LEGISLATIVE COUNCIL

Thursday 16 November 1995

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

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Transport (Hon. Diana Laidlaw)—

Environment Protection Authority—Reports for May and June 1995

Response by Minister for Health and Minister for Aboriginal Affairs to Statutory Authority Review Committee's Report on Review of the Electricity Trust of South Australia

By the Minister for the Arts (Hon. Diana Laidlaw)—

Carrick Hill Trust Report, 1994-95.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. CAROLINE SCHAEFER: I bring up the sixth report on amendments to the development plan, formerly supplementary development plans, for the Environment, Resources and Development Committee.

SUPER FLYTE

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to make a ministerial statement on the subject of the report into the grounding of MV *Super Flyte*.

Leave granted.

The Hon. DIANA LAIDLAW: I seek leave to table a copy of a report into the grounding on Wednesday 6 September 1995 of the MV *Super Flyte*, a passenger ferry operated by Kangaroo Island Fast Ferries.

Leave granted.

The Hon. DIANA LAIDLAW: At 1100 hours on 6 September 1995 the office of Marine Safety, Department of Transport, was advised that the *Super Flyte* ferry operated by Kangaroo Island Fast Ferries had grounded on the northern side of Nepean Bay near Beatrice Islets, whilst approaching Kingscote at the end of a voyage from Glenelg.

An inquiry was launched immediately by Marine Safety investigators. The report finds that navigational error, through complacency of the vessel's Master, was a primary cause of the *Super Flyte* running aground on a sand spit. However, the investigators note that the Master's conduct in evacuating passengers and refloating the vessel 'despite his obvious state of distress' had been 'very professional'. They found no evidence of negligence, incompetence or misconduct. The reports states:

> Following a thorough examination of the facts surrounding the incident, a number of wide ranging interviews and the observations of the investigating officer, it is concluded that the grounding of MV *Super Flyte* can be attributed to a navigational error on the part of the Master brought about by a number of factors.

The following factors are identified as direct causes for the error in navigation by the Master:

(a) an over confidence in the level of his familiarity with the route normally followed by the vessel, leading to complacency—sufficient to result in

(b) his failure to use an appropriate chart to regularly plot the vessel's position, thus failing to detect the deviation toward the west from the vessel's intended track, and

(c) his failure to recognise that the vessel was approaching the northern, instead of the intended southern, beacon marking the limits of the Beatrice Islet sand bar.

While the report does not seek to diminish the Master's responsibility to ensure the safe navigation of the vessel by making full and proper use of the navigational aids available to him, it is noted that a number of indirect factors contributed to the incident which may be deemed as mitigating factors—

(a) The vessel is not fitted with an auto pilot.

(b) The only depth sounding device available to the navigator is a component of the Global Positioning System (GPS) which is operable and visible only when the unit is manually switched from GPS mode to depth sounding mode.

(c) The GPS fitted at the time was a simple four track unit which did not have the capability of displaying information on the radar or GPS.

The report recommends—

1. That the Master be severely reprimanded and that the reprimand should be entered into his Master's Certificate of Competency file, where it should remain indefinitely.

2. That the Department of Transport investigate the option of retaining the existing day marks of the Beatrice Islets spit beacons or to re-mark them following claims by the Master that he had difficulty differentiating between the beacons.

In relation to the second recommendation, the report notes:

- the Master would not have had such a difficulty had the vessel not been out of position; and
- that the 'Super Flyte' management see the existing beacons as being entirely adequate, an opinion shared by a number of commercial and recreational boat operators who frequent the area.

I should add that the company itself, Kangaroo Island Fast Ferries, has undertaken to fit an auto pilot and to install an 11 track, not the current 4 track, GPS system. The management of Kangaroo Island Fast Ferries have accepted the investigator's findings and the report's recommendations. They regret the grounding incident and apologise for the inconvenience and distress caused to passengers who travelled on the ferry on 6 September 1995. Also, they have reinforced to me their enthusiasm to serve all South Australians and visitors to the State who wish to visit Kangaroo Island in the future and to provide a premium service that is in the best interests of tourism operators and the general community on Kangaroo Island.

QUESTION TIME

EDS CONTRACT

The Hon. CAROLYN PICKLES: My question is to the Attorney-General. To what extent has the Crown Solicitor's office been involved in preparing or vetting documentation relevant to the contract entered into by the Government with EDS?

The Hon. K.T. GRIFFIN: The Crown Solicitor's office has been quite extensively involved. I think the honourable

member will know that, under the previous Government when the State Bank litigation task force was established, the previous Government, particularly my predecessor, the Hon. Chris Sumner, moved to establish a multi-disciplinary task force, drawing particularly on both the office of the Crown Solicitor and the private profession.

In relation to the State Bank litigation task force, that is a format which I decided to retain because I thought it gave us the best of both worlds. It ensured a continuity of approach from the Crown and oversight of the public policy and public law issues in which the Crown Solicitor had particular expertise, and it also ensured that we brought in some of the best people from the private profession on an 'as needs' basis to deal with some of the more specialist areas. It worked well, because there was a good combination of abilities brought together in that task force.

We then continued that approach, but not with the same personnel, in relation to some of the outsourcing arrangements. In relation to EDS, the Crown Solicitor's office formed the backbone of the legal task force, working in conjunction with the Office of Information Technology and others in Government. We brought into the team both outside legal practitioners from within South Australia as well as legal practitioners from the United States who had particular expertise, and they formed again a very comprehensive group of persons who worked on the legal aspects of the EDS contract. So, there was quite extensive involvement of the Crown Solicitor's office, who had the responsibility for managing the legal resources available in the negotiations and the preparation of the contract, as well as in the due diligence area.

That same pattern has been followed in relation to the SA Water Corporation outsourcing project as it is in relation to industrial affairs. The honourable member would probably remember that there were special provisions in the budget identifying these legal expenses that were required. The Crown Solicitor's office has been involved in all of these and in all stages. The Government has taken the view that it is important from a public policy perspective to ensure that the Crown Solicitor is involved. The Treasurer's instructions under the Public Finance and Audit Act make it quite clear that, if there is to be any outside legal representation sought by most agencies of Government, particularly departments, then it does have to have the approval of the Crown Solicitor. So, as I have said, there has been quite extensive involvement of the Crown Solicitor and his office. The former Crown Solicitor, Brad Selway, now Solicitor-General, Mike Walter, the acting Crown Solicitor, previously Deputy Crown Solicitor, and others have all been involved in a variety of those projects—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: I cannot tell you off the top of my head. In relation to EDS, Mr Trenowden was one of those we brought in from outside. We had Shaw Pittman, the Washington legal firm, and particularly Mr Trevor Nagle, who is South Australian but now works I think in partnership with Shaw Pittman in Washington and who is very highly regarded as having extensive experience in dealing with outsourcing contracts. We recognised, when we moved into this area, that we did need to have some international experience, and we brought that to bear in the whole of the approach to the EDS outsourcing contract.

I repeat: I think the structure for providing legal advice to the Government, to the Crown, has been a particularly useful one. I also repeat: it was a structure which was established by the previous Government at least in relation to the State Bank litigation task force, but I would suspect in relation to a number of other projects where, from time to time, outside legal practitioners were brought in to work as part of the team with the Crown Solicitor's office on important projects that affected Government.

If the honourable member wants me to go back through the records to identify those occasions on which it occurred under the previous Government I will be happy to do so, but there is nothing uncommon about it. The Crown Solicitor's office has a very high reputation, both in this State and across Australia, and the way in which we have approached this achieves the best of both worlds for the Government and for the community, and is probably the best way that these sorts of legal tasks have been dealt with throughout Australia, whether at State or at Federal level.

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before also asking the Attorney-General a question about the EDS deal.

Leave granted.

The Hon. R.R. ROBERTS: In 1989 the State of Florida in the United States of America entered into a contract with EDS for a computer program to be installed to run the health and welfare payment system in that State. With the contract, EDS signed a guarantee to protect Florida in the event of default or poor performance by EDS under the contract. Pursuant to the terms of the guarantee, EDS agreed to 'guarantee all performances, obligations and liabilities of EDS pursuant to the Florida agreement'.

The guarantee unambiguously assures prompt and full satisfaction for the recipient of the guarantee. It states that, in the event of default, failure to perform the contract or improper performance by EDS,'the guarantor agrees to pay on demand, either oral or written, any and all sums due'. Further, EDS as the guarantor promised in the guarantee document that 'the guarantor now has no defence whatsoever to any action, suit or proceeding at law, or otherwise, that may be instituted on this guarantee'. However, as far as Florida was concerned, things began to go wrong from the beginning and litigation ensued. Litigation has been going on for years and is far from over. Is the Attorney-General satisfied that the guarantee provided to the Government by EDS is at least as effective and beneficial to the State of South Australia as the guarantee provided by EDS to the State of Florida?

The Hon. K.T. GRIFFIN: Part of the problem with the honourable member's approach is that it makes no allowances for the differences in drafting or the differences in the legal system, and also the differences in culture between what might happen in the United States and what might happen in Australia. The honourable member will know surely, from reading newspapers alone, that in the United States a culture of litigation permeates not only corporate America but also the private citizenry. In those circumstances, one can expect that everything will be litigated. Of course, the very significant difference between the United States and Australia is that in the United States there are contingency fees that the legal profession is entitled to negotiate, which relate to a percentage of the judgment that might be awarded to a particular litigant.

In those circumstances there is a significant measure of attraction for the legal profession both to drum up business and to pursue cases as far as it is possible to pursue them, because ultimately the pot of gold may become a reality. That

is why one reads stories about ambulance chasers and the card from the lawyer out to the person who has been injured in a motor vehicle accident. So, there is a different culture in the United States. There is also a different legal framework. Guarantees are notoriously difficult to administer at times in Australia. Innumerable cases are taken by parties who may wish to avoid or to enforce a guarantee, and the court cases are littered with examples where the law relating to guarantees has been refined or developed, or where some loophole perhaps has been plugged.

In relation to the law relating to guarantees, one has to understand that the courts generally try to construe the guarantees quite strictly in the interests of the person giving the guarantee rather than the person who is the beneficiary of the guarantee. In respect of the State of Florida, the honourable member must surely—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: The Leader of the Opposition says that someone is not very happy with what is happening in Florida. The honourable member's Leader in another place has selectively quoted from information provided by the Florida Attorney-General, who is currently running for office. The material which I understand has been forwarded is very selective and highlights only those parts of the arbitration decision which are favourable to the State of Florida and not those which are detrimental to that State. The decision of the arbitrator (and I understand that it was an arbitration and not a formal court case) did make both some complimentary remarks as well as some unflattering remarks about all parties involved in the process.

The interesting point is that he decided that the State of Florida owed EDS $US49.2 million, which is $A65 million. In about October the State of Florida initiated its own proceedings against EDS. It really is premature to be debating—although it is open to debate—what will be the outcome of that litigation. It may be that it is not resolved in Florida for three, four, five or six years. As I understand it, EDS refutes the allegations made in the claim by the State of Florida which will undoubtedly meander through the legal system in the United States to some conclusion if the parties do not settle it beforehand.

In respect of the EDS and the State of Florida cases, whilst I know that the Opposition is anxious to try to draw some analogy between what happened there and what happened here, the fact of the matter is that it is quite a different jurisdiction and environment from that which applies in South Australia. In this State in respect of EDS and the negotiations with the State Government, I have indicated to the Leader of the Opposition in this place that we had an extensive team, particularly of members of the legal profession, working on this with international experience through Shaw Pittman and Mr Trevor Nagel, who worked day and night, week in and week out, for a very long period of time endeavouring to draw the tightest possible contract that could subsequently be agreed.

The information that I have from the Crown Solicitor is that we have achieved what we believe to be a very tight contract and a very tight guarantee. That is all that I can say in relation to it. You cannot take it any further than that. If the honourable member wants absolute or cast-iron guarantees or whatever, he is not living in the real world. All that I can say is that we have a team providing what we regard as the best—

Members interjecting:

The Hon. K.T. GRIFFIN: Well, all that I can say is that we have a team of people who we believe have given us the best possible advice. I have not been part of the negotiating team; I have had reports presented to me from time to time. The Hon. Anne Levy has had some experience as a Minister and she would know that you try to keep a handle on everything that is happening, and I try to read most of the documentation, if not all of it, but it is impossible to do that and to give the sort of cast-iron guarantee that the honourable member seems to want.

All that I can say is that, on the advice that we have received from the team that has been working on the EDS contract, we believe that we have a very tight arrangement—a contractual deal and guarantee. That is as far as anyone can take it. Members who have had some business experience will know—the Hon. Terry Cameron will know—that that is as far as one can take it. I suspect that even those involved in the union movement will understand that that is the best that one can do. In those circumstances, I do not think that I can take the issue further. I see notes passing across the front bench on the other side, so there might be another question, which I will be happy to endeavour to answer.

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General a question in relation to the EDS contract.

Members interjecting:

The PRESIDENT: Order!

Leave granted.

The Hon. T.G. ROBERTS: The Attorney-General was right in anticipating a further question because the interest is such in the South Australian community that they require answers to some of the questions that have been raised, and they have a lot of respect for the Attorney-General's position and in relation to making assessments as to how the negotiations are continuing.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: A previous question today referred to the drawn-out litigation between EDS and the State of Florida, and the Attorney-General mentioned some of the problems associated with it and indicated that to make an assessment at this stage would be premature. On 30 October 1995, when questioned by a reporter about the litigation referred to, the Premier did not think it was premature to make a statement in relation to the position that was developing. He stated publicly that he had looked at the detail of the case when he was in America, saying, 'It would appear in fact that the court case is likely to favour EDS rather than the State of Florida.' Does the Attorney-General believe that the Premier's assessment is wrong and should not have been made and does he believe that there are any lessons to be learnt from the Attorney-General's not being on the negotiating committee?

The Hon. K.T. GRIFFIN: I do not presume—

The Hon. T.G. Cameron: We have found his Achilles heel.

The Hon. K.T. GRIFFIN: No.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: I do not believe that the Premier's assessment is wrong. The Premier obviously made a judgment about the way in which he feels that the issue may be resolved in the United States. He is entitled to make that judgment. The Hon. Ron Roberts made judgments about it, too. People are entitled to make those judgments.

The Hon. R.R. Roberts: I asked what your judgment was.

The Hon. K.T. GRIFFIN: You can ask me whatever you like. Do you want another question? I am happy to answer it.

The Hon. Anne Levy: There is no debating it.

The Hon. K.T. GRIFFIN: I am not debating. I am trying to put on the record in as calm and objective a way as possible what the facts are.

