LEGISLATIVE COUNCIL

Wednesday 8 March 1995

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

INTERNATIONAL WOMEN'S DAY

The PRESIDENT: I remind members that today is the fifty-seventh celebration of International Women's Day.

LEGISLATIVE REVIEW COMMITTEE: MEAT HYGIENE REGULATIONS

The Hon. R.D. LAWSON: I bring up the nineteenth report of the committee.

I also bring up the twentieth report of the committee, and I seek leave to make a brief statement concerning it.

Leave granted.

The Hon. R.D. LAWSON: The Legislative Review Committee has today resolved that no action be taken in respect of the regulations under the Meat Hygiene Act made in December last year and in February this year. These regulations were made pursuant to the Meat Hygiene Act 1994 which came into operation on 1 December 1994. The first set of regulations were promulgated on that date; essentially they were an interim measure which continued in force the bulk of the old meat hygiene regulations. The second set of regulations was promulgated on 23 February and came into operation on the first day of this month. These regulations introduced certain codes of conduct relating to the processing of meat at slaughter works, pet food and poultry. Basically they were the same as the previous regulations. However, new Australian codes of practice have been introduced and, amongst other things, they relate to the production and processing of smallgoods.

In view of the widespread community concern about Garibaldi smallgoods, the committee was anxious to ascertain whether the issues arising from that tragic occurrence are being addressed in the new regulations. The committee was assured in evidence given to it that the new codes of practice will be of assistance in this regard and that new national codes are being formulated and will be adopted. It is not the function of the Legislative Review Committee to rule upon governmental policy or upon any policy underlying regulations. However, it was the feeling of the committee that the new regulations, especially in so far as they include the production of smallgoods, are an improvement on the previous regime and the committee accordingly resolved to take no action in relation to them.

HOSPITALS DISPUTE

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a copy of the ministerial statement made in another place by the Minister for Industrial Affairs in relation to the hospitals dispute.

Leave granted.

QUESTION TIME

SERCO AUSTRALIA PTY LTD

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 Serco marketing.

Leave granted.

The Hon. CAROLYN PICKLES: An article appears in today's *Advertiser* detailing action taken by the South Australian Institute of Teachers against cuts to school services officers of 1 per cent across the State. At the same time as there is an obvious concern about cuts to SSOs, I have been advised that the Minister's department has organised meetings with Serco Australia Pty Ltd seeking to provide support services to schools. Serco Australia Pty Ltd is a private organisation. I understand that departmental officers contacted some school principals who the department thought would be interested in the Serco proposal.

This contact was made by telephone and they were invited to a meeting, which I believe was held in the department. I understand that a presentation was given at this meeting by Mr Chris Bowman, Serco's Marketing Director. At the end of the presentation, principals were asked to indicate whether they would be interested in a trial of private school management. On 21 February, in reply to a question I asked, the Minister told this Council no decision had been made by the Government or his department to proceed with trial proposals by Serco for outsourcing school management. The Minister said in reply that he had some concerns with some aspects of the proposal and that he had established a working party to look at whether the idea should be trialled. My questions to the Minister are:

1. Which aspects of the Serco proposal are of concern to the Minister?
2. Is the Minister aware that a meeting of some members of his department, some school principals and Serco Australia Pty Ltd took place in order to promote its proposal? If so, will the Minister take action to stop any further activities of this nature until such time as the working party can report back to him?

The Hon. R.I. LUCAS: If at first you do not succeed, try, try again.

The Hon. L.H. Davis: And you still don't succeed.

The Hon. R.I. LUCAS: And you still don't succeed. The Leader of the Opposition asserted in this Chamber a few weeks ago, and to the media, that there was to be a meeting that very day at Smithfield Plains High School, and that the Government had agreed to a two year pilot program with Serco. That was the statement made by the Leader of the Opposition: the Government had agreed to a two year pilot program with Serco, and that there was to be a meeting at the Smithfield Plains High School with the full concurrence of the Government.

They were the claims the Leader made in this Chamber; they were the claims she made in the public arena. The Leader of the Opposition has been left with a huge amount of egg all over her face because, as I indicated on that day, and I do so again today, the Government has made no decision in relation to a pilot program for the Serco proposition, and that any suggestion by the Leader of the Opposition in or out of this Chamber that the Government had made a decision to allow a pilot program of two years for the schools associated with Smithfield Plains was in fact wrong.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: We have not made a decision. It is as simple as that. I would have thought that even the Leader and the Deputy Leader of the Opposition could understand something as bald and as simple as that. We have not made a decision. I cannot be any blunter than that. I would hope that meetings are under way with departmental officers and principals about a whole range of things, including, of course, the proposition of the Serco proposal that has been put to the department. I do not mind discussions, but there has been no decision. We indicated that we would establish a working party which has been established. The Association of Principals has now nominated a representative to sit on the working party together with departmental officers to look at the particular proposition from Serco.

I do not intend, this afternoon, to indicate the aspects of the proposition about which I had some concerns. They are matters that I believe the working party will first need to address, provide advice to me and then the Government will make a decision.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: You quoted the facts. I said that I had some concerns. I told Serco I had some concerns; I told the Leader I had some concerns. There is nothing secretive about that. This issue ought to be considered and then we will make a decision. It does the Leader of the Opposition no good to be running around indicating that the Government has made a decision that a two year pilot program is going ahead in the northern suburbs and naming the schools. That was of great embarrassment to some of the schools and the principals concerned who have indicated concern to the department that the Leader of the Opposition was naming their schools as being involved in a pilot program when they know that they are not involved in a pilot program and when the Government knows that they are not involved in a pilot program. It seems to be another figment of the Leader of the Opposition's imagination.

NANGWARRY MILL

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about the future of the Nangwarry sawmill.

Leave granted.

The Hon. R.R. ROBERTS: I am advised by a number of constituents that Forwood Products Nangwarry sawmill is facing an uncertain future due to the lack of guaranteed saw log resource after 30 June this year. Nangwarry employees have accepted that their establishment will be up for sale later on as part of the Government's policy and, given that acceptance, they are concerned to ensure that the new owner has a chance to continue the operation, thus providing employment for about 150 employees at Nangwarry, which is currently in the electorate of MacKillop but has been transferred to the electorate of Gordon for the next election. My constituents are concerned about the future of their jobs in the community.

Forwood Products has indicated to its Nangwarry workforce that full-time employees will be redeployed to the Mount Gambier sawmill or offered employment at IPL. The location of these two options involves a 64 kilometre round trip, and Forwood Products has told its Nangwarry employees that travelling costs must be borne by individual employees. My constituents are concerned that their future is being closed off by the very Government and Minister who pulled out all stops to ensure that the Mount Burr sawmill, coincidentally located in the Minister's electorate of MacKillop, was given access to a guaranteed resource to ensure that it stayed open.

My constituents are also concerned that some Mount Burr employees, when redeployed to Nangwarry, were paid travelling costs, yet Nangwarry workers have been told that no such arrangement will be entered into should they be forced to travel. My constituents have indicated to me that they consider that the Government, through Forwood Products, has a double standard in relation to the treatment of its Nangwarry work force as opposed to the Mount Burr work force. Therefore, my questions to the Attorney-General are:

1. Will the Minister for Primary Industries, through Forwood Products, provide a guaranteed log resource to the Nangwarry sawmill to ensure that it will not close after 30 June and, if not, why not?

2. Should the Nangwarry mill close and the workers be redeployed to Mount Gambier, will the Minister assure that assistance is provided to those workers to enable them to travel the 64 kilometre round trip consistent with arrangements made with the former Mount Burr employees and, if not, why not?

The Hon. K.T. GRIFFIN: I will refer those questions to my colleague the Minister for Primary Industries and bring back a reply.

CHEMICAL SPILL

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for the Environment and Natural Resources, a question about the CSR chemical spill.

Leave granted.

The Hon. T.G. ROBERTS: At about this time last week in Mount Gambier 40 000 litres of dangerous chemical was discharged while being unloaded and leaked into the unconfined aquifer. The *Border Watch* on Friday reported that the EPA was down there to investigate and hold discussions. It indicated that test bores were being drilled to see what damage had been done by the run-off from the CSR mill which then polluted the underground bore that is part of the unconfined aquifer.

There is concern in Mount Gambier about any run-off and pollution in the area because the unconfined aquifer is honeycombed with cavernous caves, and it is an area that is unchartered and unmapped and in a lot of cases Mount Gambier's drinking water is sometimes put at risk. The ABC televised a program on Thursday which indicated a conspiracy of silence in the South-Eastern region regarding the reporting of this spill. The *Border Watch* did highlight it on the Friday, although the spill occurred on the Wednesday. The people of Mount Gambier are concerned that the unconfined aquifer could possibly have links to the Mount Gambier water supply. The EPA has made some statements and has said that it is quite confident that there is no linkage or any danger to the drinking water in the area. To ensure that this does not recur, I direct the following questions to the Minister:

1. What changes has CSR made to its current work and confinement practices at the discharging and unloading areas for the dangerous chemicals that it uses; and will it make sure that such a spill will not occur again?

2. What potential for damage is there to both the confined and unconfined aquifer in the area?

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

POLITICAL DONATIONS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Leader of the Government in this place a question about Catch Tim.

Leave granted.

The Hon. M.J. ELLIOTT: Over recent days I have received a number of phone calls from people expressing concern about the identity of Catch Tim and what its true reason might be for making donations. I had intended to ask a question yesterday but, when the Liberal Party said in the morning that it was going to release the identity later on that day, I chose not to ask a question. We now know that a couple of philanthropic accountants are based in Hong Kong who give money to people around the world on the basis of encouraging economic reform.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: Anyone to whom I have spoken so far will say that this does not really clarify who the real donors are or what the real purpose of that donation was. Any number of allegations have been made, but those which have come to me most frequently have related to one particular company, and that is MBf. Within a month of the election result being known MBf announced that it was purchasing the Wirrina resort. It was then suggested that the Government would be spending money on upgrading the road to Cape Jervis from where MBf already ran the Sealink ferry to Kangaroo Island. In November the Government announced that it had agreed to spend $13 million over two and a half years in infrastructure—mainly on roads, water and sewerage.

There have also been statements in the media that MBf is interested in gaining a second casino licence in South Australia. More recently, the Minister for Housing, Urban Development and Local Government Relations has issued a ministerial amendment to the local development plan—a legal but relatively unusual occurrence—which allows not only a resort development, which was already allowed under the existing development plan, but the building essentially of a new town. Finally, the Government's closure of the *Island Seaway* has left MBf in a dominant position as owner of the Kangaroo Island *Sealink* which is the predominant carrier of freight to Kangaroo Island. It has also more recently purchased one of the major airlines serving Kangaroo Island. Each of these actions has caused concern in its own right. My questions to the Minister—

Members interjecting:

The Hon. M.J. ELLIOTT: That is not the case if you read the media reports very carefully, which I have done. My questions to the Minister are:

1. Will the Government, after consultation with the Party machine, confirm that MBf was not in any way directly or indirectly linked to the Catch Tim donation?

2. Secondly, with the Liberal Party's refusal to divulge the real source of funding, how will it avoid continued speculation which has linked a number of companies to that particular donation?

The Hon. R.I. LUCAS: I will refer those questions to my colleague in another place and bring back a reply. The sad thing is that someone like the Hon. Mr Elliott with his political ethics in relation to these issues will come into this Chamber and this week will think of MBf, next week ABC or whatever, and the following week it will be another company.

Members interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Elliott, with his political ethics, will come into this Chamber and this week, as I said, it will be MBf, next week it will be somebody else and the following week it will be somebody else again. That is the difficulty in relation to this particular—

Members interjecting:

The Hon. R.I. LUCAS: I do not know who it is. That is why the Liberal Party has a fundraising code which states that members of Parliament should not know who the donors to the Party are. The Labor Party obviously might be acting contrary to its own guidelines.

Members interjecting:

The Hon. R.I. LUCAS: Have a look at your own fundraising code; speak to your former State Secretary. You are allowed to take donations up to $3 000, I am told. But the code is that members of Parliament are not to know the names of the donors, because we are then in a position to make judgments about MBf or any other company without knowing whether it has made a contribution to the political Party. If, for example, members of Parliament or members of the Government know the names of the companies or people who are making donations, they are in a position of potentially being influenced. The fundraising code is quite explicit. The Premier does not know, the Leader of the Government in this Chamber does not know and the Attorney-General does not know. The people who know are the President of the Liberal Party and the members of the Finance Committee of the Liberal Party, and that is as it should be. It is the same for the Labor Party.

The Hon. K.T. Griffin: Except for Brian Burke.

The Hon. R.I. LUCAS: That was a very good interjection by the Attorney-General. That is the same as it is meant to be for members of the Labor Party who follow its fundraising code. The Labor Party's fundraising code states that members of Parliament should not know the names of donors to the political Party, with the exception of donations up to $3 000. That is the Labor Party's fundraising code which, in its important principles, is exactly the same as the Liberal Party's fundraising code. Those who make the decision in Government—the members of the Cabinet—do not and should not know. It might be different in the Democrats—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: There might not be a fundraising code for the Democrats. It may well be that the Hon. Mr Elliott knows personally all the people who provide money to the Democrats. It may well be that he knows that and they do not have a fundraising code in the Democrats. It may well be that that is the Democrats' proposition, but that is not a proposition that the Government supports. We do not believe that the Hon. Mr Elliott should be able to walk around on behalf of his political Party, canvassing for money from businesses or unions in South Australia, accept $10 000 from a company or an individual, and then vote on those particular issues that might relate to that company in this Chamber.

If that is the position of the Hon. Mr Elliott, let him stand up in this Chamber and say that that is the position that he supports as the Leader of the Democrats. Let him stand up in this Chamber and say that. We will not hear anything from

the Hon. Mr Elliott. We do not know about the fundraising code of the Democrats, do we? We do not know about their fundraising code. Maybe he thinks it is all right that he can walk around as a bagman for the Democrats collecting money from businesses and unions, trading his votes for whatever particular issue. Maybe that is the approach of the Democrats, but at least the Liberal Party and the Labor Party have a fundraising code which says that those people who make the decisions should not know and do not know the names of the donors to their political Parties, and that is the way it should be.

I would have hoped that that is the way it ought to be for the Australian Democrats. Let them stand up in this Chamber and publicly and indicate what their fundraising code is, but do not let them come in here with the political ethics of the Hon. Mr Elliott and this week mention one name, maybe it is MBf because this has been done, and then next week make up another name and suggest it is somebody else, and every week for the next two years come in with another name and try to suggest that something improper has been done in relation to the particular issue.

So, Mr President, in relation to that aspect of this particular matter, the ball is completely with the Hon. Mr Elliott. I have indicated, as the Government has indicated, that I do not know the names of the donors to the Liberal Party, and that is the way it ought to be.

PERSONAL EXPLANATION

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to make a personal explanation in relation to Catch Tim and the Hon. Mr Elliott.

Leave granted.

The Hon. DIANA LAIDLAW: In his explanation to his question to the Leader of the Government in the Council about Catch Tim, the Hon. Mr Elliott inferred that decisions made by me had been influenced by a donation to the Liberal Party. He referred to roads to Cape Jervis and also the decision in relation to the *Island Seaway*. I wish to refute without any hesitation that I have any knowledge of any donation to the Liberal Party, nor should I. To make such inferences in this place is absolutely scurrilous, and I can assure members that no decision of mine has ever been influenced in that way.

The Hon. Carolyn Pickles interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: I suggest he does not even whisper such suggestions outside this place, because he will be in court in a moment.

EWS RESTRUCTURING

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Minister for Industrial Affairs, a question about contracts in the EWS.

Leave granted.

The Hon. G. WEATHERILL: In the Engineering and Water Supply Department at the present time a series of people have taken early retirement and the people who have remained in the department are those who are the most skilled in that area. These people have been told that when the contracts are let in the Engineering and Water Supply Department they will be offered a two year contract with the contractor. These members believe that they will teach the contractors the skills that they have learnt over the past 20 or 30 years and that they will be put off and the new crews will be kept on, which is totally unacceptable. Will the Minister insist that that two year period extend to 10 years, and that these people should at least be given that range because of their skills and the experience they have in that department?

The Hon. R.I. LUCAS: I will refer the honourable member's question to the Minister and bring back a reply. I suspect that the answer to the question will be 'No', but I will nevertheless refer the question and bring back a reply.

GLENTHORNE FARM

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Minister representing the Minister for Housing, Urban Development and Local Government Relations a question about Glenthorne Farm.

Leave granted.

The Hon. BARBARA WIESE: In 1992 the 2020 Vision planning strategy for southern Adelaide was released, and this strategy contemplated subdividing the CSIRO owned Glenthorne Farm on the corner of Majors Road and South Road at O'Halloran Hill for housing. About a month later in the *Southern Times* on 26 August 1992, the member for Fisher, Bob Such, was reported as saying:

> Glenthorne Farm was considered as 'the lungs of southern Adelaide' and to consider housing without community consultation would be an outrage.

My questions to the Minister are:

1. Is the Government aware of renewed speculation that the CSIRO land at Glenthorne Farm may be subdivided for housing purposes?
2. Is it the case that no such subdivision could take place unless the land is rezoned from its present rural B classification?
3. Is the consent of the State Government required before any such rezoning for housing subdivision can take place?
4. Does the Government agree with Dr Bob Such's view that to consider housing without community consultation would be an outrage; and, if not, why not?
5. Will the Government give an assurance that it will preserve the Glenthorne land as open space; and, if not, why not?

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

WOMEN IN PARLIAMENTS

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about the Women in Parliaments discussions paper.

Leave granted.

The Hon. ANNE LEVY: The Commonwealth-State Ministers' Conference on the Status of Women in 1993 commissioned a paper to be prepared on women in Parliaments in Australia and New Zealand. This paper was presented to the conference in 1994 and was released, stating that it was intended for wide distribution in the community and that it would result in open, informed debate. It has many interesting pieces of information in it, including tables showing how women's success rate as candidates for Parliament is less than that of men. For instance, at the last

Australian Federal election, only 6 per cent of women were successful in being elected, whereas 19 per cent of male candidates were successful in being elected. The corresponding figures for the last New Zealand Parliamentary elections were 10 per cent success rate for women candidates and 16 per cent success rate for male candidates.

Furthermore, the document shows clearly that the progression of women to ministerial positions once they enter Parliament is likewise inhibited and that glass ceilings obviously operate within Parliaments. Only nine and 10 per cent of all the women members currently in the Australian and New Zealand Parliaments are Ministers, whereas 15 per cent and 22 per cent of all the men in Australian and New Zealand parliaments have become Ministers. The glass ceiling is alive and well. I have spoken to many people about this discussion paper, and I have yet to meet anyone who has read it.

The Hon. A.J. Redford: That's not true. You have at least two colleagues in this place who have read this. We have a whole committee on the subject. Why don't you come and give evidence to the committee?

The Hon. ANNE LEVY: Of the people outside Parliament, I have yet to meet anyone who has read it. This may mean that I am not talking to the right people, and quite obviously one would not expect every one of the 500 000 women in South Australia to have read it. However, I commend the document to any member who has not yet read it. It is a mine of useful information and I certainly hope that each member of the select committee on this matter has received a copy of the document and has studied it very carefully. My questions are:

1. How many copies of this discussion paper were produced?
2. What has been the method of distribution?
3. Does the Minister know how many copies have been distributed in South Australia?
4. What feedback has the Minister had from it?

The Hon. DIANA LAIDLAW: I am sorry to learn that the honourable member is not talking to the right people because certainly I understand that 2 000 copies were distributed in South Australia. The fact that people may not have read it does not mean that they have not received it, and 2 000 were certainly sent and they came off my budget. In terms of its being a federal publication, the method of distribution was determined by the Office for the Status of Women. I had considered that that office would have a mailing list that would be appropriate to reach women's groups and other women interested in such matters. I believe that both State and Federal members of Parliament in this State were to receive one, and public libraries also were sent—

The Hon. Anne Levy: Giggling Gertie obviously hasn't got one.

The Hon. DIANA LAIDLAW: I think that that reference should be withdrawn and that the honourable member should apologise for referring to a member of Parliament in that way.

The PRESIDENT: Is that your request?

The Hon. DIANA LAIDLAW: That is my request.

The Hon. T.G. Cameron: We did not know who it was until you turned around.

The Hon. DIANA LAIDLAW: No; the honourable member pointed to him. Now she is looking innocent and coy, when she is far from innocent and coy.

Members interjecting:

The Hon. DIANA LAIDLAW: No; she pointed over here.

The PRESIDENT: Order! Will the honourable member withdraw those remarks and apologise?

The Hon. ANNE LEVY: Mr President, if you wish me to withdraw the remarks, I am happy to do so.

The Hon. DIANA LAIDLAW: I understand all members received the report about six months ago and, from the brief discussion I have had with members of the Liberal Party, I know that the three members seated behind me have read the report. I know that, in particular, the Hon. Mr Redford, who is a member of the Joint Committee on Women in Parliament, has taken a keen interest in the contents and the recommendations.

DISCOUNTING

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about retail discounting.

Leave granted.

The Hon. T.G. CAMERON: There appears to be a growing practice by some retailers to advertise large discounts off the normal or recommended retail price of their goods. Consumers who are attracted by these advertisements and who often purchase these goods then find out that the discount is illusory; that is, they can often buy these goods elsewhere at a similar price or less than the advertised discount price. The sale of oriental rugs is a prime example. I know this area can be a difficult one for legislation, and the Minister may be able to provide a simple answer to my questions. My questions are:

1. Is there any legislation that provides these consumers with any legal redress?
2. If there is not, can the Minister examine the subject with a view to introducing legislation that would make it an offence artificially to inflate the price of goods and then discount them?
3. If possible, could the Minister examine the feasibility of introducing legislation to provide protection for consumers caught by these sales techniques?

The Hon. K.T. GRIFFIN: There is already legislation, and when complaints about illusory discounts are made to the Office of Consumer and Business Affairs they are followed up. The legislation is the Fair Trading Act in this State and the Commonwealth trade practices legislation, which has a part devoted to consumer protection, particularly in relation to a variety of practices that are illegal. Quite obviously misrepresentation by any trader in relation to products or services is a basis for some civil action, but it is covered more than adequately by the Fair Trading Act and the Trade Practices Act. If the honourable member knows of particular instances that he would care to draw to my attention, I am certainly prepared to refer them to the Commissioner for Consumer Affairs and have them investigated. If there are other matters which I may need to draw to the honourable member's attention I will ensure that the Commissioner has a look at the question and, if anything further needs to be added to it, I will bring back some further information.

PAYROLL TAX

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

Treasurer a question about the avoidance of State Government payroll tax and other State charges.

Leave granted.

The Hon. T. CROTHERS: An article on the front page of the *Advertiser* of Saturday 4 March 1995 entitled, 'Restaurants caught in $2.5 million tax dodge' and written by reporters John Drislane and Paul Starick points out the following facts:

1. There is a thriving black economy involving millions of dollars of secret payments to staff. And this fact, coupled with others, emanated out of a major investigation in this State by the South Australian branch of the Australian Tax Office.

2. The investigation centred on 50 of the 700-plus restaurants located in South Australia.

3. Of the 50 restaurants investigated, 15 were found to have made cash payments to staff without deducting tax.

4. The income tax due in these cash payments totalled almost $1 million.

5. Some of this city's top restaurateurs are now facing prosecution for a range of offences, including failure to deduct taxes from wages and not keeping proper wage records. Many part-time workers in the industry who were given cash-in-hand payments were students receiving the Austudy allowance or unemployed people on welfare benefits.

6. The Australian Taxation Office believes that many of these people have not declared their income from their restaurant work.

7. The investigation took 18 months and involved tax staff posing as customers and counting staff on the premises of the restaurants they were investigating.

8. This information gathered was then checked later against the official records of the restaurant.

9. In some cases tax was being deducted from employees' wages by employers but was not being forwarded to the Australian Taxation Office, yet in other instances no records were kept at all of cash payments to staff.

10. The Australian Taxation Office says that, apart from tax breaches, many restaurants were also found to be avoiding other business obligations, such as the superannuation guarantee levy, fringe benefits tax, possibly worker's compensation payments, and other industrial relations provisions of the award.

11. The President of this State's Restaurants Association, Mr Nick Papazahariakis, recently said that he attributed the findings of the Australian Taxation Office to inexperienced restaurateurs unwittingly avoiding payments.

12. The proprietor of one of Adelaide's top restaurants, Alphutte Restaurant, Mr Leo Schadegg, said that lack of knowledge about tax regulations was no excuse for the breaches.

13. The Australian Taxation Office's crackdown in this industry is part of a continuing probe of small businesses, particularly restaurants, which is hoped to net at least an extra $825 million per year nationally. Truly, without wishing to express an opinion, that would seem to be a staggering amount of money which, if correct, would seem to mean that South Australia's share of this $825 million must be, at the most conservative estimate, at least $50 million annually. My questions, which I direct to the Treasurer, through the Minister for Education and Children's Services, in a State—we are told by the Government—that is desperately strapped for income, and which are particularly important, are as follows:

1. As the State's Treasurer, what will you do in respect of gathering the State payroll tax which these cheats are not paying?

2. South Australian restaurants operate under a State award. What, therefore, will you and your Government do to ensure that proper payments are being made in respect of the compensation cover for those employees for whom either no records are kept and who are paid cash under the counter but who are required by State law to be covered by their employer for a work-related injury?

3. If workers come under a State award but are not covered for injury, do you agree that, in the event of an uncovered worker being injured, the State's taxpayers will pick up the injured worker's health costs when the worker is on the way to recovery and rehabilitation?

4. If these sizeable levels of monetary obligations are being avoided, does this saddle the *bona fide* operator in the South Australian hospitality industry and the general South Australian taxpayer with an additional tax burden, which is being illegally avoided by these cheats to whom I have just referred?

The Hon. R.I. LUCAS: I will refer those questions to the Treasurer and bring back a reply.

PEDAL CYCLES

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport a question about pedal cycles.

Leave granted.

The Hon. SANDRA KANCK: I refer the Minister to a report on bicycle dual mode transport, prepared by the Mawson Graduate Centre for Environmental Studies at the University of Adelaide. The report points out that Adelaide's generally flat terrain and dry climate make it an ideal city for cycling, despite the fact that some roads are hazardous for cyclists. The report says that there are currently very few secure bicycle storage facilities at stations or bus stops, and taking bicycles on trains creates problems for other commuters, particularly during peak hours, due to a lack of dedicated and well designed on board bicycle storage areas in most carriages, and the requirement of an extra ticket for bicycles.

Encouragement of so-called 'dual mode travel' increases the number of people within easy access of the public transport facility. Installation of more secure bicycle parking is cheaper and more space efficient than the provision of car parking. I refer the Minister also to the Government's often-stated policy of increasing patronage on public transport, and its particular concern with the comparatively high per passenger cost of suburban passenger trains. My questions to the Minister are:

1. Has the Minister read the report in question? If she has, does she believe that many of the recommendations in the report could lead to increased patronage on suburban passenger trains?

2. What consideration, if any, has the Minister given to building more bicycle lockers at major interchanges, railway stations and bus stops? What consideration, if any, has the Minister given to free travel for bicycles on trains?

3. What consideration, if any, has the Minister given to the active promotion by the Passenger Transport Board of dual mode transport?

The Hon. DIANA LAIDLAW: I have not read the report specifically referred to by the honourable member, but I have read many others on the subject. I also wrote the Liberal

Party's cycling policy, which seems very familiar in relation to the recommendations to which the honourable member has just referred. Certainly, our policy highlights that Adelaide is a cyclists' paradise and we aim, by the year 2000, to double the number of people cycling in South Australia, particularly within the city of Adelaide. One initiative we have taken in that regard is the revamping of the Cycling Unit within the Department of Transport. It is now called Bike South and has a new manager, Mr Terry Ryan, and the money for that unit was doubled in the last budget.

Members who attended WOMAD may have seen the success of the first secure compound ever built for an outdoor event of that nature. I am told that every night it was full with thousands of bikes. The Bicycle Institute wrote to me this week applauding the Government's initiative and, in particular, Terry Ryan's efforts in relation to that bicycle compound, which, incidentally, was staffed by volunteers from the Bicycle Institute and other organisations. It has since been suggested that a secure bicycle compound be installed at Sky Show and the Fringe. I heartily agree to those suggestions and have written to Terry Ryan, Manager, Bike South, and suggested that negotiations be undertaken with those organisations and more, such as State Opera for Opera in the Park, the Festival, Glendi, and a range of other major events.

In respect of dual mode transport to which the honourable member refers, we have ordered at least one bike rack, possibly more, from Canada, where bike racks have been implemented at the front of buses. We will be commencing a pilot program whereby three bikes can be secured at the front of a bus at any one time. That equipment is to be tested to discover whether it can be made under licence here in South Australia.

I have not made the progress I would have liked with respect to trains because TransAdelaide has been very busy in terms of competitive tendering and a whole range of restructuring issues. The General Manager made a plea late last year that I had to give a bit more time to implement some of our cycling initiatives on public transport because I was asking so much of everyone, and I accepted that that was probably so. Therefore, in terms of travel and secure storage on trains, I have let that matter rest for some time. I am certainly very encouraged to see the honourable member's strong support for cycling. I will read the report and continue to implement positive initiatives to promote cycling in South Australia.

CADELL TRAINING CENTRE

The Hon. T.G. ROBERTS: I seek leave to make an explanation before asking the Attorney-General, representing the Minister for Correctional Services, a question about Cadell Training Centre.

Leave granted.

The Hon. T.G. ROBERTS: Rumours are floating around in the Riverland that the life of the Cadell Training Centre is running out and that it is possible that a restructuring program for Correctional Services in conjunction with the Government's intention to build a new 600 bed prison might sound the death knell for the centre. It would be sad if that option for the permutations that are required within Correctional Services is removed as the centre has served a sound purpose for training and has become the life blood of Cadell and the surrounding Riverland areas. It has school and community services that feed off the centre's being in place and, despite the occasional glitch by Governments in putting the wrong classified prisoner in the centre, as I think occurred in a recent case, the centre has proven to be a good rehabilitation centre and training ground for bringing back into the community people who have difficult records. Cadell has also been very good for young people in being able to isolate drug free prisoners into the Correctional Services units and the programs that it offers.

There is much concern and confusion. I understand that the problems at Port Lincoln have been put to rest. The Minister has given an undertaking that Port Lincoln gaol will remain, but the uncertainties relate to Cadell and its future as a training centre. Therefore, my questions are as follows:

1. Will the Minister say whether or not Cadell Training Centre is to be closed or if its role is to be changed or altered?
2. If so, when will these alterations or changes take place?
3. If Cadell Training Centre is to be closed, what will happen to prison officers and other officers at the centre? Will they be transferred to other prisons or departments?

The Hon. K.T. GRIFFIN: I will refer the questions to my colleague the Minister for Correctional Services and bring back a reply.

POSSUMS

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Health, a question about possum meat.

Leave granted.

The Hon. M.S. FELEPPA: Although possums are a protected species in South Australia, their interstate cousins are being imported and served up for South Australians to eat as a delicacy. Making use of our native wildlife for food as an alternative to introduced hoofed cows and sheep is possibly a sensible suggestion. However, the issue is fraught with danger from health scares in relation to the risk of endangering whole species. The possums being eaten by South Australians are from Tasmania, where there is an export possum farm. Therefore, I suggest that the following questions need to be answered before South Australians can happily tuck into a meal of a brushtail:

1. What health regulations pertain to the slaughtering of these animals?
2. What are the conditions of confinement for those animals?
3. What is the size of the possum population in Tasmania?

The Hon. DIANA LAIDLAW: I thank the honourable member for his interesting questions, to which I will certainly seek prompt replies and bring them back to the Council.

MATTERS OF INTEREST

The Hon. J.F. STEFANI: There has been much debate about WorkCover legislation before this Parliament. In a large advertisement on page 25 of the *Advertiser* of 11 February 1995 inviting workers to a public rally, the Coalition for Fair Workers' Compensation indicated that the advertisement was sponsored by various organisations, including the Greek Welfare Centre, the Federation of

Spanish Speaking Communities, the Ethnic Communities Council and the United Ethnic Communities.

I have made contact with the office of each of these organisations and in each instance I was advised that no authority was given by the organisation to publish its name and, more importantly, that no moneys were paid by the individual organisations to sponsor the advertisement. The facts surrounding the involvement of these organisations with the Coalition for Fair Workers' Compensation are as follows.

In the first instance, contact was made with each of the agencies by the Coalition of Fair Workers' Compensation offering to provide information about the proposed changes to the WorkCover legislation. Each organisation nominated a representative to attend information meetings, which later become short strategy meetings organised to plan proposed action against the WorkCover changes, including a public meeting which was later held in the Irish Hall. At the Irish Hall people who attended were asked to donate money for the campaign that was being organised to oppose the WorkCover legislation. Not all organisations were able to confirm whether their representatives attended the Irish Hall meeting or donated money personally to the voluntary collection.

Therefore, it is important that the facts be placed on the public record in order to correct the misconception created by the advertisement organised by the Coalition for Fair Workers' Compensation and for me to indicate clearly that the Greek Welfare Centre, the Federation of Spanish Speaking Communities, the Ethnic Communities Council and the United Ethnic Communities did not sponsor any of the costs associated with the placement of the advertisement.

Also, I have been advised that the four organisations did not give authority for their names to be used in connection with the advertisement dated 11 February 1995 which was published without their knowledge or approval.

The Hon. T. CROTHERS: I intend to utilise my five minutes to speak on the institution of which the 22 members in this Chamber are the elected stewards.

The PRESIDENT: Order! There is far too much background noise.

The Hon. T. CROTHERS: I am reminded of the French philosopher, Descartes.

The Hon. R.D. Lawson: So am I.

The Hon. T. CROTHERS: You would be—you look so like him. Descartes said, 'Je pense, donc je suis' (I think, therefore I am.) So it is with this institution. It is here; it exists as an entity; and, therefore, we use it. The history of associations of people brought together to represent the population in the nation, State or city in which they live is long and it would take much more than the time available to me adequately to comment on it. Suffice to say, all members would know of the plebeian organisations in the old Greek city states or of the purple togaed senators in the senate of Rome. However, more importantly for this Chamber it is claimed that we are a daughter Parliament of the mother Parliament in the Anglo-Saxon world that emanated out of England.

Prior to that, it in fact emanated out of the Vikings, those hardy and ferocious sea warriors, then the Anglo-Saxons and, in general terms, the Scandinavians before being passed on to their ethnic relations the Norman-French. In fact, the word 'Parliament' itself comes from the Norman-French and means simply a speaking place. One has only to be a member here for a very brief duration to see that whoever first coined the phrase that it was a speaking place was not kidding.

Of the old seven Anglo-Saxon kingdoms of England, three of them at least had Parliaments which were known as the Witan; that is, the northern kingdom of Northumberland, the midland kingdom of Offa of Mercia and the kingdom of the West-Saxons; that is to say, Wessex. Under Alfred, of course, they managed to succeed in combining the seven kingdoms together. Those were the Witans and we get our word 'wit', or lack of wit, from that particular old English phraseology.

A very old Parliament which still exists, of course, is the Parliament of the Isle of Man, known in the Manx tongue as the Tynwald or, again, 'meeting place'. It is a Cymbrian Celtic tongue, Tynwald, from the Welsh Celtic, as opposed to the celtic of Ireland and Scotland. Of course, the oldest Parliament of all that is still constant and running is the Althing, located in Reykjavic in Iceland. The Althing was first formed in the year 930 AD and continues on to serve as the Parliament of that nation. So, it has been in existence for over 1 000 years.

Of course, two items occur which one should note in respect of the evolution of the Westminster system of Government. One was the fight between John and the barons, which resulted in the so-called Magna Carta—or, translated from the Latin, the Great Charter—imposed on John Lackland, or John I, by his Anglo-Norman barons, as I understand it in Runnymede, a meadow situated near the Thames River. One should not be misguided by that, because that was merely the rich protecting themselves and their land from the vagaries of the King. It was not the sort of Parliament that we know which purportedly represents all people; it was a Parliament to entrench the wealthy and the landowner in England, which, unfortunately, still exists to this day.

The other matter of some significance concerns Oliver Cromwell and the dispute that Parliament had—led so ably by Speaker Pym—in respect of the rights of the King, the rights asserted by Charles I, which brought about a clash with Parliament and his execution in 1649 and the ruler, the protector, Cromwell. That was the situation that led to the start of the emergence of Parliament as we know it.

The PRESIDENT: Order! The honourable member's time has expired. His potted history of the development of the Parliament can continue next time if he wishes.

The Hon. T. CROTHERS: I would just say this, Mr President, that sometimes the Parliament is ill-used, as it was last week when an interjector appeared in the public gallery and was most unfair in the way in which he dealt with the Hon. Mike Elliott. More later.

The PRESIDENT: Order! We have a promise of more later. The Hon. Angus Redford.

The Hon. A.J. REDFORD: Over the past few years all of us on this side have, I think, become increasingly concerned about Australia's burgeoning balance of trade problems and the somersaults taken by the Hawke and Keating Federal Governments in explaining our ever declining economic position. By way of excuse we first had the J-curve. We then had the investment boom. Then we had the recession 'which we had to have' and now we have the so-called export led recovery. Australia, despite Keating's statement that we are going into the twenty-first century at the forefront of information technology, needs to make some fundamental change quickly, not the least of which would be a new Federal Government.

The Federal Government and its principal master of misinformation, Paul Keating, continues to ignore important

economic facts whilst at the same time spins economic alchemy over the people of Australia. This has continued for some 12 years and has to stop. Australia's position in regard to exports to GDP ratio is the lowest in the OECD. Countries as small as New Zealand and the Netherlands have exports that are over 30 per cent of their GDP compared to Australia's 16 per cent. What is alarming is the Goebbelsesque nonsense and fiddling that Keating, in partnership with various Federal Government departments, has done in fooling Australia in just how well we are going.

