# LEGISLATIVE COUNCIL

**Tuesday 13 February 1996**

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

## QUESTION ON NOTICE

**The PRESIDENT:** I direct that the written answer to the following question on notice be distributed and printed in *Hansard*: No. 22.

### FULL-TIME EQUIVALENT POSITIONS

22. **The Hon. R.R. ROBERTS:** How many full-time equivalent positions under the Government Management and Employment Act or other South Australian Acts which are the responsibility of the Minister for Industry, Manufacturing, Small Business and Regional Development and Minister for Infrastructure and which are located outside of the Adelaide Statistical Division, have been lost in the period from 11 December 1993 until 31 January 1995?

**The Hon. R.I. LUCAS:**

South Australian Water Corporation

140 full-time equivalent positions have been lost, the details are as follows:

| | |
|---|---|
| Natural Attrition | 21 |
| Deceased | 1 |
| Temporary Employment Ceased | 3 |
| Paid Off Workers Compensation | 1 |
| Resignation | 5 |
| Transferred Other Departments | 21 |
| VSP/TSP | 88 |
| TOTAL | 140 |

ETSA Corporation

222 full-time equivalent positions have been lost, the details are as follows:

| | |
|---|---|
| Natural Attrition | 5 |
| Resignation | 22 |
| VSP | 195 |
| TOTAL | 222 |

Economic Development Authority

Two full-time positions have been lost. (Through transfer arrangements the two officers are mow employed with the Regional Development Boards at Port Pirie and Mount Gambier respectively.)

MFP Australia

MFP Australia does not employ outside the Adelaide Statistical Division within South Australia.

## PAPERS TABLED

The following papers were laid on the table:

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

Regulation under the following Act—
Senior Secondary Assessment Board of South Australia Act 1983—Syllabus and Fee Changes
Response by the Minister for Employment, Training and Further Education to the Report of the Social Development Committee on Rural Poverty in South Australia

By the Attorney-General (Hon. K.T. Griffin)—

Regulation under the following Act—
Veterinary Surgeons Act 1985—Empower Board to set Fees and Charges.

## ENERGY

**The Hon. R.I. LUCAS (Minister for Education and Children's Services):** I seek leave to table a copy of a ministerial statement made in another place today by the Deputy Premier and Treasurer on the subject of efficient supply and use of energy.

Leave granted.

## HINDLEY STREET SHOOTING

**The Hon. R.I. LUCAS (Minister for Education and Children's Services):** I seek leave to table a copy of a ministerial statement made in another place today by the Premier on the subject of the Hindley Street shooting.

Leave granted.

## VIRGINIA PIPELINE

**The Hon. R.I. LUCAS (Minister for Education and Children's Services):** I seek leave to table a copy of a ministerial statement made by the Minister for Infrastructure on the subject of the preferred consortium for the Virginia pipeline scheme.

Leave granted.

# QUESTION TIME

## MUSIC EDUCATION

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

Leave granted.

**The Hon. CAROLYN PICKLES:** This year the allocation for instrumental and vocal music salaries has been cut by 23.4 full-time specialist music teachers. I have been given a copy of a minute which sets out the details of the cuts and the Minister's own requests on how they were to be implemented. I seek leave to table a copy of that minute.

Leave granted.

**The Hon. CAROLYN PICKLES:** I am sure that members would like to know the background to how these cuts were justified. These are the Minister's own instructions, and I quote:

> No school to have more than a 35 per cent reduction, no special interest music centre to have more than 30 per cent and unallocated salaries not to be used to ensure the 35 per cent safety net.

These instructions highlight the Minister's total lack of concern for music education and I am sure that people will raise this if and when the move to appoint a select committee is successful in this place.

In an apparent move to diffuse this issue the minute also revealed that a statewide music education review is to be set up by the Programs Division of the Minister's department and that all music teachers will be briefed. Too little too late. My questions to the Minister are:

1. Is the purpose of the review into music education to justify the Minister's cuts?

2. What are the terms of reference for this review?

3. Will the Minister guarantee that the review is conducted independently of his department by eminent music educators and include an assessment of the effects of cuts made by the Minister this year?

**The Hon. R.I. LUCAS:** The answer to the first question is 'No'. In relation to the third question, it will not be conducted by persons independent from the Department for Education and Children's Services. I am sure, given the wide interest in the Government's decisions in this area, that bodies independent of the department will certainly make submissions—

**The Hon. Carolyn Pickles:** Are you going to call for submissions?

**The Hon. R.I. LUCAS:** I would presume so—to the Department for Education and Children's Services in terms of their particular views. In relation to question 2, the terms of reference, I do not have those with me. I am happy to obtain a copy of the terms of the reference if they have been finalised and to provide the honourable member with it.

**The Hon. Carolyn Pickles:** Will a review include an assessment of the effect of the cuts?

**The Hon. R.I. LUCAS:** Well, I will look at the terms of reference and provide the honourable member with a copy. Certainly that will not be the intention of the review. We are being made aware of the implications of the decisions that we have taken, the effects of the cuts in a number of areas, as I have indicated already. That is nothing new. From last year the Government has indicated that there would be some cutbacks in services as a result of the decisions it took. The Government did not take the decision and state that there would be no effect on services. I answered a series of questions in this Chamber indicating, quite clearly, that there would be some reduction of services but that we would seek to minimise the extent of the reduction in services.

In relation to the memo that the honourable member has sought leave to table, it is true that a decision had been taken by the department at the end of November or in early December in terms of how the remaining salaries were to be allocated to schools. When I became aware of the allocation of the 80 or so salaries to schools I had some concerns about the ultimate decisions in relation to the allocation. For example, a school such as Norwood Primary School, with the very good program that it has, was to be reduced from, say, nine lessons to one or 1½ lessons. I indicated that I was unhappy with the initial allocation and I asked for that to be reviewed. As Minister, I indicated the expectations that I had in terms of allocating the remaining salaries. For example, in relation to Norwood Primary School, instead of having only one lesson, or a bit more than one lesson, it ended up with six lessons, a reduction of about 30 per cent from last year.

It is true to say that, as a result of the initial allocation, I indicated some criteria upon which the ultimate allocation would be made, and that was as a result of concerns I had had about the initial allocation. I have publicly debated that issue on a number of occasions with members of the Institute of Teachers and of the instrumental music teachers. So, it is not a new matter to be introduced into the debate.

## SAMCOR

**The Hon. R.R. ROBERTS:** I seek leave to make a brief explanation before asking the Attorney-General a question about the status of SAMCOR employees.

Leave granted.

**The Hon. R.R. ROBERTS:** Employees at the publicly owned South Australian Meat Corporation abattoir at Gepps Cross were informed in a memo dated 10 January this year that they would not be entitled to public sector targeted voluntary separation packages when SAMCOR was sold to a private buyer because they were not considered to be public sector employees. In this memo to the employees, SAMCOR claimed that 'there is no relationship between the public sector and SAMCOR employees.' This claim was the basis for not allowing SAMCOR employees to access TSVPs. Quite clearly, there is a relationship between the public sector and SAMCOR employees, and I will explain.

On page 10 of his direction to chief executive officers, titled 'Targeted voluntary separation package schemes', dated 19 December 1995 and effective from 1 January 1996, the Commissioner for Public Employment clearly defines the public sector in the following manner:

> 'Public sector' for the purposes of this document means an agency or instrumentality of the Crown in right of the State of South Australia and includes any body corporate that is in existence or which is established by or under any Act which is subject to control or direction of a Minister.

SAMCOR is established under the South Australian Meat Corporation Act. Part 2, section 9(6), of the Act states quite clearly that the corporation shall be under the control and direction of the Minister. Quite clearly, the Commissioner for Public Employment's definition of the public sector for targeted voluntary separation package scheme purposes would apply to SAMCOR and its employees. SAMCOR was established under an Act of this Parliament and is under the direction of the appropriate Minister. On page 1 of the Commissioner for Public Employment's direction to chief executive officers, the Commissioner states quite clearly again:

> The targeted voluntary separation package scheme which will operate from 1 January 1996 is the only—

and I stress 'only'—

> scheme available to assist agencies in reducing work force levels.

In spite of the scheme being described as 'the only scheme available to agencies', SAMCOR has informed its employees that they will be offered redundancy packages that are approximately only half the value of those offered to other public sector employees who have been sold to private enterprise. Given this inconsistency, will the Attorney-General explain why SAMCOR employees are considered to be public sector employees in Government budget papers, in the Commissioner for Public Employment's public sector work force figures and by definition of the Commissioner for Public Employment in his direction to CEOs on targeted voluntary separation packages yet, for the purpose of receiving separation payments from their employer, SAMCOR employees have been told that there is no relationship between the public sector and SAMCOR?

**The Hon. K.T. GRIFFIN:** It is not for me to give the honourable member legal advice. I will refer the matter to the responsible Minister and bring back a reply.

## BICYCLE TRACK

**The Hon. T.G. ROBERTS:** I seek leave to make a brief explanation before asking the Minister representing the Minister for the Environment and Natural Resources a question about the proposed bicycle route.

Leave granted.

**The Hon. T.G. ROBERTS:** This question may fall within the aegis of the Minister for Transport. Information has been given to me that the Government is proposing a bicycle path through and along the sandhills adjacent to the foreshore running north-south from north of Glenelg through Henley and Grange, and perhaps even further once the development processes are considered. Communities have raised a number of issues with me in relation to that proposal, and I am sure the Minister has been made aware of them, but the key considerations of most of the people making their submissions to me are on questions of privacy; that is, their houses have not been designed to facilitate moving traffic, and their close proximity to large movements of bicycles through that

area. I am sure that with careful planning and good advice the department could come up with proposals that may be stitched into a community plan, but as yet I am unsure whether community consultation processes have taken place.

Another reason for people approaching me is that they are concerned about the potential for damage caused by increased traffic through a very delicate, protected area, namely, the fragile sandhill network in those areas. Will the Minister guarantee that the community consultation processes will be adequate after the report by B.C. Tonkin and Associates is handed to the Government, and will the Minister seek guarantees that no environmental damage will be done in charting the bicycle path through those delicate sandhills?

**The Hon. DIANA LAIDLAW:** I will take this question, because cycling is the responsibility of the Department of Transport, which is implementing with enthusiasm the Government's cycling policy, which proposed networks of bicycle paths in the metropolitan area. Through Bike South, as the honourable member mentioned, the department has engaged B.C. Tonkin and Associates to prepare a concept plan for a foreshore bicycle path from Outer Harbor to Seacliff. Since the release of that concept, I have had representations from members of the public, and in particular from the members for Bright, Reynell and Mawson, who are all keen to see this foreshore bikeway not terminate at Seacliff but connect with the disused railway line that goes to Willunga. They are also keen for us to have an absolutely stunning cycling recreational and tourism facility, utilising the beauty of our foreshore and extending as far as Willunga.

All that is a distinct possibility, but it will not proceed until we have undertaken the extensive consultation period in which we are now engaged. I understand that the plans are now available at various council areas. I can certainly guarantee to the honourable member that the consultation will be not only adequate but also comprehensive and that environmental considerations will be paramount in addressing the infrastructure needs that will be associated with such an exciting development.

Cycling is embraced by many people because it is environmentally friendly. It would be absolutely counterproductive for us to be promoting cycling in the way I have outlined, only to find infrastructure consequences that would appal the community because of possible environmental damage.

Therefore, the issues of the environment are paramount in both the development of the initial concept and in the consultations that are being undertaken at the moment. I can assure the honourable member that, in my assessment of those consultations, the environment again will be a key consideration. If the honourable member would wish to be involved in those considerations, I would be very pleased to extend an invitation to him. If he would like a briefing from the department in the meantime about this whole concept, I would extend that invitation to him and any other member of Parliament, because we are very keen to implement this bicycleway and also to really promote cycling in Adelaide, which is just ideal for cycling given our generally flat terrain, great climate and infrastructure of roads, parklands and open space.

## COOPER CREEK

**The Hon. M.J. ELLIOTT:** I seek leave to give a brief explanation before asking the Minister for Transport, representing the Minister for the Environment and Natural Resources, questions in relation to Cooper Creek irrigation plans.

Leave granted.

**The Hon. M.J. ELLIOTT:** On a previous occasion I have raised the issue of Cooper Creek irrigation plans, in particular, a proposal for 42 000 megalitres of water to be drawn from the upper Cooper catchment in Queensland near Windorah, predominantly as I understand to be used on a major cotton farming project. There is serious concern coming from conservation groups, including the Australian Conservation Foundation (ACF), about the credibility of some studies which have recently been established.

The Department for Primary Industries (DPI) in Queensland has set up a Cooper Creek water allocation policy study under the water resources group. That study causes concern for two reasons. First, the study stops at the South Australian border, so it is looking at the impact of drawing out 42 000 megalitres until Queensland creeks reach the South Australian border, at which point the study stops. Secondly, the study is purely a hydrological study; in other words, it looks at how much water will flow in different years depending upon the seasons and the amounts of water drawn out.

*The Hon. A.J. Redford interjecting:*

**The Hon. M.J. ELLIOTT:** That is right, and does not include economic or environmental issues within the study. No hydrological modelling study is being undertaken of the Cooper Creek into South Australia, as well as no analysis of the alteration of stream flows caused by various proposals and its environment and ecological impacts. I have been told that the South Australian Department of Environment was unaware of this prior to 1 February.

The Cooper is one of the most variable large rivers in the world. The present plans threaten wetlands of world significance, which are subject to international treaties, and have huge implications for pastoralists, including pesticide pollution of stock and damage to tourism.

The ACF believes that, to ensure any study is credible, it must be expanded into South Australia with the involvement of the South Australian Government and must be widened. It says that, to ensure a proper water allocation policy, an ecological and environmental flows study must also be undertaken, which also requires an extension of the current reporting deadline of November this year. A major concern not addressed in the current process is the merits of retaining an unregulated Cooper, from an environmental and pastoralist's point of view. The ACF says this must be addressed. My questions to the Minister are:

1. Will the Minister ensure that a parallel and coordinated study is undertaken on the South Australian side of the Cooper system, in conjunction with the Queensland Government?

2. Will he ensure any studies undertaken are properly resourced and properly address the issues of concern raised by the ACF; in other words, that ecological and economic issues are also addressed?

3. Will he ensure that proper time is allowed for the studies?

4. Will he lobby the Queensland Government to ensure that studies undertaken are broad-ranging?

5. Will he ensure that the interests of the South Australian side of the Cooper system are adequately taken into account before any decisions are made?

**The Hon. DIANA LAIDLAW:** I will refer the honourable member's question to the Minister in the other place and bring back a reply. I am sure our success in these matters will

be much greater in future with the proposed change of Government in that State.

*The Hon. Anne Levy interjecting:*

**The Hon. DIANA LAIDLAW:** We have just had an outline of the history of the Queensland Labor Government in terms of its consideration of South Australia, which amounted to no consideration at all.

**The Hon. Anne Levy:** Are you suggesting Joh is better?

**The Hon. DIANA LAIDLAW:** Joh's long gone and there is a constructive Coalition in place. I am quite sure that our representations on matters such as this will be listened to with a great deal more consideration than they have in the past.

## UNIVERSITY UNION PUBLICATIONS

**The Hon. A.J. REDFORD:** I seek leave to make a brief explanation before asking the Attorney-General a question about university union publications.

Leave granted.

**The Hon. A.J. REDFORD:** Recently I have been given a copy of the University of Adelaide's 1996 *Orientation Guide*, which is a publication of the Students' Association of the University of Adelaide. Mr President, you would no doubt be aware that students covering a wide range of ages attend the University of Adelaide, including those under the age of 18. At pages 4 and 5 of the publication there are a series of photographs of people engaged in various sexual activities. It includes heterosexual and homosexual activity. Whilst I do not wish to appear moralistic on this topic—

*Members interjecting:*

**The Hon. A.J. REDFORD:** Just wait for it.

*The Hon. T.G. Cameron interjecting:*

**The Hon. A.J. REDFORD:** You just wait for it. Whilst I do not wish to appear to be moralistic, I am extraordinarily concerned that photographs were taken of various people engaged in these activities without their consent. Indeed, it may well appear possible for those people to be identified. I have also recently seen a number of documentaries in which various news gathering organisations are giving people within the community video cameras so that they can go out and spy on ordinary people going about their daily lives. One example, which was a United States documentary, involved a person videotaping, through their bedroom window, his next door neighbours engaging in normal consensual sex. Whichever way one looks at this, it is a gross invasion of our privacy.

Whilst we have put up with the increasing reduction of our privacy for a number of years, complaints have now been raised in documentaries, to the effect that various media outlets are encouraging the use of video cameras. It has been suggested that there may well need to be a revisiting of the issues of privacy. I recall, as a teenager, an attempt by the then Premier, Mr Don Dunstan, to introduce and pass legislation on the issue of privacy. I must say, judging by the reaction of members opposite, they have gone backwards, the mob opposite.

