Amendments carried; clause as amended passed.

Clauses 33 to 41 passed.

Clause 42—'Establishment of board.'

The Hon. R.R. ROBERTS: I move:

Page 13, lines 20 and 21—Leave out these lines and insert—
(2) The board consists of—
(a) four members appointed by the Governor; and
(b) the chief executive officer.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 13, after line 24—Insert—
(3a) At least one member of the board must be a woman and one a man.

Amendment carried.

The Hon. R.R. ROBERTS: I move:

Page 13—
Line 25—After 'director' insert '(who must not be the chief executive officer)'.
Line 26—After 'director' (first occurring) insert '(who must not be the chief executive officer)'.
Line 29—Leave out 'a director' and insert 'an appointed director'.

Amendments carried; clause as amended passed.

Clause 43—'Conditions of membership.'

The Hon. R.R. ROBERTS: I move:

Page 13—
Line 35—Leave out 'a director' and insert 'an appointed director'.
Line 36—Leave out 'a director' and insert 'an appointed director'.
Page 14, line 1—Leave out 'a director' and insert 'an appointed director'.

Amendments carried; clause as amended passed.

Clause 44 passed.

Clause 45—'Remuneration.'

The Hon. R.R. ROBERTS: I move:

Page 14, line 13—Leave out 'A director' and insert 'An appointed director'.

Amendment carried; clause as amended passed.

Clause 46—'Board proceedings.'

The Hon. R.R. ROBERTS: I move:

Page 14—

Lines 16 and 17—Leave out 'one-half the total number of its members (ignoring any fraction resulting from the division) plus one' and insert 'three members'.

Line 24—After 'director' insert '(who must not be the chief executive officer)'.

Amendments carried; clause as amended passed.

Remaining clauses (47 to 49), schedules and title passed.

Bill read a third time and passed.

[Sitting suspended from 5.57 to 7.45 p.m.]

THOMAS HUTCHINSON TRUST AND RELATED TRUSTS (WINDING UP) BILL

Adjourned debate on second reading.

(Continued from 29 November. Page 993.)

The Hon. R.R. ROBERTS: I rise to make a brief contribution on this matter. This Bill, which talks about trusts and testamentary dispositions, has in the past been handled with a fair degree of bipartisanship. I take particular interest in this matter because I was a member of a select committee that dealt with this area. What we felt would be a very brief exercise turned out to be a matter of great concern in particular to people with relatives who have made dispositions to charitable organisations. That prompted me to read the Bill, and I support the referral of this matter to a select committee. I note that the trustees were advised originally that the terms of the will do contemplate benefiting any other public hospital which may be established in or near Gawler and would enable the trustees to apply income from the proceeds of the sale of the old Hutchinson Hospital towards the new hospital but not the proceeds themselves.

The legal opinion sought by the trustees also pointed out that the application of the proceeds of the sale of the old hospital buildings once and for all towards the cost of the new hospital could be done only pursuant to the authority of the court either under section 59b of the Trustee Act or in the exercise of the court's jurisdiction in respect of charitable trusts, and the result could also be achieved by an Act of Parliament. The Crown Solicitor agreed with that opinion and pointed out that the trustees could apply income derived from the proceeds of the sale of the existing hospital for the benefit of the new hospital. What is being suggested is that the buildings on the estate ought to be sold and, in the case of the Thomas Hutchinson Trust, all moneys except for costs incurred from outstanding debts should then be given over to the South Australian Health Commission. It is suggested that they be applied towards the cost of the buildings and the commissioning of the new Gawler Health Service, and it is stated that the Gawler Health Service wishes to retain the residence of the Director of Nursing.

So, what is being suggested in the case of the Thomas Hutchinson Trust is that it go to the South Australian Health Commission not directly to a hospital established in the Gawler area, which was the wish of Thomas Hutchinson when he made this bequest. The Bill goes on to refer to a further five trusts: the James Commons Trust; the John Alfred Dingle Trust; the Lydia Helps Trust; the Ann Magarey Trust; and the John Potts Trust. Whilst there is some explanation in respect of the Thomas Hutchinson Trust, there is very little explanation in respect of the other trusts, three of which are to benefit directly the Thomas Hutchinson Hospital and the other two the Gawler Health Service as is now proposed (or the Hutchinson Hospital as it was) and the Women's and Children's Hospital.

When we read the body of the Bill, we see that, under his will dated 4 August 1936, John Alfred Dingle who died on 15 April 1994 established a trust, the income of which was to be paid to the Hutchinson Hospital for the benefit of destitute patients. It is difficult to see how we can combine all these trusts in an Act, and I do not see at this stage any recommendations from the trustees of those five trusts that this action ought to be taken. I think it is important for the Parliament to protect the wishes of those people who, for the best of reasons, make charitable donations and leave instructions for their wishes to be carried out. In fact, what tends to happen over time is that the original wishes become lost.

I support the establishment of a select committee to look into this matter and to provide an opportunity for the descendants of those people who have made dispositions to what they believed was to be the Thomas Hutchinson Trust and the Adelaide Children's Hospital to have those moneys distributed to and used by the Gawler Health Service as close as possible to the method they proposed.

I have some trouble coming to terms with the proceeds of the building of what was originally the Hutchinson Hospital being just transferred to the Health Commission. My interpretation of what Thomas Hutchinson was saying is that it needed to be for the benefit of a health service particular to Gawler. What is being applied for here is the raising of moneys to offset the cost of building the public hospital on a different site and maintaining some of the proceeds of this bequest by Thomas Hutchinson—they are not to be sold but to be retained, and the income is not to be spent. If we look at what was intended by Thomas Hutchinson and by others who have left testamentary dispositions to the Thomas Hutchinson Trust and indeed any other testamentary dispositions which may be outstanding, it is incumbent upon this Parliament to ensure that, as far as we possibly can, the wishes of all those people are complied with. In the past, we have been able to handle these matters very much on a bipartisan basis. As I have said, it has always been to the credit of the Hon. Mr Griffin in these matters that he has taken a view similar to my own, namely, that it is imperative that the wishes of people who leave bequests to charitable organisations to be done in perpetuity, in so far as it is possible for a Parliament to oversee and ensure that that occurs, are granted. I support the motion that this Bill ought to be considered by a select committee of this Council and make myself available to sit on that select committee to ensure as far as possible people with an interest in these matters have the opportunity to put their views before the Parliament. I support that proposition.

The Hon. K.T. GRIFFIN (Attorney-General): I appreciate the indication of support from members in relation to the second reading of this Bill. As I indicated in my second reading speech, the Government's view is that the matter ought to be examined by a select committee. Even in Opposition I took the view that, if we were trying to change charitable trusts or other trusts by Act of State Parliament, it was incumbent upon us to ensure that those who may have an interest in it at least have an opportunity to put a point of view to a select committee. I can remember one instance

which related to Carrick Hill, where the select committee did not support what was being proposed by the Government of the day in relation to the selling of certain land, which was the subject of a trust and which required the amendment of the trust to enable that to occur.

So, there is value in it. There have been a number of these over the years. In exceptional cases, select committees may have been dispensed with but they are rare. Even in relation to shipwrecked mariners, last year there was a select committee, but it met fairly quickly to deal with the issues. So, the general convention is for a select committee to be established. I would certainly envisage that, if we establish the select committee, there be an advertisement, and relevant persons in the Gawler area are contacted about it so that, if anyone does have any concerns about the Bill, they can be expressed to the select committee with a view to having the matter resolved after the recess when Parliament resumes in February.

Bill read a second time.

The PRESIDENT: This Bill is a hybrid Bill which must be referred to a select committee pursuant to Standing Order 268.

Bill referred to a select committee consisting of the Hons. K.T. Griffin, J.C. Irwin, R.D Lawson, R.R. Roberts and G. Weatherill.

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

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

Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

Motion carried.

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

That this Council permits the select committee to authorise the disclosure or publication as it thinks fit of any evidence presented to the committee prior to such evidence being reported to the Council; that Standing Order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves but they shall be excluded when the committee is deliberating; that the select committee have power to send for persons, papers and records; to adjourn from place to place; and to report on 8 February 1995.

Motion carried.

NATIONAL ENVIRONMENT PROTECTION COUNCIL (SOUTH AUSTRALIA) BILL

Second reading.

The Hon. DIANA LAIDLAW (Minister for Transport): I move:

That this Bill be now read a second time.

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

Leave granted.

The National Environment Protection Council (South Australia) Bill is an important landmark in the history of environmental protection in South Australia and Australia. It marks the commitment of the Commonwealth and the States and Territories to work co-operatively to develop national environment protection measures.

These measures aim to give all Australians the benefit of equivalent environmental protection and to ensure that investment decisions by business are not distorted by inappropriate variations in environmental standards between Australian jurisdictions (or so called pollution havens).

Establishment of the National Environment Protection Council and development and mandatory implementation of national environment protection measures are part of the Intergovernmental Agreement on the Environment to which the State of South Australia is a signatory.

The signing of the Intergovernmental Agreement in 1992 represented an important turning point in Commonwealth/State relations in the field of environmental management.

The objects of the Intergovernmental Agreement bear repeating. It provides a framework to facilitate:

- a co-operative national approach to the environment;
- a better definition of the roles of the respective governments;
- a reduction in the number of disputes between the Commonwealth, the States and Territories on environmental issues;
- greater certainty of Government and business decision-making;

and importantly:

- better environmental protection through the integration of environmental considerations into the decision-making processes of all governments, at the project, program and policy levels.

The National Environment Protection Council (South Australia) Bill is part of a package of complementary State and Commonwealth legislation to give effect to Schedule 4 of the Intergovernmental Agreement. For ease of reference, the text of the Intergovernmental Agreement is included as Schedule 1 of the Bill.

The Commonwealth *National Environment Protection Council Act 1994* was assented to on 18 October. The Queensland Act was assented to on 14 September and the Northern Territory legislation was passed on 23 November. Other States and Territories (except Western Australia) are expected to introduce mirror legislation later this year or early next year. The Bill before the House establishes the National Environment Protection Council, a Ministerial Council drawn from all participating States, Territories and the Commonwealth.