The so-called success story is an absolute fraud based on the reclassification of exports from trade based to industry based statistics. It has created the illusion that certain categories of exports appear to have increased, such as manufacturing and other areas, in comparison with primary production, including agriculture—they have not declined. The real facts are that they have not changed as a proportion very much at all, despite what Keating says. Australia has invented its own method of measuring a trade or industrial data basis of our exports, as opposed to using the one on which the OECD, the World Bank, the United States, Japan and other OECD countries rely. Another example of the fraud is the fact that in measuring exports in export income the cost of subsidies paid by Governments are not excluded. A subsidy given to a particular industry and exported overseas is denoted as an export.

Again we have heard the latest catchcry of value adding. No-one really says precisely what it means. However, if value adding does not lead to internationally competitive prices for our final product then value adding is at best illusory and at worst economically destructive. A good example is the processing of fruit and other consumables when overseas consumers are looking for fresh products. The so-called Asian boom has not yet been taken up by Australia. Our total share of Asian annual imports is less than 4 per cent and our share has not been growing nor is it expected to grow other than in the case of a few raw materials. Then we have the APEC agreement. The APEC agreement has in fact lengthened the timetable for trade liberalisation beyond existing national targets in countries such as Korea and Thailand.

The poor state of Australia's imports reflects the uncompetitiveness of this economy and exporters must rely on relatively stable exchange rates. One only has to speak to people in the wine industry to understand that the 2 or 3 per cent change in exchange rates makes their products uncompetitive. In order to have a stable exchange rate we have to have balanced Commonwealth budgets and the Government at this stage has failed to do so. The cost of electricity, water and many other fundamental services that are provided by Government are uncompetitive. They lead to uncompetitive small as well as larger industry.

It is clear that this current Federal Government has failed to reform the economy in any meaningful way. Microeconomic reform at the Federal level is appalling when one has regard to the major microeconomic reforms that have been implemented by various State Governments throughout Australia. The only current response from the Federal Labor Government is to change statistics, distort facts and put about economic misnomers. They at first seem to be an instant panacea and later become discredited. It is time that Australia and Australians stopped being mesmerised by the Keating rhetoric and analysed the facts. In other words, it is time that everybody in this country saw that the emperor has no clothes.

The Hon. T.G. CAMERON: Along with the shadow Minister for Primary Industries and Rural Affairs, Ron Roberts, I take this opportunity to congratulate the Federal Government and the Federal Minister for Primary Industries, Senator Bob Collins, on the drought assistance package for parts of Eyre Peninsula which was announced on 28 February. As a member of the parliamentary Social Development Committee, chaired by the Hon. Bernice Pfitzner, which inquired into rural poverty in South Australia, I was shocked by many of the hardships that people living in some rural areas of South Australia are experiencing, and I think the Hon. Bernice Pfitzner would agree with me.

The provision of up to $11.3 million to drought-stricken communities in South Australia is well above that expected by the South Australian Government and the South Australian Farmers Federation and, with the long-term aim of establishing a reasonable strategy for drought affected areas, it will provide more than just a short-term bandaid solution.

The main elements of the package announced by Senator Collins include the payment to farmers affected by drought of a drought relief payment, which is equivalent to the Job Search allowance but without the work activity test. Families eligible for the drought relief payment will also be eligible for health care card benefits. Another element of the package is the provision of interest rate subsidies under the Rural Assistance Scheme of up to 100 per cent to eligible farmers in exceptional circumstances on both new and existing debt.

The maximum level for Rural Adjustment Scheme support under the interest rate subsidy has also been lifted from $50 000 to $100 000, while the cumulative limit over five years has been lifted from $100 000 to $300 000. The scheme has also improved the re-establishment provisions for farmers in drought circumstances who wish to leave the land. The final element of the package is the removal of the existing Austudy farm assets test for all families in receipt of the drought relief payment, which will allow students living at home and away to access Austudy payments.

This is indeed a thoughtful and generous package from Senator Collins and the Federal Government. It addresses immediate needs and looks into the future by providing a mechanism for addressing long-term structural problems which have been exacerbated by drought in certain regions. I note the establishment by Minister Baker of a committee, which includes the Hon. Caroline Schaefer and the member for Giles (Frank Blevins), to look into these issues and to provide the State Government with recommendations. I congratulate the Minister on the establishment of this committee and wish it well with its difficult task.

The drought relief package is well in excess of the expectations of the State Government and was described yesterday by Minister Baker as 'generous'. The Minister, in his media statement on 28 February said:

> This is in fact more than the State Government's 'exceptional circumstances drought' had proposed and we are delighted at the Federal Government's decision.

Unfortunately, the one sour note in all this is the tardiness with which the drought issue was addressed by the State Government. All members would have been aware last winter that South Australia was in the grip of lower than normal rainfall and that this soon translated into drought conditions in some parts of Eyre Peninsula. The Federal Government encouraged the State to make an application for exceptional circumstances funding and to establish a regional drought declaration strategy for South Australia. However, the South Australian Government missed the October deadline for

submissions to be considered in November/December by the Rural Adjustment Scheme Advisory Council (RASAC). This meant that South Australia's drought affected farmers had to wait another three months before the South Australian submission was considered by RASAC.

The South Australian Farmers Federation was scathing in its attack on the incompetence of the Minister and the Government for failing to get its act together and get its submission to Canberra. In the *Advertiser* on 8 December 1994, the Chief Executive Officer of the South Australian Farmers Federation, Mr Michael Deare, is quoted as saying:

> It's Baker's fault. The Primary Industries Department was responsible for compiling the application and it didn't get to Canberra in time. The Minister is in charge of that department, and the buck has to stop with him.

The Federal Minister, Senator Collins, finally received RASAC's recommendations in relation to the late South Australian submission in the middle of February; and in a little over two weeks he had a Cabinet submission prepared, he took it to Cabinet, had it approved and made the announcement on 28 February. I congratulate Senator Collins on the speedy manner in which he handled the South Australian submission for assistance, but I am critical of the South Australian Government and the responsible Minister for their tardiness in putting our case to Canberra. I must also condemn the Federal member for Grey, Barry Wakelin, for claiming on radio that the drought assistance package was 'Too little, too late.'

The assistance provided was more than expected by both the South Australian Government and the South Australian Farmers Federation, and it was delayed only because of the incompetence of Mr Wakelin's Liberal colleagues here in Adelaide. Three months' delay may not have meant much down in the South-East or up in Grenfell Street, but for farmers over on Eyre Peninsula it was a delay that should not have occurred.

The PRESIDENT: Order! The member's time has expired. The Hon. Caroline Schaefer.

The Hon. CAROLINE SCHAEFER: I should like to thank the Hon. Jamie Irwin for his generosity in allowing me five minutes in which to reply to the Hon. Mr Cameron. I thank him for his congratulations and best wishes for what will be a very difficult committee on which to serve. I am very pleased that it is a bipartisan committee and that the member for Giles (Mr Blevins), whose district is on Eyre Peninsula and takes in two of the towns affected by drought, Kimba and Cowell, will also be serving on that committee with me.

I publicly acknowledge the efficiency with which Senator Collins has dealt with this matter. The Minister in this State has also publicly acknowledged the efficiency with which Senator Collins has dealt with this matter. However, I must disagree with what the Hon. Mr Cameron has said. I think there is a basic misunderstanding of the necessities for this application and a very basic misunderstanding of what constitutes drought in this State. There is no way that anyone could apply for specialist drought funding prior to late July or early August in this State, because had we had rain before that those areas would no longer have been in drought. Basic steps were taken to seek information prior to that, and the beginnings of the application were instigated in late August.

However, South Australia has been quite unique in its success with this application because it is the first State in Australia to have established that drought can be declared during a winter rainfall growing period. Therefore, the rainfall from South Australia will now be taken from April until October, which is our growing season. That is quite different from any other drought funding that has been declared throughout Australia where they have always had the ability prior to this to two crop.

Members interjecting:

The Hon. CAROLINE SCHAEFER: I am sorry if Senator Collins does not agree with what our Minister has said, but if you will listen to me this is quite logical.

The Hon. R.R. Roberts: He does agree.

The Hon. CAROLINE SCHAEFER: Yes, he does agree, exactly. But where has the delay been? There has been no delay by this Government. This Government has done an outstanding job because, for the first time ever in this State, we have had a drought declared region. Never before under a Labor or Liberal Government have we had a drought declared region. For the first time ever we have established a separate growing season, yet you still carp about the inefficiencies—

Members interjecting:

The PRESIDENT: Order!

The Hon. CAROLINE SCHAEFER: You are still carping about inefficiencies when in fact this Government has done quite an outstanding job in getting approval. I will not take anything from the Federal Minister, and let us not take anything from the efficiency of the department which prepared this application. I would draw to the attention of the Council the fact that South Australia, Queensland and parts of northern New South Wales are the only areas of which I know which have had drought funding. The Northern Territory, Western Australia and Tasmania have missed out. The Department of Primary Industries must have done something right for us to have it, particularly when we have established a quite unique growing season.

The Hon. G. WEATHERILL: The *Advertiser* this morning reported, 'SAIT warning over cuts to support staff.' Schools have new computer systems and school services officers have to learn new skills in their own time; they do not get any time to learn these skills. Also we have bigger class sizes these days. We are apparently looking at the dollar sign, not the human side of what happens in schools. The canteens in schools are served by volunteers for only two or three days a week. The support staff look after that side of things. They cut the lunches. Indeed, nine times out of 10 they go out and buy the lunches for them. They do not get any extra time to do this; they still have their own work to do over and above this.

If a child is injured at school, they have had to obtain a first aid certificate in their own time to be able to assist. They are not given time off by the Education Department for that. They have to ring the parents of the injured children. Nine times out of 10, because both parents are working, they cannot be contacted, and they contact the grandparents, but they invariably turn up by bus or on foot. So, the teachers' assistant, in their own vehicle, drives the child to the doctors or hospital and then home again. This sort of thing is going on in all schools.

These staff are working very long hours on their computer systems, doing a lot of work outside of normal hours, for which they are not paid. In one school where I spend a lot of time seeing what goes on, these people are working on average approximately 40 hours a week but are paid for only 16 or 17 hours a week. They feel responsible, and the

department makes them feel this way. Another situation is where a child is left at school. Can a teacher or school assistant knock off at their normal knock off time, which they are supposed to do? No. Because they are caring people, they stay back—and sometimes for long hours—sometimes having to chase up the parents or grandparents, and even take the children home so they are not left around the schoolyards.

These staff are expected to type up these documents, as well as school and council reports, as part of their duties. At the present time, we have a system called 'Time out' statistics. When I was going to school, there was no such thing as a 'Time out'. They used to get out a big cane and you would go home with bruised wrists or bruised hands. I must have been a real villain, because I used to get a lot of bruised fingers. This system, instead of abusing children, seems to be working. Things that children can get 'Time out' for include intimidation, harassment, bullying, fighting (physically), behaviour dangerous to self or others, leaving the school ground without permission, abusive language, stealing, intentional damage to schools or property, spitting on others—and so the list goes on about all the things these children can have 'Time out' for.

These children have to fill in a form which is kept on record, and these records are kept in the form that I am reading from at the present time. Because of the diligence of the school services officers who, I might add, spend a lot of their own time doing these things, we have found—

The PRESIDENT: Order! The honourable member's time has expired.

The Hon. G. WEATHERILL: —that abusiveness by these children has been reduced dramatically.

The Hon. L.H. DAVIS: When I went to school, there was a subject, certainly in primary school, called general knowledge. Its title was then changed to current affairs; today it is called civics. It is really the same thing, trying to give children at school an understanding of the country in which they live, its structure, history, and economic framework, with some feel for their nation, and some pride in the history of that nation. I was interested when I was in Brisbane in late January to read of a survey by the *Courier Sunday Mail*, where they asked 13 teenagers aged 16 to 18 years a total of nine basic questions which tested their general knowledge. I want to share this very interesting survey with the Council.

The first question was: Who is Gough Whitlam? Six got it correct; one said that he was in politics; another said a clown; another said a muppet; another said a President; two said, 'I do not know'; and another said a priest. The second question was: Who was Robert Menzies? It produced a similar result to Whitlam. Of the 13, six got it correct, that he was a former Prime Minister; one said he was in politics; one said, 'Who the hell is he? A singer?' Another one said a track runner and four said, 'I do not know.' The third question was: What political Parties do Paul Keating and Wayne Goss belong to? Ten out of 13 got that correct; one did not know; one had the Parties back to front; and one was partially right.

As to question 4: What are the three Parties in the Lower House of the Federal Parliament? Five out of 13 got that correct; three had no idea; others included the Democratic Party; the Republic Party; the Upper and Lower House; the Greens; and the Independents. Only five out of 13 could correctly name the three Parties in the Lower House of the Federal Parliament. Question 5: Who is the Governor General? Given that it is Mr Bill Hayden, an ex-Queensland politician and policeman, the result was perhaps surprising—none out of 13 got that correct. One thought the Governor-General was from England; one said, 'Some chick'; another thought it was a woman; someone said, 'That is a hard one'; and the last one said, 'Michael Lavarch'. The sixth question was: How old do you have to be to vote? Everyone got that correct—18.

As to question 7: Who was the Lord Mayor of Brisbane? Nine out of 13 named Jim Soorley, which was not a bad result. As to question 8: How did Harold Holt die? Remember that that is nearly 30 years ago. Two said by drowning—so only two out of 13 got it correct; four said he was shot; one very firmly said he was shot in the back; one said he was stabbed; another said food poisoning; one said he jumped off the Story Bridge; another said he had a heart attack while having sex with his secretary! As to question 9: Who is the President of the United States? A total of 11 out of 13 got it right; one did not know, and one said George Bush.

There is a lot of jocularity about some of those answers, but the point I am making is the level of response from those 16 to 18 year olds in Brisbane Mall, when surveyed, was very low. Should we worry; should we care about that? I can remember that in 1987 and 1988 I did similar surveys in Rundle Mall, around the time we were celebrating the bicentenary of Australia and the sesquicentenary of South Australia. I must say the results were very similar. It concerns me that, as a nation approaching the year 2 000 when we are about to celebrate our centenary as a federation, the level of knowledge of children as demonstrated in that survey is lamentable. In 1988 a commitment was made federally to introduce a civics course to teach Australian schoolchildren more about their country, to make them proud about their nation, to be more familiar with its structure and history, and its political and economic framework. I think that survey shows that we have a long way to go.

LEGISLATIVE REVIEW COMMITTEE: CRIMINAL INJURIES COMPENSATION ACT

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

That the report of the Legislative Review Committee on the Criminal Injuries Compensation Act 1978 be noted.

This report of the Legislative Review Committee was prompted by the claims of some legal practitioners that amendments made in 1993 to the Criminal Injuries Compensation Act would operate unfairly to claimants. The reference to the committee was made by a resolution of this Council on 11 May last year. There were six terms of reference. The first related to the effect of those 1993 amendments and the second to the adequacy of compensation provided to victims of crime in South Australia. The third raised the issue of whether the burden of proof required to be satisfied by claimants be changed in certain respects from 'beyond reasonable doubt' to the lower civil standard of 'upon the balance of probabilities'. Fourthly, the committee was asked to determine whether awards of damages ought to be indexed to inflation. The fifth term of reference related to concerns which had been expressed by certain legal practitioners that the current Attorney-General was exercising his discretion to make *ex gratia* payments to claimants for compensation in a manner different from that of his predecessor, and the sixth term of reference required the committee to examine other related matters.

Before referring to the proceedings of the committee, I should refer the Council to some aspects of the criminal injuries compensation scheme in this State. The scheme was

established in 1969. There had been earlier schemes in the United Kingdom and elsewhere in Australia and New Zealand. Ours began modestly: the maximum amount of compensation paid to a person who suffered injury in consequence of criminal activity was $1 000. The scheme was funded out of consolidated revenue. The maximum—initially $1 000, as I have mentioned—was increased. In 1984 there were 240 claims at an average of $3 900 for a total of some $900 000. However, in more recent years, pay-outs under the scheme have increased dramatically and funding for the criminal injuries compensation scheme has become a problem.

In 1986, a fund entitled the Criminal Injuries Compensation Fund was established. That fund contains elements from various sources; for example, 20 per cent of all fines collected in South Australia are paid into the fund; moreover, a criminal injuries levy—$25 in the case of summary offences, $40 in the case of indictable offences and $6 for any offence which is expiated—comprises that levy. The fund also receives confiscated profits and amounts received from offenders, but the balance, to the extent that the fund is insufficient to discharge liabilities under the Act, is made up from consolidated revenue.

Until the financial year 1991-92, the fund was sufficient to satisfy payments without recourse to general revenue; in other words, those criminal injuries levies and the 20 per cent of fines collected were sufficient to pay all claims. However, since 1991-92, the claims upon the fund have been greater than the amount in the fund and there has had to be substantial recourse to consolidated revenue, and there were not only substantial claims upon consolidated revenue but also very markedly rising claims. For example, in 1993, $3 million was taken from general revenue to meet claims. In the following year, $8 million was appropriated from consolidated revenue for that purpose.

The reason for this phenomenon is not that we are in the grip of a crime wave. It appears to be the fact that more victims of crime are aware of their right to make a claim and more are claiming. Because compensation is based upon common law principles, which include allowances for loss of earnings, medical expenses and the like, both of which are rising, the amount paid to successful claimants is rising. I might say that, whilst medical expenses and other expenses have been rising, legal expenses in relation to this scheme have been frozen for some years.

With that brief introduction I say that the Legislative Review Committee was assisted with a number of written submissions from interested persons and organisations. The Law Society, the Legal Services Commission, the Victims of Crime Service, the Royal Automobile Association, the Rape and Sexual Assault Service and the Attorney-General's Department all made substantial written submissions to the committee, which also heard evidence from a number of legal practitioners who were very experienced in this field, from the Attorney-General himself, and from representatives of the Victims of Crime Service and other interested persons.

The committee found that the position in South Australia relating to ballooning payments is not at all unique. For example, only last year the New South Wales Auditor-General noted in his annual report difficulties in funding the Victims Compensation Fund Corporation in that State. The Auditor-General reported, that assuming the same level of crime and pay-out figures, the claims potentially payable over the next five years could amount to $2.5 billion. In the United Kingdom also there has been a ballooning rate of payment. Payments in the scheme in the United Kingdom were £21 million in 1981, but 10 years later they had risen to £152 million. A recent white paper in that country has proposed that a new scheme entirely be adopted, a scheme under which a fixed tariff for all injuries is established. For example, £1 000 is paid for fractured ribs, but the maximum is £250 000 for permanent brain damage with no effective control of functions, and a there is a wide range of tariffs for injuries between those two extremes. It is proposed in England that no award at all be made for expenses or loss of earnings. However, we in South Australia have continued with the method of common law assessment of damages.

The first term of reference required the committee to examine the effect of the 1993 amendments to the Act. The principal amendment in 1993 was one which altered the manner in which payments for pain and suffering are assessed. Prior to 1993, the court would simply make a monetary assessment based upon other cases—other criminal injuries and motor vehicle and other injuries cases—and determine the appropriate figure. In 1993 amendments were introduced which required the court to fix a numeral between zero and 50 and assess the injury on that scale by assigning any number between those two numerals and multiplying it by $1 000.

It was anticipated that that scheme would substantially reduce compensation paid for pain and suffering. That scheme was based upon similar amendments made to the Wrongs Act previously in relation to motor vehicle accidents, and its introduction in that field had the effect of substantially reducing compensation payable to individual claimants. It was clear to the committee that it was the intention of the Government of the day in 1993 to reduce compensation in this manner. However, when the Legislative Review Committee came to investigate the matter, the general effect of the 1993 amendments, whilst appreciated and anticipated, had not really worked its way through the system.

The committee took the view that it would be appropriate in all the circumstances to allow more time before making some final assessment of the exact impact upon individual claimants. Also, it was the view of the committee that it was appropriate in a case such as the present, where there are very tight economic restraints, to spread the available compensation as widely as possible rather than enhancing payments for pain and suffering. So the committee did not recommend that any change be made to the method which has only so recently been introduced into the Act.

In 1993, the minimum award was $100. Anyone who had a claim below $100 could not receive any compensation whatsoever. However, in 1993, as a result of amendments passed in this Parliament, the minimum claim was increased to $1 000. The committee heard a good deal of evidence to the effect that many worthwhile claims would thereby be excluded. The committee was most concerned that the minimum fee payable for conveyance by ambulance was just under $400 plus $2 per patient kilometre. So, the committee heard and was impressed by the fact that, if someone was the victim of an unprovoked assault and required conveyance by ambulance to a hospital, even if that victim incurred no other expense than the ambulance charge, he or she would be substantially out of pocket and, with a minimum claim of $1 000, would be unable to make any recovery at all.

In these circumstances the committee considered that it would be appropriate to reduce the minimum fee from $1 000 to $500, and it has recommended accordingly. I mention also that the $1 000 presently in operation is substantially higher

than the minimum fee under the scheme of any other State in the Commonwealth.

The committee was required to examine whether compensation payable under the scheme was adequate and it came to the conclusion that it was. In South Australia the amount paid from State revenue sources, including the Criminal Injuries Compensation Fund, represents about $9.50 per head of population per annum, which is about the same as that paid in Victoria and New South Wales, slightly less than the amount paid in the Australian Capital Territory but substantially more than the amounts paid in the other States. The maximum of $50 000 in this State is the same as that in other States, and the committee considered that, if an adjustment were made to the minimum compensation payable, our scheme would provide adequate compensation.

Evidence presented to the committee by the Victims of Crime Service suggested that monetary compensation alone might not be the most effective method of providing adequate compensation to victims of crime. The Victims of Crime Service suggested that it might be better to give to victims a package of services, including counselling and the like, together with some monetary compensation, rather than the present arrangements which focus almost exclusively upon monetary payments. The committee considered that these suggestions were worthy of closer examination, although the committee itself did not undertake that examination and has accordingly recommended that the Attorney-General undertake inquiries to see whether a more targeted package of services, freely available to victims of crime, would be more appropriate.

The committee heard a good deal of evidence about the standard of proof which is required to be satisfied before a claimant can obtain compensation. In all States of Australia the standard of proof in the Criminal Injuries Compensation Scheme is said to be the balance of probabilities. However, South Australia has two standards of proof: the claimant is required to establish the proof of a criminal offence beyond reasonable doubt and then to prove his or her injuries, their extent and the fact that those injuries derive from criminal behaviour upon a different standard of proof, namely, the balance of probabilities.

The ordinary standard in criminal cases is, of course, beyond reasonable doubt. In the case where a person has been convicted of a crime there will be no difficulty because guilt will already have been established beyond reasonable doubt. The committee heard evidence on this matter and, although the Attorney-General defended the retention of the bifurcated standard of proof, the committee was of the view that South Australia should fall into line with other States and adopt a uniform standard.

The committee made certain recommendations about the indexation of awards; it made recommendations in relation to the provision of better statistical information regarding the operation of the scheme; it suggested that the Attorney be required to table in Parliament within 90 days of the end of each financial year a report setting out particulars of the scheme's operation; it made recommendations in relation to the appropriate scale of legal costs and, in so doing, adopted recommendations which had been made in 1992 by a committee chaired by the Chief Judge of the District Court.

The committee received claims that the present Attorney-General was not exercising his discretion to make *ex gratia* payments as liberally as did his predecessor. The Act provides that the Attorney-General has an absolute discretion to make payments in certain circumstances, and they are usually circumstances where no crime is proven or the alleged offender is acquitted on the grounds of lack of the necessary mental capacity to commit a crime. The committee noted that the Act gives to the Attorney-General an absolute discretion in this regard.

Somewhat extreme claims were made about the position adopted by the present Attorney-General when he took office in December 1993. They were clearly and expressly refuted by him. No evidence was proved to sustain the claims, and the committee did not accept them. Indeed, the evidence showed that *ex gratia* payments made since the present Attorney came into office were largely in line, in monetary terms, with payments made by his predecessor. The committee noted that an absolute discretion is conferred upon the Attorney, and the committee considered that it was appropriate that that not be changed. The committee was satisfied—although it is not really called upon to be satisfied—that the Attorney was conscientiously exercising the discretion vested in him. Accordingly, the committee resolved, in relation to this claim, that the matter was simply not established by those who made complaints.

I commend the report to members of the Council and, in conclusion, I would wish to express my thanks, as Presiding Member, to the interest shown by members in the proceedings of the committee, and for their assistance and attention to the business of the committee. I wish also to thank the witnesses who gave evidence, those who made submissions, and also to the Secretary of the committee, David Pegram, and the Research Officer, Linda Graham, for the invaluable assistance they rendered in the preparation of this report.

The Hon. M.S. FELEPPA: I wish also to add some comments in relation to the tabling of this report. I certainly will not go through every term of reference that guided the committee in its inquiry, but I would like to re-emphasise the comments made by the Presiding Member of the committee, the Hon. Mr Lawson, in relation to reference number 2: the adequacy of compensation to victims of crime, as well as to reference number 5: the manner in which the Attorney-General has been exercising his discretion to make *ex gratia* payments.

Before I commence my comments, I first thank the Presiding Member for the way in which he, without bias, conducted the meetings of the committee, and the bipartisan manner in which all members contributed to the inquiry. I also thank the Secretary and Research Officer of the committee respectively, David Pegram and Linda Graham, for their assistance and cooperation. I also thank the witnesses, of course, who have been a vital part of this inquiry and all those people and organisations that have submitted their written and verbal submissions to the committee. Finally, and importantly, I thank *Hansard* who patiently assisted us every time we took evidence.

The criminal injury compensation inquiry, as I said, originated in this Council on the motion of one of its members. As the Presiding Member has already said, the inquiry was concerned with the effect of the 1993 amendment to the original Act concerning the ultimate justice in compensation for criminal injuries. One amendment raised from $100 to $1 000 the drop-off amount for which compensation would be considered. This would affect all claimants, we believe, whether or not they were wealthy.

By dropping off claims of less than $1 000, the less wealthy in the community would undoubtedly feel it more adversely and the poor would again feel it as a real hardship.

I repeat the illustration already made by the Presiding Member: a trip in an ambulance may cost between $400 and $600. If there were no other expenses to take the claim to $1 000 or more the claimant would be out of pocket by $400 to $600, and this would be a considerable loss to a person on the lower end of the scale of wealth and a big loss to one who is poor. They would feel discriminated against by this Act. The jump in the drop-off amounts from $100 to $1 000 seems to be too high with the present level of charges under prevailing economic conditions. It may unduly affect the needy.

The second recommendation of the committee is that an amount be set below that which a claim for compensation will not be considered. I think that is fair and more equitable. The number of claims and the amounts of money involved therein are insignificant, I believe, when compared with other agencies dealing with money and claims; therefore, we can afford not to be so niggardly. The claims under this Act run into hundreds of dollars, whereas with other agencies they amount perhaps to tens of millions of dollars. The total amount of money involved under this Act is only thousands of dollars, whereas with other agencies it amounts perhaps to hundreds of millions of dollars.

What people are looking for in compensation for criminal injury is recognition, first and foremost, that they are victims and have a need for compassion and compensation. Since they have been criminally injured they do not accept that they should incur expenses for hospitalisation and medical treatment, ambulance costs, legal costs, and loss of earnings through no fault of their own.

As stated by the witnesses, compensation does not give them some profit or advantage for having suffered criminal injury but merely keeps them on about a level as if they had not suffered those injuries. They can claim for physical and mental suffering inflicted due to injuries. However, as one witness said in evidence to the committee:

> What people really want when they are victims of a crime is to recover [above all]. They want to get back to a reasonably normal life. They want to get on and do things they want to do and be reasonably happy like they were before the crime happened. Actual amounts of money, whether it be $5 000 or $1 million, may not be important. What they want is to recover. We—

that is, the Victims of Crime Service—

> suggest what is needed is a package. The components of that package should include all medical costs and other costs in meeting their need being covered. Their counselling needs over any period of time should be met.

That is the thinking behind the committee's third recommendation and I, for one, have no hesitation in commending that recommendation to the Council and the Parliament.

The matter of the differences in *ex gratia* payments by Attorneys-General was also raised with the committee. This is the second issue that I wish to raise. The main thrust of the matter raised may have been misinterpreted and undoubtedly led to the need for some defence. It was said that there seemed to be some inconsistency between present decisions to grant or reject *ex gratia* payments, the decision making and the amounts granted in payments with that of the previous Attorney-General. The stumbling block for the committee was that the Act allows the Attorney-General absolute discretionary power in making *ex gratia* payments under section 11(3) of the Act.

That places the Attorney-General, whoever he or she may be, beyond criticism in any way for the decision that he or she reaches. But it should be borne in mind at the same time that case law is part of the judicial foundation so that there is consistency at all times in judicial decisions. What is decided in a set of circumstances in one case should continue to be the required decision in identical situations in succeeding cases, and any departure from this consistency in court may be subject to some form of appeal.

What is seen in the supposed differences in the interpretation of the Act and the exercise of power by the Attorney-General is inconsistency. Each Attorney-General may claim absolute discretionary power and be right. However, I add that what the public sees and experiences is not right or wrong but inconsistency. Therefore, to the public this seems to be contrary to the principle that consistency and justice should always be maintained. That is the issue that was raised consistently in the evidence to the committee, although it was not expressed in those terms.

Because of the absolute discretionary power conferred by the Act on the Attorney-General, as already indicated by the Hon. Mr Lawson, the committee's Presiding Member, the committee had no alternative but to conclude:

> The committee considers that the criticism levelled at the Attorney-General regarding the manner in which he exercises his statutory discretion to make *ex gratia* payments is not established.

Consequently, the committee could not make any recommendation on that matter. However, what the Attorney-General may choose to do about consistency in making *ex gratia* payments will be entirely up to him personally. In conclusion, I repeat my appreciation for all those people who have assisted the committee in its inquiry. I endorse the Presiding Member's comments and recommend the report to the Council.

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

ROAD TRAFFIC (BLOOD TEST KIT) AMENDMENT BILL

The Hon. R.R. ROBERTS obtained leave and introduced a Bill for an Act to amend the Road Traffic Act 1961. Read a first time.

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

That this Bill be now read a second time.

The Opposition has introduced this Bill following something of a saga after a test case in Port Pirie last year concerning a person charged with having a blood alcohol reading of 1.98. Without going into all the detail, this person was acquitted on the basis of an assertion by his barrister, Mr Lyon, that the kit issued to the defendant in that case had not been properly approved or had not been approved by the Minister for Transport as required under the Act. We asked a series of questions in this place and I have taken different advice in respect to this matter.

There has been questioning over a few days during the past couple of weeks of the Minister for Transport asking whether she had received legal advice on the matter. The Minister indicated to the Council on 23 February that the matter was being considered by the Crown Solicitor's Office and that she had some other opinion that the form was satisfactory in terms of approval. I congratulate the Minister because I see an announcement in today's *Advertiser* that she is attempting to put beyond doubt the question of the validity of the approval by having a declaration inserted in the *Gazette*. I understand that that will occur tomorrow. From tomorrow on, at least—although I am not privy to the terms

of her gazettal—it will ensure that there is not a loophole by which people charged under the prescribed alcohol laws can escape conviction. However, I would make one comment. Yesterday I was interviewed by a reporter about this matter when we gave notice that we were to introduce the Bill. The story was checked with me and I was told then that the Minister was going to make an announcement.

It does not come as much of a surprise to me that in the *Advertiser* this morning there was what one can best describe as a condensed report, in that what we had said with regard to the reason why we were trying to be responsible in putting this matter to rest was omitted. The only story that appeared was that the Minister was announcing, on the same day we had given notice, that it was her intention to *Gazette* the matter.

The relevant provision of the Road Traffic Act, section 47g, simply refers to 'a blood test kit in a form approved by the Minister'. By way of contrast, section 47h specifies that the breath testing devices must be approved by the Governor by public notice published in the *Gazette*. No particular form of approval is specified in section 47g(2)(b). There need not be any notice published in the *Gazette*. Everyone would assume that some form of written approval is necessary, but even that may not necessarily be so. I understand the Minister has been advised that that may be the case.

Of course, it would be unreasonable for the Minister not to express her approval in writing and it is arguably unfair on citizens for written approval not to be published in some way, otherwise how can citizens possibly know whether or not they are being given an approved blood test kit when being offered one by the police? It could be argued that a memo from the Minister for Transport to the Minister for Emergency Services indicating approval of the blood test kit would signify approval for the purpose of section 47g. However, I am advised that this could only be ascertained by a test case.

It is certainly the opinion of the barrister, Mr Lyons, who first raised the shortcomings of the prosecution of the Act in the test case in Port Pirie. Mr Lyons stated, in his professional opinion when answering a reporter, Mr Greg Mayfield, the following:

> Evidence was tendered to the court that the kit was subsequently approved in a 'minute' of communication between two Ministers, but Mr Lyons says this approval still could be seen by a court to be insufficient. . . Mr Lyons said in his opinion the 'minute' was open to argument that it was not a '*bona fide* approval by the Minister of the blood test kit now in existence'. He said the issue depended on interpretation of the Road Traffic Act, section 47g(2a), paragraph (b) as to what amounted to an approval.
>
> 'It is possible that a person even today could be acquitted on a drink-driving charge depending, of course, on how a court would look upon the way that the Minister says she approved the blood test kit,' he said.
>
> 'My own view is there is still a query over whether or not these blood test kits have been approved by the Minister and whether that minute from one Government department to another is sufficient.'
>
> He said if approval has been gazetted by the State Government it would have been put beyond doubt.
>
> He described the original legislation introduced on 1 February relating to the kits as being unusual and vaguely worded. He said the legislation referred to the question of approval, but failed to say how this was to be done.
>
> 'Certainly any clarification of the law is going to suit the public interest and should be done as soon as possible,' he said.

Given that advice and the advice of other legal opinion provided to us it was the opinion that, as there was no indication of an amendment coming from the Government, the responsible thing to do would be to suggest an appropriate amendment to the Act to overcome this problem and close the loophole.

The real problem in this case is the lack of accompanying evidentiary provisions, making it easy for police to prove that approval was ever given by the Minister. If approval can be given by notice appearing in the *Gazette*, the police prosecutor simply submits the relevant extract from the *Gazette* to the magistrate and approval is then proven. There is another method that could suffice and, in fact, it appears in the Act again in the section 47g when it talks about proof of an offence. I am advised it also appears in the Beverage Container Act whereby section 6 forbids retailers to sell beverage in containers 'unless the container is marked in a manner and form approved by the Minister'. Subsection (2) then has an evidentiary provision which provides:

> In proceedings for an offence. . . a document purporting to be signed by the Minister specifying the manner and form of marking to be approved by the Minister. . . constitutes, in the absence of proof to the contrary, proof of the matters so specified.

There are two forms in which the amendment could have been done to overcome the problem. One is in the form outlined and the other is by moving an amendment to section 47h, which is the form of the amendment that we have chosen to go to, which states:

> The Minister may by notice published in the *Gazette* approve a form of a blood test kit for the purposes of section 47g(2a) subsection (b) or vary or revoke a notice under paragraph (a).

In the absence of evidentiary provisions accompanying the requirement of a ministerial approval in section 47g of the Road Traffic Act, I am advised the usual rules of evidence apply. They applied very strictly in criminal cases, which include the road traffic prosecutions. The textbook on *Australian Evidence*, written by a senior lecturer at Adelaide University, Mr Andrew Ligertwood, states at page 463:

> Legislation is carefully drafted to ensure that prosecutors do not fail to call available witnesses. . . In criminal cases the protection of the accused is paramount. Eye-witnesses must be called.

Accordingly, the only proper way to prove approval by the Minister, in the absence of an appropriate evidentiary provision, would be to call the Minister to the court in every prosecution where the approval for the blood test kit was in dispute. That is something that the Minister does not want to be engaged in and I believe that it is incumbent on this Council to overcome the problem.

The Minister has announced that she will have approval put in the *Gazette* tomorrow. I suspect that the Crown did not appeal in the Walshaw case because the publicity may well have flowed from the Supreme Court decision along these lines. It would appear that hundreds of drivers have pleaded guilty to driving while having over the prescribed concentration of alcohol contrary to section 47b of the Road Traffic Act since the changes introducing the blood testing kits came into effect on 1 February 1994. The offence is known to lawyers and police as PCA or more generally in the community as drink-driving, although it must be distinguished from the old offence established in section 47: driving under the influence of intoxicating liquor. The reason that all matters relating to PCA must be strictly proven is because the prosecution is given a huge head start by being able to rely on a statutory presumption that a breath test reading established the blood alcohol level of the motorists for the preceding two hours.

I am advised that cases in the South Australian Criminal Court of Appeal, such as *R v Clayton* (1984) and the *Attorney-General v Kitchen* (1989) establish that people who

have pleaded guilty may be given the opportunity of withdrawing the plea if they can persuade the court that they would suffer a miscarriage of justice if the plea is to stand. What that means is that in these cases persons who have been convicted are given the opportunity to plead or to appeal their own decision. Despite the fact that they have pleaded guilty, if it can be shown that evidence has been produced which could not reasonably have been known to them at the time that they made their original plea, they are entitled to have their case tested and the decision overturned.

I am advised that it is impossible to give a definite answer to the question whether or not a plea to the PCA on the mistaken assumption that the police had properly carried out their obligations under section 47G would constitute a miscarriage of justice. I am advised that only the court can answer that. I am also advised that there are arguments that could go both ways. People who have contacted staff in my office—people with a legal background and obviously others who find themselves involved in litigation—have indicated that it may be their intention to test that avenue which is available to them.

Given that brief outline, I think it is clear that there is a situation that needs to be fixed. I suppose one could argue—and I imagine the Minister will—that the problem has been overcome by the fact that tomorrow she intends to gazette that the blood test kit is an approved kit. It will overcome the problem from now on, and I suppose we shall have to rely on due process of the law in respect of cases that have gone before.