*Members interjecting:*

**The Hon. A.J. REDFORD:** Indeed, the Government, as I recall, intended to create a tort of breach of privacy. Amid a great outcry, particularly from the media, which, on the face of it, had the most to lose, the then Premier dropped the idea. However, given that there appears to be a real increase in breaches of people's privacy and encouragement by various unscrupulous media outlets in that regard, I would be grateful if the Attorney-General could answer the following questions.

1. Is the Attorney-General considering privacy legislation and, if so, what is the likely shape of that legislation and when is it likely to be introduced?

2. Has the Attorney-General, or any other Minister, had any complaints from anyone about breaches of privacy in the manner which has occurred in relation to this university publication?

3. What rights do students have to resign from their university union in protest of such activity in publication?

**The PRESIDENT:** Order! Before I call on the Minister, I remind members again that Standing Orders do not allow for debate on the subject. That really was debate from go to whoa, from where I sit. I do not mind the Minister—

*Members interjecting:*

**The PRESIDENT:** Order! I do not mind the Minister answering the question as he sees fit—I have no control over that, if members read their Standing Orders—but we have introduced into Parliament a session on Wednesdays to allow members five minute debates. I apply this also to the previous question. I believe that it is not helpful in this case. I call on the Attorney-General.

**The Hon. K.T. GRIFFIN:** I know that the honourable member said that he was not attempting to be moralistic about the issue of what might appear in the university orientation newspaper. Of course, some of the material may be quite offensive to many of the people, of whatever age, who might enrol as students at the university. In those circumstances, whilst the university students' associations have generally been a law unto themselves, I hope that they will recognise that there are certain limits beyond which they ought not go in terms of the proper way in which they should publish and the content of material they should publish.

Be that as it may, the fact is that if students want to resign from their university union they cannot do so. There is a provision which requires them to belong to the student union, and that has been a controversial issue over the years. It is more appropriate that my colleague, the Minister responsible for tertiary education, should answer this question rather than my embarking upon a dissertation about the compulsory membership of student unions, but it is an issue which is still fairly widely and hotly debated.

In terms of the issue of complaints from anyone about breaches of privacy in the sort of manner which has occurred in the university publication, there are lots of complaints not about the issue of privacy but about pornography and sexual violence, and generally in this State they are addressed by the new Classification Council and at the Commonwealth level by the Classification Board. If material has not been classified but it appears that it should be then it is appropriate to refer it to either of those two bodies, at either the State or Federal level. But there is concern expressed quite frequently to my office about some of the material, particularly printed material which is available generally for sale within newsagents, delicatessens and other such retail facilities.

In terms of privacy, recently I have not seen any complaints about breaches of privacy in the context to which the honourable member refers, but I will have some inquiries made of my colleagues to determine whether they have received any complaints of that nature. In terms of privacy legislation, that has a chequered history. Several years ago I can remember that the former Attorney-General brought in legislation which was controversial and which was very wide ranging, and the then Opposition was very concerned about its breadth and the creation of the tort of breach of privacy. It has not been proposed to me that we should revisit that. It

is certainly not on my legislative agenda at the present time, but if members believe that it is an issue that ought to be further addressed I would be happy to consider doing so.

## GLENELG TRAM LINE

**The Hon. T.G. CAMERON:** I seek leave to make a brief explanation before asking the Minister for Transport a question about the Glenelg tram line.

Leave granted.

**The Hon. T.G. CAMERON:** Can the Minister give the Council an updated summary of the Government's intentions regarding the city extension of Glenelg tram line's strategic elimination report released in 1993, and does the Minister support the extension of the tram line to North Adelaide?

**The Hon. DIANA LAIDLAW:** The extension of the tram line is being considered along with a whole range of other issues in terms of transport infrastructure in the metropolitan Adelaide area as part of the scenarios for transport strategy which are presently under debate. Last year, I released the guidelines that we would follow for the implementation of a transport strategy on the basis that there was no such long-term strategy for the metropolitan Adelaide area. In its *2020 Vision* document, the former Government looked at longer term planning issues, but it did not embrace transport issues as part of that planning exercise. That was seen by this Government to be a big omission that we should address. Many people want to know about transport infrastructure issues, for rail and road, the O-Bahn, interchanges, and the like, so that they can make their planning decisions. That initiative was announced in the middle of last year.

Workshops were conducted last year, and I envisage that, at the end of March or in early April, I will receive a report which looks at the issues that were raised at these workshops and provides various scenarios for community debate as options for us to proceed in the future. The extension of the Glenelg tramline is one matter that is being actively discussed. However, we do not want to proceed on an *ad hoc* basis with an extension of the tramline without knowing what the implications are for public transport infrastructure interchanges, and for the city as a whole, and how that will work together with other public transport initiatives. We are also taking into account the needs of freight operators, which is an area that has not been considered adequately in the past. I should be able to provide the honourable member with more information towards the end of March or early April, which is the further stage in the development of these scenarios.

**The Hon. T.G. CAMERON:** I have a supplementary question. Does the Minister support the extension of the tramline to North Adelaide? That was part of my original question.

**The Hon. DIANA LAIDLAW:** To North Adelaide?

**The Hon. T.G. Cameron:** Yes.

**The Hon. DIANA LAIDLAW:** No.

## ARTS AND CULTURAL HERITAGE DEPARTMENT

**The Hon. ANNE LEVY:** I seek leave to make a brief explanation before asking the Minister for the Arts a question on the resourcing of salary increases.

Leave granted.

**The Hon. ANNE LEVY:** After Parliament rose just before Christmas, the Government announced very large increases in salary for many CEOs. The largest increase, no doubt for very good reason, was to the CEO of the Department for the Arts and Cultural Development. It was a rise of $35 000. A great deal of concern has been expressed to me as to where this money will come from. I do not make any comment whatsoever about the salary of the CEO, but obviously this increase in salary was not part of the budget that was presented to—

**The PRESIDENT:** That is opinion.

**The Hon. ANNE LEVY:** No, it was not part of the budget. Members can look at the budget papers. It is fact: it is not opinion. It was not part of the budget papers that were presented to this Parliament when the last budget was brought down by the Government. That is a fact: it was not part of the budget. Either there will have to be supplementation of the arts budget by Treasury or this extra sum will have to be found from some other line of the arts budget. There is great concern amongst many arts organisations that it will be those organisations that will suffer by having their assistance from the Government cut by this $35 000 so that the books can balance. My questions are:

1. Will there be Treasury supplementation of the arts budget for this increase in salary?

2. If not, from which line in the arts budget will this increase be taken?

3. Will the Minister assure the Council that it will not be from the arts development line of the budget or that of any other organisation, either within or without Government, that receives Government funding?

**The Hon. DIANA LAIDLAW:** I can guarantee to the honourable member, as I have been able to reassure people in the arts community generally when they have sought such advice, that the arts development budget will not be affected by this increase to the CEO; nor will the budget of other organisations. As the honourable member would be aware, at the time the increase was announced, all budgets for all arts companies, whether general purpose or line budget, will have been confirmed with those organisations, and there is no suggestion that they will be touched. The Department for the Arts and Cultural Development has made a saving of about $500 000 within its own operating budget over the past two years.

*The Hon. Anne Levy interjecting:*

**The Hon. DIANA LAIDLAW:** No, in its own internal operating central staff budget. It is within these areas that the savings can be made.

*The Hon. Anne Levy interjecting:*

**The Hon. DIANA LAIDLAW:** The interjections from the honourable member opposite are interesting because, when I was in Opposition and prepared the arts policy, the arts community was very adamant that the Arts Department had to be streamlined and refocussed so that the maximum resources went out to arts programs and performances, and that is exactly what this Government has done. This is a broad view amongst arts practitioners in this State and, if the honourable member suggests otherwise, she is extraordinarily misinformed. The arts community in this State has wanted fewer resources in the bureaucracy of the Arts Department and Ms Pelz, as CEO, has delivered on that front, as she has delivered on many others in the arts area. Her job within the department has involved the promotion of the arts as an economic generator, as well as a source of artistic, cultural awareness and richness in our community, and that role has been recognised in the new, changed salary scales. Those scales were assessed by an independent consultant for the

Commissioner for Public Employment, not by the Government or by me.

I am pleased for the arts that, as the honourable member would know, the status of the CEO within the bureaucracy is such that the Arts and Cultural Development Department is recognised as one of the important portfolios within this State, a portfolio that befits the new salary for the CEO, and it will ensure for the arts that we get more than our money's worth from this salary rise.

**The Hon. ANNE LEVY:** As a supplementary question, is there supplementation from Treasury to the budget for the salary increase?

**The Hon. DIANA LAIDLAW:** No. I said I did not need it, because—

**The Hon. Anne Levy:** You did not say there was not.

**The Hon. DIANA LAIDLAW:** If you only listened or read between the lines. It was quite obvious when I indicated that it will be funded from savings that have been generated within the central office of the department—not within the other agencies of the department. The increased salary will come from the central office. There is no supplementation from Treasury, and nor should there be.

## LAWYERS, CONDUCT

**The Hon. A.J. REDFORD:** I seek leave to make a brief explanation before asking the Attorney-General a question on the topic of misleading and deceptive conduct.

Leave granted.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. A.J. REDFORD:** I recently received a newsletter entitled 'Immigration Notes' from a well known legal firm, Johnston Withers. As I understand it, the newsletter is to promote the skills of Johnston Withers as lawyers and at the same time inform people of the issues that might arise in the area of immigration. In that regard, Johnston Withers is to be congratulated on this initiative.

Of real concern was an item identified by Johnston Withers regarding the Federal Immigration Department. Johnston Withers reported to the readers of the newsletter the following:

> Reviewable or not reviewable? . . . the truth about Cambodian sub-class 214 visas. Misleading wording in Immigration Department refusals has led many applicants to believe that the decision is not reviewable.

The newsletter goes on and explains that the assertions made by the department are not true. The newsletter points out that, if the application is refused on grounds that the applicant is not considered to be experiencing hardship, it is, in fact, possible for the interpretation of the word 'hardship' to be tested on appeal to the Federal Court.

It seems clear that the department is providing misleading information, according to Johnston Withers, to a class of people who could only be described as disadvantaged and in a foreign environment. In the context of that, I would be grateful if the Attorney-General would answer the following questions:

1. Will the Attorney-General bring this to the attention of the Federal Attorney-General?

2. Will the Attorney-General raise with the Federal Attorney-General the prospect of bringing Federal Government departments within the ambit of the Trade Practices Act and the Fair Trading Act to ensure that they do not embark upon misleading and deceptive conduct, particularly in relation to disadvantaged groups such as migrants in our community?

**The Hon. K.T. GRIFFIN:** I will certainly have the matter referred to the Federal Attorney-General. Presumably, that will not occur until after the election when I can find out who is the Attorney-General. I presume that it will be a Coalition member and a South Australian, Senator Amanda Vanstone.

*Members interjecting:*

**The Hon. K.T. GRIFFIN:** I am not smug about it: the fact of the matter is that the Federal election has to be won and things are not looking too bad at the moment for the Coalition. It is an issue that is important. If Government departments are misleading the public in their brochures, or in the information that they impart in some other ways to the community, they should be brought to account. If the Federal Immigration Department is publishing material that gives a false impression, then it certainly ought to be corrected.

With respect to the Trade Practices Act applying to all Government agencies, as a matter of law that generally is the position as a result of a recent High Court case, unless the legislation is specifically expressed to be not of any application to the Crown. Again, I will look at that issue for the honourable member and bring back a reply.

## SITTINGS AND BUSINESS

**The Hon. T. CROTHERS:** I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, as Leader of the Government in this House, a question about the changing of the sitting times of the South Australian Parliament during the currency of this sitting period.

Leave granted.

**The Hon. T. CROTHERS:** On 6 February, the Deputy Premier and Leader of the House in another place, Mr Stephen Baker, announced the cancellation of a week's sitting of this State Parliament just prior to the forthcoming Federal election. In so doing he was exercising his right as the Leader of the House to change the sitting times of this Parliament, no doubt in consequence of decisions by himself and Cabinet colleagues.

In a later press conference, the Deputy Premier announced that the Government's cancelling of that week of sitting was done to prevent the South Australian Opposition from being mischievous in respect to issues which could have impact on the present Federal election—

*Members interjecting:*

**The Hon. T. CROTHERS:** We just heard the last question—

**The Hon. Anne Levy:** No, the last answer.

**The Hon. T. CROTHERS:** Both. This was done to prevent the South Australian Opposition from being mischievous in respect to issues which could have impact on the present Federal election campaign. This matter, coupled with the recently released press statement by the Government that, for the third time, it intends to introduce a Bill to abolish compulsory attendance at polling booths on election days has certainly caused some head scratching in the South Australian community. In fact, I was reminded by one irate citizen of a comment made during the period of book burning in Hitler's Germany during the 1930s and which was 'Tonight they are burning books; tomorrow they will be burning human beings.' How true. My questions to the Minister for Education and Children's Services are as follows. Well, the Minister for Education and Children's Services laughs at

what happened in Germany in the 1930s. Did it not happen? Of course, it happened, you fool.

*Members interjecting:*

**The PRESIDENT:** Order! The honourable member will ask his question.

**The Hon. T. CROTHERS:** Thank you, Mr President.

1. Why did the Minister and his Cabinet and Liberal Party Caucus members agree to cancel a week's sitting of this Parliament?

2. Does this cancellation tie in with the ducking and weaving of the Liberal Party Federal Leader in refusing, until recently, to debate issues in public with the Prime Minister?

*Members interjecting:*

**The Hon. T. CROTHERS:** It's a question, you fool!

**The PRESIDENT:** Order! That is not opinion; it is a question.

**The Hon. T. CROTHERS:** It is a question; it is not part of my statement. F O O L fool, D A V I S Davis; Both four-letter words!

*Members interjecting:*

**The Hon. T. CROTHERS:** I would have thought it was 40-love: six-one.

*Members interjecting:*

**The PRESIDENT:** Order, order on my right!

*Members interjecting:*

**The Hon. T. CROTHERS:** We will see what he serves up if he gets in. My questions continue as follows:

3. Is this cancellation part of a move by members of the Liberal Party nationwide that is aimed at preventing public debate on matters of public interest in the Australian Federal election at hand?

**The Hon. R.I. LUCAS:** I think Don Russell is not only writing the Paul Keating one-liners: he is starting to write the Hon. Mr Crothers' one-liners or questions as well. The honourable member's question could be answered much better by the Hon. Terry Roberts. Those members who served in this Parliament prior to the last Federal election will well know the unprincipled attack that the Hon. Terry Roberts read out in this Parliament on behalf of Mr Peter Duncan, written by Mr Peter Duncan and his cohort—his Left wing cell mate from Makin—in a desperate and, in the end, successful bid to smear the then Liberal candidate for the Federal seat of Makin in the dying days of the last Federal election campaign in 1993.

If the Hon. Mr Crothers wants another answer, if he does not trust the Left, I suggest that he speak to Mr Atkinson, who represents another faction in the Party and who, again, in an unprincipled attack in another House, smeared the reputation of another Federal Liberal candidate, the now Federal member for Adelaide. If the particular allegations made by Mr Atkinson had any remote truth about them, that person would have been in gaol by now. So, when I suggest to the members the reasons why Mr Baker indicated that the Opposition in South Australia could not be trusted in the week before the Federal election, I suggest that he speak to the Hon. Mr Roberts, to Mr Atkinson and to his other colleagues who urged on those two members prior to the last election to smear candidates in the Federal arena, when they could not defend themselves. It was a shameless, unprincipled attack on two members of the Liberal Party prior to that election. That is the simple answer to the question asked by the Hon. Mr Crothers. I suggest that it is not much different from the reason why Mr Goss is proving reluctant to reconvene the Queensland Parliament prior to the Federal election.

**The Hon. Anne Levy:** Why won't you tell us when we are sitting?

**The Hon. R.I. LUCAS:** That wasn't the question.

## WATER SUPPLY

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

*The Hon. Anne Levy interjecting:*

**The PRESIDENT:** Order, order on my left! It is a nice day outside, and if you want to go and have a look at it I can facilitate that.

**The Hon. SANDRA KANCK:** —representing the Minister for Infrastructure questions about SA Water's discharge licence.

Leave granted.

**The Hon. SANDRA KANCK:** The Environmental Protection Agency prescribes effluent discharge requirements for all sewage discharges into Gulf St Vincent. These requirements include a target of zero environmental harm caused by effluent by the year 2001 and annual goals for the reduction of the nutrient levels of discharges into the gulf. Since Parliament has not been allowed to see any of the contract details between SA Water and United Water, we are all in the dark about who is responsible for meeting the discharge requirements prescribed by the EPA. My questions to the Minister are:

1. Who is responsible for meeting the requirements of the EPA pollution licence for sewage discharges into the gulf: SA Water or United Water?