Although a signatory to the Intergovernmental Agreement, the Western Australian Government has indicated that it will not be participating in the Council at this stage. While this does not invalidate the national scheme, automatic application of national environment protection measures in Western Australia will not be guaranteed.

The Ministerial Council will be empowered to make national environment protection measures which, through complementary implementation legislation, will apply as valid law in each participating jurisdiction.

The National Environment Protection Council may make measures in relation to:

- ambient air quality;
- ambient marine, estuarine, and freshwater quality;
- noise, related to protecting amenity where variations in measures would have an adverse effect on national markets for goods and services;
- general guidelines for the assessment of site contamination;
- the environmental impacts associated with hazardous wastes;
- motor vehicle emissions, and
- the reuse and recycling of used materials.

National environment protection measures may be a combination of goals, guidelines, standards and protocols.

Simply, goals are the desired outcomes; guidelines are the means of meeting these outcomes; standards are the quantifiable characteristics against which environmental quality is assessed; and protocols are the processes for measuring environmental characteristics to determine whether desired outcomes are being achieved.

Consistent with the principles of ecologically sustainable development, and to ensure simplicity and effectiveness of administration, the Council must develop measures through a public consultative process having regard to a number of factors as specified in the Bill. Important among these is the need to have regard to regional environmental differences.

This will ensure that proper account is taken of the different properties of air, water and land across the diversity of Australian environments in the setting of environmental goals, standards and guidelines.

In addition, the process will have regard to environmental and social impacts of the measure and whether it is the most effective means of achieving the desired environmental outcome.

In making a final decision on a measure, the Council must have regard to an impact statement relating to the measure, the public submissions received and to advice from a Committee of State and Commonwealth officials.

Decisions by the Council, which is chaired by the Commonwealth, will be by a two thirds majority. The Commonwealth is thus

one of seven or eight members under current arrangements, and does not have a casting vote.

Through the Intergovernmental Agreement, South Australia, like other States and Territories, is required to introduce complementary legislation for the application of national environment protection measures made by the Council.

South Australia will implement NEPMs through the *Environment Protection Act 1993*. The amendments to the *Environment Protection Act* allow for the national environment protection measures, made by the Council, to become State environment protection policies.

As incorporated in Schedule 4 of the Agreement, a national environment protection measure (or a variation or revocation of such a measure) agreed to by the Council may be disallowed by either House of the Commonwealth Parliament.

If not disallowed by either House of the Commonwealth Parliament, the measure will then apply automatically in each participating jurisdiction.

As provided by the Agreement, the measures adopted by the above procedures do not prevent South Australia from introducing or maintaining more stringent measures to reflect specific circumstances or to protect special environments within the State. This is provided for in the amendments to the *Environment Protection Act*.

As well as making national environment protection measures, the Council has an important role to play in reporting annually to Parliaments of all participating jurisdictions on its activities, and its overall assessment of the implementation and effectiveness of national environment protection measures in all participating jurisdictions.

The Council will be assisted by a statutory Committee of Commonwealth and State officials (the National Environment Protection Council Committee) and by a small secretariat staffed by public servants, established as a separate service corporation and accountable to the Council. The Australian Local Government Association, as a signatory to the IGAE, will be represented on the Committee.

It is not proposed to create a substantial new bureaucracy for the development of national environment protection measures. Rather, the Council secretariat will draw upon work being carried out in existing environmental agencies throughout Australia.

The cost of establishing the Council and developing measures will be shared between the Commonwealth and State Governments on a 50-50 basis, with States contributing on the basis of population.

The introduction of this Bill is an important step in the process of developing harmonious environmental law in Australia. The National Environment Protection Council will provide the means whereby South Australia can work in partnership with the Commonwealth and the States and Territories to share expertise, resources and decision-making to benefit environmental protection in South Australia and across Australia.

I commend this Bill to the House.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement of the measure on a day fixed by proclamation.[1]

Clause 3: Object of Act

This clause provides that the object of the measure is to ensure that, by means of the establishment and operation of the National Environment Protection Council—

- people enjoy the benefit of equivalent protection from air, water or soil pollution and from noise, wherever they live in Australia; and
- decisions of the business community are not distorted, and markets are not fragmented, by variations between participating jurisdictions in relation to the adoption or implementation of major environment protection measures.[2]

Clause 4: Act to bind Crown

This clause provides for the measure to bind the Crown in right of the State and also, so far as the legislative power of the State permits, the Crown in all its other capacities.

Clause 5: Interpretation

This clause provides for expressions used in the Commonwealth Act to have the same meaning when used in this measure.

Clause 6: Definitions

This clause contains definitions and interpretation provisions.

Clause 7: Implementation of national environment protection measures

This clause provides that it is the intention of this Parliament that the State will, in compliance with its obligations under the Intergovernmental Agreement implement, by such laws or other arrangements as are necessary, national environment protection measures in respect of activities that are subject to State law (including activities of the State and its instrumentalities).[3]

PART 2

ESTABLISHMENT AND MEMBERSHIP OF THE NATIONAL ENVIRONMENT PROTECTION COUNCIL

Clause 8: The National Environment Protection Council

This clause establishes the National Environment Protection Council ("the Council").[4]

Clause 9: Membership of the Council

This clause provides that the Council consists of Ministers from each participating jurisdiction, that is, one from the Commonwealth and one from each of the participating States and Territories. The Prime Minister, State Premiers and Chief Ministers each nominate a Ministerial member and may replace that member at any time.[5]

Clause 10: Chairperson of the Council

This clause provides that the Ministerial member from the Commonwealth is the Chairperson of the Council.[6]

Clause 11: Deputies

This clause provides that the Prime Minister, State Premiers and Chief Ministers may each nominate a Minister to be the deputy of the Minister nominated by them to be a member of the Council.

PART 3

FUNCTIONS AND POWERS OF THE COUNCIL

DIVISION 1—FUNCTIONS AND POWERS

Clause 12: Functions of the Council

This clause provides that the functions of the Council are to make national environment protection measures and to assess and report on their implementation and effectiveness in participating jurisdictions.

Clause 13: Powers of the Council

This clause empowers the Council to do all things necessary or convenient to be done for or in connection with the performance of its functions, and, in particular, to consult with appropriate persons and bodies, relevant Commonwealth, State and Territory bodies and the Australian Local Government Association, to obtain advice and assistance from the NEPC Committee and other committees established by the Council, to undertake or commission research, to publish reports relating to its functions and powers and to provide information to the public.

DIVISION 2—MAKING OF NATIONAL ENVIRONMENT PROTECTION MEASURES

Clause 14: Council may make national environment protection measures

This clause authorises the Council to make national environment protection measures[7] relating to ambient air quality, ambient water quality, the protection of amenity in relation to noise, site contamination, environmental impacts associated with hazardous wastes, or the re-use and recycling of used materials. The Council may also, in conjunction with the National Road Transport Commission, develop measures relating to motor vehicle noise and emissions.[8]

Clause 15: General considerations in making national environment protection measures

This clause provides that in making any national environment protection measure, the Council must have regard to whether the measure is consistent with the Agreement, the environmental, economic and social impact of the measure, the simplicity and effectiveness of the administration of the measure, the most effective means of achieving the desired environmental outcome, the relationship of the measure to existing inter-governmental mechanisms, relevant international agreements to which Australia is a party and any regional environmental differences in Australia.[9]

Clause 16: Council to give notice of intention to prepare a draft of proposed measure

This clause requires the Council, before making a national environment protection measure, to give notice of its intention to prepare the measure by advertisement in the Commonwealth Gazette and in a newspaper circulating in each State and Territory.

Clause 17: Council to prepare draft of proposed measure and impact statement

This clause requires the Council to prepare a draft of the proposed measure together with an impact statement which includes a

statement of the desired environmental outcomes, the reasons for the proposed measure and the reasons why alternative methods of achieving the desired outcome have not been adopted, an identification and assessment of the economic and social impact of the proposed measure, the manner in which any regional environmental differences have been addressed and the intended date for making the measure. The statement must also include any proposed transitional arrangements and timetable for the implementation of the proposed measure.[10]

Clause 18: Public consultation

This clause requires the Council to publish a notice in the Commonwealth Gazette and a newspaper circulating in each State and Territory which states how a copy of the proposed measure and impact statement can be obtained and invites submissions relevant to the proposed measure.[11]

Clause 19: Council to have regard to impact statements and submissions

This clause requires the Council, when formulating measures, to take into account the impact statement relating to the measure, any submissions received in relation to the measure or impact statement, and any advice given by the NEPC Committee or a committee established by the Council.[12]

Clause 20: Variation or revocation of measures

This clause provides that a national environment protection measure may be varied or revoked by the same procedure as it is made.

Clause 21: National environment protection measures to be Commonwealth disallowable instruments

This clause provides that section 21 of the Commonwealth Act applies to national environment protection measures (and any variation or revocation of such measures). The combined effect of that section and this clause is that measures may be disallowed by either House of the Commonwealth Parliament.[13]

A measure ceases to have effect if it is disallowed or otherwise ceases to have effect for the purposes of the Commonwealth Act.

Clause 22: Failure to comply with procedural requirements

This clause provides that a failure to comply with a particular procedural requirement for making a measure will not invalidate the measure if the Council has substantially complied with the procedural requirements for the making of the measure.

DIVISION 3—ASSESSMENT AND REPORTING ON IMPLEMENTATION AND EFFECTIVENESS OF MEASURES

Clause 23: Report by Minister on implementation and effectiveness of measures

This clause requires the State Minister who is a member of the Council to report annually to the Council on the implementation of national environment protection measures in his or her jurisdiction and on the effectiveness of those measures.[14]

Clause 24: Annual report of Council

This clause requires the Council to prepare an annual report of its operations, which is to include copies of the reports submitted by the Ministerial members and an assessment by the Council of the implementation and effectiveness of national environment protection measures (having regard to the members' reports). The report is to be laid before each House of this Parliament within seven sitting days of that House after the Council has formally adopted the report.[15]

PART 4

MEETINGS OF THE COUNCIL AND ESTABLISHMENT AND MEETINGS OF ITS COMMITTEES

DIVISION 1—MEETINGS OF COUNCIL

Clause 25: Convening of meetings

This clause provides that a meeting of the Council may be convened at any time by the Chairperson or on request of at least two-thirds of the members.