Members interjecting:

The Hon. K.T. GRIFFIN: The Premier is quite rational and he is showing real leadership. In fact—

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: I refute the statement made by the Hon. Terry Roberts that there is a great deal of interest in the South Australian community about the EDS contract in the sense that they are interested in how it was all developed and what might or might not be there. The fact is that the South Australian community suffered under Labor for 12 years, and Labor got no major contracts, it did no major outsourcing, and it achieved no major efficiencies. We were elected in 1993 by a landslide because the people of South Australia wanted a change of direction. We are giving them a change of direction. We are providing better value for money, for the taxpayer's dollar. The last thing—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: Well, the Auditor-General did say that: he said that we were—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: If you want to debate that, we will take that up later. The Hon. Michael Elliott obviously does not—

The PRESIDENT: Order! There is far too much side play. The Minister.

The Hon. K.T. GRIFFIN: The Hon. Michael Elliott obviously does not bother to read the whole of the Auditor-General's Report and interpret it in its proper context. It is as simple as that. But, he can argue about that later. The main thing is that in the context of both the EDS outsourcing and the SA Water contract we are endeavouring to provide South Australians with a new direction and with better value for the money which they pay to Government.

One of the things that the previous Government forgot was that everything it spent came from the taxpayers of South Australia. It was not the Government's money: it is the taxpayers' money. What we are endeavouring to do in this Government is set a new scene in South Australia which provides attraction for business to come to this State, for jobs to be created and for South Australians to prosper. That was the essence also of the EDS negotiations.

The previous Government, through Mr Mike Rann, had endeavoured to try to get up an arrangement with EDS through the previous Cabinet but failed on, I think, two occasions. So, he was very supportive of EDS becoming very much more involved, but he was not successful in doing so. It was quite obvious, when we came to government, that computing and wordprocessing was all over the place. Within particular agencies of Government there was some good development, but there was no coordination of it. So we worked together to endeavour to establish a coordinated and coherent approach to data processing. We believe that that is what has been achieved. Members can make criticisms of it if they want to, but do not detract from the advantages which it will bring to South Australia both in coordination and better value for taxpayers' money and also the economic development benefits which will flow from it.

Regarding the Attorney-General's being on the negotiating committee, as members opposite know, the fact is that Ministers cannot be on every committee of Government and we rely very much on our officers. We put competent officers on negotiating committees. We give the best possible opportunities and resources to them to enable them to do the job well, and we rely on their ability to deal with the nitty gritty. As Ministers, we obtain from within our areas of respective responsibility reports on where this is all going, and the finger is closer to the action in some instances than in others. In this particular case, I had no concern to be on yet another committee, and I do not believe that there would have been any improvement to the process if I had been on it.

PATAWALONGA

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Housing, Urban Development and Local Government Relations, a question about the Patawalonga development.

Leave granted.

The Hon. M.J. ELLIOTT: On 27 July I raised questions about development plans for the Patawalonga during debate on amendments to the Development Act. At that stage I stated that many people did not trust the development process because they felt that much of it was going on behind the scenes, to which they were not a party. They felt that information was being withheld and that the processes in which they were involved were not transparent.

An honourable member: Who is that?

The Hon. M.J. ELLIOTT: The public. I said that the Patawalonga development was a classic case—

Members interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: —with the decision on a new mouth of the Sturt Creek being decided a long time ago. What is more worrying is that it had been decided for reasons which had not yet been made public. I said at that stage that, if we succeed in cleaning up the Sturt Creek, uncontaminated water should be able to flow out to sea via the Patawalonga without any problems. I asked how, if we did not succeed in cleaning it up, we could justify sending it directly out to sea and said that I could not see how approval would be granted. I also said I must assume that, if a new mouth is to go out, we would run clean water out so that we would have to look after not only the mouth at the Patawalonga but also a second opening. Why would we want the extra problem? I also said that I understood there was talk of putting a few houses along the side of this outlet. Also, I understand that for some years there have been plans in the department for a marina or canal-type estate in the West Beach Trust land areas. If so, the reason for wanting an extra mouth makes all the sense in the world.

I informed the Chamber of this in July and said that I did not know whether the Minister was aware of these proposals, but I knew then that the plans existed and who had drawn them up. I was keen to know whether this was a Sir Humphrey situation because I knew that some key bureaucrats had been involved in these plans for many years. In a letter dated the following day—because the day on which I asked the questions was the last day of that session of Parliament—the Minister replied to my question and stated:

> I am not aware of any plans for a marina to be included as part of these facilities.

I restate that I do know the names of people who drew up those plans and they did exist in the Minister's department. Despite the Government's continuing to insist that a new mouth for the Sturt Creek is only an option, I know for a fact that the bureaucrats have decided that it is the only option, making a total farce of the whole public consultation and environmental assessment process. My questions to the Minister are:

1. What knowledge does the Minister now have of any other development associated with the new mouth of the Sturt—three months after I asked the initial question?

2. If the Minister still knows nothing, what attempts has he made in the past three months to find out?

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

RABBITS

The Hon. T. CROTHERS: I seek leave to make a precied statement before asking the Minister for Transport, representing the Minister for Health, questions about the introduction of the rabbit calicivirus disease.

Leave granted.

The Hon. T. CROTHERS: Several weeks ago I held a conversation with the Minister for Health on the introduction of the calicivirus disease into South Australia, during which I outlined to him my concerns as a layperson in respect of the virus. I then told him that I would probably ask some questions of him on the matter at the first opportunity. I explained to him what I had in mind and, in fairness to the Minister for Health, he encouraged me to do so, whilst not agreeing with my argument.

In recent times we have been told that the over use of antibiotics in our society has led to many complaints and illnesses which formerly responded to antibiotic treatment becoming even more difficult to treat. We have witnessed the emergence of new strains of known illnesses of which the common flu is the best known example. Still other medical ailments such as malaria and tuberculosis have re-emerged as life threatening entities in more virulent forms, in spite of the fact that it was the general medical view that both those complaints, along with others, had been effectively dealt with as scourges of our society: their race had been run.

But, in addition to all that, in recent times we have witnessed the emergence of other viruses which are life threatening. The problem with that is that our medical scientists do not understand whence they came. The HIV virus, the E. virus in Queensland, which recently took the life a prominent race horse trainer, and the *eboli* virus, which so recently led to some tragic deaths in Africa and which until now has been confined to certain areas of the African continent, are but three of the best examples of what I am talking about. Certainly, the HIV virus can apparently mutate at will so as to defy any form of present day treatment. There are many other examples that one could cite.

I realise that Australia's rabbit population does enormous damage in our crop and pastoral areas. A figure of $300 million damage per year is that which is generally given for the annual damage to Australia's farm products, although I noticed in yesterday's *Advertiser* that there is some evidence to suggest that the damage could even be as high as $600 million per annum. However, sometimes the cure can be worse than the complaint. So, members can imagine then, when I saw an Australian scientist of some prominence raise the question of the possibility of the calicivirus disease being able to mutate so as to affect members of the human race, or even other animals that are raised as domestic livestock in Australia, I was even more greatly alarmed.

The calicivirus virus first made its appearance in China some 11 years ago and, since that time, it has, where applied, devastated rabbit populations both in Asia and Europe. It has been pointed out to me that 11 years is not a very long period of time in the life of a virus so as to bottom out the full capacity and impact of such an entity on humanity as a whole. My questions to the Minister for Health—and I again take this opportunity to thank him for his encouragement—are as follows:

1. At the next meeting of Health Ministers, will he take the opportunity to raise the whole question of this alarming trend worldwide for viruses to mutate? I backdrop that with the fact that some HIV researchers believe that that virus originated in animals and then was able to adopt itself so as to be able to attack human beings.

2. Is any research being done anywhere in respect of the ever-apparent increase in the ability of viral mutation?

3.If there is no research, or indeed limited research, being done here in Australia on the subject matter, will the Minister push for increased research funding from the Federal Government in respect of the whole of this matter?

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

RAPE

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Attorney-General a question about rape laws.

Leave granted.

The Hon. BERNICE PFITZNER: The issue of rape laws and how they are administered has generated some concern in the community recently. For instance, a great deal of publicity has followed a case in the District Court in which the judge instructed the jury to return a verdict of 'not guilty' after he found there was insufficient evidence on the issue of consent. Only last week the Women's Electoral Lobby of South Australia issued a press release about the matter, and a representative went on talkback radio declaring that only 4 per cent of rape prosecutions are successful. If this is true, current community concerns may be justified. I therefore ask the following questions of the Attorney-General:

1. What does the law in this State say about rape?
2. How often are offenders prosecuted?
3. Does the Government have any plans for reform?

The Hon. K.T. GRIFFIN: We dealt with the issue of consent, or lack of consent, when a question was asked on this matter recently in the public arena and also in this Chamber a couple of weeks ago. However, it needs to be made clear that, although it was suggested that there was some difference between what is or is not consent between the law in South Australia and Victoria, the fact is that our law is no different from that in Victoria. Lack of consent means just that: 'No,' or no consent.

For the purposes of the criminal law, a person who has sexual intercourse with another person without their consent (and that is the emphasis—without their consent—it does not have to be 'No': it can be no consent) is guilty of rape, and the maximum penalty is life imprisonment. There is no difference in that concept between what happens here and

what is the law in places like Victoria. I have some figures in relation to rape prosecutions which took into account the number of reports to police. That can be somewhat misleading, because ultimately it depends on what matters finally go to court. About 20 per cent of rape prosecutions are successful, I am told. Last year there were 97 charges in which the major charge was rape. Of these, 20 offenders were found guilty as charged; 16 were found guilty of another or lesser offence, for example, unlawful sexual intercourse; 18 were acquitted (and I think they were largely by juries); 41 were discharged and there were two other outcomes. Sixteen offenders were imprisoned, and the average sentence was 6.6 years. The average non-parole period was four years and the remainder of those found guilty received a suspended sentence. Members will recall that the non-parole period relates to a period before which a person may not be released, so there is nothing off the non-parole period for so-called good behaviour. That is dealt with after the non-parole period has been served.

Several other issues were raised at the time, and a press release from the Women's Rape Reform Group last week called for the education of lawyers and judges. It is important to recognise that there is education of judges and lawyers. Last week or the week before, an article in the *Advertiser* made specific reference to some of the initiatives that were being taken. That education was specifically in relation to issues of gender and also about the way in which the system applies to women and others who might be appearing either as defendants or witnesses for the prosecution.

Members interjecting:

The Hon. K.T. GRIFFIN: Maybe not enough go, but the fact is that some judges are participating, and it is important to recognise that that is occurring. Another important thing is that Supreme Court Justices Lander and Nyland are both involved in programs to educate judges and other members of the judiciary about a whole range of issues, not just this one. Another important thing which I mentioned on one occasion was that former Chief Justice Len King has now been appointed an auxiliary judge and has been commissioned by the present Chief Justice to prepare a set of standard summings up for trial judges in the criminal jurisdiction. Standard summings up have been used over a long period of time, but with judges picking the appropriate summings up which they wished. This time it is a coherent review of all summings up so that they will be available to judges for particular cases.

Another point is that the Women's Rape Reform Group had a meeting last week, and I am told that two prosecutors from the office of the DPP attended the meeting and endeavoured to work through some of the issues about the way in which trials, and particularly trials relating to sexual assault matters, are dealt with. I think that was particularly helpful to those who were at that meeting—or at least that is the information I am receiving. Some suggestions were made about ways in which they may be able to help develop some different positions in relation to the way in which these matters are dealt with. I did say also that if this group or any other group has some submissions to make in relation to reform of the law I will always look at those conscientiously.

The only other point that has been raised is a question about whether it is time for a review of what is happening with respect to sexual assault. The Office of Crime Statistics has given me an overview of what might be undertaken, remembering that there was a review by the Office of Crime Statistics into sexual offences between 1980 and 1981. That office suggested that it may be time to look again at what is happening with respect to the process which deals with those who are charged with sexual assault and to victims. We have not yet developed that extensively, but initially it would appear that we would need a dedicated research officer for between six months and one year. Of course, that has significant resourcing implications, but we may be able to find some means by which we get some external funding if we decide to proceed with such a study, updating particularly or taking a different course from the study by that office between 1980 and 1981. That is a matter which I am considering further, particularly in light of the costs.

The Hon. R.D. LAWSON: As a supplementary question, Mr President: in the light of the Attorney's last answer concerning rape statistics, the recently released report of the Office of Crime Statistics for 1994 indicates that in that year 90 persons were charged with rape in South Australia; 18 were found guilty either on their own plea or by verdict; 15 were found guilty of a lesser offence; 16 were acquitted and 40 were discharged on *nolle prosequis*. Is the Attorney able to give some indication to the Council about the apparently high number of *nolle prosequis* entered in relation to rape charges, and whether any trend has developed over the years concerning *nolle prosequis* in rape cases?

The Hon. K.T. GRIFFIN: I do not have that information, but I am happy to endeavour to obtain it. Probably no single reason flows through the *nolle prosequis*. It may be that there is lack of evidence or that the prosecution witnesses do not come up to proof, or there may be other reasons. It is important to recognise that there is now a committal unit dedicated to reviewing all cases before they get even to the committal stage and also to deal with cases in some respects when they come to trial. So, before persons are charged, one should see a greater number being actually identified as those which should not go to trial by reason of some inadequacy in the evidence or the wrong charges being laid. That will tighten up on the figures. More cases will actually be heard; because of that approach I would suspect fewer cases where there were *nolle prosequis*.

The figures I have given are the correct ones, although I will have them checked. They show that there were 97 cases in which the major charge was rape; 20 offenders were found guilty as charged; 16 were found guilty of another or lesser offence, perhaps unlawful sexual intercourse; 18 were acquitted; 41 were discharged; and there were two other outcomes. The figures the honourable member has quoted are in that ball park, but the information I have gives more precise figures for 1994. With respect to the *nolle prosequis* I will endeavour to bring back some further information about that to assist members.

MUSIC EDUCATION

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about music education.

Leave granted.

The Hon. P. HOLLOWAY: In the last budget the Minister announced that 23.9 music teacher salaries would be withdrawn from the education system in 1996, which is a reduction of about 25 per cent in the number of music teachers. When these cuts were first assessed by music schools it was estimated that the number of instrumental lessons available would be dramatically reduced. For example, at Marryatville High School the reduction would

have been from 160 to just 11. After this information became available, the Minister's department established a working party to try to minimise the compact of the cuts on students.

Music teachers have expressed their concern to me that, even if the cuts to instrumental lessons are considerably reduced from these early estimates, the numbers of students studying musical instruments will greatly reduce at the year 8 and year 9 levels. As SACE music studies are instrument based, these teachers fear this will ultimately lead to a slashing in the number of SACE music students over the next few years. My questions are:

1. Why did the Minister establish his working party after the size of the cuts to music staff was determined and not before?

2. Can he now say what cuts in the number of instrumental lessons at each of the specialist music high schools will now occur in 1996 and, if he cannot provide this information, why not?