I introduce this amendment to the legislation in a spirit of cooperation and concern for the well being of people in the community. I point out that the Opposition does not support a situation where people who are guilty of an offence under any Act ought to be able to get out of their responsibilities to the community on a technicality. However, there is another principle of law that I think most members in the Legislative Council hold dear: that if a person is not guilty under the law, they ought to have the protection of the law. It is a question of balancing both.

In summary, we are confident that this amendment will overcome any future problems. Technology changes daily and there may be the necessity for a better or more appropriate kit to be introduced from time to time. We believe that to overcome this problem and make the position clear the combination of the insertion of this amendment into the legislation and the actions that are proposed to be taken by the Minister for Transport tomorrow will provide the best possible situation to ensure the health, safety and well being of those who use our roads and minimise the effect of costs that may be awarded against the Government.

I point out that in the case of Walshaw, because of the mishandling of the mechanics of the legislation, the cost amounted to $1 600. In the event of a successful test case based on the precedent in law that a person can appeal a conviction on the basis that evidence has been produced which was not reasonably available at the time and would have proved their innocence, I think we can get the best possible result.

I commend what I believe is a very sensible action, and I reinforce the Opposition's contention that this needs to be done, and it is done with the purest of motives. I am a little disappointed that the Minister did not take the opportunity, despite the warnings and forebodings that we were exhibiting earlier, to introduce an amendment. I would have been most complimentary and congratulatory if that had occurred. However, the Opposition believes it must be done now and I ask the Council to support the Bill. In summary, clause 1 is the short title, clause 2 is the commencement and clause 3 contains the amendments to section 47H, approval of the blood analysis and alcohol apparatus blood test kit. I commend the Bill to the House.

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

SELECT COMMITTEE ON THE CIRCUMSTANCES RELATED TO THE STIRLING COUNCIL PERTAINING TO AND ARISING FROM THE ASH WEDNESDAY 1980 BUSHFIRES AND RELATED MATTERS

The Hon. K.T. GRIFFIN (Attorney-General): I bring up the report of the select committee and move:

That the report be printed.

Motion carried.

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

That the report of the select committee be noted.

It is with a great deal of pleasure and also relief that we have now reached a point where the select committee can report. The select committee was first established in 1990 in the last Parliament and was re-established last year after the election. During the period that the select committee was meeting, it received a mass of documentation, correspondence and minutes from within Government and it also heard a significant amount of evidence. A wide range of issues was explored in evidence before the select committee. Some were not strictly within the terms of reference, but the committee took the view, under its former Chairman and present Chairman, that it should allow some latitude to enable witnesses to raise in evidence and submissions the sorts of issues that had been the subject of some concern and debate in the Parliament and in the local community in Stirling.

The select committee has decided that it should present in the report a summary of the evidence following the terms of reference, but obviously the comprehensive evidence is tabled. We have not sought significantly to interpret the evidence, although it has been relevant to reach some conclusions from it; nor has it been appropriate for us to seek to paraphrase the evidence. That may be a blessing for those who wish to read the report. On the other hand, one will see from the appendices to the report a comprehensive chronology of events as well as some cross-indexing of the report with the evidence, and then some important recommendations by the committee.

A variety of concerns were raised in the Parliament before the select committee was first established. There were also issues raised in the submissions and evidence to the select committee about delays in dealing with important issues relating to the rights of citizens, the rights of the council and others, and also concerns about delays in the legal process. There were issues raised in relation to legal costs which formed a very substantial part of the costs of the ultimate settlement, not just in relation to the Stirling District Council but for the other litigants in the various legal actions which occurred.

There were some issues relating to the large claims which had, I think, sparked a significant amount of public comment, particularly those claims of the Casley-Smiths. It is important to recognise that the committee has taken the view, and I

think correctly so, that it was not either possible or for that matter appropriate within the terms of reference, to analyse the claims, the evidence which either supported those large claims or raised questions about those claims. In fact, whilst we did have evidence about some questions relating to the heads of those claims, the committee was not in a position to make a final judgment about them. That, I suppose, is always one of the difficulties that either select committees or the public at large have in relation to claims which appear before the courts where a very detailed analysis of the claims may be made, but only a part of the information may be communicated publicly. So, we have taken the view that we will make no comment upon the validity or otherwise of the claims which were the subject of public comment.

We did, however, look at some of the processes which were followed in relation to the resolution of claims, the concerns of the District Council of Stirling as it was from time to time constituted, inadequate insurance, inadequate resources, and difficulties because of those matters to be able to make decisions about settlement of the cases. We have made some reference to those processes in our recommendations. We did not make judgments, as some may have wished us to make, about the involvement of previous Governments and officers of Government. We allow the evidence and submissions to speak for themselves. In any event, it was not appropriate for us to do that under our terms of reference.

We did give special consideration to the trauma suffered by the victims of the 1980 Ash Wednesday bushfires. It was quite obvious from the evidence which we received that the delays in the settlement of claims were a very significant factor in the lives of many of the citizens who suffered loss as a result of those bushfires. The recommendations of the committee do specifically focus upon the trauma of the victims and we have recommended specifically that the State Government should ensure that its disaster plan for dealing with natural disasters under the State Disaster Act 1980 be constantly updated and that special emphasis be given to dealing with the trauma, particularly of victims, in consequence of such a major natural disaster. We have suggested that in that context some of the peak bodies, such as the Law Society, the Insurance Council and the Australian Medical Association, should be involved in providing assistance in the aftermath of a natural disaster in helping people to understand what issues there may be in respect of their rights, to understand their rights, and to endeavour to develop a fast track process for resolving disputes at an early stage and also to resolve outstanding issues of compensation.

I said earlier that there were concerns about delays in the legal process, and we have made some reference to that in our recommendations but have noted that, since the 1980 Ash Wednesday bushfires, there have been significant steps taken within the courts system to more effectively manage the resolution of claims and to ensure that delays which might otherwise be blamed upon litigants or upon their lawyers might be, as much as it is possible to do so, alleviated or avoided completely.

We have talked specifically about the public liability insurance issues which arise. The Stirling District Council was grossly underinsured in 1980 and that was a very significant contributing factor to the problems of delay, of determination of liability and the processes which were adopted with the intervention of the Government to endeavour to bring matters to a head. The view which the committee perceived from the evidence was that there generally was a view within the council and the council area and among the litigants that, because the council was a local government body or one of the levels of government, ultimately the taxpayers of the State would have to make some settlement or there would be other major difficulties arising. So, we have made specific reference to that.

We have also acknowledged that, since 1980, systems and also insurance facilities have been put in place through the Local Government Association mutual liabilities scheme which hopefully will minimise the risk that innocent citizens who suffer damage in similar circumstances might not be able to recover, or that the taxpayers of the State might ultimately be called upon to resolve the outstanding liabilities. We have specifically referred to the Government giving consideration to making a statutory declaration that government is not liable for the liabilities of local government, even though that may be the law, and I have no doubt that the relevant Minister will give consideration to that recommendation.

We did touch upon the appointment of the administrators and again make a recommendation to the Government that it should at least maintain, if not strengthen, the powers of government to appoint investigators and administrators of local government. So, the recommendations might not be what some people would have expected from a select committee which considered such important issues. However, it is a unanimous report. We have sought to make constructive recommendations which would lead to better government and better processes for resolving disputes. We have not sought to dwell upon the past. That can be discerned from the evidence which has been tabled in conjunction with the tabling of the report.

The committee in this Parliament has had several new members, and I must say that the longer serving members of the committee appreciated the participation of those newer members and their grasp of the issues which arose from that rather lengthy select committee.

The Hon. Anne Levy: Only one; four of us continued.

The Hon. K.T. GRIFFIN: There was one—the Hon. Dr Pfitzner—and it is difficult coming into a select committee at such a late stage, but that does not prevent me from also extending my appreciation to all members of the select committee for the spirit in which they considered the issues and participated in the development of the report and the resolution of the issues.

Lastly I want to pay a compliment to the research officers who served committee. There were a number of these and each of them must have had some difficulty in coming to grips with the difficult issues which arose and with the evidence, which was long and complex. I want to pay a special tribute, on behalf of the committee, to Mr Richard Coombe, who must take a lot of the credit for marshalling evidence chronologies and the preparation of the report, and I want to place on record our appreciation for his contribution to the work of the committee. He was seconded to this task, during the course of which he was appointed to another position and, notwithstanding that, he maintained his interest in the work of the committee and his support for its members in the final stages of its deliberations. So, it is an important report, with I would suggest positive recommendations for the future which I have no doubt the Government will consider in due course.

The Hon. ANNE LEVY: I certainly support the motion moved by the Attorney-General as we note the recommendations of this select committee. I begin by also expressing my thanks to the research officer, Richard Coombe, for one could

say the absolutely sterling quality of his work in assisting us in bringing this select committee to finality. Without his diligence and dedicated work, we would not be presenting the report today.

As the Attorney has said, the committee had an enormous amount of material presented to it. We had thousands of pages of documents—vast documentation—from Stirling council itself, from the then Department of Local Government, from the Attorney-General's Office, from the Crown Solicitor's Office, plus, of course, hundreds of pages of transcript of evidence given by members of the public and people more intimately concerned in the matter.

The detailed chronology that is presented in the report will be of great interest to anyone who wants to follow or who might still have any interest in this issue. This chronology quite clearly details how the Government at the time tried to help, tried to give advice to urge settlements and tried to bring the matter to finality but had no powers to do other than provide advice until the parties to the dispute agreed in June 1989 that other than the desperately slow and expensive legal processes could be used.

The settlement procedure known as the Mullighan process certainly achieved within a couple of months what had then been nine years of proceedings through the courts, and it might well have taken another nine years had it gone to finality in the courts. I am sure that anyone who reads this chronology and the discussion and summary of evidence will agree with me that there is a complete vindication of the actions of the Government of the time and regret that the Government was not able to do more because of the lack of agreement between the other parties.

The fire which was the subject of this select committee occurred in 1980, which is 15 years ago. However, nothing happened in the courts until 1984-85, so there was a great hiatus before anything really happened. Court cases then proceeded on and off until 1989, when the Mullighan process put a stop to this endless litigation and achieved a resolution.

I think one can say that the root cause of the many problems which arose and the effect on the Stirling district was the under insurance of the council of the time. It had public liability insurance for only $1 million. There then occurred the bankruptcy of F.S. Evans and Co., which had been managing the dump, so that the Stirling District Council was legally left holding the baby. I was interested that no-one seems to have expressed much bitterness at the fact that F.S. Evans disappeared from the scene, even though I am sure that in the eyes of most people they were probably more culpable than the Stirling District Council, as F.S. Evans were the ones who owned the dump and, as was shown in the courts, did not properly put out a fire in the dump which had occurred a fortnight before and which got away on Ash Wednesday 1980.

The Stirling District Council was found by the courts to have had a duty of supervision and hence was found liable for damages against people who had suffered as a result of the fire and, with F.S. Evans becoming bankrupt, the council had the sole legal responsibility for all the claims resulting from the fire. If the council at the time had had adequate insurance, I am sure that in that situation the legal cases would have been handled by the insurer, who I am prepared to guess would have settled at a much earlier stage, so avoiding the increasing value of the claims and the increasing legal costs which Mr Justice Olsson in one of the of the judgments described as scandalous.

As is stated in our recommendations, both the District Council of Stirling and the many claimants seemed to believe that eventually the Government would pay, as indeed it did. In fact, 87 per cent of the total costs, which include compensation to claimants and legal costs, has been picked up by the taxpayer. At the time, the Government obviously was not going to grant blank cheques to anyone, and it would have been grossly irresponsible to do so. The Government therefore consistently refused to consider financial grants until final figures were known, and would certainly not finance legal cases unless it had some control over the conduct of those cases—in other words, until it was able to give instructions.

To many people, the conclusions and recommendations of this report will be regarded as almost banal in nature. The recommendations cover six different areas, and most of the deficiencies which existed in 1980 and which were mentioned in the report have been remedied since then by the Bannon Government. For instance, on the question of adequate public liability insurance for local government, the LGA Mutual Liability Scheme was given statutory recognition in 1986 and, in 1992, statutory requirements for adequate public liability insurance were enacted in legislation. So, never again should we have the situation where a local council is not adequately insured for public liability loss.

The question of legal delays was raised constantly before the select committee; it was four years before the first case occurred and there were other periods of up to 12 months when nothing seemed to be happening at all, as any reader of the chronology will see, and these delays resulting from the legal processes undoubtedly were responsible for much of the frustration and anger that occurred amongst many people in the Stirling area. However, it was Attorney-General Sumner who, in the late 1980s, completely revamped our court procedures with the complete cooperation of the then Opposition so that the court management procedures that are now in existence should ensure that lengthy legal delays as occurred in the Stirling situation should not occur again.

The settlement procedures were eventually achieved after an almost complete change of the membership of Stirling council in a local government election, resulting in the new council being prepared to consider settlement procedures instead of insisting on continuing litigation through the courts. As I have said, with the agreement of both the council and one group of claimants, this agreement did not occur until June 1989 so that the new settlement procedures could be introduced and settlement achieved in a very short space of time compared to the nine years which had passed at that stage.

The committee considered whether there should be legislation to enable such settlement procedures to be implemented in other cases of this nature, should they ever arise, but it felt that this was probably unnecessary given that the Sumner changes of the late 1980s brought in many new alternative dispute resolution procedures and pretrial procedures and that, as a result of this, situations such as had occurred with Stirling would not recur.

The Attorney has mentioned the committee's recommendations that the powers of the State Government to appoint administrators should be at least maintained, if not strengthened, and the committee makes the point in the recommendations that, given the fact that a local government council had a legal obligation to pay a large debt to the Government, that the time for paying it had elapsed, and that it had taken no steps whatsoever to negotiate a payment schedule and, in fact,

had refused to negotiate, there was no other responsible action that the Government could take than to appoint an administrator. That was a unanimous conclusion by all members of the select committee: that there was no other responsible alternative action that a Government could take.

Our recommendation on financial responsibility referred to by the Attorney-General is a recommendation of legislating the obvious, of stating in law what is in fact the existing situation: that is, that the State Government has no responsibility whatsoever for the debts or liabilities of local government. However, it was felt by members of the committee that it could be of advantage to have this clearly stated in law as an indication to various people who obviously thought that this was not the case or that, whatever the legal situation was, the Government would end up paying, and this affected their actions.

One of the committee's recommendations which has not yet been implemented but which the committee hopes the Government will take up is the question of much greater counselling and support for victims in natural disasters. It feels that this counselling and support should be available not only at the time of the disaster but also should be ongoing for considerable periods thereafter, and that various peak bodies should be involved in designating what is appropriate counselling and support for victims in these and other situations.

The State disaster legislation did not, of course, exist when the Stirling bushfire occurred but later that year it was implemented by the then Tonkin Government, perhaps as the first Government response to the events in Stirling.

We feel that the question of ongoing counselling and support for victims needs to be considered in the context of the State Disaster Plan, and we hope that will occur soon. Many people have said, 'Why have we had this select committee at all?' There is no doubt that when it was set up there was a variety of motives. Some people obviously had political motives, wishing to discredit the then Government. There were people who had planned to discredit the Casley-Smiths in the court case and who, because of the settlement of the case, were not able to present the evidence that they wished to present. The select committee certainly gave these people an opportunity to present their evidence to us.

I certainly concur with the Attorney-General that we were not in a position to judge the credibility of these witnesses. None of their testimony to us was tested by cross-examination, so that those who wish to read the transcript of evidence must remember that the various claims which were made to us have not been established; that they have been neither proven nor disproven and remain statements of opinion by the individuals concerned. I must admit to some cynicism on my part to a number of the claims which were made, on both sides.

Without wishing to single out any particular claim, I recall the witness who said that she had visited a property and that, to her, claims for furniture burnt in the fire seemed excessive, as she could vouch that the furniture was pretty old and unattractive. But, when questioned, she admitted that she knew absolutely nothing about antiques; would not know one if she saw it; and had no notion of the value of antiques. We should note, of course, that in the final settlement agreed to by the various parties, the Casley-Smiths settled for less than half the total amount they had originally claimed, but I am sure many people still feel that they should not have received that amount.

It can be noted that the recommendations of the select committee include no criticisms at all of the Government of the day. No-one who reads the chronology, or the vast number of documents provided to the select committee, could possibly suggest that the Government should have acted differently at any stage. This applies right from the time when the Tonkin Government refused to provide financial assistance to Stirling district council up to the time when the council was suspended and an administrator appointed. As I have already indicated, the report itself says that no other responsible actions could have been taken.

It seems to me that much of the trauma and stress, which was undoubtedly suffered by the community in Stirling, arose not only from the under-insurance of Stirling council but also from the inexperience and naivety of the various councils, their members and their officers, and also from the conviction of the legal advisers of all parties in the litigation that eventually the Government would pay. I feel strongly that legal advice to clients would have been different if the lawyers had not had this conviction that there was the Government ready to finance everything. Had they not had this conviction their advice would have been different to their clients, and out-of-court settlements would have been achieved at a very much earlier stage and at very much lower amounts, so preventing the costs and the time-induced anguish which divided the Stirling community so bitterly and for so long.

In my view, the lawyers involved have a lot to answer for. While the District Council of Stirling must obviously accept responsibility for continuing the endless litigation, we must remember that it did so on the advice of its lawyers, and it is difficult for a non-legal council not to accept the advice of its lawyers. I maintain that their lawyers would have urged reasonable settlements years before they occurred had the lawyers on both sides not been acting on the premise that the Government would eventually pay. The end result was a divided and bitter community and enormous pay-outs by the taxpayers of this State. I maintain that the report is a complete vindication of the actions of the Government and its advisers in handling what must surely have been one of the most tragic and intractable problems that a Government in this State has ever had to face. I support the motion.

The Hon. J.F. STEFANI secured the adjournment of the debate.

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

The Hon. K.T. GRIFFIN obtained leave and introduced a Bill for an Act to amend the Bail Act 1985, the Criminal Law Consolidation Act 1935, the Evidence Act 1929, the Legal Services Commission Act 1977, the Magistrates Act 1983, the Parliamentary Committees Act 1991, the Summary Offences Act 1953 and the Summary Procedure Act 1921. Read a first time.

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

That this Bill be now read a second time.

This Bill makes amendments to several Acts within the Attorney-General's portfolio.

Bail Act 1985: The Bail Act is amended to provide that all persons who are refused bail by the police or justices can have that decision reviewed by a magistrate. A person who has been refused bail by a member of the Police Force may apply to a justice for a review of that decision. A person

refused bail by the police or a justice may, if there is no magistrate in the vicinity immediately available to review the decision, have that decision reviewed by way of a telephone application by a magistrate. However, the application for review can be made by telephone only if the person cannot be brought before a justice not later than 4 p.m. on the day following the arrest.

Another way in which a police bail decision may be reviewed is by the person being brought before the Magistrates Court on the charge in relation to which he or she was arrested. The Magistrates Court may, in accordance with the provisions of the Magistrates Court Act, be constituted by a magistrate, two justices of the peace or a special justice. A person remanded in custody by a Magistrates Court constituted by two justices or a special justice cannot have that decision reviewed by a magistrate by way of telephone application.

The Chief Magistrate when giving evidence before the Legislative Review Committee on the Courts Administration (Directions by the Governor) Amendment Bill suggested that in practice it is rare for justices to take a different view of a bail application than the police. The result is that persons brought before justices are likely to be held in custody to the next date when a magistrate is available. He recommended that the Bail Act be amended to provide that single justices should no longer review police bail decisions and that telephone applications to a magistrate to review the refusal of the police to grant bail should be available in all instances where a magistrate is not immediately available to review a refusal of bail by the police and to review decisions to refuse bail by a Magistrates Court constituted by justices.

The Legislative Review Committee recommended that the Act be amended as proposed by the Chief Magistrate as a matter of priority and the amendments to sections 5, 13, 14 and 15 of the Bail Act implement these recommendations. Magistrates are rostered to deal with telephone applications. All persons refused bail by police or a Magistrates Court constituted by justices will have a right to have that decision reviewed by a magistrate by way of a telephone application. The amendments will enhance both country and metropolitan residents' access to magistrates to have decisions refusing bail reviewed.

Other amendments are made to the Bail Act. Section 11 provides that where a person cannot comply with a condition of bail he or she must be brought back before a bail authority within five working days. Often it becomes apparent that a bail condition cannot be met very shortly after the condition is imposed. To ensure that the condition can be reviewed expeditiously section 11 of the Act is amended to provide that where the bail condition cannot be met the person must be brought before the bail authority as soon as practicable and, in any event, within five working days. The intention is to make it clear that there should not be a delay of five working days before the condition is reviewed but that it should be reviewed as soon as possible.

Section 17 of the Act is also amended. This section is quite complex. Section 17(2) provides that where a condition of bail is breached a person is liable to the same penalties as are prescribed for the principal offence but no sentence of imprisonment of more than three years may be imposed. An offence against this section may be summary, minor indictable or major indictable depending on the penalty applicable to the principal offence for which the offender is charged. Which type of offence is involved may depend on whether or not the alleged offender has previous convictions for the offence. Further, if a person breaches bail in respect of an offence of, for example, exceeding the prescribed concentration of alcohol, the penalty for breach of bail may presumably include disqualification from holding a driver's licence as the person is liable to that penalty for the principal offence.

If the breach of the bail is occasioned by the commission of some other serious offence the defendant will be charged with that offence as a substantive offence. There is no need to link the breach of the bail condition with the principal offence. It can be dealt with as an offence in its own right and the amendment to section 17 in this Bill makes it a summary offence punishable with a maximum of two years imprisonment or a fine of $8 000, with the proviso that no penalty may be imposed which exceeds the penalty which could be imposed for the principal offence.

Section 17(3a) is repealed. This provides that proceedings for an offence of breaching a condition of bail shall not be heard and determined until the proceedings for the principal offence have been determined unless a court otherwise orders or the alleged offender elects to have the proceedings determined at an earlier time. In the ordinary course of events it is difficult to see how the hearing of an allegation of breach of bail would prejudice the trial of an alleged offender. In cases where such prejudice might occur, the court has adequate power to postpone the hearing of the trial for breach of bail until the trial of the principal offence has been completed. For the trial to be delayed as a norm results in inordinate delays in the determination of matters which are likely to lead to prejudice of the fair hearing of such matters.

Criminal Law Consolidation Act 1988: It is clear that companies can be charged with indictable offences but the procedures to deal with companies who do not appear to answer a charge on indictment are governed by ancient common law rules which are not conducive to efficiency. Where a corporation fails to appear the court can issue writs of *venire facias* and *distringas* in an amount thought sufficient to ensure the corporation's appearance. If this proves insufficient *alias* and *pluries* writs of *distringas* can issue. The culmination is a writ involving distress *ad infinitum* by which the entirety of the corporation's assets can be attached.

This cumbersome procedure was replaced by a simple statutory provision in the United Kingdom in the Criminal Justice Act 1925. A similar provision is included here. A plea can be entered by a representative of a corporation, or, if there is no representation, the court orders a plea of not guilty to be entered and the trial proceeds as though the corporation had entered a plea of not guilty.

Evidence Act 1929: Section 21 of the Evidence Act entitles a close relative (that is, a spouse, parent or child) of a person charged with an offence to apply to the trial court for an order exempting him or her from any obligation to give evidence against the accused. The matters that the court should take into account in determining such an application are set out in subsection (3) and subsection (5) requires that the prospective witness be made aware of the right to apply for an exemption. This practically obliges the trial judge to ensure that the prospective witness has a general understanding of the subsection (3) criteria.

This causes difficulties where the prospective witness is a child who is too young to understand the explanation or is mentally impaired. Subsection (3a) provides that the court can exempt a prospective witness who is a child, or is mentally impaired, even though no application for exemption is made but the way the provisions are drafted the court must still explain the subsection (3) criteria. While the section's

requirements can be construed as adaptable to the intelligence of the prospective witness there may be uncertainty about the adequacy of the judge's explanation and whether, therefore, there has been a miscarriage of justice. The Supreme Court judges have suggested that subsection (5) be amended to provide that the obligation to make the prospective witness aware of his or her right to apply for an exemption not apply in the case of a close relative who, in the judge's opinion, is unlikely by reason of age or mental impairment to understand the explanation of the section's provisions.

Legal Services Commission Act 1977: There is no provision in the Legal Services Commission Act which provides commission members with immunity from civil liability for an honest act or omission in the exercise of discharge, or purported exercise or discharge, of a power or function under the Act. This type of provision is commonly included in statutes creating statutory authorities and usually provides that any liability that would be incurred by a person but for the exemption is instead placed on another body. This ensures that persons who serve on statutory authorities are not exposed to personal liability for their honest acts but that persons who suffer loss in their dealings with the statutory authority are not disadvantaged by the exemption from liability. In the case of the Legal Services Commission Act it is appropriate that the liability be placed on the Legal Services Commission.

Magistrates Act 1983: Section 7(1) of the Magistrates Act provides that the Chief Magistrate is responsible, subject to the control and direction of the Chief Justice, for the administration of the magistracy. Section 7(3) provides that the Chief Magistrate may delegate to the Deputy Chief Magistrate or a Supervising Magistrate or Assistant Supervising Magistrate any of his administrative powers or functions. This is unduly restrictive and there is no reason why the Chief Magistrate should not be able to delegate any of his administrative powers or functions to any magistrate, remembering that under section 7(4) a delegation may be absolute or conditional and is revocable at will. Accordingly section 7(3) is amended to allow the Chief Magistrate to delegate any of his administrative powers or functions to any magistrate.

Parliamentary Committees Act 1991: Six committees are established under the Parliamentary Committees Act. The Statutory Authorities Review Committee and Public Works Committee have five members. The Economic and Finance Committee has seven members. The Environment, Resources and Development Committee, the Legislative Review Committee and the Social Development Committee have six members. Section 24(2) provides that four members of a committee constitute a quorum of all the committees. A requirement of a quorum of four for a five member committee can significantly impede the business of a committee and both the Statutory Authorities Review Committee and the Public Works Committee have requested that the Act be amended to provide that three members constitute a quorum if the committee consists of five members.

Summary Offences Act 1953: Body armour vests are prohibited imports under the customs regulations. The authority to sanction the import of such vests has been delegated by the Commonwealth Minister to the Commissioner of Police. Police policy is to restrict the import of body armour vests but they are being imported through other States and material is being imported for the manufacture of body armour vests in Australia. Body armour vests, although not inherently dangerous in themselves, may in the hands of criminals induce a sense of invincibility, the consequences of which may well be an increase in violent crimes by armed offenders.

The Commissioner of Police has recommended that it be an offence to make, sell, distribute, supply or otherwise deal in body armour or to possess or use body armour. Under the mutual recognition scheme South Australia cannot restrict the availability of body armour if it is available in any other State or Territory. Some States have legislation and the matter has been raised by South Australia at the Police Ministers' Council with a view to all States and Territories enacting similar legislation restricting its availability. This amendment makes it an offence for a person, without the approval of the Commissioner of Police, to manufacture, sell, distribute, supply or deal in body armour or to possess or use body armour. The provision will be brought into operation when all States and Territories have legislation in place.

A further amendment is made to the Summary Offences Act. When attending a fire scene in the metropolitan area, police officers attached to the Fire Investigation Unit have to rely on section 73(1) of the South Australian Metropolitan Fire Services Act 1936 to empower them to enter upon land or premises, to conduct searches and to seize objects when investigating fires or other emergencies which are not suspected of being caused by criminal activity. Under that section the role of the police is to provide assistance to the Metropolitan Fire Service. It is neither practical nor efficient to require Metropolitan Fire Service officers to be present and give directions each time police are investigating a fire, which may not, at that time, be suspected of being a crime. The police have an independent power of investigation under the Country Fire Services Act 1989. The Commissioner of Police has requested that the Summary Offences Act be amended to give the police an independent power to enter premises to conduct searches and to seize objects for the purpose of determining the cause of a fire, explosion or other emergency.

Summary Procedure Act 1921: Section 72 of the Act provides that the Registrar of the Magistrates Court shall provide a party to proceedings, or a person whom a magistrate has certified to have a proper interest in the proceedings, with copies of complaints, depositions, written reasons for judgment, convictions or orders. This section is inconsistent with section 51 of the Magistrates Court Act and needs to be repealed. Section 112 provides that a person committed for trial be remanded in custody or released on bail. A company cannot be remanded in custody or released on bail so this section is amended to refer only to natural persons.

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

Leave granted.

Explanation of Clauses

PART 1
PRELIMINARY

Clause 1: Short title
Clause 2: Commencement
These clauses are formal.
Clause 3: Interpretation
This clause is an interpretation provision. It specifies that a reference in this Bill to "the principal Act" is a reference to the Act referred to in the heading to the Part of this Bill in which the reference occurs.

PART 2
AMENDMENT OF BAIL ACT 1985

Clause 4: Amendment of s. 5—Bail authorities
This clause removes the references to a "justice" in section 5 of the principal Act, which defines "bail authorities" under the Act.
Clause 5: Amendment of s. 11—Conditions of bail
This clause amends section 11 of the principal Act by removing the reference to a "justice" in subsection (6) and replacing it with a reference to a "magistrate", and by making a minor change to

subsection (9) which will ensure that an applicant for bail who remains in custody only because a condition imposed by the bail authority is not fulfilled will be brought back before a bail authority for a review of the condition as soon as reasonably practicable but, in any event, within five working days after the condition was imposed. The current subsection omits the "as soon as reasonably practicable" requirement.

Clause 6: Amendment of s. 13—Procedure on arrest

Section 13 of the principal Act is amended by substituting a new subsection (2) which refers only to the Youth Court. It is unnecessary for this subsection, which provides for review of a decision to refuse bail by a police officer, to continue to apply to applications by an adult in the Magistrates Court given the proposed amendments to section 14 and 15 of the principal Act.

In addition, the reference to "a justice" in subsection (5) is replaced with a reference to "the Magistrates Court", in keeping with the removal of single justices as a bail authority.

Clause 7: Amendment of s. 14—Review of decisions of bail authorities

This clause makes a consequential amendment to section 14 of the principal Act by striking out the reference to a "justice" in subsection (2)*(b)* and substituting a reference to a "court constituted of justices".

Clause 8: Amendment of s. 15—Telephone review

This clause amends section 15 of the principal Act, dealing with telephone reviews. Subsections (1) and (2) are amended consequentially to make the terms consistent with the other amendments to the Act. Subsection (3) is amended to provide for a telephone review by a magistrate in any case where the accused cannot be brought before a magistrate by 4 p.m. on the day following the arrest. This will eliminate the need for the accused to be brought before a justice before being able to apply for a review by a magistrate.

Clause 9: Amendment of s. 17—Non-compliance with bail agreement constitutes offence

This clause amends section 17 of the principal Act by striking out current subsections (2) and (3a) and providing a maximum penalty for breach of a bail agreement of $8 000 or two years imprisonment. Currently breach of a bail agreement renders the accused liable to the same penalty that is applicable to the principal offence. Under the proposed amendments, however, breach of a bail agreement will always be a summary offence. New subsection (2) also provides that a penalty imposed under this section must not exceed the maximum penalty that may be imposed for the principal offence.

Clause 10: Amendment of s. 18—Arrest of eligible person on non-compliance with bail agreement

Section 18 of the principal Act is amended by striking out from subsection (3)*(a)* the reference to a "justice" and by replacing the obsolete reference to "any court of summary jurisdiction" in subsection (3)*(b)* with a reference to "the Magistrates Court".

Clause 11: Amendment of s. 19—Estreatment

Section 19 of the principal Act is also consequentially amended to remove references to a "justice" and to "any court of summary jurisdiction".

PART 3
AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935

Clause 12: Insertion of s. 291

This clause inserts a new clause in the principal Act dealing with proceedings against corporations as follows:

291. Proceedings against corporations

Subsection (1) defines a "representative" of a company and subsection (2) provides that

- a representative need not be appointed under the seal of a corporation; and
- a statement in writing saying that a person has been appointed as a representative is admissible in evidence and, in the absence of evidence to the contrary, is proof that the person has been so appointed.

Subsection (3) provides that a representative of a corporation may enter or withdraw a plea or election on behalf of the corporation.

Subsection (4) provides that if there is a requirement that something be done in the presence of the defendant, or be said to the defendant, it is sufficient if that thing is done in the presence of the representative or said to the representative.

Subsections (5) and (6) provide a procedure for dealing with the non-appearance of a defendant corporation. If a corporation fails to appear at the trial of a matter the court may proceed with the trial in the absence of the defendant. If a corporation fails to appear to enter a plea the court may order that a plea of not guilty be entered in relation to the charge.

PART 4
AMENDMENT OF EVIDENCE ACT 1929

Clause 13: Amendment of s. 21—Competence and compellability of witnesses

Section 21 of the principal Act is amended to relieve judges of the need to be satisfied that a witness understands his or her right to apply for an exemption under that section where the judge is satisfied that the witness is incapable of understanding his or her right to apply for an exemption under that section.

PART 5
AMENDMENT OF LEGAL SERVICES COMMISSION ACT 1977

Clause 14: Insertion of s. 33A

This clause inserts new section 33A into the principal Act as follows:

33A. Immunity of members

A member of the Commission incurs no liability for an honest act or omission in the exercise by the member or by the Commission, of a power, function or duty under the Act and a liability that would, but for this provision, lie against a person lies instead against the Commission.

PART 6
AMENDMENT OF MAGISTRATES ACT 1983

Clause 15: Amendment of s. 7—Responsibility for administration and control of the magistracy

Section 7 of the principal Act is amended to ensure that the Chief Magistrate can delegate powers to any Magistrate.

PART 7
AMENDMENT OF PARLIAMENTARY COMMITTEES ACT 1991

Clause 16: Amendment of s. 24—Procedure at meetings

This clause amends section 24 of the principal Act to provide that no business may be transacted at a meeting of a Committee unless a quorum is present and that the number of members of a Committee that constitute a quorum is—

- if the Committee consists of five members—three members; and
- if the Committee consists of six or seven members—four members.

PART 8
AMENDMENT OF SUMMARY OFFENCES ACT 1953

Clause 17: Insertion of s. 15A

This clause inserts a new section 15A into the principal Act as follows:

15A. Possession of body armour

A person who, without the approval in writing of the Commissioner manufactures, sells, distributes, supplies or otherwise deals in, body armour or has possession of, or uses, body armour is guilty of an offence. The maximum penalty on conviction is $8 000 or 2 years imprisonment.

"Body armour" is defined to mean a protective jacket, vest or other article of apparel designed to resist the penetration of a projectile discharged from a firearm.

Clause 18: Insertion of s. 80

This clause inserts a new section 80 in the principal Act as follows:

80. Power of entry and search in relation to fires and other emergencies

A member of the police force may, at any time of the day or night, with or without assistance—

- enter and inspect land, premises or an object for the purpose of determining the cause of a fire or other emergency; or
- remove an object or material that may tend to prove the cause of a fire or other emergency; or
- retain possession of an object or material for the purpose of an investigation or inquiry into the cause of the fire or other emergency.

PART 9
AMENDMENT OF SUMMARY PROCEDURE ACT 1921

Clause 19: Repeal of s. 72

This clause repeals section 72 of the principal Act.

Clause 20: Amendment of s. 112—Remand of defendant

This clause makes a consequential amendment to section 112 of the principal Act to make it clear that the section does not apply to corporations, which are dealt with in new section 180.

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

MAGISTRATES COURT (TENANCIES DIVISION) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 21 February. Page 1231.)

The Hon. SANDRA KANCK: The purpose of this Bill is ostensibly to create a tenancies division within the Magistrates Court to hear commercial and residential matters which are currently being heard in separate tribunals operating outside the general court system. But of real concern to the Democrats is the Government's intention to change the role, function and future of the current Commercial and Residential Tribunals and the impact that this will have on residential tenants. The Opposition has indicated its preference for the retention of the Commercial Tribunal, although I note that the Hon. Anne Levy conceded that, should certain aspects of the system currently operating in the Commercial Tribunal be transferred to the Magistrates Court, then Labor could support such a transfer.

Whilst the position of the Democrats is that it is not convinced that a change is needed, it has not received a single message of concern from commercial groups. On that basis then the Democrats will support the Government's desire to transfer commercial disputes from the current Commercial Tribunal to a separate division of the Magistrates Court. Given the changes accepted in deadlock conferences recently on assorted consumer matters regarding real estate, consumer credit and second-hand motor vehicles, it is clear that it is possible to have a user friendly court to deal with some consumer matters, but the Democrats cannot support the Government's intention to dismantle the Residential Tenancies Tribunal and have matters which would have been handled by the tribunal instead dealt with by a tenancies division of the Magistrates Court.

Indeed, the Democrats have great difficulty understanding the Government's rationale for introducing the legislation in the first place. It appears that the Government came to review the residential tenancy tribunal simply because it was scrutinising all regulatory frameworks and not as a result of any demonstrated demand for change.

In undertaking the review, the legislative review team was instructed to have regard 'to the imbalance which is perceived to exist by the community between landlords and tenants'. I am not clear whose perception we are talking about, what imbalance or who it favours, but, given that this Bill seems to be less attractive to tenants, I am left to assume that, according to the Government, the committee worked from the premise that the community perceives a power imbalance in favour of tenants, which I find startling.

In concentrating on the dispute resolution aspect of the tribunal, the Government has disregarded the other important functions of the tribunal. The Government has chosen to ignore the importance of housing as a basic human right and, in doing so, has failed to recognise that many people ultimately do not choose to rent but would prefer the security of having their own home, if they could afford it. The current system provides tenants with security of tenure, whilst balancing the rights of landlords. The proposed system does not.

