LEGISLATIVE COUNCIL

Thursday 15 February 1996

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

PORT NOARLUNGA CROSSING

A petition signed by 54 residents of South Australia concerning the lack of a safe means of crossing Murray Road, Port Noarlunga and praying that this Council will urge the State Government to take immediate action to assist elderly residents in crossing Murray Road by installing traffic lights, was presented by the Hon. T.G. Cameron.

Petition received.

PAPERS TABLED

The following papers were laid on the table:

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

Commissioner for Equal Opportunity, 19th Annual Report, 1994-95.

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

Corporation By-laws—
- West Torrens—
  - No. 1—Permits and Penalties
  - No. 2—Moveable Signs
  - No. 3—Council Land
  - No. 4—Inflammable Undergrowth
  - No. 5—Animals and Birds
  - No. 6—Bees
  - No. 7—Dogs
  - No. 8—Lodging Houses
  - No. 9—Garbage Disposal
  - No. 10—Caravans

District Council By-laws—
- Mallala—No. 2—Moveable Signs
- Mount Barker—
  - No. 2—Permits and Penalties
  - No. 3—Moveable Signs
  - No. 4—Taxis
  - No. 5—Keeping of Dogs
  - No. 6—Vehicle Movement
  - No. 7—Streets
  - No. 8—Parklands
  - No. 9—Caravans and Camping
  - No. 10—Licensing of Horse and Animal Drawn Vehicles
  - No. 11—Keeping of Poultry
  - No. 12—Street Traders
  - No. 13—STED Scheme
  - No. 14—Bees
  - No. 15—Keeping of Animals.

QUESTION TIME

NATIVE TITLE

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Attorney-General a question about native title legislation.

Leave granted.

The Hon. CAROLYN PICKLES: At the end of 1994 this Parliament had passed three historic Bills which were part of a package of legislation to deal with the question of native title over land in South Australia. The Native Title (South Australia) Act, plus laws amending the jurisdiction of the ERD Court and also in respect of land acquisition by the Government were passed after exhaustive debate and considerable compromise on both sides. A fourth part of the legislative package amending our Mining Act was finally passed—again after much debate and compromise—on 12 April last year.

The purpose of this package of legislation introduced by the Attorney was to provide for and facilitate resolution of native title issues within the South Australian court system in the Environment, Resources and Development Court. But now, nearly a year since the legislative process was completed, the ERD Court has still not been given the jurisdiction which Parliament said it should have because none of the essential parts of the legislation has ever been proclaimed.

Federal Liberal MP Miss Christine Gallus recently confirmed the prospect of the Commonwealth Native Title Act being amended following earlier indications by Federal Liberal Leader John Howard that the Commonwealth legislation would be overhauled in the unlikely event that the Liberals won the next election. These statements by the Federal Liberals were made following vociferous lobbying by groups such as the National Farmers Federation, which is particularly concerned about uncertainty over whether pastoral leases have necessarily extinguished native title. That is an issue that can be resolved by neither the State nor the Commonwealth Parliaments, and the High Court is yet to determine its stand on this point. My questions are:

1. Has the Attorney deliberately stalled the operation of this State's native title laws in the expectation that the Liberals will proceed to gut the Commonwealth legislation in the unlikely event that they are elected?

2. Is the reason for delaying operation of the native title legislation a dispute with the Courts Administration Authority and the ERD Court about the level of resources required for the jurisdiction to be effectively exercised by the court?

The Hon. K.T. GRIFFIN: This might be a long answer because there is a lot to be said about the issue of native title and it is important that, in the context of that question, I put that on the record.

Members interjecting:

The Hon. K.T. GRIFFIN: I was asked the question and I am going to give the reply, and it will be a comprehensive reply. The Leader of the Opposition is correct that three pieces of legislation were passed at the end of 1994 and the mining package was passed in the early part of 1995. Part of the requirement of the Commonwealth Native Title Act is that any State alternative right to negotiate procedure should be approved by the Commonwealth Minister. In that context, we were required to demonstrate consultation with those who were likely to be affected by the alternative right to negotiate, including Aboriginal people.

The Hon. Carolyn Pickles: We did that prior to the passing of the legislation.

The Hon. K.T. GRIFFIN: I know we did that, but there had been months of consultation with Federal officials. I went to Melbourne to see the Commonwealth Special Minister of State (Mr Johns) to put to him the position from the South Australian Government's perspective, and I must say that he was very receptive to the points that I made to him in relation to our submission for approval of our alternative right to negotiate scheme. As I say, there was extensive consultation between State and Commonwealth officers in the development of the submission. We had to make some finetuning here and some finetuning there. We had to identify the long list of consultations that were undertaken, not only in the Parliament as a result of the deadlocked conferences but also with Aboriginal and other people.

After all that consultation with the Commonwealth and others, we made that submission, and it took some time for the Commonwealth Minister finally to indicate his approval of the South Australian Government's and Parliament's alternative right to negotiate process. That was laid on the table of the Federal Parliament. Under the Federal subordinate legislation Act or the statutory instruments legislation, whichever it is—anyway, the Act dealing with subordinate legislation—there was a period of disallowance, and that has not yet expired. Although we did not expect there to be any motion for disallowance, we were not prepared to bring into operation the South Australian scheme and, even though it might be a remote possibility, we have to face the possibility that, in the Federal Parliament, after the election, there might be a move to disallow it. As I say, I do not think that it is likely at all but we were conscious of the need to ensure that that time period had expired. I think there are a couple of sitting days of the Federal Parliament still to run in relation to that disallowance.

The other difficulty was that there was a specific period within which the decision of the Minister could be challenged under judicial review proceedings. We were not prepared to proclaim our legislation to come into operation until that period of time had expired. That has now expired. I am currently considering whether or not we should, in the light of the Federal election, take the risk of proclaiming our legislation and finding that may be the alternative right to negotiate scheme will be, in some way or another, disallowed in the next Parliament by one of the Houses.

The Hon. Carolyn Pickles: It has to be better than what your Liberal colleagues are proposing.

The Hon. K.T. GRIFFIN: That is just not correct: I will talk about that in a moment. The fact is that we had been conscious of the need to ensure that there were no difficulties at all that had to be faced in relation to the State alternative right to negotiate scheme.

To the side of that is the issue of the ERD Court. If the honourable member looks at the budget for 1995-96, she will see that on the Attorney-General's lines there is a substantial amount on a miscellaneous line for native title. That is to fund the court processes under the agreement which has been negotiated in principle with the Commonwealth Government. We are entitled to recover 50 per cent of the court costs in relation to native title matters. In the State budget there is provision for funding the ERD Court and the Crown Solicitor's office to deal with native title claims. Some of that has been allocated, but it is from the authority of the Attorney-General that is being done and it has been put into the miscellaneous lines specifically to ensure that we properly assess what costs and expenses have to be incurred by the Government in the implementation process. It would have been quite foolish to have provided in the budget, for example, that so much money should be available in the budgets of the Courts Administration Authority, the Attorney-General's Department, Environment and Natural Resources, the Museum and whatever. There is a bundle of money which is allocated in accordance with the needs which are demonstrated as a result of native title issues. The question of funding is not a problem with the ERD Court.

The next issue relates to commissioners. We sought information on nominations from a wide range of bodies—Aboriginal groups, the Aboriginal Legal Rights Movement, Maralinga, Pitjantjatjara Lands, the National Farmers Federation, the Chamber of Mines and Energy, the Aboriginal Lands Trust and many other groups of those people who might be considered to be appropriate for appointment as native title commissioners to assist the ERD Court. That process was long and drawn out. We have some recommendations from the panel as to persons who might be suitable, but under the Commonwealth Act I now have to consult with the Commonwealth Minister about these appointments. What members have to realise is that the Commonwealth Native Title Act requires a long and tortuous process of consultation with the Commonwealth and with others. It is not just a matter of putting the proclamation in and bringing it into operation. I am as conscious as anyone of the delay in implementing the State alternative right to negotiate procedures. I refute any suggestion that might be expressly or impliedly made by the Leader of the Opposition that either I or the Government in this State may have deliberately stalled proclamation.

The next point relates to amendments to the Commonwealth Native Title Act. The honourable member will know, I am sure, and I think I have made a number of statements, both in this House and publicly, about the review of the Commonwealth Native Title Act and its interrelationship with State legislation and State administrative structures.

It is quite clear that the Commonwealth Native Title Act is confusing in some respects, is complex and overlaps the State areas. For example, action may be taken in a State court in relation to a native title claim, but that may not be the final decision because then someone can take the same action at the Commonwealth level in the Federal court. There is no recognition that, once a matter has been dealt with, that should be the final decision. That is one issue, and there are a number of others. What we have done—and I have already made this available to the Commonwealth—is agreed with other States, with Governments of both political persuasions, a core set of amendments that we would see as necessary to ensure that the native title scheme administered by State and Federal Governments is workable. That is the issue: is it workable?

Quite obviously, the Aboriginal community is quite critical of the way in which the native title legislation operates, as are miners and pastoralists. In this State—and it is no secret—the Crown Solicitor has been having discussions with the Aboriginal Legal Rights Movement, the Farmers Federation, the Chamber of Mines and other groups about the special problems we in this State have in relation to pastoral leases. With pastoral leases, section 47 provides a reservation to Aboriginal people about rights of access for the purpose of travelling across pastoral leases, travelling onto pastoral leases for the purpose of ceremonies and so on, and no-one in this State has ever bothered to find out exactly what that meant. But native title issues have forced Governments to consider the nature of that reservation, and there have been informal discussions designed to try to work through some of the issues rather than crashing through.