3. Did he consider the impact of the cuts to music staff on the long term future of the SACE music program? If so, what impact does he expect his cuts will have in two or three years' time? If he did not consider the impact, will he say on what basis he determined the number of staff—that is the 23.9 positions—to be cut?

The Hon. R.I. LUCAS: One of the principles guiding the distribution of the 80 remaining salaries is that the position of SACE music students will be protected. Contrary to the claims being made by the Institute of Teachers and others who may have spoken to the Hon. Mr Holloway, the position of SACE music students is to be protected in the distribution of the 80 remaining positions.

Members interjecting:

The Hon. R.I. LUCAS: We still have 80 instrumental music positions and four special interest music schools. There will continue to be a quality music program offered to those, and it is a small number of students who continue with their music studies through to year 11 and year 12. In relation to the special interest music school provision, there was never any prospect that the number of instrumental music lessons at any of the special interest music schools was going to be dropped from 168 to 11, as claimed by the Hon. Mr Holloway. In relation to some of the bigger instrumental music schools, the lessons are dropping from about 168 to about 115 or 120 or that order—I do not have the exact number with me.

It is fair to say that at one of our special interest music schools, for example, 25 per cent of the lessons are actually one on one, a class of one student being provided at that school. As I indicated in replying to a number of previous questions on this issue, it may well be that the restrictions we talk about will mean that we cannot maintain the number of individual music lessons with one student in a class for particular programs. So, we may well require an instrumental music teacher to have two or three students in the class instead of one. In the ideal world, with unlimited amounts of taxpayer money, we could have every student in the State having an individual teacher for an individual lesson, but the taxpayers of South Australia do not have that amount of funding to provide that level of service for everybody within our schools. We cannot continue—

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: In private schools, parents pay for it.

Members interjecting:

The Hon. R.I. LUCAS: The Hon. Ms Pickles asked me what happens in private schools. In non-government schools, you pay your fee level—

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: No, we are continuing to provide—

Members interjecting:

The Hon. R.I. LUCAS: No, the Hon. Ms Pickles asked what happens in non-government schools. What happens in non-government schools is that you pay your $2 000 or $7 000 or whatever in terms of fee income, and then pay your instrumental music tuition fee on top of that.

Members interjecting:

The Hon. R.I. LUCAS: No, the Government and the taxpayers are continuing to provide a free service to the parents and the students—

Members interjecting:

The Hon. R.I. LUCAS: We will be requiring that on occasions some teachers who have been teaching one student will have to teach two students, or some teachers who have been teaching two students might have to teach three students at a time.

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: That is the truth. No-one is denying it. I said right at the outset—

Members interjecting:

The Hon. R.I. LUCAS: No, I said right from the outset that you cannot say anything other than we are reducing the number of instrumental music teachers within our Government schools and that there will have to be some restriction on the level of provision of the instrumental music program. There is no surprise about that.

I indicated right from the word go that there would have to be some restriction of the programs being offered in instrumental music within our schools. It was not a decision I enjoyed taking as Minister, but it was one of those painful decisions that we in Government have had to take. There is no surprise there. What we have indicated—and it is not a justification, but is a statement of fact—is that there will have to be teachers who teach two students instead of one, or three students instead of two, and we do not believe that that is too much to expect in terms of instrumental music teaching or instruction to require of some teachers to teach two students instead of one student, or some of those changes.

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order! If the honourable member on my left wants to ask a supplementary question, I suggest he get up and ask one, but he should stop interjecting.

The Hon. Anne Levy interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: I have answered the honourable member's question in relation to the reductions. I believe the most recent working party estimates are that it might be reduced to the order of 110 to 120 instrumental music lessons, and that will mean that for some of those lessons, instead of having two separate individual lessons, the teacher may have one lesson with two students.

The Hon. Carolyn Pickles: You have said that five times.

The Hon. R.I. LUCAS: Well, he asked the question and I am responding. The honourable member also asked why we established the working party afterwards. I know he has not been a member of executive Government, but the simple decision was that the budget decision was taken and, once the budget decision has been taken, it is then a question of establishing how we can allocate those salaries amongst the

700 schools. If we were to go out and consult the 700 schools and their representatives first, I suspect the information might get out before we released our budget decision.

The Hon. T.G. ROBERTS: As a supplementary question, is it the Government's intention to encourage or discourage music to be taken up by students in this State?

The Hon. R.I. LUCAS: This Government is committed to encouraging students to continue with music studies as a part of a quality education program. It is a part of the arts profile and statement, one of the eight key learning areas. It is an essential and required part of the curriculum. It is important to note that music is not just about instrumental music. Music is a required part of all students' programs. Instrumental music is an option taken up by a small group of students who decide that that is a particular interest for them. Music remains a required part of the curriculum program for all students in our schools; instrumental music remains an option chosen by a number of students who have a particular interest and expertise in the area.

COFFIN BAY AQUACULTURE

In reply to **Hon. T.G. ROBERTS** (12 October).

The Hon. DIANA LAIDLAW: The Minister for Primary Industries has provided the following information.

1. Yes SEMP will continue for the full five years, funding will be resumed to SARDI to prepare, analyse and report on all existing data. SARDI will have an opportunity to access the available funding to carry out the program, as will other research institutions.

2. The South Australian Research and Development Institute (SARDI) will provide Primary Industries South Australia with an outline for a comprehensive Shellfish Environmental Monitoring Program (SEMP). It is anticipated that the revised SEMP will concentrate its efforts in areas that are identified as a consequence of the initial program. Whether or not wetlands will be part of the revised SEMP is dependent on the outcomes of the review. As part of the review of SEMP the draft revised program will be provided to the Aquaculture Committee of the Development Assessment Commission for comment by all Government, industry and conservation stakeholders to ensure it addresses concerns of all parties.

PARKING BAYS

In reply to **Hon. ANNE LEVY** (11 October).

The Hon. DIANA LAIDLAW: The Minister for Housing, Urban Development and Local Government Relations has provided the following information.

In relation to reserving parking bays for people with prams and pushers, the Minister for Housing, Urban Development and Local Government Relations has been informed that the arrangement in Queensland is an unregulated customer service provided by large shopping centre companies such as Westfield. Westfield also provide an identical service at their Adelaide stores in common with one or more other large shopping complexes such as Grove Shopping Village, Wynn Vale.

The Minister for Housing, Urban Development and Local Government Relations has now written to the Building Owners and Managers Association, inviting its co-operation in promoting this service to customers. The Minister has also written to the Local Government Association asking that Councils, such as Adelaide City Council, which own car parks, give the matter similar consideration.

BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act about the registration of births, deaths and marriages and related matters. Read a first time.

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

That this Bill be now read a second time.

This Bill repeals the Births, Deaths and Marriages Registration Act 1966 and replaces it with an Act which will continue the system of compulsory civil registration established in South Australia in 1842 but will bring the administration of that system up to date in a number of significant ways. There is no need for the Government to stress the importance of the registration system. It is at the same time an indispensable social record and the source of data which is essential to a wide range of community services and activities. The Bill follows closely the provisions of a model Bill which was developed by the State and Territory registrars of Births, Deaths and Marriages over a period of several years, drafted by the South Australian Parliamentary Counsel and approved by the Standing Committee of Attorneys-General earlier this year.

It is expected that over the next year or so all States and Territories of Australia will enact legislation based on the model, giving a very desirable degree of consistency across all jurisdictions and providing mechanisms to facilitate cooperation between the various registries which have not previously existed. The significant differences between this Bill and the present Act are as follows. The Bill provides for the Minister to enter into agreements with the Ministers of other States and Territories; to provide for registrars to exercise each other's powers and functions; and to establish joint databases and control access to the information they contain. In time, this will enable greatly improved services to people living away from the State or Territory in which their birth or marriage is registered, and coordination of the provision of data to the registrars' corporate customers, including other Government agencies, utilising modern electronic communications facilities while maintaining the privacy, integrity and ownership of the registers.

Still births will be registered in the same manner as live births, bringing South Australia into line with existing practice in all other States and Territories. References to legitimate and illegitimate birth have been removed, consistent with the general body of family law. It will be the joint responsibility of the father and mother of the child, whether lawfully married or not, to provide information necessary for the birth to be registered, unless the registrar sees good and sufficient reason to accept an information statement signed by only one parent. Parentage details can be added to, or corrected on, an existing birth registration by agreement between the parties concerned. It will only be necessary to take the matter to court if a dispute exists. Parents will be able to register their child's birth using any given name or surname they wish, provided only that it is not a prohibited name as defined in clause 4 of the Bill.

The provisions of the present Act, whereby the child's birth must be registered in either the father's surname or the mother's or a combined form of the two, do not cater for the naming practices of a number of communities of non-European origin within our multicultural society. They are clearly discriminatory, and have no place in this Bill. Providing the registrar with details necessary for registering

a death is now the responsibility of the funeral director or other person arranging disposal of the deceased's remains. This has long been the case in practice, but is not consistent with the present Act. Division 4 of part 7 of the Bill contains important provisions requiring the registrar to protect personal privacy as far as practicable in the exercise of his discretion as to who may or may not have access to the registers and under what conditions.

The registrar is also required to maintain a written statement of his access policies, and to provide a copy to any person, on request. Finally, any person who is dissatisfied with the decision of the registrar under the Bill may apply to the Magistrates Court for a review of that decision. The Births, Deaths and Marriages Registration Act has important operational interfaces with the Coroner's Act 1975 and the Cremation Act 1891, and the second and third schedules to the Bill propose necessary consequential amendments to those pieces of legislation. I commend the Bill to members. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

This Bill repeals the *Births, Deaths and Marriages Registration Act 1966* and replaces it with an Act which will continue the system of compulsory civil registration established in South Australia in 1842 but will bring the administration of that system up to date in a number of significant ways.

There is no need for the Government to stress the importance of the registration system. It is at the same time an indispensable social record and the source of data which is essential to a wide range of community services and activities.

The Bill follows closely the provisions of a model bill which was developed by the State and Territory registrars of births, deaths and marriages over a period of several years, drafted by the South Australian Parliamentary Counsel, and approved by the Standing Committee of Attorneys-General earlier this year.

It is expected that, over the next year or so, all States and Territories of Australia will enact legislation based on the model, giving a very desirable degree of consistency across all jurisdictions and providing mechanisms to facilitate co-operation between the various registries which have not previously existed.

The significant differences between this Bill and the present Act are as follows.

The Bill provides for the Minister to enter into agreements with the ministers of other States and Territories, to provide for registrars to exercise each other's powers and functions and to establish joint data bases and control access to the information they contain. In time, this will enable greatly improved services to people living away from the State or Territory in which their birth or marriage is registered, and co-ordination of the provision of data to the registrars' corporate customers, including other government agencies, utilising modern electronic communications facilities while maintaining the privacy, integrity and ownership of the registers.

Still births will be registered in the same manner as live births, bringing South Australia into line with existing practice in all other States and Territories.

References to legitimate and illegitimate birth have been removed, consistent with the general body of family law. It will be the joint responsibility of the father and the mother of the child, whether lawfully married or not, to provide information necessary for the birth to be registered, unless the registrar sees good and sufficient reason to accept an information statement signed by only one parent.

Parentage details can be added to, or corrected on, an existing birth registration by agreement between the parties concerned. It will only be necessary to take the matter to court if a dispute exists.

Parents will be able to register their child's birth using any given name or surname they wish, provided only that it is not a prohibited name as defined in clause 4 of the Bill. The provisions of the present Act, whereby the child's birth must be registered in either the father's surname or the mother's or a combined form of the two, do not cater for the naming practices of a number of communities of non-European origin within our multi-cultural society. They are clearly discriminatory, and have no place in this Bill.

Providing the registrar with details necessary for registering a death is now the responsibility of the funeral director or other person arranging disposal of the deceased's remains. This has long been the case in practice, but is not consistent with the present Act.

Division 4 of Part 7 of the Bill contains important provisions requiring the registrar to protect personal privacy as far as practicable in the exercise of his discretion as to who may or may not have access to the registers and under what conditions. The registrar is also required to maintain a written statement of his access policies, and to provide a copy to any person, on request.

Finally, any person who is dissatisfied with a decision of the registrar under the Bill may apply to the Magistrates Court for a review of that decision.

The *Births, Deaths and Marriages Registration Act* has important operational interfaces with the *Coroners Act 1975* and the *Cremation Act 1891*, and the Second and Third Schedules to the Bill propose necessary consequential amendments to those pieces of legislation.

I commend the Bill to Honourable Members.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Objects of Act

This clause sets out the objects of the Bill.

Clause 4: Definitions

This clause defines certain terms used in the Bill.

PART 2

ADMINISTRATION

DIVISION 1—THE REGISTRAR

Clause 5: Registrar

The Bill is to be administered by the Registrar of Births, Deaths and Marriages (subject to the Minister's control and direction).

Clause 6: Registrar's general functions

This clause outlines the Registrar's general functions under the Bill.

Clause 7: Registrar's staff

This clause provides for the Registrar's staff. A Deputy Registrar is to have the powers and functions of the Registrar but is subject to direction by the Registrar.

Clause 8: Delegation

The Registrar may delegate powers.

DIVISION 2—EXECUTION OF DOCUMENTS

Clause 9: The Registrar's seal

The Registrar has a seal.

Clause 10: Execution of documents

This clause provides for the manner of execution of documents by the Registrar.

DIVISION 3—RECIPROCAL ADMINISTRATIVE ARRANGEMENTS

Clause 11: Reciprocal administrative arrangements

Under this clause the Minister may enter into an arrangement with the Minister responsible for the administration of a corresponding law providing for Registering authorities in each State to exercise each other's powers and functions to the extent authorised by the arrangement. An arrangement may also establish and provide for the use of a data base in which information is recorded for the benefit of all the participants in the arrangement.

PART 3

REGISTRATION OF BIRTHS

DIVISION 1—NOTIFICATION OF BIRTHS

Clause 12: Notification of births

This clause imposes a duty on health care professionals to notify the Registrar of any births they are involved in. Where a hospital is involved in a birth, it is the chief executive officer's responsibility to give the required notice under this clause but, if no hospital is involved, the doctor or midwife responsible for the professional care of the mother at the birth must give the notice. The maximum penalty for failure to give notice is a fine of $1250.

This section also requires that a notice and death certificate be provided to the Registrar where there has been a still-birth. A copy of a death certificate provided under this clause must also be given to the funeral director or other person who will be arranging for the disposal of the remains.

(N.B. a "still-born child" is defined as a child of at least 20 weeks' gestation or, if it cannot be reliably established whether the period of gestation is more or less than 20 weeks, with a body mass of at least 400 grams at birth, that exhibits no sign of respiration or heartbeat, or other sign of life, after birth.)