The Government has chosen to ignore the social justice components embodied in the current system, which is based upon the premise that there is a power imbalance between landlords and tenants and that it favours the landlords. Landlords let out their spare houses for investment earnings, and tenants, for the most part, rent a house simply because they do not have the money to purchase their own. The current system acknowledges this power imbalance and thus provides support to the tenant through education and by way of representation—at no cost and no threat of cost. Quite remarkably, though, it appears that the Government, through its independent review, has decided that tenants have too much power.

In his second reading speech on 30 November last year, the Attorney-General stated:

> 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.

Unfortunately, the Attorney-General did not specify what the complaints were. Since being elected 15 months ago, any concerns I have received regarding residential tenancies have been vastly different from what Liberal members have received, quite obviously.

Only three landlords have contacted our office over the past year, and their talk of undue hardship has not been convincing at all. They either do not understand basic investment rules with respect to expected returns or, quite frankly, they have been greedy. As a result, they have taken out their frustrations on their tenants and the tribunal. One landlord who approached us and who rents out about three houses does not have a realistic approach to her investment, but seems to be out to get every cent that she believes is rightfully hers. She wants these houses so that she can give one to each of her three daughters, who, incidentally, have left home and are even buying houses of their own. Another landlord, who has ended up being a nuisance to my office, was literally making himself sick through his retaliatory attitude because he had a communication problem with one of his tenants. I fail to see how landlords like these can be used as justification to change an effective system.

Whilst the landlords who have lobbied the Democrats have not put up any convincing argument to support the dismantling of the Residential Tenancies Tribunal, organisations such as Shelter SA and the Consumers' Association of SA have put up very strong arguments for the current system to remain. By coincidence, the position of these organisations has been backed up by a study carried out by the Community Law Reform Committee of the Australian Capital Territory. The report is titled 'Private Residential Tenancy Law', and was published only in December last year. The composition of that committee, by the way, was not stacked by consumer housing groups: it included magistrates and judges and ordinary members of the community. That committee undertook an analysis of the different arrangements between landlords and tenants around Australia and in New Zealand. Its recommendation was that the ACT set up a tribunal along the lines of the South Australian system, not a court system. So ironically, at precisely the time that the South Australian Government was promoting the disbandment of the Residential Tenancies Tribunal, an objective study performed outside this State says that we already have the best system in the country.

Our Residential Tenancies Tribunal is made use of by large numbers of both lessors and tenants. This is not always the case in other States. For instance, lessors make up around 90 per cent of applications in Victoria and New South Wales. In South Australia we have a more balanced number of

tenants and landlords attending the tribunal precisely because we do not have a court system. Tenants are reluctant to attend tribunals in New South Wales and Victoria because they are daunted by the court system.

It is not just the fact that tenants feel intimidated by using the court system; it has to be recognised that all the normal advantages of power which are associated with greater wealth, confidence, representation and knowledge go to the landlord. Moreover, landlords often employ agents who build up expertise and experience in such matters. The current tribunal offers all these services to tenants and landlords.

Furthermore, the process of conciliation, with the threat of court costs and of possibly having nowhere to go (or at least the burden of actually shifting and all the extra pressures that go with living at a different locality, for instance, having to come up with a bond and paying for the cost of installation of a new telephone), would further exacerbate the powerlessness of the tenant. He or she would be pressured to accept an otherwise less than acceptable position during conciliation because of the threat of shifting or facing escalating costs.

Under the proposed new system, a major feature of the Bill is that the landlord can more easily terminate a tenancy agreement. Therefore, should a decision go the tenant's way, with the landlord vehemently opposed, it appears that the landlord can quite easily terminate the tenancy agreement sooner than agreed—so-called retaliatory evictions. The Government is of the view that shifting the dispute resolution function of the tribunal would provide cost savings to the State. However, the ACT Community Law Reform Committee found that such a shift would not be an appropriate use of resources. The expertise and experience of the judiciary is more expensive because of the complex issues of evidence and procedure that they normally deal with. Whilst time-consuming and important residential matters are less complex, such disputes do not need judicial levels of expertise and the associated expense.

As the Hon. Ms Levy mentioned, the Business and Consumer Affairs Division in the lead-up process has about 10 per cent of cases not proceeding further. While that is quite admirable, if the Government wants to get it to about 50 per cent, as it has professed, more training will be required for the officers in business and consumer affairs. I should also mention in regard to cost that the Residential Tenancies Tribunal is a self-funding mechanism based on the interest from tenants' bond money, so it costs the Government nothing.

The ACT Community Law Reform Committee identified a number of advantages in the South Australian system. The South Australian tribunal operations are effectively integrated and coordinated, which makes each service more efficient and effective. The ACT committee noticed that the combination gives the Adelaide centre a high profile in the Adelaide community as the place to go with tenancy difficulties. They further observed that all services—from applications, lodging or claiming a bond, making inquiry or complaint to applying for a hearing—being located in one central location is an advantage to the community.

The Attorney-General has stated that hearings in the Magistrates Court will be heard expeditiously and economically, but the ACT study observed that the South Australian system (a) hears matters promptly within two weeks of application—in fact, urgent matters are heard within 24 hours, and I would like to see a court beat that; (b) conducts hearings in a helpful, clear but not overly formal manner during which the tribunal member actively seeks information from the parties and assists them where possible; and (c) operates with a high degree of efficiency, ensuring that each party is satisfied that all their arguments have been listened to and understood. We have no guarantee that the Magistrates Court will be able to offer a service with the same degree of efficiency and helpfulness.

The savings that the Government is keen to make must be balanced by other considerations, particularly the special requirements of government, and there are five matters which must be given weight. First, I refer to the wealth gap. Given the growing wealth gap in our society, continuing high unemployment and the increasing casualisation of the work force, one does not need a crystal ball to work out that in the future there will be a greater number of people renting houses, particularly those in part time or insecure employment or amongst those not employed at all, and this will no doubt be matched by the wealthier members of society who can afford to purchase a home not only for themselves but also another for investment.

Secondly, there is the phasing down of public housing. This, together with the planned phasing down of public housing, will add further to the greater numbers of people renting. If we cherish a society based on egalitarian ideals and fairness, it has to be acknowledged that the role of the current Residential Tenancies Tribunal will be in still higher demand and will be more important than it is now.

Thirdly, as to the special needs of housing disputes, the demands and pressures of criminal cases and complex civil matters are of a different order to the demands of tenancy disputes. The tenancy jurisdiction is and will remain a special jurisdiction which requires close attention to issues such as the financial position of the lessor, the accommodation needs of the tenant, the state of the rental market, the need for repairs to a house, and the state of cleanliness of the house.

Fourthly, there is the unique relationship between landlord and tenant. Unlike commercial or business disputes, tenancy disputes also often involve a continuing relationship between lessor and tenant and the need to preserve that relationship in a harmonious form wherever possible.

Fifthly, I refer to the staff at the Residential Tenancies Tribunal. The people who make up the tribunal carry out their duties so well because they lead the normal lives of ordinary people. They are not paid huge salaries, they live in all parts of Adelaide, and they are not part of the social circuit by virtue of their work or title. Thus, they are able to understand the problems that are brought to them.

The Democrats believe it is immoral to cut services from the less wealthy and generally less powerful people in our society. There is no guarantee that the Residential Tenancies Tribunal, which currently provides this service, will be able to have this same function carried on in the Magistrates Court. The Government's proposed system may be more costly to run, provide less services to both tenants and landlords, and put a greater financial burden on those who can least afford it. It is not appropriate to bring the problems associated with shop tenancies and residential tenancies to the same jurisdiction. Shop tenancies are part of a commercial decision, while residential tenancies are about a basic human right, the right to shelter.

The Democrats will be amending this Bill so that the Tenancies Division of the Magistrates Court will deal only with retail tenancies. With those amendments in mind, confident that the Residential Tenancies Tribunal will survive, the Democrats support the second reading of this Bill.

The Hon. T. CROTHERS secured the adjournment of the debate.

[Sitting suspended from 6.6 to 7.45 p.m.]

MINING (NATIVE TITLE) AMENDMENT BILL

In Committee.
(Continued from 7 February. Page 1095.)

Clauses 1 and 2 passed.
Clause 3— 'Interpretation.'
The Hon. CAROLYN PICKLES: I move:

Page 2, after line 18—Insert—
(ca) by inserting after the definition of exempt land' in subsection (1) the following definition:
'exploration authority' means—
(a) a miner's right;
(b) a precious stones prospecting permit;
(c) a mineral claim;
(d) an exploration licence;
(e) a retention lease (but only if the mining operations to which the lease relates are limited to exploratory operations);;
(cb) by striking out from subsection (1) the definitions of 'mining' or 'mining operations' and inserting the following definition:
'mining' or 'mining operations' means all operations carried out in the course of prospecting, exploring or mining for minerals (except fossicking) and includes—
(a) quarrying; and
(b) operations to recover minerals from the sea or a natural water supply; and
(c) operations under a miscellaneous purposes licence.

The Opposition is inserting three definitions into the definitions section of the Mining Act, namely, those of 'exploration authorities', 'mining operations' and 'production tenements'. The amendments are necessary because in our view there is a vital distinction in the mining process between those activities which are essentially carried out pre-mining and involving little if any damage to the landscape and activities which are associated with mining itself, which can potentially cause permanent disruption of the land. At the same time, we acknowledge the concern of mining companies that it would become unduly onerous if the native title negotiation procedure needed to be carried out for every single type of tenement created under the Mining Act. This could lead to unnecessary expense, delays and duplication of resources. Ultimately, the sensible solution to this problem would be a thorough review of the Mining Act to simplify the licensing and tenement requirements for miners in this State. I understand that at some point in the future the Government will review the Mining Act, so we will look with interest at that proposition when it comes before this Council.

I note that the Government amendments partly reflect agreement with the definitions of 'exploration authority' and 'production tenement' put forward by the Opposition. In respect of retention leases, however, we note that section 41F of the Mining Act gives scope for a retention lease to permit mining operations, and the Act places no express limit on those mining operations. We therefore consider it necessary to distinguish between retention leases which limit mining operations to exploratory activities and those which do not. The alternative to our amendment as proposed would be to limit 41F(b) so that clearly no more than exploratory activities can be permitted under a retention lease, and this would be in line with the original intention behind the retention lease provisions which were brought in 1981.

The major difference between Government amendments and those proposed by the Opposition is in respect of the miscellaneous purposes licence. We consider that the activities permitted by these licences should be classified as mining operations and included in the concept of a production tenement, because such activities are obviously closely related to full scale mining operations and because many of the activities covered by the licence will have a substantial impact on the land. For example, the miscellaneous purpose licence can permit the establishment of a treatment plant for recovered ore and the establishment of housing for miners, and so on. The licences are primarily utilised when major mining operations are anticipated or being carried out. It therefore makes sense to put these licences in the same category as those tenements which permit more than exploratory operations.

If taxation implications arise from the fact that these ancillary activities are to be defined in this legislation as mining operations, that can be addressed in other legislation if need be. For the purposes of the present legislation it is important to us that there can be a very broad definition of mining operations. The Government has an amendment to this clause, which we will oppose.

The Hon. K.T. GRIFFIN: I do not take the initial point that the amendment I have was on file first, but we will work through the issues in relation not only to this amendment but also to other amendments. However, the Leader of the Opposition got in first, and I am not taking the point on this occasion.

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: It is certainly on the record. The Government does not support the amendment, although it is in some measure similar to that which I now move from the Government perspective. There are two distinctions between the definition which I propose for 'exploration authority' and that proposed by the Leader of the Opposition. The first is purely in drafting style, where ours run on without being in separate paragraphs. The second is more substantive and includes in the Leader of the Opposition's amendment a retention lease, but only if the mining operations to which the lease relates are limited to exploratory operations. There is then the more substantive amendment proposed by the Leader of the Opposition, namely, to add a paragraph (cb) to define mining or mining operations, and I will deal with that shortly. The amendment that I will move inserts an additional definition. It is really a consequence of a subsequent Government amendment aimed at confining or narrowing the scope of the provisions relating to conjunctive agreements.

During the course of the informal discussions which have occurred over the past two or three months, conjunctive agreements have been a very lively issue. The Government was originally of the view that there ought to be a provision relating to native titleholders, and at one stage claimants could negotiate with the mining corporation with a view to working out all aspects of the proposed mining development from start to production. Some concerns were raised by those who represented Aboriginal interests that this was much too broad. The Government did not believe that was the case, but it has been prepared to accommodate that concern and to limit the conjunctive agreements in some circumstances to an exploration phase.

By this definition we do create the global term 'exploration authority', and it does encompass all the various

tenements that might be obtained by a miner in the exploration phase of a mining operation. We have other amendments on file which provide that, where a mining operator is negotiating with mere claimants, as distinct from registered native titleholders, a conjunctive agreement can be reached only with respect to the exploration phase, that is, the tenements that fall within this definition of the term 'exploration authority'.

We would suggest that the proposal by the Leader of the Opposition to add a paragraph (cb) is quite inappropriate. The Act itself draws a fundamental distinction between mining operations and ancillary operations such as treatment of ore, provision of amenities for workers, drainage, and so forth. A miscellaneous purposes lease is the appropriate licence for those latter activities. Those matters would not be covered by the definition of 'mine' in the Native Title Act and therefore they are not matters to which the right to negotiate applies. It is quite well established by case law and in every other sense that these activities are, by definition, not considered to be mining operations. The definition of 'mine' in the Commonwealth Native Title Act is as follows:

(a) explore or prospect for things that may be mined, including things covered by that expression because of paragraphs (b) and (c); or
(b) extract petroleum or gas from land or from the bed or subsoil under waters or sea quarry.

It is quite clear that, in respect of the Commonwealth Native Title Act, those matters that are covered by miscellaneous purposes licence are not the subject of the right to negotiate. In this State legislation we certainly do not want to extend the ambit of the right to negotiate beyond what is recognised under the Commonwealth legislation. Under the Mining Act, the miscellaneous purposes licence may be granted for any number of purposes:

> . . . for the carrying on of any business that may conduce to the effective conduct of mining operations or provide amenities for persons engaged in the conduct of mining operations; for establishing and operating plant for the treatment of ore recovered in the course of mining operations; for drainage from a mine; for the disposal of overburden or any waste produced by mining operations; or any other purpose ancillary to the conduct of mining operations. . . and may be granted upon such terms and conditions as may be determined by the Minister and specified in the licence.

Then there are certain matters that the Minister has to take into consideration in determining the terms and conditions subject to which a licence is to be granted. So, very strongly and vigorously we oppose the concept of miscellaneous purposes licences being included in the definition of mining or mining operations. That activity ought to be limited to quarrying and operations to recover minerals and not those incidents to mining activity. So, I move:

Page 2, after line 18—Insert:
(ca) by inserting after the definition of 'exempt land' in subsection (1) the following definition:
'exploration authority' means a miner's right, a precious stones prospecting permit, a mineral claim, an exploration licence or a retention lease;;

Also I indicate opposition to the Hon. Ms Pickle's amendment.

The Hon. SANDRA KANCK: Throughout the process of this Committee I have a number of amendments that are going to be similar to others that are on file and in many cases I will not actually get to move mine but it will be clear which way my support is going. In this particular case I have an amendment that is very much the same as the Opposition's and, although I do not want to talk at length about it and repeat what the Hon. Ms Pickles has said, I do want to speak out strongly in favour of the addition of paragraph (cb) particularly in regard to miscellaneous purposes licences. I was born in Broken Hill and spent 22 of the first 23 years of my life there. I saw very much what the effect of these miscellaneous operations can be on the environment.

The skip dumps in Broken Hill stretch literally for kilometres. One I remember from childhood was such a landmark in Broken Hill and had been there for so long and had had so much dumped on top of it that it was actually known as Mount Hebbard. In the 1970s it was proven to be a gold mine, quite literally, because the stuff that had been dumped was actually processed again for the gold deposits that were in it. The sorts of operations that come under a miscellaneous purposes licence are a direct effect of the mining and have quite a heavy impact on the environment. I believe that it is essential that they be included as part of a definition of mining.

The Hon. K.T. GRIFFIN: Mining tailings is actually a mining operation. It is not the subject of any miscellaneous purposes licence. Miscellaneous purposes licences are to deal with the incidents of mining, and processing tailings is not an incident in that sense. The fact is that what the Hon. Carolyn Pickles' amendment paragraph (cb) and the Hon. Sandra Kanck's support does is to widen the ambit of the right to negotiate. That is not acceptable to the Government. I indicate that I do not intend to take up a lot of time with divisions on issues upon which I am not going to be successful. I will indicate my position on particular amendments and, as I said, if I am not successful I am not going to divide. We have a long way ahead of us, but I do not want the fact that I do not divide to be taken as an indication that we are somehow less vigorously opposed to a particular amendment. Quite obviously, if we start off in that way everyone knows where they stand. Ultimately we may well end up in a deadlock conference where we can attempt to resolve some of these issues, and I would expect that will be in the next week or so.

The Hon. K.T. Griffin's amendment negatived; the Hon. Carolyn Pickles' amendment carried.

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

Page 2, after line 33—Insert:
(ea) by inserting after the definition of 'precious stones field' in subsection (1) the following definition:
'production tenement' means a precious stones claim or a mining lease;;

This amendment is related to the earlier amendment that I moved. It defines the term 'production tenement' and that encompasses precious stones claims or mining leases, which are the only production tenements under the Act so that in subsequent proposed amendments conjunctive agreements can be precluded where a mining operator is negotiating with mere claimants. Conversely, where registered native titleholders are involved, an agreement may cover both the exploration and the production phases.

The Hon. CAROLYN PICKLES: I move:

Page 2, after line 33—Insert—
(ea) by inserting after the definition of 'precious stones field' in subsection (1) the following definition:
'production tenement' means—
(a) a precious stones claim; or
(b) a mining lease; or
(c) a retention lease (if the mining operations to which the lease relates are not limited to exploratory operations); or
(d) a miscellaneous purposes licence.

We oppose the Government's amendment. As indicated, we have already canvassed the issues relating to the Opposition's amendment. We say that the proposed definition of 'production tenements' should include miscellaneous purposes licences and retention leases covering more than exploratory operations.

The Hon. K.T. GRIFFIN: I oppose the amendment moved by the Hon. Carolyn Pickles. I note the reference to a retention lease and the qualification to that, which I think is complementary to the earlier amendment which was successful and which I opposed. However, I think the most significant part of this amendment is that it includes a miscellaneous purposes licence as a production tenement and that, with respect, is just nonsense. It makes a fundamental change to the Act, and I think it has very significant consequences. I can say right here and now that if this and a number of other amendments get up and we cannot resolve it at the deadlock conference there is a very strong possibility that this legislation will not pass, because it introduces into the legislation a totally unacceptable provision. There may be some people who would like to see that occur, but the fact of the matter is that it is unworkable and, as I say, it is opposed strenuously because it does have such significant consequences. It is a fundamental change which we do not accept.

The Hon. K.T. Griffin's amendment negatived; the Hon. Carolyn Pickles's amendment carried.

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

> Page 3, after line 7—Insert:
> (h) by inserting after subsection (2) the following subsection:
> (3) An explanatory note to a provision of this Act forms part of the provision to which it relates.

Several explanatory notes appear in the Bill. I have some reservations about explanatory notes being part of legislation, but I have conceded that, in respect of the package of native title Bills, explanatory notes do serve a useful purpose and, for that reason, in each of the other Bills that we have passed in this package, we have acknowledged that an explanatory note forms part of the provision to which it relates. That is important from the point of view of statutory interpretation. We certainly do not want there to be any doubt about the status of an explanatory note, and this puts that issue beyond doubt. It is not something which, as a matter of general principle, I or the Government have accepted, but we see that there is value in the explanatory note in the context of this complicated package of legislation.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment. We had a similar amendment and we will not proceed with it.

Amendment carried; clause as amended passed.

Clauses 4 to 7 passed.

Clause 8—'Registration of claim.'

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

> Page 4, lines 4 to 12—Leave out proposed subsection (4) and insert:
> (4) A mining registrar may refuse to register a mineral claim (other than a claim that relates solely to extractive minerals) if satisfied that—
> (a) before the claim was pegged out, an application had been lodged for an exploration licence for an area comprising the area of the claim or portion of the area of the claim; and
> (b) the application has not been refused.
> (4a) A mining registrar cannot register a mineral claim if to do so would be inconsistent with a public undertaking by the Minister to the mining industry.

This is really a reworking of the provision to make it clearer. New subsection (4a) replaces subparagraph (b) of subsection (4). Subsection (4a) has been altered to make it clearer that the mining registrar cannot register a claim if to do so would be inconsistent with a public undertaking by the Minister to the mining industry. The previous provision seemed to still allow the registrar a discretion in that regard, and that discretion has now been removed. This is important in the context of priority issues, which we will touch upon at a later stage of the consideration of the Bill.

The Hon. CAROLYN PICKLES: The Opposition supports the Government amendment. We have a similar amendment that I do not intend to proceed with. We share the Government's concern on the question of priorities of mining companies, which seek to secure their claim while native title negotiation procedures are being carried out. Our proposed section 63G addresses that issue. We have no objection either to subsections (4) or (4a) as proposed by the Government.

The Hon. SANDRA KANCK: I had some concern about this clause both in the Bill and in the amendment. Could the Attorney tell me what the public undertaking will be and how a mining registrar will be able to keep abreast of the public undertakings that the Minister might have made?

The Hon. K.T. GRIFFIN: Section 24 of the principal Act provides:

> Application for registration of the mineral claim must be lodged at the office of the mining registrar within 30 days after the day on which the claim is pegged out.

Presently, the Act provides:

> A mining registrar shall, subject to this Act and any order of the Warden's Court, register a mineral claim upon receipt of due application for registration of the claim in the prescribed form and accompanied by the prescribed particulars.

So, it is a mandatory process. The mining registrar shall, of course, subject to the Act and any order, register a claim. It further provides:

> Subject to subsection (4a), a mining registrar may refuse to register a mineral claim if he is satisfied that, before the claim was pegged out, an application had been made and lodged with the Director of Mines under Part 5 for a licence under that Part in respect of an area comprising the claim, or any portion of the claim, and that the application has not been refused.

Subsection (4a) provides:

> The mining registrar shall not exercise his power under subsection (4) to refuse to register a claim if the claim relates solely to extractive minerals.

Where there is some invalidity in a mining tenement other than through the fault of the holder of the tenement, then there ought to be priority, and there may be any number of reasons, particularly in the context of this legislation. It may be that there are issues arising in relation to native title; it may be that, as a result of those, the tenement is not valid, and through no fault of the holder of the tenement. We were anxious to ensure that there was an appropriate mechanism by which the mining registrar should be required to register a mineral claim.

We decided that—and I suppose one could call it a safety net provision rather than anything else—in the context of a particular tenement and the process leading up to the issuing of that tenement, if there were matters which suggested that there ought to be some priority given to the person who is actually registered as the holder of that tenement—not related to native title—then, if the Minister had given a public undertaking that that priority would be given, the registrar had to recognise that and refuse to register a claim that someone might seek to lodge in priority to the invalid tenement.

It is in that context and it is difficult to identify particular undertakings that might be given. I would envisage that they might be straightforward and clearly made, that they have to be public and of course they would have to be kept on the appropriate register or files at the officer of the Registrar. I would expect that they would be related to particular tenements. It is possible that they would not be related to specific tenements, but in those circumstances they would certainly be within the knowledge of the Registrar and would be matters taken into consideration in the processing of applications for registration of tenements.

The Hon. SANDRA KANCK: I am still unclear. The Minister said it is something that would be lodged with the Mining Registrar, and presumably it would have to be in writing. Could it be a statement made in a television interview with the Minister? Would that be a public undertaking? If so, would the Mining Registrar be provided with a copy of the video of that interview? I find it muddly, which is why I am concerned about it: the definitions are unclear.

The Hon. K.T. GRIFFIN: When we were addressing the issue of a safety net provision it was envisaged that the Minister would make the public undertaking in the Parliament so that it is clearly on the public record. There is no reason why it should not be a notice in the *Gazette*. In fact, it can be related to a particular tenement but it can also be the mining industry at large. We envisage that by administrative means rather than by formal proclamation or by other means that this public intimation would be given, that it would be drawn to the attention of the Mining Registrar and would then be effected.

The honourable member might think it is a bit woolly. There are areas in the Commonwealth Native Title Act which are rather confused and we have been trying to find our way around it in an amendment to this legislation to ensure that there is some safety net provision for the mining industry. This was very much designed to give some reassurance to the mining industry and particular tenement holders if that was at all necessary that there would be a safety net. Later proposed amendments reinforce the safety net approach, but we have taken the view that, notwithstanding that we had not specified how and where the public undertaking would be given, it will still be on the public record.

The other point that everyone has to recognise is that this really does not prejudice anyone. If the public undertaking is given by the Minister, it is recorded by the Registrar in terms of having it drawn to his attention and then he refuses to register a mineral claim which is contrary to the content of that public undertaking. It is all part of the safety net provision and we are doing the best we can to give that reassurance that I think is necessary in the context of other disadvantages which are suffered by the mining industry, but an industry which is so important to South Australia.

The Hon. SANDRA KANCK: I understand that the intention is good and I am not challenging the Attorney on that. I understand from the briefing that we have these cowboys in the mining industry who go around gazumping mining leases and it appears it is necessary, but I was worried about the wording. 'Woolly' is the Minister's word, but I said 'muddly'. The Minister slightly clarified the position in his explanation and I will not keep persisting with it, although I would have liked the position to be clearer if that was possible.

The Hon. R.D. LAWSON: How many undertakings have been given by the Minister to the mining industry to which this subclause would apply? Is this a provision to reinforce or ensconce undertakings already given?

The Hon. K.T. GRIFFIN: No formal undertaking has been given because this provision is not yet part of the law. No informal undertaking has been given except in the context of negotiations where we have made it clear to everyone, because it is to everyone's advantage that they know, whatever interest people have in this Bill, that as a Government we are anxious to give reassurance to the mining industry. In that context this reflects that broader commitment to the industry. I repeat: there is no basis upon which there ought to be concern about it. The Minister is likely to give an undertaking about the registration of mineral claims in order to prevent what the Hon. Sandra Kanck indicated is a gazumping characteristic of some people on the industry's perimeter.

Amendment carried; clause as amended passed.

Clause 9—'Grant of exploration licence.'

The Hon. SANDRA KANCK: I move:

Page 4, lines 16 to 22—Leave out proposed new subsection (5) and insert:

(5) The Minister must, at least 35 days before granting an exploration licence, publish a notice—

(a) describing the land over which the licence is to be granted and, if the licence is to relate to a particular stratum, specifying the stratum; and

(b) inviting members of the public to make written submissions about the proposed grant of an exploration licence to the Minister within a period (of at least 28 days from the date of publication of the notice) specified in the notice,

in the *Gazette*, a newspaper circulating generally in the State, and if there is a regional or local newspaper circulating in the part of the State in which the licence area is situated, in the regional or local newspaper.

(5a) In determining an application for an exploration licence and the conditions of the licence, the Minister will have regard to any representation made in response to an invitation under this section.

The amendment reflects what currently happens in regard to exploration licences. It partly reflects it, anyhow. There is an advertisement in the *Government Gazette* and members of the public are invited to respond within 28 days with any concerns about the proposal. However, there does not appear to be anything in the Act that causes this to happen and I want to make sure that it is a definite requirement. My amendment takes it further than the current situation because it requires that the Minister has to set this process in motion at least 35 days before granting the exploration licence and there is still 28 days for public submissions. That means that there can be a period of up to seven days when submissions can be taken into account. There is an explicit requirement for the Minister to actually look at those representations. I want to ensure that we have more than just a gentlemen's agreement. It is important in the context of native title to recognise that there may be Aboriginal people who may not qualify as native title holders who may still have some deep attachment to part of the land and may want to make use of a provision like this to ensure that the land they love is still looked after.

The Hon. K.T. GRIFFIN: There are a number of issues relating to this Bill that are proposed to be moved by the Hon. Sandra Kanck. They are not significantly related to issues of native title and what we have tried to do is to focus on issues relating to native title with this Bill. I have indicated previously that the Government is reviewing, in a broader context, the Mining Act, but deliberately we avoided addressing issues of substance relating to other matters in the Mining Act when we were dealing with native title issues. This, I suggest, is not

an issue that is related to native title: it is related to other matters addressed by the principal Act.

It does relate to the grant of exploration licences. The Bill amends this provision in section 28 of the Act to ensure that the notice the Minister gives of his or her intention to grant an exploration licence is more accessible. At the moment notice only has to be published in the *Government Gazette*. We are proposing to alter this to include notice in a newspaper circulating generally in the State and also in a regional or local newspaper. So, the advertising will be much more extensive than at the present time. The proposal by the Hon. Sandra Kanck goes even further in requiring the Minister to invite public submissions on the proposed grant of the exploration licence, and then the Minister is required to have regard to those representations or submissions.

I suggest that is quite unnecessary. It has nothing to do with native title and I do not think anything would be achieved by it. It would delay and complicate the process of granting an exploration licence for no good reason, as it is unlikely that public submissions could yield any useful information prior to the miner even having a look to see what is there. I suggest that it is in the public interest that processes be streamlined, that we look to remove bureaucratic delays, or at least reduce them rather than increase them. One of the concerns which I have about this amendment is that it will raise at least the expectation in the minds of some members of the public that there will be a much greater involvement of the public in the grant of exploration licences, and it may be that it has the potential to involve ultimately the courts more in the consideration of the granting of exploration licences because, if the Minister does receive some public submissions, then what is the Minister's duty? To have regard to them? How is the Minister to have regard to them? Is the Minister to accord natural justice to both the applicant and to the people making submissions? It opens up a Pandora's box which the Government is not prepared to accept. For those reasons we would very vigorously oppose this amendment.

The Hon. CAROLYN PICKLES: The Opposition opposes the amendment. As the Attorney has quite rightly pointed out, this and several of the Democrat amendments do not deal specifically with native title and the Opposition agrees that it would be much more appropriate to deal with these amendments in the comprehensive review of the Mining Act, which we hope will not be too far away.

The Hon. SANDRA KANCK: I am very disappointed in both responses and they indicate a lack of knowledge. I have page 755 from the South Australian *Government Gazette* of 2 March. These types of advertisements are published every week in the *Gazette*. This advertisement states:

> Mining Act 1971, Department of Mines and Energy, 2 March 1995. Notice is hereby given that I propose to grant exploration licences over the undermentioned areas. Any comments on this proposal must be lodged in writing, marked 'Comment on granting of exploration licence' and addressed to the Director-General, Department of Mines and Energy, 191 Greenhill Road, Parkside, on or before 30 March 1995.

That is 28 days by the way. It is signed P.J. Cronin, Mining Registrar. Then it gives details of the number of applicants, the locations—given in terms of latitude and longitude—the term that is proposed, the area in square kilometres and the DME reference number.

I have had occasion to respond to these advertisements and I refer specifically to one occasion where I responded to one application that involved an area near Olary in north-eastern South Australia where, as some members may know, there are Aboriginal rock carvings more than 40 000 years old. I rang Aboriginal Heritage at that time. It knew nothing about it and because of lack of resources it was not in a position to respond to it. I did respond to it. As a result of the response to my letter to the Department of Mines and Energy they were able to put certain conditions on that particular exploration licence. So, I am shocked at the lack of knowledge of both the Government and Opposition on this because clearly this is a native title issue.

The Hon. K.T. GRIFFIN: I am not quite sure how a question of comment gets into the notice—there is no provision in the Act for it.

The Hon. Sandra Kanck: I acknowledge it is not in the Act. I said I want it put it in there because it happens.

The Hon. K.T. GRIFFIN: I am not prepared to support it going in there. The fact is the Act does not presently require it. I cannot answer for the Registrar as to why that goes in the notice. The fact is the public notice is required to be given and we are looking to extend that public notice, but I do believe that if you start to talk about public submissions and representations you begin to open a Pandora's box.

Amendment negatived; clause passed.

Clause 10—'Term of licence.'

The Hon. SANDRA KANCK: I move:

> Page 4, lines 26 to 30—Leave out proposed subsections (1) and (2) and insert:
>
> (1) An exploration licence is to be granted for a term not exceeding two years with a right of renewal but not so the aggregate term of the licence exceeds five years.

My concern in this case is about the adverse environmental impacts of exploration and anyone who knows a little bit about mining knows the appalling visual damage of seismic lines. The view within the environment movement is the shorter the term for a licence the better.

The current Act says that it may include a right of renewal, so I have made a concession here to say that it will be able to. The mining lobby has been arguing for certainty and establishing an absolute upper limit of five years gives a very clear picture with regard to how long they have for exploring a particular area. I suspect the Government might turn around and argue that this will require a further agreement to be entered into, but that eventuality could be built into the first agreement.

The Hon. K.T. GRIFFIN: The Government opposes this amendment. If one breaks up the licence to fixed term periods, on each occasion one has to go through the right to negotiate process. We were seeking to provide more flexibility for the Minister and for the mining company and to allow Aboriginal interests to be alerted to the proposals being made in the negotiation of the exploration rights. We are talking about exploration. We are not talking about anything beyond exploration, and it is important to recognise that. We have taken the view that if we grant the licence for a term of up to five years, decided by the Minister, that will provide the necessary flexibility without imposing the right to negotiate at any stage other than the commencement of that term.

The Hon. CAROLYN PICKLES: The Opposition opposes the amendment. We do not believe that there is any need to restrict the initial licence to two years. We support the position set out in the Bill.

Amendment negatived.

The Hon. SANDRA KANCK: I move:

> Page 4, after line 33—Insert:
>
> (3a) An application for renewal of an exploration licence must be made to the Minister in the prescribed form not more than six

months, and not less than three months, before the date of expiry of the licence.

As currently worded, the process for extending a licence could go on *ad nauseam*, and many of us would not like to see that. My amendment puts some constraints on the company, perhaps forcing it to get its act together regarding licence renewal. Obviously, if a company has not applied in that time period, it is not very interested in renewal. Also, that lead-up time of not more than six months and not less than three months will allow the department to get its act together. It is consistent with other parts of the Act. Section 38 provides that the renewal of mining leases requires an application to be made between three and six months before expiry, and retention leases, in section 41D, also require an application to be made three months beforehand.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. It has to be recognised that the exploration licence is to be granted for a term of up to five years decided by the Minister, so ultimately it is a fixed period. There is a provision for holding over, but that is limited in its scope. I should have thought that each exploration licence or application for extension had to be judged on its merits. When the term has expired, I understand we get into the negotiation phase again. The Government is anxious to provide flexibility and some measure of certainty to ensure that exploration does not drag on indefinitely but occurs within certain fairly tough parameters. For those reasons, we take the view that the amendment is not appropriate.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment. We do not believe that it is a great change from the existing section 30A of the Mining Act. It takes away the element of ministerial control and discretion, which we would accept is not really necessary if rights of renewal have been agreed at the outset. The issue whether exploration licences are initially granted for two years or more or less will become less important if the Opposition's amendments to part 9B are carried.

The Hon. K.T. GRIFFIN: I should have thought that carrying this amendment was a signal to the Minister that the licences ought to be granted for the five-year period, and then the issue of renewal becomes irrelevant. I think that we need some flexibility. We have indicated in the Bill that the maximum term is five years and within that framework, if it is appropriate in the context of a particular exploration project, there ought to be a right of renewal. It is clear from subclause (3), which provides:

An exploration licence that does not include in its terms a right of renewal may be renewed at the discretion of the Minister from time to time, but not so the aggregate term of the licence exceeds five years.

In those circumstances, support for this amendment is an indication for the Minister to take up the full five years in more cases than otherwise may have been allowed.

The Hon. SANDRA KANCK: I indicated at the outset that I was slightly altering my amendments. I put in some flexibility, because I understand that not all miners want a flat term of two years; some of them actually want something shorter than that. It would be a pointless exercise for the Minister to award exploration licences for a term of five years when all a miner wants is six months.

The Hon. K.T. GRIFFIN: That might be the case, but it gives no flexibility. If a company wants a six-month exploration licence with a right of renewal, this provides that the renewal application must be made not more than six months and not less than three months before the date of expiry of the licence. If a company gets a six-month term, three months into the term it has to decide whether or not it wants a renewal of that six-month term. With respect, I think it is nonsense.

The Hon. SANDRA KANCK: Again, I refer the Minister to the advertisements in the *Gazette* as regards exploration licences. It is clear that mining companies already impose their own limits on the time that they want. There are licences for six months, one year and two years. I am not sure what the Attorney-General is on about.

The Hon. K.T. GRIFFIN: I am not disputing that mining companies may want a limited term. That largely relates to the resources that they may have available. However, if they get into a short-term exploration licence and discover something which suggests they have a good basis on which to raise more money, this imposes a rigid requirement of not less than three months for the renewal of an exploration licence. If it is a licence for six months, it has to be decided three months into the exploration program.

Amendment carried; clause as amended passed.

Clause 11 passed.

Clause 12—'Representations in relation to grant of lease.'

The Hon. SANDRA KANCK: I move:

Page 5, lines 9 to 15—Leave out this clause and insert:

12. Section 35A of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) The Minister must, at least 49 days before granting a mining lease, publish a notice—

(a) describing the land to which the application for the lease relates and, if the application relates to a particular stratum, specifying the stratum; and

(b) specifying a place at which the application may be inspected; and

(c) inviting members of the public to make written submissions about the proposed grant of a mining lease to the Minister within a period (of at least 42 days from the date of publication of the notice) specified in the notice,

in the *Gazette*, a newspaper circulating generally in the State, and, if there is a regional or local newspaper circulating in the part of the State in which the land is situated, in the regional or local newspaper;

(b) by striking out from subsection (1a) 'time' and substituting 'period (which must be a period of at least 42 days)';

(c) by striking out from subsection (2) 'time fixed in the invitation' and substituting 'specified period (which must be a period of at least 42 days)'.