There have been a couple of cases in the High Court, although I will not talk about the details—the Wik people case and the Waanyi people case—where the issue of pastoral leases extinguishing native title has not been resolved. Only last week in the Waanyi case leave to appeal was heard in the High Court and the High Court decided, as I recollect, that there was an issue of process—not of substance—which had to go back to the Federal court. In those circumstances, quite obviously, someone needs to make a clear decision about whether or not a valid grant of a pastoral lease, with or without a reservation, extinguishes native title. And that is a long, drawn out process.

However, it is quite possible that the Commonwealth Government could overcome that difficulty by legislating. Whether or not the next Government—and we believe it will be a Federal Coalition Government—legislates to deal with this issue, I do not know. But I make no secret of the fact that this Government in South Australia has taken the view and made representations to the Commonwealth and to others that there need to be amendments to the Commonwealth Native Title Act to make it a workable, less confusing, less complex framework within which to deal with native title issues. I have made the statement in this Chamber, and we debated it when the four pieces of legislation were going through the South Australian Parliament, that this State Government does not quarrel with the principle of native title.

What we do say is that, in the interests of all people of South Australia, Aboriginal and non-Aboriginal, we need to ensure that there is as much certainty as possible in the interpretation of native title. Of course, for Aboriginal people, expectations in many instances are unreal, and in the non-Aboriginal community understanding about what native title really means is limited, because native title in many instances does not equate to freehold title. As the High Court said in its second Mabo ruling, native title may in fact be fishing rights, rights to draw water or rights to hunt, which is nothing like a freehold entitlement.

I am sorry that there has been such a long explanation of the issue, but I wanted to ensure that no-one could say that the State Government and I in particular are trying to delay the implementation of the State native title legislation or that in some way or another we were not genuine in endeavouring to get this issue resolved. South Australia is the leader in the way in which we have tackled native title issues. We have consulted. We were the only State to have its alternative right to negotiate scheme recognised under Commonwealth native title legislation.

It is in our interests to ensure that as much as we possibly can we resolve the disagreements and the conflicts which are occurring in relation to pastoral leases and mining and other development, in the interests of all South Australians. It is not just the mining companies or the pastoralists who suffer—or benefit, as the case may be—from dealing with the issue of native title: it is all South Australians. If we can get development up in the mining industry, for example, and ensure that the pastoral industry thrives, everyone will benefit from it, both Aboriginal and non-Aboriginal people. I would hope that we are able to implement the State scheme at the earliest possible opportunity, but some steps still have to be taken before we are in a position to get the ERD court in particular up and running, and I am endeavouring to do that as quickly as possible.

PUBLIC ENQUIRY TIMETABLES SYSTEM

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to make a statement about the Public Enquiry Timetables System.

Leave granted.

The Hon. DIANA LAIDLAW: Members will recall that yesterday the Hon. Terry Cameron asked a question in relation to the Public Enquiry Timetables System, commonly known as PETS. He indicated that he had asked a question on 4 July, suggested that he had not received a reply and asked when I intended to make one. I indicated yesterday that I was surprised that the honourable member indicated that the answers were outstanding, and that there was nothing to hide and no reason not to reveal the full situation. I am pleased to advise that the question asked by the Hon. Terry Cameron on 4 July was answered on 19 July 1995. I refer the honourable member to page 2316 of *Hansard* of 19 July.

EDMUND WRIGHT HOUSE

The Hon. DIANA LAIDLAW (Minister for the Arts): I seek leave to make a ministerial statement in relation to Edmund Wright House and the National Museum.

Leave granted.

The Hon. DIANA LAIDLAW: Over the past few years the National Museum has developed some major touring exhibitions as an important part of its outreach to the whole Australian community. However, Adelaide has been left off the exhibition circuit for lack of suitable and available venues. As members will recall, during the debate last year on the future use of Old Parliament House, the History Trust of South Australia considered the possibility of offering space at Old Parliament House, but the building proved inadequate. Not only were the main galleries too small to accommodate most exhibitions but also the entrances to the site were too small to allow larger objects to be brought in.

The importance of making available a suitable venue for the National Museum's exhibition was a key factor in the decision to relocate the staff of the State History Centre from Old Parliament House on its closure in mid 1995. Instead of offering them offices elsewhere, the Government seized the opportunity to establish a strategic partnership with a key Government cultural agency. Edmund Wright House's main banking chamber is twice the size of the main gallery at Old Parliament House. Its doorways are wider, and the building is also excellently sited in the heart of the Adelaide central business district and near the main cultural and tourism precinct.

I am now able to advise members that it is proposed that the National Museum will use Edmund Wright House under a licence agreement initially for two and a half years. While I would have wished the licence to be signed and sealed last December, I believe agreement is imminent between the board of the History Trust and the board of the National Museum. The licence will give the museum use of the main banking chamber and access to an office adjacent to the chamber. The History Trust will use the three floors of offices at the front of the building and its basement. State History Centre staff were relocated there in 1995 and the trust directorate staff will move there from the Institute Building once renovations are completed later in 1996. Renovation works will commence when the licence contract with the National Museum has been finalised, which I hope will be before the conclusion of this month.

Funds of $760 000 have been made available by the State Government to upgrade public areas of Edmund Wright House and to address outstanding fire safety and access issues. The banking chamber has been partially repainted in the same colour scheme. Lighting, humidity and temperature control systems to meet exhibition standards are to be installed in the banking chamber. Arrangements will be made to ensure that the South Australian community still has access to the beautiful and well-loved banking chamber. The National Museum will schedule community access timeslots between exhibitions. The exhibitions themselves will be a drawcard which will introduce a whole new public to Edmund Wright House and to the chamber.

The History Trust and the National Museum of Australia are already looking at developing joint exhibitions and exploring other areas of potential partnership, especially in the field of outreach to the wider South Australian community. That has been a subject that I have pushed, and I know that, because of your interest in rural areas, Mr President, you would equally share my enthusiasm that this is an outcome of this partnership.

For many years until late 1995 the chamber was the venue for concerts of the Australian Society of Keyboard Music. Considerable effort was made by my office and by the Department of Arts and Cultural Development, as well as the History Trust, to help the society find a new home when it became apparent that exhibitions and concerts could not be programmed together. The society is now using Pilgrim Church in Flinders Street, and is pleased with this venue.

Meanwhile, an exciting exhibition program is proposed by the National Museum for Edmund Wright House in 1996 and beyond. I will be pleased to provide continuing updated reports on this exciting development in terms of the partnership between the National Museum, Edmund Wright House and the History Trust.

HEARTSMART EGGS

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement made by the Minister for Primary Industries in another place about the success of HeartSmart eggs.

Leave granted.

FORESTS

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Minister for Education and Children's Services, representing the Treasurer, a question in relation to the review of the State's forests.

Leave granted.

The Hon. R.R. ROBERTS: Recently the Opposition tabled in this place a confidential Government document dated 16 October 1995, warning the Government of the experience in New Zealand with the sale of its State-owned forests to overseas interests. Material published in New Zealand since that time has further expanded upon the problems caused by the sale of harvesting rights to the New Zealand forests.

In the *Dominion* newspaper of 24 November 1995, the President of the New Zealand Timber Industry Federation, Mr Alan Turner, said in relation to the sale of some of the New Zealand forests:

> The sale of Crown forestry assets has seen not only foreign control of the industry but also a massive growth in the raw log export. Since the sale process started, raw log exports have grown by almost 800 per cent and have risen as a percentage of sawing harvests from less than 10 per cent to nearly 40 per cent.

The New Zealand model for selling harvesting and management rights of the forests, whilst maintaining Crown ownership of the land on which the trees stand, sounds very much like the model being promoted within Government circles. Following criticism by the Opposition of selling off our forests, on 30 January 1996 in the *Advertiser*, the brand new Minister for Primary Industries stated:

> State Cabinet has reaffirmed Liberal Party policy that the Government will not sell any forest land.

Members should look at the Liberal Party policy, which, in its published documents, states:

> Retain ownership of our forest resource and promote the growth and management of trees.

It is fairly obvious that the spin doctors have changed the language. The situation with New Zealand's forests management has reached the stage where the three former Directors-General of State Forests during the 1960s right through to the 1980s have called, in the *Dominion* newspaper of 20 January this year, for an independent investigation before any more harvesting and management rights are sold. My questions are:

1. Will the Government's review of forestry investigate the New Zealand experience, with particular emphasis on the longer-term implications of outsourcing harvesting and management of the State's forests?

2. Will the review also investigate not only the economic but also the social impact of forestry and any proposed changes to forestry management in the South-East of South Australia?

The Hon. R.I. LUCAS: The Government's policy in this area seems to be clear to everybody with the exception of the Hon. Mr Roberts. Nevertheless, I will refer his further set of questions to the Treasurer and bring back a reply.

SAND REPLENISHMENT

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

Leave granted.

The Hon. T.G. ROBERTS: Concerned citizens of the Christies Beach/O'Sullivan Beach area have approached me about the growing problem of sand erosion on the Christies Beach section of our southern beaches. This has been a problem that all Governments have faced. I am not being parochial in pointing the accusing finger at the Government about not doing anything about it because there has been a problem about the north-south movement of sand and replenishment programs which have gone on over a long number of years, taking sand from the southern beaches and putting it on northern beaches and taking sand from some northern areas and putting it on some central metropolitan areas.

Unfortunately, on this occasion the sand management section of the Coast Protection Board seems to have got its figures and perhaps the modelling wrong. There is now a fear by residents in the Christies Beach area, who I hope would be protected, that the modelling which is being done and the dredging and replenishment program which is being carried out is permanently impacting on the Christies Beach foreshore and the area around the boat ramp; so that the area between Port Noarlunga and O'Sullivan Beach is starting to be permanently impacted on.

A dredge some 200 metres offshore, which is dredging sand continually, unfortunately appears to be preventing the sand that is offshore being moved onto the Christies Beach beach area. What is happening now is that there are total areas of exposed rock, and it is down almost to bed soil. My questions are:

1. Will the Minister ask the department to investigate the claims that are being made, and could a working model be put together to ensure that the figures that have been prepared by the department are crosschecked?