Clause 26: Procedure at meetings

This clause requires the Chairperson to preside at meetings of the Council. If the Chairperson is not present at a meeting, the members present must elect one of their number to preside. The Council must keep minutes of each meeting. The Council may regulate the conduct of its meetings as it thinks fit.

Clause 27: Quorum

This clause provides for a quorum of the Council to be constituted by two-thirds of the members.[16]

Clause 28: Voting at meetings

This clause requires a decision of the Council to be supported by the votes of at least two-thirds of the members, whether present at the meeting or not. The presiding member has a deliberative vote only.

DIVISION 2—COMMITTEES OF COUNCIL

Clause 29: NEPC Committee

This clauses establishes the National Environment Protection Council Committee ("the NEPC Committee"). The NEPC Committee consists of the NEPC Executive Officer and nominees of each of the members of the Council.[17]

The President of the Australian Local Government Association may nominate a person who is entitled to attend and be heard at Committee meetings but who is not entitled to vote at such meetings.[18]

Clause 30: Chairperson of NEPC Committee

This clause provides that the nominee of the Chairperson of the Council is to be Chairperson of the NEPC Committee.

Clause 31: Procedures of NEPC Committee

This clause provides that a meeting of the NEPC Committee may be convened at the request of the Council or by the Chairperson of the Committee. The procedures to be followed at such meetings are to be determined by the Committee.

Clause 32: Functions of NEPC Committee

This clause provides that the functions of the NEPC Committee are to assist and advise the Council.

Clause 33: Other committees

This clause empowers the Council to establish other committees to assist it in developing national environment protection measures. The Council is to determine the functions, membership and procedures of such committees.

Clause 34: Withdrawal from Agreement

This clause provides that if a State or Territory withdraws from the Agreement, the member of the NEPC Committee (and of any other committee established by the Council) nominated by that party ceases to be a member of those committees. Similarly, if the Australian Local Government Association withdraws from the Agreement, the person nominated by it to attend meetings of the NEPC Committee ceases to be entitled so to attend and be heard.

PART 5

NEPC SERVICE CORPORATION, NEPC EXECUTIVE OFFICER AND STAFF

DIVISION 1—THE NEPC SERVICE CORPORATION

Clause 35: NEPC Service Corporation

This clause recognises the NEPC Service Corporation which is established as a body corporate under the Commonwealth Act.

Clause 36: Functions of the Service Corporation

This clause provides that the functions of the Service Corporation are to provide assistance to the Council, the NEPC Committee and any other committee established by the Council and to do anything incidental or conductive to the performance of those functions.

Clause 37: Powers of the Service Corporation

This clause provides that the Service Corporation has power to do all things that are necessary or convenient to be done in connection with the performance of its functions (including entering into contracts, and acquiring, holding and disposing of personal and real property, accepting gifts and acting of trustee of property held by the Corporation on trust).

Clause 38: Contracts and leases

This clause prohibits the Service Corporation, without the written approval of the Council, from entering into a contract for the payment or receipt of an amount exceeding $250 000 (or any higher amount prescribed under the Commonwealth Act) or taking any land or buildings on lease for a period exceeding three years.

DIVISION 2—THE NEPC EXECUTIVE OFFICER

Clause 39: NEPC Executive Officer

This clause provides that there is to be a NEPC Executive Officer[19] and requires the Council to appoint the Officer for a term not exceeding five years.

Clause 40: NEPC Executive Officer to control Service Corporation

This clause provides for the NEPC Executive Officer to conduct the affairs of the Service Corporation.

Clause 41: NEPC Executive Officer to act in accordance with Council directions

This clause requires the NEPC Executive Officer to act in accordance with any directions given by the Council.

Clause 42: Remuneration and allowances

This clause deals with the remuneration of the NEPC Executive Officer.

Clause 43: Leave of absence

This clause deals with the leave entitlements of the NEPC Executive Officer.

Clause 44: Resignation
This clause permits the NEPC Executive Officer to resign his or her office.

Clause 45: Termination of office
This clause empowers the Council to terminate the appointment of the NEPC Executive Officer for misbehaviour or physical or mental incapacity. It also sets out the circumstances in which the Council is required to terminate the appointment of the NEPC Executive Officer.

Clause 46: Terms and conditions not provided for by Act
This clause provides for the NEPC Executive Officer to hold office on such terms and conditions in relation to matters not provided for by this measure as are determined by the Council from time to time.

Clause 47: Acting NEPC Executive Officer
This clause empowers the Council to appoint an acting NEPC Executive Officer.

Clause 48: Powers and functions of acting NEPC Executive Officer
This clause provides for an acting NEPC Executive Officer to have all the powers and functions of the Executive Officer.

DIVISION 3—STAFF OF THE SERVICE CORPORATION AND CONSULTANTS

Clause 49: Public Service staff of Service Corporation
This clause provides for staff of the Service Corporation to be Commonwealth public servants.

Clause 50: Non-Public Service staff of Service Corporation
This clause empowers the Service Corporation to employ persons under written agreements in accordance with terms and conditions determined by the Corporation from time to time.

Clause 51: Staff seconded to Service Corporation
This clause empowers the Service Corporation to make arrangements for the services of staff of Commonwealth departments and authorities and State and Territory authorities to be made available to the Corporation.

Clause 52: Consultants
This clause empowers the Service Corporation to engage consultants on terms and conditions determined by the Corporation from time to time.

PART 6
FINANCE

Clause 53: Payments to Service Corporation by State
This clause provides that such money as is appropriated by this Parliament for the purposes of the Service Corporation is payable to the Corporation and empowers the State Treasurer to give directions about the amount and timing of payments.

Clause 54: Payments to Service Corporation by Commonwealth and other States and Territories
This clause allows the Service Corporation to receive money paid by the Commonwealth and other States and Territories.

Clause 55: Money of Service Corporation
This clause provides for the money of the Service Corporation to consist of money paid and received under clauses 53 and 54 and other money paid to the Corporation.

Clause 56: Application of money of Service Corporation
This clause sets out how the money of the Service Corporation is to be applied.

Clause 57: Estimates
This clause requires the NEPC Executive Officer to prepare estimates of the Service Corporation's receipts and expenditure for each financial year and any other periods specified by the Council. Except with the consent of the Council, the money of the Service Corporation must not be spent otherwise than in accordance with estimates of expenditure approved by the Council.

Clause 58: Special provisions relating to reports etc. prepared under the Audit Act 1901 of the Commonwealth
Under the Commonwealth *Audit Act 1901* the Service Corporation is required to prepare a report on its operations and financial statements for each financial year. This clause requires such a report to include such other information as is required by the Council to be included in the report. It also requires a copy of each report and set of financial statements (which must be given to the Commonwealth Minister under the Commonwealth Audit Act) to be given to each other member of the Council.

PART 7
MISCELLANEOUS

Clause 59: Powers and functions conferred under corresponding legislation
The constitutional basis of the legislative scheme is supported by recognition by this clause that each participating jurisdiction may confer powers and functions on the Council, each committee of the Council, the NEPC Service Corporation and the NEPC Executive Officer.

Clause 60: Delegation by Council
This clause empowers the Council to delegate any of its functions, other than the functions of making, varying and revoking national environment protection measures and recommending the making of regulations.

Clause 61: Acts done by Council
This clause provides for certificate evidence that the Council has done any act or thing or formed any opinion.

Clause 62: Regulations
This clause empowers the Governor to make regulations on the recommendation of the Council.

Clause 63: Review of operation of Act
This clause requires the Council to cause the operation of this measure (and of the corresponding legislation of the Commonwealth and each of the States and Territories) to be reviewed at the end of five years after the commencement of the corresponding Act of the Commonwealth.

Schedule 1: Intergovernmental Agreement on the Environment
This schedule sets out the text of the Intergovernmental Agreement on the Environment.

Schedule 2: Amendment of Environment Protection Act 1993
This schedule amends the *Environment Protection Act 1993* to make the following provisions.

When a national environment protection measure comes into operation under the national scheme laws, the measure comes into operation as an environment protection policy (s. 28a(1)).[20]

Such a policy will be taken into account by the Environment Protection Authority in determining any matters under the Act (or the *Development Act 1993*) to which the policy has relevance and may be given effect to by the issuing of environment protection orders under Part 10 (s. 28a(2)).

Such a policy will only be varied or revoked by a further national environment protection measure made under the national scheme laws or by an environment protection policy made under Part 5 Division 1 that imposes more stringent measures for protection of the environment (s. 28a(3)).[21]

Where a national environment protection measure that comes into operation as a State environment protection policy is inconsistent with an existing State environment protection policy, the national measure will prevail to the extent of the inconsistency, except to the extent that the existing State policy makes more stringent provision for protection of the environment (s. 28a(4)).[22]

Where the Minister considers that, in consequence of the making or amendment of a national environment protection measure, it is necessary or desirable to amend or revoke a State environment protection policy, the normal procedures for amendment or revocation of a policy does not apply and the Minister can refer the draft policy directly to the Governor. However, these powers do not apply in relation to an amendment or revocation that would have the effect of relaxing requirements for the protection of the environment, taking into account the provisions of the relevant national environment protection measures (s. 29(1A) & (1B)).

The Environment Protection Authority may impose or vary conditions of an environmental authorisation where it considers it necessary to do so in consequence of the making or amendment of a national environment protection measure (s. 45(3)).