I deal with a number of things in this amendment. First, there is the question of time. The Bill provides for 14 days. I have been in contact with the South Australian Farmers Federation about this, and I was told that for someone living on a pastoral lease the turnaround time for mail can be four weeks.

That means two weeks to get something up north and two weeks to get something back down south, and if the pastoralist wants to make an appointment to come to the city to see a lawyer to decide what he or she is going to do, 14 days is highly inadequate. The suggestion from the Farmers Federation was actually eight weeks, but I finally settled on six weeks.

Other aspects concerned me about the clause as it is in the Bill. Section 35A(1a)(b) of the Act allows the owner of any land abutting the land to which the application relates to be provided with a copy. I would be interested to know from the Attorney why this provision has been removed. It seems to me that mining can have some fairly disastrous consequences and, if one have land abutting, I think it is fairly reasonable that one should be advised of this.

I have also increased circulation of the advice from the Minister to include three publications, the Government *Gazette*, a Statewide paper and a local paper if that is appropriate. Again, I have set in place time periods with the Minister having to put that notice out 49 days ahead of the time, with the public having 42 days to respond. That then gives the Minister one week to look at those submissions.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. With respect, it has nothing to do with native title. As I said at the beginning, the Government has endeavoured to focus upon issues directly related to native title in dealing with this legislation. In response to an earlier comment by the Hon. Carolyn Pickles, I cannot indicate exactly when the Parliament will see any substantive amendments to the Mining Act in those matters which deal with issues other than those related to native title, but it is in progress. It is a complicated issue. All I can say is that I am aware that that review is taking place.

I point out that the present Opposition, when in government, did in fact cut down the time limit from 28 days to 14 days by an incidental amendment when the Development Act was dealt with in 1993. What the Hon. Sandra Kanck's amendment does is blow the period for responses from 14 days to 42 days, and I would suggest that is far too long. Rather than facilitating developments within the mining industry which flow through to every citizen in South Australia, it will increase the potential for delay and discourage investment.

The fact of the matter is that section 35A already requires notice to be given. We are actually seeking to remove that provision which says that the Minister must, within 14 days after receiving an application for a mining lease, send a copy of the application to the owner of any land that abuts on the land to which the application relates. We are removing that because we are providing for adequate public notification. Those owners who abut the land are then in no different a position from other citizens within the State.

This is particularly important in the context of native title because owners may include the holders of native title. If we do not know who the holders of native title are, there are additional obligations placed upon the Minister in relation to giving notice. So, we took the view that we treat everybody equally: other land owners, citizens and native titleholders. They will all be able to take advantage of the public notice, rather than anyone other than the land to which the application relates being treated in the same way through the public advertising regime.

The Hon. CAROLYN PICKLES: The Opposition opposes the amendment. We believe that, like some of the other amendments moved by the Australian Democrats, this is not directly connected with native title and we believe we should wait for the overall review of the Mining Act.

The Hon. SANDRA KANCK: Well, I have to say that the process of removing the subclause about people on neighbouring land also has nothing to do with native title, but it is being done in the context of this legislation. I still assert, as I did with clause 9, that this is related to native title, because we could be dealing with Aboriginal landholders who again may not be native title claimants or native title parties. It is quite probable that we can have Aboriginal pastoralists, again who have great commitment to that land and want to be able to have some input. I cannot see how you can say it is not native title, but obviously I will be defeated on this one. Again, I express my disappointment.

Amendment negatived; clause passed.

Clause 13—'Nature of lease.'

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

Page 5, lines 19 to 22—Leave out paragraph (b).

This proposed amendment and the next one delete the requirement for the Director of Mines to notify the Registrar-General of the grant of a mining lease, and for the Registrar-General then to note the mining lease on the certificate of title or Crown lease to which the mining lease relates. On reflection it was felt that this requirement was unnecessary in view of the establishment of the State native title register. I refer in particular to Part 4, Division I, of the Native Title (South Australia) Act. By searching the native title register, anyone will be able to ascertain whether particular land has been found to be affected by native title or whether native title has been claimed over it.

If this is linked in with or cross-referenced to the mining register, the same sort of information can be gleaned without the Registrar-General's going to the trouble and expense of noting each mining tenement on the relevant certificate of title or Crown lease, and then deleting or altering those notations whenever a tenement expires, is transferred or whatever occurs. We have taken the view that it is administratively burdensome and quite unnecessary in the light of the fact that there will be a State native title register. The information will still be on the public register, but it will not place those additional administrative burdens upon the Registrar-General of Deeds.

The Hon. CAROLYN PICKLES: The Opposition has the same amendment. We will not proceed with ours but support the Government amendment.

Amendment carried; clause as amended passed.

Clauses 14 and 15 passed.

Clause 16—'Nature of lease.'

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

Page 26, lines 25 to 28—Leave out paragraph (b).

I move this amendment for the same reasons as I expressed in relation to the amendment to clause 13.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment. We had a similar amendment and we will not proceed with it.

Amendment carried; clause as amended passed.

Clauses 17 and 18 passed.

Clause 19—'Registration of claims.'

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

Page 7, lines 33 to 35—Leave out proposed subsection (4) and insert:

(a) A mining registrar cannot register a precious stones claim if to do so would be inconsistent with a public undertaking by the Minister to the mining industry.

This amendment is identical to that proposed to clause 8, page 4, lines 4 to 12 (subsection (4)(a)). However, instead of relating to mineral claims it relates to precious stones claims. It precludes the mining registrar from registering a claim where to do so would be inconsistent with a prior undertaking given by the Minister to the mining industry. The provision has been reworded to remove the discretion in the mining registrar as to whether he or she registers a precious stones claim where to do so would be inconsistent with a public undertaking given by the Minister.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment. We had a similar amendment and will not proceed with ours.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 7 after line 35—Insert:

(ab) by striking out subsection (7) and substituting the following subsection:

(7) If an application is made for renewal of a precious stones claim at least one month before it falls due for renewal, the owner of the claim is entitled to a renewal unless the Mining Registrar is satisfied, after giving proper consideration to the protection of the natural environment, that renewal in the circumstances cannot be justified.

I move this amendment because it invites the mining registrar to consider environmental factors in deciding whether to renew a precious stones claim. There are currently precious stones claims in areas of South Australia where Aboriginal people do have an interest, and I believe that the Aboriginal people are currently not in any position to do anything about these claims and the way the environment is treated. It means that the claim is not automatically renewable, although I suspect that, given the philosophy of the Government, in most cases the reality is that it would be. It does mean that, if there is any evidence that a precious stones claim has been having an adverse impact on the environment, there is an opportunity for the mining registrar to say 'No'. A positive side effect of having such a provision might be that those miners who are working precious stones claims would be just a little more environmentally responsible. I know that it would probably have the greatest impact on opal miners who are occasionally known to be laws unto themselves. The important thing is that it would be there as a provision to allow the mining registrar to consider those factors in deciding whether to renew a precious stones claim.

The Hon. K.T. GRIFFIN: Again, the Government argues that this issue is unrelated to native title. I suppose one can make the passing reference to the fact that if this was to get up it would not be appropriate for the mining registrar to make the assessment; to ensure consistency it would have to be the Director of Mines, but that is not my reason for opposing it. I am just pointing that out as a matter of drafting. It really would mean that the Department for Mines and Energy would have to pass just about everything to the Department for Environment and Natural Resources before a lease could be granted. That would mean that rather extensive consideration would have to be given to issues of the protection of the natural environment. The Government supports that as a principle, but these sorts of issues are generally taken into consideration as I understand it over a longer time frame and in conjunction with specific projects.

Notwithstanding that, this also introduces the question of whether or not the officer—whether it is the mining registrar or the Director of Mines—has given proper consideration to the protection of the natural environment. It may well end up in litigation to determine whether the Minister has properly exercised his or her discretion and judgment. I think it introduces a particularly bureaucratic and difficult process which would not be in the interests of the State. It does of course relate to a precious stones claim, which is a less extensive area than in relation to other claims.

I think one needs to point out also that, in relation to an individual project, once the project is in the pipeline, apart from exploration, miners must address issues like development plans, and they deal in detail with environmental issues. I would suggest that the framework within which developments occur is already in existence where issues relating to the environment have to be addressed and that it would be inappropriate in relation to this Bill, because it is not related to native title but, more particularly, in the context of the general framework of the legislation, to consider this as an appropriate amendment.

The Hon. CAROLYN PICKLES: The Opposition agrees that it is more appropriate to deal with this in the context of the of the review of the Mining Act, so we oppose the amendment.

The Hon. T. CROTHERS: One thing concerns me about the Mining Act, and perhaps the Attorney with his legal background can put my mind at rest. I understand that as of 1901 the Federal Government had constitutional rights given to it for foreign affairs, defence and other matters. I noticed recently that a lease had been granted by the State Government offshore with respect to a company that is prospecting for alluvial diamonds *a la* Sierra Leone and South-West Africa. We know that the international protocols in respect of sovereignty over the shoreline have changed fairly rapidly over the past 15 to 20 years. It was three miles, then it was extended to 12 miles and now I think international protocols are 200 kilometres. What is the position relative to State's mining rights, noting as I do that Western Australia has laid claim to the gas and petroleum fields up in the North-West Shelf? What does this Bill say in respect to the offshore mining rights of South Australia? Do they exist, do we have them totally and, if we do not have them and there is a partial agreement, somewhat suspended—like Mohammed's coffin—between the Federal and State Governments, just what is the position? It is an important matter environmentally, perhaps not at the moment, but certainly up the track it will be very important. Given that there is some debate, I understand, in the Cabinet at the moment over the South Australian declaration or potential declaration of a marine park, what does this Bill either in its proposed futuristic form or its present form say about South Australia's sovereign rights to mining leases offshore? If we do have rights, has the Bill been changed so as to reflect the changing nature of the international protocols of offshore sovereignty?

The Hon. K.T. GRIFFIN: That is a curly one. I do not profess to keep at my fingertips all of the arrangements, both legislative and administrative, between the States and the Commonwealth about offshore waters.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: The Timor Gap was a negotiated agreement between Australia—not Western Australia or the Northern Territory—and Indonesia, so it was an international agreement, because Australia has extended its economic zone to the 200 mile offshore limit. The State's jurisdiction extends to enclosed waters, bays and gulfs, and there are baselines which take us out to three miles beyond Kangaroo Island and then around the coast.

The Hon. T. CROTHERS: But the Northwest Shelf, which Western Australia claims, is far beyond the old three mile limit.

The Hon. K.T. GRIFFIN: It is acknowledged; I saw a newspaper report the other day that Western Australia was laying claim to Northwest gas. The reason for that quite clearly is that it is a very productive gas field, but I do not know the basis upon which that claim is being made. I just do not have the answer in relation to the interrelationship between the States and the Commonwealth in relation to waters beyond the three mile limit. Within the three mile limit it is within State jurisdiction, and the Mining Act itself addresses this issue. Section 8(1) states:

The Governor may, by proclamation—

(a) declare any land in the State (including land within any gulfs, bays, inlets and harbors of the State and within

three nautical miles of the low water mark on the seashore) to be mineral land;

That means up to the three mile limit. There is an agreement between the States and the Commonwealth under the seas and submerged lands package, which relates to mining beyond the three mile limit. I do not have the answers to it, but certainly we have jurisdiction up to the three mile limit.

The Hon. T. CROTHERS: I think this is an important question that requires a finite answer because we have before us a mining Bill, which the Government is saying requires to be upgraded in order to be more flexible. It seems to me to be an oversight of some consequence if the Government has not considered the alteration of the international protocol in respect to territorial sovereignty since the time of Federation, because the three mile limit was certainly in existence in 1901. I would think that is a question that requires some form of answer from the Attorney and maybe some extracurricular address by the Government to this Bill.

The Hon. K.T. GRIFFIN: I remind the honourable member that we are actually talking about native title.

The Hon. T. Crothers: I understand exactly what you are talking about.

The Hon. K.T. GRIFFIN: The Commonwealth Native Title Act states:

An offshore place means any land or waters to which this Act extends other than land or waters in an onshore place.

The Hon. T. Crothers interjecting:

The CHAIRMAN: Order!

The Hon. K.T. GRIFFIN: It continues:

Onshore place means land or waters within the limits of a State of Territory to which this Act extends.

The Commonwealth Native Title Act does not prevent Acts in relation to mining in offshore waters.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: Section 235(2), which deals with permissible future Acts states:

A future Act in relation to an onshore place is a permissible future Act if it is for making amendment or repeal of legislation. . .

So, it excludes offshore waters. So, the fact is that we are talking about native title. The Commonwealth Native Title Act deals with offshore and onshore places and, with respect to the honourable member, I do not really want to spend a lot of time dealing with that because—

The Hon. T. Crothers: But it would be nice to try to get it right though, if there is some doubt.

The Hon. K.T. GRIFFIN: I do not think there is a need for this State to address any issue in relation to international protocols in respect of offshore waters. We have jurisdiction with respect to those waters within the jurisdiction of the State. It is the offshore waters where you are unlikely to have native title, anyway—

The Hon. T. Crothers: But the fact is that the three mile limit was in existence as a protocol in 1901, and the State, under different political persuasions, has really done nothing to address that. Yet you have the West Australian Government much further out than that laying claim to the Northwest Shelf.

The CHAIRMAN: Order!

The Hon. K.T. GRIFFIN: It is an issue that can be explored at some later stage. I acknowledge what the honourable member says, that there may be some issue to be resolved, but I would suggest that it is not an issue to be resolved in the context of this legislation.

The Hon. T. Crothers interjecting:

The CHAIRMAN: Order!

Amendment negatived; clause passed.

Clause 20—'Consent required for claims on freehold or native title land.'

The Hon. SANDRA KANCK: I move:

Page 8, lines 3 to 6—Leave out proposed section 50 and insert:

Consent required for claims on freehold or native title land

50. A precious stones claim cannot be validly pegged out on land that has been granted in fee simple, or is subject to native title, except with the written consent of the owner[1] of the land.

[1]Owner of land is defined in section 6(1) to include a person who holds native title in the land.

I have moved this amendment because I fear that the current wording in the Bill will be used against Aboriginal people. The words 'native title conferring an exclusive right to possession of the land' concern me. The evidence is that native title will not necessarily confer an exclusive right to possession of the land, and therefore my amendment removes those words and I have clarified this with a footnote stating that 'owner' includes the holder of native title land.

The Hon. K.T. GRIFFIN: The Government does not agree to this amendment. Section 50 of the principle Act provides:

A precious stones claim shall not be pegged out on freehold land (otherwise than by the owner of the land) unless the owner consents in writing.

We have sought to draw a comparison between the holder of the freehold in land and the native title, which confers an exclusive right to possession of the land, and then to make the application of this section non-discriminatory. The amendment in fact elevates all native titleholders to the level of freehold owners, no matter how small or transitory their interest. In the context of the Racial Discrimination Act, one should be able to conclude from that that it is unfair and discriminatory because it is treating the holders of those small or transitory interests in the same way as the holders of freehold and also those who have something akin to freehold, that is exclusive possession.

The Government amendment, I would submit to the Committee, is fair and non-discriminatory. It allows native titleholders with rights equivalent to exclusive possession to have the same power of veto as freehold owners, and it is our view that that is fair and reasonable.

The Hon. CAROLYN PICKLES: The Opposition prefers the wording of the Democrat amendment. As all parties are aware from previous debates about pastoral leases when we debated the other Bills, there is room for argument about what constitutes an exclusive right for possession of the land. One can imagine many situations where native title rights will not confer rights of exclusive possession. I believe the amendment is necessary to give the desired protection from precious stones miners, native titleholders and potential native titleholders.

The Hon. K.T. GRIFFIN: I am disappointed to hear that. We will have to resolve it at another time when this Bill is being further considered. The view the Government has taken is that, certainly, the present section 50 is unfair and discriminatory. The amendment we have is neither unfair nor discriminatory, but it is unfair and discriminatory if you give to all native titleholders, regardless of whether they have exclusive possession or merely a right to pass over it, the same rights in relation to consent. If one looks at the Hon. Sandra Kanck's amendment, it says that the owner of the land—and that is a person who holds native title of the land

as well as the person who has the freehold in the land—must give written consent. That is not the position in relation to a lessee or other licensee. So, to that extent, I would suggest that it is unfair and discriminatory in the form in which the Hon. Sandra Kanck proposes it to be inserted into the Bill.

Amendment carried; clause as amended passed.

Clause 21 passed.

Clause 22—'Application for licence.'

The Hon. SANDRA KANCK: This clause should be deleted. The clause seeks to remove from section 53 of the Mining Act, subsection (4)(ab), a reference to the owner of any land abutting the land over which the licence is sought. Currently, that person or persons can expect to receive a notification from the Minister when a miscellaneous purposes licence is lodged. The Attorney-General has rejected some of my amendments by saying that they have nothing to do with native title. I would like him to explain what this has to do with native title. Why should people, whose land abuts, not be informed about the miscellaneous purposes licence?

Having grown up in a mining town, I reflect on the sorts of constructions that can be sited on the land: as well as skip dumps there can be evaporation ponds, the construction of poppet heads, mills, and crushing plants. They are things that will add to air, noise, water and visual pollution. If I had a property situated next door, I would certainly want, at the very least, to be advised. The failure to advise by removing this subclause will lessen the chance of people being involved in a process of consultation and advising the Minister or mining registrar that there are potential problems with the proposals.

The Hon. K.T. GRIFFIN: I oppose the amendment. It relates to a similar matter that we discussed earlier about what notice should be given to abutting land owners. The fact is that this has everything to do with native title, because the advent of native title has meant that the giving of the notice is particularly burdensome because of the potential number of native titleholders, and native titleholders who may not have the right to exclusive possession but merely the right to pass over land, to conduct ceremonies, and so on. In those circumstances, and if one leaves in the requirement to give notice to not only the owner in *fee simple* but also the native titleholders, then it does become a particularly burdensome process.

The Hon. CAROLYN PICKLES: The Opposition supports the Democrats in opposing the clause. This clause does away with a right of certain land owners to receive copies of applications for miscellaneous purposes licences. As I suggested earlier, the activities permitted by these licences can have a severe and permanent impact on the land, which is the subject of a licence application. Surrounding areas can also be affected, yet the Government clause takes away the right of owners abutting the land, which is the subject of the application, to receive notice that such a licence has been applied for.

I do not imagine that pastoralist will be too happy with the Government's amendment as set out in the Bill. The Opposition considers that neighbouring land owners should continue to have the right to be informed of impending miscellaneous purposes licence grants so that they can have a proper opportunity to raise objections as they so wish.

The Hon. SANDRA KANCK: I follow up the Attorney-General's use of the word 'burdensome'. What is this heavy burden? How many letters have to be sent advising people, and what is the huge cost?

The Hon. K.T. Griffin interjecting:

The Hon. SANDRA KANCK: I am not sure that is the case. I do not know that many of the tribal groups—if we are talking about it in terms of native title—have thousands of members, but the Attorney might know more than I do. If it is burdensome for a mining company under these circumstances, then that might be the penalty a mining company has to pay, because I do not think we want to be making mistakes like this just because we did not want to put a mining company to a little bit of extra work and cost.

Members interjecting:

The Hon. SANDRA KANCK: All right, the Minister.

The Hon. K.T. GRIFFIN: We are not talking about the land upon which the mining is to take place: we are talking about abutting owners. You might well have a very large area of land, which is the subject of the mining proposal, and other large areas obviously surrounding it where you may have a significant number of native titleholders who must be given notice. Under the Commonwealth Native Title Act, I am told that the first determination of the Native Title Tribunal set out a very complicated scheme by which one must give proper notification: advertisements; the size of the advertisements; the period over which the advertisements must appear, and a whole range of requirements.

There may well be a number of native title holders, but there may also be a number of notices to ensure that proper notice is given. We do not know how much this is going to cost or how much bureaucratic obligation is going to be placed on the Government. We took the view that, whether you are an owner in freehold or you are a native title holder, if the notice is given publicly it ought to be sufficient.

The Hon. Sandra Kanck: But there are no other notifications in section 53—this is the only form of notification.

The Hon. K.T. GRIFFIN: It is a miscellaneous purposes licence. It is not the actual mining licence but all the peripheral things such as buildings and so on, as the honourable member has indicated. You cannot grant a miscellaneous purposes licence unless you cause notice to be published in the newspaper, etc. The Minister must, within 14 days after receiving an application for a miscellaneous purposes licence, send a copy of the application to the owner of the land over which the licence is sought—that is fair enough—to the owner of any land that abuts on the land over which the licence is sought. The big problem will be if you do not know all the owners. Native title owners could be numerous in any event, and this requires you to give notice to those owners. There is a significant amount of bureaucracy required to identify the owners, remembering that they are people with native title interests and then to ensure that proper notice is given. It is the Government's view that a burdensome obligation will be placed on the Minister if the requirement is to continue.

Clause negatived.

Clauses 23 and 24 passed.

Clause 25—'Substitution of ss. 58 and 58A.'

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

Page 9, lines 11 to 20—Leave out proposed section 58 and insert:

58. (1) A mining operator may enter land to carry out mining operations on the land—

(a) in accordance with the terms of an agreement with the owner of the land; or

(b) in accordance with conditions laid down by determination of the appropriate court; or

(c) after giving notice of the proposed entry describing the nature of the proposed operations.

(2) However, a mining operator may not enter native title land under subsection (1)(c) if the mining operations may affect native title in the land.

Explanatory note—

This section extends to native title land. However, it should be noted that a mining operator is not entitled to carry out operations that affect native title unless authorised to do so by an agreement or determination under Part 9B (see section 63F). Hence a mining operator who seeks to enter native title land to carry out mining operations that may affect native title should negotiate an agreement, or obtain a determination, conferring the necessary authorisation under Part 9B. Such an agreement or authorisation will not, however, be necessary if the right to carry out mining operations arises under a claim registered, or a lease or licence granted, before 1 January 1994 (see section 63W).

The amendment makes clear that a mining operator is not entitled to carry out mining operations that affect native title unless authorised to do so by an agreement or determination under Part 9B. Since new section 63F contemplates that a mining operator may conduct operations on native title land that do not affect native title, it is necessary for section 58 to provide a means of entry to the land for that purpose. Subsection (2) has been added to clarify that subsection (1)(c) only applies to allow entry in the absence of an agreement or determination if the mining operations do not affect native title in the land. If the mining operations do affect native title in the land, subsection (1)(c) has no application. The explanatory note explains that the situation then is that a mining operator must obtain an agreement or determination under Part 9B in order to proceed.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment. We had the same amendment on file but we will not proceed with it. We are pleased to note that both the Government and the Opposition have compromised from their original position in respect to section 58, which deals with the question of when mining operators are permitted to enter on to land with the intention of carrying out mining operations. We are pleased the Government is willing to support a provision such as in subsection (2), which compels miners to consider the question of whether land is native title prior to entry on the land. However, protection offered by this amendment will not be worth much to Aboriginal groups without the Opposition's proposed section 63F which we will come to in due course.

Amendment carried.

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

Page 9, line 31 (new section 58A)—Leave out 'tenure' and insert 'title (other than a pastoral lease)'.

There are two reasons for this amendment. First, it is more appropriate to refer to land being held under a form of title rather than tenure. Title comprehends native title, whereas there may be some doubt whether native title is a form of tenure. The second reason is to preserve the *status quo* regarding pastoral lessees having a right to receive notice of entry but not a right to object to such entry. The wording of this provision in the Bill would mean that as pastoralists have a right to exclusive possession of land they would now have a right to object to entry on land and that is not the situation under the current Act. To alter it would have significant ramifications for pastoralists and miners and, in any event, such an alteration goes beyond the scope of this Bill.

The amendment takes the situation back to what it currently is by specifically excluding pastoral leases from the right to object to entry on land. However, the broader issue of pastoralists having rights to object to mining on pastoral land may be a matter to be given further consideration in a full scale review of the Mining Act.

The Hon. SANDRA KANCK: I move:

Page 9, lines 31 and 32—Leave out 'is held under a form of tenure that confers a right to exclusive possession of the land' and insert 'is freehold land, land held from the Crown under a perpetual lease or an agreement to purchase, or native title land'.

The amendment returns the provision more to the original wording in section 58. Section 58(8) provides:

The land to which this section applies is—
(a) freehold land; and
(b) land held of the Crown pursuant to a perpetual lease or an agreement to purchase.

The provision in the Bill tightens it up greatly and I am not happy with that. I want to take the provision back to its original form, widening the right to object. This could also be useful to Aboriginal landholders at some time in the future, even those who do not hold native title.

The Hon. CAROLYN PICKLES: Originally the Opposition had an amendment the same as the Government's amendment. However, since the Democrat amendment came on file some time this week we believe the wording of that amendment is preferable to our amendment and we will not be proceeding with our amendment. The words 'a right to exclusive possession' are best avoided if it is intended that the term include native title land. Land over which native title rights are held will not necessarily provide the right of exclusive possession to the native title holder. Therefore, we support the Democrat amendment.

The Hon. K.T. GRIFFIN: The Government does not support the amendment and suggests that the amendment is unnecessary. It is a similar point to that made in relation to clause 50 that we have discussed. The new section 58A applies only where native title is not affected and therefore, in our view, this is an amendment which, in the circumstances, is certainly not necessary and does not aid the application of the legislation.

The Hon. K.T. Griffin's amendment negatived; the Hon. S.M. Kanck's amendment carried; clause as amended passed.

Clause 26—'Use of declared equipment.'

The Hon. SANDRA KANCK: I move:

Page 10, line 25—After 'amended' insert:
(a) by inserting in subsection (6) 'or substantial damage to the land' after 'hardship';

Section 59 of the Act deals with the use of declared equipment, and I unashamedly in this case support bringing in environmental considerations. I realise that this will have only a limited effect and that it relates only to a right to objection. But I am told, for instance, that at present the Pitjantjatjara people cannot object to what happens at Mintabie. Although I say it is unashamedly environmental, I believe that it would have positive effects for Aboriginal people.

The Hon. K.T. GRIFFIN: In the spirit of goodwill, I am prepared to indicate that we will agree with that. It is consistent with the provisions that we have addressed in the South Australian Native Title Act and for that reason we have no difficulty.

Amendment carried; clause as amended passed.

Clause 27—'Restoration of land.'

The Hon. SANDRA KANCK: I move:

Page 11, lines 4 to 8—Leave out proposed subsection (1) and insert:
(1) A mining operator who uses declared equipment in the course of mining operations must restore the ground disturbed by the operations to a condition that is, in the opinion of an inspector or authorised person, satisfactory (and an inspector or authorised person may give written

directions to the operator to ensure compliance with this requirement).

Section 60 also deals with the use of declared equipment. Again, I have moved this amendment for environmental reasons, although I suspect that native titleholders might benefit from it. The effect of it will very much depend on whether the inspector or authorised person does give some sort of direction to an operator to ensure compliance. Of course, we cannot be certain that that will happen, but I have left it in this form so that, hopefully, it might be accepted by the Government because it is not too confronting because it does not say that it must happen.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. Quite obviously, the amendment seeks to change the discretionary obligation imposed through the actions of an inspector or authorised person to mandatory provisions. What it may well do is require rehabilitation of the opal fields—and that is a mammoth task. I am told that the department already has a system for rehabilitation of land outside precious stones fields. The department ensures rehabilitation by obtaining undertakings from the South Australian Opal Miners Association or by requiring miners to pay a bond. It is our view that to impose a mandatory obligation gives no flexibility at all, whereas the provisions, both legal and administrative, which are presently in place are more than adequate to address the problems raised by the Hon. Sandra Kanck.

The Hon. CAROLYN PICKLES: The Opposition opposes the amendment. We believe that further consideration needs to be given to the question of land restoration. We oppose the clause at this stage, but we have an open mind whether or not land restoration provisions should eventually be inserted into the Mining Act.

The Hon. R.D. LAWSON: The opening words of the existing section and of the proposed amendment are, 'Subject to the terms and conditions of any relevant lease, etc.' Can the Attorney say whether it is the practice of the Department of Mines to insert in leases, licences and authorisations, and so on, terms and conditions relating to restoration? Because it does seem to me that that is a valuable protection in the Government's amendment, which is absent from the Hon. Sandra Kanck's amendment.

The Hon. K.T. GRIFFIN: I do not have the answer tonight. There will be an opportunity to pursue the matter again, and I will undertake to bring back a response in relation to that. But I agree with the Hon. Robert Lawson that this does provide that flexibility to put in place some terms and conditions in the relevant lease, licence or authorisation, and I suppose one could say that the bond provisions would fall within that category. However, I do not know for certain. All I can do is take the question on notice.

Amendment negatived; clause passed.

New clause 27A—'Compensation.'

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

Page 11, after line 8—Insert new clause as follows:

27A. Section 61 of the principal Act is amended by striking out from subsection (1) 'financial' and substituting 'economic'.

Section 61 is the main provision in the Mining Act by which miners compensate land owners for the effect of mining on their land. This is, in effect, the same as the Opposition's proposed amendment to section 61, although it is in a different form. Both result in the substitution of the word 'economic' for the word 'financial'. I suggest that the Government's amendment is less likely to have unforeseen consequences as it changes only one word, whereas the Opposition's proposed amendment rewrites the existing section.

I note that the Hon. Sandra Kanck has an amendment in the same form as that proposed to be moved by the Leader of the Opposition. Notwithstanding that, I still put the view that the change of one word is more appropriate than a total rewrite of the section, which may have some unintended consequences.

The Hon. CAROLYN PICKLES: The Government and the Opposition agree on this new clause. We will not proceed with our amendment but are pleased to support the Government's new clause.

New clause inserted.

Clause 28—'Term, etc., of access claim.'

The Hon. SANDRA KANCK: I move:

Page 11, lines 13 to 15—Leave out proposed subsection (1a) and insert:

(1a) If an application is made in accordance with the regulations for renewal of an access claim, the owner of the claim is entitled to renewal of the claim for a further term of 12 months unless the Mining Registrar is satisfied, after giving proper consideration to the protection of the natural environment, that renewal in the circumstances cannot be justified.

I have added some words to the clause. The amendment adds environmental considerations and allows the Mining Registrar not to renew an access claim if he or she is satisfied that the natural environment has not been properly protected. Again, I ask members to look at this in terms of access to substrata. Even though the mining is occurring underground, presumably it will require the removal of top soil and substrata.

The question arises as to where that material goes. By including a clause like this, it gives some sort of message to the miner or the mining company that they need to be very careful about the way they dispose of or store that material. If this clause is supported, it will provide for greater environmental responsibility on the part of mining companies or miners who are using access claims.

The Hon. K.T. GRIFFIN: I oppose the proposed amendment for the same reasons that I indicated opposition to a similar amendment to clause 19. In clause 19, it related to a precious stones claim. This relates to an access claim. As I indicated, I oppose it.

The Hon. CAROLYN PICKLES: The Opposition opposes the amendment, for the reasons given previously. We think it is similar to the terms of the amendment to clause 19.

Amendment negatived; clause passed.

Clause 29—'Insertion of Part 9B.'

The Hon. CAROLYN PICKLES: I move:

Page 11, lines 21 to 34, page 12, lines 1 to 8—Leave out proposed section 63F and insert—

Mining operations on native title land

63F. A prospecting authority confers no right to carry out mining operations on native title land and a mining tenement over native title land may not be granted or registered unless—

(a) the mining operator is authorised by a native title mining agreement or determination registered under Division 3 to carry out mining operations on the land under the prospecting authority or mining tenement; or

(b) a declaration is made under the law of the State or the Commonwealth to the effect that the land is not subject to native title.

[1]A declaration to this effect may be made under Part 4 of the Native Title (South Australia) Act 1994 or the Native Title Act 1993 (Cwth). The effect of the declaration is that the land ceases to be native title land.

This is arguably the single most important amendment to be made to the Government Bill. Section 227 of the Commonwealth Native Title Act states that an Act affects native title if it extinguishes native title rights or if it is otherwise wholly or partly inconsistent with their continued existence, enjoyment or exercise. Therefore, the Government's proposed new section 63F.(1)(a) is misleading because it suggests that mining operations pursuant to a mining tenement might not affect native title. We say that they necessarily will be.

The thread running through section 43 of the Commonwealth Native Title Act is that the proposed act to be concerned about, the crucial point before which there should be adequate negotiation, is the legal granting of the mining tenement or other interest in land in itself. If this is so, then the Commonwealth Native Title Act it takes the right to negotiate is a right to negotiate prior to the granting of the mining tenement. The Government provisions in its proposed 63F contravene this principle. The scheme proposed by the Opposition with its amendment is that mining tenements over native title land may not be granted unless there is a native title agreement or determination in relation to that land. But if a declaration has been made to the effect that the land is not subject to native title, then there is no impediment to the mining tenement being granted. Our amendments to the following proposed sections tie in with this proposed scheme.

Our amendments to section 63G will provide some protection for potential applicants for mining tenements who find themselves unable to obtain mining tenements because of pending native title claims or negotiations. The principle of first come, first served in the mining Bill is retained. Our amendments to 63I and proposed 63IA allow the person wishing to explore or mine on what is or may be native title land to negotiate with the relevant native title parties. The chief mischief which this provision aims to avoid is the situation where mining operators on the ground, as it were, will have to ask themselves whether they think they have entered into a situation where the negotiation process must be pursued. The problem is it may be difficult for mining operators in these situations to put aside the obviously significant self interests on the part of the mining operator. In practice, the temptation is likely to be overwhelming. The Government's concession in respect of the proposed section 58 is inadequate protection.

Failure to accept the Opposition amendment is highly likely to lead to mining operators destroying native title incidentally as they set about mining operations, either genuinely ignorant or wilfully blind to the possibility that native title rights extend over the piece of land concerned. The Government will often be in a better position to assess whether land is potentially subject to native title than most mining operators, especially over time, as a central database builds up in respect of native title claims and non-claimant applications.

In the end, the difference between the Government's and the Opposition's points of view is an ideological one. Nobody is disputing the value of mining to the South Australian economy, but mining operations also pose the threat of considerable harm to be done to a very significant section of our community through devastation of land use in the carrying out of traditional Aboriginal pursuits, and we believe that it is appropriate for the Government to have an active regulatory role to play in the course of handing out mining tenements, rather than leaving assessment of potential native title conflicts to those who stand to profit handsomely by turning a blind eye to native title rights.

To sum up, we believe that the Government scheme for the granting of mining tenements is likely to minimise the potential for conflict between small mining operators and the Government, but this would be at the expense of maximising the potential for conflict between small mining operators and native titleholders.

The Hon. K.T. GRIFFIN: This is really a fundamental change to the proposals which the Government has included in this Bill. We do not support them. We take the view that the model which we are proposing is more appropriate for our circumstances and provides a measure of consistency of approach in the granting of tenements. Our understanding is that the Commonwealth is basically happy with the approach which we are proposing.

On our approach, as I think members will realise, the Government grants the tenement in the normal way under the existing provisions of the Act. The Government's clause 63F provides that the tenement does not confer any rights to carry out any activities on land that may be affected by native title unless the miner negotiates an agreement with the native titleholders or claimants under Part 9B, obtains a determination from the Environment, Resources and Development Court allowing the mining operations to proceed, or the particular act has no effect on any native title interest. Our approach is better, we say, because it allows the mining tenement to be granted without there being any effects on native title. It puts the onus on the miner to then find out what parts of the tenement might be affected by native title, to give notice as required so as to flush out any persons who claim native title and then to negotiate with all those persons who come forward.

It is our view that the Opposition's amendments would allow for prospecting authorities to be granted using the Government's model, but mining tenements could not be granted or registered until the mining operator obtained a native title mining agreement with the native title parties or a determination was registered under Division 3 allowing the operations to proceed. Mining operations can proceed where a declaration is made that the land is not subject to native title.

The other point we make in relation to this amendment is that it is less flexible than the Government's proposals. The Government's proposals will allow mining to proceed with minimum disruption, whilst ensuring that full and proper negotiations take place before anything is done on the land which affects native title. We say that that is an appropriate way to go.

I know that those who represent Aboriginal interests have expressed the view that they are not concerned about the big companies; they are concerned about the smaller companies and that the amendments which are now being proposed will in effect place the onus upon the Government to ensure that the native title issues have been resolved before a tenement is granted. Quite obviously, that will create some concerns about mining exploration and development in this State; it will cause a significant delay in the granting of tenements. The State will have to take some decisions as to whether it will issue the Swiss cheese tenement or develop some other means by which it will address this issue if this provision is ultimately part of the Bill. As I say, our discussions with the Commonwealth have not detected any disagreement as far as we are aware with the model that we are proposing. We do say that it is an appropriate mechanism by which we can deal

with issues of native title, with the onus significantly upon the holder of the tenement on whom the obligation is placed to address the issues of native title. Other amendments follow which deal with these issues, but we have very grave concern about this amendment and therefore vigorously oppose it.

Amendment carried.

The Hon. CAROLYN PICKLES: I move:

Page 12, lines 9 to 20—Leave out proposed section 63G and insert:

Protection for applicants for mining tenements over native title land

63G(1) If a person lodges an application under this Act for the grant or registration of a mining tenement over native title land, no other mining tenement may be granted over the same land for minerals of the same kind.

(2) If the application relates to land that is in part native title land, the Minister may subdivide the application and direct that it be granted insofar as it relates to land that is not native title land, and that consideration of the application insofar as it relates to native title land be deferred until a native title mining agreement or determination under this Part authorises mining operations on the land.

(3) The Minister may dismiss an application if it appears that the mining operator is not proceeding with proper diligence to obtain the necessary native title mining agreement or determination to authorise mining operations on the land.

Our amendment protects applications for mining tenements over native land in that the mining operator who applies for a mining tenement over native title land will not lose his or her place in the queue in terms of applications for mining rights over that land simply because the native title negotiation procedures must be carried out. At the same time, it would be inappropriate for ambit mining applications to be lodged, and we have therefore given the Minister the power to dismiss an application for the grant of a mining tenement if a mining operator is not diligently proceeding with the native title procedures.