DIVISION 2—REGISTRATION OF BIRTHS

Clause 13: Cases in which registration of birth is required or authorised

Any birth occurring in the State must be registered in this State and a court of any State or the Commonwealth may direct the registration of a birth.

The birth of a child on a flight or vessel during a journey to a place of disembarkation in the State may be registered under the Act as may the birth of a child outside the Commonwealth, if the child is to become a resident of the State (or in the case of still-births, the child's parents are or are to become residents of the State). In these cases, however, the Registrar must not register the birth if it is registered under a corresponding law in Australia.

Clause 14: How to have the birth of a child registered

A person registers a birth by lodging a "birth registration statement" (to be prescribed in the regulations).

Clause 15: Responsibility to have birth registered

This clause provides that both parents of a child are responsible for having the child's birth registered but the Registrar may accept a birth registration statement from one parent if satisfied that it is not possible for the other parent to join in the application.

In the case of a foundling, the person who has custody is responsible for having the birth registered and, in general, the Registrar may accept a birth registration statement from a person who is not a parent if satisfied that person has knowledge of the relevant facts and the child's parents are unable or unlikely to lodge a birth registration statement.

Clause 16: Obligation to have birth registered

A birth registration statement must be lodged with the Registrar within 60 days after a birth. The maximum penalty for failure to lodge the statement is a fine of $1 250. The Registrar must, however, accept late statements.

Clause 17: Registration

Registration of a birth consists of making an entry in the Register containing the particulars prescribed by the regulations. If necessary, the Registrar may register a birth on the basis of incomplete particulars.

DIVISION 3—ALTERATION OF DETAILS OF BIRTH REGISTRATION

Clause 18: Alteration of details of parentage after registration of birth

The Registrar may add information about a child's parents in the Register on the joint application of both parents or on the application of one parent where the other parent cannot join in the application. The Registrar must add information when directed to do so by a court or when notified of a finding as to parentage by a court (of any State or the Commonwealth).

DIVISION 4—COURT ORDERS RELATING TO REGISTRATION OF BIRTH

Clause 19: Application to Court

This clause specifies that a person may apply to the Magistrates Court for an order relating to the registration of a birth.

Clause 20: Power to direct registration of birth, etc.

This clause provides that if, in the course of any proceedings, a South Australian court finds that a person's birth is not registered or is incompletely or incorrectly registered (whether under South Australian or interstate law) the court may make appropriate directions.

DIVISION 5—CHILD'S NAME

Clause 21: Name of child

A birth registration statement must state the child's name, but the Registrar is empowered to assign a name to a child under this clause if—

- the name proposed is a prohibited name ie. the name is obscene or offensive, or is such that it could not be established by repute or usage (eg. because it is too long, or consists of symbols without phonetic significance) or it resembles an official title or it is otherwise contrary to the public interest; or
- the parents of the child are unable to agree on the child's name.

Clause 22: Dispute about child's name

Either parent of a child may apply to the Magistrates Court for resolution of a dispute about a child's name.

PART 4

CHANGE OF NAME

Clause 23: Change of name by registration

A person's name may be changed by registration under this Part.

Clause 24: Application to register change of adult's name

An adult person who is domiciled or ordinarily resident in the State or whose birth is registered in the State may apply for registration of a change of name.

Clause 25: Application to register change of child's name

The parents of a child who is domiciled or ordinarily resident in the State or whose birth is registered in the State may apply for registration of a change of the child's name.

An application may, however, be made by one parent if he or she is the sole parent named in the registration entry, there is no other surviving parent of the child or the Magistrates Court approves the proposed change of name.

The Magistrates Court may approve a change of name if satisfied that the change is in the child's best interests.

If the parents of a child (for whatever reason) cannot exercise their parental responsibilities, the child's guardian may apply for registration of a change of the child's name.

Clause 26: Child's consent to change of name

A change of a child's name must not be registered unless the child consents to the change or is unable to understand the meaning and implications of the change.

Clause 27: Registration of change of name

Before registering a change of name the Registrar may require evidence of certain matters specified in this clause.

The clause also provides that a change of name under another law or by court order may be registered under this Act and that the Registrar may refuse to register a change of name if the proposed name is prohibited.

Clause 28: Entries to be made in the Register

Registration of a change of name consists of making an entry in the Register containing the particulars prescribed by the regulations. The Registrar may also, if requested, note a change of name in the entry in the Register relating to the person's birth, in which case a birth certificate issued by the Registrar for the person must show the person's name as changed under this Part. There is also provision for requesting an interstate Registrar to similarly note a change where a person's birth is registered in that Registrar's jurisdiction.

Clause 29: Change of name may still be established by repute or usage

This clause specifies that this Part does not prevent a change of name by repute or usage.

PART 5

REGISTRATION OF MARRIAGES

Clause 30: Cases in which registration of marriage is required

Marriages solemnised in the State must be registered under the Act.

Clause 31: How to have marriage registered

A marriage is registered by lodging a certificate under the *Marriage Act 1961* of the Commonwealth or, if the marriage occurred before the commencement of that Act, the evidence of the marriage required by the Registrar.

Clause 32: Registration of marriage

A marriage may be registered by including the marriage certificate or particulars of the marriage in the Register.

PART 6

REGISTRATION OF DEATHS

DIVISION 1—CASES WHERE REGISTRATION OF DEATH IS REQUIRED OR AUTHORISED

Clause 33: Deaths to be registered under this Act

The Registrar must register deaths occurring in the State and deaths that a court or coroner (of any State or the Commonwealth) directs him or her to register.

The Registrar may register a death that has occurred in an aircraft or vessel travelling to a place of disembarkation in the State or the death, outside the Commonwealth, of a person domiciled or ordinarily resident in the State or who leaves property in the State. However, the Registrar is not obliged to register deaths in these categories if they are registered under a corresponding law.

Still-births are not to be registered as deaths under this Part.

DIVISION 2—COURT ORDERS RELATING TO REGISTRATION OF DEATH

Clause 34: Application to Court

This clause specifies that a person may apply to the Magistrates Court for an order relating to the registration of a death.

Clause 35: Power to direct registration of death, etc.

If, in the course of any proceedings, a South Australian court or coroner finds that a person's death is not registered or is incompletely or incorrectly registered (whether under South Australian or interstate law) the court or coroner may make appropriate directions.

DIVISION 3—NOTIFICATION OF DEATHS

Clause 36: Notification of deaths by doctors

This clause provides that doctors must, in certain circumstances, notify the Registrar of deaths and provide the Registrar, and the person who will be disposing of the remains, with a death certificate. The maximum penalty for failure to comply with any part of the section is a fine of $1250.

Clause 37: Notification by coroner

This clause provides for the coroner to give notice of certain matters to the Registrar and provides that the Registrar may register a death even though it is subject to coronial inquiry.

Clause 38: Notification by funeral director, etc.

This clause provides for the Registrar to receive notices relating to the disposal of human remains.

DIVISION 4—REGISTRATION OF DEATH

Clause 39: Registration

Registration of a death consists of making an entry in the Register containing the particulars prescribed by the regulations. If necessary, the Registrar may register a death on the basis of incomplete particulars.

PART 7

THE REGISTER

DIVISION 1—KEEPING THE REGISTER

Clause 40: The Register

The Registrar must maintain the Register, which may be in the form of a computer data base or any other form the Registrar thinks fit. The Register must, however, be indexed so that the information contained in it is reasonably accessible.

DIVISION 2—REGISTRAR'S POWERS OF INQUIRY

Clause 41: Registrar's powers of inquiry

The Registrar may conduct an inquiry to gain information about registrable events and may, by notice, require a person to answer specified questions or to provide other information within a time and in a way specified in the notice. Failure to comply with a notice is an offence punishable by a maximum fine of $1250.

DIVISION 3—CORRECTION OF REGISTER

Clause 42: Correction of Register

The Registrar may correct the Register and must correct it if required by a court.

DIVISION 4—ACCESS TO, AND CERTIFICATION OF, REGISTER ENTRIES

Clause 43: Access to Register

The Registrar may allow a person or organisation that has an adequate reason access to the Register or information extracted from the Register.

In deciding whether an applicant has an adequate reason the Registrar must have regard to the nature of the applicant's interest, the sensitivity of the information, the use to be made of the information and any other relevant factors.

In deciding the conditions on which access or information is to be given, the Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy.

Clause 44: Search of Register

This clause provides that a person may apply to the Registrar for a search of the Register for an entry about a particular registrable event. The applicant must, however, have an adequate reason for wanting the information to which the application relates. In deciding whether an applicant has an adequate reason the Registrar must consider the relationship (if any) between the applicant and the person to whom the information relates, the age and contents of the entry and any other relevant factors.

Clause 45: Protection of privacy

In providing information extracted from the Register, the Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy.

Clause 46: Issue of certificate

This clause provides for the issue of certificates by the Registrar certifying particulars contained in an entry or that no entry was located in the Register about the relevant registrable event.

Clause 47: Access policies

The Registrar must maintain a written statement of the policies on which access to information contained in the Register is to be given or denied and must give a copy of the statement, on request, to any person.

Clause 48: Fees

The regulations may prescribe fees, or a basis for calculating fees, for the various services provided by the Registrar.

The regulations may allow for fees to be fixed by negotiation between the Registrar and the person who asks for the relevant services.

Clause 49: Power to remit fees

The Registrar may remit the whole or part of a fee.

PART 8

GENERAL POWER OF REVIEW

Clause 50: Review

A person may apply to the Magistrates Court for a review of a decision by the Registrar.

PART 9

MISCELLANEOUS

Clause 51: False representation

This clause makes it an offence punishable by a maximum fine of $1250 to knowingly make a false or misleading representation in an application or document under the Act.

Clause 52: Unauthorised access to or interference with Register

This clause provides offences relating to unauthorised access to or interference with the Register. The maximum penalty under the clause is a fine of $10 000 or imprisonment for 2 years.

Clause 53: Falsification of certificate, etc.

This clause provides offences for forging the Registrar's signature or seal ($10 000 or imprisonment for 2 years) and forging or falsifying a certificate or other document under the Act ($10 000 or imprisonment for 2 years).

The clause also gives the Registrar power to impound certain documents.

Clause 54: Immunity from liability

This clause provides for immunity from liability for the Registrar.

Clause 55: Regulations

The Governor may make regulations for the purposes of the Act. Regulations may impose a penalty not exceeding $1250.

SCHEDULE 1

Repeal and Transitional

This schedule repeals the *Births, Deaths and Marriages Registration Act 1966* and provides transitional provisions allowing for the continuation of the Register maintained under that Act and the continuation in office of the Principal Registrar and deputy registrar.

SCHEDULE 2

Amendment of Coroners Act 1975

This schedule makes various consequential amendments to the *Coroners Act 1975*.

SCHEDULE 3

Amendment of Cremation Act 1891

This schedule makes various consequential amendments to the *Cremation Act 1891*.

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

CRIMINAL LAW CONSOLIDATION (MENTAL IMPAIRMENT) AMENDMENT BILL

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Insertion of part 8A.'

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

Page 2, line 6 (Definition of'mental impairment')—Leave out 'disorder' and insert 'disability'.

This is a technical matter that has been drawn to my attention. It deals with the definition of 'mental impairment'. It includes a mental illness or an intellectual disability, or a disability or impairment of the mind resulting from senility. The view that has been put to me is that 'disability' more accurately reflects the impairment than 'disorder' and, in those circumstances, I am happy to accede to the proposal for change. The other issue is whether in respect of the use of the description 'senility' we actually meant a disability or impairment of the mind resulting from the effects of senility or whether some other connotation was intended. Basically, we have endeavoured to use language that has been reflected in the law generally, has been the subject of some interpretation by the courts or may have some common meaning.

'Senility', I suppose, has some common connotation. It probably means more precisely some disability or impairment of the mind resulting from advancing age, but even that is

selective. The principal object is to ensure that there is broad coverage for that particular disability or impairment in the context of this legislation, which is designed to address issues about the fitness to plead of persons who are accused before criminal courts, and also relating to the old defence of insanity which, of course, is particular to the occasion when the offence actually occurred.

The Hon. BERNICE PFITZNER: I find the definitions not only of 'mental impairment' but also of 'mental illness' vague and confusing. Possibly the difficulty is that these terms are used here in the legal sense rather than in the sense to which I have been used, namely, a medical sense. In particular, 'mental illness' means pathological infirmity. The footnote states:

> a condition that results from the reaction of a healthy mind to extraordinary external stimuli is not a mental illness, although such a condition may be evidence of mental illness if it involves some abnormality.

I construe that mental illness here therefore means that it should be of a structural nature. I differentiate a structural nature as opposed to a functional nature of mental ability. I therefore find it rather vague that the term for mental illness would clarify a structural defect. 'Pathological infirmity' to me is vague and open-ended. I wondered whether the term the Attorney-General ought to look at was 'pathological abnormality' or 'pathological defect'.

The second difficulty I have is in the definition of 'mental impairment', which includes:

> (a) mental illness—

which we have just discussed, and—

> (b) an intellectual disability.

That denotes a function. I am pleased to see that the disorder in paragraph (c) has been changed to 'disability' because, in the medical sense, it denotes a function. I have difficulty accepting the definition of 'a mental impairment' as impairment of the mind. It does not clarify it any further and I wonder why we do not use the wording 'a disability of the mind resulting from senility'. These are points of clarification and I ask the Attorney-General to clarify the legal sense of those terms.

The Hon. K.T. GRIFFIN: First, these terms have been included in the draft that was the subject of consultation. My recollection is that there was no comment, particularly from the medical profession, on this issue but it may be that it did not apply itself to those definitions as much as to the way in which the scheme proposed in the Bill would operate. Secondly, I understand that the Victorian Law Reform Commission used the description 'infirmity' back in 1990 or 1991 in a report which it published and that has been picked up by the Model Criminal Code Officers' Committee, which is a committee of the Standing Committee of Attorneys-General working on a review of the whole common law.

It was from that interpretation that 'infirmity' was preferred because it had a vagueness about it which would give this Bill a reasonable scope. Issues that might once have been dealt with under the broad description of 'insanity' are now dealt with under a more modern description of 'a mental illness' or 'intellectual disability or impairment', and to ensure that we were not confined by medical terminology.

The difficulty with using, under the definition of 'mental illness', 'a pathological defect or abnormality' is that it raises more precise medical questions than does the description already in the definition. It may be that infirmity might be more appropriately referred to as an illness, but whatever description we use it is important to try to ensure a broader coverage than the description in medical terms would have given.