2. If a problem is associated with replenishment of sand to the Christies Beach area, could that problem be looked into and fixed?

The Hon. DIANA LAIDLAW: I will refer those questions to the Minister and bring back a reply.

COLLEX WASTE MANAGEMENT

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General a question about abuse of defamation laws and Collex Waste.

Leave granted.

The Hon. M.J. ELLIOTT: I have been informed that the Enfield council and a prominent activist have been threatened with legal action as a result of their opposition to the establishment of a liquid waste treatment facility opposite a residential zone at Kilburn. The development has been proposed by Collex, a wholly owned subsidiary of Compagnie General Des Eaux—the company now in charge of South Australia's water supply. I have been informed that a Collex solicitor has told a newspaper reporter that it was the company's intention to sue the council, as well as a prominent local councillor and spokeswoman for the Enfield Environment Watch, Johanna McLuskey, for defamation.

The Hon. T.G. Roberts: That is a good start to the negotiations.

The Hon. M.J. ELLIOTT: It is! The legal threats stem from a letter written by Ms McLuskey to the Environmental Protection Authority asking for it to investigate allegations about a second leak involving Collex. The company was involved in a confirmed liquid waste spill in 1994. Local residents are concerned that Collex appears to be poised to commence work on the liquid waste disposal plant.

Currently, the Enfield council is awaiting the decision by the Supreme Court regarding its appeal against a decision by the Development Assessment Commission to approve Collex's development application for the site. At this stage the State Government has still not ruled out intervening in the planning process to allow Collex's development to go ahead. Concern has been raised that a decision on the development application may be imminent, and Collex is now seeking to gag any adverse comments by threatening legal action against opponents to the development.

In the 10 years I have been in this place there have been a large number of examples of commercial operations seeking to silence their critics by initiating defamation action. A large number of examples come to my mind. For instance, when my then colleague, Ian Gilfillan, raised allegations about difficulties with the State Bank, long before it became public, he had a writ served on him by the State Bank and was told that, if he uttered one more word, basically he would be done for everything. He was gagged for a significant period by the State Bank. In relation to Hindmarsh Island, I know that a number of people who were involved also had defamation writs issued against them and again they were effectively gagged. There is quite a long list.

The Hon. Diana Laidlaw: Also death threats against those who spoke against the claim.

The Hon. M.J. ELLIOTT: That is right. I am asking a general question as well as a specific question in relation to defamation. My questions to the Attorney are:

1. Does he have a view whether or not the defamation laws are open to abuse at times when commercial interest may wish to gag critics? This may or may not prove to be the case in relation to Collex.

2. Does he have a general view about the laws of defamation, and whether or not they need to be changed to ensure that they are not simply used for commercial purposes, as they have been regularly in the past.

3. Can he inform this Chamber what stage the decisions have reached in relation to Collex's proposal and whether the Government knows how soon it is likely that work may start on the site? The Attorney may need to refer this question to the Minister for Housing, Urban Development and Local Government Relations.

The Hon. K.T. GRIFFIN: The honourable member is correct in suggesting that I will have to refer that question to the Minister for Housing, Urban Development and Local Government Relations. I will do that and bring back a reply. In relation to defamation proceedings, I do not think I can give a general answer to a general question. The honourable member makes the assertion that there is some abuse of defamation laws and that corporations seek to gag critics by taking legal action, that is, defamation action, to prevent them from making statements. The fact is that the defamation law does not seek to distinguish between citizens, nor between citizens and corporations where slanderous or libellous statements are made about the corporation or the citizen, as the case may be.

The High Court has made some modification to the law of defamation, particularly when criticism is made of public figures, including members of Parliament—and some members of Parliament now will not find it so easy to obtain an award of damages in relation alleged defamatory remarks. The law does not seek to distinguish between the right of a corporation as opposed to the right of a citizen to take legal action claiming damages if there are libellous or slanderous remarks which have reflected upon the reputation, integrity or otherwise of either the citizen or the corporation. I am not sure that we can allow open slather in criticism of, say, a corporation as opposed to protection for citizens. The fact is that the law of defamation is civil law, except in relation to criminal libel and, in relation to civil actions, it is a matter for actions between parties.

In terms of the law relating to defamation, South Australia's law is very largely the common law. When I was last Attorney-General there was a project to try to get some uniformity into defamation laws across Australia, but that project was not completed by the end of 1982, when I ceased to be Attorney-General. It was pursued, as I understand it, for a period after that but then languished when Senator Evans (who had a particular interest in this) ceased to be Federal Attorney-General. But it is now back on the agenda of the Attorney-General to try to achieve some greater level of consistency of approach in defamation laws across Australia. There is no point in South Australia's amending its defamation laws without some similar amendments also being made in other States because of the transborder communication by way of television, radio and print media.

The Hon. T.G. Roberts: One of your colleague's last night said, 'A State start would be a good way to start.'

The Hon. K.T. GRIFFIN: On defamation? I think members will find that there is no agreement about that across Australia. It does have to be a uniform approach. For example, I refer to the defences alone. In this State truth is a defence, but in New South Wales truth and public benefit is a defence. Therefore, the person who is allegedly defaming must prove not only that it is but also that it was in the public interest. That is a significant hurdle which does not exist in this State, but there may be some modification to that,

according to some of the media reports I have seen over the past few months, from the New South Wales Attorney-General, but that is for another day. The fact is that I do not believe we can amend the law to prevent corporations or citizens from taking legal action, whether it is to gag or for any other reason in relation to defamation proceedings.

The Hon. M.J. ELLIOTT: I ask a supplementary question. Does the Attorney-General at least acknowledge that the economic power of a company allows it simply to make an allegation of defamation and that, in itself, is enough to silence critics because they do not have the money to take on the company?

The Hon. K.T. GRIFFIN: It is not up to me to make a judgment about the merits, or otherwise, of what people do. The fact is that there are citizens who equally make vexatious and frivolous allegations to prevent action being taken. I do not think there is a general answer to that general hypothetical question. Each case has to be judged on its merits.

RAILWAYS, LEFEVRE PENINSULA

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport a question about rail closures.

Leave granted.

The Hon. T.G. CAMERON: The Opposition has been informed that the Government is preparing plans to close the railway link servicing the LeFevre Peninsula by stopping all trains at the Glanville railway station. A bus route would then replace this train service by using the Glanville station as its hub. Will the Minister rule out—for the term of this Government—closure of the Outer Harbor railway line between Glanville and Outer Harbor railway stations and replacing it with a bus service?

The Hon. DIANA LAIDLAW: The claims are rubbish. There is no such suggestion within my office or, as far as I am aware, within TransAdelaide. Every now and again, when Labor members in that area, particularly the member for Hart, run out of things to say, they always try to stir up the troops by saying that this or that service is to close. I am always told that the Grange line is to close, but that is not on the books. It is absolute rubbish.

Members interjecting:

The Hon. DIANA LAIDLAW: Of course I can guarantee it! It is absolute rubbish. I have guaranteed it in the past and I guarantee it again. It is a indication to me that Mr Rick Hills, the Federal candidate for Port Adelaide, is doing pretty well if Labor members have to make such stupid statements which create fear in the area when there is no basis for such fear.

SENIOR SECONDARY ASSESSMENT BOARD

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about the Senior Secondary Assessment Board of South Australia.

Leave granted.

The Hon. A.J. REDFORD: On 9 January, year 12 students received their results from the Senior Secondary Assessment Board of South Australia (SSABSA). Included with each of the results was a copy of the SSABSA information paper, the *Standard*, which is said to be produced to help students and their families understand the results. This year my stepdaughter, a year 12 student last year, received her results, and I was home at the same time. There was obviously great trepidation in our household.

When I looked at the record of achievement, I have to say that I did not understand it at all. On the first page there was a list of the subjects that the student had undertaken. The subjects indicated a number followed by a letter followed by a statement varying from high achievement to very high achievement. On the other side of the paper there was an item noted 'University entrance points', which gave points in each subject out of 20. I did not understand precisely what was meant by the conglomerate of information so I went to the *Standard* to see whether I could interpret just how well she had gone. I might say that she had a similar difficulty and rang her tutor to get some advice from him.

After reading the *Standard* I was none the wiser. Adjustments were made in relation to various subjects and there was no description or explanation as to why that occurred. What I did find particularly disconcerting was that, despite a concerted campaign on the part of our national and, in some cases, our State leaders to encourage students to embark on studies of foreign languages, almost without exception foreign language subjects had been marked down. I read through the *Standard* to try to understand why and upon what justification that might have occurred. The only information I could obtain was that scaling was a process that compares and adjusts initial results and that there was no guarantee that a subject would be scaled up or scaled down. It was disappointing not to see the basis upon which scaling up or down might occur. In any event, I have to say that I was also none the wiser in terms of interpreting the results, despite the expensively produced newspaper. I endeavoured to call the telephone numbers and they were engaged for a considerable time that day.

The Hon. R.R. Roberts: I wonder why!

The Hon. A.J. REDFORD: Yes! I have noted recent correspondence and newspaper articles to the effect that, in some courses, some universities are proposing to hold pre-entrance exams and it might be suggested that indicates a lack a confidence in the Senior Secondary Assessment Board's processes in determining appropriate students to enter appropriate courses. In the light of that experience, my questions are:

1. Has the Minister had any negative feedback in relation to the information provided to students and/or their families in understanding precisely what the year 12 results mean?

2. Will the Minister make inquiries as to whether or not the Senior Secondary Assessment Board will embark upon a survey to determine to what extent people found it difficult to understand the results?

3. Will the Minister make inquiries as to whether or not the scaling process will discourage students from embarking on certain courses of study in ensuing years and, in particular, I refer to foreign language study which I understand to be both a Federal and State Government priority?