Subsection (2) specifically deals with the problem that has been raised with the Chamber of Mines. That is where a mining tenement is sought over a vast area, part of which is clearly free of native title rights and part of which could well be subject to native title. In these circumstances a mining company would prefer to commence legitimate mining operations over the land which is clearly not native title land. Meanwhile, the negotiation process can be commenced in relation to the land which could be subject to native title. Obviously, we envisage the Minister making some sort of judgment about which areas should be given the green light in that situation and which areas should get the amber light pending resolution of the native title question. The Government will often be in a good position to judge which areas are likely to be free of or subject to native title. If there is any doubt about any areas covered by any particular application it is then up to the Minister in his or her discretion to defer consideration of the application until the native title question is clarified.

The Hon. K.T. GRIFFIN: This is a modification to enable the scheme that the Opposition is proposing to tie together. I suppose to some extent this amendment is therefore consequential upon on the earlier amendment which has been passed. We certainly have no difficulty with proposed subsections (1) and (3), but subsection (2) is really unacceptable, very largely for the reasons that I have already expressed. Obviously, it places a significant onus upon the Minister to identify those parts of the land which may be subject to native title and those which may not. That has to be a decision taken before any subdivision may occur. I suspect that it will result in considerable delays in dealing appropriately with applications for mining tenements and will create a significant bureaucratic problem rather than the relative flexibility which is given by the Government's own proposals for sections 63F and 63G. I indicate that we oppose the amendment. Maybe this issue can be addressed more carefully when we get to a deadlock conference, but it may be that the way in which the Opposition is approaching this causes the whole of the Bill to be lost.

Amendment carried.

The Hon. CAROLYN PICKLES: I move:

Page 12, after line 24 (proposed section 63H)—Insert:

(2) However, an application cannot be made if—

(a) the land is subject to a declaration under the law of the State or the Commonwealth to the effect that the land is subject to native title; or

(b) an application for a native title declaration has already been made under the law of the State or Commonwealth, and the application has not yet been determined.

The proposed section 63H is strictly unnecessary, given that section 19 of the Native Title (South Australia) Act explicitly allows for a mining operator to make an application that native title does not exist. At least section 63H signals to mining operators and their advisers that Native Title (South Australia) Act procedures will need to be followed. Our amendment we believe places sensible limitations on the right of the mining operator to seek a native title declaration. There should be no right to do this if the land in question is already subject to a declaration regarding native title on that land, and the same applies if there is pending application for a native title declaration before either the State or Commonwealth arbitral bodies.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. The amendment does seek to prevent an application for declaration that land is not subject to native title from being made where the land has already been subject to a declaration that it is subject to native title or where an application for such a declaration has been made but not yet determined. I must say that it is not at all apparent why a mining operator would want to waste his or her time by making an application for a declaration that native title does not exist in particular land when a declaration has already been made that it does exist. The situation where there is an application for a native title declaration and an application for a declaration that there is no native title over the same land is dealt with in the Native Title (South Australia) Act. Section 26 provides for the merger of proceedings instituted in the same jurisdiction, or section 21 provides for concurrent proceedings where the non-claimant application is lodged in the State jurisdiction and the claimant application is lodged in the Commonwealth jurisdiction.

It is the Government's view that it is desirable to leave the Native Title (South Australia) Act to deal exclusively with these matters and not seek to incorporate the sorts of provisions which are proposed to be inserted in this specialist piece of legislation. I oppose the amendment.

Amendment carried.

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

Page 12, lines 27 to 39 and page 13, lines 1 to 24—Leave out proposed sections 63I, 63J and 63K and insert—

Types of agreement authorising mining operations on native title land

63I. (1) An agreement authorising mining operations on native title land (a 'native title mining agreement') may—

(a) authorise mining operations by a particular mining operator, or

(b) authorise mining operations of a specified class within a defined area by mining operators of a specified class who comply with the terms of the agreement.

Explanatory note—

If the authorisation relates to a particular mining operator it is referred to as an individual authorisation. Such an authorisation is not necessarily limited to mining operations under a particular exploration authority or production tenement but may extend also to future exploration authorities or production tenements. If the authorisation does extend to future exploration authorities or production tenements it is referred to as a conjunctive authorisation. An authorisation that extends to a specified class of mining operators is referred to as an umbrella authorisation.

(2) If a native title mining agreement is negotiated between a mining operator who does not hold a production tenement for the relevant land and native title parties who are claimants to (rather than registered holders of) native title land, the agreement cannot extend to mining operations conducted on the land under a future production tenement.

(3) An umbrella authorisation can only relate to prospecting or mining for precious stones.

(4) If the native title parties with whom a native title mining agreement conferring an umbrella authorisation is negotiated are claimants to (rather than registered holders of) native title land, the term of the agreement cannot exceed 10 years.

(5) The existence of an umbrella authorisation does not preclude a native title mining agreement between a mining operator and the relevant native title parties relating to the same land, and if an individual agreement is negotiated, the agreement regulates mining operations by a mining operator who is bound by the agreement to the exclusion of the umbrella authorisation.

Negotiation of agreements

63IA. (1) A person (the "proponent") who seeks a native title mining agreement may negotiate the agreement with the native title parties.

Explanatory note—

The native title parties are the persons who are, at the end of the period of two months from when notice is given under section 63J, registered under the law of the State or the Commonwealth as holders of, or claimants to, native title in the land. A person who negotiates with the registered representative of those persons will be taken to have negotiated with the native title parties. Negotiations with other persons are not precluded but any agreement reached must be signed by the registered representative on behalf of the native title parties.

(2) The proponent must be—

(a) if an agreement conferring an individual authorisation[1] is sought—the mining operator who seeks the authorisation;

(b) if an agreement conferring an umbrella authorisation[1] is sought—the Minister or an association representing the interests of mining operators approved by regulation for the purposes of this section.

[1]See the explanatory note to section 63I(1).

Notification of parties affected

63J. (1) The proponent initiates negotiations by giving notice under this section.

(2) The notice must—

(a) identify the land on which the mining operations are to be carried out; and

(b) describe the general nature of the mining operations that are to be carried out on the land.

(3) The notice must be given to—

(a) the relevant native title parties; and

(b) the ERD Court; and

(c) the Minister.

(4) Notice is given to the relevant native title parties as follows:

(a) if a native title declaration establishes who are the holders of native title in the land—the notice must be given to the registered representative of the native title holders and the relevant representative Aboriginal body for the land;

(b) if there is no native title declaration establishing who are the holders of native title in the land—the notice must be given to all who hold or may hold native title in the land in accordance with the method prescribed by Part 5 of the Native Title (South Australia) Act 1994.

What happens when there are no registered native title parties with whom to negotiate

63K. (1) If, two months after the notice is given to all who hold or may hold native title in the land, there are no native title parties in relation to the land to which the notice relates, the proponent may apply *ex parte* to the ERD Court for a summary determination.

(2) On an application under subsection (1), the ERD Court must make a determination authorising entry to the land for the purpose of carrying out mining operations on the land, and the conduct of mining operations on the land.

(3) The determination may be made on conditions the Court considers appropriate and specifies in the determination.

(4) The determination cannot confer a conjunctive or umbrella authorisation.[1]

[1]See the explanatory note to section 63I(1).

This provision particularly relates to conjunctive agreements and determinations. Agreements with native title holders may be negotiated by a person who holds a mining tenement; an individual authorisation, which authorises mining operations on native title land by a particular mining operator under a prospecting authority or mining tenement held by the mining operator; or a conjunctive authorisation, which authorises mining operations on native title land by a particular mining operator, extending to future prospecting authorities and/or mining tenements.

Where a mining operator is negotiating with persons who are the registered holders of native title, a conjunctive authorisation can cover activities in both the exploration and mining phases of a development. However, where a mining operator is negotiating with persons who simply have claimed native title but have not yet been found to be the native title holders, a conjunctive authorisation can only relate to activities in the exploration phase; that is, the miner's right, the exploration licence, the mineral claim and the retention lease. Agreements may be negotiated by the Minister or an approved association of mining operators to obtain an umbrella authorisation, which authorises prospecting or mining for precious stones in a particular area, regardless of the holding of a tenement by any particular person.

The umbrella authorisation would obviate the need for any further negotiations with native title parties by a person holding a particular precious stones prospecting authority or claim. Umbrella agreements have been limited to prospecting or mining for precious stones, as this is the area in which they are likely to be most useful as far as both miners and Aboriginal groups are concerned. In this context, the umbrella authorisation is akin to the provisions concerning proclaimed fields under the existing legislation. This reflects the fact that precious stones mining tends to involve a relatively large number of miners pegging out small areas—I think 50 metres by 50 metres—within an area known generally to contain precious stones. It can save individual miners from having to negotiate individual agreements with native title holders and, conversely, it can save the native title holders from having to negotiate with a multitude of individual miners.

Where an umbrella authorisation is negotiated with claimants as distinct from registered native title holders the term of any agreement cannot exceed 10 years. It is proposed to limit the life of an agreement to allow for the possibility that those claiming native title may not be the only ones who claim native title. It will give other claimants, or even the next generation of claimants, an opportunity to negotiate in relation to continued mining on the land. Ten years represents a reasonable period for miners as it will allow for a significant period of mining before requiring a reassessment of whether the area is viable for a further period of up to 10 years. Where an umbrella authorisation is negotiated with registered native title holders, there is no time limit on the period covered by the agreement. Subsection (5) has been inserted to make it clear that individual authorisations can

still be sought and agreements negotiated with native title parties in relation to land that has been the subject of an umbrella authorisation.

So, the scheme we are proposing has been developed in the light of concerns which have been put to the Government by various bodies and, I think, represents a reasonable approach to this legislation.

Proposed section 63IA provides that the mining operator who seeks to mine on native title land can negotiate an agreement with the native title parties. The term 'native title parties' is explained in the explanatory note which forms part of subsection (1). The native title parties are those persons who are registered as the holders of or claimants to native title in the relevant land at the end of the two-month notification period. Registration in the Register of Native Title Claims in the case of claimants; the National Native Title Register in the case of registered holders, established under the Commonwealth Native Title Act; or the State Native Title Register, established by the Native Title (South Australia) Act will be sufficient to give rise to a right to negotiate on the part of Aborigines.

Registration as a native title holder or claimant will inevitably involve the nomination of a registered representative. A miner who negotiates with the registered representative conclusively will be presumed to have negotiated with the native title parties. This is consistent with the Commonwealth approach and resolves the legal difficulties of negotiating with what could be a potentially large and fluctuating population of native title holders.

A miner can negotiate direct with the native titleholders if he or she chooses, but any agreement reached must be signed by the registered representative on behalf of the native title parties. Subclause (2) clarifies who the proponent is. Where an individual authorisation is sought, a proponent is the miner who seeks the authorisation. Where an umbrella authorisation is sought the proponent is the Minister or else the association representing the mining operators. It should be noted that such associations must be approved by regulation for the purposes of this section. I need to give an assurance to the Committee that only reputable industry associations will be approved for this purpose.

Proposed new section 63J provides that negotiations are initiated by the proponent giving notice under this section. The notice must identify the relevant land and describe the operations that are proposed. The notice must be given to the relevant native title parties, the ERD Court and the Minister. Notice is given to the relevant native title parties by giving notice to the registered representative of the native titleholders and the relevant representative Aboriginal body for the land in the case of holders. Where there has been no prior declaration or determination as to who holds the native title, notice must be given to all who hold or may hold native title in the manner prescribed in part 5 of the Native Title (South Australia) Act 1994.

Section 30 of the Native Title (South Australia) Act provides that notice must be given personally or by post to all registered representatives of native title holders, if any, or registered representatives of registered native title claimants, if any, the relevant representative Aboriginal body, the Commonwealth Minister, the State Minister, and public notice is also given as required by regulation. I stress: public notice is also required to be given by regulations. Regulations are being prepared that mirror the Commonwealth regulations in this regard, and it is important for members to recognise that. Section 30(3) of the Native Title (South Australia) Act provides that notice is completed when all of the requirements for notification are completed.

In other words, time does not start to run until the last notice is given. As to proposed section 63K, in the event that no-one comes forward within the two month period to at least claim native title, the proponent can apply to the ERD Court for a summary determination allowing him or her to proceed with mining operations on the land. The ERD Court must make a determination authorising both entry and mining operations on the land. That determination can be made subject to any conditions the court thinks fit to impose. However, the determination cannot confer a conjunctive or umbrella authorisation. This amendment represents a significant move by the Government to address concerns expressed by Aboriginal groups about the powers of the court in this area.

We then deal with other amendments, which, whilst they are still part of the framework, can be dealt with subsequently as separate amendments. They relate to proposed sections 63L and 63M, which, of course, is part of the whole of the scheme and which we suggest would be appropriate for dealing with these sorts of issues. There are also some others which follow on. That is the appropriate point at which to deal with the specific amendments I have just moved and deal with the remaining issues subsequently.

The Hon. CAROLYN PICKLES: I move:

Page 12, lines 27 to 39 and page 13, lines 1 to 24 leave out proposed sections 63I, 63J and 63K and insert—

Types of agreement authorising mining operations on native title land

63I. (1) An agreement authorising mining operations on native title land (a 'native title mining agreement') may—

(a) authorise mining operations by a particular mining operator, or

(b) authorise mining operations of a specified class within a defined area by mining operators of a specified class who comply with the terms of the agreement.

Explanatory note—

If the authorisation relates to a particular mining operator it is referred to as an individual authorisation. Such an authorisation is not necessarily limited to mining operations under a particular exploration authority or production tenement but may extend also to future exploration authorities or production tenements. If the authorisation does extend to future exploration authorities or production tenements it is referred to as a conjunctive authorisation. An authorisation that extends to a specified class of mining operators is referred to as an umbrella authorisation.

(2) If a native title mining agreement is negotiated between a mining operator who does not hold, or has not applied for, a production tenement for the relevant land and native title parties who are claimants to (rather than registered holders of) native title land, the agreement cannot extend to mining operations conducted on the land under a future production tenement.

(3) An umbrella authorisation can only relate to prospecting or mining for precious stones in a precious stones field over an area of 100 square kilometres or less.

(4) If the native title parties with whom a native title mining agreement conferring an umbrella authorisation is negotiated are claimants to (rather than registered holders of) native title land, the term of the agreement cannot exceed 10 years.

(5) The existence of an umbrella authorisation does not preclude a native title mining agreement between a mining operator and the relevant native title parties relating to the same land, and if an individual agreement is negotiated, the agreement regulates mining operations by a mining operator who is bound by the agreement to the exclusion of the umbrella authorisation.

Negotiation of agreements

63IA. (1) A person (the "proponent") who seeks a native title mining agreement may negotiate the agreement with the native title parties.

Explanatory note—

The native title parties are the persons who are, at the end of the period of two months from when notice is given under section 63J,

registered under the law of the State or the Commonwealth as holders of, or claimants to, native title in the land. A person who negotiates with the registered representative of those persons will be taken to have negotiated with the native title parties. Negotiations with other persons are not precluded but any agreement reached must be signed by the registered representative on behalf of the native title parties.

(2) The proponent must be—

(a) if an agreement conferring an individual authorisation[1] is sought—

(i) an applicant for the grant or registration of a mining tenement over native title land; or

(ii) a person who holds a prospecting authority and wants to explore for minerals on native title land;

(b) if an agreement conferring an umbrella authorisation[1] is sought—the Minister or an association representing the interests of mining operators approved by regulation for the purposes of this section.

[1]See the explanatory note to section 63I(1).

Notification of parties affected

63J. (1) The proponent initiates negotiations by giving notice under this section.

(2) The notice must—

(a) identify the land on which the mining operations are proposed to be carried out; and

(b) describe the general nature of the mining operations that are proposed to be carried out on the land.

(3) The notice must be given to—

(a) the relevant native title parties; and

(b) the ERD Court; and

(c) the Minister.

(4) Notice is given to the relevant native title parties as follows:

(a) if a native title declaration establishes who are the holders of native title in the land—the notice must be given to the registered representative of the native title holders and the relevant representative Aboriginal body for the land;

(b) if there is no native title declaration establishing who are the holders of native title in the land—the notice must be given to all who hold or may hold native title in the land in accordance with the method prescribed by Part 5 of the Native Title South Australia) Act 1994.

What happens when there are no registered native title parties with whom to negotiate

63K. (1) If, two months after the notice is given to all who hold or may hold native title in the land, there are no native title parties in relation to the land to which the notice relates, the proponent may apply *ex parte* to the ERD Court for a summary determination.

(2) On an application under subsection (1), the ERD Court must make a determination authorising entry to the land for the purpose of carrying out mining operations on the land, and the conduct of mining operations on the land.

(3) The determination may be made on conditions the Court considers appropriate and specifies in the determination.

(4) A determination under this section—

(a) cannot confer a conjunctive or umbrella authorisation; and

(b) if the proponent is an applicant for the grant or registration or a mining tenement in respect of the land—has no effect until the tenement is granted or registered

[1]See the explanatory note to section 63l(1).

I will deal with this series of amendments in essentially the same way as has the Government. As the Attorney has indicated, this is the Government's revised scheme for conjunctive agreements. We essentially agree with section 63I as proposed by the Government. It defines conjunctive authorisations, individual authorisations and umbrella authorisations. We have no objection in principle to the definitions in the explanatory note, nor do we object to the possibility of umbrella authorisation whereby mining operations of a specified class, within a defined area to be undertaken by mining operators of a specified class, should be capable of being the subject of a native title agreement.

The only point of contention in relation to proposed section 63I is the limitation we seek to place on the size of umbrella agreements. Our intention is to ensure that the provision for umbrella agreements is not abused. The size limitation should be sufficient for all genuine applications. On that basis we must reject the Government version of proposed section 63I and insist upon our amendment. We have pretty well reached agreement with the Government in respect to proposed new section 63IA. The only variance is in respect of subsection (2)(a), where we have expanded the concept of 'mining operator' to ensure that it can cover those who are not yet tenement holders—prospective prospectors, one could say.

As to proposed new section 63J, again, we are virtually agreed. We consider that we have improved on the drafting of 63J(2), however, in adding the word 'proposed' in respect of the anticipated mining operations which are the subject of the negotiations. Proposed new section 63K allows a summary determination by the ERD Court upon application by the mining operator without any parties being heard on the basis that due notice has been given. Again, we are virtually at one with the Government in respect of this proposed new section, but we have one significant amendment.

It could be considered consequential to our new sections 63F and 63IA(2) dealt with earlier in clause 29, because it envisages the situation of an applicant for a tenement sorting out the native title issue prior to receiving the tenement rather than the Government scenario whereby the tenement would ordinarily have been obtained prior to the proponent's embarking on the section 63K procedure. Because we consider that our amendments are preferable to those put forward by the Government—although we are moving in the same direction—we insist on our amendments and perhaps when we get into the deadlock conference we can discuss this matter further.

The Hon. K.T. GRIFFIN: The Government certainly prefers its position, and for that reason we will be opposing the Leader's amendments. However, it is pleasing to note that the majority of the Government's amendments have been accepted by the Opposition. As to section 63I, as the Leader of the Opposition has indicated, the only change is proposed subsection (3), which inserts a maximum area for an umbrella authorisation as 100 square kilometres in a precious stones field.

There is no obvious reason why umbrella authorisations should be limited to proclaimed precious stones fields. The Government's proposal would allow for umbrella authorisations to be allowed in relation to any area where precious stones are found and not just proclaimed fields. The maximum area of 100 square kilometres reduces the flexibility of the provision, and we do not agree with that limitation. The Government's amendments limit conjunctive agreements to holders of native title where both mining and exploration phases are covered and to the exploration phase with mere claimants. Apart from those matters it appears that there is a significant measure of agreement but the characteristics of the Opposition's amendments, which are different from ours, in our view are not desirable.

As to proposed section 63IA, it is similar to what the Government is proposing. Proposed subsection (1) is the same but subsection (2)(a) is different as a consequence, I think, of the Opposition's different approach in section 63F. We do not like its section 63F and for that reason similarly we oppose this amendment. Subsection (2)(a) provides:

> Where an agreement conferring an individual authorisation is sought the proponent must be an applicant for the grant or registration of a tenement over the land or a person who holds a prospecting authority and wants to explore for minerals on native title land.

That reflects the Opposition's desire to preclude mining tenements from being granted until after the negotiations have taken place with the native title holders. Therefore, in order to be able to negotiate, the miner must have applied for a mining tenement.

In the case of exploration, the Opposition's scheme allows for exploration tenements that have already been granted and, to that extent, it is similar to the Government's scheme, but the timing of the grant of a mining tenement is a crucial feature of the Government's scheme. It is really designed to facilitate a business as usual approach with the onus on the miner to negotiate agreements with native title holders where necessary but recognising that there is no attempt to circumvent the obligations in relation to native title. It is designed to maintain, as much as it is possible to maintain, a status quo approach.

The proposed provision is virtually identical to our proposal, apart from the addition of the word 'proposed' in paragraphs (a) and (b). The addition of the word 'proposed' really reflects the difference between the Opposition and the Government in relation to the timing of the grant of the mining tenement. The Opposition's scheme does not allow the tenement to be granted until after negotiations have taken place with native title claimants or in a determination obtained from the court allowing operations to proceed. Our proposal is preferred because of the inherent differences between our scheme and that proposed by the Opposition.

Proposed new section 63K deals with what happens when no registered native title parties come forward to negotiate with the miner. The miner must apply to the ERD Court for a summary determination that mining may proceed. The ERD Court must make a determination authorising both entry and mining operations on the land. However, the Government amendment eliminates the ability of the court to impose a conjunctive or umbrella authorisation.

This proposed amendment is the same as the Government's, except that subsection (4) is divided into two paragraphs, the first of which is the same as the Government's subsection (4), and I think the second is consequential on the Opposition's fundamental change in approach under proposed section 63F. It provides that if the proponent is an applicant for the grant or registration of a mining tenement the determination allowing operations to proceed has no effect until the tenement is granted or registered. It is just out of sync with the Government's preferred approach.

The Hon. SANDRA KANCK: I have some amendments on file to page 12, lines 27 to 37 and page 13, lines 22 to 24. Upon reflection, I have decided that the amendments moved by the Hon. Ms Pickles are preferable, so I will be supporting those and not proceeding with mine.

The Hon. K.T. Griffin's amendment negatived; the Hon. Carolyn Pickles's amendment carried.

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

Page 14, lines 1 to 13 (new section 63L)—Leave out proposed subsections (2) and (3) and insert:

(2) If the proponent states in the notice given under this Division that the mining operations to which the notice relates are operations to which this section applies and that the proponent proposes to rely on this section, the proponent may apply *ex parte* to the ERD Court for a summary determination authorising mining operations in accordance with the proposals made in the notice.

(3) On an application under subsection (2), the ERD Court may make a summary determination authorising mining operations in accordance with the proposals contained in the notice.

(4) However, if within two months after notice is given, a written objection to the proponent's reliance on this section is given by the Minister, or a person who holds, or claims to hold, native title in the land, the court must not make a summary determination under this section unless the court is satisfied after giving the objectors an opportunity to be heard that the operations are in fact operations to which this section applies.

The proposed section 63L reproduces the Native Title Act expedited procedure in our legislation. Subclause (1) provides that this proposed section would apply where mining operations are proposed that will not interfere with the community life of the native title holders, not interfere with particularly significant areas or sites and not involve major disturbance to the land. The miner is required to state in the original notice given under section 63J that he or she proposes to rely on this provision. If no objection is received to the proponent's reliance on this provision, the court may make a summary determination allowing the miner to proceed with the proposals described in the notice. However, where a mining operator proposes to use the expedited procedure, but an objection is lodged, the court must not make a determination until it has given the objectors the opportunity to be heard in the court even though it is satisfied that the proposed operations are operations to which the expedited procedure can apply.

The amendments to subclause (4) make the provision consistent with the Native Title Act and mean that an objection need not be fatal to the miner's use of the expedited procedure. Instead, like the Commonwealth Act, provision is made for objections to the use of the expedited procedure to be determined by the court. If the court finds the objection to be without merit, it can still proceed to make a summary determination allowing the miner to proceed.

The Hon. CAROLYN PICKLES: I move:

Page 14, lines 1 to 13 (new section 63L)—Leave out proposed subsections (2) and (3) and insert:

(2) If the proponent states in the notice given under this Division that the mining operations to which the notice relates are operations to which this section applies and that the proponent proposes to rely on this section, the proponent may apply *ex parte* to the ERD Court for a summary determination authorising mining operations in accordance with the proposals made in the notice.

(3) On an application under subsection (2), the ERD Court may make a summary determination authorising mining operations in accordance with the proposals contained in the notice.

(4) However, if within two months after notice is given, a written objection to the proponent's reliance on this section is given by the Minister, or a person who holds, or claims to hold, native title in the land, the court must not make a summary determination under this section unless the court is satisfied after giving the objectors an opportunity to be heard that the operations are in fact operations to which this section applies.

(5) If the proponent is an applicant for the grant or registration of a mining tenement in respect of the land, a determination under this section has no effect until the tenement is granted or registered.

Again, we virtually agree with the Government's position on this amendment, but as with proposed section 63K, because we envisage that the proponents will often be applicants for tenements rather than tenement holders, we have added subclause (5). We oppose the Government's amendment in the expectation that our version of section 63L will be accepted, at least in this place.

The Hon. K.T. GRIFFIN: The Government opposes the Opposition's amendment, although it is consequential upon the difference in approach in section 63F.

The Hon. SANDRA KANCK: The Democrats object to the whole of this clause because it will put in a fast track procedure. It is not given that name, but basically that is what it will be. Our prediction is that this will become the norm rather than the exception: that most miners will use this fast tracking procedure. It is interesting because in its original form in the Bill it provided for the native title parties to stop that fast track procedure, and that appeared to me to be consistent with section 32, part 2, of the Federal Act. My preference is for the Bill's original wording, with the addition that I will propose later to add words after line 13. What new evidence does the Government have to cause it to backtrack from the original position where the Aboriginal people were able to have some say in this and put it entirely in the hands of the ERD Court?

The Hon. K.T. GRIFFIN: The Government was proposing to bring the provision we had originally proposed into line with the expedited procedure provisions in section 32 of the Commonwealth Native Title Act. We had omitted to make reference to the resolution of issues by the ERD Court. In our view the approach we are taking is totally consistent with the provisions of the Commonwealth Native Title Act. I do not believe that it will prejudice native title holders or anyone else. It seeks to avoid the bogging down of negotiations and to provide a means by which they can be if not avoided at least minimised.

The Hon. SANDRA KANCK: Maybe I am misreading the Federal Act. The heading above 32(2) says, 'Act may be done if no objection' and it states:

> If the native title parties do not lodge an objection with the arbitral body in accordance with subsection (3), the Government party may do the act.

The Hon. K.T. GRIFFIN: What the Commonwealth Act provides is correct in section 32(2). If the native title parties do not lodge an objection, then the Government party may do the act. Our procedure in this State is different, anyway. We have sought to provide that, if there is no objection and the proponent proposes to rely on the section, the proponent may apply *ex parte* to the ERD Court for summary determination. I would not have thought that that would create any problems. It is simply that our regime for the granting of tenements in this State is different from that envisaged in the Commonwealth Native Title Act. The proponent gives the notice because the State has already granted the tenement. I do not see a particular problem in the way in which we have approached it. We have had to modify the Commonwealth provision to suit the circumstances of the South Australian Mining Act and the processes which apply under that Act. No-one will suffer as a result.

The Hon. K.T. Griffin's amendment negatived; the Hon. Carolyn Pickles's amendment carried.

The Hon. SANDRA KANCK: I will not proceed with my amendment to clause 29 (page 14, after line 13). It was necessary only if the Bill remained in its original form.

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

> Page 14, lines 15 to 17 (new section 63M)—Leave out proposed subsection (1) and insert:
>
> (1) All parties to the negotiations must negotiate in good faith and explore all possibilities of reaching agreement.

The Opposition raised some concerns about the use of the words 'good faith' in the obligation which was imposed on all parties. There had been further consultations about what is currently in the Bill, and I think it was suggested that it may be interpreted as requiring negotiation in good faith actually to reach agreement. That has never been the Government's intention. Certainly, there was an intention that parties should negotiate in good faith and endeavour to reach an agreement if possible, but there was no obligation to reach that final agreement.

My amendment means that both the mining operator and the native title parties must negotiate in good faith and explore the possibility of reaching agreement. As I say, it is designed to make clear that, while native title parties are obliged at least to talk to the miner and explore possibilities, it will not be taken as a lack of good faith on their or the miner's part if they do not reach agreement. They do not have to give ground if they do not want to. If they do not reach agreement, the matter will be determined by the court. The amendment proposed by the Hon. Carolyn Pickles is somewhat differently drafted, and I will have one or two observations to make about it when she moves it.

The Hon. CAROLYN PICKLES: I move:

> Page 14, lines 15 to 17 (proposed section 63M)—Leave out proposed subsection (1) and insert:
>
> (1) The proponent and native title parties must negotiate in good faith and accordingly explore the possibility of reaching an agreement.

As has been indicated, these are the good faith provisions. Subclause (1) clearly is based on the Commonwealth Native Title Act. Our original concerns with the drafting of the Bill were essentially that there was a suggestion that both parties had to compromise. Both the Government and the Opposition have come considerably closer to each other in relation to this provision. We consider the word 'accordingly' to be important, because it indicates that the effort to explore a possible agreement is subsidiary to and embraced by the concept of negotiating in good faith.

We are happy to leave off the previously suggested words 'the conduct of mining operations on native title land'. The Opposition accepts that it will be very obvious to the parties what it is they are meant to be negotiating, given the context of section 63M in the Mining Act. We do not support the Government wording 'explore all possibilities of reaching an agreement', which is absurd if taken literally. Everybody knows what is meant by 'explore the possibility of reaching an agreement'. It is a commonly used expression, and I suggest that we can do no better than that.

The Hon. K.T. GRIFFIN: The Government was concerned to ensure that a wide range of issues was canvassed. We certainly wanted to ensure that all parties are required to negotiate in good faith and explore all possibilities. I think it is starting at shadows to believe that the use of the word 'all' will in some way place impossible burdens upon the parties and ultimately result in some adverse finding against one or other of the parties who may not have explored even remote possibilities. It was certainly intended by the Government that the issues be addressed comprehensively, and that was the reason for using the words 'all possibilities'. I do not think that the proposition I am putting on behalf of the Government is at all likely to compromise the position of any of the parties if someone asserts that technically that possibility or this possibility has not been considered. So, my preference is for the Government amendment and I therefore oppose the amendment of the Hon. Carolyn Pickles.

The Hon. SANDRA KANCK: I move:

> Page 14, lines 15 to 17 (proposed section 63M)—Leave out proposed subsection (1) and insert:
>
> (1) The proponent must negotiate in good faith with the native title parties with a view to obtaining their agreement to the conduct of mining operations on native title land.

This clause has given me a lot of heartache, particularly with this vexed question of good faith. My understanding of legal matters is that 'good faith' does impose an obligation on the parties, and I would appreciate a little more feedback from the Attorney-General on that. He seems to be indicating now that it does not impose that obligation—that there is no obligation to come to some sort of agreement. Again, it is very vague. It seems to me that, if we have gone through the process of granting native title, effectively this could be saying, 'We are going to give something to you and then we will force you to give it back again.' If an area has spiritual significance for Aboriginal people, it seems to me that it is quite pointless even beginning to negotiate, because there is no possibility of an agreement being reached even before they start. If my amendment is not supported, I will support the Opposition amendment.

The Hon. K.T. GRIFFIN: What the Hon. Sandra Kanck is proposing is very one sided. If a minor is required to negotiate in good faith, I would have thought that equally other parties ought to be required to negotiate in good faith. Of course, it may be that native title parties have a complete misconception of what is being proposed as part of the proponent's activity. If there is not a genuine approach to the discussion of the issues, then it is quite likely that a brick wall will be thrown up. I do not see that an obligation on all the parties to negotiate in good faith means anything more than being honest, open, frank, prepared to listen and prepared to respond in a way which reflects some sense of genuineness. I do not think that negotiating in good faith requires a conclusion that there must be an agreement at the end of it. What we are deliberately doing is saying that, in the Government's view, the negotiation in good faith should explore all the possibilities of reaching an agreement.

The Hon. Sandra Kanck: But what if there are no possibilities? You can't explore them.

The Hon. K.T. GRIFFIN: Who knows whether or not there are possibilities. Ultimately, it will go to the court. Simple. People might as well talk about things to determine where they stand on particular matters, rather than all just ending up in court. The whole process has been to talk and conciliate as much as it is possible to do so. One of the native title parties may have the view, 'Look, to undertake this development at this site is just absolutely untenable.' It is all very well to say that but surely there must be some good reasons for it. It is important to explore what those reasons are and to explore them before one ends up in a full-blown contest before the court.

I would have thought that there is commonsense in parties negotiating, talking openly. If there is a major problem, for example, if it is a traditional burial ground, then it is better for that to be on the table than for the native title parties to say, 'No, you can't do it.' It is not a particularly intelligent way of dealing with things, whoever it is, whether it is the mining proponent or the native title parties. There just has to be some openness about the reasons why something can or cannot occur. The mining operator also ought to put all the cards on the table and quite openly identify why something is sought to be achieved or why something cannot be achieved if it is being proposed as an alternative by the native title parties. That is the context in which the Government believes that this ought to be addressed.

The Hon. SANDRA KANCK: That explanation is about honesty and genuineness. If the native title parties say, 'There is not a possibility of reaching an agreement here because it is a sacred site,' is that where it would end?

The Hon. K.T. GRIFFIN: I confess that I do not know whether that will be the end of it. The fact is that good faith means genuineness and honesty, and I cannot answer a hypothetical in that respect. Good faith is used as an alternative to the Latin *bona fide*—genuine, honest, open. I think the description *bona fide* has a well established meaning in the law, but the practice is not to use those Latin descriptions. Putting that to one side, I would have thought that if the native title party said, 'There is a sacred site at this location,' which presumably will be covered anyway by Aboriginal heritage considerations under the Aboriginal Heritage Act, that may well be the end of it in relation to that particular area, but it may be that it is a small part of a larger area which is the subject of consideration. I would have thought that it would be ludicrous if the whole of the 1 000 square kilometres were claimed as a sacred area, but I may be wrong. To talk about it in that broad general context, I do not think that I can give you a more positive or specific response than that which I have given.

The Hon. K.T. Griffin's amendment negatived; the Hon. Carolyn Pickles's amendment carried.

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

Page 14, after line 27 (new section 63N)—Insert:

(1a) The basis of the payment may be fixed in the agreement or left to be decided by the ERD Court or some other nominated arbitrator.

Proposed new section 63N (1) provides that an agreement negotiated between the mining operator and the native title parties may provide for payment to the native title parties based on profits or income derived from mining operations on the land or the quantity of minerals produced. This proposed amendment allows for the possibility that the parties may agree on everything else and may be prepared to reach an agreement for payments based on profit or income sharing, but find themselves unable to finalise the terms of such an agreement. In those circumstances the parties can leave the matter to be decided by the ERD Court or a nominated arbitrator.

It should be borne in mind that this provision becomes operative only if the parties are both prepared to allow the court or an arbitrator to decide the basis of the payment for them. If the parties are unable to agree on the basis of payments to be made to the native title parties, at the end of the relevant period, any party to the negotiations or the Minister may apply to the ERD Court for a determination. I refer to section 63O. It should be noted that the court still is estopped from imposing a profit or income-based determination on the parties by section 63O(3)(b).

Proposed section 63N(1)(a) could also cater for the possibility that parties may have negotiated a conjunctive agreement and found themselves in agreement on all other matters except the question of compensation. This provision will enable them to refer that question to the court or some other arbitrator for resolution, thereby allowing them to finalise the terms of the agreement.

The Hon. CAROLYN PICKLES: The Opposition is happy to support the Government's suggestion that the basis of payment may be one item that negotiating parties would rather leave to the court or an independent arbitrator. We support the amendment.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 14, line 29—After 'operations' insert 'and with rehabilitation of the land on completion of the mining operations.'

This amendment is self-explanatory. As well as the other matters such as notices or other conditions this particularly specifies that rehabilitation of the land at the conclusion of the project must be part of the agreement. I think that that can only be of benefit to native title parties.

The Hon. K.T. GRIFFIN: I oppose the amendment. It requires parties to agree on conditions regarding rehabilitation at the outset. It is a difficult matter to determine up front as necessary rehabilitation will depend on what is actually done during the course of mining operations. Rehabilitation is generally covered in a detailed development plan which the miner supplies to the Department of Mines and Energy and which, as I understand it, is approved by the department as part of the general approach to the mining program.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment at this stage. It obliges negotiating parties to address the issue of rehabilitation of land that is mined subject to an agreement, but it clearly imposes no binding negotiation. It can only benefit the environment and ultimately the people of South Australia if some thought is put into rehabilitating land damaged by mining operations. We therefore support the amendment.

Amendment carried.

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

Page 14, lines 31 and 32 (new section 63N)—Leave out 'extending the right to carry out mining operations on the native title land to the proponent' and insert 'authorising mining operations on the native title land'.

This amendment is consequential on the changes made to allow for umbrella organisations to be agreed or conferred in certain circumstances. It makes the language used in section 63N(3) consistent with the wording of section 63F and 63I.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried.

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

Page 15, lines 2 to 4 (new section 63N)—Leave out proposed paragraph (b) and insert—

(b) if the court considers it appropriate, make a determination authorising entry on the land to carry out mining operations, and the conduct of mining operations on the land, on conditions determined by the court.

In our view this amendment is consequential upon the amendments that allow for umbrella organisations. As amended, it can relate to mining operations conducted by various operators pursuant to an umbrella organisation.