1 S. 2(2) of the Commonwealth Act provides that if that Act does not come into operation within the period of one year commencing on 18 October 1994, it will be automatically repealed on the day after the end of that period. This provision was inserted on the recommendation of the Senate Standing Committee on the Scrutiny of Bills.
2 Schedule 1 of this measure (*IGAE*, schedule 4, clause 1).
3 *IGAE*, schedule 4, clause 16. Schedule 2 of this measure amends the *Environment Protection Act 1993* to implement national environment protection measures in this State as environment protection policies and orders under that Act.
4 *IGAE*, schedule 4, clauses 2 and 4.
5 *IGAE*, schedule 4, clause 2.
6 *Ibid.*
7 National environment protection measures must comprise one or more of the following: a national environment protection standard, a national environment protection goal, a national environment protection guideline or a national environment protection protocol.
8 *IGAE*, schedule 4, clauses 5 and 7.

[9] *Ibid.*, schedule 4, clause 6.
[10] *Id.*, schedule 4, clauses 9 and 10.
[11] *Id.*, schedule 4, clause 11.
[12] *Id.*, schedule 4, clause 12.
[13] *Id.*, schedule 4, clauses 13 to 15.
[14] *Id.*, schedule 4, clause 21.
[15] *Id.*, schedule 4, clause 22.
[16] *Id.*, schedule 4, clause 2.
[17] *Id.*, schedule 4, clause 3(i)
[18] *Id.*
[19] *Id.*, schedule 4, clause 3(ii).
[20] *Id.*, schedule 4, clause 16(a).
[21] *Id.*, schedule 4, clause 19.
[22] *Id.*, schedule 4, clause 20.

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

SHOP TRADING HOURS (MEAT) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 23 November. Page 914.)

The Hon. R.R. ROBERTS: This Bill has been dealt with in another place. I have been advised by the shadow Minister that the Opposition has no objection to it. Therefore, I indicate our support for the second reading.

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

PUBLIC FINANCE AND AUDIT (LOCAL GOVERNMENT CONTROLLING AUTHORITIES) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 29 November. Page 988.)

The Hon. BARBARA WIESE: The Opposition supports this Bill which is relatively simple but certainly worthwhile. It seeks to bring controlling authorities which are established by more than one council under the ambit of the Public Finance and Audit Act, which would enable the Auditor-General to examine the affairs of such bodies in the same way as the Auditor-General is able to examine the affairs of Government bodies and councils and, by implication, controlling authorities set up by individual councils.

I am not sure why the Act was not extended to cover controlling authorities which are established by more than one council when the legislation was first framed, but I am sure that everybody would agree that it is reasonable that such organisations should be covered. It may be that, at the time this legislation was framed, not many, if indeed any, of these controlling authorities had been established by more than one council. These days it is becoming more and more common for councils to group together and establish authorities for one purpose or another. It is all part of the reform that is taking place within local government, which is enabling a better service to the public and also cheaper operations for individual councils.

We believe it is important that the Auditor-General have this power. I note that the Minister in another place was very quick to point out that he is not introducing this Bill as a result of the recent problems with the Centennial Park Cemetery Trust. I am happy to accept his explanation on that. As far as I am concerned, it is neither here nor there whether it was sparked by that issue. The fact is that the power should exist, and there may be a reason to have the Auditor-General intervene in matters where there is a dispute about these controlling authorities, whether it be the Centennial Park Cemetery Trust or some other such body in the future. We support the Bill.

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

LOCAL GOVERNMENT (1995 ELECTIONS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 29 November. Page 988.)

The Hon. BARBARA WIESE: This, too, is a Bill which the Opposition supports. It provides for the Governor to suspend for a maximum of 12 months the holding of elections which were otherwise due to take place in May 1995 in circumstances where councils have lodged a formal proposal for amalgamation. The Opposition agrees with the Government that powers to suspend the democratic right of citizens to vote for public bodies should be exercised very carefully, and that it is a very serious matter to withdraw for any period of time that right to vote. However, it seems to me that there are circumstances, such as the ones that are covered by this Bill, which make it a reasonable power for a Government to exercise, as long as it is exercised with care.

As the second reading explanation indicates, there was previously a power to suspend elections where amalgamation procedures had been set in place in the Local Government Act, until the Act was changed in 1992. Certainly during the period that I was Minister of Local Government there were occasions when I approved the suspension of elections where there were proposals for amalgamation and I did not exercise that power lightly but certainly felt that there were good grounds for the suspension of elections in some cases. I cannot recall the debate that took place in 1992 on this issue, but I note from the second reading explanation that the power to suspend elections was removed from the legislation at that time because there was a feeling that it had been over-used. I certainly trust that the feeling that some members had about that issue did not relate to the period during which I was exercising the power because it certainly did not happen often. More is the pity, because I would have preferred more amalgamations to have taken place at that time. But I was certainly aware of the dangers of taking away the right to vote and was careful that it was only exercised in appropriate circumstances.

It is commendable that the Government is taking this step to allow councils to pursue amalgamations during the coming months, although I understand that very few proposals are likely to come forward before February when this power must be exercised. It is heartening that the Government is taking this action, which enables councils to proceed with their plans. It is also commendable that the Government is establishing a ministerial advisory group, which will be examining and making recommendations on how to achieve reform arrangements within local government for the future. It has been a vexed question for quite some time as to how reform might take place in local government.

During the time when I was Minister of Local Government, as a Government we encouraged councils to consider ways of reforming their operations, whether by way of amalgamation or in forming some other shared arrangements for facilities, plant and so forth, so that local government

could become more efficient. It was during my time as Minister of Local Government that we saw more action in the area of amalgamation than we had seen for many years before or have seen since. There was a flurry of activity that lasted a short time, but in recent years that process has stalled, although there have been other measures taken by councils in the reform area, whether by way of establishing regional authorities, sharing resources or whatever the case may be.

Some reform has taken place in this area, but it is by far too little, in my opinion, and there is still much to be done in the local government area. I hope that the ministerial advisory group will be successful in establishing some procedures and guidelines to which not only the Government and other parties represented in the Parliament but more particularly local government can feel committed so that they will proceed down the path of reform. I note that the measures before us have the support of the Local Government Association and they also have our support. I hope that the Bill will have a swift passage.

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

ELECTORAL (DUTY TO VOTE) AMENDMENT BILL

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

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this Bill be now read a second time.

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

Leave granted.

The object of this Bill is to remove the criminal sanctions which currently apply when people fail to exercise their right to vote.

Australia is one of the few democracies which compels (via the use of penalties) its citizens to vote in elections.

In all other democracies the right to vote entails the right not to vote. The fact that Australia persists with compulsion is something which may generally be seen as incompatible with a fair and democratic society.

Most democracies see the right to vote as embracing the fundamental right of individuals not to vote if they so choose. One of the principal reasons Holland abolished compulsory voting in 1970 was the view that to force people to exercise their right to vote was to destroy the very nature of that right. Another critical factor influencing the Dutch was the view that election results should be based on the clear choice of voters voluntarily participating in the election process. Election results should not be influenced by the votes of those who would not bother to vote but for compulsion. This Bill therefore removes the threat of criminal sanctions against those who do not vote.

The arguments have been debated extensively, so there is no need to repeat them all.

At the last State election 64 744 people failed to vote. Please explain notices were sent to 33 746 and expiation notices were posted to 9 814. At the present time 5 849 summonses are being prepared—5 672 are for failing to respond to either the please explain notice or the expiation notice and the remaining 177 are for failing to provide a valid and sufficient reason for not voting.

The estimated costs of the resulting court action is expected to be greater that $500 000. Further costs will be incurred by the Electoral Commissioner in following up non-voters in the by-elections of Torrens, Elizabeth and now Taylor.

Chasing up non-voters is a costly and time consuming process and the end result is that non-voters are penalised for failing or choosing not to exercise their basic democratic right to vote.

This Bill preserves the expressions of the basic duty of citizens to vote but removes the sanction of a criminal penalty where the citizen chooses, for whatever reason, not to vote. It is the view of the Government that the obligation to vote and the exercise of the right to vote should be voluntary and not subject to the sanction of a criminal penalty. Those who would rather not vote should not be subject to that coercion. If they do not vote they should not be penalised and if, ultimately, they refuse to pay any fine and costs it should not be possible for a non-voter to end up in gaol.

This Bill achieves that end.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Substitution of heading

This clause provides a new heading to Division VI of Part IX of the Act as a consequence of the amendments to be effected by clause 3.

Clause 3: Amendment of s. 85—Duty to vote

It is proposed to remove from section 85 of the Act (being the section that creates a duty for every elector to record a vote at each election in a district for which he or she is enrolled) those subsections that require the Electoral Commissioner to send out a notice to each elector who appears not to have voted in an election, and that create various offences in relation to failing to vote.

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

PARLIAMENTARY REMUNERATION (SALARY RATES FREEZE) AMENDMENT BILL

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

The Hon. K.T. GRIFFIN (Attorney-General): 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 amends the *Parliamentary Remuneration Act 1990*, and in particular the definition of 'base salary' for the purposes of that Act.

The effect of this Bill is to establish a fixed base salary for the purposes of the Act. That fixed base salary is $1 000 less than the amount applying as the Commonwealth parliamentary base salary as at 1 September 1994.

This proposal gives effect to the decision foreshadowed by the Premier in June of this year with respect to the fixing of State parliamentary remuneration. That decision is designed to limit the automatic flow on into the South Australian *Parliamentary Remuneration Act* of salary movements at the Federal level.

The Bill is an appropriate response by the State Government to the current issues concerning parliamentary remuneration.

I commend this Bill to the House and seek leave to have the explanation of clauses inserted into Hansard without my reading it.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of s. 3—Interpretation

'Basic salary' is currently defined under section 4 of the principal Act as $1 000 less than the amount applying from time to time as Commonwealth basic salary. Commonwealth basic salary is, as the term suggests, defined by reference to the basic salary for Commonwealth parliamentarians. The definition of 'basic salary' is then used under section 4 of the Act to fix the salary and additional salary for members of the South Australian Parliament.