2. If effluent levels above annual maximum limits are discharged into Gulf St Vincent, who will pay the resulting fine: United Water, which is operating the sewage treatment plants, or the taxpayers of South Australia through SA Water?

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

---

## FISHERIES (GULF ST VINCENT PRAWN FISHERY RATIONALIZATION) (LICENCE TRANSFER) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 28 November. Page 632.)

**The Hon. R.R. ROBERTS:** The Opposition supports the second reading of this Bill, which seeks to overcome what the Minister says is an anomaly in that, if a licensee is to sell his licence to someone else, there has been for many years in this industry a requirement that a surcharge be placed on all licensees to pay back what is called the buy-back debt. The Bill, I am told, seeks to allow a situation where those licences can now be transferred and the surcharge, instead of being the responsibility of the person selling the licence, can now transfer to the new licence owner.

There is somewhat of an anomaly in the Act whereby, as a result of a case before Justice Olsson in the Supreme Court in respect of these matters, all levies and surcharges on licensees had to be applied equally. People from the Fisheries Department and the Minister have explained to me that, because of the legislation, there is a requirement to change that to allow the new purchaser to take over the debt. I do not

really have a problem with the concept of the new purchaser's being able to take over an existing debt; it allows a situation whereby someone who is now in the industry but wishes to get out does not have to come up with that amount of money, because he can onsell his licence and a new player can come into the operation and pick up the debt. However, I am a little concerned about the way that it is proposed to do this, that is, by regulation and not through the forums of the Act.

Those who have served in this Parliament for a long time would well know that this has been an industry in which there has been much controversy over many years. The legislation was brought about simply because of the ongoing controversy, the very fragile nature of the continuation of this industry and the survival of the fishery. Because of the history of this industry, there has been great angst. We are talking about an industry which in 1976 used to take over 470 tonnes of prawns but in which in 1991 the catches were so low that the fishery had to be shut down. The shutdown was suggested by a select committee of the Lower House, chaired by Mr John Quirke, which made a number of recommendations, including the closure to allow this fishery to re-establish.

It was suggested that, before the fishery was to open, proper research and a series of steps needed to be undertaken to assure the viability of the fishery. Two of those requirements were that there needed to be a total catch allocation and individual quotas allocated to each fishery to ensure that the fishery was not overexploited again. It is a matter of history. I have made numerous contributions since 1993, when that fishery was prematurely reopened. I say 'prematurely' advisedly, because it was a recommendation that it be closed for two years but, at the end of those two years, the then Minister (Hon. Terry Groom) took advice from the Director of Fisheries and the Fisheries Department that the fishery, based on their own evidence, was still in a parlous state.

I have recounted some figures for the consideration of this Chamber on other occasions but, in precis, when we compared the November 1993 figures with those of 1991 (when I remind the Council we closed the fishery because of its parlous state), we found that the catch rates in the same area in that fishery were about half what they were in 1991. So, how the people in charge—the Fisheries Department in South Australia—could recommend to the Minister that they reopen that fishery is beyond me. Since that time, when fishing did occur without a total catch allocation, without individual quotas for each individual fisherman, what occurred—which could have been expected after a two year closure—was that initially there were some very good catches, which faded away until the end of the year, when the fishermen themselves had to close the fishery, because again they were concerned about the parlous state of the fishery. Last year, when the fishery was reopened and fishing occurred, a similar situation prevailed.

A whole range of factors affects a fishery of this nature, and it is not my intention today to go into all of them. Suffice to say that at the end of that season a report into that fishery was necessary, because again we found that the fishermen had to say, 'Enough is enough. This fishery is not producing what it is supposed to produce and in fact it is under extreme pressure.' In the preceding year they had commissioned a report by Dr Gary Morgan, who came in for a week. It was an enormous task to try to establish what was going on in that fishery in a week. He looked at that fishery for a week and laid down certain criteria which he suggested should have been met prior to fishing opening last year. Included in that was again a close focus on the fishery. Dr Morgan pointed out the need for a proper management plan and that the industry had to determine whether it would proceed on an economic basis or whether it would introduce a scheme which concentrated on the breeding stock in the industry.

When fishing occurred last year, most of Gary Morgan's recommendations were ignored. Indeed, after numerous calls from the Opposition for caution in this industry, repeated denials that there was anything wrong in the fishery and absolute repulsion of any suggestion we made that further study of this industry was needed, as a result of the lack of fish, the Minister once again was forced to hold an inquiry, and Gary Morgan was again commissioned to come and look the fishery.

At that stage, in an endeavour to try to secure a long term future for the Gulf St Vincent prawn fishery, the Opposition suggested that Dr Copes, who is probably the best informed researcher on this subject, be invited to assist Gary Morgan. That was rejected. A fishing and biological accountant, Mr Morrison, was commissioned to do a report on this fishery, in conjunction with Gary Morgan. Gary Morgan had made recommendations the year before based on the advice that had been given him by the Fisheries Department over many years, advice that the Fisheries Department swore and declared was valid and accurate, but I think history has shown that it was not. Dr Gary Morgan's findings, after his extended look at this industry, have changed many of the criteria.

What is disconcerting about this is that the Morrison report, which discusses the financial arrangements and how this industry ought to be run, has not been presented at all. Its findings have not been made available to the South Australian Fishing Industry Council; as I understand it, they have not been made available to the Gulf St Vincent Advisory Committee; and they certainly have not been made generally available to fishermen.

The Minister introduced this Bill at the end of the session before our last break, with no prior consultation with SAFIC, the Gulf St Vincent Advisory Committee or the individual fishermen. On that occasion I made some inquiries, because I found it quite strange. I had to ask myself why anybody in this fishery, which is in such a delicate state, would want to start buying licences, especially given the worth of those licences. The logic behind this has been explained as trying to reduce the number of fishing licences in the industry. I have no truck with that. In my view and that of others, the prawns in the Gulf St Vincent prawn fishery could well be caught by half the number of fishermen. What we are talking about is selling the licences so that we can take players out.

When at my request I was being briefed by Mr David Hall, Mr John Jefferson and Mr Smith from the Gulf St Vincent Prawn Advisory Committee, I asked what this was about and how we were to allocate catch. This fishery operates on a number of finishing nights designated for each year. Given that all fishermen have parameters as to what gear they can use, one has to ask why they would buy two licences. A question arising from that is whether they pay two licence fees or one. I think the answer is that they pay two. But, if they fish only a certain number of nights per year, how do they catch two allocations? Clearly, it is not possible.

I raised those issues with the Director of Fisheries, and his answer to me was that they would allow a different type of fishing gear to be used; that is, they could have longer lengths of headline ropes, increased boat lengths and increased horsepower for their boats. Again, we are still faced with the question of whether they will pay for two licences or one, and

how that will guarantee the profitability of amalgamating two licences. I was advised that this would be done by regulation. On inquiry as to what those regulations may contain, I was advised they had not given any thought to it and did not know how it would work.

We have here a Bill introduced without any consultation whatsoever and without the benefit of the Morrison report on the financial aspects of this operation. I did question the people who were briefing me as to the position of the Gulf St Vincent Prawn Advisory Committee, only to be told to my absolute surprise that the financial arrangements with respect to buy-back and licence fees did not come under the purview of the Gulf St Vincent Advisory Committee. I do not know why, given that the Government recognises the need to look at the Gulf St Vincent prawn fishery. We need biological evidence to find out what is going on in the fishery and financial advice to see that operations can go ahead and so the Government can manage the State's fishing estate for the benefit of all South Australians in a biologically sustainable manner and at a reasonable financial return for the people in that fishery.

However, after I made inquiries, it was quite disconcerting to me that none of the fishermen, SAFIC or the Gulf St Vincent prawn fishery advisory committee had been consulted, although the Chairman—the Minister's appointment to the Gulf St Vincent Advisory Committee—had clearly been having discussions, because he was one of the people briefing me, and he had all the details. Since that time, I have sought to have SAFIC, the Gulf St Vincent Advisory Committee and the fishermen themselves consulted so we can get some handle on what those people involved in the industry think about it.

Section 4 of the Act is read in conjunction with section 8. Bearing in mind the decision of Minister Olsen, which I touched on earlier, if anybody did transfer their licence and, in effect, pay out their total liability to surcharge, there is no ability to recognise this total payment by imposing a differential charge on the other licence holders. Having spoken to the legal advisers to the fishermen, they agree that this anomaly does need correcting and suggest that it can be easily overcome by amending existing section 4(2)(b) to read:

> An amount is paid to the director representing the licensee's accrued liabilities by way of surcharge under this Act.

In effect, that deletes any reference to prospective liability and the ability to transfer is still available but the ability to levy surcharge on the licence holders uniformly is not affected. We are suggesting that, rather than take this out and do it by regulation and leave it to the Minister, it ought to be done in the legislation.

With respect to amalgamation of licences, the Minister seeks to rely on the Morgan report as the basis for amending the legislation to allow for the amalgamation of licences. It is a little curious, because the amalgamation of licence was not one of the terms of reference for Morgan. In fact, he was not asked to consider it at all. Nowhere in the bulk of Gary Morgan's report is there any reference to the matters referred to by the Minister. No submissions were requested or made on this issue of amalgamation; nor was there any consultation with the industry on the issue of amalgamation. Gary Morgan, in his executive summary, mentions headline lengths and talks about a limit of 15 fathoms of total headrope length. He specifically excludes any increases in headline lengths by amalgamation. In fact, I have a copy of what he said, and it is as follows:

> It is recommended that the Gulf St Vincent Advisory Committee set in place guidelines for such replacement [this is with respect to equipment] at an early stage. The minimum conditions in order to retain control of affecting fishing effort while enabling sufficient flexibility to encourage the development of the industry should be:
>
> 1. A limit on the total headrope lengths to the present 15 fathoms;
>
> 2. The ability to combine licence and gear entitlements provided the total headrope lengths for the combined licences remain the same. This would necessarily mean that one vessel is permanently removed from the fishery for every such amalgamation.

In the past the Minister has relied on the Gary Morgan report. I and many others would argue, though, that as to the advice given by Gary Morgan, albeit having been arrived at under some duress—and clearly he has found this and has admitted it himself—a lot of the information provided to him by the department has now been proved to be inadequate and, in fact, wrong. Whenever the advisory committee and the Minister have ordered that fishing could take place, they relied completely on Gary Morgan, and when it suits the Minister's point of view, his report is held up like the holy grail. Indeed, when it does not suit them, it is dismissed. My point is, if Gary Morgan was right in respect of these things, why are we not taking his advice with respect to the total management of the fishery, because Gary Morgan looked at all the implications and mechanisms within the fishery?

The Gulf St Vincent Advisory Committee at its meeting on 7 November 1995 adopted the Morgan report but specifically excluded the comments made by Morgan under the heading: '4. Other issues', which is where he makes his sole comment about amalgamation. Mr John Jefferson, of the Fisheries Department, has advised that there would be an opportunity with amalgamation of the licences for amendments to the regulations to allow for those things that I have mentioned earlier—increased horsepower, increased boat length and increased headrope length. The point I have just made is in opposition to Gary Morgan's specific recommendations.

Management of the fishery is the issue. It is up to the Gulf St Vincent Advisory Committee to determine how the management occurs. It should be the aim of the Government to protect the fishery, not to legislate how much the fishermen should make. Clearly, it is the role of the Government and the department to ensure that the fishery is sustainable biologically in the first instance. Then, any considerations about finance ought to be made against that backdrop.

I will not oppose totally this legislation because the incentives in the legislation are clearly good. The Quirke committee suggested that boats ought to be taken out of the fishery, and I agree with that. Quirke also was the first person to recognise that there have to be quotas. It is my personal view that, if this fishery is to remain open, there have to be quotas. If there are quotas, much of what has been proposed here could work. Whilst the fishery is managed the way it is, on the number of nights fishing, and given that the present legislation provides parameters in which gear has to be used, I do not think it can work. It seems to me an inappropriate piece of legislation without consultation and without a clear focus on what we are trying to do. If the proposed regulations were available to the Legislative Council, we may be in a better position to make some judgments.

With respect to what is happening in the prawn fishery at the moment, when fishing took place last year, one of the recommendations that Morgan provided was that fishing could take place in November and December. This is significant for people who have a knowledge of the prawn

industry, because that is the period when spawners first come into spawn and start to spawn within the fishery. Gary Morgan, in his recommendations, did point out that our spawning stocks needed to be protected, and if the areas where fishing was to take place were spawning areas they needed to be avoided to protect that base stock.

I am advised that fishing did take place in November and, on the first night, in the area in block 1, which is an area known to be a recognised spawning area for Gulf St Vincent prawns. In fact, I am advised further that some ten years ago 40 per cent of the total prawn catch was made in that particular area, but the fishery was sustainable. That may sound a contradiction but, at that time, there were huge amounts of juvenile and younger age prawns, and to take some of those spawners was not a problem. However, we found on that first night's fishing that sustainable catches were not made. Some fishermen caught only 100 kilograms of prawns in a recognised area where spawners congregate.

I am informed that the official version of the next to nothing catches in the main area where spawning females gather was that the night was spent surveying and not fishing. I have reliable information that says that this is a complete misrepresentation and the complete area was searched without success and, consequently, fishing could not take place. For the next couple of weeks fishermen were unable to locate prawns of about 20 to the kilogram. What occurred was that prawns of about 26 to the kilogram were being fished. Gary Morgan's report said that they should target the 22 but during the night, if the fish dropped off, they could go out to 24. What occurred on the first night was that prawns of about 26 to the kilogram were being caught and some unloadings were even smaller. Since the fishery needed to be closed for several years when prawns of about 27 to the kilogram were being caught, obviously it can now be seen that the fishery is in sharp decline.

Members need to remember that we used to catch 476 tonnes of prawns from this fishery years ago and those prawns were about 18 to the kilogram. It appears that we seem to be going down the same path. What occurred after that was that prawns were taken 26 to the kilogram versus 22 to the kilogram, which is far worse than it appears at this point. But, if members look at some of the fishing data that was collected, they will find that the measuring sheets from one fisherman on 23 December 1993 show prawns 159 to the bucket, which is a little less than 22 to the kilogram, had only 17 prawns which were 37 millimetres or smaller. The measuring sheet of 25 November 1995 shows 190 prawns to the bucket, which is a little more than 25 prawns to the kilogram—it is nearer to 26—had 68 such prawns.

The same exercise using 42 millimetre carapace length, that is 27 to the kilogram, resulted in 55 prawns, which were 42 millimetres or smaller on 23 December 1993, but 122 such prawns on 25 November 1995. Clearly, there are no bigger prawns and we are catching more and more smaller prawns, which is exactly the same path we travelled until such time as the fishery was forced to be closed. It can be seen that many more smaller prawns are being removed under the lower size criteria presently employed. These prawns have not reached their full growth or price potential and, even more importantly, their full reproductive potential—and that is the key issue. If they are left they would spawn twice more and each spawning would produce greater numbers of eggs because the larger the prawn the more eggs it produces. They progressively increase from 100 000 eggs to 600 000 eggs as they grow.

I am advised that the South Australian Fisheries Industries Committee is studying this matter. I also understand that the Gulf St Vincent Advisory Committee is also seeking consultation with Fishery SA in respect of these matters. At this stage I am advised that there are no further speakers listed on this particular Bill. I am expecting to receive some further information, so with the leave of the Council I seek leave to conclude my remarks tomorrow.

Leave granted; debate adjourned.

**The Hon. K.T. GRIFFIN:** Mr President, I draw your attention to the state of the Council.

*A quorum having been formed:*

## EVIDENCE (SETTLEMENT NEGOTIATIONS) AMENDMENT BILL

**The Hon. K.T. GRIFFIN (Attorney-General)** obtained leave and introduced a Bill for an Act to amend the Evidence Act 1929. Read a first time.

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

*That this Bill be now read a second time.*

This Bill amends section 67c of the Evidence Act 1929. Section 67c protects the confidentiality of private dispute resolution. It provides that evidence of a communication made in connection with an attempt to negotiate the settlement of a civil dispute, or of a document prepared in connection with such an attempt, is not admissible in any civil or criminal proceedings except in the circumstances set out in section 67c(2). Section 67c(2) provides that such evidence is admissible in a variety of circumstances, for example, where the parties consent to its being admitted, where the evidence has been disclosed with the consent of the parties or where the communication was made in the furtherance of the commission of an offence. Section 67c(2)(e) provides that such evidence is admissible where it relates to an issue in dispute and the dispute, so far as it relates to that issue, has been settled or determined.