In terms of the definition of 'mental impairment' in paragraph (c), and the reference to what I hope will be 'a disability or impairment of the mind', again that has been in the drafts that have been exposed and I think referred to by the Victorian Law Reform Committee and has been around for a long time. It may be again that one could be more precise in medical terms, but we were anxious to ensure that there be a reasonably broad coverage of the law in respect of these matters. Members will know that in the previous Bill introduced in August last year we referred to 'severe personality disorders'. That was too controversial, particularly in the minds of the psychiatrists, so we took that out. That was a proper decision because it would have broadened the state of this quite significantly, and we did not want to get the essence of it side-tracked with debates about what is or is not a severe personality disorder. I prefer to retain the language as it is, except for the amendment that I have moved. For those reasons I hope that the honourable member will appreciate that, whilst I understand her concern from a medical perspective, I would prefer to leave the drafting as it is.

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

Amendment carried.

The Hon. CAROLYN PICKLES: I move:

> Page 11, lines 17 to 20—Leave out subsection (1) and insert the following subsection:
>
> (1) For the purpose of assisting the court to determine proceedings under this Division the Crown must provide the court with a report setting out, so far as reasonably ascertainable, the views of—
>
> (a) the next of kin of the defendant; and
>
> (b) the victim (if any) of the defendant's conduct; and
>
> (c) if a victim was killed as a result of the defendant's conduct—the next of kin of the victim.

The thrust of the Opposition's amendments in relation to this Bill is to extend the concept of victims' rights one step further to next of kin of those who are killed as a result of an offence being committed. In other words, we are trying to do something for the families of murder victims. In some cases, however, where someone has been killed by another person, the offender will be convicted of manslaughter or an offence such as causing death by dangerous driving rather than murder. In these cases the trauma suffered by the family of the deceased is no less and generally the concern about the sentencing and ultimate release of the offender is no less than in the case where the offender is convicted of murder.

As the Opposition considered these matters in relation to the families of people killed by mentally impaired offenders, the Opposition could see no distinction in principle between the needs of those families and the families of those killed by legally sane offenders. In addition to our amendments to clause 3 in respect of proposed new sections 269R, 269T and 269Z, we have also sought to insert a new schedule to the Act.

The proposed new schedule, with which the Committee will deal shortly, extends two rights to the next of kin of homicide victims. Those rights are the entitlement to be notified of Parole Board hearings and the entitlement to make submissions in writing to the Parole Board in respect of the offender's release.

The amendment that is before the Committee provides the next of kin of homicide victims with the right to let the court know their views of the defendant's conduct. Next of kin are

defined in the definition section of the Bill as the spouse, parents and children of the victims, The point is that in cases of homicide there will be no equivalent of a victim impact statement, but the family of the victim could well be able to assist the court in two ways. First, their views about the severity of the crime and the impact of the crime on the family can be ascertained. Secondly, they have the opportunity to tell the court whether or not they will continue to be in fear of the offender if he or she is released.

A significant proportion of murder occurs either within the family or in the context of some other close relationship between the victim and the defendant. In many of these cases the family of the victim is closely affected by the conduct of the defendant in the events leading up to the death of the victim. Naturally in these circumstances, which I have suggested only in general terms, it may be that families of victims remain in some fear of what the defendant will do upon release. These fears are obviously aggravated if the offender is found to be out of control in some way, for example, if the offender does not have a normal appreciation of what is right and what is wrong. For these reasons we think it is important to give families of homicide victims a say in the process when the court is considering how best to deal with an offender under this part of the legislation.

The Hon. K.T. GRIFFIN: The Opposition is proposing what are, in effect, two sets of amendments. This first set adds a category of victim to the three provisions in the Bill that deal with the rights of victims. The new category is the next of kin of the victim of a homicide. I do not have any difficulty with that, although I will oppose the honourable member's later amendment to insert a new schedule, and I will deal with the reasons for that when we get to it. For the moment, I indicate that I am prepared to support this first set of amendments.

The Hon. M.J. ELLIOTT: I have sympathy for the amendments, but I just pose a further question that is consistent with the amendments. There are occasions when the victim may have been severely injured and the next of kin still might have an active interest. The amendment extends it to the victim's next of kin when that person dies, but what if the person has been severely physically or mentally disabled as a consequence of the defendant's actions? There may still be a case for the next of kin of the victim. I support the amendment, but an argument could be put to go a step further. It is a bit hard to do it on the run, so the Attorney-General might think about it and give the matter some further consideration when it is before the other place.

The Hon. K.T. GRIFFIN: It is difficult to do it on the run. I will consider that issue. The difficulty is in what circumstances one provides that additional right. Is it in the context of mental incapacity or some other aspects of an injury? There may be significant difficulties in defining the limits of it, but I am happy to give some further consideration to it and put a reply on the table prior to the matter being dealt with in the Lower House.

The Hon. CAROLYN PICKLES: The Opposition thanks the Hon. Mr Elliott for bringing these matters to the attention of the Committee, and I am pleased that the Attorney-General will consider this issue further.

Amendment carried.

The Hon. CAROLYN PICKLES: I move:

Page 12, lines 15 to 17—Leave out paragraph (d) and substitute the following paragraph:

(d) is satisfied that—

(i) the defendant's next of kin; and

(ii) the victim (if any) of the defendant's conduct; and

(iii) if a victim was killed as a result of the defendant's conduct—the next of kin of the victim,

have been given reasonable notice of the proceedings.

With reference to proposed new section 269T, many of the same arguments apply in relation to the families of homicide victims being notified of proceedings when the release of the defendant is being considered. This will be particularly relevant if the family is in fear of further criminal behaviour on the part of the defendant. Again, we say that there is no difference in principle between the right of the victim to be notified of such proceedings and the right of the family of a deceased victim to be notified thereof.

The Hon. K.T. GRIFFIN: I indicate support for that amendment.

Amendment carried.

The Hon. CAROLYN PICKLES: I move:

Page 14, lines 6 to 9—Leave out subsection (1) and substitute the following subsection:

(1) If an application is made under Division 4 that might result in a defendant being released from detention, the Minister for Health must ensure that counselling services in respect of the application are made available to—

(a) the defendant's next of kin; and

(b) the victim (if any) of the defendant's conduct; and

(c) if a victim was killed as a result of the defendant's conduct—the next of kin of the victim.

In relation to proposed new section 269Z, we are talking about the right of counselling services for those most strongly affected by the defendant's behaviour. The defendant's next of kin may well be affected, particularly if they have some care responsibility for the offender upon his release. Obviously, the victim may have concerns about the defendant's release and the Opposition strongly supports the Government's move to give victims entitlement to counselling in these circumstances. Again we are taking this slightly further by giving an entitlement to counselling services to the family of a victim if the defendant caused the death of a victim. All members would appreciate the value of counselling to many families in that situation.

Our amendment simply asks the Minister for Health to ensure that counselling services are made available to the various parties, although they would not have to take up that option if they wanted to forget about the whole business or if they thought counselling was inappropriate for some other reason.

The Hon. K.T. GRIFFIN: The Government supports this amendment.

Amendment carried.

The Hon. BERNICE PFITZNER: I should like to identify a matter on page 6 at line 22, in view of the Attorney-General's recent amendment that replaced 'disorder' with 'disability'. The second line reads, 'if the person's mental processes are so disordered or impaired. . . ' Will the Attorney-General please look at whether the term 'disordered' should read 'disabled'?

The Hon. K.T. GRIFFIN: I cannot do that on the run, but I will give a commitment to have the matter examined in the light of the earlier amendment that I moved. If there is a basis upon which we should amend, I will have it arranged in the other place.

Clause as amended passed.

Schedule passed.

New schedule.

The Hon. CAROLYN PICKLES: I move:

Insert the following schedule after the schedule of repeal and transitional provisions (now to be designated as Schedule 1):

SCHEDULE 2

Amendments to Correctional Services Act 1982

Section 77 of the Correctional Services at 1982 is amended—

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

(1) On receiving an application made under this Part, the Board must notify the following persons of the receipt of the application and of the day and time fixed for the hearing of the application:

(a) the prisoner; and

(b) the Chief Executive Officer; and

(c) the Commissioner for Police; and

(d) if an offence for which the prisoner is imprisoned is an offence under Part 3 of the Criminal Law Consolidation Act 1935 or any other offence involving violence—

(i) the victim; or

(ii) the next of kin of the victim if the victim was killed as a result of the offence.;

(b) by striking out paragraph (ba) of subsection (2) and inserting the following paragraph:

(ba) if an offence for which the prisoner is imprisoned is an offence under Part 3 of the Criminal Law Consolidation Act 1935 or any other offence involving violence—

(i) the victim; or

(ii) the next of kin of the victim if the victim was killed as a result of the offence,

may make such submissions to the Board in writing as he or she thinks fit; and.

The Opposition seeks to have a new schedule included in this Bill to give corresponding rights to the families of homicide victims in respect of Parole Board decisions about release of legally sane offenders. The Opposition can see no difference in principle between the families of homicide victims, whether the offender is judged to be mentally impaired and required to be under supervision as opposed to being legally sane and required to be imprisoned.

The Opposition is aware of a number of examples where families of victims, not necessarily of homicide, have been shocked to find out about the release of offenders, and that is perfectly understandable in cases involving severe violence or homicide. Our amendment changes section 77 of the Correctional Services Act by extending two rights to the next of kin victims killed as a result of an offence for which a prisoner is imprisoned. The amendment will give these families the right to be notified of Parole Board deliberations and the right to make submissions in writing to the Parole Board. Of course, it is optional for the families of victims in these circumstances to make submissions. They may not wish, for a number of reasons, to do so, and among those reasons is the fact that the offender may take offence to the submissions that are made. Still, it is an option which we say should be made available to families of homicide victims.

The Hon. K.T. GRIFFIN: The Government does not support this new schedule. I am not arguing about the principle of the issue. The fact is that this new schedule is totally irrelevant to the matters which are covered in this Bill and which deal with the criminal law and mental impairment. I know that the Leader of the Opposition is entitled to take this course of action, if she so wishes. But, it is totally irrelevant to the issue of mental impairment.

I suggest that a better course of action is for the honourable member, if she wants to, to introduce it in a private member's Bill; or, if there happens to be a Correctional Services Act Amendment Bill, to introduce the amendment in that. But, she should not tack it onto the end of a Bill which deals with the criminal law and mental impairment. If it will help the honourable member, I will refer the schedule to the Minister for Correctional Services and ask whether he will seek some advice from the Parole Board as to both the consequences of this proposal and the current practice of the board.

My understanding is that at present the Parole Board does in fact seek to identify victims who wish to be informed about the release or potential release of an offender on parole, and that there is consideration of the wishes of that person. I know it is correct that, in past years, there has not been that consultation and that victims and relatives of victims have been surprised to hear that someone has been released on parole after the release has actually occurred. I have made criticisms of that practice, but my understanding is that the Parole Board now does adopt a practice of consultation with victims in those circumstances where victims indicate that they wish to be consulted either about the terms of parole or about the information being made available to them when parole is being considered.

The thrust of the amendments is to add further victims' rights to the functioning of the Parole Board in general, but as I say it is not appropriate to do that in the context of this Bill. If one looks at the drafting, one sees that paragraph (a) provides that the board must notify the victim. Then there is the question, 'Well, what happens if the victim cannot be found? What if the victim does not want to be notified?'—and there are some victims who do not want to be notified. The current section in the Correctional Services Act provides that the Parole Board may notify the victim, and I think that is a much more flexible position.

In the Correctional Services Act at the moment, 'victim' is defined as 'a person who suffered mental or physical injury or nervous shock as a result of the offence'. I suggest that that formula may well include the next of kin of a victim of homicide if they did in fact suffer in that way. But, 'next of kin' is not defined in the Act, and the amendment, in introducing that term, does not seek to define it. One could ask, 'Who are the next of kin for the purposes of the amendments?' I take this issue more on the question of whether it is appropriate to be moving in this direction in the context of this Bill. I am prepared to facilitate consultation on this, but I think it is quite wrong to be seeking to tack this on to a Bill dealing with the criminal law and mental impairment.

The Hon. M.J. ELLIOTT: I would have to agree with the Attorney-General that the amendment goes outside the bounds of this Bill. It is almost turning into an omnibus Bill to some extent in so doing, and it is a question of whether or not we should make a practice of amending Bills to amend some other Act on a matter which is not totally relevant, and we should not do that as a matter of practice. For that reason, I do not support it, although I must say that I have absolute sympathy for the contents of the amendment. I think the Attorney-General is correct, so I will not support the new schedule.

The Hon. CAROLYN PICKLES: I thank members for their comments. Obviously this amendment will not succeed. I thank the Attorney for undertaking to raise this issue in another place.

The Hon. K.T. Griffin: I undertook to get the Minister to get the Parole Board's reaction and also its current practice.

The Hon. CAROLYN PICKLES: The Opposition may bring in a private member's Bill to incorporate this, and there seems to be some sympathy for the content of it. This may be the course of action of my colleague the shadow Attorney-

General in another place. I thank members for their comments.

New schedule negatived.

Title passed.

Bill read a third time and passed.

SECURITY AND INVESTIGATION AGENTS BILL

In Committee.

Clauses 1 to 19 passed.

Clause 20—'Licence or identification to be carried or displayed.'

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

Page 11, after line 16—Insert new subclause as follows:

(1a) A natural person who is a licensed security agent authorised to perform the function of controlling crowds must, while performing that function—

(a) wear identification that—

(i) identifies the person as a security agent or crowd controller; and

(ii) contains the number of the agent's licence; and

(iii) contains a photograph of the agent (taken within the last 14 months); and

(iv) is displayed in a prominent manner so that it is clearly visible and legible by a person in close proximity to the agent; and

(b) wear a uniform that complies with the requirements of the regulations.

Maximum penalty: $1 250.

Expiation fee: $160.

I take on board the comments made by the Attorney-General in his response to the contributions on the Bill. The Attorney made a couple of the points relating to the fact that there may be undercover agents who will be involved in this process. We submitted that there ought to be an identification tag with an agent's licence number and a photograph and that they wear uniforms. I point out to the Attorney that I am aware of what he said and those points were taken into account when the Opposition was discussing this matter.

When a closer scrutiny is taken of the amendment, it can be seen that we are suggesting a new subclause. I made a brief reference to the issue of identification in my second reading contribution. A number of people from across South Australia have contacted me in this regard—and one person in particular from Murray Bridge. I have had reports from Port Lincoln, Whyalla, Port Augusta and Port Pirie. A number of people have been involved in instances in the metropolitan area, and some in Hindley Street, where altercations in public places have occurred and crowd controllers have been involved. It has been alleged that, on occasions, the unauthorised persons acting in that capacity have injured members of the public.

It has been a requirement in the past whereby a person acting in this capacity should be asked to present identification. I submit that it is quite unrealistic when someone has belted the living daylights out of a person that he or she will insist that they give them some form of identification. The whole point of this amendment is that there is a clear identification.