The Hon. CAROLYN PICKLES: I move:

Page 15, lines 2 to 4 (new section 63N)—Leave out proposed paragraph (b) and insert—

(b) if the court considers it appropriate, order the registration of the agreement as originally negotiated or with amendments agreed by the parties.

The Government's amendment gives the ERD Court the power to entertain an appeal against a decision by the Minister to prohibit registration of an agreement due to lack of good faith on the part of one of the parties.

The Government amendment gives the court open slather on the appeal to impose conditions, which one or more parties might consider highly undesirable. We prefer our amendment. The point is that the ERD Court should not be able to make a determination governing the rights of the parties unless the proper procedures set out in sections 63O and 63P have been carried out. Therefore, our amendment allows the court to (a) confirm or revoke the Minister's order; and (b) order the registration of the agreement as originally negotiated or with amendments agreed by the parties. This amendment leaves the solution to the claims in the hands of the parties so far as is possible.

The Hon. K.T. GRIFFIN: The amendment is opposed. Proposed section 63N(5) provides that where the Minister has decided that an agreement has not been negotiated in good faith, and makes an order prohibiting registration of the agreement, the parties may appeal to the ERD Court. Paragraph (a) provides that on appeal the court may repeal or revoke the Minister's order; alternatively, existing paragraph (b) would allow the court, where it considered it appropriate to do so, to make a determination authorising the mining operator to proceed to enter and mine on the land.

The Leader of the Opposition's proposed amendment would substitute in paragraph (b) a provision that only allows the court to order registration of the agreement as originally negotiated or with amendments agreed by the parties. This could be done without the need for specific provision as the same result could be achieved by revocation of the Minister's order under paragraph (a), or the renegotiation of the matter between the parties for which no specific provision is required. The Government paragraph (b) allows the court to move straight into a hearing and determination of the substantive issues in the event that an agreement is prevented from being registered by order of the Minister due to the fact that it has not been negotiated in good faith.

This is intended to save red tape and delays by forcing the parties whose agreement has been overturned to then start from scratch in the court process. It is for those reasons that the Government amendment is preferred, but the Opposition amendment is opposed.

The Hon. K.T. Griffin's amendment negatived; the Hon. Carolyn Pickles's amendment carried.

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

Page 15, after line 10—Insert:

Effect of registered agreement

63NA. (1) A registered agreement negotiated under this Division is binding on, and enforceable by or against—

(a) the holders from time to time of native title in the land to which the agreement relates; and

(b) the holders from time to time of any prospecting authority or mining tenement under which mining operations to which the agreement relates are carried out.

(2) The agreement may provide that it is also binding on, and enforceable by or against, the original parties to the agreement.

This subsection, which dealt with the effect of a registered agreement, is to be deleted as it has now been reworked as the new section 63NA, which provides for the effective registration of an agreement. Registered agreements are binding on and enforceable by or against the holders from time to time of native title and the holder from time to time with the prospecting authority or mining tenement which authorises the operations covered by the agreement with the native title parties. Subsection (2) contemplates that the original parties to an agreement may provide in the agreement that the agreement will remain binding on and enforceable by or against them notwithstanding that they may have transferred or otherwise divested themselves of their interest. Thus, native title parties who may have concerns about the solvency or level of commitment of a successor in title to the original tenement holder may agree with the original tenement holder that they will always remain bound.

The Hon. CAROLYN PICKLES: The Government wishes to leave out subsection (6). The Government's amendment responds to our concern which led us to move the following amendment adding subclause (7) to new section 63N. We were concerned that the existing scheme of the Bill

allowed conjunctive agreements to be made between mining companies and native title claimants. These agreements could have the effect of binding existing native titleholders and the generations after them. The Government's solution is to delete this subclause altogether, which makes registered agreements binding on and enforceable against the native titleholders from time to time. It is, in fact, important that registered agreements be binding both ways, on the Aboriginal groups and on the mining companies, subject to the proposed section 63VA, even if there is a difference in composition of the Aboriginal group concerned or the legal identity of the tenement holder. We therefore oppose the amendment and support the clause as it stands in the Bill.

The Hon. SANDRA KANCK: The Democrats oppose this Government amendment. Of particular concern is the wording currently in the Bill, which provides that a registered agreement is binding on and enforceable by or against the original parties to the agreement. If we take out 'the original parties to the agreement', we could have a mining company that transferred the licence to a shelf company and it would no longer be held responsible by virtue of this clause no longer being there. So, it is simply not acceptable to the Democrats.

The Hon. K.T. GRIFFIN: This is a very important provision. It is overlooking the fact that, when there is to be a transfer of a tenement, it must have the Minister's approval. Section 83(1) of the principal Act provides:

> Subject to subsection (2) a lease or licence or an interest in a lease or licence under this Act shall not be assigned, transferred, sublet or made the subject of any trust or other dealing, whether directly or indirectly, without the consent in writing of the Minister, and any such transaction entered into without that consent shall be void.

Subsection (2) provides:

> A lease or licence or an interest in a lease or licence may be charged without the consent of the Minister, but any assignment or transfer of the licence or interest for the purpose of enforcing the charge shall not be made except with the consent of the Minister and, if made without that consent, shall be void.

The Leader of the Opposition and the Hon. Sandra Kanck seem to forget that it is not in the interests of a Government that a mining tenement be transferred to a shelf company without maintaining the obligations to perform adequate work on the tenement, to spend a certain amount of money, and I cannot see the sorts of circumstances in which that will occur: that the tenement will be transferred without proper regard for both the obligations under the tenement and the financial strength required of the holder and the assignee. It may be 10 years down the track and a quite reputable company may have actually transferred—

The Hon. T.G. Roberts: Catch Tim.

The Hon. K.T. GRIFFIN: It probably is quite reputable. Catch Tim has nothing to do with the transfer of a mining tenement.

Members interjecting:

The Hon. K.T. GRIFFIN: It is a shelf company, sure—

The Hon. T.G. Roberts: It's certainly discriminating.

The Hon. K.T. GRIFFIN: Very discerning, I would have thought. The fact is that we are talking not about those sorts of instances but about the transfer of mining tenements. I was beginning to say, before being so rudely interrupted, that there might be an assignment from a quite reputable company to another quite reputable company and, 10 years down the track, the obligations in relation to the tenement are still binding upon the original holder.

The original holder will continue, therefore, to have a contingent liability stated in the accounts of the company and will continue to be bound by something over which that company has no control. It is ludicrous to propose in the real world that we are going to have anyone negotiating a position which in those circumstances will keep a binding obligation in place when someone has no control over what happens in the future because they do not have entitlements at law under the tenement.

It is an absolute nonsense to suggest that we ought to be continuing to bind the original holders. Ordinarily, this sort of arrangement is the subject of agreement between the parties. It happens in all commercial transactions where there is an assignment that the parties do give attention specifically to whether or not the predecessors will be bound, whether there is a capacity to assign, with or without consent, and whether the personal covenants of a particular arrangement may or may not be discharged.

So, the proposition put by the Government in its amendment is by far the most preferable, realistic and commercially appropriate with the necessary safeguards for native titleholders. I repeat: it is ludicrous to propose maintaining the existing provisions rather than supporting this amendment.

Amendment negatived.

The Hon. CAROLYN PICKLES: I move:

> Page 15, after line 10 (proposed section 63N)—Insert—
> (7) If native title parties were not represented in negotiations by the relevant representative Aboriginal body, the court may, on application by that body, made within three months after the date of the native title declaration to the effect that land is subject to native title, exempt (wholly or partially) from the application of subsection (6)(a) any person or group of persons who—
> (a) are recognised at common law as holders of native title in the land; but
> (b) were not among the original parties to the agreement.

The purpose of this amendment is to ensure that late starters do not miss out altogether. If native title parties are not represented in the relevant negotiations and the native title declaration is made, these native title parties may apply within three months after the date of the native title declaration to be exempted from the terms of the agreement.

This provision addresses the potential situation where Aboriginal groups collude with mining companies to do deals aimed at cutting out other potential native titleholders. Proposed section 63VA will not necessarily provide adequate remedy. I note that the Hon. Ms Kanck has a similar amendment on file.

The Hon. K.T. GRIFFIN: The amendment is opposed. To accept it would substantially erode the Government's efforts to put some finality into the process. It would erode section 63N(6)(a) in the Bill and what was to have been a new provision in section 63NA that registered agreements are binding on and enforceable by or against the holders from time to time of native title in the land. The Government scheme encourages native title claimants to come forward at the outset. This provision means that native titleholders could by remaining silent still obtain compensation and yet not be bound by the agreement. That really introduces a great deal of uncertainty for the miner with respect to the basis for mining. We take strong exception to this and vigorously oppose the amendment.

Amendment carried

The Hon. K.T. GRIFFIN: I do not propose to proceed with my next amendment as it is consequential on an amendment which has already been lost.

The Hon. CAROLYN PICKLES: I indicate that the Opposition will not be proceeding with its next amendment but will support the Democrat amendment. The Democrat amendment goes one step further by expressly providing that the court can make determinations where the amount of compensation can be based on profits or income derived from the proposed mining operations. Section 63O(3)(b) provides that the ERD Court, if it permits mining operations, cannot stipulate profit sharing or royalties to go to the native title parties. We believe the ERD Court should not be so restricted.

The Government will say that the subclause is consistent with subsection 38(2) of the Commonwealth Native Title Act, but the Democrat amendment is not inconsistent with the Commonwealth legislation. Again reference must be made to applicants for tenements who are before the court as proponents, hence the insertion of proposed subsection (3a). We support the Democrat amendment.

The Hon. SANDRA KANCK: I move:

Page 15, lines 24 to 30 (proposed section 63O)—Leave out proposed subsection (3) and insert:

(3) if the ERD Court determines that mining operations may be conducted on native title land, the determination—

(a) must deal with the notices to be given or other conditions to be met before the land is entered for the purposes of mining operations; and

(b) may provide for payment to the native title parties based on profits or income derived from mining operations on the land or the quantity of minerals produced.

(3a) If the proponent is an applicant for the grant or registration of a mining tenement in respect of the land, a determination under this section has no effect until the tenement is granted or registered.

The Democrat concern with parts of native title is that we are going to give on the one hand and take away with the other. That appears to be the case with some aspects of the Mining Act, and we believe that some sort of payment should be made to the Aboriginal people in this circumstance, and by supporting this amendment the Aboriginal people could get something out of this as opposed to nothing.

The Hon. K.T. GRIFFIN: Again the amendment is opposed quite vigorously. An amendment of this sort could have serious ramifications for the mining industry, particularly the financiers and shareholders of mining companies who made their investment or bought their shares on a particular prospectus that made no mention of profit or income sharing with third parties because it was not known at the time. At the very least such an amendment should not be made without full and proper consultation with the mining industry. One of the concerns the Government has is to try to get as great a level of certainty into the process as possible. What this does is to open up the uncertainty to a much greater degree. There is very grave concern about it. I suspect there has been no consultation by the Opposition with industry in particular. The greater level of uncertainty which is imported into the legislation as a result of this is totally unacceptable.

Amendment carried.

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

Page 16, after line 1 (new section 63O)—insert:

(5) The relevant representative Aboriginal body is entitled to be heard in proceedings under this section.

This amendment adds a new subsection (5) to section 63O, which gives the relevant representative Aboriginal body the right to be heard in relation to a determination in the event of lack of agreement between the miner and the native title parties. The amendment has been moved in response to a request by the Opposition for a provision of a similar nature to be included.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried.

Progress reported; Committee to sit again.

PETROLEUM PRODUCTS REGULATION 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 will replace the *Motor Fuel Distribution Act 1973*, the *Business Franchise (Petroleum Products) Act 1979* and the *Petroleum Shortages Act 1980*. It also makes consequential amendments to the *Environment Protection Act 1993*.

It is the Government's view that the nature of petroleum products is such as to warrant a comprehensive regulatory regime. It has also been recognised by the Government that it is desirable to reduce duplication and red-tape as far as practicable.

The Bill merges and simplifies licensing and other regulatory requirements which currently apply to activities involving or relating to petroleum products. Under the scheme of the Bill, any person who keeps, sells, or conveys petroleum products, or who engages in an activity of a prescribed class involving or related to petroleum products, must obtain a licence. Provision is made for necessary exemptions to be *Gazetted*.

This Bill replaces similar requirements currently found in the *Motor Fuel Distribution Act*, the *Business Franchise (Petroleum Products) Act* and the *Dangerous Substances Act*. However, it has been of concern to the Government and sectors of industry that operators in the petroleum products industry have been required to obtain multiple licences. Persons wishing to operate petrol stations, for example, have been faced with a daunting array of paperwork from numerous Government Departments and agencies.

Under this new scheme operators need only obtain one licence in relation to petroleum products. The scheme will regulate aspects of their operations previously regulated by the Dangerous Substances Branch of the Department of Industrial Affairs, the Motor Fuel Licensing Board and the State Taxation Office. This stream-lining of administrative procedures should prove advantageous to industry, as it will reduce time and costs involved.

Petroleum is dangerous if not handled and stored safely. The Government is committed to ensuring public safety is maintained. The Bill enables licence conditions to be fixed for the protection of employee or public safety or health and for compliance with specified codes or standards. This will replace that part of the current Dangerous Substances licensing regime that relates to petroleum products. The Bill imposes a general duty to take reasonable precautions to avoid endangering the safety and health of others and the property of others. A similar duty in relation to plant used in connection with petroleum products is imposed, requiring reasonable precautions to be taken to ensure the plant is in a safe condition.

The Government also recognises that the storage and use of petroleum products brings with it environmental concerns. A general duty to take reasonable care to prevent risk of significant environmental harm is imposed, and a similar duty in relation to plant used in connection with petroleum products is imposed to ensure that plant remains in an environmentally sound condition.

An enforcement regime using authorised officers is created under the Bill.

There is a requirement in the Bill that persons trading in petroleum products use correct and just measuring instruments. Compliance with the *Trade Measurements Act* is reinforced by making it a condition of licences authorising the sale of petroleum products.

This Bill also includes provisions dealing with the rationing and restriction of petroleum products during periods of shortages in terms similar to those currently contained in the *Petroleum Shortages Act*.

The Government has been concerned for some time about the devastating effects of petrol sniffing. This Bill makes it an offence for any person to sell a petroleum product to a child under 16 years

of age. It will also be an offence for any person, acting on the request of a child under the age of 16 years, to purchase a petroleum product on behalf of a child for the purposes of inhalation.

At an administrative level, the Motor Fuel Licensing Board will be replaced with the Petroleum Products Retail Outlets Board. The Retail Outlets Board will be involved in making recommendations to the Minister concerning licences for retail sellers of petroleum products.

Wholesalers and retailers of petroleum products are currently subject to licence fees under the *Business Franchise (Petroleum Products) Act*. That Act will be repealed by this Bill, and the fee structure duplicated in this Bill. Money collected is earmarked for Government costs associated with petroleum products—the costs of administering this measure and other regulatory laws and costs incurred in connection with hospitals, ambulance services and roads.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Objects of Act

The objects are—

- to merge and simplify licensing and other regulatory requirements applying to activities involving or related to petroleum products; and
- to direct the revenue resulting from fees towards the costs of administration of this proposed Act and other areas of public administration incurring costs in consequence of activities involving or related to petroleum products.

Clause 4: Interpretation

This clause contains the definitions of words and phrases used in the proposed Act and is self-explanatory. It also provides that where, under a sale and purchase made outside the State, petroleum products are delivered within the State, that sale and purchase is for the purposes of this proposed Act to be taken to have been made within the State.

Clause 5: Division of State into zones

The State is divided into 3 zones for the purposes of this proposed Act.

Clause 6: Application of Act

The Minister may, by notice in the *Gazette*, exempt a class of persons or petroleum products from the application of this proposed Act or a specified provision of this proposed Act unconditionally or subject to specified conditions. The Minister may, by notice in writing to a person exempt the person from the application of this proposed Act or a specified provision of this proposed Act unconditionally or subject to specified conditions.

Clause 7: Non-derogation

The provisions of this proposed Act are in addition to and do not derogate from the provisions of any other Act. This non-derogation does not limit the effect of any regulation made under proposed Part 2 dispensing with a requirement for a licensee under this proposed Act to hold a specified licence or other authority under some other specified Act.

PART 2

LICENCES

DIVISION 1—GENERAL

Clause 8: Requirement for licence

A person must not—

- keep petroleum products; or
- sell petroleum products; or
- convey petroleum products; or
- engage in an activity of a prescribed class involving or related to petroleum products,

unless authorised to do so under a licence. The penalty for an offence against this proposed section is a fine of $10 000.

The clause further provides that the licence required under this proposed section is an annual licence subject to the exception that a monthly licence is required for the sale of petroleum products that have not been purchased by the vendor from another who sold the products under the authority of a licence.

A licence does not authorise a prescribed retail sale of petroleum products unless the sale is made from premises specified in the licence for that purpose.

Clause 9: Issue or renewal of licence

The Minister may, on application, issue or renew, or refuse to issue or renew, a licence under this proposed Act. Where an applicant for a monthly licence is a member of a group of petroleum vendors (*see schedule 2*), the application must be made on behalf of all members of the group.

Clause 10: Licence term, etc.

Subject to this proposed Act, a monthly licence expires at the end of the calendar month in which it came into effect and an annual licence expires on the anniversary of the date of issue of the licence and may be renewed on application for successive terms of one year.

Clause 11: Conditions of licence

The Minister may fix conditions of a licence, including conditions—

- requiring compliance with specified codes or standards;
- requiring the reporting of accidents;
- for the protection of employee or public safety or health;
- for the protection of the environment;
- requiring the licensee to prepare and submit to the Minister assessments of the safety, health or environmental risks associated with the activity authorised under the licence;
- limiting the premises that may be used under the licence;
- limiting sales of petroleum products that may be authorised by the licence;
- requiring the keeping of records and the provision of information;
- authorised or imposed under proposed Part 5 or 6 or the regulations.

Clause 12: Variation of licence

The Minister may (on application or at the Minister's own initiative—if satisfied that the licensee has contravened or failed to comply with this proposed Act or that other sufficient cause exists) substitute, add, remove or vary a condition of a licence or otherwise vary a licence. A licence may be varied by endorsement of the licence, by notice in writing to the licensee or by a notice published under proposed Part 5.

Clause 13: Form of application for issue, renewal or variation of licence

An application for the issue, renewal or variation of a licence must be made to the Minister in a manner and form approved by the Minister containing the information required by the Minister.

Clause 14: Reference of matters to other persons or bodies

Subject to this proposed section, an application for the issue or variation of a licence, an application for a development authorisation (referred under the *Development Act 1993* to the Minister) or any other matter with respect to a licence must be referred to the appropriate person or body for the recommendation of that person or body. Such a person or body may dispense with the requirement that a specified matter or class of matters be referred to it.

Subject to the regulations, the Minister must refer to the Retail Outlets Board for its recommendation—

- any application for the issue or variation of a licence authorising prescribed retail sales of petroleum products;
- any application for development authorisations referred under the *Development Act 1993* to the Minister where the application is for a development that relates to premises from which prescribed retail sales of petroleum products are to be made;
- any other matter with respect to a licence authorising prescribed retail sales of petroleum products.

Clause 15: Criteria for decisions relating to licences, etc.

This proposed section applies to a decision by the Minister in respect of—

- an application for the issue or variation of a licence; or
- an application for a development authorisation referred under the *Development Act 1993* to the Minister; or
- any other matter with respect to a licence.

The Minister must take the following matters into account in making a decision to which this proposed section applies:

- the protection of employee and public safety and health; and
- the protection of the environment; and
- whether the premises and plant proposed to be used or in use by the applicant or licensee comply with this Act and other relevant laws; and
- the applicant's or licensee's record of compliance with this proposed Act and other relevant laws; and
- in the case of a decision relating to prescribed retail sales of petroleum products—factors including the suitability of the premises, the need for facilities and services to be provided at the premises for the assistance of motorists, the extent to which the interests of retail customers for petroleum products will be served and the extent to which fair and reasonable competition in the retail sale of petroleum products will be affected; and

- any recommendation of a person or body to which the matter has been referred under this proposed Part; and
- any other relevant matters.

Clause 16: Avoidance of multiple licences
The Governor may make regulations applicable to licensees under this proposed Act dispensing with a requirement for a specified licence or other authority to be held under some other specified Act. A regulation under this proposed section has effect according to its terms and despite the provisions of any other Act.

Clause 17: Offence relating to licence conditions
A licensee who contravenes or fails to comply with a condition of the licence (whether fixed by the Minister or by proposed Part 5 or 6) is guilty of an offence and liable to a fine of $10 000.

Clause 18: Cancellation or suspension of licence
The Minister may, if satisfied that a licensee has contravened or failed to comply with this proposed Act or that other sufficient cause exists, suspend or cancel the licence.

Clause 19: Cessation of prescribed retail sales under licence
If, without the Minister's approval, the business of making prescribed retail sales of petroleum products from premises specified in a licence for that purpose is not carried on for a continuous period of one month during the term of the licence, the licence ceases to authorise such sales to be made from the premises (unless the Minister otherwise determines).

DIVISION 2—LICENCE FEES

Clause 20: Fees
The fee for an annual licence is fixed under the regulations. The fee for a monthly licence is assessed by the Commissioner by applying the following calculation:

> the appropriate amount fixed under the regulations plus a percentage of the value of petroleum products sold by the applicant during the relevant period (*ie:* the calendar month that is the last calendar month but one preceding the calendar month during which the licence, if issued, would be in force—*see definition of relevant period in clause 4*).

The percentage rate varies according to the type of petroleum product and the zone in which the petroleum product is destined for use or consumption.

Clause 21: Determination of value of petroleum products
The value of motor spirit or diesel fuel sold during a particular relevant period will be taken to be the indexed amount or the amount prescribed by regulation and in force as at the commencement of the relevant period, whichever is the greater, multiplied by the number of litres of motor spirit or diesel fuel sold for the purpose of assessing the fee for a monthly licence. The method for calculating the indexed amount (which involves using the Consumer Price Index) is set out in this proposed section.

Clause 22: Recovery of unpaid fees from unlicensed persons
If a person was required by this proposed Act to hold but did not hold a particular licence in respect of any period, the person must pay to the Commissioner an amount equal to the licence fee that would have been payable if the person had held that licence. An amount assessed under this proposed section may be recovered by the Commissioner (as a debt due to the Crown) in a court of competent jurisdiction.

Clause 23: Reassessment of fee
The Commissioner may reassess a monthly licence fee or other amount assessed under this proposed Division on the Commissioner's own initiative or on receipt of an objection by the person liable to pay the fee or amount lodged with the Commissioner within two months after the service on the person of notice of assessment.

If on reassessment, the fee or amount is reduced, the amount overpaid must be refunded by the Commissioner and the Consolidated Account is appropriated accordingly. If on reassessment the fee or amount is increased, the Commissioner may recover as a debt due to the Crown the amount by which the fee or amount is increased from the person liable for the fee or amount.

PART 3
INDUSTRIAL PUMPS

Clause 24: Industrial pumps not to be installed without approval
A person must not install an industrial pump without the prior approval of the Minister who must not grant approval unless satisfied that the amount of petroleum products that will be supplied to the occupier of the premises in relation to which it is proposed to install the pump will be not less than 6 800 litres a month. The penalty for an offence against this proposed section is a fine of $10 000.

PART 4
GENERAL SAFETY AND
ENVIRONMENTAL DUTIES

Clause 25: General duty
A licensee or other person must, in dealing with petroleum products, take such precautions and exercise such care as is reasonable in the circumstances to—

- avoid endangering the safety or health of another, or the safety of another's property; and
- prevent risk of significant environmental harm.

The penalty for an offence against this proposed section in the case of a body corporate is a fine of $50 000 and, in any other case, is a fine of $10 000 or imprisonment for 2 years (or both).

Clause 26: Duty in relation to plant
Plant that is used, or that is reasonably expected to be used, in connection with petroleum products must be kept in an environmentally sound condition. Plant is in an environmentally sound condition if it is in a condition that does not give rise to a risk of significant environmental harm. A person who contravenes or fails to comply with a provision of this section is guilty of an offence and liable to, in the case of a body corporate, a fine of $50 000 and, in any other case, a fine of $10 000 or imprisonment for 2 years (or both).

Clause 27: Improvement notices
If an authorised officer is of the opinion that a person—

- is contravening a provision of this proposed Part or a condition of a licence; or
- has contravened a provision of this proposed Part or a condition of a licence in circumstances that make it likely that the contravention will be repeated or reasonable to require that the contravention be remedied,

the authorised officer may issue an improvement notice requiring the person to remedy the matters occasioning the contravention. The proposed section sets out the matters to be included in an improvement notice.

A person who contravenes or fails to comply with an improvement notice is guilty of an offence and liable to a fine of $20 000.

Clause 28: Prohibition notices
If an authorised officer is of the opinion that a dangerous situation exists, the authorised officer may issue to the person apparently in control of the activity giving rise to the danger or risk a prohibition notice prohibiting the carrying on of the activity until an authorised officer is satisfied that adequate measures have been taken to avert, eliminate or minimise the danger or risk. Subject to this proposed Act, a person who contravenes or fails to comply with a prohibition notice is guilty of an offence and liable to a fine of $50 000.

Clause 29: Action on default
If a person is required by an improvement notice or prohibition notice to take any specified measures and the person fails to comply with the notice, the authorised officer who issued the notice (or any person authorised by him or her) may—

- after giving reasonable notice to the person required to take the measures, enter and take possession of any place (taking such measures as are reasonably necessary for the purpose); and
- do, or cause to be done, such things as full and proper compliance with the notice may require.

Clause 30: Action in emergency situations
If an authorised officer considers on reasonable grounds that a dangerous situation exists and there is insufficient time to issue a notice under this proposed Part, the authorised officer may, after giving such notice (if any) as may be reasonable in the circumstances, take action or cause action to be taken as necessary to avert, eliminate or minimise the danger or risk.

Clause 31: Cost recovery
Where a government authority incurs costs as a result of the occurrence of an incident to which this proposed section applies, those costs reasonably incurred by the government authority are recoverable as a debt in a court of competent jurisdiction.

Costs and expenses are not recoverable against a person who establishes—

- that the incident was due to the act or default of another person, or to some cause beyond the person's control; and
- that he or she could not by the exercise of reasonable diligence have prevented the occurrence of the incident; and
- that the incident is not attributable to an act or omission of a person who was an employee or agent of his or hers at the time when the incident occurred (unless it is proved that the incident is attributable to serious and wilful misconduct on the part of the employee or agent).

PART 5

PERIODS OF RESTRICTION
AND RATIONING
DIVISION 1—INTERPRETATION

Clause 32: Interpretation

This defines sale for the purposes of this proposed Part.

DIVISION 2—DECLARATION OF
PERIODS OF RESTRICTION
AND RESTRICTION

Clause 33: Declaration of periods of restriction and rationing

If, in the opinion of the Governor, circumstances have arisen, or are likely to arise, that have caused, or are likely to cause, shortages of petroleum products in the State, the Governor may by proclamation declare—

- a period (extending for not more than seven days) to be a period of restriction; and
- that the period of restriction will be a rationing period; and
- petroleum products of specified kinds to be rationed petroleum products.

The Governor may, by proclamation—

- extend a period of restriction for successive periods (each not to exceed seven days) but not so that the total period exceeds 28 days; or
- extend a period of restriction by such other period or periods as may be authorised by a resolution of both Houses of Parliament; or
- vary or revoke a proclamation or declaration under this proposed section.

Where a period of restriction expires, no subsequent period may be declared to be a period of restriction unless—

- that subsequent period commences 14 days or more after the expiration of the former period of restriction; or
- the declaration is authorised by a resolution of both Houses of Parliament.

DIVISION 3—CONTROLS DURING
PERIODS OF RESTRICTION

Clause 34: Controls during periods of restriction

The Minister may, if of the opinion that it is in the public interest to do so, fix conditions of licences and issue directions (applying to a particular person, a particular class of persons or to the public generally) that apply during a period of restriction in relation to petroleum products. A person to whom a direction is issued under this proposed section who contravenes or fails to comply with the direction is guilty of an offence and liable to a fine of $10 000.

DIVISION 4—CONTROLS DURING
RATIONING PERIODS

Clause 35: Controls during rationing periods

It is a condition of a licence during a rationing period that the licensee must not sell rationed petroleum products except to a permit holder. During a rationing period, a person who purchases rationed petroleum products who is not a permit holder faces a fine of up to $10 000. This proposed section does not apply to the sale of rationed petroleum products to, or the purchase of rationed petroleum products by, a licensee in the ordinary course of the licensee's business.

Clause 36: Permits

The Minister may, if satisfied that it is in the public interest to do so, issue a permit (to which the Minister may attach conditions) to any person.

It is a condition of each permit that the permit holder must carry the permit at all times when driving a motor vehicle to which petroleum products have been supplied under the permit. A permit holder who contravenes or fails to comply with a condition of the permit is guilty of an offence and liable to a fine of $10 000.

The Minister may by notice in writing served on a permit holder cancel the permit and the former permit holder must then return the permit or be fined $10 000.

Permits are not transferable.

DIVISION 5—LIMIT ON
PROCEEDINGS AGAINST MINISTER

Clause 37: Limit on proceedings against Minister

Except as provided by proposed Part 9, no proceedings can be instituted against the Minister to compel the Minister to take, or to refrain from taking, any action under this proposed Part.

DIVISION 6—CONSERVATION OF
PETROLEUM PRODUCTS

Clause 38: Publication of desirable principles for conserving petroleum

The Minister may publish principles that the public should, in the Minister's opinion, be encouraged to observe in relation to the conservation of petroleum products during a period of restriction. If, during a period of restriction, a person, by conforming with such published principles, commits a breach of a policy of insurance, that breach is, for the purpose of determining the rights of that person under the policy, to be disregarded.

Clause 39: Special consideration to be given to those living in country areas

In exercising powers under this proposed Part, the Minister must give special consideration to the needs of those living in country areas.

PART 6
CORRECT MEASUREMENTS

Clause 40: Correct measurements

A licensee or other person who uses for trade in petroleum products a measuring instrument that is incorrect or unjust is guilty of an offence and liable to a fine of $20 000. It is a condition of a licence authorising the sale of petroleum products that the licensee must comply with the requirements of the *Trade Measurements Act 1993*.

PART 7
SALE OF PETROLEUM PRODUCTS
TO CHILDREN

Clause 41: Sale of petroleum products to children

This proposed Part creates two offences dealing with the sale of petroleum products to children. A licensee or other person who sells a petroleum product to a child under the age of 16 years is liable to a penalty of $5 000. A person who, acting at the request of a child under the age of 16 years, purchases a petroleum product on behalf of the child for the purpose of inhalation, is guilty of an offence and liable to a penalty of $5 000.

An authorised officer may confiscate a petroleum product that is in the possession of a child under the age of 16 years if the officer has reason to suspect that the child has the product for the purpose of inhalation.

PART 8
AUTHORISED OFFICERS

Clause 42: Appointment of authorised officers

The Minister may appoint persons (subject to any conditions specified in the instrument of appointment) to be authorised officers for the purposes of this proposed Act. Members of the police force and authorised officers under the *Stamp Duties Act 1923* are also authorised officers for the purposes of this proposed Act.

Clause 43: Identification of authorised officers

An authorised officer (other than a member of the police force) must be issued with an identity card containing his or her name and photograph and stating that the person is an authorised officer for the purposes of this proposed Act. Where the powers of an authorised officer have been limited by conditions, the officer's identity card must contain a statement of the limitation on the officer's powers. An authorised officer must, at the request of a person in relation to whom the officer intends to exercise any powers under this proposed Act, produce identification.

Clause 44: Powers of authorised officers

This clause sets out the powers of an authorised officer, including the power to enter and remain on premises and inspect premises and the power to require persons to produce records for any reasonable purpose connected with the administration or enforcement of this proposed Act. A magistrate may issue a warrant for the purposes of this proposed section if satisfied that the warrant is reasonably required for the administration or enforcement of this proposed Act.

Clause 45: Offence to hinder, etc., authorised officers

A person who—

- hinders or obstructs an authorised officer, or a person assisting an authorised officer; or
- uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
- refuses or fails to comply with a requirement or direction of an authorised officer; or
- when required by an authorised officer to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- falsely represents that he or she is an authorised officer,

is guilty of an offence and liable to a fine of $5 000. For an offence to have been committed, the authorised officer must have been operating within his or her powers.

Clause 46: Self-incrimination

It is not an excuse for a person to refuse or fail to answer a question or to produce, or provide a copy of, a record or information as required under this proposed Part on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

However, if compliance might tend to incriminate the person or make the person liable to a penalty, then—

- in the case of a person who is required to produce, or provide a copy of, a record or information—the fact of production, or provision of a copy of, the record or the information (as distinct from the contents of the record or the information); or
- in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings under this proposed Act).

PART 9
APPEALS

Clause 47: Appeals
An appeal to the Administrative and Disciplinary Division of the District Court (which may be constituted of a Magistrate) may be made—

- by an applicant for the issue, renewal or variation of a licence against a decision by the Minister to refuse to issue, renew or vary the licence; or
- by an applicant for the issue of a permit against a decision by the Minister to refuse to issue the permit; or
- by a licensee against a decision by the Minister to vary, suspend or cancel the licence; or
- by a permit holder against a decision by the Minister to cancel the permit; or
- by a person against an assessment by the Commissioner of a monthly licence fee or other amount under proposed Part 2 Division 2; or
- by a person to whom an improvement notice or a prohibition notice has been issued against the decision to issue the notice.

Except as determined by the Court, an appeal is to be conducted by way of a fresh hearing and, for that purpose, the Court may receive evidence given orally or (if the Court so determines) by affidavit. The Court may, on the hearing of an appeal, affirm, vary or quash the decision appealed against or substitute, or make in addition, any decision that the Court thinks appropriate and make an order as to any other matter that the case requires (including an order for costs).

PART 10
APPLICATION OF FEES REVENUE

Clause 48: Application of fees revenue
The money collected by way of fees under this proposed Act must be paid into the Consolidated Account and the Treasurer must apply the money—

- towards the costs of administration of this proposed Act; and
- to the Environment Protection Fund; and
- to the Highways Fund; and
- towards the cost of health and ambulance services; and
- towards other administrative costs incurred in consequence of activities involving or related to petroleum products.

PART 11
MISCELLANEOUS

Clause 49: Delegation
The Minister may delegate any of his or her powers or functions under this proposed Act to another Minister, the Commissioner or another person or body.

Clause 50: Register of licences
The Minister must cause a register (which must be kept available for public inspection) to be kept of licensees under proposed Part 2.

Clause 51: Particulars of dealings with petroleum products
The Minister or the Commissioner may require—

- a person who is carrying on, or has carried on, or is or was concerned in, a business involving or related to petroleum products;
- a person who, as agent or employee of such a person referred to above, has or has had duties or provides or has provided services in connection with a business so referred to,

to furnish in writing such information with respect to those petroleum products as is specified in the notice (not being information relating to any period after the date of the requirement). A person who fails to comply with a requirement under this proposed section is liable to a fine of $5 000.

Clause 52: Invoices, statements of accounts and receipts to be endorsed
The holder of a monthly licence must endorse on every invoice, statement of account and receipt issued by the licensee relating to the sale of petroleum products the words "Licensed petroleum wholesaler". There is a fine of $1 250 (which is expiable on payment of the expiation fee of $150) for failure to comply with this requirement.

A person who is not the holder of a monthly licence must not issue an invoice, statement of account or receipt relating to the sale of petroleum products that is endorsed with the words "Licensed petroleum wholesaler" or words of similar effect. The fine for contravention of this proposed subsection is $2 500.

Clause 53: Records to be kept
A person who carries on a business involving or related to petroleum products must keep accounts, records, books and documents as required by the Minister from time to time by notice published in the *Gazette* for a period of 5 years after the last entry is made in any of them. The fine for contravention of this proposed section is $2 500 (which is expiable on payment of the $200 expiation fee).

Clause 54: False or misleading information
A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished, or record kept, under this proposed Act. A person who contravenes this proposed section is liable to a fine of $5 000.

Clause 55: Statutory declarations
A person who is required to furnish information to the Minister or Commissioner must, if required by the Minister or Commissioner, verified the information by statutory declaration. The person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the Minister or Commissioner.

Clause 56: Confidentiality
A person must not divulge any information relating to information obtained (whether by that person or some other person) in the administration of this proposed Act except—

- as authorised by or under this Act; or
- with the consent of the person from whom the information was obtained or to whom the information relates; or
- in connection with the administration or enforcement of this proposed Act; or
- to the Commonwealth Commissioner of Taxation, an officer of this or another State, or of a Territory, employed in the administration of laws relating to taxation, the Comptroller-General of the Australian Customs Service or for the purpose of any legal proceedings arising out of the administration or enforcement of this proposed Act.

The fine for contravening this proposed section is $10 000.

Clause 57: General defence
It is a defence to a charge of an offence against this proposed Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Clause 58: Immunity from personal liability
No personal liability attaches to an authorised officer or any other person engaged in the administration of this proposed Act for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this proposed Act. A liability that would, but for proposed subsection (1), lie against a person, lies instead against the Crown.

Clause 59: Offences by bodies corporate
If a body corporate is guilty of an offence against this proposed Act, each director of the body corporate is, subject to the general defence, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

Clause 60: Continuing offence
A person convicted of an offence against a provision of this proposed Act in respect of a continuing act or omission—

- is liable (in addition to the penalty otherwise applicable to the offence) to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
- is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

Clause 61: Prosecutions

Proceedings for an offence against this proposed Act must be commenced within 2 years after the date on which the offence is alleged to have been committed or (with the authorisation of the Minister) at a later time within 5 years after that date. A prosecution for an offence against this proposed Act cannot be commenced except with the consent of the Minister.