4. Will the Minister advise the Parliament of any plans that any tertiary institutions may have to introduce pre-entrance tests or examinations outside the SSABSA examinations?

The Hon. R.I. LUCAS: I thank the honourable member for his questions and I will offer some comments now, and some points I will need to refer to SSABSA, which, as I have indicated before, is an independent authority. In relation to the first question as to how many complaints I have had this year, I must say that I am delighted to report that the number of complaints in my office as a result of the year 12 results

release was almost negligible when compared with the results release in 1995 and 1994, when there were significant problems in terms of the results release process that was implemented or managed by the Senior Secondary Assessment Board. As I have indicated before, I want to place on record my public congratulations to Dr Jan Keightley, the new Chief Executive Officer of SSABSA, and her hard-working staff on what was a very successful results release process in 1996. That is in my judgment as Minister. I will check, but my recollection is that we had very few complaints in relation to the results release process.

With respect to the complexity of the *Standard*, whilst I have not had any complaints this year about that issue or about the explanations in it, I must concede that in previous years some parents, in particular, and some students have raised the issue of complexity, not only of the *Standard* but of the explanation of the very complicated processes involved in the year 12 assessment, more particularly the scaling process to which the honourable member referred. That was his third question.

It is important to reinforce for members that the scaling process is not something that the Senior Secondary Assessment Board does for the interests of year 12 students and itself. The process is required by the universities of South Australia in making an assessment of which year 12 graduates they want to select for the various faculties or courses. On behalf of the three universities, the Senior Secondary Assessment Board undertakes that complicated calculation and includes it in the year 12 results.

Consideration has been given as to whether in the reporting of the results, the year 12 results themselves ought to be reported by the Senior Secondary Assessment Board and a separate body, such as the Tertiary Admissions Centre or the universities, ought to report the results of the scaling process. Principals and teachers generally have opposed that because they believe that too great an emphasis would be given to the universities' results, that is, the scaled results, as opposed to the subject achievement scores gained by students undertaking year 12. This is an important, ongoing debate and, in the review of the South Australian Certificate of Education this year, it may well be that that issue is canvassed again.

The honourable member referred to wanting to see an explanation of the mechanics of scaling. I can only say that, if the assessment board was to include an explanation of the mechanics of scaling, the degree of confusion that the honourable member, his stepdaughter and others experienced would only have been multiplied. Having seen the explanation, I am happy to provide a copy to the honourable member through SSABSA, but it is an extraordinarily complicated process conducted on behalf of the universities. It is a complicated mathematical process which, from the universities' viewpoint, seeks to even out the degree of difficulty of various subjects. If we take as an example the subject of home economics or some other subject compared with mathematics 2 or physics, the universities have a view that, if no scaling process were involved and students were treated equally in terms of entrance to some university courses, very few people would undertake studies in maths 2 and physics and a lot more students would undertake studies in some of the other subjects areas that are offered in year 12.

Again, I repeat that that is the universities' position: they are independent authorities and it is their responsibility, under the current legislative framework, as to which students they will accept into their courses and on what criteria. The honourable member has asked whether or not SSABSA might undertake a survey. I am happy to refer the honourable member's question to SSABSA to see whether it has either undertaken a survey or would be prepared to do a survey as part of the review of the South Certificate of Education which has been undertaken this year.

Whilst the honourable member did not me ask me a question about the telephone, I am concerned about his response in relation to the telephone and being unable to get through to the office. Certainly, in 1994 parents and students experienced significant problems trying to get through on the telephone to SSABSA. At great cost, significant changes were implemented through 1994-95 in terms of the number of lines, the program being used, the waiting system and the call-back system to try to improve that element of the service. I am concerned to hear that the honourable member telephoned on a number of occasions and was not able to get through. I will certainly raise that issue with the Chief Executive Officer to get an indication from her as to the changes that the Secondary Assessment Board has made in that area and what might have been the particular problem. My understanding is that the number of calls that SSABSA received this year, compared to previous years, was significantly down. Again, that is an indication, in general terms, of a much smoother results release process.

The fourth question that the honourable member asked was in relation to pre-entrance examinations. Certainly, the only recent publicity that I have seen is that the medical faculty at the University of Adelaide, from next year or the year after, will introduce a three phase selection criteria. It will still use the year 12 assessment results from our Senior Secondary Assessment Board. Secondly, students will undertake a skills test conducted by ACER—I am sure that members of the Labor Party will shy back in horror at the notion that test might be used—to assess general intelligence and problem solving. Thirdly, having used the year 12 assessment results and the skills test as a filtering device, a number of students will be interviewed—a double masked interview as I understand it.

An honourable member interjecting:

The Hon. R.I. LUCAS: This is just for the medical faculty. As I said, those three elements of the selection process will be used from either next year or the year after. Those members who have served on the University of Adelaide Council, like the Hon. Anne Levy and others, will know that is a significant change which is likely to impact in future years on students' year 12 selection choices. I understand that instead of a cut-off score of, perhaps, 67 out of 70 to enter medicine a cut-off score of the order of 57 will be used as a general criteria and the skills test, the ACER test, together with interview will determine final selection. If the honourable member is aware of other examples in South Australia of pre-entrance testing, I will be happy to obtain the information from him and refer it to SSABSA for a reply.

Finally, the honourable member in his question asked whether or not the pre-entrance examination was an indication of the lack of confidence in the processes of SSABSA. I have to say, as Minister, as I indicated at the outset, I thought that the results release process this year was a significant improvement on the results release process in 1994 and 1995. There are difficulties in relation to the processes of SSABSA, but I do not believe that the changes that the medical faculty is implementing are a concern about the processes directly of SSABSA in terms of the assessment.

They are a judgment about the quality of the graduates that it is receiving under the 67-68-69 out of 70 criteria and the fact that the student who is able to achieve that score might not necessarily always have the interpersonal skills and communication skills that medical practitioners in the 1990s require. I understand from the head of the medical faculty that has been one of the principal issues.

SPEAKER'S CORNER

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for the Arts a question about Speaker's Corner.

Leave granted.

The Hon. ANNE LEVY: I very much welcomed the Minister's statement this afternoon regarding the agreement between the History Trust and the National Museum on exhibitions in Edmund Wright House. Such a statement has been imminent for so long that I began to wonder if it would ever come.

The Hon. Diana Laidlaw: We have been waiting for the Federal Minister.

The Hon. ANNE LEVY: Yes, I know.

The Hon. Diana Laidlaw: You are not suggesting that we have been sitting on it.

The Hon. ANNE LEVY: I did not suggest it. There is no need to imply things which are not in my statements. The statement, however, leaves quite unresolved the question of Speaker's Corner. When Old Parliament House Museum was abolished—the announcement occurred in May last year—the Minister was adamant that Speaker's Corner would continue to exist. I quote from *Hansard* of 31 May last year:

> My press release states quite specifically that Speaker's Corner, which is an institution in its own right, will be continued.

Furthermore, in the debate in this place on 6 July last year, she said:

> There is no way that there will be no Speaker's Corner.

At that time, she said that there were three possibilities for Speaker's Corner: a room in Old Parliament House—perhaps the room which had been the shop—or it be taken over by the State Library or it would go into Edmund Wright House. As we know the old shop in Old Parliament House is now a staff member's office and there is certainly no Speaker's Corner in Old Parliament House; there is no Speaker's Corner in the State Library and no suggestion that there will be. I understand that the plans for renovation of Edmund Wright House do not include provisions for a Speaker's Corner. The room immediately to the left, which was the old reception area, is, I understand, to accommodate the Duryea Panorama from Old Parliament House but not Speaker's Corner.

My question to the Minister is: when and where are we going to have a Speaker's Corner, given her adamant assurances that there is no way that there will be no Speaker's Corner? Where will it be? When will it again be operative seeing that it has not existed since 30 June last year.

The Hon. DIANA LAIDLAW: I am adamant that there will be Speaker's Corner. It has not been possible to achieve it in terms of—

The Hon. Anne Levy: Still looking for a corner!

The Hon. DIANA LAIDLAW: Well, I am still looking for a corner, that's true. In terms of the three options, it has not been possible to achieve a Speaker's Corner within Old Parliament House, which is now occupied by various members of Parliament for committees. The History Trust tells me that it is having trouble fitting in all that is needed, in terms of its requirements, when it moves into Edmund Wright House before the end of the year. I do not want to squash Speaker's Corner into such a little corner that it does not have community value. I am speaking, however, with the State Library because I have always considered that—

The Hon. Anne Levy: You have been doing that since July.

The Hon. DIANA LAIDLAW: Yes, I know, but the State Library, as the honourable member would know, has considerable accommodation pressures of its own. As part of these discussions for Speaker's Corner we are seeking to resolve the longstanding problem of disability access to the Institute Building, and the accommodation needs of the Women's Information Service (formerly Switchboard) and CISSSA as part of the future needs of the Institute Building. As part of an assessment of the Institute Building and the relocation of the Women's Information Service, there will be space for Speaker's Corner, when I have resolved all these other issues.

ALDINGA TREATMENT PLANT

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 in another place today on the subject of the preferred bidder for the Aldinga treatment plant.

Leave granted.

TRAVEL AGENTS (MISCELLANEOUS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Travel Agents Act 1986. Read a first time.

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

That this Bill be now read a second time.

These amendments to the Travel Agents Act 1986 are the result of a review which was part of the review of all legislation in the Consumer Affairs portfolio which has taken place over the last eighteen months.

The proposed amendments will make the South Australian Travel Agents Act more contemporary and in line with the legislation in other States, thereby promoting a more nationally uniform approach to the regulation of travel agents. The amendments will also bring the legislation into line with changes that have been made following the review of other South Australian occupational licensing legislation during 1994 and 1995.