The rationale for the protection of evidence of communications made in connection with an attempt to negotiate the settlement of a dispute is founded on the public interest in encouraging those in dispute to settle their differences rather than litigate them to a finish. Settlement negotiations are encouraged by protecting a party from the use against the party of concessions made in the course of such negotiations. Disputing parties should not be discouraged from making concessions by the knowledge that anything said in the course of negotiations might be used to their prejudice.

In the course of *State Bank of SA v. Smoothdale No. 2 Ltd & Anor* litigation the scope of section 67c(2)(e) came into question. The question was whether the statutory protection survives the settlement of a dispute, so that things said and done in the course of successful negotiations must be revealed, and can be used as evidence, in proceedings involving parties other than, or additional to, the original disputing parties.

The Supreme Court in a judgment delivered on 13 December 1995 held that the effect of section 67c(2)(e) is that once a dispute has been settled any claim of privilege for communications or documents in connection with those successful negotiations ends. This interpretation of section 67c(2)(e) is arguably narrower than the common law and may inhibit settlement negotiations. Frank negotiations will be discouraged if parties to the negotiation show that communications made in the course of settlement of a dispute

may be used in any subsequent litigation connected with the same subject matter.

This Bill repeals existing section 67c(2)(e). It is to be noted that the New South Wales and Commonwealth Evidence Acts provisions, on which section 67c is based, do not have a provision similar to section 67c(2)(e). The opportunity has also been taken to include a provision which makes it clear that evidence of communications made in the course of settlement negotiations can be adduced in proceedings to enforce an agreement to settle a dispute or proceedings in which the making of such an agreement is in issue. Such a provision reflects the common law and needs to be included here for completeness. This new provision is inserted in place of the repealed section 67c(2)(e). I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

*Clause 1: Short title*

This clause is formal.

*Clause 2: Amendment of s. 67c—Exclusion of evidence of settlement negotiations*

Clause 2 provides that evidence of settlement negotiations is admissible in proceedings to enforce a settlement agreement or proceedings in which the making of such an agreement is in issue. The previous paragraph under which evidence of settlement negotiations becomes generally admissible once settlement has been reached is removed.

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

## EXPIATION OF OFFENCES BILL

Adjourned debate on second reading.

(Continued from 7 February. Page 824.)

**The Hon. A.J. REDFORD:** I support the Bill and congratulate the Attorney-General for introducing it. I think that all members in this Chamber, and particularly those in the other place, have had complaints from time to time from various members of the public who, having received an expiation notice, have caused payment to be made one or two days' late. The difficulty under the current regime is that, once that time has expired and a person has not paid their expiation fee, the juggernaut of the law and the legal process is brought to bear at great cost to those people.

Currently it is not unusual for a person faced with a $60 or $70 expiation fee to be a day or two late and then have a summons served upon him, be dealt with through the ordinary process of the courts and finish up with a bill, including court costs, fees and the like, in excess of $200. This situation may arise as a consequence of a person's not being able to afford to pay the fine at the time. So, in that context, this legislation and the scheme that it establishes is welcome.

I welcome the Attorney-General's approach in limiting the extent of the expiation fee to some $315, being the maximum expiation fee. That will ensure that we do not bring an administrative process into more serious offences where the full process of the law ought to be applied. I will not bore members with my views in any detail on that topic.

I also congratulate the Attorney-General in making provision for the payment of expiation fees by credit card (which is mentioned in clause 7 of the Bill). I have a query and do not need an instant answer, but I would be grateful if the Attorney could advise this place at some stage, or arrange for the other place to be advised, so that it is on record, of the nature and extent of the availability of credit card facilities. I am not sure to what extent people can avail themselves of the use of credit card facilities if the only place they can pay their fine is at Angas Street or a particular court. If there is a demand for this service, local police stations and other agencies which have responsibility for this task might consider having credit card facilities available.

I have a number of comments to make about various clauses, but my comments are more suggestions or queries in an administrative sense. The first relates to the question of hardship. It is the age old worry of all people who become involved in the criminal justice system as to how fines ought to be applied. We all have heard the argument of how a fine of $400 for drink driving on a person who is earning $60 000 or $80 000 a year has far less impact than such a fine on a person who is earning $20 000 a year and who has three children and a mortgage to pay.

*The Hon. M.J. Elliott interjecting:*

**The Hon. A.J. REDFORD:** The Hon. Michael Elliott interjects and says that uniform parking fines are applied without any reference to income. I do not know if there is a short or simple answer to it. It is a question that has exercised the mind of legal academics ever since I became associated with them. It is an age old argument. Another thing that concerns me is in relation to clause 9 and the way in which the hardship provision is to be applied. Basically, the legislation provides that if a person can establish some hardship then they can apply to the registrar and serve community service in lieu of paying the expiation fee. I take no issue with that: I think that that is an excellent provision. I also take no issue with the thrust of the legislation, that the onus ought to be for the person to establish their hardship and that they should not just opt out of paying their fine because it is a matter of convenience to them.

However, I suggest to the Attorney that perhaps the Registrars be asked to develop a set of guidelines in terms of how they go about establishing hardship. There are a number of registrars of courts throughout the State, and I do not seek for the Attorney to interfere with the independence of these people who are part of the Courts Administration Authority, but I think there is a need for consistency. We do not want, and I think it would be undesirable, for people to go registrar shopping. In other words, a registrar at Mount Gambier might be tougher in his application of hardship rules as opposed to the registrar at Christies Beach, so people jump in the car and go to the registrar at Christies Beach. I offer that by way of suggestion to the Courts Administration Authority, that it does develop some guidelines so that there is some consistency in decisions relating to hardship.

The next issue relates to clause 6(1)(f), which provides that an expiation notice cannot be given to a person if a prosecution has been commenced against that person. I invite the Attorney to monitor that over the next couple of years. I can imagine occasions where a police officer might make a quite reasonable decision to prosecute and, when the circumstances are subsequently examined, it is felt that an expiation notice would be more appropriate. In that case, the police might want to take the option of withdrawing the summons and issuing an expiation notice, given the time limits that might apply. That might assist the police and prosecutors in what I euphemistically call, but which everyone in the legal profession denies exists, the process of plea bargaining. In that process, a prosecutor might say, 'If you plead guilty, we will withdraw the summons and issue you with an expiation notice and, if you pay it, there is no conviction on your record.' That might be an option to

prosecutors, but I am not suggesting that we do anything about it at this stage.

The next issue concerns the form in clause 8. That clause provides that an alleged offender may, by notice in the prescribed form, elect to be prosecuted for the offence. In other words, that person is given an expiation notice but, if he or she wants to plead not guilty and take on City Hall, that person has an onus to give notice; otherwise the administrative procedure will automatically flow through. I suggest to the Attorney—he probably has it in his mind and I am sorry that I have not discussed this with him privately—that any expiation notice and the form that is issued should be simple and clearly understood. I know that great strides have been made in the presentation of forms and documents to general members of the public so that they can understand them, but it is very important that this form be made very clear so that anyone who receives an expiation notice understands clearly that, unless they put in a notice, they are deemed to have accepted the liability that that expiation notice creates.

Another issue relates to clause 14(3)(c), which sets out a ground upon which a person may apply to have an expiation notice set aside. These circumstances arise where a person who is subject to a fine has a knock on the door with a police officer saying, 'You owe X amount of dollars under this expiation notice.' The person says, 'I have no knowledge of this. I never received an expiation notice. I really do not know what it is all about.' Under the current law and under this proposed legislation, that person can apply to the court to have the notice set aside. However, under this legislation, for the saving of cost and for administrative ease, with which I agree, there are a number of options in the requirements for the service of expiation notices—I do not want to use the term 'loose'—and there are some risks, so a large number of expiation notices could be issued and purportedly served within the legislation that do not come to the attention of the alleged offender. I hope that, over the next two years, the Attorney can monitor how many applications are made pursuant to clause 14(3)(c) so that we in this place might revisit it if a substantial number of expiation notices are not coming to the attention of the offender. I support the current regime and I cannot think of anything better, but it is a question of seeing how the system works over the next couple of years.

I apologise to the Attorney for raising this final point at this very late stage, but it is something that he might want to consider. It relates to clause 16, which involves the withdrawal of expiation notices. I have read some of the contributions made earlier and I can imagine situations where it can occur. In fact, I have had clients in this situation who have committed quite serious offences. For some reason (and we all understand the sort of pressures they are under), the police officer issued an expiation notice for a minor offence, and I have had people come into my office, as a criminal lawyer, with a grin from ear to ear, saying, 'Mr Redford, if I pay this fee does that mean I get off all these serious offences? This is my lucky day.' I have had to explain to them that it is likely that the police will withdraw the expiation notice and charge that person with the more serious offence. I take no issue with that because we cannot allow the administration of justice to be fiddled around with because of some administrative mistake made by an overworked police officer.

However, my query relates not so much to this legislation but to the Summary Procedure Act and the time limits. The Attorney may be able to give me a simple answer, but it is not clear to me what time limit would apply in the case of a withdrawal of an expiation notice. It seems to me that the other Bill, on which I will speak a little later today, sets out the time limit in relation to a case in which an expiation notice was given for an expiable offence. There is no provision as to what time limits should apply in relation to where an expiation notice is given and then subsequently withdrawn. Perhaps that matter can be examined at some stage, but I can see that, in a very rare case, it might create a difficult problem for a court in determining precisely what the time limit should be. I apologise to the Attorney for raising that at such a late stage, having regard to the fact that the Attorney gives me extraordinary amounts of time and listens to all submissions that I make. I congratulate the Attorney. I think this is an enlightened approach to what is a difficult issue. Subject to those few queries, I commend the legislation to this place.

**The Hon. M.J. ELLIOTT:** It is not my intention to move amendments during the Committee stage, but I do want to raise some issues and seek responses from the Attorney-General on them. In fact, most issues that I want to raise have been covered by the Hon. Angus Redford, and the fact that he has raised them and I, too, am raising them suggests that they will be issues that will come back to us at some future stage.

Most of my questions relate to clause 9, which is about options in cases of hardship. I have certainly had some lobby from the Aboriginal legal rights movement and from others as well. This is the area that causes concern. We are seeking at the end of day not to have people in gaol for minor offences, and that is certainly the track that we have been taking generally. However, there is some concern that that could still be an end result if this clause does not work properly.

One of the problems with expiable offences is that those generally are the sort of offences that people from any strata of society are likely to commit, and we pitch a fine that will hurt people and, in so doing, the pain on some people is far greater than that for others. People at the bottom end of the economic scale will find expiation fines very difficult to cope with. For others, they are nothing more than a minor nuisance. Many other offences tend to be committed by categories of people and, when you set levels of fines, which are ultimately administered by the courts, they not only match the offences but also closely match the individual who has to pay them.

In relation to clause 9(4), the Registrar has to be satisfied that the applicant or his or her dependants would suffer hardship if the expiation fee under the notice were to be paid in full. At this stage I ask why applicants may not have a little more discretion as to whether or not they pay a fine in full or in instalments or work it off by way of community service. Why cannot we offer a discretion as to how it is handled in the first instance by the person who has committed the offence? That discretion could be lost if that person has reneged on any previous occasion. If a person has previously opted to work off a fee by community service but has not attended when required and has not fulfilled the requirements of community service, he or she would never have that option available again. If a person, under prescribed circumstances, opts to pay the fee in instalments but fails to fulfil the requirements, again he or she would lose any further discretion to exercise that right should another expiable offence be committed.

In relation to clause 9(6), the Hon. Angus Redford asked why there could not be some circumstances where the Registrar might make an order in respect of an amount if the enforcement order has been made. There may be such circumstances, and I am sure that this Bill would not lose a lot if subclause (6) was struck out or amended. I agree with the Hon. Angus Redford that it would be appropriate in some cases.

Subclause (7)(c) provides that the Registrar should not make an order for community service if the alleged offender is able to pay the due amount in instalments. This is really where the rich get it easy. There are occasions when a person finds an expiation amount nothing more than a trivial inconvenience. In fact, it would be appropriate for the Registrar to order community service instead. In this case, there is a clear instruction that if you can afford to pay the fine you should not get community service. If you are capable of paying the fine that is the time when you should get community service, because you will be asked to do something and will be put to an inconvenience. You will in fact, have had a real penalty. If anything, clause 9(7)(c) has not got things quite right.

The other issue I want to raise—and I am not proposing any amendments in this respect—relates to orders being delivered by post. There are some people who, because of their circumstances, simply do not receive the enforcement orders, and then a whole chain of events follows from that. There is a question whether or not clause 13(6)(c) and clause 16(4) in their current form are entirely appropriate. I am not offering an alternative at this stage, but I have been lobbied by some people who feel that the people whom they represent are disadvantaged in relation to those clauses. I welcome responses from the Attorney when he closes the second reading debate.

**The Hon. K.T. GRIFFIN (Attorney-General):** I thank honourable members for their indications of support for this package of legislation, which is quite a significant reform of the expiation of offences law designed to provide more options for people who are unable immediately to expiate offences and also to bring within the whole range of Government enforcement of fines legislation a consistent scheme common to the whole of Government.

I think that is important because various schemes are operating in relation to expiation. It has created some confusion and has developed from an ad hoc basis. It was obvious when the fines committee was reviewing the whole area of the payment of fines that there was a great deal of confusion about the way in which the expiation of offences could occur; also,there was a concern that limited options were available for discharging the statutory liability which citizens may have if they commit an offence.

It should be remembered from the outset that expiation is the alternative that is given to offenders to pay some penalty to society for the offence which they are alleged to have committed. Their option is, of course, to go to court and, if that option is pursued, court costs and other fees will be added to the burden which the offending citizen will be required to pay. Expiation of offences is a convenient way to minimise the costs, as well as to minimise the disruption to an individual's life when a relatively minor offence has been committed that can be discharged by payment of a monetary penalty. There is no doubt that there is a consensus that these reforms are welcome and that they will improve justice and fairness of the expiation of offences system.

The Hon. Carolyn Pickles has made three points of criticism of the Bill and I will address each of them in turn. To some extent, my answers will also address some of the issues raised by other members. The honourable member criticised clause 9(7)(c) of the Bill, which provides:

> The Registrar should not make an order for community service if the alleged offender is able to pay the due amount in instalments.

The honourable member has criticised the provision on the ground that it potentially renders redundant the option of community service and that it prevents the Registrar from making an order for community service if the alleged offender can make payment by instalments. Other members have raised the issue as well.

I cannot accept this criticism and I give three grounds for saying that. First, the honourable member has read the provision too harshly. The operative word is 'should': the operative word is not 'must'; that is, the Registrar retains discretion. It is simply that preference is to be given to payment by instalments. One should ask why that is so. The answer to that question leads to the second part of my answer.

Secondly, it must be remembered that this is a scheme about monetary penalties. The penalty that is attached to the commission of all these offences is the payment of a sum of money: it is not a penalty of doing so much community service. Put another way, it is the intention of the Parliament that in relation to all these offences of which we are speaking the penalty is a monetary one and not community service.

If Parliament wants to make community service the punishment for offences, quite obviously, it is free to do so. The fact is that it has not. The preference in the legislation for payment of some or all of the penalty enacted by Parliament reflects, I suggest, the wishes of Parliament. Thirdly, the preference—and I think it must be emphasised that it is a preference—for part payment is grounded in experience. I would like to quote to the Council from a submission that was forwarded to me by an experienced magistrate. The magistrate explains that he had given some thought to this quite common problem that often came before his court and then decided to begin from the beginning. He states:

> I adopted the view that, in the main, people generally are fairly inadequate at managing their personal finances. Accordingly, to ask many offenders to pay a $500 or $700 fine within 12 or 14 months is realistically no better than asking them to pay it within two to three weeks. I believe that most people who receive a large penalty and are given a lengthy time to pay initially come out of court reasonably satisfied. But in many instances the inevitable occurs and they never consider making any payments until such time as their financial resources and the time limitations totally prohibit them from putting together such a large sum. . . If, in fact, they are ordered to pay the fines on a weekly or fortnightly basis (preferably fortnightly) when either their wage packet arrives or their social security benefits arrive, that payment does fall firmly into their overall calculations. . . My approach has been so well received by the legal profession that, on occasions even before I make such an order, solicitors have submitted that 'it' would be a most appropriate case for 'the time payment order'.

The magistrate then comments on the time it takes to serve off such amounts by community service and concludes:

> My way. . . immediately brings to light persons who for some reason are going to default. It has the capacity of bringing them immediately back before the registrar or the court, and may assist the offender in determining a realistic budget for accommodating the payment of the fine. In other words, in lieu of waiting 12 months for the defendant to pay the fine, then waiting another six to 12 months for the offender to complete the community service work and then, if the offender defaults, waiting another six months to bring the offender back to court, the offender could be brought back before the court or registrar within a matter of one or two months after the original penalty was imposed.