The clause amends the definition of 'basic salary' so that it is fixed at $1 000 less than the amount applying as Commonwealth basic salary as at 1 September 1994.

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

NATIVE TITLE (SOUTH AUSTRALIA) BILL

The House of Assembly intimated that it had agreed to amendments Nos 1 to 7, 9 to 11, 13 and 15 to 23, had disagreed to amendments Nos 8, 12 and 14, and had made alternative amendments as follows:

No. 8 Page 4, lines 31 to 33 and page 5, lines 1 to 3 (clause 4)—Leave out subclause (5).

No. 12 Page 10, line 7 (clause 18)—Leave out 'reasonably ascertainable by the applicant' and insert 'known to the applicant after reasonable inquiry'.

No. 14 Page 11, line 13 (clause 20)—Leave out 'reasonably ascertainable by the applicant' and insert 'known to the applicant after reasonable inquiry'.

Consideration in Committee.

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

That the Legislative Council do not insist on its amendments.

Of course, this is part of the process towards establishing a conference of managers of both Houses, which I am sufficiently presumptuous to believe the House of Assembly will ultimately agree to. There is only a small number of issues to be resolved. However, of course, one is quite significant; that is, amendment No. 8, which deals with the leaving out of clause 4(5), which is the statement of the law so far as the Government and the Prime Minister are concerned. That is critical to the passage of the Bill. Quite obviously, if we can get to a conference, the various issues can be explored in the context of the consideration the whole package.

The Hon. CAROLYN PICKLES: The Opposition insists on the amendments. We believe that the amendments moved in the Council yesterday were important. We therefore insist that they be agreed to. Presumably it will go to a conference and this issue will be thrashed out there.

Motion negatived.

LAND ACQUISITION (NATIVE TITLE) AMENDMENT BILL

The House of Assembly intimated that it had agreed to amendments Nos 1 to 9 and 12 to 18 and had disagreed to amendments Nos 10 and 11.

Consideration in Committee.

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

That the Legislative Council do not insist on its amendments.

It is pleasing to note that a significant number of the amendments made in this Council have been accepted by the House of Assembly. There are two that are of concern to the Government: amendment Nos 10 and 11. It would be desirable that, as with the previous Bill and the amendments made by the Legislative Council not acceptable to the House of Assembly, they be considered by a conference of managers of both Houses.

The Hon. CAROLYN PICKLES: The Opposition insists on the amendments. We believe that they are very important and we will certainly be dealing with them in a conference and hope that the issue can be resolved. However, we hope, too, that the Government can come to the party and support our amendments.

Motion negatived.

The Hon. R.I. LUCAS: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

WHEAT MARKETING (BARLEY AND OATS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 November. Page 987.)

The Hon. R.R. ROBERTS: The Opposition supports the proposition that the Government puts in this Bill. I am advised that this matter was taken up with the Minister by the grain section of the South Australian Farmers Federation on 8 March 1994, and during my consultation with the federation and the Barley Board I have heard expressions of disappointment that the matter has been left so long before being taken up. It has been pointed out to me that the late passage of the Bill through the Parliament will throw out the Barley Board's marketing strategy for this year.

There is quite a history in respect of this matter, which was first brought to my attention by the radio broadcast of an interview with the member for Custance in another place (Mr Ivan Venning), who was supporting the move to allow the Australian Wheat Board to enter the domestic feed barley market. This has not been able to occur in the past because of the difference in the two Acts.

Originally, it was decided by farmers' organisations and the industry, in particular, that there really did need to be two boards: the Australian Wheat Board to market wheat, obviously, and the Australian Barley Board to handle the barley crop.

In my consultations it has been reinforced that it is the desire and wish of both the South Australian Farmers Federation and the Barley Board that this accommodation for the Australian Wheat Board to become involved in the barley and oat market for domestic feed only should be retained precisely in that area, and that there should not be any extensions to go into the export market. The Barley Board believes the reason for the amendment, as it understands it, was to give the Australian Wheat Board the power to deal in feed barley for stock feed purposes only in the Australian domestic market. Other traders can do so as section 42 of the Barley Marketing Act permits them to obtain a permit to do so. Since 1 November 1994 the board has waived the permit fee so as not to put an impediment in the way of growers wishing to maximise their income in the current drought situation.

The Barley Board recognised that, on logical grounds, it is now difficult to argue against the Australian Wheat Board's entry into the market. However, the Australian Wheat Board has a significant market power and a capital base which would enable it, if it wished, to buy into market share. The Australian Barley Board does not have that capital base and, whilst the Barley Marketing Act 1993 allows for the Australian Barley Board to create reserves, the low prices last year coupled with the drought this year are the worst position from which to start building a reserve and thus it has not been able to do so. Its preferred position is for the Australian Wheat Board to market wheat and the Australian Barley Board to continue in its expert area, and that is to market barley as that is what both were established today. Both bodies should use common sense and cooperate with each other.

For the Barley board's part, it is prepared to sell barley to the Australian Wheat Board at market rates if it has a need for this commodity. Although the Barley Marketing Act enables it to trade in wheat on the domestic market, and despite approaches from groups of growers for it to do so, it is not its intention to do this. It needs to be pointed out that the Barley Board has, for many years, had the ability to trade in wheat. It has had a gentleman's agreement with the Australian Wheat Board that it would not enter into that market, and history now shows that it has honoured that agreement. The Barley Board believes that the timing of the amendment is poor, and it comes at a time when it is in the midst of a harvest and therefore will cause maximum disruption to the marketing strategy with confusion to growers. The preference of the Barley Board is that this alteration become effective next season.

The proponents of the amendments base their support for the higher prices being offered by the Australian Wheat Board in Victoria compared to those on offer in South Australia, and contend that South Australians will get the same prices as the Victorian growers. That is in fact not true. The Australian Barley Board is offering the same prices as the Australian Wheat Board in Victoria. On 23 November, the Australian Wheat Board's price was below the Australian Barley Board's price. Prices in Victoria are higher than in South Australia because the shortage of grain is greater there and, as they are closer to the end users, the cost to get it to them is less, and hence the higher prices to the grower.

However, in South Australia there is a greater availability of grain to supply the markets in the eastern states. However, the cost to get it to market (namely, South Australian Cooperative Bulk Handling costs, port costs, sea freight or, in the case of overland movement, road and rail freight) is greater than in Victoria and is deducted by buyers from the price they have from the end user to arrive at a price they are prepared to pay. Further, V-line is offering an on farm line pick-up service in South Australia for delivery to Victoria. Depending on the location, this can give growers a saving of up to $10 per ton.

This is a fundamental marketing practice and the Australian Wheat Board cannot pay more than the Australian Barley Board unless it has secured higher price sales, which is considered to be quite unlikely, or if it cross subsidises and offers higher prices to the market share. It is worth mentioning at this stage that, whilst the Australian Wheat Board claims to pay higher prices for barley, there has been an ironic price movement with the Australian Wheat Board. In the past 18 days, the price for premium hard wheat has dropped by $40 a ton because of an oversupply of hard wheat in South Australia.

So, in some cases, growers are looking for some relief from higher priced barley, but unfortunately we have this anomaly where the screws are being tightened in respect of commodity prices for prime hard wheat. At all stages, the Barley Board has advised the Government to take care in framing the amendment to ensure that the Australian Wheat Board can obtain feed barley for only the domestic market and not enable it to export its barley. The Barley Board believes that it is critical to the future of South Australian barley growers that the Australian Barley Board retains the export monopoly.

The Victorian Government recognised this when it amended its wheat marketing Act to enable the Australian Barley Board to retain the sole export rights for Victorian barley. The Barley Board sought legal advice on the original Bill and was told that an amendment ought to be inserted into the Bill for the protection of its concerns. That amendment would provide:

> In performing functions and powers in relation to barley and oats within the meaning of the Barley Act 1993 the board is subject to that Act.

Essentially, this amendment seeks to ensure that the Australian Wheat Board becomes an agent and competes in a similar manner to other private agents that are given permits or are licensed under the Australian Barley Board to deal in domestic barley. I contend that this matter would have been better handled if the Australian Wheat Board were given a licence or a permit by the Australian Barley Board to be a trader in this particular commodity.

Some people believe that deregulation of the grains industry would be in the best interests of farmers. There are two schools of thought. People with whom I have consulted who have vast experience in the marketing of grains have put to me that most growers have had a taste of this suggested change to deregulation and the majority are sick of trying to market their own crop. They want the Australian Barley Board and the Australian Wheat Board each to specialise in their own commodity. It is my personal belief that it would be highly desirable to have the two individual boards trading in those particular commodities. Whilst Australia produces exceptionally good crops and whilst the history of dryland farming in Australia is probably second to none in the world, if we look at the amount we produce in world terms we will see that we are not a huge producer of the commodity. It is my view that, rather than having a deregulated grains marketing industry in Australia, we need a succinct and properly regulated market.

We are in the position of selling and must be serious about protecting the agricultural industries of South Australia. We have had to contend in this State over the past three or four years with exceptional circumstances ranging from locusts to mouse plagues to unseasonal rains to hail and the ever present threat of drought. The new phenomenon in South Australia this year is pockets of different weather conditions all over the State so that one can move 10 kilometres from a reasonable area to a drought situation. If we are serious about maintaining viable farms and South Australian property, it is crucial that we have sensible, regulated marketing procedures. My view is that we need to protect both the Australian Barley Board and the Australian Wheat Board so that they can operate to get the best prices, virtually in a single desk selling situation, especially in the export markets, in order to realise the best prices for their constituents—the grain producers of South Australia.

This Bill, with the proposed amendment, has the agreement of the South Australian Farmers' Federation, the Cereals Committee and, obviously, the Australian Wheat Board in South Australia and the South Australian Barley Board. The only concern that has been expressed regarding this legislation is one of timing. By the time this Bill comes into force in the drier areas of the State where we have had lean seasons, many producers will have reaped their crops and sold them. So if there is to be any advantage in this new facility, the unfortunate part about it is that those people who have experienced a year of semi-drought or below average conditions will have probably marketed their barley and any advantage will go to other areas, particularly the South-East, where crops will be reaped later, and those farmers will have the opportunity to benefit.