When considering this Bill it should be recalled that South Australia, together with all other States and Territories with the exception of the Northern Territory, is a signatory to a Participation Agreement which establishes the Co-Operative Scheme for the Uniform Regulation of Travel Agents. The agreement which was signed in 1986, requires all participating States and Territories to include in their own Travel Agents Acts a number of specific uniform provisions covering such areas as licence eligibility criteria, disciplinary actions and the requirement to be licensed. In view of these constraints, the review of the Travel Agents Act was unable

to be carried out in the same manner as the reviews of other consumer legislation, that is, by going back to first principles.

This Bill does, however, contain some significant changes particularly in the areas of licensing and penalties, to better protect consumers and provide the travel industry with greater flexibility. The Bill is directed towards achieving greater efficiency in the administration of the licensing system for this industry by transferring licensing from the Commercial Tribunal to the Commissioner for Consumer Affairs.

The disciplinary forum for licensees will be the Administrative and Disciplinary Division of the District Court. This move and the change to make the Commissioner the licensing authority are common to all consumer legislation which has been subject to the current review process. As with other jurisdictions, the court will sit with industry and consumer assessors, as directed by the presiding member.

Also in common with other reviewed Acts, is the power of the Commissioner for Consumer Affairs to enter into agreements with relevant industry bodies in order that those bodies may, with ministerial approval, carry out certain functions under the Act, on the Commissioner's behalf.

The Bill is directed towards the lifting of educational and competency standards in the industry as there will be training requirements for persons who manage or supervise places from which a licensed travel agent carries on business. The detail of changes to the qualifications required will be contained in the Regulations.

Significant changes to penalties which are contained in the Bill include the following:

- The maximum penalty for breaching a condition of the licence is a $50 000 fine. Currently, it is $5 000.
- Where a person becomes involved in the business of a travel agent or becomes a director of a body corporate that is a travel agent in contravention of a District Court order, that person and the agent are each guilty of an offence. The maximum penalty is six months imprisonment or a $35 000 fine. Currently, the maximum penalty is a $5 000 fine.
- The maximum penalty for breaches of the Act in relation to the management and supervision of a travel business is a $20 000 fine. Currently, it is $5 000.
- The maximum penalty for the offence of improperly obtaining a licence has increased from a $1 000 fine to $8 000.
- The maximum penalty for breaches of the Act in relation to account keeping, use of the agent's authorised name and displaying the name of the travel agent is a $2 500 fine. Currently, its $1 000.
- Proceedings for an offence must start within two years after the date on which the offence is alleged to have been committed. Currently, proceedings must begin within 12 months.

The draft Bill was released for consultation. As a result of this consultative process and taking into account recommendations received prior to the draft stage, a large number of proposals were incorporated into the Bill. Other recommendations will be addressed in the drafting of amendments to the regulations under the Act.

Significant changes to the area of licensing which will be addressed in the regulations under the Act include:

- Exempting from the requirement to be licensed those people who sell tickets for commuter travel and day tours. This will correct an anomaly in our legislation which imposes an unnecessary and unintended impost on sections of the business community, particularly the tourism sector in the case of 'day tours'. South Australia will then be consistent with other States in this regard.
- People who sell travel or accommodation within Australia to the value of $100 000 or less a year will not be required to be licensed. Currently the threshold is $30 000 and has been since 1986.

  Some concern has been expressed that this proposed action will allow a substantial number of operators who do not reach the increased threshold to escape licensing and thereby avoid the responsibility of recompense to consumers through the normal travel industry channels of the Travel Compensation Fund.

  However, these reservations appear to be based on anecdotal rather than factual evidence as information supplied by the Travel Compensation Fund indicates that there are currently only four licensed travel agents in South Australia with an annual turnover of between $30 000 and $100 000 per annum.
- The introduction of a new regulation which will extend the definition of the business of a travel agent. The addition of the new regulation will give effect to a decision by the Ministerial Council on Consumer Affairs (MCCA) which resolved, in November 1994, to give in-principle support to the extension of the Travel Compensation Fund Scheme to incorporate 'travel related products'.

  The effect of this decision is such that the Travel Compensation Fund can now pay compensation to consumers with respect to travel related products such as holiday accommodation, car rental or the provision of travellers cheques, even if they have been supplied by a travel agent independently of making travel arrangements.

  To ensure that South Australian legislation recognises the decision made by MCCA, it is necessary that the definition of the business of a travel agent will be extended in the regulations to include 'travel related activities'. Once the amended regulations are in operation, if a licensed travel agent makes travel related arrangements on behalf of a consumer which are either separate from or in conjunction with the activities described in section 4 (1)(a) or (b) of the Act, the consumer will, if necessary be able to seek compensation from the Travel Compensation Fund. However, the scope or coverage of the Act will not be extended beyond the current boundaries to include for example service providers such as car hire companies etc.

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

Leave granted.

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 3—Interpretation

The amendment to 'authorised name' is consistent with the approach taken in other occupational licensing Acts such as the *Building Work Contractors Act 1995*, the *Plumbers, Gas Fitters and Electricians Act 1995* and the *Security and Investigation Agents Act 1995*.

The definition of 'director' (defined in the broad way as in the other occupational licensing Acts) is inserted. This is equivalent to current section 8(9)*(a)*(ii) of the principal Act, but defining it in this way matches with the other occupational licensing Acts passed in 1995.

The insertion of the definition of the 'District Court' and the deletion of the definitions of 'Registrar' and 'Tribunal' are required as a result of the transfer of certain functions of the Tribunal to the Administrative and Disciplinary Division of the District Court as requested. There will no longer be a need for the Commercial Tribunal to exist if this Bill is passed.

Clause 4: Amendment of s. 4—Business of travel agent

The amendments to section 4 of the principal Act are intended to allow for regulations to be made to include or exclude certain activities from coming within the ambit of carrying on 'business as a travel agent'.

Clause 5: Substitution of Part II

In order to make the principal Act consistent with other occupational licensing Acts and as there were quite a number of amendments to be made to existing Part II, a new Part 2 is proposed.

PART 2—LICENSING OF TRAVEL AGENTS
DIVISION 1—GRANT OF LICENCES

7. Travel agents to be licensed

New section 7(1) is equivalent to current section 7(1) to (3). New section 7(2) and (3) are similar to current section 7(4) and (5).

New section 7(4) replaces current section 11 (Unlicensed person may not recover agent's commission, etc.) and is similar to what is provided in the *Building Work Contractors Act 1995*.

The offence of breaching a condition of licence is provided for by new section 7. The conditions are imposed on, and are therefore part of, the licence. New section 7 provides that it is an offence for a person to carry on business as a travel agent except as authorised by a licence. If a licensed travel agent breaches a condition of the licence, the agent is committing an offence against new section 7 as the agent would be carrying on business as a travel agent otherwise than as authorised by the licence. (See also explanation in relation to new section 10.)

8. Application for licence

New section 8 replaces current section 8(1) to (8). New section 8 is consistent with the approach taken in the other occupational licensing Acts—

- the Commissioner is the licensing authority;
- application forms will not have to be prescribed by regulation;
- the Commissioner of Police will not be required to play a role in the application process;
- there is no provision made for objections to be lodged.

9. Entitlement to be licensed

New section 9 replaces current section 8(9). New section 9(2) reiterates, in respect of a body corporate applicant for a licence, the provisions in respect of applicants who are natural persons. The broad definition of director inserted by clause 3 is consistent with the approach taken in current section 8(9)*(a)*(ii).

10. Conditions of licences

New section 10 replaces current section 10 and is substantially the same, except that the conditions are imposed by the Commissioner instead of the Tribunal and the licensed travel agent may apply at any time for a variation or revocation or a licence condition. This approach is consistent with other occupational licensing Acts.

A penalty is not provided for in new section 10 as the offence of breaching a condition of licence is provided for by new section 7.

11. Appeals

There is currently no provision for a person to appeal against the failure to grant a licence by the Tribunal but applicants under each of the other occupational licensing Acts are given this right and an applicant for a travel agent's licence should also have this right. Given that the licensing authority is to be the Commissioner and not the Tribunal, this clause is included in the amendments.

This provision is the same as that included in every other occupational licensing Act where the Commissioner is the licensing authority.

12. Duration of licence and annual fee and return

New section 12(1) and (2) are equivalent to current section 9(1) and (2). New section 12 matches the other occupational licensing Acts.

13. Supervision of travel agent's business

New section 13 is equivalent to current section 10a with an increased penalty (from $5 000 to $20 000) in line with other occupational licensing Acts.

14. Business may be carried on by unlicensed person in certain circumstances

New section 14 is equivalent to current section 12.

DIVISION 2—DISCIPLINE

The forum for discipline of travel agents has been transferred from the Tribunal to the District Court. This Division follows the pattern established in the other occupational licensing Acts.

15. Interpretation of Division

New section 15 defines director and travel agent for the purposes of the proposed Division.

16. Cause for disciplinary action

The causes for disciplinary action against travel agents set out in new section 16 are substantially the same as those set out in current section 13(8). Any differences (such as the added section 16(1)*(a)*) are as a result of matching (wherever this is possible without upsetting the national scheme) this Act with the other occupational licensing Acts.

17. Complaints

New section 17 replaces current section 13(3).

18. Hearing by Court

18A. Participation of assessors in disciplinary proceedings

These new sections match sections in the other occupational licensing Acts. There is no equivalent in the current Act but it is necessary for them to be included so that the Administrative and Disciplinary Division of the District Court can take over the functions of the Commercial Tribunal.

They provide that the District Court must conduct a hearing, on the lodging of a complaint, for the purpose of determining whether the matters alleged constitute grounds for disciplinary action. If the judicial officer presiding at the proceedings so determines, the Court may sit with assessors selected in accordance with the proposed schedule.