In this amendment we have taken on board the other point that the Attorney made, namely, that he believes that these things can be done by regulation. We are not specifying exactly what sort of uniform, but there needs to be some uniform. That may be in the form of an epaulet which is worn by numerous people in the services. They could have a tag on their shoulder identifying them as a security agent. The precise form of that identification can be the subject of regulation, but this is in the best interests of the public and responds directly to real situations that have occurred whereby crowd controllers—and that is what this amendment refers to as distinct from other forms of security agents—need to carry that type of identification. We are not specifying precisely what it should be, but only what it ought to contain. The same comment applies to the uniform. I ask members of the Committee to support the amendment.

The Hon. K.T. GRIFFIN: I oppose the amendment. I indicated in my second reading reply that we had already provided in clause 20(2) that a natural person who is an agent of a class required by the regulations to wear identification must comply with the regulations about the wearing of the identification. We recognise the issue and we recognise crowd controllers more in the context of discos and nightclubs have been the source of some concern. There does not appear to have been the same level of complaints in relation to those who might be, for example, giving directions at the Grand Prix. There were a number of security agents at the Grand Prix who were wearing uniforms. They were not so much controlling crowds as giving directions. It may be a problem of definition in the honourable member's amendment, in any event, but that is not the main issue.

The main issue is that we have at all times intended that, in consultation with the industry, we would prescribe by regulation the appropriate means of identifying a holder of a licence under this Act. Quite obviously, in some instances, people do not need to have identification, but in others it would certainly be helpful. We had intended in relation to those who might be more colourfully described as bouncers to be appropriately identified. I indicated in my second reading reply that identification is a matter that we would wish to discuss with the industry. It may be that it is a plastic card which has both the photo and the registration or licence number of the holder of that licence or it may be a number on the shirt or on the coat as police have, partly because we are not anxious to put the families of crowd controllers or other agents at risk by giving access to information which will seek to identify their places of residence.

It does seem odd that the honourable member is seeking to specifically deal in the Act with a licensed security agent who is authorised to perform the function of controlling crowds, but subsection (2) provides for others to be dealt with in accordance with the regulations. It would be rather strange if some were dealt with in the Act and some in the regulations, and may be in the Act by means which might not be practicable. For example, it may be—although I cannot say that this will occur—that we might require a photograph of the agent to be on a plasticised card taken within the past 18 months or within the past six months. It might be that we would want to have some regard to variations in facial characteristics. If a person had a beard when the photograph was taken, but six weeks later shaved the beard, then the identification card would not accurately reflect the semblance of the licensed agent. It may be that the converse applies, that an agent has his photograph taken without a beard and subsequently grows one.

There are all those types of variations which are more appropriately dealt with in the regulations. I do not disagree, as a matter of policy, with what the honourable member is seeking to do, but I do disagree with the way in which he is seeking to do it. I give a commitment that this issue will be the subject of consultation with industry and the subject of regulations after that consultation.

The Hon. R.R. ROBERTS: The Attorney in opposing the reasons for the amendment has reinforced many of the points about which I am talking. He says that it is inappropriate for some classes of security agents to carry identification. That is why we specifically have left those classes out. The Attorney also referred to whether they have a photograph taken six months or 14 months beforehand and mentioned the matter of a beard. You can have a beard and, whether it is six months, 18 months or two years, you can still strike that same problem. In most classes of agents—

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: He now interjects and says that we can deal with this in the regulations. Clearly, the Opposition is very happy to accept that, but what we are talking about here is a real situation involving people who live in the real world. Where people congregate in these areas, there have been problems with crowd controllers for years. I can remember reports of problems with this 10 or 12 years ago, well before I came into this place. They used to consult with the industry, and we have got ourselves into this problem. A real problem has been identified. When an altercation takes place, often when the police intervene, they do not know whether they are fighting one of the protagonists from the public or the crowd controller. Another point the Attorney made was that it is not desirable to provide information on the identification that may identify where the person lives. We do not propose that: we say we should have his photograph and number.

The Hon. K.T. Griffin: They might be women.

The Hon. R.R. ROBERTS: Him or her; we do not want to be pedantic about it. Whether they are male, female or something else—and that is a possibility these days—it still requires the agent or the crowd controller to wear identification with a photograph and a number which is clearly legible by someone in close proximity. There have been real incidents where alleged assaults have occurred and where the person alleging the bashing does not recognise the person whose identification is being presented. We are saying that this is a problem in a particular part of the security industry which has been identified not just once: this problem has arisen on dozens of occasions.

I accept the Attorney-General's arguments with respect to the generalities of the agency. I ask him to accept my proposition that there is a real problem that has been identified not only by the members of the public: police officers have reported to the Opposition their problems. All we are saying is that this will fix up that problem. I am allowing the flexibility of consultation with the industry, including undercover agents and store security people. It would be ridiculous for someone trying to detect shoplifting to be running around with a big sign on; nobody will offend right in front of them. We are saying that a particular problem has been identified on a number of occasions, and in that instance we are clearly providing the very basic framework that needs to be put into place. We are saying that that should be done by legislation.

We also provide the flexibility that the uniform can be set by regulation. We say that there needs to be a clear direction that these minimum standards must be involved in that process of making regulations. This is a matter of community interest. It is important that we lay down that that is what we expect of crowd controllers, so that when people are in public they can have confidence in the people they are dealing with. This is something that we are dealing with more and more, because of the lack of police around. More and more of these people are being employed, and there have been problems between them and members of the public. We are proposing this in a constructive way to overcome that clearly identified problem.

The Hon. K.T. GRIFFIN: The Government knows that there are difficulties within that industry, and we are trying to address them by this legislation in more substantial ways than merely wearing an identification. There is mandatory training; that is a substantial advance.

The Hon. R.R. Roberts: We are accepting that.

The Hon. K.T. GRIFFIN: Of course you are accepting that, but you are arguing that this is a mechanism by which you can improve the industry. I disagree with that. The question of identification is separate from the fact that we are trying to improve the quality of people and their skills in this industry, and it is not related to this issue of identification. The honourable member says that they should wear a suitable photograph so that people can identify them. What does that mean? They get into a crowd—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: In real life, if they have a photograph that someone can see, then the photograph will match the face on top of the shoulders, I would expect. The identification has to be displayed in a prominent manner on the left chest so that it is clearly visible and legible—I suppose that means intelligible—by a person in close proximity to the agent. It introduces all sorts of issues, such as: what is clearly visible? What is legible? What is close proximity to the agent? They are issues that we can deal with more precisely in the regulations, once we have had a discussion with the industry and said, 'This is what you have to do: you have to wear a badge which measures 15 millimetres by 20 millimetres; the print on it has to be not less than such and such a size,' and so on. So, we can deal with that.

Then, the honourable member wants the Government to get involved in telling them what sort of uniform they should wear, in compliance with the regulations. Does that mean that for each different company and disco we have to go through the business of prescribing a different uniform for each group? All I am saying is that it is much more flexible and sensible to go with what the Government has and accept the assurance that some regulations will deal with this issue. What form they will take I cannot say finally yet, but it may be that they will include a card. It may be with a photograph; it may be that they will include a number. It may be that someone has to wear some epaulettes which you can quite reasonably identify. But that is one of those things which can be more flexibly dealt with by way of regulations. The principle is in the Bill, and that is what ought to count.

The Hon. SANDRA KANCK: I did not speak in the second reading. I acknowledge the Government for having introduced this Bill in the first place; it is obviously an improvement on the current situation. However, I indicate support for the Opposition amendment. We are dealing with a question of public perception here, and we must be seen to be doing something. While I accept all the Attorney says about the Government's intent, this issue is one about which the public has great concerns, particularly some young people in their mid to late teens who encounter some of these rather rough bouncers on a Saturday night. Because of that level of concern, it should be in the legislation, so on that basis we support the amendment.

The Hon. K.T. GRIFFIN: I am disappointed to hear that. I thought that the commonsense position was that the

Government has established the principle in the legislation. I have indicated quite clearly that it will be the subject of regulations, and that is the proper place for it. We will have an opportunity to revisit it, because it is not acceptable to the Government, full stop. It will go to a deadlock conference over this issue.

Amendment carried; clause as amended passed.

Remaining clauses (21 to 48), schedules and title passed.

Bill read a third time and passed.

BUILDING WORK CONTRACTORS BILL

Adjourned debate on second reading.

(Continued from 25 October. Page 348.)

The Hon. ANNE LEVY: The Opposition supports the second reading of this legislation, although I do have a number of questions that I would like to put to the Minister in my second reading contribution. The Bill is very much in line with that dealing with plumbers, gas fitters and electricians which was dealt with earlier this session by this Parliament. It tidies up the licensing and registration provisions for building contractors and building supervisors as did the earlier Bill.

Both the licensing and registration processes are being simplified. Licences will be issued by the Commissioner for Consumer Affairs, who will also be responsible for the registration. The number of categories of licence and registration is being reduced so there are two of each. Disciplinary matters which, under previous legislation, were referred to the Commercial Tribunal are now being sent to the Administrative and Disciplinary Division of the District Court, and other matters which also previously went to the Commercial Tribunal are to go to the Consumer and Business Division of the Magistrates Court. This is quite consistent with the regulation and dispute resolution processes which have previously been agreed to.

Magistrates will be able to use assessors when technical matters are involved. It is very much to be hoped that they will do so considering that most of the matters which are likely to go to the Magistrates Court (Consumer and Business Division) are certainly likely to involve technical matters relating to building, in which magistrates would certainly not have the experience which can be brought by the assessors. I understand that proposals have been put to the Attorney that, when such matters are being considered by the court, the presence of assessors be mandatory, not just at the discretion of the court. I also understand that the Attorney is bitterly opposed to making mandatory use of assessors. I would certainly like his response on this issue.

I have a fear, as have others, that some magistrates will consider that they know everything or that expert witnesses can provide any information they do not know, whereas in fact they would benefit enormously by having people from the industry qualified and with technical knowledge as assessors to give impartial advice to the magistrate involved. There is the fear that, even if assessors are allowed for, as they are in this Bill, magistrates will choose not to use them as they are not used to working with assessors. I would certainly be interested in the Attorney's comments in that regard.

There are a few other changes relating to the building industry where this Bill differs from the previous legislation. The Opposition certainly approves of having the provision regarding owner-builders extended to only permit one house every five years, and the provision that anyone buying from an owner-builder must be informed of this fact and that, in consequence, the normal five year warranty does not apply if someone buys from a licensed builder. People should be aware that there is no warranty and this may well have an effect on the price of the building so purchased. However, as there is no warranty, the price should in fact be discounted to allow for this fact.

We are also glad to see that licences will not be granted for a period of 10 years, not only to directors of failed companies but also to people who were directors of a failed company within 12 months of the insolvency. This seems a very desirable strengthening of protection against fly-by-night companies that become insolvent, then start up again and proceed to fleece new customers. The Opposition wholly supports this change. I would ask of the Attorney an explanation of why there is the change of no public advertisement of any disciplinary action which is imposed by the Administrative and Disciplinary Division of the District Court.

It is one thing to apply discipline to someone but, if nobody is aware of that fact, there may well be people who are tricked into using someone whom they otherwise would not consider using had they known that disciplinary action had been taken against him or her. The provision to have public advertisement existed in the previous legislation so that there could be public knowledge of these matters, and I ask the Attorney why that has been abandoned in the new legislation. I understand that the Attorney has intimated that the licence in the future will have a photograph of the individual who is licensed as a builder, to avoid misuse of licences. We support such a measure. It is not provided for in the legislation but I presume would be included in the regulations, although we would like confirmation of that from the Attorney.

Since licences are to be continuous, providing fees are paid annually, the question arises as to how someone will know if a builder they approach has been suspended or his licence has expired and he has not paid the fee to have it renewed, since there will not be a licence issued every 12 months but he will have the one continuous card or piece of paper. How will consumers know whether a builder has been suspended through non-payment of the annual fee or for any other reason, perhaps through disciplinary action, since disciplinary action will not be advertised and he will be presented with a builders licence that has no finishing date on it and is in no way marked? How can the consumer know that it is not at that time a valid licence?

The Attorney also mentioned that lesser fees would be charged for partnerships as the current procedure for partnerships is clumsy and expensive but that, in consequence, everyone else's fees would have to go up, I presume on the basis that the aim of the legislation is to be revenue neutral. Will the Attorney give any indication of how much lower the fees will be for partnerships and how much greater they will be for everyone else? It may be that not very large sums are involved, but I am sure I am not the only person who is interested in the financial implications of these changes.

I also have some queries relating to the advisory board that is being set up under this legislation. I realise it parallels exactly the advisory board that exists under the plumbers, gasfitters and electricians legislation, which we considered earlier. Someone has suggested to me that it is planned to have about 20 people on the advisory board. I would be interested to know what size the Attorney is considering and whether the unions will be included on the advisory board as,

indeed, they are on the advisory board for the plumbers, gasfitters and electricians. The unions, obviously, have considerable interest in competency training, as do the employers, and they should be able to contribute in this regard. There is also the question of how the advisory board will relate to the training board that exists under quite separate legislation responsible to the Minister for Employment, Training and Further Education, I think it is.

This training board is funded by a .25 per cent levy on every construction and has considerable funds of about $4.5 million a year, I understand, which is designed to be spent on training relating to the industry. The training board is tripartite: it includes the unions, employer representatives such as the Housing Industry Association and the Master Builders Association, and also Government representation from DEET, TAFE and other Government representation. The training board (which is obviously concerned with the actual training and delivering of training) is obviously very closely related to the competency requirements that this new advisory board is to be concerned with.

I would hope that we would never have the ridiculous situation where the training board approved some course of training as guaranteeing a certain competency and then the advisory board refused to accept that as competency for licensing or registration, or that the reverse applied: that the advisory board accepted as a measure of competence a training course that the training board did not approve of and did not regard as being of sufficient standard to provide competency. Such a situation would be absolutely ridiculous, but I wonder whether the Attorney could elaborate on what relationship he expects to see between the training board that exists under separate legislation, is already funded and works perfectly well, and the new advisory board, and how we can ensure that the ridiculous situations I have suggested do not come about.

There is one other matter which has been raised with me and which I understand is of concern to a number of players in the industry; to both employer representatives and employee representatives. There is a united approach on a number of these matters, I am delighted to find, as indeed occurred with the plumbers, gasfitters and electricians legislation. As I am sure the Attorney is well aware, there exists the long service leave board for the construction industry, which collects payments that go towards long service leave payments to workers in the industry, since they move from one job to another, from one employer to another. It is their time in the industry that counts towards long service leave, not time with a particular employer.

The Long Service Leave Board has inspectors who have the power to inspect the books of companies, builders and subcontractors to ensure that proper payments are being made to the board. Obviously there is not much point having legislation unless there is a means to ensure that it is being complied with and enforcement procedures can be undertaken.