It is a little bit of a reverse Robin Hood situation where those who really need extra relief will not be able to access it and those who are fortunate enough to be in an area where they will have a reasonable crop will get an extra benefit, if that is the outcome of this particular technique. I am not criticising that; I believe that, from year to year, farmers are in a fairly tenuous situation. They compete in a bidder's market; therefore, one would not deny those people the opportunity to make a better income. It is just sad that some of the areas in greatest need will not be able to benefit from this measure. However, I suppose these transitionary arrangements must take place at some time. If there is an opportunity for grain producers in South Australia to benefit from them, that is fine with me, and, as the matter has the agreement of all the principal players and subject to the amendment that has been passed in the Lower House, the Opposition supports the Bill.

The Hon. M.J. ELLIOTT: There are two issues I want to address: the substance of the Bill and the political processes surrounding it. I will comment on the political processes surrounding the legislation to start with. This legislation was introduced into the House of Assembly on 23 November. I for one had no inkling that the legislation was even coming. Exactly one week later, on 30 November, the Minister was on a plane; he had gone somewhere overseas. He did offer me a briefing on Tuesday morning. I went to the briefing, but neither he nor any adviser was there at the time. So, after waiting for some time, I left the office and said, 'Well, please make contact for me to get further information.' I had expected—although the indications appear to be otherwise—that the Parliament would have sat into the additional week that we had set aside as being available. I expected that reasonably, because there were a couple of substantial pieces of legislation, and then a Bill such as this popped up out of nowhere. Government members are now saying that they hope to finish off everything this week. So here we have legislation, albeit short, which is a very important, with precisely one week's notice, with a lot of other things on the Notice Paper and with no chance for me to consult with people with whom I would have liked to consult.

That is a gross abuse of this Parliament. There are some Ministers in this Government who understand how a Parliament works and who handle legislation properly. But the handling of this legislation is a gross abuse of the Parliament. It is a contempt of the Parliament as far as I am concerned. I do not ask of Government Ministers that we agree with each other, but I do ask that they show the courtesies to members of Parliament in terms of giving adequate time for examination of important issues. It is a touch of incredible arrogance that we should be having to handle this legislation this way. I am under the clear impression that the Minister has had this legislation ready for quite some months and then, after the season has started, after much harvesting has already occurred, he wheels in this legislation and wants it through within a week. That is absolutely stunning.

I would have thought that the agricultural community, regardless of their feelings about this legislation, would be absolutely horrified and mortified that important legislation could come into Parliament and be treated that way. The legislation will pass, but what would have happened, indeed, if there had been a significant division in the Parliament on an issue such as this? What if there had been some reaction in the community, and either the thing was defeated or amended in a way which more adequate time would have allowed it to have been treated differently? The primary industries community as a whole should be horrified that their Minister should treat an important issue in this manner.

The Hon. R.R. Roberts: Transporting of the grain was asked for on 9 March.

The Hon. M.J. ELLIOTT: Okay; it was asked for on 9 March, but the Minister has had the legislation ready for quite some time. Obviously it does not take time to draft it. But it is not the length of the Bill but the significance and impact of the Bill that is important. Lengthy legislation might not cause much controversy but relatively short pieces of legislation can be highly significant. I pass that comment simply on the political process which has surrounded this legislation. I protest most strongly about this, and I would hope that after a year in Government Ministers would have learned not to treat the Parliament—and I say treat the Parliament not me—in this way.

Consistently in the nine years that I have been in this Parliament, I have supported regulated marketing. Through successive Labor Governments and now a Liberal Government, there has been a continuing trend away from regulated marketing. There is no doubt in my mind that that trend will reverse, although I suspect it may be another decade before it happens. I notice the Hon. Mr Roberts quoted from a letter of which I also had a copy. The person who wrote to us both said:

> The pendulum has swung very much towards free trade but the farmers have never been more broke. They have had a taste of SAFF change, and the majority of growers are sick of trying to market their own crop and want stability of the old Barley Board and the Wheat Board, each specialising in their own commodity.

This is from a person who is very experienced and is well placed to make a comment. I do not think it is necessary to identify the individual. This person did say that it would be necessary to pass the legislation, but only in the light of what else has been happening, not because this person agrees with the overall outcome that we are ending up it. When I say 'overall outcome' I do not just mean in relation to this legislation, but it is part of an ongoing process—the total deregulation of domestic marketing, essentially, and still significant pressure for deregulation of international marketing as well.

So, again, I reiterate my position that I do want to see regulated marketing. It does not mean a return to the old days. Things do change and you do progress, but progress can take many different directions and progress can be defined by us. I believe we could have a regulated marketing environment which still sends clear market signals to growers. There are many ways that you can achieve that but put a great deal more stability into commodities. There is no doubt the trend we are on at the moment will make prices even more cyclical than they are at the moment. If we see increasing amounts of barley this season, next season we go into feed barley because of drought and we fail to service overseas markets, then I will tell you what will happen to the overseas markets in barley and, therefore, what will happen to the price of barley once the drought is over. We really do need ordinary marketing not just to protect the growers from being played off against each other but also in terms of thinking about the long term future of a commodity and not just grabbing the quick buck now because those who get in the 'quick buck now' mentality in the long run will find themselves in a great deal more trouble.

In terms of the substance of the legislation, I note that one amendment will be moved by the Minister, and that has been asked for. Essentially, it will make sure that what we are doing in South Australia is consistent with what happens in Victoria. That is reasonable, and I will support that. I will move an amendment which I am not happy doing, but it really relates to the comments that I made at the beginning: I simply have not had a chance to consult on this Bill. I find myself in the invidious position of not really wanting to say 'No' halfway through a marketing season, with at least one person with whom I have had communication and whom I trust saying, 'Well it looks as though it might be inevitable.' What I am seeking to do by way of my amendment is to simply say, 'Well, I'll agree to the change and role of the Australian Wheat Board for the rest of this season, but I would like a chance to revisit the issue and have an opportunity to consult with the people that I have been denied an opportunity to consult with up until now.'

If I believed we were sitting next week, I would have simply said, 'Look, put this off to next week; I will have a

chance to talk to these people, and this amendment will be totally unnecessary.' So, I do not want to move this amendment but in the circumstances I feel that I should. Although I have put the date 1 November, I would not want uncertainty to hang around until that time: I really would like to debate and come to a conclusive decision as soon as Parliament resumes in February.

The Hon. CAROLINE SCHAEFER: I support the Bill. I agree that it is unfortunate that this legislation has been delayed, for whatever reason. I also agree that many of the earlier maturing grain growing districts in this State, particularly as barley is an early maturing grain, have sold under the old provisions. I see no reason why the rest of the State should be impeded from a competitive market just because some growers have missed out. I do not support Mr Elliott's amendment, although I have some sympathy with his reasoning as to why he will move it, because I think it will again throw the market into some confusion. Certainly there is no options trading in barley, but I imagine that the Wheat Board will begin to offer forward purchase contracts for barley as it does now for wheat. Many of the more modern growers are seeking to get some stability into their prices by selling at least a portion of their grain crop under forward contracting. If this amendment were to be successful, they again would be denied the opportunity to look at forward contracts or forward pricing for their grain.

The Hon. M.J. Elliott: Not if this is handled next week or next February.

The Hon. CAROLINE SCHAEFER: That is not what your amendment says. I know you have said that that is the way Parliamentary Counsel worded it, but it does say 1 November 1995. I think that we have had the confusion once, so let's get on with it. There has been some debate as to whether we support a free trade or a regulated grain market. As far as I am concerned, that debate was held a number of years ago with the Federal Government and we lost it. As a wheat grower, I felt that we could have had a regulated market for a number of years longer than we did, although deregulation of the domestic market was inevitable. Having lost that argument, we then had one board trading under regulated conditions and another board trading under deregulated conditions. In every other grain trading State in Australia the Wheat Board could trade in barley and vice versa. In this State the Barley Board was legally able to trade in wheat, although admittedly it never took up that option, but the Wheat Board was unable to trade in barley. To me that seems to be a contradiction and it defies commonsense.

The Hon. Ron Roberts mentioned the South-East as being the area that would gain some advantage with regard to this, because it is a late grain growing district and would reap late. But that area was always advantaged because, under section 92, it was able to trade its grain where it could get the best price. In fact, there was a distinct advantage for that area prior to this amendment to the Act.

The Hon. M.J. Elliott: What about on the black market?

The Hon. CAROLINE SCHAEFER: Yes. There has always been some trade on black market, but the advantage of that disappears when you deregulate both the boards. Whether or not they should have been deregulated in the first place is an entirely different debate and one which I do not intend to enter into tonight. However, I think that commonsense must prevail. I am pleased to see that we have the support of the Opposition on this.

I have been quite offended by the patronising material which has been sent to me by the Barley Board and which suggests that I do not know what I am talking about. It explains in very simple words to some poor dumb female how pooling works. I place on the record that I have made my living from pool payments of grain for the past 27 years. The people who sent me this information would have done well to do a bit of homework with regard to whom they were sending it.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indications of support for the second reading. I regret that the Bill is moving through the parliamentary process so quickly, and that the Hon. Mr Elliott in particular is concerned about the inability to consult adequately on it. I also regret that there is nothing now that I am able to do about that. Notwithstanding his position with respect to that, I indicate the Government's appreciation for the indications of support. When we get to the Committee stage, I will resist the amendment which is to be moved by the Hon. Mr Elliott, although I can understand the reason why he seeks to move it. Notwithstanding that, it would seem to me that it is inappropriate in the context of the marketplace and the way in which this whole scheme is proposed to operate. We can deal with that during the Committee consideration of the Bill. I again thank members for their contributions.

Bill read a second time

In Committee.

Clause 1—'Short title.'