18B. Disciplinary action

New section 18B is equivalent to current section 13(6) and (7).

18C. Contravention of orders

The precedent for new section 18C is found in the *Building Work Contractors Act 1995*. This new section substitutes for current section 14. It provides that if a person is employed or otherwise engages in the business of a travel agent, or becomes a director of a body corporate that is a travel agent, in contravention of an order of the District Court, that person and the agent are each guilty of an offence the maximum penalty for which is a fine of $35 000 or imprisonment for 6 months.

Clause 6: Amendment of s. 21—Appeals

These amendments are consequential on the transfer of judicial functions from the Commercial Tribunal to the Administrative and Disciplinary Division of the District Court.

Clause 7: Amendment of s. 25—Trustees subrogated to rights of claimant

These amendments are consequential on the insertion of the new definition of director.

Clause 8: Substitution of Part IV

Current Division III of Part II of the principal Act has not been included as part of the new Part 2 of the amended Act in keeping with the pattern established in the other occupational licensing Acts. The sections currently included in that Division will be found in new Part 4—Miscellaneous.

PART 4—MISCELLANEOUS

New sections 27 to 29 were included to maintain consistency with the other occupational licensing Acts.

27. Delegations

New section 27 provides for delegations by the Commissioner or the Minister.

28. Agreement with professional organisation

New 2. 28 allows the Commissioner, with the approval of the Minister, to enter into an agreement under which a professional organisation takes a role in the administration or enforcement of this Act. The agreement cannot contain a delegation relating to discipline or prosecution or investigation by the police.

29. Exemptions

New section 29 provides the Minister with power to grant exemptions.

30. Registers

New section 30 mirrors the other occupational licensing Acts and replaces current section 15. The Commissioner is required to keep the register and to include in it a note of disciplinary action taken against a person. The requirement in current section

15a of the Act to advertise disciplinary action is not retained (consistently with other occupational licensing Acts).

31. Commissioner and proceedings before District Court

New section 31 sets out the entitlement of the Commissioner to be joined as a party and represented at proceedings.

32. False or misleading information

New section 32 replaces current section 33 and matches other occupational licensing Acts. It is an offence to provide false or misleading information under the Act. The penalties are $10 000 if the person made the statement knowing that it was false or misleading or, in any other case, $2 500.

33. Notice to be displayed

New section 33 is equivalent to current section 16 with an increased penalty (from $1 000 to $2 500) for breach of the section.

34. Travel agent to use authorised name

New section 34 is equivalent to current section 17 with an increased penalty (from $1 000 to $2 500) for breach of the section.

35. Accounts to be kept

New section 35 is equivalent to current section 18 with an increased monetary penalty (from $1 000 to $2 500) for breach of the section.

Sections 36 to 39 match the other occupational licensing Acts.

36. Statutory declaration

The Commissioner is authorised to require information provided under the Act to be verified by statutory declaration.

37. Investigations

The Commissioner of Police is required, at the request of the Commissioner for Consumer Affairs, to investigate matters relating to applications for licences or discipline.

38. General defence

The usual provision is included allowing a defence that the act was unintentional and did not result from failure to take reasonable care.

39. Liability for act or default of officer, employee or agent

Acts within the scope of an employee's authority are to be taken to be acts of the employer.

40. Offences by bodies corporate

The usual provision placing responsibility on directors for offences of the body corporate is included. This is equivalent to current section 35.

41. Continuing offence

A continuing offence provision is included consistent with the other occupational licensing Acts.

42. Prosecutions

New section 42 replaces current section 37 but, in line with the other occupational licensing Acts, increases the time within which a prosecution for an offence against this Act can be commenced from 12 months to 2 years.

43. Evidence

New section 43 provides that an apparently genuine certificate of the Commissioner as to whether or not a person is licensed under the Act is to accepted as proof in the absence of proof to the contrary. This section follows the precedent set in the other occupational licensing Acts.

44. Service of documents

New section 44 matches the other occupational licensing Acts and replaces current section 32.

45. Annual report

New section 31 matches the other occupational licensing Acts and replaces current section 31.

46. Regulations

New section 46 replaces current section 38, keeping the matters needing to be included while matching, where appropriate, the other occupational licensing Acts.

Clause 9: Insertion of schedule

SCHEDULE—Appointment and Selection of Assessors for District Court

This schedule matches the schedules providing for appointment and selection of assessors when sitting with the Administrative and Disciplinary Division of the District Court in occupational licensing matters.

Clause 10: Transitional provisions

This clause provides for matters arising from the transition from the current Act to the Act as it will be when amended.

Clause 11: Further amendments to principal Act

These amendments are of a minor statutory law revision nature.

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

WILLS (WILLS FOR PERSONS LACKING TESTAMENTARY CAPACITY) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Wills Act 1936. Read a first time.

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

That this Bill be now read a second time.

This Bill amends the Wills Act 1936 to vest power in the Supreme Court to make a will on behalf of a person who lacks testamentary capacity. A statutory will-making scheme is a means of providing a person lacking testamentary capacity with a will reflecting, as far as possible, current intentions or at least what his or her intentions would have been but for the disability.

The power vested in the Supreme Court is not a power to review the reasonableness of earlier dispositions made by a person then having testamentary capacity on the grounds that the person now lacks such capacity. Rather it is a power to be exercised in situations where a will or a new will is necessary to avoid a person's property being distributed in a manner contrary to his or her intentions or what those intentions would have been if he or she had testamentary capacity.

It provides for the situation, for example, where a child is left a substantial settlement as compensation for permanent brain damage resulting from a motor vehicle accident. If the child's parents died in the accident, and the child is being cared for by a friend of the family, it is to this person that a court would look to as the intended beneficiary of the child's estate.

There is community support for the concept of statutory wills and organisations assisting persons with disabilities are of the view that the ability to make a will can be a matter of considerable dignity and satisfaction for a person with a disability. The New South Wales Law Reform Commission in recommending that a statutory will making scheme be introduced in that State noted that 'a statutory will making scheme would greatly enhance the rights and dignity of persons with disabilities by enabling their property to be devised appropriately by having regard to their current situation'.

The Bill adopts the statutory will-making scheme recommended by the New South Wales Law Reform Commission Report in the Commission's Nineteenth Report, Wills for Persons Lacking Testamentary Capacity, published February 1992.

The main features of the scheme are as follows:

- the will-making power is vested in the Supreme Court;
- the scheme covers any person lacking testamentary capacity;
- any person is entitled to apply for the making of a statutory will (solicitors, health care workers, social workers, administrators appointed by the Guardianship Board);
- the person who lacks testamentary capacity is entitled to appear and be heard at the proceedings;
- the manager of the estate of the person under the provisions of the Aged and Infirm Persons Property Act 1940, the Public Advocate, the Administrator appointed by the Guardianship Board under the

Guardianship & Administration Act 1993, and the Donee of an Enduring Power of Attorney under the Powers of Attorney & Agency Act 1984, are also entitled to appear and be heard at the proceedings;

- in order to filter out frivolous and vexatious applications, leave of the court must be obtained before an application for an order to make a statutory will can proceed;
- the applicant must prove the lack of testamentary capacity;
- the court shall, where possible, make a will in terms which the person lacking testamentary capacity would have made if the person had the capacity to make a will, at the time of the hearing of the application;
- a statutory will is to be executed by the Registrar of Probates and deposited in the Probate Registry;
- a statutory will is to have the same effect as a will executed under the Wills Act 1936, and the Inheritance (Family Provision) Act 1972 is to apply in the same way as ordinary wills;
- a statutory will is to be capable of alteration or revocation in the same way as it is made (unless the person regains testamentary capacity in which case the will can be revoked in the normal way);
- the costs of or incidental to the application for the making of a statutory will are to be determined in accordance with the Court's discretion.

The Supreme Court has been selected as the most appropriate forum to determine applications for a number of reasons:

1. The court is currently vested with probate jurisdiction.
2. Costs are not awarded as of right but at the discretion of the court, allowing the court to take into consideration the financial circumstances of those persons appearing before it.
3. If jurisdiction was vested in a board or tribunal as suggested by some, a right of appeal to the Supreme Court would be required. Determinations of this nature affect a person's prospective interests in a very serious and substantial manner.
4. Testamentary capacity is a legal concept familiar to the courts and customarily applied by the courts.

The list of factors to be considered by the court are set out in the Bill, namely:

- any evidence relating to the wishes of the person for whom the will is to be made;
- the likelihood of the person gaining or regaining testamentary capacity;
- the terms of a valid will previously made and the interests of persons under that will;
- the interests of any persons who would be entitled under an intestacy;
- the likelihood of an application being made under the Inheritance (Family Provision) Act 1972;
- the circumstances of any person for whom provision might reasonably be expected to be made;
- any gift for a charitable or other purpose the person might be reasonably expected to give or make by a will;
- the likely assets of the estate;
- any other matter that the court considers to be relevant.

South Australia, on enactment of this legislation, will be the first State to have incorporated provision for statutory wills. Legislation empowering a court to make wills for persons lacking testamentary capacity has existed in England since 1969 and appears to be working well. I commend this Bill to the Council. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Clause 1: Short title

Clause 2: Commencement

Clause 3: Insertion of s. 7—Will of person lacking testamentary capacity pursuant to leave of court

New section 7 enables the Supreme Court to make an order authorising the execution, alteration or revocation of a will on behalf of a person who lacks testamentary capacity.

An application for an order (setting out a specific proposal for the consideration of the Court) can be made by any person but only with the leave of the Court.

Before making an order, the Court must be satisfied:

- that the person lacks testamentary capacity;
- that the proposed will, alteration or revocation would accurately reflect the likely intentions of the person if he or she had testamentary capacity; and
- that the order is reasonable in all the circumstances.