I understand that there are to be no or few inspectors in relation to the new Building Work Contractors Bill before us, so the question arises as to how one can ensure that it will be enforced. The suggestion has been made that the inspectors from the Long Service Leave Board could be empowered, when making their inspections in relation to the provisions of that Act, to undertake inspections in relation to compliance with this Act. I wonder whether the Attorney has given any thought to that matter or whether there were other plans as to how inspection could occur to ensure compliance with the Act.

It is no reflection on the vast majority of builders and contractors to suggest that inspection is required. There are always a few bad apples, as we all know, and unless there is the chance of detection of non-compliance with an Act there will be people who will try to get away with it, and in consequence consumers can suffer as a result. So, enforcement measures are just as important as the legislation that is to be enforced.

I will not say any more at the moment. I will certainly be interested in the Minister's response to the various questions I have asked and, while I have no amendments on file at the moment, his response to these questions may well determine whether I feel it desirable to move any amendments. I hope it will not be necessary as the Opposition generally agrees wholeheartedly with the basic thrust of the legislation.

The Hon. K.T. GRIFFIN (Attorney-General): I thank the honourable member for her support of the Bill. I can answer most if not all of the questions that she asked. If she still has some questions that are not integral to the Opposition's decision whether or not to move amendments, I would be happy to get the information back to her within a few days. I think I can deal with most of the issues that she has raised.

The Hon. Anne Levy raised the issue of assessors. She quite properly made the observation that the provision for assessors under this Bill is in similar terms to the provision for assessors under other legislation that we have considered in the consumer affairs and occupational licensing areas. In those other pieces of legislation it is not mandatory for magistrates or judges to sit with assessors, and that choice was deliberately taken because in some cases it would not be necessary for assessors to sit, so we felt that it was appropriate to give the judicial officer who presided an opportunity to make a choice.

In relation to magistrates, I had discussions with both the Chief Magistrate and Mr Cannon (also a magistrate), who has just been appointed Deputy Presiding Member of the Commercial Tribunal. Whilst I do not want to hold them to the conversations we have had because in practice it might vary, it was their view that magistrates would find it valuable to be able to sit in some cases with a person who has expertise in building work. There is provision not only in this Bill for assessors to sit but also in the District Court Act and the Magistrates Court Act for judicial officers to call in an expert, conciliator or mediator and to be able to identify a specialty that would provide some assistance in resolving the matter in dispute.

The magistrates have told me that a number of matters go into the Magistrates Court which are not at first view disputes under the Builders Licensing Act or relating to building work. They are generally for a lump sum of between $7 000 and $20 000. It is only when they come to deal with the pre-trial conferencing procedures that they discover frequently that they relate to a building dispute. It is not just about a lump sum but about whether or not the work was done properly. There have been occasions, I am told, where magistrates have enlisted the aid of an expert for the purpose of endeavouring to resolve that dispute.

It is certainly the present intention of the Chief Magistrate and Mr Cannon to draw upon the panel of assessors in endeavouring to resolve building work disputes. They recognise that these disputes are notorious for being pro-

longed and for incurring substantial costs. They are of the view that the panel, once established, will provide valuable expert support to the magistracy in resolving these sort of disputes.

That is as far as I can take it. I prefer the flexible approach to the mandatory approach partly for that reason and partly for the reason that I identified earlier, namely, that there are some cases where you can deal with it without an assessor being present.

The Hon. Anne Levy raised the issue of owner- builders. It was a big decision to make the change from a person being entitled, as a so-called owner-builder, to build one house every year to an owner-builder being a person who builds one house in five years. The industry felt that there was constant circumventing of the licensing regime by those who profess to be owner-builders but who were speculative builders building one house every year. Other propositions were put to the Government about how we should deal with owner-builders, but the Government was not prepared to impose a heavy bureaucratic regulatory system on all owner-builders—the genuine as well as the speculative—and we felt that, if we extended the criterion from one every year to one every five years it would achieve our objective of ensuring that those who built more than one a year were regarded as builders, and therefore be subject to the licensing regime and all the consequences thereof.

The honourable member has also commended the change which proposes that licences should not be granted to those who have been directors of companies that have gone into liquidation or those who have been directors in the 12 months prior to liquidation and that that embargo should extend for 10 years. That has been one of the major concerns within the industry, as well as among consumers: that too many people who have been part of a company that has gone into liquidation, or has just become defunct and shut its doors, suddenly surface next week as the directors of another company or companies. So, we decided to take some strong action in relation to that. Some additional disciplinary provisions deal with that sort of issue.

I also indicate that, in the review of the Fair Trading Act, we are looking at parts of that legislation which will have some impact on the building industry, particularly in relation to assurances. Whilst no amendments are before the Council in relation to that, it is part of the framework of disciplining defaulting builders and directors.

The honourable member asked why there is no public advertisement of discipline that might be afforded. My recollection of the rationale for that is that we felt that it was not required in relation to any other area of occupational licensing and that there was no good reason why that should occur with builders. The information will be on the public record through the registry, so it will be accessible, and the disciplinary process is a public process. There is also the report of the Commissioner for Consumer Affairs. In the 1993-94 report—I cannot recollect what is in the 1994-95 report—there was an identification of those against whom disciplinary action had been taken. So, I suggest that adequate information is on the public record about the disciplinary process and the outcomes of it.

The Hon. Anne Levy: It cannot be readily available to the average home builder?

The Hon. K.T. GRIFFIN: One might also make that observation in respect of public advertisement. They do not all read the public advertisements. We felt that it really does not achieve a lot. It might inform the building industry, but it will be informed, anyway, from the processes that occur through the District Court and through the Commissioner. For that reason, we did not think it was an effective avenue for promoting particular outcomes of the disciplinary process.

The Hon. Anne Levy: You wanted to hit at the *Advertiser*.

The Hon. K.T. GRIFFIN: I am not sure about that. The next issue was that of photos on licences. The intention in the Office of Consumer and Business Affairs is that there will be photographs on licences. I do not think that the building industry regards that as particularly significant because, when I first announced it, it was a bit ambivalent about that. I think it does have some benefits, particularly with subcontractors and those who do small jobs for pensioners and for other members of the community. The requirements for that part of the licensing process will be provided for in the regulations.

The honourable member referred to the expiry date issue. I do not have a recollection of how that will be handled, except to say that one proposal was that there would be a new photo licence each year in a different colour with date of issue. I cannot categorically say that will occur, so if the honourable member will bear with me I will see if I can bring back some information upon that issue. I recognise it as important to have that information available.

The Hon. Anne Levy: Twenty year old photos would be no good.

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

The Hon. Anne Levy: The driving licence photo is every five years.

The Hon. K.T. GRIFFIN: Yes, every five years. We were looking at some process by which we could ensure that relatively recent information was available. The honourable member also raised the issue of continuous licences and how people will know that the licence is suspended or withdrawn. Again, I think the public register, which is accessible, will be the formal basis upon which people will have that information. That is probably as effective as any other means of providing information at the present time. A quick check with the Office of the Commissioner for Consumer Affairs will provide that information.

I digress by saying that the industry organisations are as anxious as the Government and consumers to ensure that the identity of those who do not have current licences, or who have been struck off or suspended, should be known. It is in their interests to have a reputable industry, and they are concerned about issues of enforcement, which I will touch upon a bit later.

The suggestion that there will be lesser fees for partnerships while other fees will go up is really a general observation on the principle. Some tentative calculations have been made. I cannot recall what the amount of the increase in ordinary licences will be as a result of this measure, because it depends on a couple of things. We will deal with this largely in the regulations. One of the major complaints that we in Government get—and I expect that the honourable member as Minister may have received a similar number of criticisms—concerns partnerships having to pay two licence fees and an additional fee for the partnership. We looked at how we should deal with that.

Quite obviously, the persons to whom the licences are issued have to be identified and verified, so a certain amount of basic work has to be done in respect of each. However, for two, in a partnership context it is likely to be less work than for two individuals. We are looking to try to balance that out

and do some calculations to ensure that, as much as possible, this is a revenue-neutral piece of legislation.

Let me also say—and this is where I want to deal quickly with the enforcement issues—that one branch of the industry is prepared to pay much higher fees to finance a stronger level of enforcement. The other branch is not so sure about that.

The Hon. Anne Levy: Which?

The Hon. K.T. GRIFFIN: The Master Builders Association is supportive of higher fees but the Housing Industry Association is somewhat more concerned. Obviously, they regard additional fees as an impost that reflects in the price to the consumer, and we are sensitive to that, too. One of the major criticisms has been the issue of enforcement, and it is quite obvious that, if that is to be upgraded, we may have to take up one of the options to which the honourable member referred. For example, inspectors under the Construction Industry (Long Service Leave) Board may have dual functions; we may appoint people who will undertake the inspection function; or we may allow the industry organisations to begin to do a measure of inspection. That is not an option that we have explored. It is just one of the possibilities that have been on the table.

In respect of the Construction Industry Long Service Leave Board, the big issue there will be whether the inspectors who are presently inspectors with an accounting responsibility have the skills necessary to inspect workmanship. That is something that we will have to work through.

The Hon. Anne Levy: But you do expect to have enforcement procedures?

The Hon. K.T. GRIFFIN: Yes, that has been one of the concerns that has been expressed across the industry. Certainly it is an option that there are inspectors appointed specifically for this purpose on a cost recovery basis. In respect of the advisory board, I am not sure where the honourable member would have gained information that we were considering about 20 people. There has been no consideration given to that.

What I can say is that someone may have reported that from a meeting which I convened a couple of months before the Bill was introduced and which involved a whole range of players in the industry, including the unions, because I was concerned that we were not really crunching the decisions that had to be made in relation to this Bill. At that meeting there was one representative from the Master Builders Association, one representative from the Housing Industry Association, two representatives from subcontractors and one representative from one of the unions (I cannot remember which one).

The Hon. Anne Levy: The CMFEU?

The Hon. K.T. GRIFFIN: I think it was. That group was commissioned to meet with my officers and work through the Bill. We did not reach agreement on everything: I had made some policy decisions which the Government supported, but generally on most issues there was agreement. I think the representative of the union was not able to get to some of the meetings, but I cannot give the honourable member the attendance records and I do not think it is necessary to do that. All I wanted to say is that that demonstrates, I hope, that we are in the business of consulting with all those who have an interest in the industry, and that I would expect that, on the advisory board, there will be some representation of the unionised work force.

We have not made any decisions about who or how many: it is flexible. The other advisory bodies are meeting under the Plumbers, Gas Fitters and Electricians Act, and I have not heard that there is any difficulty with that. I have met on one occasion at least with those two advisory boards and I have indicated to them that I am prepared to meet with them on occasions when it is necessary to do so in order to facilitate the resolution of any issues of difficulty.

The question then is how the advisory board relates to the Construction Industry Training Board. There has been some consideration given to this, but no formal structure has yet been worked out. I would like to think that there will be a basis for consultation on the competency issues. As the honourable member has quite properly identified, competency standards are a key component of the qualifications of those who might be licensed under this Bill.

The building industry is working on those on a national basis and, generally speaking, once those competency standards have been properly resolved, we intend to adopt them, and that will necessarily involve the Construction Industry Training Board so that there is no overlap or conflict. Again, that is as far as I can take it. Certainly the intention is to ensure that there is consultation and cooperation.

The Hon. Anne Levy: A lot of common membership.

The Hon. K.T. GRIFFIN: It may be that that is the case. I am conscious that we do not want a proliferation of advisory committees and boards around the building industry: that is the worst thing that can happen. But, the industry was anxious to have an advisory panel under this Bill as much as it was anxious to have advisory panels under the Plumbers, Gas Fitters and Electricians Act. I was prepared to accede to that. I did not want it so formally structured that we had quorums, votes and all those sorts of things, because I think that they can be counterproductive.

In relation to those advisory panels that already have been established, they seem to be working quite well without that sort of formality that has been the hallmark of many of the advisory boards and committees which this Government and previous Governments—Governments generally—have set up and which I do not think in some instances have been able to achieve what can be achieved with a less formal structure. I think that I now have addressed all the issues which the honourable member raised, but if there is an issue which I have omitted to respond to I would be happy to do so in Committee.

Bill read a second time.

In Committee.

Clauses 1 to 10 passed.

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

The Hon. ANNE LEVY: I take it from what the Attorney said that although a licence, such as a driver's licence, will remain in force, the piece of paper or card will have to be renewed periodically. I know that an annual fee is to be paid, but does this mean that the licence which the builder can show to the prospective client will have a date on it which indicates when that card ceases to be valid even if the licence does not expire then, so that there will be a date or something on the card that the consumer can see?

The Hon. K.T. GRIFFIN: The whole concept is that there will be a continuing licence. The piece of paper or the card will be evidence of that licence. It will not be the formal licence, as I understand it, but it will be evidence of the licence and, to some extent, its currency. I do not have at my fingertips all of the detail of how that will occur. I will undertake to provide that information before the matter is dealt with in the House of Assembly, if the honourable

member is happy to accept that undertaking. My understanding is that there will be the periodical issue of a card, photo-licence or something which indicates that the annual fee has been paid and the licence is current. Whether that is all on the photo identity card or whether it is a photo identity card plus a piece of paper which identifies the payment of the annual fee and that the licence is current, I am not sure. But there will certainly be something issued, as I understand it, on a reasonably regular basis—a year, 18 months or six months, I am not sure—which will identify the currency of that licence.

Clause passed.

Clauses 12 to 43 passed.

Clause 44—'Agreement with professional organisation.'

The Hon. ANNE LEVY: This clause is very similar to clauses which we have had in numerous pieces of legislation recently where the Commissioner may make an agreement with an organisation representing the interested persons affected by this Act. Will the Attorney indicate what role in administration or enforcement of this Act was being contemplated? Obviously, it cannot be any of the disciplinary or other powers which cannot be delegated, but which powers is it suggested should be delegated and to which organisation, considering that there are a number of organisations which represent the interests of persons affected by this Act? To name only three, there is the MBA, the HIA and the CFMEU and there are doubtless others.

The Hon. K.T. GRIFFIN: There has been no decision taken in relation to that and we have not identified particular functions which might be delegated at this stage. Some discussion has been had with the MBA and the HIA. They have expressed an interest in being able to identify people who are in breach of the Act, for example, but they have talked more in terms of dispute resolution. As I have indicated to the Council on a number of occasions, I have a very strong view that we ought to be encouraging people at the earliest opportunity to resolve disputes without, ultimately, having to go to the Government or to the courts. If dispute resolution mechanisms are available where it involves, say, a member of the MBA or the HIA, which give satisfaction to the customer, then that certainly resolves the issues at a much earlier stage without the trauma of going through the legal process.