There, I suggest, speaks the voice of practical experience of the worth of payment by instalments. Clause 9(7)(c) retains the discretion but expresses a preference, because that preference expresses the will of the Parliament and the voice of experience, and I would therefore oppose its deletion. I would add by way of rider that the Government intends in any event to introduce an amendment to allow a person to apply to a court for a review of the decision of the registrar if dissatisfied with, for example, an order to pay by instalments.

The second criticism made by the honourable member was of the finality of the review contemplated by clause 14 of the Bill. Again, I regret that I cannot agree with the honourable member. Proposed clause 14 deals with a review of an enforcement order based not on the merits of the crime for which the enforcement order is made but on whether or not, in general terms, the procedures required by the Act have been complied with. The honourable member wants this review to be subject to appeal pursuant to section 42 of the Magistrates Court Act. That is, the honourable member wants a decision of the Magistrates Court on the question of whether or not, for example, the expiation notice should have been given to the offender in the first place to be appealable to the Supreme Court. I cannot accept this as a serious proposition.

As I explained in the second reading explanation, we are here dealing with a class of offences that are not thought to be sufficiently serious to require the attention of the court in the first place. Not only that, but the appeal cannot be on whether or not the offender is actually guilty of the offence but will be on whether the right notice was given or whether a clerical mistake has been made in recording the amount of payments outstanding. These matters do not belong in the Supreme Court on appeal: there is a limit beyond which some things are unappealable in all commonsense. This proposal is beyond that limit: the Supreme Court has greater demands on its costly resources.

The third criticism made by the honourable member relates to the withdrawal of notices under clause 16. The Hon. Mr Lawson has also expressed concerns about this clause. It is proposed, as I understand it, that once an expiation notice has been issued it cannot be withdrawn so that the alleged offender can be prosecuted. If that is the proposition, I cannot agree with it. It should first be noted that the provision in question is taken from the existing Act. Expiation notices may be withdrawn for the purposes of prosecution for a number of reasons, and I will give the Council three examples. The first is as follows. A driver receives an expiation notice for speeding: when the notice arrives at the relevant police enforcement branch it is discovered that the driver is also driving without a licence and the car is unregistered and uninsured. Whether or not the expiation fee has been paid, police practice is to withdraw the expiation notice and prosecute the whole lot of offences committed at once, to give the court the true picture of the offending.

The second example is a variation on the first. I am informed that it sometimes happens that a person given an expiation notice gives a false name and address and pays it, but it is then discovered that, under the true name and address, other offences are outstanding. The third example is where a driver receives an expiation notice for, say, getting caught by a red light camera. The driver pays but later information reveals that he or she was not the driver at the time or that the licence plate shows that there is doubt about the identity of the car. For any number of reasons a driver, even after payment, may want to contest the offence in court because of subsequent information or events, in which case the police will withdraw the notice and prosecute in the normal course. This operates in favour of the rights of the accused.

In any event, there are safeguards for the person whose notice is withdrawn and who is then prosecuted. In Offord's case, (1991) 56 SASR 98, the Court of Criminal Appeal held that, where a person was prosecuted for an offence for which an expiation notice should have been given, the penalty imposed on the accused cannot exceed that which would have been the expiation fee. So, a defendant who is prosecuted and who should have been able to expiate cannot lose by any mistake anyway. For these reasons I think that clause 16 should remain. No evidence has been given to show that this power, which has existed since 1987 (nine years), has led to trouble or been abused, and good reasons do exist, I submit, for its retention.

The Hon. Mr Lawson and it looks like the Hon. Mr Redford have asked for further information on two matters. First is the extent to which credit card facilities are available in agencies and whether any direction will be given to provide them. It should be noted that the Bill does not require the provision of payment by credit card. It merely facilitates that option should the relevant authority choose to provide it. The Government cannot speak for authorities other than its own because, remember, expiation extends beyond Government authorities, although I recall that in the course of the consultation process one local council noted that it already provided this service. And of course it may be that, when payment by credit card becomes available as an option, more agencies and bodies will move to adopt that service.

The provision of payment by credit card, though, as a service comes at a cost to the service provider as well as to the credit taker. Whether or not the gains will outweigh the losses is a matter for pure speculation, and there are arguments on both sides. In general terms, very few State authorities provide credit card facilities, so reliable data is hard to acquire. Telstra allows payment by credit card, and such information as we have been able to obtain shows that about 7 per cent of users employ a credit card and that Telstra is charged 2 per cent merchant fees on this. Anecdotal evidence from New South Wales, which has allowed payment of expiable fines by credit card since 1984, is that the merchant fees are high and the usage rate low. It is not intended that Government authorities—or indeed any authorities—will be directed to provide such facilities, and it may prove an economic option for Government if—and only if—a whole of Government approach to the payment of moneys due is taken with the credit card service provider. As I have said, the Bill is merely facilitative and not directive in this matter.

The second matter raised by the Hon. Mr Lawson relates to discounts. In the course of one of the consultations that we conducted on the drafts of the Bill, two types of discount were set out as options. The two options were:

1. Any person who pays in full within 14 days receives a 10 per cent discount; and

2. A person assessed as 'hardship' in applying for a fine option receives a 10 per cent discount if, nevertheless, he or she pays in full within the 60 day period.

The discount options attracted a variety of views both for and against each possibility. Some were against both, some were for both, some favoured one over the other. There was clearly little consensus on these issues. It would be fair to say

that someone can find something unfair or unjust in any proposal which seeks to confer a financial advantage on someone. For example, it can be argued that to give anyone a discount who pays within 14 days further discriminates against the poor, because the wealthier get to pay less. Equally, one can argue that it is wrong to give a financial incentive to those who can pay (but who would be classed as hardship cases) to seek relief by way of a fine option and then, having been so classified, immediately pay in full. It would bring the system into disrepute.

There were other, more revealing problems lurking in the wings as well. A number of respondents asked whether it was intended that any discount would take the form of a rebate or a refund. One respondent stated that the discount should be a rebate and not a refund, saying, 'The administrative costs of actually making refund payments would be greater than the expiation fee itself.' Another stated:

> If a person is able to pay the fee so as to qualify for a discount, there seems no reason why they should be required to pay the full amount up front and then, presumably with extra paperwork, receive a refund. It would be fairer and more efficient to require payment of the discounted amount in one transaction.

This seems quite correct and what was intended. However, the remarks did ring a warning note. Many pay their expiation fees by post. If they received an expiation fee of $50 and wanted the discount they would post a cheque for $45, but what if they were late? The responsible agency would be left to chase the $5. It would not do it. But worse trouble was predicted. The police submission stated:

> Clarification is needed as to whether it is a discount or a refund that is proposed. Technically, the introduction of refunds is manageable, whereas incorporating facilities for discounts would require a rewrite of the GENS application, as well as changes to the cash receipting application. Changes would be required to the GENS application to create refund transactions after processing of payment (in full) of the expiation notice. Also, changes would need to be made to the cash receipting process at SAPOL to enable these transactions to be passed to the Treasury Accounting System for the preparation of cheques.

In short, the police system could handle refunds but not discounts. They did not refer to the cost of this process. In the end, it seemed that any discount on a regular basis would be more trouble than it was worth, not merely because of the inflexible bureaucratic systems but also, and more importantly, because of the principles involved. It is also fair to say that the omission of any discounts from the Bill eventually introduced to the Parliament has attracted hardly any unfavourable comment—indeed, any comment—at all.

The Hon. Angus Redford raised several other issues, and I would suggest that I have dealt with that which relates to credit card payment. With respect to hardship and clause 9 he suggests that registrars be given a set of guidelines for application to determine hardship, because he did not want to see forum shopping or registrar shopping. That may be a practical solution. To some extent it requires some commonsense and sensitivity as well as precision in the questioning of a party who may present himself or herself with the claim that payment would be a hardship. I will refer the matter to the Courts Administration Authority when the legislation has been enacted, to ensure that the registrars are properly advised in relation to the hardship issue.

The Hon. Angus Redford asks that over the next two or three years we should examine clause 6(1)(f), which provides that a expiation notice cannot be given to a person if a prosecution has been commenced against a person for the alleged offence or offences. I am certainly prepared to consider that further. I would have thought, however, that the possibility of withdrawing a prosecution and issuing an expiation notice may lend itself to abuse and also to allegations of patronage or undue influence. Certainly, I am not at all keen to have that sort of suggestion made or that practice develop in relation to expiation offences, but the issue that the honourable member raised is one that can be examined further in the future.

In relation to clause 8, the Hon. Angus Redford makes the point that the expiation notice form should be simple. I do not disagree with that. I am one who believes that, right across the spectrum of Government, we need to ensure that the forms are simple, clearly expressed and really highlight the major points which might have some impact upon a citizen, rather than putting in a lot of fine print which is largely irrelevant to the decision which the citizen is required to make in any particular circumstance. In relation to clause 14(3)(c), the Hon. Michael Elliott raised the issue of service by post. That is allowed at the present time. The previous Government brought in legislation which the then Opposition and now Government supported and which provided that summonses could be served by post. Adequate mechanisms exist for dealing with that if the summons has not been received, and I would suggest the same in relation to an expiation notice, but the issue will be monitored.

I certainly do not have any information about the number of cases in which it is claimed that the notice or, in the case of summonses, the summons was not received if forwarded by post. One has to remember that to ensure that everyone gets personal service is a very expensive exercise. The cost will be borne by the defendant or the person who gets the expiation notice eventually. It seems that, in the very large majority of cases, those matters which are served by post actually arrive at their destination. One has to make a judgment about whether it is worth while dealing with that handful of cases where there may be a dispute about service by post by bringing in a requirement for personal service across the whole range of expiation notices or enforcement orders, or whether we just build into the system a mechanism for dealing with complaints that a notice has not been received. My experience is that, where it has been asserted by a party that he or she did not receive a summons, generally speaking the magistrate looks favourably upon an application to set aside a judgment or order.

In relation to clause 16, the Hon. Mr Elliott asks what is the time limit within which a prosecution may be initiated if an expiation notice has been withdrawn. My reading of the Summary Procedure (Time for Making Complaint) Amendment Bill is that if an expiation notice is given, the proceedings must be commenced within six months after the expiry of the expiation notice—a period specified in the notice—which effectively means six months after the end of that period, which I believe would apply in the circumstances to which the Hon. Mr Redford referred.

The Hon. Mr Elliott raises some issues in relation to clause 9. He refers to the concerns which the Aboriginal Legal Rights Movement may have and upon which it may wish to make representations about the issue of hardship. I appreciate the points he makes in addressing some remarks to the definition of 'hardship'. I think it will remain controversial and there will be continuing disagreements about the definition of 'hardship'. But one has to recognise that what we are trying to do in this Bill is to address the issue of hardship in the context of what a person in receipt of an expiation notice is or is not able to pay within the constraints

of his or her income and living expenses and, as a preference, payment by instalments, or if that is not achievable because there is just no income or the expenses outweigh the income, then community service.

The Hon. Mr Elliott referred to the role of the registrar. I think the Hon. Carolyn Pickles also referred to the registrar's role. The registrar is an officer of the court, and a senior officer at that. It is a matter for the registrar to obtain information and to make a judgment. I do not agree with the Hon. Mr Elliott's observation that subclause (vi) of clause 9 might be effectively withdrawn without any adverse effect on the context of the scheme. I am not convinced about that. I will, though, seek to have some more information about subclause (vi) during the Committee consideration of the Bill.

He also refers to payment by instalments and the preference which the Bill expresses, and I have already dealt with that in some detail in responding to the remarks of the Hon. Carolyn Pickles, as I have also responded to his observations about the service of orders by post. If there are matters which do need to be addressed during the course of the Committee and which I have not adequately addressed, at least in the minds of members who have raised these questions, I will be happy to deal with them during the course of the Committee consideration of the Bill.

Bill read a second time.

## STATUTES AMENDMENT AND REPEAL (COMMON EXPIATION SCHEME) BILL

Adjourned debate on second reading.

(Continued from 7 February. Page 824.)

**The Hon. K.T. GRIFFIN (Attorney-General):** This Bill is really consequential upon the principal Expiation of Offences Bill. I do not think members have directly spoken on this Bill, although they have made remarks which relate to it in the context of consideration of the Expiation of Offences Bill. The matter can be dealt with in Committee as in a sense consequential upon the principal Bill.

Bill read a second time.

## SUMMARY PROCEDURE (TIME FOR MAKING COMPLAINT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 February. Page 801.)

**The Hon. M.J. ELLIOTT:** I have on file an amendment that I will move during the Committee stage of this Bill. I have read very carefully the contribution the Attorney made in introducing this Bill. I must say that I am not convinced that he in fact produced any case at all which would substantiate a change from six months to two years in relation to non-expiable offences. In his contribution, I do not believe that he has given any examples of any particular problems that have arisen, and I have certainly received a number of representations arguing that a change should not be made.

I do, however, recognise that there may be some argument put forward that expiable offences and non-expiable offences may be treated differently, in particular recognising that we may go through the expiable offence process for some time and then find that the person who has committed the offence may start dragging their feet or whatever, becoming non-cooperative, and it becomes a question as to when the six months period should commence. I have attempted to address that in my amendment. With those few words, I support the second reading.

**The Hon. A.J. REDFORD:** I support this Bill. I must say I was a little surprised at some of the comments made by the Leader of the Opposition in her contribution. Just to remind members who are here, she said:

> The Opposition is concerned that the Attorney has not specifically justified the introduction of the legislation.

I am sure the Attorney will address that when he replies, but she went on and said:

> The only reason given by the Attorney for introducing this Bill is that the seriousness of summary offences and their complexity in our society have greatly changed since 1850.

She draws a very long bow in my view and further says:

> The time limit for summary offences being quadrupled might be an admission on the part of the Government that insufficient police resources are being provided to allow the Police Force to do the job of investigating and prosecuting offences.

That is a very cheap shot. A very simple and cursory examination of the history of section 52 of the Summary Procedure Act shows that it first came into existence under the old Justices Act in 1850 and has remained unamended. Section 52 states:

> Where no time is specially limited for making the complaint by any statute or law relating to the particular case, a complaint shall be made within six months from the time when the matter of the complaint arose.

When this section first came into being in 1850 we never had a motor car, we did not have drink driving offences and the range and the extent of summary offences in the Summary Offences Act did not exist. They were not there. In fact, in 1850 there were very few offences that were dealt with summarily. Over the years the Summary Offences Act, the Justices Act and now the Summary Procedure Act have been amended on many occasions. Looking at the statute books one would estimate that they have been amended in the order of 700 or 800 times, but throughout this whole process of amendment section 52 has remained untouched.

On 4 August 1991 the then Attorney-General, the Hon. Chris Sumner, introduced the Justices Amendment Bill and a regime which made some quite dramatic changes to how criminal and minor criminal matters were to be dealt with. One of the important matters that the then Attorney-General did was to go through and review all offences on the books and come up with a better way of classifying them in order of seriousness. He came up with three classifications and abolished the old common law distinction, which had all kinds of anachronisms, between felonies and misdemeanours. He came up with three categories: major indictable offences, minor indictable offences and summary offences. When he and his officers did that they looked at what should be a summary offence from an entirely different perspective than that which our legislators would have looked at over 100 years ago in 1850 when section 52 first was promulgated.

The Hon. Chris Sumner made a number of comments in *Hansard* on 14 August 1991. He said:

> While it is true that the right to trial by jury should not be lightly removed for serious criminal matters, the devolution of these scarce resources on what can only be described in any person's language as trivial larceny and assault cases is more than questionable.

I know that a great deal of concern was expressed at the time in relation to that comment because to some people, and in my view, there is no such thing as a trivial larceny. If any member of this place was charged with larceny, even a minor

shoplifting, I would be most surprised if the honourable member did not manage to make the first couple of pages of the *Advertiser* and appear in the first two or three stories on the television news. In that sense, there is no such thing as a trivial larceny for members of this place, and that can extend to judges and various prominent people in the community.

Be that as it may, the then Attorney carried out an extensive classification of offences. He brought in legislation which defines summary offences in these terms: first, offences that were not punishable by imprisonment; and, secondly, offences for which a maximum penalty of or including imprisonment for two years or less is prescribed. One can go quickly through the statute book and find a whole range of serious offences in which the maximum penalty would necessarily be two years or less. The third category was common assault. In my former career I very rarely found a person who came into my office who did not think being charged with common assault was not a serious offence.

The fourth category was an offence of dishonesty not involving the use of force or any threat of the use of force against another where the amount that the offender stands to gain through the commission of the offence is $2 000 or less. Again, that includes quite a range of very serious offences. Indeed, I am sure that, if any member in this place, any member of the legal profession, any member of the medical profession, any member holding public office or any police officer was charged with an offence of dishonesty, even though they stood to gain $2 000 or less, that would be taken by them to be a very serious offence. In the eyes of the community that would be taken to be a very serious offence.