The Hon. R.R. ROBERTS: I take this opportunity to make a comment about the contributions that have been made so far. I understand the position that has been put by the Hon. Mike Elliott: I concur with him. It is disconcerting that this Bill has been around since early March and that it did come in late. With respect to his amendment, I understand what he is talking about and I understand the reasons for it. In taking up the point that the Hon. Caroline Schaefer made about 1 November, if we take that date literally it will cause a fair amount of confusion because, in some of the very early seasons in barley growing areas, some people will be reaping in November.

I understand what the Hon. Mr Elliott is trying to achieve, but probably it is achievable anyhow and there may be good reasons for a change as a result of his consultations (and I would be happy to be kept informed of them). However, I have gone to some trouble since I was made aware that the Bill would be introduced—

The Hon. M.J. Elliott interjecting:

The Hon. R.R. ROBERTS: I am not deserting anybody. I am confident from investigations I have made that there is agreement/acceptance between all principal players in this field and that this Bill does need to come in at this stage. The clear indication is that they have confined it to the domestic feed market only, and most of the concerns expressed to me by the people with whom I did consult were related to their fears about the export market. It has been drawn to my attention that, as far as the Barley Board is concerned, the only criticism is that in Australia we have too many Barley Boards operating and selling on the overseas market and the result of that has been to drive prices down because they are competing with one another. That reinforces my belief that the single desk seller is probably the best in the long term for the marketing of barley.

I indicate that I cannot support the Hon. Mr Elliott's amendment at this stage. However, as a result of his consultations I am prepared to enter into a reopening of this Act in the February session or any other time, but in the interests of fulfilling the wishes of the South Australian Farmers Federation Cereals Committee in particular, the Barley Board and the Wheat Board (and in talking about the South Australian Farmers Federation one takes it as an indication of the growers views), I will not support the amendment. However, I make clear to the Committee that if, as a result of further consultations that I and the Hon. Mr Elliott will undertake, there is a clear indication that there needs to be an adjustment to this provision, I will support the reopening of this matter and further consideration at that time.

Clause passed.

Clauses 2 and 3 passed.

New clause 4—'Sunset provision.'

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

Page 1, after line 19—Insert the following clause:

4. On 1 November 1995, the principal Act is amended so as to restore its provisions to the form that they would have been in had this Act not been enacted.

Despite the fact that before I moved it I had indications of opposition from both the Government and the Opposition, it is important that a clear signal be sent to the Minister that he should not be introducing legislation, heading off overseas and expecting it to pass within the week while he does all this. He should be giving adequate consultation time for members of Parliament, regardless of their political complexion. I take my role seriously, as I am sure do other members, despite the fact that we may disagree from time to time. Ministers in the Lower House in particular need to understand that there is a parliamentary process and that Parliament is not an inconvenience but part of the democratic system that decides what the people of this State get. This sort of behaviour from the Minister will at some time lead to serious mistakes being made.

I made the point that on what little information I have been able to gather so far I will support the legislation, but I wanted more time to talk to people—something which has been denied. It was only on that basis that I inserted the sunset provision. I asked for 1 November because I would like to have handled it next week and would have happily handled it as soon as we sat in February. I can hardly put it back to 1 February or even 1 March in case there is some sort of delay. Some people will still have grain stored on farm. I went for a date well past this harvest but before the next one with every anticipation that it would have been tackled beforehand, and any suggestions that it would interfere with marketing or forward sales is a nonsense. I have indicated a willingness to handle it on 1 February and there is every likelihood that, as on present indications, I would be supporting it, anyway.

The Hon. Mr Roberts' suggestion that if we find that we have got it wrong we can bring it back is a nonsense because the Parliament will have lost control of it. Sunset clauses enable you to keep control of the issue until you have consulted. If you do not have a sunset clause and you pass something, that is the end of it. If the Government of the day and the Minister, who has the numbers in the Lower House, decides not to treat the issue further, that is exactly what happens. By opposing this amendment the Opposition is saying that it will accept the Government's position and that is it because there is nothing we will be able to do about it later. That is for the Government to make its own decisions. I did not want to be in a position of moving this sort of amendment, but it is necessary and a matter of principal is involved.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. We take the view that it sends confusing signals not only to the marketplace but also to growers, and we believe that there ought not to be what is, in effect, a sunset clause. I am informed that this year has highlighted the difference between the price the Barley Board offers and the price that growers, particularly those close to the border, may be able to get from traders who, whilst trading within their constitutional rights, nevertheless are operating in a sense at the fringes.

The Government takes the view that it would be in the interests of barley growers if the Wheat Board was able to be involved on a legitimate basis, so you have legitimate traders in the marketplace competing and the Barley Board will be forced to pay a competitive price and not act in some respects as a law unto itself.

The Hon. M.J. Elliott: It is hardly stashing profits away or ripping off anybody.

The Hon. K.T. GRIFFIN: No, I know.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: That's almost right. Sometimes in this business almost right or just about right is good enough. We oppose the amendment.

The Hon. R.R. ROBERTS: I take it from the Hon. Mr Elliott's contribution in suggesting that what I said was nonsense—he is not normally offensive and I will not take offence—that we were conceding to the Government's view. I make the point that this view is shared by all the principal players involved: the Farmers Federation, the Barley Board and the Wheat Board. I take the point that the Attorney just made with respect to growers getting prices because of the peculiar nature of this year's crop.

We had a problem with deregulated markets when we had them in the 1930s and 1940s. What tends to happen is that you can get good prices for barley in a lean year when there is not a lot of commodity around, as is the situation this year. Hopefully, we will get back into a full production phase. When the market is flooded with barley, I do not believe that the Australian Wheat Board, out of the goodness of its heart or for any other reason, will offer prices over and above: it will be just as competitive and just as hard.

I believe that there is an element where growers, by being in the situation in which they have found themselves in the past three or four years because of the lack of crop and product, see an opportunity to get a short-term higher price. I believe that the Australian Barley Board, especially the South Australian branch, has an enviable record in grain marketing. When we were in strife with the Australian Wheat Board the group consistently in the black and getting the best prices for its constituents was the Australian Barley Board.

As I said earlier, the board has the right to accumulate capital reserves. It has resisted that and put its efforts into the marketing of barley to get the best prices for growers. As I said, it has a record second to none in that respect.

I happen to believe that, in time, and back in a full production season, most growers will be only too happy to go back to the Australian Barley Board to have it market their wheat, because history has shown that it has always tried to get the best possible price for its growers. It would be my submission that that would continue when we get back into full production. Sometimes all that glistens is not gold. However, in a democratic society, when we have all the

principal players in agreement, it is my view that we ought to support this legislation and allow the market, in this delicate year, to get on with the job of marketing the harvest. As I said earlier, if it is necessary, or a problem is discovered during this marketing period, the processes of the Parliament are open to anyone here. If it is proven to me, I will be more than happy to introduce a private member's Bill if required to make the necessary adjustments. The Opposition supports the legislation but will not support this amendment.

New clause negatived.

Title passed.

Bill read a third time and passed.

STATE LOTTERIES (SCRATCH TICKETS) AMENDMENT BILL

Consideration in Committee of the House of Assembly's amendments:

No. 2 Page 2, lines 20 to 22 (clause 4)—Leave out subsection (3).

No. 3 Page 3, lines 2 and 3 (clause 4)—Leave out 'that person and the minor are each' and insert 'the person is'.

No. 4 Page 3, line 4 (clause 4)—After 'Penalty:' insert '$200'.

No. 5 Page 3, lines 5 and 6 (clause 4)—Leave out paragraphs (a) and (b).

The Hon. R.I. LUCAS: I move:

That the Legislative Council do not insist on its amendments.

In moving this motion, I find myself in a difficult position. When last we debated this issue, two broad packages of amendments were discussed. There are many related amendments, but in essence one was the age at which individuals could purchase scratch tickets.

The majority view in this Chamber was that the age be 16 years. That package of amendments has now gone to the House of Assembly. Members will know that originally its position was that the age should be 18 years. The Assembly has seen the wisdom of the Legislative Council's combined view of consciences and has offered the Council a package in the interests of trying to resolve this issue without necessarily having to go to conference in the dying day, or days, of the session.

They have indicated their preparedness as a Chamber to accept that aspect of the amendments, that is, that it be 16. However, in relation to the second range of amendments, which I think were originally moved by the Hon. Anne Levy, which talked in terms of the potential penalties applying to young people purchasing scratch tickets, there was a majority view in the Legislative Council, which was reflected in the legislation that went down to the House of Assembly. Members in that place have strongly disagreed with that. They have offered a package to the Legislative Council that comprises accepting the argument on 16 whilst disagreeing with the notion in relation to penalties, the package being moved by the Hon. Anne Levy. I supported willingly and as a consenting adult the amendments moved by the Hon. Anne Levy in relation to the penalty provisions but, as I have said, I have now moved the position that the Council not insist on its amendments, and do so on the basis that, whilst that was my position and is still my preferred view, I do not hold that position so passionately and strongly that I would like to see the whole Bill necessarily fail by having to go to conference with the possibility of an agreement not being reached.

The stronger view that I had was in relation to the age. I must say again that my preferred position was not for 16 anyway; that was a compromise in that I preferred the *status quo* but accepted the compromise position of 16. The Council would seem to have a number of options before it. Again, this is a conscience vote for members. The Council can not insist on its amendments and therefore accept what has been a compromise package offered by the members of the House of Assembly; that is, they are prepared to accept one set of amendments but not the other. Or, if the numbers are here, the Council can insist on the amendments, which would necessitate going to a conference of managers of the Houses to see whether or not some agreement could be reached.

A couple of issues there will need to be considered by members, a bit like palliative care, I suspect. When that comes it will be interesting trying to work out who will represent this Chamber at the conference of managers, given the diversity of views about the issue. The other aspect is a judgment that everyone has to make as to whether this issue is so significant to them that we need to force it to a conference to resolve it. I accept that there will be some members in this Chamber for whom this is a very important conscience issue, and I am sure they will express their views forcefully during this Committee debate. I will happily accept the majority view of this Chamber and, if there is to be a conference, will seek to negotiate some form of happy compromise as to who represents this Chamber at that conference.