Again, we have not worked through those issues. They have been areas where we have said, 'Well, maybe this is possible,' and they have said, 'Look, we would like to be able to participate in a way which tries to enhance the status of the industry, does not prolong disputes and so on.' That is where it rests at the moment. There has been nothing specific. It has been of a general nature and, partly because the development of this Bill has been more drawn out than other Bills, it has been more difficult to try to bring together the various interests within the industry to the one mind on this piece of legislation. In respect of approximately 98 per cent of it probably everyone is of one mind. The issue of owner-builders is still a difficult issue which does not satisfy the MBA and the HIA, for example, but the approach that has been taken is reasonable. The concentration has been on trying to get the framework right. The next big task is to consult on and work through the development of regulations, including what delegations, if any, can be granted.

The Hon. ANNE LEVY: I appreciate what the Attorney has said. I hope he will not take it amiss if I point out that we would have reservations about dispute resolution mechanisms being too much under the control of the industry. Even though a consumer may have the right to go from, say, the MBA to the Commissioner for Consumer Affairs, unless they are well aware of that fact they may feel intimidated that they must accept what is being told to them by an industry body even if they do not feel that it is fair. They could feel that it is a case of Caesar judging Caesar and that it is not the impartial dispute resolution mechanism which is provided through the Government and instrumentalities of the Government such as the Commissioner for Consumer Affairs and the courts where impartiality is guaranteed. I am sure the Attorney would appreciate that there could be people who feel that they are being intimidated and forced to accept something they do not want to accept, even though in fact they do not have to accept it.

The Hon. K.T. GRIFFIN: I understand the sensitivity of the issue and, quite obviously, the Office of the Commissioner for Consumer Affairs will continue to be available. But, in a number of areas, industry and Government have set up complaint resolution mechanisms in-house. The Health Commission has an in-house complaint resolution system; the banking industry has a banking industry Ombudsman who is outside particular banks, but nevertheless funded by banks; and the insurance industry has the same.

The Hon. Anne Levy: It is independent; they cannot tell them what to do.

The Hon. K.T. GRIFFIN: That is right. Big department stores have complaints departments. Essentially, it is a part of a broader range of opportunities for people to get satisfaction if they have a complaint. I repeat that I recognise the sensitivity of the way in which it is done and who does it.

Clause passed.

Clause 45 passed.

Clause 46—'Registers.'

The Hon. ANNE LEVY: I do have some concern about clause 46 in the light of the explanation which the Attorney gave regarding the non-publishing of advertisements indicating when disciplinary action has been taken against a builder or contractor. While the Commissioner must keep a register and the register will record whether disciplinary action has been taken against a particular firm or individual, if a consumer has to pay a fee before being able to inspect the register, I feel this is an imposition, where the register becomes the only way a potential consumer can determine whether disciplinary action has been taken. That he should have to pay a fee for this privilege strikes me as an unfair imposition. It is a fee on necessary information which can be obtained only in this one way. I do have particular concerns about this matter, although I would certainly agree that relative to the cost of building a house it will certainly be very minor. Nevertheless, it seems undesirable to impose fees for obtaining information which is necessary and which cannot be obtained in any other way.

The Hon. K.T. GRIFFIN: This is in a form which I recollect is identical with the form in the Second-hand Motor Vehicles Act.

The Hon. Anne Levy: There is not so much money involved.

The Hon. K.T. GRIFFIN: There is not so much money involved; I acknowledge that. I draw the honourable member's attention to what I said earlier: that even under the Second-Hand Motor Vehicle Dealers Act and other occupational licensing legislation, there is no public advertisement of disciplinary action. When we have framed the issue of the register and access to it, in the past we have had in mind the access that one may gain to the register under the Corpora-

tions Act now—the companies and securities register—and other registers, such as the Lands Titles Office, the General Registry Office, Births Deaths and Marriages, and so on. All I can say to the honourable member is that in the light of the concerns she has raised, I would be prepared to ask my officers to address the issue of information being available about how information about disciplinary action can be more readily made available for the sorts of purposes to which she referred. If she would be happy with my doing that by correspondence, I will endeavour to do it next week before the Bill is finally resolved in the House of Assembly. If there is a way in which we can more effectively deal with that—

The Hon. Anne Levy: You can see my concern.

The Hon. K.T. GRIFFIN: I can see the honourable member's concern, but if there is a way we can deal with it more effectively I am certainly prepared to consider it seriously.

Clause passed.

Remaining clauses (47 to 62), schedules and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (SUNDAY AUCTIONS AND INDEMNITY FUND) BILL

Adjourned debate on second reading.

(Continued from 14 November. Page 409)

The Hon. SANDRA KANCK: When I first became aware of this Bill, my initial gut reaction was, 'Can't we have one day of the week that is free of commercial activity?' I know that is not possible; we have had all day Saturday and Sunday shop trading in Adelaide for two years now, so it is a bit like railing against the stars, I realise. The arguments in favour of Sunday auctions include the fact that because of their religious persuasions some people cannot participate in an auction on a Saturday, and there is an inconsistency that houses can be bought or sold, yet not auctioned on a Sunday. I consulted members of my Party and there was not a clear view on that subject, but one suggestion that someone made to me was that we should allow them but make certain that they do not happen on a Sunday morning, because that is when many people sleep in. I can certainly attest to that in the case of my son, who normally gets home between about 3 a.m. and 5 a.m. on Sunday morning. I think that is the pattern with most people in their late teens and twenties—at least in the singles set. So, they are either sleeping in in the morning or those who did not go out the night before are often at church.

I then decided to find out how the churches felt about this. I have had a couple of responses. I wrote to different churches and suggested that I would produce an amendment that prevented auctions from occurring within 200 metres of a church on a Sunday morning. The President of the Lutheran Church of Australia, South Australia and Northern Territory District, Mr D.O. Paech, responded that he would prefer that there be no auctions at all on Sunday morning until 1 p.m. and thought that that could still accommodate people who wanted to have auctions on a Sunday afternoon. I quote from his letter as follows:

> We live in a secularised society and churches cannot expect to impose their views on this society. Much as one might prefer a complete day for family and spiritual values and recreation, Parliament does need to consider needs and desires of a secular society. At the same time, it should be possible to provide for these needs for setting a time for commencement of auctions.

Major Ernest Johnson, of the Salvation Army, responded by indicating that my suggested amendment would be acceptable but went on to say:

> Whilst supporting this amendment, we would further voice our protest against Sunday auctions *per se*.

Yesterday, I placed on file an amendment that would prevent those auctions on a Sunday morning occurring within 200 metres of a church. I have to say I am not a Christian, although I was raised as an active one—do not look surprised, Mr Roberts. I attended church at least once every Sunday, at least until I was about 22 years of age. I attended Sunday school and all sorts of things.

Members interjecting:

The Hon. SANDRA KANCK: I think I am a very fine upstanding citizen as a result of it. Anyhow, despite everyone else's best efforts, I am no longer a Christian. I am an agnostic, but God, if she exists, was very wise to set aside one day of the week in which normal activities did not take place. I believe there is great psychological value in having a day which is different from the rest—a day for relaxing, a day for catching up on sleep, for communicating with friends and family, and for getting back in touch with nature.

The Hon. T.G. Cameron interjecting:

The Hon. SANDRA KANCK: Yes, absolutely, a good Sunday barbecue. This is the sort of stuff that restores the soul. Perhaps in time the decision makers in our society will once again understand this. But, in the mean time, in this Parliament, in the next week, we will have to make a decision about whether or not we do support Sunday auctions. I know the outcome is reasonably predictable, because the Government has introduced the Bill to achieve this and the Opposition has indicated its support for it.

I ask both the Government and the Opposition to consider seriously, when we get to the Committee stage, my amendment to prevent those auctions occurring on a Sunday morning if they are to be held within 200 metres of a church, or if the place to be auctioned adjoins premises in which someone resides. This amendment will accommodate the desires of both the Government and the Opposition to allow Sunday auctions but still preserve some of the special aspects of Sunday. Particularly with respect to Christians, it will help to preserve the sanctity of their community and allow those people who like to sleep in on Sunday mornings not to be woken up by an auction taking place next door.

I do not anticipate there would be many Sunday morning auctions, anyway. I am sure that auctioneers would be aware that many people will not be available on a Sunday morning and probably would not provide their best audience if they held them on Sunday mornings, but it is important to guarantee a little bit of peace and quiet in some instances. So, I indicate that I support the second reading in the expectation that my amendment will be given serious consideration in the Committee stage.

The Hon. K.T. GRIFFIN (Attorney-General): I appreciate the consideration which members have given to the Bill. I recognise that the issue of Sunday auctions may be contentious, and that issue can be addressed when the Hon. Sandra Kanck's amendment is dealt with in the Committee stage.

The Hon. T.G. Roberts: We might be able to mime them on Sunday morning!

The Hon. K.T. GRIFFIN: The point is that already there are a number of activities which are permitted on a Sunday,

including open inspections, and private parties and lawnmowers after a particular hour, which is a fairly early hour, although I am generally up and about by the time everyone else's lawnmowers are going. So, there are a number of events that presently occur on a Sunday. It is the Government's view that, notwithstanding that there may be some misgivings about it from church and other members of the community, we should not seek to impose the sorts of restrictions which the honourable member has in her amendment.

When the honourable member does consider her amendment, she will need quite obviously to give consideration to that paragraph which deals with adjoining premises in which a person or persons are residing, to indicate how that might be identified, because that will certainly be a technical issue that does need to be addressed. I have had faxes from the Executive Officer of the Australian Council of Churches urging me and the Government to support the Hon. Sandra Kanck's amendment. There has also been correspondence from the Anglican Church of Australia, the Diocese of Willochra, and there has also been a similar fax to that which the Hon. Sandra Kanck referred from the Lutheran Church of Australia. So, there are representations being made which quite obviously members will want to consider. I certainly do not intend to deal with the Committee consideration of the Bill today. Nevertheless, I thank members for their indications of support.

Bill read a second time.

OPAL MINING BILL

Adjourned debate on second reading.

(Continued from 14 November. Page 406.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contributions to the second reading debate on this Bill. A number of matters have been raised by the Hon. Sandra Kanck and, to facilitate consideration of the Bill in the Committee stage next week, I will respond to those. If there are matters which have not been adequately dealt with, she is at liberty to contact officers and we will endeavour to facilitate consideration of those additional matters and they can ultimately be put on the public record during the Committee consideration.

A separate Bill has been prepared for a separate Act because opal mining, particularly within the proclaimed precious stones fields, is different from general mining operations and because it was requested by opal miners in their early discussions with officers from the Department for Mines and Energy. The Bill does make provision for the entry of corporations into the search for opal in South Australia, and the important question is why they should be excluded rather than why they should be included. They are not excluded in the other opal States such as New South Wales and Queensland. In any event, the entry of corporate activities to a proclaimed precious stones field will be strictly controlled and the interests of the smaller operator protected.

In talking about production, it has to be recognised that production is the value of production, not the quantity produced. Because of the nature of the industry, this value can only be estimated but, on the department's best estimates, the value of opal production in South Australia has declined over recent years and has fallen below the value of the opal produced in New South Wales. The presence of increased corporate activity in New South Wales has not, on my information, harmed the smaller operator. Marketing advice supplied to the Department for Mines and Energy in South Australia has strongly confirmed that what overseas markets for opal require is a reliable continuity of supply of good quality opal in specific colour ranges. This is just not coming from South Australia at the present time. It would require a mammoth increase in supply of top quality opal even to get close to an over-supply situation and, given the nature of this elusive mineral, this is most unlikely to happen, with or without the participation of corporations.

There is no way that the so-called big companies can peg the fields and not work them. Within a proclaimed precious stones field, that is, within the Coober Pedy field, companies will be restricted to certain areas that are described as opal development areas. They will require the approval of the Minister and will be declared only after consultation with the miners' associations and gazettal of the declaration.

There are strict requirements on companies holding these areas involving approved work programs with required exploration expenditures, lease rentals and progress reports at regular intervals. There is no way that a small miner will be forced to negotiate with a company for an area to work. What is far more likely to happen is that, after a company has relinquished an area, having made some discoveries of insufficient magnitude for a company operation, an individual miner could peg parts of the area and realise a good income. Companies require a certain critical mass to enable them to support a mining operation.

The honourable member refers to the situation if everything grinds to a halt. I suggest that that is far more likely to occur under the present regime than under the changes that are proposed in this Bill. There is no argument at all with the honourable member's statement that quality can never be predicted and that quantity can in any way guarantee quality. High quality opal is a very elusive commodity, and there is no guarantee that a company operation will be any more successful than that of a smaller operator. What is required is a situation that will increase the chances of maintaining a continuity of supply of high quality opal, which the market is not getting at present from South Australia.

The Coober Pedy Miners Association, or at least its hierarchy, has decided in more recent times that it wants no change at all; that is, that it wants the *status quo* to remain. In fact, it has effectively achieved this through the amendment passed in the House of Assembly to clause 13 with regard to the major working area or areas at Coober Pedy. Within this area or areas the new Act will not apply. In other words, the miners will operate under exactly the same conditions as they do now.

With regard to the comments about Red Fire Resources No Liability, these again indicate a preference to listen selectively to people with some particular axe to grind rather than endeavouring to obtain an overall consensus opinion. I am told that Mr Geoff Oliver is a geologist formerly employed in the Mines Department, but he is not a director of Red Fire Resources and has definitely not been involved in any way in any negotiations with the Department of Mines and Energy in South Australia.

The Government is well aware of the need to increase the opal cutting industry in South Australia and the value adding that this entails. With the increased quantity of quality opal that this Act will in time generate, it is predicted that we will see a marked increase in the opal cutting and polishing industry in South Australia. The major working area will have a buffer zone within the boundary of at least 500 metres. In

many places it will be considerably more because of the nature of the survey and the need to install tall pegs that can be clearly seen from another. The worked area will be clearly marked on the ground on plans and be defined in the regulations. It is not proposed to have the Act and regulations proclaimed until the survey and pegging of the worked area has been completed.

Clause 17(7) protects the situation where an exploration licence has been granted for opal outside of precious stones fields. Obviously, if a person is exploring for opal, he or she should have exclusive rights to the opal while that lease is current. However, where a company is exploring for other minerals—for example, BHP and other big companies—such company may well agree to allow mining for opal under the strata title arrangements. Clause 29 refers to the removal of machinery from land where a tenement has expired. This has been a problem in the past where machinery lies around for months. For this reason, and again because many miners wanted it, the time period for removal has been dramatically reduced to 14 days.

The bogey of corporations entering the industry will prove to be just that, without foundation or substance. Quantity, of course, cannot replace quality, and it is quality that is required for the major overseas markets and the future increased development of the opal industry in South Australia.

As I said at the commencement of that reply, if the honourable member has other matters that she wishes to raise before the Committee consideration next week, I will be happy to endeavour to provide information to her, but additional matters can be raised during the Committee consideration of the Bill.

Bill read a second time.

ADJOURNMENT

At 5.47 p.m. the Council adjourned until Tuesday 21 November at 2.15 p.m.