Clause 62: Evidence

In any proceedings for an offence against this proposed Act, an apparently genuine document purporting to be a certificate of the Minister certifying as to matters alleged constitutes proof of the matters so certified in the absence of proof to the contrary.

The presence on any premises of a vending machine from which petroleum products may be obtained is to be taken to constitute conclusive evidence that the occupier of the premises has sold petroleum products by means of the machine unless a licensee is authorised by licence to sell petroleum products by means of the machine.

Clause 63: Service

A notice, order or other document to be given to or served on a person may be given or served—

- by delivering it personally to the person or an agent of the person; or
- by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.

Clause 64: Regulations

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this proposed Act, including regulations that—

- provide for and require the making of returns relating to dealings with petroleum products;
- impose a penalty not exceeding $2 500 for a breach of a regulation.

The regulations may incorporate or operate by reference to a specified code or standard as in force at a specified time or as in force from time to time.

SCHEDULE 1

Petroleum Products Retail Outlets Board

This schedule establishes the *Petroleum Products Retail Outlets Board* with the function of making recommendations to the Minister in respect of matters referred to the Board under proposed Part 2 (Licensing) and carrying out any other function delegated to the Board by the Minister. The Board must take into account the matters that the Minister is specifically required by proposed Part 2 to take into account in making a decision relating to prescribed sales of petroleum products.

SCHEDULE 2

Groups for the Purposes of Licensing

This schedule contains provisions relating to groups of petroleum vendors that correspond to provisions contained in the repealed *Business Franchise (Petroleum Products) Act 1979* (*see schedule 3*).

SCHEDULE 3

Repeal and Transitional Provisions

This schedule contains repeal and transitional provisions.

SCHEDULE 4

Consequential Amendments to Environment Protection Act 1993

This schedule contains amendments to the *Environment Protection Act 1993* consequential on the passage of this Bill.

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

SUPERANNUATION FUNDS MANAGEMENT CORPORATION OF SOUTH AUSTRALIA 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.

In view of the lateness of the hour, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

This Bill seeks to reconstitute the South Australian Superannuation Fund Investment Trust (SASFIT), as the Superannuation Funds Management Corporation of South Australia.

The purpose of this Bill is to establish an investment body with a new image and mission, charged with the responsibility of investing the funds associated with the main State Government superannuation schemes.

The proposed legislation introduces a clear statement of objectives for the Government's superannuation investment body. The existing Investment Trust does not operate under its own legislation but under legislation which lacks performance guidelines, prudential guidelines and a clear statement of objectives.

The revamping of SASFIT is long overdue and the Government is pleased to be introducing this legislation that will also make the new Corporation much more accountable and subject to considerably more external scrutiny. To date, the scrutiny of SASFIT and its operations has been minimal.

One of the significant provisions of this Bill is a restructuring of the Board of Directors. In particular the Bill provides that the Board of Directors comprise persons with the abilities and experience necessary to form an effective investment body with a satisfactory level of performance. Accompanying this requirement, and for the purpose of strengthening the pool of expertise on the Board, the size of the Board of Directors is also being expanded to provide for a Board of between five and seven members. The existing arrangement for SASFIT having an elected representative of superannuation scheme members and a member nominated by the Superannuation Federation is maintained under the Bill.

The Bill also establishes clear legal liabilities and duties for the Corporation. The legal position of the responsible Minister is also made clear. Under the existing legislation, the legal liabilities and duties of the Trust and the responsible Minister are not clear.

Another significant feature of this legislation is the requirement for the Corporation to prepare a performance plan in respect of each financial year.

The plan must set out a target for the rate of return on investments and management of the funds, strategies for the achievement of that target, the anticipated operating costs to be incurred by the Corporation during the financial year and the factors that, in the opinion of the Corporation,will affect or influence the investment and management of the funds during the year. Under this requirement, the Corporation's strategies and target rates of return in relation to recognised benchmarks will enable better scrutiny and evaluation.

In the past, broad strategies have been adopted without any particular reference or comparison to recognised investment return benchmarks in the market place. The new legislation will require constant monitoring of performance in respect to both short term and long term strategies, to ensure performance in the future is measured against recognised market place benchmarks. This will encourage a much more enhanced performance by the new Corporation while at the same time not involving unacceptable levels of risk. The Corporation's objects set out in the Bill require the directors to have proper regard for the need to manage the risks relating to investment at an acceptable level.

Under the legislation, the Corporation must not only provide the Minister with a copy of the performance plan, but a copy must also be provided to the South Australian Superannuation Board and the Police Superannuation Board. This will enable not only the Boards as a whole, but in particular the member representatives to monitor the strategies and performance of the Corporation. The arrangement will enhance the link between the trustees administering the scheme and the body charged with investing the fund's money.

The Bill also establishes the Superannuation Funds Management Corporation of South Australia under a corporate charter with the appropriate requisite duties and responsibilities of a public corporation being attached to the Corporation.

Under the Bill, the definition of a 'public sector superannuation fund' is expanded to incorporate the employer contributions paid to the Treasurer under Arrangements entered into between the South Australian Superannuation Board and public sector bodies. Other funds can be included within the definition as a result of a determination by the minister. It is intended that the funds established by the Government for the purpose of funding the accrued and accruing employer liability of all the main Government superannuation schemes, be determined as being 'public sector superannuation funds' under this legislation and thereby invested by the new Corporation. SASFIT is currently investing these funds.

The Transitional Provision of the Bill provides that on the commencement of the Act, the offices of the members of the South Australian Superannuation Fund Investment Trust shall be vacated. This will enable the appointment of the initial Board of Directors of the Corporation. The Bill also contains some consequential amendments to the Superannuation Act, the Police Superannuation Act, and the Southern State Superannuation Act.

Explanation of Clauses

The provisions of the Bill are as follows:

PART 1
PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clauses 1 and 2 are formal.

Clause 3: Interpretation

Clause 3 defines terms used in the Bill.

PART 2
SUPERANNUATION FUNDS MANAGEMENT CORPORATION OF SOUTH AUSTRALIA

Clause 4: Continuation in existence of Corporation

Clause 4 continues SASFIT in existence under the name Superannuation Funds Management Corporation of South Australia.

Clause 5: Functions of the Corporation

Clause 5 sets out the functions of the Corporation.

Clause 6: Powers of the Corporation

Clause 6 sets out the powers of the Corporation.

Clause 7: Object of the Corporation in performing its functions

Clause 7 is a statement of the Corporation's object in performing its functions.

Clause 8: Common seal and execution of documents

Clause 8 provides for the use of the common seal and the execution of documents by the Corporation.

PART 3
THE BOARD OF DIRECTORS

Clause 9: Establishment of the board

Clause 9 provides for the establishment of the Corporation's board of directors.

Clause 10: Conditions of membership

Clause 10 provides for a maximum term of appointment of three years for directors and provides for the removal of directors and the vacation of office of director.

Clause 11: Vacancies or defects in appointment of directors

Clause 11 ensures that an act of the board is valid even though there is a vacancy in the board's membership or a defect in the appointment of a director.

Clause 12: Remuneration

Clause 12 provides for remuneration of directors.

Clause 13: Board proceedings

Clause 13 provides for procedures at meetings of the board. If the board consists of five members (or less where there is a vacant office) the quorum is three members. If the board consists of six or seven members, the quorum is four.

Clause 14: Directors' duties of care, etc.

Clause 14 deals with the directors' duty of care. This clause and clauses 15, 16, 17 and 18 follow the wording of similar provisions in the *Public Corporations Act 1993*.

Clause 15: Directors' duties of honesty

Clause 15 requires the directors to act honestly.

Clause 16: Transactions with directors or associates of directors

Clause 16 restricts the involvement of a director or the associate of a director in transactions with the Corporation.

Clause 17: Conflict of interest

Clause 17 deals with directors' conflict of interest.

Clause 18: Civil liability if director or former director contravenes this Part

Clause 18 provides for a director to be civilly liable if convicted of certain offences under the Bill.

PART 4
CHIEF EXECUTIVE OFFICER

Clause 19: Chief executive officer

Clause 19 provides for the appointment of a chief executive officer on the nomination of the board. The board may nominate one of their number or any other suitable person. The provisions for removal from office and vacation of office are the same as for directors. If the chief executive officer is also a director he or she ceases to be chief executive officer on ceasing to be a director.

PART 5
PERFORMANCE BY THE CORPORATION OF ITS FUNCTIONS

Clause 20: The performance plan

Clause 20 requires the Corporation to prepare a draft performance plan for each financial year. The draft plan must be submitted to the Minister and the superannuation boards and the Corporation must have regard to their comments. This means that the Corporation must give proper consideration to whether it should make any changes in light of the comments but is not bound to make any changes.

Clause 21: Government policy

Clause 21 requires the Corporation to have regard to Government policy set out in a notice or letter from the Minister to the Corporation when preparing a performance plan or carrying out its other functions.

Clause 22: Provision of information and records to Minister

Clause 22 enables the Minister to obtain information and records from the Corporation.

Clause 23: Notification of disclosure to Minister of matter subject to duty of confidence

Where the Corporation discloses confidential information to the Minister it must notify the person to whom it owes a duty of confidentiality in relation to the information.

Clause 24: No breach of duty to report matter to Minister

Clause 24 protects a director when reporting the affairs of the Corporation to the Minister.

Clause 25: Administration of s. 3(3) funds

Clause 25 requires the Treasurer to transfer to the Corporation a superannuation fund held by the Treasurer which is to be administered by the Corporation.

PART 6
ACCOUNTING RECORDS AND AUDIT

Clause 26: Accounts

Clause 26 requires the Corporation to keep accounts and prepare financial statements in relation to its financial affairs.

Clause 27: Internal audits and audit committee

Clause 27 provides for internal auditing by the Corporation.

Clause 28: External audit

Clause 28 provides for external auditing by the Auditor-General.

PART 7
REPORTS

Clause 29: Progress reports in relation to performance plan

Clause 29 requires the Corporation to submit a progress report to the Minister after 31 December in each year outlining its progress in achieving its target for that year.

A report at the end of the financial year as to the Corporation's success in achieving its target is also required. The Corporation must also prepare a report if a factor affecting its achievement of a target has changed or a new factor has arisen.

Clause 30: Annual reports

Clause 30 requires the Corporation to prepare an annual report which must include copies of the audited accounts and financial statements, valuations of the public sector superannuation funds and other relevant information.

PART 8
MISCELLANEOUS

Clause 31: Staff of the Corporation

Clause 31 provides for the staff of the Corporation.

Clause 32: Immunity for directors and employees

Clause 32 protects directors and employees of the Corporation from civil liability for honest acts or omissions.

Clause 33: Delegation

Clause 33 enables the board to delegate its powers or functions. The clause also deals with conflict of interest in relation to a person to whom a power or function has been delegated.

Clause 34: Transactions with executives or associates of executives

Clause 34 provides for transactions between an executive, or an associate of an executive, and the Corporation. It is similar to clause 16 which deals with transactions between a director and the Corporation.

Clause 35: Validity of transactions of Corporation

Clause 35 provides for validity of transactions to which the Corporation is a party.

Clause 36: Power to investigate Corporation's operations

Clause 36 empowers the Minister to appoint the Auditor-General or any other suitable person to investigate the operations or financial position of the Corporation and report to the Minister.

Clause 37: Exemption of Corporation from rates, taxes, etc.

Clause 37 exempts the Corporation from rates, taxes and other imposts. A similar provision applies to the Trust under section 16 of the *Superannuation Act 1988*.

Clause 38: Proceedings for offences

Clause 38 provides for proceedings relating to offences.

Clause 39: Regulations

Clause 39 provides for the making of regulations.

Schedule 1 provides for the vacation of the offices of the members of the Trust on the commencement of the Act.

Schedule 2 makes consequential amendments to other Acts.

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

REAL PROPERTY (WITNESSING AND LAND GRANTS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

SOUTH AUSTRALIAN HOUSING TRUST (WATER RATES) 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 is intended to allow the government to implement the position it has reached on the provision of water to Housing Trust tenants, following recent changes to E&WS water charges for all consumers.

The supply of water is not the business of the Housing Trust. As a landlord, its properties are charged for water by the E&WS in the same way as any other property owner. Like other landlords, the Trust has the option of absorbing the water consumption charges which its tenants incur, (which will cost the Trust approximately $5.84 million in 1995-96) or it can pass on a percentage of the cost of water to tenants.

Successive Governments have chosen to take the latter course.

Under current Housing Trust tenancy arrangements, all tenants receive a water allowance of 136 kilolitres per annum and, in addition, approximately 32 000 rent rebate tenants receive a further 64kl allowance, for which the Trust meets an annual cost of up to $1.8 million.

Low income people renting in the private sector do not enjoy such generous arrangements with landlords. It is difficult to justify, on equity grounds, the continuation of this subsidy to only one sector of the community. Indeed, as the subsidy is in the form of free water at a level of consumption well in excess of household norms, it can be said to be encouraging waste, to the detriment of our environment, as well as being an inefficient use of community support funds.

Existing legal and contractual arrangements with Housing Trust tenants only permit the Trust to recover monies from tenants for 'excess water'. The notion of excess water charges have now been eliminated under the new E&WS charging system. The effect is the Trust cannot now legally charge for any water usage, including what currently is termed 'excess water'. This would mean that public housing tenants would have free water which would be contrary to the intention of the agreements as well as to the principles of water conservation.

To correct this situation it will be necessary to amend the Housing Trust Act. As the Trust is not in a position to carry the $5.8 million total cost of water for its tenants, it is intended to recover water charges from July 1, 1995. Thus, all water consumed from January 1, 1995 after the 1994-1995 second half year water reading will be under the new system, matching the effect on the rest of the community of the E&WS policy.

Under the proposed amendments, all tenants in separately metered properties will, in future, receive the same consideration in respect of their water consumption. The Trust will pay the access charge of $113 relating to their property and the first 136kl consumed by the tenant. Above this level, tenants, whether they are full rent payers or those on rebates, will be required to pay for the water they use. All tenants in separately metered properties will then be treated equally and will have the same incentive to conserve water as their neighbours.

Full rent payers will have no change from the current arrangement, if their water consumption does not increase. They currently pay for water consumption above 136kl and this will remain the case. Rebated rent payers will pay slightly more if they consume more than 136kl as they currently only pay for consumption in excess of 200kl. If a rebated tenant uses 200kl a year they will pay an extra $56.32 or about $1.00 per week.

Within Trust rental stock there are some 21 000 walk-up flats, cottage flats for aged pensioners and other units which are not separately metered. In 1993-94 the average consumption across all these dwellings was 116kl which is within the 136kl allowance provided to separately metered properties. These units have no private gardens but the estates have large common areas that are maintained for the benefit of all occupants by the Trust. Given these facts there is no justification for spending millions of dollars installing separate water meters to these units and flats and consequently these tenants will not be charged for water consumption.

In summary, the change in policy for water usage by Housing Trust tenants provides for greater equity between individual trust tenants as well as between the public and private sectors as a whole.

The details of the proposed charging are set by Regulation rather than the Bill itself, to allow for future changes that may be necessary to reflect changes in water pricing policy. This method is in line with current legislative practice and will ease the transition to new management arrangements for the housing and urban development portfolio that are to be addressed by separate legislation.

These changes will have no effect on any future Housing Trust tenancies, which will be established under new agreements reflecting the policy I have described. It affects only the existing tenancy agreements and brings them into line with the position they were in prior to the E&WS changes, except for the abolition of the additional 64kl allowance to rebated tenants, the reasons for which I have described.

I commend the Bill to the House.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

This clause provides for the short title of the measure.

Clause 2: Commencement

The measure will come into operation on 30 June 1995 (and will therefore relate to water charged from 1 July 1995).

Clause 3: Insertion of s. 30

This provision relates to tenancy agreements that, on the commencement of the provision, provide for the tenants to pay an amount for or towards excess or additional water. Such a provision will be taken to provide (from the relevant date) that rates and charges for water supply are to be borne as agreed after the commencement of the measure or, if an agreement is not made, are to be borne on the basis that the trust will bear the relevant costs up to a limit fixed or determined under the regulations, and the tenant will bear any excess.

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

HOUSING AND URBAN DEVELOPMENT (ADMINISTRATIVE ARRANGEMENTS) 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.

There is a consensus within Government and the community that public enterprises should provide value for money and accountability. This is particularly relevant in the aftermath of the State Bank losses and the legacy of debt the State has inherited. Public enterprises must adapt to current demands to provide services that will be valuable and relevant in the future. This Government takes a whole-of-government approach to the development of State, which

in turn demands a whole-of-portfolio approach to the matters entrusted to this portfolio. This reformist approach to housing has been endorsed by the National Housing Ministers in conference and is being vigorously pursued by the Federal Government.

In contrast to those ideals, the Government has inherited a group of autonomous bodies, some established as long ago as 1936.

Each of these was working to a specific charter. Each was working diligently towards its goals. Each measured its efforts against its charter, using resources at hand, as was seen by it to be appropriate.

The blindspot was a lack of an overall plan of action, of co-ordination between the agencies; of recognition that the agencies were complementary players in the delivery of a complex range of housing and urban development services to the community.

Those delivery agencies were each producing their own product, with more regard for the production than its use. Process became the end rather than the means and a focus on overall outcomes was not clearly apparent.

The Planning Review, instigated by the previous Government, had terms of reference that constrained it to a review of metropolitan strategy and relatively minor revision of the development control legislation.

That Review took it upon itself to criticise the lack of strategic direction at the centre of government, the lack of coordination between the operating agencies and the disjointed mass of often contradictory legislation that controlled the development process.

It proposed a radical new system, in which a clear policy direction would be set by the Premier and Cabinet and published as the Planning Strategy.

That policy would be used as a guide to change the rules for assessment of development proposals as well as the outcomes for Government programs to service and facilitate urban development.

In Opposition, we supported the thrust of these recommendations but we were less pleased with the results of their implementation.

As a result of this, a Cabinet committee was established immediately after the election, which recast the Planning Strategy into a useful and practical form. The strategy was a clear statement of our policies for Metropolitan Adelaide and was applied by the *Development Act* which came into effect on 15 January 1994.

That initiative was followed very quickly by a review of the Country Planning Strategy, which had been ignored by the previous Government. The Country Strategy is being addressed by an interdepartmental taskforce, which for the first time integrates economic, physical and social strategy on a regional basis.

The second main avenue that has been addressed is the actual operation of the *Development Act*. While it promises the benefits of an integrated system, those benefits have yet to be delivered.

The Government will therefore be amending the *Development Act* as a first stage in overcoming some of its shortcomings. We will also work towards a quick and certain system under which one proposal would simply require one application and receive one approval.

That will be a refreshing change from the current web of about 100 Acts of Parliament each controlling independently one aspect or another of development. This current situation gives "red tape" a whole new meaning.

The third main avenue of our concerted efforts to promote economic growth through physical development is in the Government's own services.

You have heard of the proposals to improve effectiveness of basic service delivery, power and water, introduced to this Parliament the Minister for Infrastructure.

Similarly, public transport has been put on a new footing by the Government. There are other initiatives by other Ministers—all, I stress, aiming at the fulfilment of the overall plan which brings me to the subject of this current Bill.

This Bill is to bring together the housing and development functions of the Housing and Urban Development portfolio in a way that is efficient, visible and accountable.

The intention is to have no redundant functions, no duplication, clear responsibilities and to achieve the best result for our limited resources.

The changes proposed are motivated by the need to provide the specialised services of those agencies in a way that contributes to the economic wellbeing of the State and assists in reducing the massive debt that we inherited from our predecessors.

The State Bank demonstrated that a Minister cannot escape responsibility for things under his or her control, no matter how far 'off the balance sheet' the mistakes occurred. This Bill ensures that with responsibility comes accountability. It provides for full ministerial accountability and rationalises roles and hence skills in agencies, reducing duplication and obtaining economies of scale.

This portfolio reorganisation was proposed by the Ministerial Review carried out in early 1994 by consultants Deloitte Touche Tohmatsu and the SA Centre for Economic Studies.

Their reports recommended that the community services provided by the portfolio, the government businesses and the regulatory functions should be separated from each other.

They recognised that this principle needed refinement in light of the desired outcomes, and made specific recommendations based on a study of the individual agencies in the portfolio.

The Consultant's report 'Organisation Structure, Governance and Management Arrangements' was accepted by the Government as the basis of the reorganisation and a team of senior staff given the task of putting it into practice.

The reorganisation was overseen by an Implementation Steering Committee comprised of Board Chairmen of the affected agencies, the Director of the Office of Public Sector Management and the Assistant Crown Solicitor. It was chaired by the Chief Executive Officer of the Department of Housing and Urban Development.

The Housing and Urban Development (Administrative Arrangements) Bill is the legislative vehicle for the reorganisation of the portfolio. It is based on the concept of full accountability and responsibility of the Minister for the activities of the portfolio.

The Bill places the Minister in control of all the Crown assets in his or her portfolio, making that clear by disbanding the current administrative arrangements that lock those assets into agencies established under separate Acts of Parliament.

It enables the Minister to set up, in place of those agencies, new statutory corporations which will hold the relevant assets on behalf of the Crown.

The corporations would be in a position analogous to wholly owned subsidiaries of a conglomerate group. Each corporations would have its own Board, which would be responsible to the Minister for the operations of the corporation.

The functions allotted to each corporation will be gazetted and the criteria for performance of its tasks would be set out in agreements between the Minister and the Board of the corporations.

While it is not necessary to specify it in the Bill, the Department is to include a head office function, which will assist the Minister in setting broad strategy, operational policy and legislative directions as well as overall portfolio budgeting and allocation of resources.

The statutory corporations that would be created or brought under this arrangement at the inception of the legislation are:

South Australian Housing Trust, to manage public housing. It would have two divisions operating individually as businesses:

SAHT—Housing Services, to manage housing services to public and private tenants;

SAHT—Property Manager, to own, maintain and trade in public housing;

South Australian Urban Projects Authority, to develop major projects and realise on surplus real assets;

HomeStart Finance, to provide financial assistance to home buyers.

Others may be envisaged, for example, to undertake a specific project (like the Glenelg foreshore development).

The Bill provides for full accountability and reporting by each corporation, the clear identification of community service obligations and for dividend and tax equivalence payments, in the light of Commission of Audit recommendations.

The Bill repeals the *South Australian Housing Trust Act 1936* and the *South Australian Urban Land Trust Act*. It provides transitional arrangements which, amongst other things, preserve the rights, remuneration and conditions of all employees, whether employed under the *GME Act* or any other industrial agreement or determination. Arrangements for enterprise bargaining will also be available.

The Bill gives the Minister powers to create, modify or disband the statutory corporations. In comparison, the *Public Corporations Act* and its intended successor put these powers in the hands of the Governor.

The powers are put in the hands of the Minister because it is intended to build a strong and cohesive portfolio, with the statutory corporations acting, not as individuals with their own objectives, but as operating parts of an integrated group. The functions of these corporations are closely related, with none of them being truly commercial in nature.

The Government has a clear policy for urban development, published as the Planning Strategy. The activities of the various parts

of the portfolio are aimed, together, to work towards the attainment of that policy. The intention is that they should do so in the most efficient and rational manner, and in a way that opens them to scrutiny, for the Minister, the Government and the people of the State.

The adopted arrangements allow for separate reporting of the operational corporations, with the attendant visibility of performance. However, it stops short of the complexity of quasi-independence and internal trading that has characterised some private sector group structures.

It is expected that both the operating environment and the commercial maturity of the corporations will change over time. It follows that the current structures are not necessarily permanent as they represent a current balance between practicality and administrative ideals. It is intended to further reform the structure of the entities in response to those influences.

For that reason, the Bill confers powers on the Minister to change the structures in response to future circumstances. A relevant example is the forthcoming agreement on national competition policy.

The Bill provides for dividends and tax equivalents to be paid by the statutory corporations, in accordance with Commission of Audit recommendations and in consultation with the Treasurer.

Performance agreements will specify these dividends and tax equivalents as part of overall portfolio budgeting and resource allocation.

All of the statutory corporations will deliver some Community Service obligations and these too will be clearly specified in the performance agreements.

Tax equivalent payments are to be paid direct to the Treasurer by the quasi-commercial corporations, such as HomeStart Finance. Further definition of the trading enterprises will be done through Treasury, in accordance with Federal—State government agreements, when those are finalised.

Dividend payments by the corporations will be approved by the Minister in consultation with the Treasurer and paid to the portfolio account or, if appropriate, to Consolidated Revenue. Capital adequacy and debt-to-asset ratios are to be examined and defined with Treasury involvement and agreement.

The portfolio will agree with Treasury on long term recurrent funding and its implications on the draw of Taxation Equivalents and Dividends to fund community service obligations of the portfolio.

The Bill makes the South Australian Housing Trust directly responsible to the Minister. It changes the current arrangement that the Trust Board, while bound to comply with a direction of the Minister, can estimate the cost of complying with such a direction and the amount, if certified by the Auditor-General, must be paid to the Trust out of moneys to be provided by Parliament. That power has, in the past, proved to be an effective brake on Ministerial control of the Trust.

It has been conclusively demonstrated that Governments cannot escape responsibility for the actions of their agencies, no matter how far those agencies are theoretically removed from Ministerial direction. Hence, accountability must be matched with the responsibility and the agencies, including the Trust, be made directly responsible to the Minister.

The Trust is held in general high regard by its customers and other public housing authorities. It commands a very high proportion of South Australian residential tenancies. It is therefore proposed to retain the external corporate structure and its name. That will provide continuity and retain the goodwill of the Trust.

To accord with the national agreement on public housing, the Trust's operations are split into two divisions which will deal with each other on a supplier-customer basis. They will account separately for their operations to the Board and for the information of the Minister and Treasurer. The Bill will allow for a further degree of corporatisation at a future stage, should it be practical to do so.

The rationale for this change is that changing circumstances have removed the opportunity for the SAHT to operate entrepreneurially and the Community Service moneys distributed by it have amplified and resulted in a substantial debt.

The Bill brings together a number of quasi-autonomous agencies, each of which has a set of existing powers essential to its operations.

In general, the development activities of the existing agencies are to be concentrated in a new South Australian Urban Projects Authority (SAUPA).

This means that the various powers to develop and deal with land, concentrated by the Bill in the hands of the Minister, will be used on his or her behalf principally by SAUPA.

It is Government policy not to compete with private development. SAUPA will carry out Government input to projects which would not, in pure market terms, be viable in their own right. Usually, the Government of the day wants to promote such projects because they are a catalyst to economic growth, like Technology Park and the Airport upgrading, or correct a problem and unlock opportunities, like the Patawalonga or Port Adelaide Centre projects.

SAUPA will not be allowed to initiate projects in its own right, but simply manage them at the direction of the Minister, often at the request of other Ministers. SAUPA will also have the task of realising on surplus assets, many of which require remedial or packaging work to maximise returns on the public capital they represent.

The purpose of this agency is to bring together Government's urban project management skills to:

separate the policy decisions from the operational tasks;
provide maximum transparency of purpose and costs; and
achieve economies of scale by having all urban project management skills in one agency.

It is intended to present a separate Bill to the Parliament to integrate Housing Cooperatives and Associations, within a new South Australian Community and Cooperative Housing Authority (SACCHA). This is necessary to regulate the Associations and to secure the substantial public investment in housing under their control. That Bill will ensure that the operation of SACCHA can be regulated in the same manner as a statutory corporation under this measure.

HomeStart Finance will be re-established as a statutory corporation under this Bill which, by virtue of the transition arrangements, dissolves the existing company. No changes to the operations of HomeStart Finance are contemplated.

It has been determined that the function of providing advice to assist the Minister in:

corporate strategic planning;
resource allocation, budget and funds management;
performance evaluation and management;
policy development; and
inter-agency and government liaison

should be added to the existing functions of the Department, rather than through the creation of a new organisation. This proposal is consistent with the recommendations of the Audit Commission and the Hilmer report. Being an administrative action, it requires no mention in this Bill.

The reforms are aimed towards improving the financial performance of the portfolio. The intention is to progressively eliminate the net draw of the portfolio on the Consolidated Account.

In the 1994-95 financial year establishment costs will be incurred in putting the new arrangements into effect. These will be accommodated within the budget of the portfolio.

Following the intended legislative change, Boards with a maximum membership of six people each are proposed. Individuals of national standing within the business and finance community will be sought for the commercial boards.

These arrangements are consistent with the national approach to public housing reform and urban development initiatives adopted by the Federal Government and other States. South Australia is leading the way in the provision of public housing and the reforms to development and investment area. These new arrangements will underscore and strengthen our position and provide a new flexibility and quickness of response to changing circumstances in the future.

Explanation of Clauses

PART 1
PRELIMINARY

Clause 1: Short title
Clause 2: Commencement
These clauses are formal.

Clause 3: Interpretation
This clause defines various terms used in the proposed Act.

Central to the scheme implemented by the Act are the 'statutory corporations' which are defined to mean bodies corporate established under the Act.

PART 2
THE MINISTER

Clause 4: Ministerial powers
This clause sets out the powers of the Minister under the Act. Subclause (3) provides for the making of proclamations transferring assets, rights or liabilities to the Minister or from the Minister to the Crown or an agent or instrumentality of the Crown.

Clause 5: Functions

The functions of the Minister under the proposed Act include—

- to promote the housing sector and provide public housing, and housing finance or assistance, in accordance with Government policy;
- to initiate, undertake, support and promote the development of land and housing in the State;
- to promote planning systems and facilitate planning and development;
- to ensure that new developments are well-planned and serviced, and to improve the amenity of existing communities;
- to develop and implement strategies to improve housing and urban development;
- to respond to community interest and contribute to informed debate on development within the State;
- to manage property within the Minister's portfolio, and enhance the financial resources of government;
- to promote the effective, fair and efficient allocation of public resources;
- to promote co-operation between the public and private sectors in respect of housing and urban development;
- other necessary or incidental functions.

Clause 6: Delegations

The Minister may delegate powers or functions under the Act.

Clause 7: Advisory committees, etc.

The Minister may form advisory and other committees.

PART 3
STATUTORY CORPORATIONS
DIVISION 1—SAHT

Clause 8: Continuation of SAHT

This clause provides that the South Australian Housing Trust (SAHT) continues and is deemed to be a statutory corporation under the Act.

DIVISION 2—FORMATION
OF STATUTORY CORPORATIONS

Clause 9: Formation of bodies

This clause allows for the formation of statutory corporations or subsidiaries by notice in the *Gazette*.

A notice forming a statutory corporation—

- must name the body;
- must provide for the constitution of the board;
- must specify the body's functions;
- may limit the body's powers;
- may specify procedures that will be followed if the body is to be dissolved;
- may make any other necessary provision.

The clause goes on to provide for variation of the matters specified in the initial notice, dissolution of a statutory corporation and the transfer of assets, rights and liabilities of a body that has been dissolved.

DIVISION 3—MINISTERIAL CONTROL

Clause 10: Ministerial control

A statutory corporation is under the control and direction of the Minister.

DIVISION 4—BOARDS

Clause 11: Appointment of boards of statutory corporations

This clause deals with appointment and removal of a member of the board of a statutory corporation.

Clause 12: Allowances and expenses

A member of a board is entitled to remuneration, allowances and expenses determined by the Minister.

Clause 13: Disclosure of interest

This clause provides for disclosure of personal or pecuniary interests by a member of the board of a statutory corporation and the effect of disclosure or failure to disclose on a contract entered into by the board.

Clause 14: Members' duties of honesty, care and diligence

A member of a board of a statutory corporation will be required to act honestly at all times, and to exercise a reasonable degree of care and diligence in the performance of official functions. It will also be an offence to make improper use of information acquired by a member of the Board through his or her official position.

Clause 15: Validity of acts and immunities of members

A member of the Board will not be personally liable for an honest act or omission in the performance or purported performance of a function or duty under the Act. The immunity will not extend to culpable negligence.

Clause 16: Proceedings

This clause provides for the proceedings of the Board. Each member present at a meeting will have one vote on any question arising for decision.

Clause 17: General management duties of the Board

The Board will have various management duties relating to performance standards and improvements, management structures, and reporting.

DIVISION 5—STAFF, ETC.

Clause 18: Staff, etc.

The Minister will determine the staffing of a statutory corporation after consultation with the CEO and the statutory corporation. The staff will, unless the Minister determines otherwise be appointed and hold office under the *Government Management and Employment Act 1985*.

The statutory corporation may, with approval, engage agents or consultants.

A statutory corporation may make use of services, facilities or staff of a government department, agency or instrumentality.

DIVISION 6—COMMITTEES AND DELEGATIONS

Clause 19: Committees

This clause provides for the establishment of advisory and other committees by the board of a statutory corporation.

Clause 20: Delegations

The board may delegate a function or power conferred on it.

DIVISION 7—OPERATIONAL, PROPERTY
AND FINANCIAL MATTERS

Clause 21: Common seal

A statutory corporation will have a common seal.

Clause 22: Specific powers

This clause sets out various powers of a statutory corporation. These are essentially the powers of a natural person, although the approval of the Minister, or authorisation by a notice under Division 2, is required if the statutory corporation is to deal with shares or securities of another body or borrow money. In the case of borrowing money the Minister must also obtain the concurrence of the Treasurer.

Subclauses (2) and (3) provide that a statutory corporation must not establish a trust or partnership or joint venture or other profit sharing scheme unless—

- the Minister has approved the scheme or arrangement; or
- the other party is a statutory corporation; or
- a notice under Division 2 provides that the prohibition does not apply to the statutory corporation.

Clause 23: Property to be held on behalf of Crown

A statutory corporation holds its property on behalf of the Crown.

Clause 24: Transfer of property, etc.

This clause provides for transfer of assets, rights and liabilities of a statutory corporation to or from the Minister, to another statutory corporation, to the Crown or an agent or instrumentality of the Crown or, in prescribed conditions and circumstances to another person or body (provided that the person or body consents to the transfer).

Clause 25: Securities

A statutory corporation may issue securities, or a mortgage or charge, with the approval of the Minister. Before giving approval, however, the Minister must obtain the concurrence of the Treasurer and a liability incurred with the consent of the Treasurer is guaranteed by the Treasurer.

Clause 26: Tax and other liabilities

This clause is based on section 29 of the *Public Corporations Act 1993* and essentially provides that the Treasurer may require a statutory corporation to pay tax equivalents. The opportunity has been taken to ensure that tax equivalence can be applied to specific divisions of a statutory corporation and that the Treasurer has sufficient power to apply relevant taxation principles without necessarily applying the Commonwealth taxation law strictly. For example, the clause enables the Treasurer to determine an income tax equivalent liability on income measured according to conventional accounting standards where that is considered likely to give a similar result as a strict application of the provisions of the *Income Tax Assessment Act*. In respect of wholesale sales tax equivalents, the provision is intended to enable the tax payable by a corporation on its taxable purchases to be calculated and collected directly from that corporation whereas under Commonwealth taxation law, the tax payable would normally (*i.e.* in the absence of Commonwealth WST exemptions available to State owned entities) be collected from the vendor.

Clause 27: Dividends

This clause is in similar terms to section 30 of the *Public Corporations Act 1993* and allows for the payment of dividends or interim dividends by a statutory corporation that is involved in a commercial operation where the Minister and the Treasurer consider that this is appropriate.

Clause 28: Audit and accounts

The Board will be required to keep proper accounting records and to prepare annual statements of accounts. The accounts will be audited by the Auditor-General on an annual basis.

DIVISION 8—PERFORMANCE AND REPORTING OBLIGATIONS

Clause 29: Objectives

The Minister may, after consultation with a statutory corporation, prepare a performance statement for it. A performance statement will set goals and objectives for the statutory corporation and will be reviewed at least once a year. If the statement sets financial targets the Minister must also consult with the Treasurer.

Clause 30: Provision of information and reports to the Minister

The Minister may require information or reports from a statutory corporation.

Clause 31: Annual report

The Board will be required to prepare an annual report for the Minister. The report will be tabled in Parliament.

PART 4
MISCELLANEOUS

Clause 32: Acquisition of land

A statutory corporation may acquire land with the consent of the Minister in accordance with the *Land Acquisition Act 1969*.

Clause 33: Power to enter land

A person authorised by the Minister may enter land provided that the occupier of the land has been given reasonable notice. It is an offence to hinder a person exercising a power under this section.

Clause 34: Satisfaction of Treasurer's guarantee

A liability of the Treasurer under a guarantee under this Act is to be paid out of the Consolidated Account.

Clause 35: Effect of transfers

This clause makes it clear that the transfer of an asset, right or liability operates despite the provisions of another law and the transfer of a liability from a body discharges that body from the liability.

Clause 36: Registering authorities to note transfer

This clause provides for the registration of transfers effected under the Act where necessary. Subclause (3) provides that the vesting of property by proclamation or notice under the Act is to be exempt from stamp duty.

Clause 37: Offences

A prosecution for an offence may be commenced within three years or, with the approval of the Attorney-General, within five years.

Clause 38: Regulations

The Governor may make regulations for the purposes of the Act.

SCHEDULE 1
Repeal and Amendments

This schedule repeals the *South Australian Housing Trust Act 1936* and the *Urban Land Trust Act 1981* and makes consequential amendments to the *Housing Improvement Act 1940*.

SCHEDULE 2
Transitional Provisions

This schedule contains the transitional arrangements applicable to the measure, including the following:

- the members of the board of the Housing Trust cease to hold office;
- Homestart is dissolved;
- the property, rights, powers, liabilities and obligations of the Housing Trust (except its rights, powers, liabilities and obligations as a landlord), Homestart and the Urban Land Trust vest in the Minister (unless otherwise vested by proclamation);
- the South Australian Housing Trust fund and the South Australian Urban Land Trust Fund vest in the Minister.

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

ADJOURNMENT

At 11.58 p.m. the Council adjourned until Thursday 9 March at 11 a.m.