One of the problems that the authorities had in Operation Hygiene (where there was a series of minor larceny offences committed by police officers many years ago) was how that ought to be dealt with. The fact is that the authorities at the time—the Government of the day with the support of the Opposition of the day and the current Commissioner of Police in conjunction with the Director of Public Prosecutions under the supervision of the courts—all believed that these police officers who had committed larceny as long ago as 15 to 20 years ago ought to be dealt with by the courts and those police officers dealt with in one way or another. Indeed, in two cases police officers were convicted and served a period of imprisonment. In some other cases they were dealt with by the loss of their job, and so on. At the same time it was important that the people of South Australia had confidence in their Police Force and in the administration of justice.

If members examine the law as it currently stands they will realise that there is a great opportunity for a substantial number of people to avoid their criminal responsibility because of this very old legal clause that they cannot be prosecuted—if I can use today's parlance—for these serious offences because they happen to have been reclassified as summary after the expiration of six months. The Attorney would be grossly irresponsible if he did not take some steps to look at this issue and deal with it in the manner that he has by the introduction of this piece of legislation. I do not need remind members of the extraordinary anger that the South Australian people had over the fact that we could not prosecute State Bank employees and/or directors in certain cases because of the expiration of a time limit. One could hardly have said or be heard to validly say that those directors were not prosecuted simply because of a lack of police officers or a lack of resources. Other events intervened, including a royal commission, a change of Government and so on.

So, to say that this Government is introducing this sort of legislation simply because police resources have been reduced—in fact, I do not believe that they have been—or that this is an admission on the part of the Government, in my view, with all due respect to the Leader of the Opposition, indicates a complete misunderstanding of what the Attorney-General and this Government are seeking to do and indicates that some of the advice that the Leader of the Opposition is receiving on this issue is quite wrong—and knowing the Leader's background I understand the difficulties that she has. To suggest, as she has, that it is an admission that there are insufficient police resources plainly misunderstands the legislative history involved in section 52.

I will not say, and nor should I say, that it would be very easy for the Government to stand up and say, 'Why didn't the previous Government fix this up when it made those substantial amendments back in 1991? Why did not the Government of the day, back in 1991, amend section 52 so that some of the more serious offences which have been reclassified as summary offences be the subject of a different time limit?' At the end of day, I accept that there is a legitimate argument about the level of police resources, but I do not think that this is the subject of that.

However, when one looks at the amendment filed by the Hon. Michael Elliott, one realises that if we allowed the Australian Democrats to run the show the State Bank directors would have been off the hook in quick smart time, as would quite a range of other serious offenders. I think I have said enough on the topic.

*The Hon. M.J. Elliott interjecting:*

**The Hon. A.J. REDFORD:** The present law is six months, and we are seeking to extend it to two years.

**The Hon. M.J. Elliott:** I was saying that the present law is six months.

**The Hon. A.J. REDFORD:** Yes, and we are seeking to change it. The honourable member's amendment takes it back to the present law. I have to say that the amendment could easily be dealt with by his voting against the legislation, because all that amendment does is take it back to the existing law.

*The Hon. M.J. Elliott interjecting:*

**The Hon. A.J. REDFORD:** I use that as an example: it does not specifically apply because their time limit was contained within the Commonwealth legislation—and I use that only as an example. If one looks perhaps at Operation Hygiene, for example—and there are differing views about how that should have been approached in the various legal circles within which I move—the fact is that the community demanded some action, and six month time limits, if they are allowed to remain, will mean that quite serious offences—not trivial larcenies but larceny and assault, which are serious offences—may well be avoided simply because of a legal technicality. Quite frankly, I think that the amendment suggested by the honourable member is misguided and I would urge him to reconsider his position. I commend the Bill to the Council.

**The Hon. K.T. GRIFFIN (Attorney-General):** I thank members for their contributions to the debate. The Hon. Carolyn Pickles has expressed misgivings about the substance of the Bill, and I understand fully the reasons why she has those misgivings. I believe that every incentive should be given to those responsible for detecting and prosecuting crime to do so in as timely a way as possible. It is, of course, true to say that, while the seriousness of summary offences, their

complexity and society have changed since 1850, so have police numbers and detection methods.

It is equally true, however, to say that the complexity of offences remains unaffected by the improvements in policing and that the sophistication of criminal activity has increased since 1850. This is not an admission by the Government that it provides insufficient police resources. This is not an admission by Government that it provides insufficient resources for prosecution: it is an assertion by the Government that the way in which society works, the way crime commission and detection are, the way in which the classification of criminal offences has evolved and the kinds of regulation that modern society demands have changed dramatically since 1850.

One must remember at all times that we are speaking of a limit that runs from the time of the commission of the offence to the time proceedings are started and not from the time the offence is discovered to the time proceedings are started. That is an important distinction: to recognise that the time limits run from the date of the commission of the offence. Some offences are very difficult to discover, and it does take perhaps a stroke of luck but sometimes some time to discover offences, and by the time that occurs with a summary offence frequently the six months' time limit has expired.

I begin the explanation by saying that, while the general time limitation for summary offences in the Summary Procedure Act is six months, that general limitation has been honoured more in the breach than in the observance by Governments of both political Parties for years and for the practical reasons given by me. For example, section 131(2) of the Environment Protection Act 1993 provides that summary proceedings under the Act may be commenced within three years after the alleged commission of the offence or, with the permission of the Attorney-General, up to 10 years after the date of alleged commission. One has to ask, 'Why?' It is because pollution is hard to detect, I suppose. However, the same three years, up to 10 years, by consent of the Attorney-General, is to be found in the Development Act 1993. Section 15(2) of the Long Service Leave Act 1987 provides that summary offences against that Act have a limitation period of three years. So does section 43(2) of the Long Service Leave (Building Industry) Act 1987 and section 42(2) of the Public Corporations Act. But the Waste Management Act 1987 restricted the limitation to 12 months, as does the Public and Environmental Health Act 1987 and the Harbors and Navigation Act 1993. But still that time limit is six months more than the general limitation.

I do not desire to labour the point with further examples, but let me use one more example to point out how absurd this can all be. The statute of limitations on local government parking offences is 12 months, but criminal penalties for breach of conflict of interest mean that these offences are summary and the six month period applies. These offences are secretive and often very difficult to detect. And, if that kind of dishonesty can go undetected for six months, this kind of corruption cannot be prosecuted. So the limit for illegal parking is 12 months, but for corrupt dealing it is six months. That makes no sense at all. In other words, I think the time has now come to recognise what has been recognised by this Parliament for years, namely, that the six month's limitation period is, in general, no longer supportable for the reasons which I gave in the second reading speech and which I have just illustrated.

The Hon. Angus Redford has referred to the State Bank. I think it is important to recognise that when I became Attorney-General I was confronted with the results of the Auditor-General's inquiry and the royal commission, and the previous Government had set up a bank litigation task force and a criminal task force, and one of the issues involved was whether any of the directors had committed offences which could be prosecuted. I did indicate that, in respect of Mr Marcus Clark, the DPP had said that, but for the time limitation of six months, he would have prosecuted Mr Marcus Clark for an offence which was a summary offence, but he was precluded from doing so.

To some extent the Bill which is before us arises from my experience, both in Opposition and in Government, and as a legal practitioner, in trying to deal with the myriad of different time limits which are available for the prosecution of offences. It makes no sense to have such a disparity of time limits for the prosecution of offences, some serious and some minor. What I sought to do was put up a proposition to Parliament which I thought was reasonable and which dealt with the minor offences as being those which were expiable, because most minor offences are expiable, and to say, 'Look, the time limit should still be six months for prosecution, but you have to take into account that there is a 60 day time limit for satisfaction of an expiation fee.' With red light camera expiation fees, there might be a rollover effect, with the owner receiving a notice but saying, 'It wasn't me who was driving; it was someone else.' To give time for that system to be worked through, six months after the end of the expiation period would be appropriate. That dealt with minor offences.

To some extent, the Hon. Mr Elliott's amendment deals with that, but he goes the other way, by providing a longer period for the so-called minor or expiable offences and a shorter period, effectively, for the serious offences, which are not expiable. So I ask the honourable member to consider the conflict that that presents.

The other point I make is that I am as conscious as anybody of the need to ensure that public authorities are not slack in investigating offences and that they do not rely on long time periods within which to investigate. It is wrong, say, on the day before the six month, the 12 month or the two year time limit expires, that everyone should scramble around and issue a summons just to protect themselves. Public authorities need to be diligent, but there are some offences where it is not possible to discover the commission of an offence or complete the investigation within the six month time frame. I thought that, on balance, the two year period that I am suggesting for non-expiable offences was a reasonable period.

All that I ask is that, in the context of the consideration of this Bill, members who have expressed some concern might consider the remarks that I have made in reply and might revisit their proposals for amendment, because, with respect, I do not think that they are in the best interests of the community and fly in the face of what has been some important experience by Governments of both political persuasions over the past few years where a six month time limit for what would otherwise be a serious offence might otherwise expire without action having been taken.

Bill read a second time.

## LAW OF PROPERTY (PERPETUITIES AND ACCUMULATIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 February. Page 801.)

**The Hon. R.D. LAWSON:** I support the second reading of this Bill, which amends the law relating to perpetuities and accumulations. The rule against perpetuities can be stated fairly simply. It is this:

> No interest is good unless it vests if at all not later than 21 years after some life in being at the creation of the interest.

That rule is easy to state but, in many fact situations, it is difficult to apply. It can become extremely complex in some situations. This rule is one of great antiquity. It reflects the legal policy deeply rooted in the common law of preventing persons from tying up property for an unreasonably long period. Parliament in England as early as Magna Carta of 1215 sought to restrict the tying up of property for generations. The modern law of perpetuity results from the decision of Lord Nottingham in the Duke of Norfolk's case in 1682, so the antiquity of this rule is well established. The rule against perpetuities places a limit upon the time within which a gift or interest, that is, a trust or a bequest of capital, must vest.

There is an allied rule against lengthy accumulations of income. Basically, one cannot accumulate income for a period longer than the life of some existing person plus 21 years. This rule was established by statute in England in the Accumulations Act 1800, usually called the Thellusson Act. That Act was passed to overcome directions by one Sir Peter Thellusson for virtually perpetual accumulation of the income of part of his estate. In South Australia the provisions of the Thellusson Act have been transcribed into sections 60, 61 and 62 of the Law of Property Act 1936. All this law was examined in the seventy-third report of the former Law Reform Committee of South Australia. It delivered its report in November 1983.

I should use this occasion to lament the passing of the South Australian Law Reform Committee. It was a fairly unique institution. It was never funded with the rather extravagant budgets of the Australian Law Reform Commission or the budgets of the commissions in some other States. Its Chairman for the whole of its duration was the then Mr Justice Zelling, now Dr the Hon. Howard Zelling. He was and remains a most learned lawyer and an enthusiastic law reformer. His committee was not supported by the research staff and extensive paraphernalia of some other committees. Its members were all part-time members. His Honour was joined by a couple of fellow judges, usually I think a member of the staff of the Law School of the University of Adelaide and some members of the legal profession, and they produced many fine reports. Their report on the law relating to perpetuities is one of them.

It is a pity that the previous Government saw fit to discontinue the Law Reform Committee. I understand that the Government acquired the committee's extensive law reform library, which is still available to the State. I hope that at some time in the future a similar lean and well focused law reform organisation can be re-established in this State.

To return to the seventy-third report of the Law Reform Committee, the authors thereof point out that the law of perpetuities had been ridiculed for many years. They said of the modern law against perpetuities as follows:

> A civil case is decided on the balance of probabilities. A criminal case is decided on proof beyond reasonable doubt. The rule against perpetuities goes beyond either of those standards of proof and is decided upon proof of any possible, however improbable, contingency.

Accordingly, we have the stupidities of the 'fertile octogenarian'; that is, the legal presumption that a woman can be a child throughout her life. One case proceeded on the assumption that a six-year-old child might have a child. Yet another case concerning the rule related to a gift of income that was to continue until a certain gravel pit was exhausted. In fact, when the case came on for hearing everybody knew that the gravel pit was already exhausted, but the gift was held to be bad because it created a perpetuity because the quarry might not be exhausted within a period of 21 years. There are many absurdities in the application of this rule.

The authors of the Law Reform Committee report refer to the elaborate efforts of Emmanuel Solomon, so the report says, an early South Australian settler whose bequests inured for nearly 90 years because the last surviving life tenant or, as it is called in this context, the life-in-being lived to be 97 years of age. I think that the authors of the report were, in fact, referring to the estate of W.H. Grey, the well-known Grey estate which owned many properties not only in the western part of the City of Adelaide but also at what is now West Beach and the Patawalonga area of Glenelg, as well as in other parts of Adelaide.

I can give the Chamber a more recent example which occurred in the estate of the late M.S. McLeod who was the founder of the tyre company which bears his name. I break no professional confidence by mentioning this matter because his will was the subject of an application to the Supreme Court that went to trial in open court before Justice Millhouse. Mr McLeod had established the company of which was very proud and in which he held almost one half of the shares at the time of his death and, obviously, he was anxious to ensure that that parcel of shares remained in his estate for the longest time permissible at law. His will was extremely complex and, hence, the application to the judge.

When he died in 1981, the youngest of his grandchildren was aged 18 years. He directed the accumulation of income for the longest period possible— which was 21 years—and then he deferred the enjoinment of that income and of the capital until 21 years after the death of the youngest of his grandchildren, which would have meant that final distribution of the capital to a fund for medical research would not have taken effect, given the ordinary expectations of life, until perhaps the year 2070. That modern bequest illustrates some of the complexities of the rule. In fact, the rule against perpetuities did not apply to Mr McLeod's bequest because he was creating a charitable fund and the rules about perpetuities and accumulations do not apply to charitable funds.

In recent years there have been reforms to the law relating to perpetuities in other places. In fact, we are late into the field. Amending legislation was passed in the United Kingdom in 1964; Victoria in 1968; Western Australia and New Zealand in 1969; Queensland in 1974; and New South Wales in 1984. Most of those earlier jurisdictions adopted one or other or both of the following measures: first, they adopted what is termed the 'wait and see' rule. Under that rule the court waits until actual events occur to see whether or not a perpetuity has been created, rather than, as we presently do, seek to determine at the outset whether the rule has been offended. At the outset one, of course, has to take into account many contingencies which may or may not

happen. Under the 'wait and see' rule the court waits until the actual events occur, namely, until the various lives-in-being die and successions are determined.

The second common reform adopted elsewhere was the so-called *cy-pres* provision which provides that where some gift would, on the normal rules of construction, be void as a perpetuity, but the general intention of the testator can be determined in the ordinary way from the construction of his will or deed of trust, or whatever the creating instrument is, that that intention was not to create a perpetuity, then the will or deed is reformed to give effect to that intention.

However, the Law Reform Committee of South Australia recommended a bolder solution, namely the abolition of the rule against perpetuities entirely. The committee gave three reasons for that recommendation. They were: first, that Scotland has not and never has had a rule against perpetuities, and the report noted:

> The Scots have never suffered the slightest inconvenience by reason of the fact that they never had such a rule.

*The Hon. K.T. Griffin interjecting:*

**The Hon. R.D. LAWSON:** Indeed, as the Attorney says, they hoarded their money. That reliance upon Scottish rules reflects some of the predilections of the Chairman of the Law Reform Committee who was a great admirer of many things Scottish. Secondly, the authors noted that the modern rule against perpetuity was really devised as a concomitant to the so-called strict settlement. However, the committee noted that the so-called strict settlement ceased to be strict in England as a result of the Settled Estates Act of 1877. In general terms, the Settled Estates Acts, of which there is a South Australian equivalent passed in 1880 and 1889, allow a life tenant to lease or sell trust property with the consent of the court. The committee concluded on this point that, and I quote:

> The 'old strict settlement' is extinct and now that it is gone the rule against perpetuities which was evolved to put some limits on it should also go too.

The third reason given by the committee for the abolition of the rule against perpetuities was the fact that the Trustee Act now enables trusts to be varied by the Supreme Court. It was the view of the authors that in those circumstances it is now very unlikely that any trust would be allowed to endure for over 100 years, simply because the beneficiaries would well before that time have applied to the court for a variation of it.

They were the three reasons given. Personally, I am not convinced that the reasons themselves were sufficient justification for the abolition of the rule against perpetuities. I consider that there is yet another reason which justifies the abolition of the rule, namely, that it has simply outlived its usefulness. The economic circumstances which prevailed in the seventeenth century when the rule was formulated in its modern sense have changed markedly.