Subsection (4) lists the following factors for consideration by the Court:

- any evidence relating to the wishes of the person;
- the likelihood of the person acquiring or regaining testamentary capacity;
- the terms of any will previously made by the person;
- the interests of—
  - the beneficiaries under any will previously made by the person;
  - any person who would be entitled to receive any part of the estate of the person if the person were to die intestate;
  - any person who would be entitled to claim the benefit of the Inheritance (Family Provision) Act 1972 in relation to the estate of the person if the person were to die;
  - any other person who has cared for or provided emotional support to the person;
- any gift for a charitable or other purpose the person might reasonably be expected to give by a will;
- the likely size of the estate;
- any other matter that the Court considers to be relevant.

Subsection (7) entitles the following categories of persons to make representations to the Court:

- the person in relation to whom the order is proposed to be made;
- a legal practitioner representing the person or, with the leave of the Court, some other person representing the person;
- the Public Advocate;
- the person's administrator, if one has been appointed under the Guardianship and Administration Act 1993;
- the person's guardian or enduring guardian, if one has been appointed under the Guardianship and Administration Act 1993;
- the person's manager, if one has been appointed under the Aged and Infirm Persons' Property Act 1940;
- the person's attorney, if one has been appointed under an enduring power of attorney;
- any other person who has, in the opinion of the Court, a proper interest in the matter.

A will or instrument made pursuant to an order under the new section is to be executed by the Registrar signing it and it being sealed with the seal of the Court.

Clause 4: Substitution of heading to Part 3

The heading is altered to take account of new section 25D.

Clause 5: Insertion of s. 25D—Validity of statutory wills made outside the State

New section 25D provides for recognition in this State of wills made under the law of some other jurisdiction despite the lack of testamentary capacity of the testator.

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

SUPPLY BILL

Second reading.

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.

Last year the Government decided to bring forward the tabling of the budget from the traditional time of the end of August to the beginning of June.

The Government has decided to continue with this practice this year by introducing the 1996-97 Budget on 30 May 1996.

A Supply Bill will still be necessary for the early months of the 1996-97 year until the Budget has passed through the parliamentary stages and received assent.

In the absence of special arrangements in the form of the Supply Acts, there would be no parliamentary authority for expenditure between the commencement of the new financial year and the date on which assent is given to the main Appropriation Bill.

The amount being sought under this Bill is $500 million which is $100 million less than last year's Supply Bill.

The Bill provides for the appropriation of $500 million to enable the Government to continue to provide public services for the early part of 1996-97.

Clause 1 is formal.

Clause 2 provides relevant definitions.

Clause 3 provides for the appropriation of up to $500 million.

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

EXPIATION OF OFFENCES BILL

In Committee.

Clauses 1 to 6 passed.

Clause 7—'Payment by credit card.'

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

Page 4, line 36—After 'credit card' insert 'or debit card'.

The purpose of the amendment is simply to permit the payment of expiation notice by debit card. What I have said previously about credit cards applies equally about this measure. If an agency wants to provide the facility of permitting payment by electronic funds transfer at the point of sale, it is free to do so.

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

Amendment carried.

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

Page 4, line 37—After 'card' insert 'or debit card'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 8 passed.

Clause 9—'Options in cases of hardship.'

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

Page 5, lines 27 and 28—Leave out subclause (6) and insert subclause as follows:

(6) The registrar cannot make an order under this section in respect of an expiation notice—

(a) unless the levy (or levies) payable under the Criminal Injuries Compensation Act 1978 and specified in the notice have been paid; or

(b) if an enforcement order has been made under this Act in respect of the notice.

The purpose of this amendment is to ensure that the policy of the Parliament in relation to the criminal injuries compensation levy is carried out. It requires payment of the levy before a fine option can be accessed. Parliament has always been clear that the payment of the levy is a high priority for the benefit of the fund that is used to compensate the victims of crime. Section 13(7) of the Criminal Injuries Compensation Act provides:

Where a person is imprisoned or placed in a place of detention, the superintendent of the prison or place of detention must, unless satisfied that the levy has been paid out by or on behalf of that person, retain the amount of the levy from the earnings to which the person becomes entitled while imprisoned or under detention.

In short, if the person is in prison and is in default of a pecuniary sum, the intention of the Parliament is that the levy be paid out of the money earned by the prisoner, and the manager of the prison has a clear duty to retain the prisoner's earnings for that purpose until the levy is paid.

Section 13(6)(b) makes it quite clear that a court is not empowered to reduce that liability or exonerate a prisoner from it entirely. It provides:

The levy is recoverable in the same way as a fine, and the court that convicted the person has the same powers in relation to the levy as it has in relation to the fine. But the court may not reduce the levy or exonerate the convicted person from liability to pay it.

This amendment makes it quite clear that the new expiation system carries that existing policy into effect. Where the person applies for relief and the order is for payment by instalments, the first instalment will be the amount of the levy outstanding. Where the person is assessed to suffer hardship by payment of the full amount and can work off the sum by community service, the effect will be that the levy must be paid before the order for community service can come into effect.

The interaction between the provisions of the Criminal Injuries Compensation Act and the Criminal Law (Sentencing) Act in relation to the recovery of fines is a far more complex situation, and it would be entirely inappropriate to deal with that question in the context of this Bill. It is sufficient for me to say at this point that those complexities are currently under review by my office, the Courts Administration Authority and the Department for Correctional Services, and will be dealt with in due course. By that, I mean as quickly as possible in the circumstances.

Members may recall that the first step in that process was the enactment of a new section 61(5a) of the Criminal Law (Sentencing) Act by the Criminal Law (Sentencing) (Miscellaneous) Amendment Act 1995 which stated:

However, where the warrant relates to a levy payable under the Criminal Injuries Compensation Act 1978, the imprisonment to be served in respect of the levy is to be served after all other terms of imprisonment to which the person is liable, whether under this section or not, have been served.

In short, this amendment is made with a view to making sure that a consistent policy in relation to the payment of the levy is maintained across the whole of the criminal justice system. The sums involved cannot possibly cause hardship unless the person in question is in the position of having accumulated a large number of fines and/or expiation notices, in which case the offender has simply gone too far to be regarded as the normal course of expiation offender.

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

Amendment carried.

The Hon. CAROLYN PICKLES: I move:

Clause 9, page 5, lines 34 and 35—Leave out paragraph (c).

The Opposition will be moving the three amendments that are on file, although we have carefully considered the comments made by the Attorney-General in his summing up earlier this week.

In relation to clause 9(7)(c), we were not persuaded by the suggestion that payment of fines should take priority over

community service orders as a general rule, because it is the will of Parliament that it should be the case.

Whatever Parliament might have formulated in the existing Expiation of Offences Act or in the Criminal Law (Sentencing) Act, the will of Parliament in relation to the registrar's treatment of the expiation notice recipients will be expressed by the final form of this Bill, which will depend on whether the Opposition's amendments are accepted.

I do not accept the implication that our amendments are inconsistent with the goals of the Bill or even inconsistent with the sentencing philosophy underlying our criminal justice system. Once we realise that our society accepts that minor offences can best be dealt with administratively by way of a standardised penalty, there is no logical justification for limiting the price for opting out of the courts system purely to payment of money into the court.

The Attorney says it is a scheme about monetary penalties. It may have been so, but it is up to this Parliament to decide the extent to which community service orders can be tied into the expiation notice scheme. Philosophically, we have achieved the same objectives in relation to the individual offender, if responsibility for commission of a minor offence is discharged by the offender carrying out some work for the community rather than paying money. It is expiation by way of paying with one's labour rather than with one's cash or credit card, as the case may be. By deleting clause 9(7)(c), the registrar will have a broad discretion as to whether to order instalment payments of an expiation fee to be paid, or alternatively order the recipient of the expiation notice to carry out community service.

In the Opposition's view, the community service order should not be seen simply as an order of last resort. It will be the logical order to make where the recipient of the expiation notice is able-bodied and has time available but has only a very limited income, for example, or the recipient of the expiation notice is unemployed or perhaps studying. On the other hand, there may be grounds for instalments payments to be permitted in a case where a person is not well off or if, because of employment or child-care obligations, that person may find it very difficult to carry out community service work. To allow for the great variety of individual cases, the registrar's discretion as to what order should be made should be left very broad.

If the Government has a strong preference for the payment of money rather than community service work being performed, I suggest that it would be more appropriate to concentrate on improving the value of community service work. The community service option was brought in by the Labor Government, because there will always be a proportion of people who either cannot or will not pay a fine. It is better to have such people, when they must be punished, being put to some useful work, rather than sitting idly in prison and serving no useful function.

Clause 9(7)(c) as proposed by the Government could be interpreted as an admission that community service work programs are not working out, or proving not to be sufficiently valuable. If this clause represents the view that money should be extracted from citizens if humanly possible when an expiable offence has been committed, such an approach might help Treasury, but there will be injustice and hardship in many cases if the individual circumstances of applicants are not taken into account by the registrar.

The Hon. K.T. GRIFFIN: I very strongly oppose the amendment. The fact that the paragraph is in the Bill is not an admission that community service does not work; it is a recognition of the reality that, in our legislation, if there is an expiation of $300, we do not provide expiation of one month's community service. The focus is upon a monetary penalty. The Criminal Law (Sentencing) Act does, it is true, provide some options for community service once a matter has been through the court process. If a fine has been ordered, then ultimately community service can be involved. But that is a long, drawn-out process that involves cost to Government, costs to the defendant because the defendant will always have his or her penalty loaded with the cost of service of a summons, court fees in relation to a summons and costs of enforcement.

The Government has taken the view that this paragraph really indicates a preference, that is, that if people are able to pay for it then they ought to pay for it in money rather than in community work. It is a preference; it is not mandatory. The Leader of the Opposition refers to the fact that hardship may be created. That is one of the reasons why the option of community service can be accessed, and we have deliberately built into this a mechanism for dealing with the issue of hardship.