The only other issue is that we need to bear in mind that there was an important aspect of the legislation, which everyone has agreed to and which has been lost in the debate about the age of the purchasers of scratch tickets and penalties, and it is important, therefore, that the legislation not be lost if we end up going to conference. I hope that, if we do end up in conference, the essential part of the Bill, the reason for having it introduced in the first place, is not lost and that some compromise can be reached in relation to the penalty provisions, if it is the majority view of this Chamber that we should go to a conference of managers.

The Hon. T. CROTHERS: It is my view that the Council ought to be insisting on its amendments, even though the matter (and I quite agree with most of what the Leader has said) is one of some vexation, because this Council is truly a House divided on the amendments that have come back to us. Some people would support the amendment in respect of age and not the other in respect of lifting the penalty of fine. I may be wrong, but I believe that it is the first time in my almost eight years here that I have seen an issue having the potential to go to a meeting of House managers with the issue in such dispute, given that the matter before both Chambers has been declared by both major political Parties and also the Democrats, I think, as an issue of conscience.

The Leader, of course, is quite right: I do not know how you resolve that relative to trying to reach across the ether, to touch fingers with the opponents of the amendments that were carried here and endeavour to reach a compromise. I feel that, as a supporter of the amendments that have been rejected by our colleagues in another place, I must insist that we insist on our amendments, because that will provide the only solution possible in respect of reaching out and touching base with some form of compromise, if that is possible, with members in another place. If a compromise is not possible then, as I understand the procedure, the Bill would be lost. The Leader referred to that, and I agree with him that, whatever happens, I for one do not want to see the Bill lost.

The Hon. R.I. Lucas: You can go on the conference then.

The Hon. T. CROTHERS: I am on another one, actually, on native title. I do not want to see the Bill lost in its entirety, and I have already told a couple of my colleagues in another place that they ran that risk if, as a matter of conscience, they insisted on the Bill coming back to us with our amendments rejected. I believe that the only possible sane, rational, commonsense course open to us relative to trying to get some resolution to the matter is for this Chamber to insist on its amendments, to go into conference with our colleagues in the other place whence the Bill came, so that everyone, whether in support or in opposition, who wants to be on such a conference as a manager (although I certainly do not), everyone who thinks he or she has something to contribute, can do so.

I do not see how it is possible that the normal House rules of conferences would apply; that is, that whoever represents this Chamber has to take the point of view that has been expressed and adopted by a majority of members in this Chamber. Likewise, I am sure there are people in the other place who may not be happy with the Bill as it was sent up to us, and I cannot, again, see that sort of critique apply to the normal House rules that by custom and practice we have adopted as being the rules for House managers to follow. Again, because the matter is an issue of conscience, I think it would be a meeting of the House managers in a dispute resolution situation with people really open to say what they believe and the road down which they believe we should proceed.

A fairly large number of members in this Council were not happy with having any age limit in respect of the Bill. That is another situation which could arise, and I guess the majority of members in another place would not be happy with that, but these are the chances they take. I warned one or two of them, who came up and talked to me about all sorts of other things, that these were possibilities that they were hoisting on their own shoulders which might at the end of the day hoist them on their own petard of invincibility and cynicism.

The Hon. R.I. Lucas: Don't talk about Quirkie like that.

The Hon. T. CROTHERS: I never mentioned any names. It is a strange quirk of nature that the honourable member should raise that name. I never said it: he did. That is the position I see as it confronts me.

The Hon. R.I. Lucas interjecting:

The Hon. T. CROTHERS: I will ignore that absolutely scandalous interjection. That is the position I believe we should adopt. It is one that is full of common sense and I believe it is the one alluded to by the Hon. Mr Lucas as the common sense road to take. I commend the proposition that we insist on our amendments.

The Hon. K.T. GRIFFIN: The last occasion that the Council considered this I spoke against the majority view of the Council and we did not divide. On this occasion we ought to divide to put the issue beyond doubt so that we can ascertain exactly where the Council actually stands on this issue. I expressed the concern that if we removed the offence in relation to the minor it really gives the minor *carte blanche* to do what he or she wants to do without criticism or sanction. Whilst the shopkeeper carries the penalty, the minor is able to thumb his or her nose at the law and even create some problems for the shopkeeper.

Let me provide the Council with a couple of precedents. It is true that in the Tobacco Products Control Act there is no penalty on the minor. On the other hand, in relation to the Casino Act, which has a minimum age limit for entry to the Casino, a person under the age of 18 years who enters a licensed casino shall be guilty of an offence and be liable to a penalty not exceeding $500. The same sort of penalty applies in relation to liquor licensing where a minor who obtains or consumes liquor in prescribed premises is guilty of an offence. There are certainly precedents in the statute book for penalties to be imposed on minors where they breach the law in respect of liquor and gaming offences. It seems to me not inappropriate therefore that we recognise that young people also have to accept responsibility and that they cannot escape scot-free if they compromise the position of the retailer in relation to the scratch tickets covered by this Bill. I therefore am of the view that we ought no longer insist on our amendments.

The Hon. A.J. REDFORD: I support the Hon. Trevor Crothers on the issue that the Council ought insist upon its amendments. I will deal first with the comments made by the Attorney. I do not believe that it is for us to make laws about basic parental responsibility. For too long, and on so many occasions, people looked to Parliament to change human behaviour and to impose parental discipline when in fact that discipline and behaviour ought to have been imposed from a parental point of view.

The Hon. K.T. Griffin interjecting:

The Hon. A.J. REDFORD: Absolutely. You bring your children up from whoa to go. The fact is that at the end of the day when you are bringing up children they rely upon your example, discipline and training. When they go out there, whether they are playing scratch tickets, going to hotels—

The Hon. K.T. Griffin: Painting graffiti.

The Hon. A.J. REDFORD:—or painting graffiti, they do not look up law books. When was the last graffitist caught looking up a law book to see whether what they were doing was wrong or right? The fact is that the whole of this issue has been driven by the people who actually sell these tickets. It has not been driven by anybody else other than the people who sell the tickets and a two week campaign by the *Sunday Mail*. The fact is that we are the Legislative Council. We make the laws, not the *Sunday Mail*. It is not some sort of mandate that it from time to time claims, and at the end of the day it is my view that we ought to go back to our human experiences, our own ability to bring up our own children, and not react in a simple political way by saying, 'Well, the Sunday Mail wanted this law to go through.' We ought to put the onus back onto parents and children, and not onto the law.

It seems to me that the Council ought to insist on its position from the simple point of view that, when one looks at the statistics, we have a very small issue. But it is an issue that this Parliament can say, 'Let's take it back to parental responsibility.' At the end of the day we cannot live the lives of people: we cannot make other people change their attitudes. We can pass laws to make everybody millionaires if we want to but that does not make any difference and they will not be millionaires. At the end of the day we have to say to people that they have to take responsibility for their children. If the industry wants to take a particular position about fining people for buying scratch tickets, then let us impose that imposition on the industry and not on our kids.

The Hon. M.J. ELLIOTT: I agree with the position taken by the Hon. Angus Redford. I think there is an important difference (if I might take up the interjection of the Attorney-General) between a child buying a scratch ticket and a child carrying out an act of graffiti.

In relation to a graffiti attack, there is a victim; the child actually commits an act against another person. In relation to

buying a scratch ticket—and I support the concept of an age limit and I think that 16 is a reasonable age—the most you can say is that you are protecting persons against themselves, and you should do so very carefully. I take the view that, generally speaking, adults are responsible for their own behaviour and you do not have a huge responsibility to protect adults from their own behaviour, but you do have some responsibilities in relation to children. Those responsibilities might primarily be those of a parent, but they are also, in part, those of society, and there are many cases where society chooses to apply a different law to minors than to adults.

As I said, the only real argument, in my opinion, is about a particular issue and at what age one decides one will offer some level of protection. I think it is undesirable for children, particularly young children, to buy scratch tickets; therefore, I am prepared to penalise an adult who encourages such behaviour in the same way as I am willing to penalise an adult who sells alcohol or tobacco to a minor.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: Yes, but if you turn it around the other way and say, 'Will you punish a person to protect them,' which is what we are saying, we should look at that very carefully.

The Hon. T. Crothers: The parents will have to pay the fine anyhow.

The Hon. M.J. ELLIOTT: That is right, so the outcome is that you say, 'I will help you by punishing you.' I do not think that is appropriate in this case. Therefore, I do not support the notion of a $50 fine for a minor—in this case, a person under the age of 16—who buys a scratch ticket.

The Committee divided on the motion:

AYES (5)

Feleppa, M. S.	Griffin, K. T. (teller)
Irwin, J. C.	Pfitzner, B. S. L.
Stefani, J. F.	

NOES (13)

Crothers, T.	Davis, L. H.
Elliott, M. J.	Kanck, S. M.
Laidlaw, D. V.	Lawson, R. D.
Pickles, C. A. (teller)	Redford, A. J.
Roberts, R. R.	Roberts, T. G.
Schaefer, C. V.	Weatherill, G.
Wiese, B. J.	

PAIRS

Lucas, R. I.	Levy, J. A. W.

Majority of 8 for the Ayes.

Motion thus negatived.

NATIVE TITLE (SOUTH AUSTRALIA) BILL

The House of Assembly requested a conference, at which it would be represented by five managers, on the Legislative Council's amendments to which it had disagreed.

The Legislative Council agreed to a conference, to be held in the First Floor Conference Room of the Legislative Council at 10.15 a.m. tomorrow, at which it would be represented by the Hons T. Crothers, K.T. Griffin, Sandra Kanck, R.D. Lawson and Carolyn Pickles.

DOG AND CAT MANAGEMENT BILL

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

ELECTRICITY CORPORATIONS BILL

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

ADJOURNMENT

At 10.49 p.m. the Council adjourned until Thursday 1 December at 2.15 p.m.