The taxation regime operating today dictates more the way in which people will arrange their affairs than anything else. Of course, the taxation regime today is vastly different from that which prevailed even last century, let alone several centuries ago. Finally, family arrangements and notions of how one makes appropriate provision for one's family have changed markedly. There is also the fact that we have today family provision legislation which very often intervenes in arrangements that have been made by testators in an attempt to defer for as long as possible their beneficiaries' enjoyment of the property. The solution recommended by the committee and adopted in the Bill will therefore abolish the rule against both perpetuities and accumulations.

But, once those rules are abolished, there will be no time limit within which any disposition of property may be capable of vesting and no time limit as to how long income can accumulate. However, new clause 62 recognises that it may be desirable for the interest in property to vest, and it does provide a mechanism by which the court can vary the terms of a disposition so that property that is not vested or will not vest within 80 years will do so. And the court has similar powers in relation to accumulation of income. Eighty years was the period suggested by the committee in its report in 1983. Personally, I consider that an accumulation for as long as 80 years is perhaps a somewhat timorous approach to the problem. I would have preferred the period to be 50 years from the date of the death of the settlor. Fifty years is more than sufficient, in my view, in the circumstances. However, the solution adopted in this Bill is better than no reform at all, and I commend it.

It is good to see that clause 62A preserves the rule in *Saunders v Vautier*, a rule that allows persons who are of full legal capacity and who hold the totality of the beneficial interest in any particular estate or trust to call for a distribution to themselves, notwithstanding the provisions of the instrument. It was by application of that rule in the matter of M.S. McLeod, which was determined by Justice Millhouse and which I mentioned, that the judge determined that the trust should be vested earlier and, by that means, the ultimate charitable recipients of Mr McLeod's largesse will receive their entitlements far sooner than the 2070 contemplated by him. I commend the second reading.

**The Hon. M.J. ELLIOTT:** I rise to support the second reading. I have no particular difficulties with the Bill but, in correspondence with the Law Society, it raised a couple of issues and, just for the sake of the record, I will raise those two issues and gain a response from the Attorney-General. The first issue raised was in relation to clause 60(e), and the letter written by John Harley, Executive Member, reads as follows:

> I presume that the intention of this subclause is to ignore (when ascertaining a class of persons) those who are unborn and not yet conceived.

He came up with a rather interesting example, as follows:

> . . . a polar explorer who is about to go to Antarctica leaves behind him in Adelaide a bottle of reproductive material. He dies in Antarctica and his wife is subsequently impregnated with his reproductive material. Children born as a result will not be included when ascertaining a class of beneficiaries who could benefit from a trust. Is that the intention of the clause?

I think that is a very good question. The second matter relates to clause 62(6)(c), and the letter reads as follows:

> If a multimillionaire sets up a trust in perpetuity which benefits his or her family and their descendants, and the object of the trust is to provide superannuation, retirement, medical, hospital, death, sickness or incapacity benefits to such descendants, it would be a valid trust. Is that the intention of the clause?

Having put those two questions on the record, I seek the response of the Attorney.

**The Hon. K.T. GRIFFIN:** I presume the answer is 'Yes' to the two questions raised by the Hon. Mr Elliott, but I will have the matters examined and, if there is any different answer, I will let the honourable member know. I appreciate the attention that members have given to the Bill. It is a piece of legislation which, as I said when I introduced it, relates to

a very complex and archaic rule that has developed over centuries and, as the Hon. Robert Lawson has said, it really serves no useful purpose in this day and age. It is interesting to note that there have been some responses from members of the legal profession and others to whom we forwarded the Bill, and they are all supportive of it. One response in particular was from Mr John Keeler at the University of Adelaide Law School, who says:

> Dear Attorney,
>
> Several months ago you were kind enough to send me a copy of a draft Law of Property (Perpetuities and Accumulations) Amendment Bill for comment. While I was a member of the Law Reform Committee of South Australia at the time it recommended the rules against perpetuities and the rule against accumulations, it is several years since I have worked in the field of property law and I therefore thought it best to discuss the draft with one of my leagues, Simon Palk, who does work in the field. While we discussed various points in some detail, our view was that the draft was satisfactory and that there were no suggestions for altering that we wanted to make.
>
> I have recently been asked by the Leader of the Opposition in the Legislative Council (Hon. Carolyn Pickles) for any comments I may wish to make on the draft Bill which was introduced into the Legislative Council on 29 November 1995. That has given me the opportunity to examine the updated version of the draft you have sent me. Much of it is unchanged from the draft I saw earlier and the Bill remains the beneficial legislation that Mr Palk and I considered it to be when we discussed it. The amendments that have been made often deal with and clarify the points that he and I discussed and, in my view, the advice you have received and the amendments made in consequence of it have improved the draft.
>
> There are no additional comments or proposals for the amendment that I would wish to make. I am writing in those terms to the Hon. Carolyn Pickles. Thank you for the opportunity of letting me see and comment on the Bill.

So, it has withstood the close scrutiny of a former member of the Law Reform Committee and very prominent academic at the Law School and one of his colleagues, as it has withstood the scrutiny of a number of other persons who make some specialty of practice in this area of the law. I thank members for their contributions to it and for their indications of support.

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

## LEGAL PRACTITIONERS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 February. Page 802.)

**The Hon. K.T. GRIFFIN (Attorney-General):** I appreciate members' contribution on this Bill and their indications of support. I indicate that, hopefully later in the year, another Bill will be introduced which deals with the more substantive issues which arise under the Legal Practitioners Act and which have been the subject of continuing discussion with the Law Society and others, but it was felt important that this Bill should proceed now, because some matters there are of an urgent or pressing nature. Since the Bill was introduced, further representations have been made to me by the Law Society in particular as well as the Legal Practitioners Complaints Committee. A number of amendments have been placed on file today that address some of the issues which can be dealt with quickly and which ought to be incorporated in the Bill.

A substantial number of the amendments deal with the change of name from the Legal Practitioners Complaints Committee to the Legal Practitioners Complaints Board. There was a bit of a toss-up as to what that body should be called. The Law Society was concerned about the fact that as a committee it was seen to be a committee of the Law Society when in fact it was a separate and distinct statutory body. I therefore believed that it was appropriate to accede to the request to change the name. 'Board', 'authority' and other names were suggested, and it was decided that in the circumstances 'board' probably conveys the best connotation. The bulk of the amendments relate to that, but some other amendments deal with other issues that have been raised. I will be pleased to deal with those during the course of the Committee consideration of the Bill.

Bill read a second time.

In Committee.

Clause 1—'Short title.'

**The Hon. CAROLYN PICKLES:** I place on record that the Opposition supports the raft of amendments that the Attorney has tabled today. I believe that this will save the time of the Committee in dealing with this issue. The Opposition understands that the Attorney has indicated that he has received further submissions since the Bill was introduced late last year, and he has accordingly amended the Bill further. The Opposition's view of the Bill has not changed as a result of the Government's amendments, which were introduced today. Although these amendments clearly broaden the powers of the complaints board, as it will be known, the Opposition sees this Bill as carrying out reasonable reforms which in some cases are overdue. I particularly refer to the separation of the complaints board from the Law Society being made clearer than ever. It is vitally important for consumers of legal services that there be not only independent scrutiny from the complaints body but also the perception that the scrutiny of that body be objective and unbiased in respect of any particular complaints.

The Opposition does not view the extension of powers to the complaints body as going too far. We do not imagine that lawyers keeping within the bounds of proper professional practice will have any difficulty with the new complaints system. We see very little likelihood of arbitrariness or draconian intervention creeping in as a result of these changes. No doubt a number of people who complain about their lawyers are being unreasonable. But, for genuine complainants, the more extensive powers and clear separation of the complaints board from the Law Society will give the complainant greater faith that the system is free from corruption and bias.

At different times, members of the Opposition and probably members of the Government benches, the Attorney and shadow Attorney have all had complaints from people about lawyers. Some of the complaints that the Opposition has heard will be addressed immediately by one or more of these amendments. For example, we have heard complaints that the investigation process takes too long. The simple reform of requiring lawyers to answer letters from the complaints body, with an appropriate penalty for non-compliance, will speed things up. One would hope that when there is a serious problem with a legal practitioner it will be uncovered and dealt with more quickly and efficiently by virtue of the reforms in this Bill.

In closing, once again I note that the Opposition has refrained from moving any amendments of its own, on the ground that the Attorney is considering a more extensive review of the legal practitioners disciplinary process later in the year. More contentious issues may well arise as a result of that review, and we will be prepared to debate them at that stage. At this stage, we support all the amendments.

**The Hon. K.T. GRIFFIN:** I appreciate the Leader of the Opposition's indication of her support for the amendments. Other members may wish to raise several other issues during Committee.

Progress reported; Committee to sit again.

## COMMUNITY TITLES BILL

Adjourned debate on second reading.

(Continued from 30 November. Page 689.)

**The Hon. ANNE LEVY:** The Opposition has considered this Bill very carefully, and we certainly support the second reading. We support the basic principles of the Bill which seek to combine the benefits of traditional subdivisions of real estate with the benefits that arise from people living or working adjacent to each other in separate areas on what is essentially the one piece of real estate. It is a fact of modern life in cities that many people will live or work very closely to one another. Obviously, our property law needs to take account of this to ensure that the rights and expectations of immediate neighbours are managed properly and efficiently without undue conflict. This applies in a general way, whether we are talking about a high-rise city office building or a residential development in the inner city or the outer suburbs.

Since 1967 in South Australia we have had the mechanism of strata title to cope with these sorts of property arrangements, and that legislation has served us well. The Community Titles Bill before us extends and modifies the approach used in the strata titles legislation. Eventually, the community titles scheme will replace strata titles, according to the Bill, given that once it becomes law no new strata title applications will be permitted. However, the Community Titles Act will allow for something called 'community strata plans', which will achieve the same objectives as the old strata titles.

We accept that there are many benefits to the community titles scheme. It is true that developers will have greater flexibility in laying out and planning developments, whether they be industrial, residential or mixed. For individual residents, the management and administrative arrangements will, we believe, be on the whole more effective and more reasonable than the constraints laid down in the strata titles legislation which has given rise to difficulties in some circumstances. For this reason, we certainly will not be objecting to a transition mechanism for strata titleholders to transform into community titleholders.

In this Bill, this process can be achieved by an ordinary resolution of the members of a strata title plan. It has been put to us by a number of groups that such a transition should have to be by a special resolution of the strata title plan holders. I should explain that, in the legislation, the special resolution is one where no more than 20 per cent of those entitled to vote have voted against the proposition—a roundabout way of saying there has to be 80 per cent in favour. Can the Attorney say why he has rejected submissions which suggest a special resolution be required for converting strata title to community title, given the extra safeguards to prevent people feeling bulldozed by something which a special resolution would provide?

We certainly see it as a good thing that there are greater responsibilities and safeguards in respect of managers of the common property. Most members of Parliament will have experienced at one time or another the complaint that it is very difficult to discipline the managing body of a strata plan. There have been examples of petty objections to reasonable improvements that strata title owners wish to make to their particular properties—for example, in relation to air conditioners or exhaust fans—but the new definition of lots extending to the outside wall will, I think, overcome many of these previous complaints.

We also commend the requirement that development contracts be prepared in relation to each community title development. We feel it is most proper and good urban planning to oblige residential developers to stay with a project to ensure that decent amenities and landscaping are provided in line with what has been promised at the outset. Too often, there are complaints that completion of a development has not occurred but, with the development contracts, the developer will be bound to complete all that has been initially promised, and there are fairly simple procedures for owners of lots within the community to take legal action to enforce the development contract.

I do have a few other queries and I hope the Attorney can supply information about them. There is no mention whatsoever in the Bill regarding the payment of rates to local councils. Most such community developments will obviously occur within the boundaries of local government. I presume that the owner of each lot will receive a rate notice from the local council and the corporation will receive a rate notice which applies to the common property. It is not mentioned anywhere in the Bill, and it would seem to me it might make things clearer for both developers and people who are thinking of buying one of the lots available if this were specified in the legislation, and it were made clear so they would know that the rate notice they received from the council would not be the only rates they would be obliged to pay.

I also understand that, if any roads within the community area are not vested in the council, they will be private roads and their maintenance and upkeep will be the responsibility of the community corporation and not that of the local council. Again, this is not stated, though it is perhaps implied in the legislation. When so much is being stated—the legislation does run to 93 pages and 154 clauses—it would seem to me that some of these matters could perhaps be spelt out.

One problem which I initially had with the legislation was that it might lead to the development of completely walled-in small suburbs, as occurs in a number of Asian cities. I have visited one such walled suburb in greater Manila which was the preserve of obviously wealthy people. The entire suburb was walled. There were armed guards standing at the gates to the suburb. If anyone wished to enter, they either had to produce evidence that they lived in that suburb or else state who was expecting them within the walled complex, and the guards would check with the owners of that property as to whether indeed they were to be admitted before letting them in. It was a way of preventing most people from entering into the total area which was, as I say, an obviously very well healed one.

I was somewhat concerned that this community title procedure might lead to similar developments in Australia which, it seems to me, would be most undesirable. I think, however, that we are saved from that by the clause relating to by-laws. Clause 36 relates to the restrictions on the making of by-laws. I should perhaps say that 'by-laws' here has a slightly different meaning from what is normally understood by by-laws. These will be the by-laws for the entire

community which are set down by the developer and which must be adhered to by all those who come into the scheme. There are mechanisms for changing the by-laws, but they can be instituted only by either special resolution or unanimous resolution of members of the corporation, that is, the owners of all the lots within the community.

Clause 36 discusses the restrictions on the making of by-laws and provides that a by-law cannot prevent access by the owner or occupier or other person to a lot. In other words, there can be no means of excluding people from the area; any member of the public will be able to approach any house or dwelling within the compound and it will be illegal to attempt to prevent them by means of by-laws. To some extent, that reduces my concern about these exclusive walled-in suburbs and that this community title could not lead to such a thing happening in Adelaide. While discussing the by-laws, I must state that clause 36(2) provides:

> A by-law may prohibit or restrict the owner of a lot from leasing or granting rights of occupation in respect of the lot for valuable consideration for a period of less than six months.

I would be grateful if the Attorney could give some explanation why the possibility of such by-laws has been included. Certainly, the model by-law at the end of the Bill contains such a by-law. One can imagine some sort of retirement village which comes into the category where there is community title.

This subclause means that a couple who reside there, if they wish to go to Europe for a three month trip or visit one of their children and grandchildren in another State for three or four months, will not be able to let their house while they are away. This seems to me to be a possible restriction which I find difficult to understand. Why should such a restriction be imposed? If it is being suggested that the other people within the community may not wish to have what they consider to be undesirable people within their community, I should have thought that, if the owners of a house went away for 12 months, nothing would prevent them from letting their accommodation to whomever they wished. I should have thought it might be preferable to have a three month tenancy rather than a 12 month tenancy. I certainly would appreciate comment from the Attorney when he responds to this legislation why the possible prohibition on letting one's property for less than six months is included in the legislation.

Another matter which concerns me arises in clause 100, which refers to the power to enforce duties of maintenance and repair. It is being suggested that, if the owner of a lot is not undertaking his or her obligations in terms of carrying out specified maintenance or repair which has been agreed to by all members of the corporation, the corporation can give notice in writing to the owner of a lot that such work is to be carried out. However, if the owner does not take any notice of the direction from the corporation, there is a subclause which provides that the corporation can authorise a person or persons to enter the lot and carry out the work using such force as may be reasonably necessary in the circumstances. This concerns me gravely.

It seems to me that compulsory powers of entry which may involve force are matters for the police and not for someone appointed by a corporation. It seems to me that the appropriate action for the corporation to take, if the owner will not comply with the notice, is legal action; that is, it should obtain a court order that the particular work must be undertaken, rather than giving the corporation the power forcibly to enter the person's property and carry out the work. It may be internal work as well as external work. Therefore, we are giving to the corporation the right of forced entry into someone's home, and I feel very hesitant about such power being given to people other than the police. Obviously, police have the right to force entry in certain circumstances, but I am not aware of non-legal individuals having the right to force entry into people's property. I ask the Attorney to consider this question and say what principle he is proposing and whether he thinks it might not be better to have a legal avenue for the corporation through the courts rather than giving it the power to start breaking down someone's door. The same comment applies in relation to clause 101 as applies to clause 100.

I have a few other queries, particularly relating to the model by-laws, which, while they are put forward only as a model, doubtless will be adopted by many community developments perhaps with minor changes. In the model by-law relating to roads, it states that a person must not park a vehicle on a road unless authorised to do so by the corporation. Does this mean that the corporation can set out parking areas and non-parking areas, or could the corporation prevent visitors to homes within the area parking anywhere within the area by means of that by-law? If the latter is the case, it would seem to me most undesirable to have it as a model.

There are also model by-laws suggesting that, while the occupier of a lot may keep one or two cats on the lot, he may not keep any other animal thereon. I am not quite sure of the legal definition of an animal in this case. Does that mean that the occupier of a lot could not have goldfish, a budgie or a guinea pig? They are all part of the animal kingdom. If by 'animal' a mammal is meant, then goldfish and budgies would still be possible but a guinea pig would not. Apart from begging the question of how one keeps one or two cats on one's own property—and no-one has yet devised a means of doing so—I feel that it is an odd sort of by-law and that perhaps consideration should be given to changing it. If it means no dogs why does not it say no dogs instead of 'animal', which could prevent, as I say, budgies, goldfish and guinea pigs.

Also in the model by-laws is a requirement that at least 25 per cent of the area of a community lot must be laid out as a garden, which must have either ornamental plants or lawn, trees or vegetables, from which one deduces that any garden path is not part of the garden and therefore not part of the 25 per cent which must be under garden. Again, this seems to me a little strange and perhaps unnecessary, and I would be grateful if the Attorney could comment whether in fact that is what is meant or whether the garden path can be part of the garden when considering the area of the garden.

Also in the model by-laws is a clause which relates to advertisements and which states that a person cannot display an advertisement other than a sign advertising the lot for sale without authorisation from the corporation. Does this mean that people in these communities will not be able to have garage sales; that again seems to me a rather draconian condition to put in the by-laws. I realise that the by-laws are not mandatory; we are not legislating the by-laws; but the fact that they are there as model by-laws will mean that they are accepted and used by a great number of community titles, and I think it is important that we not place unnecessary restrictions within them.

In summary, we support the Bill because we believe it will lead to greater diversity, flexibility and innovation for residential and industrial developments on real estate in South

Australia, while at the same time providing suitable safeguards and arrangements for the owners of community title properties within those developments. We strongly suspect that it will take some time, even for members of the legal profession involved in the property law area, fully to understand the ramifications of the community titles legislation. Legal argument is obviously still proceeding, as I am informed this afternoon that the Attorney may be introducing to the legislation five pages of amendments which appear at first glance to be merely technical type amendments. It will obviously take a good deal longer before there is general community understanding of just what the new community titles involve.

So, I would strongly urge the Government to admit that it has an obligation appropriately to publicise the substantial changes to the law in this area and to undertake an education program about the new legislation not only to the legal profession but also to the general public. I have not had prepared any amendments, but I have put a number of queries to the Attorney and, on the basis of his replies, I may wish to move some amendments to some of the clauses on which I have asked questions.

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

## WORKERS REHABILITATION AND COMPENSATION (SGIC) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 8 February. Page 839.)

**The Hon. R.R. ROBERTS:** This Bill, which has passed the other place, refers to the funds and obligations that were transferred to the Motor Accident Commission as a result of the sale of SGIC. It involves a couple of other funds, namely, the Statutory Reserve Fund and the Assurance Assistance Fund. The Bill seeks to tidy up the requirements and put those responsibilities for injured workers that would normally be picked up under the old SGIC fund into the realms of the WorkCover Corporation.

I notice that this Bill talks about the WorkCover Corporation's being able to delegate some or all of its powers with respect to the running of these funds. This is something that I have commented on before: that the Government is delegating its powers in many areas. There are a number of examples of that, but at this late hour I will not expand on those.

From time to time proceedings are taken by workers against employers in circumstances where there is a reasonable likelihood that the matter will result in a claim against the Statutory Reserve Fund. Where that is likely, the employer or insurer concerned is frequently indifferent to the fate of the proceedings. This Bill will provide that where there is a prospect of a claim against the Statutory Reserve Fund WorkCover can seek the right to intervene and be heard in the proceedings before the court.

As indicated by my colleague in another place, Mr John Quirke, the Opposition supports this Bill as it tidies up some anomalies created by the sale of SGIC and amendments brought about by amendments to the WorkCover Corporation last year. The Opposition will move no amendments and supports the legislation.

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

## CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

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

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

*That this Bill be now read a second time.*

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

Leave granted.

This Bill seeks to make various amendments to the *Correctional Services Act 1982*.

The first amendment relates to the work release program. The vision statement for the Department for Correctional Services is 'To contribute to a safer community by providing offenders with opportunities to stop offending'.

A progressive prison system provides for a graduated security regime which reduces in intensity as prisoners progress through the system and attitudinal and motivational changes occur. These changes are primarily as a consequence of the rehabilitation programs offered within the prison system.

One of these programs is work release, where selected prisoners are able to undertake daily work in the last six months of their sentence. This program operates from the Northfield Prison Cottages and duplicates as closely as possible, conditions prisoners can expect to encounter upon their release.

Since 1985, the Department has deducted a sum of money from wages earned in outside employment, up to a maximum of $80 per week. This figure closely resembles the market rate for shared accommodation in the general community. This payment is also viewed as a contribution by prisoners towards the cost of their board at the Northfield Cottages.

An agreement authorising the deduction of such monies is signed by participating prisoners.

Legal advice previously obtained failed to reveal any impropriety in this practice.

However, recent legal opinion has suggested that the Correctional Services Act does not allow the Chief Executive Officer to charge prisoners for the cost of board as a condition of their participation in the Work Release Program.

The Work Release Program is an important step in a prisoner's rehabilitation and it is considered necessary for such prisoners to experience conditions as closely resembling those encountered in the general community as possible to assist in their successful assimilation back into the community.

Amendment of the Act is considered essential to the continuation of this very important program.

Secondly, the Act provides the Department with the authority to release eligible prisoners onto the Home Detention Scheme.

Home detention is an intensive supervision option for prisoners who meet appropriate criteria to be supervised in the community prior to their ultimate release.

An amendment to Section 37a of the Act that came into operation on 21 December 1990 unintentionally precluded Federal offenders who were serving 12 months or more, but who were subject to a recognisance release order, from being considered for home detention. As a result, interim measures by the Federal Minister for Justice were introduced to release recommended offenders on Federal licence under Section 19AP of the *Crimes Act 1914*. These provisions have proved to be cumbersome and due to the lapse in time now no longer apply.

One of the amendments in this Bill therefore aims to ensure that Federal offenders serving 12 months or more, but having a recognisance release order, are eligible to participate in the Home Detention Scheme. It will also ensure that the Department for Correctional Services has the authority to revoke the home detention orders of those Federal offenders breaching conditions of release, consistent with legislative provisions relating to State offenders. Currently the Department is required to apply to the Magistrates Court to deal with a Federal offender on home detention who has breached the conditions of release and the offender must be notified 14 days in advance of the intended court hearing. A magistrate must then determine whether the offender should be returned to prison.

A further amendment in this Bill will ensure that the term 'residence' also includes, if the prisoner is an Aborigine who resides on tribal lands or an Aboriginal reserve, any area of land specified in the instrument of release.

As part of its 1993 election policy, the Government undertook to conduct an investigation into Drugs in Prisons in South Australia. The inquiry has been completed and the recommendations of that investigation are now being implemented.

The Investigation into Drugs in Prisons recommended that:

*Correctional Services Officers be given the authority to stop, search and detain any person, on prison property, who is reasonably suspected of attempting to bring drugs or other contraband into prison.*

*It is recommended that section 33 of the Correctional Services Act 1982 be amended to allow for the examination of all incoming and outgoing mail, with the exception of items from those agencies referred to in section 33(7).*

The Investigation found that although satisfactory cooperation existed between prisons and police, it is not always possible for police to respond to an alert that a visitor to a prison may have drugs in their possession. As a consequence, the only option available to prison management is to challenge the suspected person with the result that they generally leave prison property and may pass any contraband which they are carrying to another person for delivery to a prisoner.

Those detected are subsequently banned from entering all prisons for a given period of time.

It also needs to be recognised that the types of drugs entering prisons are not limited to 'prohibited substances' such as heroin or cannabis, but include 'prescription drugs' and 'drugs of dependence', such as Rohypnol, Serepax and Rivotril. These drugs are not illegal but when used with other substances or in large doses, can have a severe reaction.

Consistent with the recommendations of the Investigation into Drugs in Prisons in South Australia, for the Department for Correctional Services to take more effective action in preventing drugs and other contraband from entering prisons, it must provide prison management with the authority to stop, search and detain any person on prison property, who is reasonably suspected of attempting to bring drugs or other contraband into prisons.

Failure to provide this authority currently allows suspected persons who have been challenged and asked to leave the prison to pass drugs or contraband to another person for transmission to a prisoner. Eviction from the institution is the only effective option which prison management has at its immediate disposal.

The wider issue of what constitutes a drug is also relevant. Legally prescribed drugs such as those previously referred to (Rohypnol, Serepax and Rivotril) have become 'popular' with prisoners and while it is currently illegal for visitors to have them in their possession when they enter a prison, it is difficult to establish that a visitor intended to pass them on to a prisoner.

It is therefore proposed to amend the Act to require persons entering prisons to obtain the approval of the Manager to carry any prohibited item (this includes prescription drugs) which is needed for a lawful purpose.

Where a person fails to obtain consent from the Manager, the onus will be on them to prove that they did not have the drug in their possession for the purpose of supply to prisoners, and if they discharge that onus, a lesser penalty applies.

I refer now to the handling of prisoners' mail.

The Act provides that mail cannot be opened except under certain circumstances.

*Subject to the Act, a manager may, with the approval of the Minister, cause—*

*(a) any letter sent to or by a prisoner who is, in the opinion of the manager, likely to attempt to escape from prison;*

*(b) any letter sent by a prisoner who has previously written or threatened to write, a letter that would contravene the section; or*

*(c) any other letter, selected on a random basis, sent to or by a prisoner,*

*to be opened and perused by an authorised officer for the purposes of determining whether it contravenes this section of the Act.*

The ability of prison management to peruse mail is considered vital in detecting illegal activity and therefore the Investigation into Drugs in South Australian Prisons recommended that section 33 of the Act be amended so that all incoming and outgoing mail, with the exception of legal and Parliamentary items, may be opened and examined.

The current provisions for the handling of prisoner's mail are considered cumbersome and operationally inefficient. They require the Minister to authorise the appointment of officers to open prisoner mail. Additionally, all prisoner mail opened must be officially stamped and notated.

Existing practices for handling mail must be amended with greater authority being given to prison managers if control of the entry of drugs and contraband, and restriction of illegal activity by prisoners, recommended in the Investigation, are to be achieved.

It is considered inefficient for the Minister to maintain responsibility for the appointment of authorised officers and to approve the opening and inspection, or perusal of all mail. It is proposed that this responsibility should be transferred to the prison manager to permit the perusal of all mail except for certain legal, Parliamentary and other approved items.

Similarly, given that all mail is now to be opened, it will be unnecessary for an authorised officer to indicate on all mail that it has been opened, perused or examined and therefore it is proposed that this requirement should be removed from the current Act.

The final component of this Bill seeks to provide for wider flexibility in the release of information relating to prisoners.

Section 85B of the Correctional Services Act 1982 states that '*An employee of the Department must not, except as required or authorised to do so by law or in the course of employment, disclose to another person any information contained in a file maintained within the Department in relation to a prisoner, or a person on probation or parole.*'

In addition, Crown Law opinion has recently been received concerning Section 77 of the Act. This opinion indicates that whilst, under the present provisions of the Act, the Parole Board may provide appropriate information to victims of crime, it may only do so under its statutory function. Disclosures beyond the requirements of its statutory function may not be regarded as bona fide.

The Government's 1993 Correctional Services Policy states that a Liberal Government will '*allow police to make submissions to the Parole Board on a prisoner's application for parole, and victims may be notified of the application where violence was involved in the original offence.*'

In addition, the Government Policy for the Attorney-General and Law Reform states that a Liberal Government will '*provide more information to victims about investigations, bail and transfer and release of offenders.*'

The Department for Correctional Services, in consultation with the South Australia Police Department and the Victims of Crime Service, has established a 'Victims Register' for 'bona fide' victims who have expressed a desire to be kept informed about their offenders.

Under the proposed amendments, the Department for Correctional Services will have a discretion to provide appropriate information to these victims, to the prisoner's family, friends or legal representatives , or to any other appropriate person.

In addition, the Parole Board is given the power to provide information to selected members of the community concerning the release of an offender on parole.

Constraints caused by the Correctional Services Act 1982, the Freedom of Information Act 1991, Cabinet Administrative Instruction Number 1 of 1989—*Information Privacy Principles* will be overcome by amending Section 85B of the Correctional Services Act.

The effect will be to provide the Department for Correctional Services and the Parole Board with the discretionary right to provide information to specified classes of persons. Such information will include sentence details, release date, approval for home detention, transfer details, approved leave details and escapes.

The discretion to release information should not be limited to victims of crime. The present legislation also prevents the Department for Correctional Services from responding to legitimate inquiries, ie persons wishing to visit an offender cannot be informed where the prisoner is being detained unless the prisoner's consent is first obtained. The large number of these inquiries makes this a significant problem.

Other third parties include Government and semi-Government agencies (State and Commonwealth), and other persons who may have a proper interest in the release of the information, such as the Offenders Aid and Rehabilitation Service and the Victims of Crime Service.

The proposed amendment does not compel the Department for Correctional Services or the Parole Board to release information to victims of crime or any other person or organisation. In some cases an offender's health or well being may be put at risk by the release of such information. It is proposed that the Chief Executive Officer of the Department or the Parole Board have the discretion to refuse

to meet requests where circumstances dictate. It is further provided that a decision by the Chief Executive Officer or the Board as to whether a person is an eligible person, or to grant or refuse an application for information, is final and is not reviewable by a court.

This Bill serves to demonstrate, amongst other things, this Government's commitment to victims of crime and to stamping out drugs in prisons.

The above amendments are considered essential to the smooth workings of the prison system.

I commend this Bill to the House.

Explanation of Clauses

*Clause 1: Short title*

This clause is formal.

*Clause 2: Commencement*

This clause provides for commencement of the Act on proclamation.

*Clause 3: Amendment of s. 27—Leave of absence from prison*

This clause amends the section that empowers the CEO to grant leave of absence to prisoners for certain purposes. It is provided that the CEO may make it a condition, if leave of absence is granted for paid employment, that the prisoner pay an amount by way of board and lodging while he or she is so employed.

*Clause 4: Amendment of s. 33—Prisoners' mail*

This clause provides that the manager of a prison may cause all letters (with certain exceptions) sent to or by prisoners to be opened and examined for the purpose of determining whether any letter contravened the section. Letters will no longer have to be marked as having been opened. It is provided that authorised officers for the opening of mail will be appointed by prison managers.

*Clause 5: Amendment of s. 37A—Release of eligible prisoners on home detention*

This clause provides two definitions in relation to the home detention provisions. First, 'non-parole period' is defined to include the minimum term of imprisonment to be served by a Federal prisoner who is subject to a recognisance release order. Second, the term 'residence' is defined to include Aboriginal tribal lands or reserves specified in the home detention order made in respect of any particular Aboriginal prisoner.

*Clause 6: Amendment of s. 51—Offences by persons other than prisoners*

This clause provides that if a person is found guilty of introducing a prohibited item into a prison without permission, a lesser penalty is available if the defendant proves that he or she did not intend to part with possession of the item while in the prison.

*Clause 7: Amendment of s. 77—Proceedings before the Board*

This clause makes it clear that the Parole Board has a discretion to release details of any order it may make in relation to a prisoner or parolee to certain specified persons or to any other person (e.g. a media representative) the Board thinks has a proper interest in the release of the information. A decision of the Board to release, or not to release, information is not reviewable by a court.

*Clause 8: Substitution of s. 85B*

This clause inserts a new provision in the Act giving the manager of a prison the power to cause any person (whether a staff member or visitor) to be detained and searched if there are reasonable grounds for suspecting that the person may be in possession of a prohibited item without the permission of the manager. Vehicles entering the prison may similarly be searched. The rules for conducting a body search are much the same as those for searching prisoners, except that nothing may be introduced into a body orifice and two other persons must be present at all times. If a prohibited item is found as a result of a search, the person (or driver) may be detained until handed over into the custody of the police. Prohibited items may be retained as evidence or disposed of or dealt with in accordance with section 33A. New section 85C recasts the existing confidentiality provision to give a wider flexibility in the release of information relating to prisoners to, for example, appropriate interstate authorities. The penalty for breach of this section is increased from $2 000 to $10 000 in line with modern confidentiality provisions. New section 85C empowers the Chief Executive Officer to release certain information to specified eligible persons or to any other person (*e.g.* the media) who the CEO thinks has a proper interest in the release of the information. A decision by the CEO as to whether a person is eligible or whether to release information to a particular person is not reviewable by a court.

*Clause 9: Amendment of penalties*

This clause amends all penalties in the Act so that they appear in dollars, in line with Government policy.

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

## RACING (TAB) AMENDMENT BILL

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

## ADJOURNMENT

At 6.23 p.m. the Council adjourned until Wednesday 14 February at 2.15 p.m.