In those circumstances, it seems to me that it is quite unrealistic not to put in some preference for monetary payment. It may be that, administratively, some registrars and officers may seek to deal with it, but there is no legislative authority for dealing with it in a way which gives preference to payment by instalments.

I suppose if we delete the paragraph it opens up some interesting questions about what then the registrar has to do and to what extent will the registrar's decision be subject to challenge if the registrar says, 'I think on the basis of all you have told me the preference is still for a monetary payment, even if it is a payment by instalments.' Practical experience does suggest that payment by instalment is a very effective way of enforcement and deterrence, and it is for those reasons that I very strongly oppose the amendment.

The Hon. M.J. ELLIOTT: Some important issues are being debated here, but I am not quite sure whether this subclause is the place for that debate. During the second reading stage I also expressed concern about clause 9(7)(c). But, on reflection, I do not think that is really the place where I should have expressed it. The major concern I expressed was that for some people expiation was not a particular penalty and for other people it was a very real penalty. In some cases, I felt that people who could easily afford expiation were better off being given community service. As I said, some people happily get parking ticket after parking ticket and throw it in their glove box, and it is quite clear that it is nothing more than a minor irritation.

However, on reflection, that is not really the issue in subclause (7)(c), in which we are already at the position where a person has acknowledged that they cannot pay a lump sum expiation without causing hardship, and it then becomes a question whether or not they can afford instalments. The registrar has the clear discretion in subclause (7)(c) to make the judgment that instalments themselves will cause a hardship and, in such circumstances, community service is to be considered.

I think the Hon. Carolyn Pickles is correct in saying that it does still lean towards the use of expiation. It is really a question of exactly how the registrar's discretion is used, but if the registrar does not use the discretion who else does? Clearly, if the registrar is not doing it do we ask the offender to choose which one they want to do? That is another issue

which could be raised more broadly but perhaps not necessarily within subclause (7)(c).

On reflection, I will not support the amendment, although I think the issues raised by the Hon. Carolyn Pickles are important and that we will have to revisit them in this Parliament if law and justice are supposed to mean the same thing, because I do not think the current expiation system works fairly for all members of the community. It works very well—if you like overly well—in relation to people on lower incomes in that it does incur a genuine penalty. For some people, it does not incur a penalty at all, so the expiation notice system exists, to a significant extent, in my view, for the poor rather than for the rich. That is not ultimately the issue in this subclause that we are addressing, because we have already acknowledged by this point that a person does have difficulties and the registrar must decide whether the difficulty is so severe that they have to do community service. If it is not so severe, then the option for instalments is to be used.

The Hon. K.T. GRIFFIN: In relation to the issue of hardship, it is intended that some guidelines will be provided to registrars to assist them in determining how they should exercise their discretion. We have not yet decided whether that will be by way of rules of court or by way of regulations but, in both instances, they are laid before both Houses of Parliament. I acknowledged, as I recollect, in my second reading reply, that we did recognise that some guidance would have to be given to registrars, and that is the way we propose to do it.

The Hon. Mr Elliott has referred to the issue being one as to how registrars exercise their discretion. That will always be the issue. We are hoping by this legislation to put in place a consistent and coherent scheme across all agencies, including local government, by which one can deal effectively with the expiation system. That will mean that the courts will ultimately have the responsibility for the translation of an expiation fee not paid to an enforcement order and, in the interim part of that process, the registrars will have a discretion. We hope, and it is our intention, that they be given the guidance to which I have referred.

It must be recognised that not only does this Bill provide a coherent, comprehensive scheme which the Government intends should have uniform application across Government but also that it recognises, for the first time, late payment, which is presently not the position; it recognises payment by instalments; and it recognises community service. But, in the order of things, the first preference obviously is for someone to pay the expiation fee in full. The second preference is that, if it is not paid on time, within the 60 days, it must at least be paid within the period of time for which one has been granted an extension. If one cannot pay it in full in either of those two circumstances, one can opt to pay by instalments. But, if one cannot do that because of hardship, then one goes the final step of satisfying the expiation fee by way of community service. If you ignore it all you end up in court, or you end up with a conviction and the matter proceeding to an enforcement order, and then the subsequent processes can take effect. It is still possible for someone to end up in gaol if they throw everything out the window and say, 'I could not care less and I will just let it all take its course.'

The Hon. Mr Elliott raises this very difficult issue of not only whether the punishment fits the crime but whether the punishment fits the offender. I do not think you can resolve that in the context of an expiation scheme. An expiation scheme is designed to provide a simple mechanism for those who acknowledge that they have committed an offence to satisfy their obligation to society without having to go through the court process incurring costs and so on. I suggest that to try to build into what is intended to be a relatively simple scheme some process by which you then determine not a flat rate of expiation but maybe a differential rate of expiation, or that, in this case, it is better for one person to do community service because an expiation fee is not a penalty, or for another person to pay an expiation fee because community service is not appropriate: to do that is to go back to the court system to make those judgments. With respect, I do not think that is practical.

I recognise the point which the Hon. Mr Elliott makes, but I do not see how one can build that into an expiation process. You may be able to build it into the system to some extent. It is there, to some extent, under the Criminal Law Sentencing Act where you prosecute someone and it goes to court. There you have all of the sentencing options which are available. But you have to go, I suggest, through the court process to be able to make that judgment and to give the accused person his or her rights in relation to the determination as to what penalty would be appropriate. The expiation scheme is a subsidiary to that and it is designed to keep simple things out of the court system. I suggest that you cannot build into it the sort of judgments which the Hon. Mr Elliott has referred to as being of concern to him.

The Hon. M.J. ELLIOTT: I do not want to extend this too far, but there are other mechanisms. For instance, it would be possible that a person who scored three parking fines in a year could not expiate a fourth (so they do not have their glove box full of parking fines) as long as there are other penalties available. I am reminded of people who used to get speeding penalties which were expiable, but there were no points lost. The attitude towards speeding has changed now that people can lose demerit points as well as having an expiation fee. If we put a limit on the number of times a person can expiate an offence that might be another way of people regarding the expiation fee as an easy way out when, clearly, they can afford the expiation fee.

The Hon. K.T. GRIFFIN: There are some road traffic offences, for example, where you are detected by a radar or laser speed detection device. You are pulled up by the police officer and you are reported. In those circumstances, you lose demerit points—and I think there are some other circumstances. In those circumstances, there is a discretion in the prosecuting authorities to say, 'Look, you have had three offences for speeding within the year, or the past two years. We will not issue an expiation fee; we will issue a summons and you will then be dealt with in the court process.' I remember in 1987, when I raised the issue in relation to cannabis expiation notices, whether after you had about three or four, or you were a multiple offender, should it mean that, in some way, you are brought before the authorities—whether it is the court or in some other way—for your own benefit as much as for anyone else's benefit?

That was rejected at that time. I merely cite those cases, without wanting to debate the merits or otherwise, to indicate that some of the matters to which the honourable member refers have been considered but, in some instances, not accepted, and in others they have been.

Amendment negatived.

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

Page 6, lines 9 and 10—Leave out subclause (9) and insert subclause as follows:

(9) The registrar must, on making a decision on an application for relief—

(a) give the applicant, personally or by post, written notice of the decision; and

(b) if an order for payment in instalments or community service is made, give written notice of the order to the relevant issuing authority.

The purpose is simple. The Bill does not require the registrar to notify the applicant if the application for fine relief is refused. Therefore, this amendment is the correction of an oversight.

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

Amendment carried.

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

Page 6, after line 10—Insert new subclause as follows:

(10a) A decision of a registrar made on an application for relief is not subject to appeal.

This amendment is to make it clear that the registrar's decision is not subject to direct appeal. This decision was made after some consideration. It was decided that such an appeal would be a generally useless burden on the overtaxed Magistrates Court and, in addition, would add to the complexity of an already complex system. The person concerned can make an indirect appeal. If he or she wants to appeal the decision of the registrar, then the remedy is to take the matter to court. At that point the person is free to argue that section 13 of the Criminal Law Sentencing Act requires the means of the defendant to be taken into account in fixing a monetary penalty and that no order can be made which the defendant is unable to pay, and hence, that the decision of the registrar was wrong.

In short, an indirect avenue of appeal exists and could be used in addition to the appeal from the registrar, if that appeal existed. Therefore, the Government has decided that the direct appeal is unnecessary, complex and burdensome and should not exist. I am aware that in my second reading speech in reply I foreshadowed that there may be an amendment to introduce such a right of appeal, but further consideration has been given to the issue and the position is as I have now expressed it.

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

Amendment carried; clause as amended passed.

Clauses 10 to 13 passed.

Clause 14—'Enforcement orders are not subject to appeal but may be reviewed.'

The Hon. CAROLYN PICKLES: I move:

Page 9, line 15—Leave out 'not'.

I explained the reasons for this amendment in my second reading contribution of 7 February. Essentially, I am concerned about a final order being made by a court which will extract money from a citizen and ultimately imprison that citizen if they do not pay up. In those circumstances there should be a right of appeal to the Supreme Court if the registrar has dealt with an expiation notice recipient harshly or unfairly, if an enforcement order issued by the registrar in those circumstances is confirmed by a magistrate on erroneous grounds. I appreciate what the Attorney has said about the narrow scope of the disputes which might arise about whether a person has been correctly served with a notice. My guess is that there will be very few such appeals to the Supreme Court pursuant to section 42 of the Magistrates Court Act, particularly so if one assumes that all the relevant facts will be established in the Magistrates Court, for example, where there is a question about whether a person received their expiation notice.

Still, the possibility for error remains. For example, hearsay evidence as to the service of a notice might be wrongly admitted into evidence. Under limited circumstances such as this a citizen should have the right to go to a judge of the Supreme Court to review the magistrate's decision. In practice we will not upset the budget too much by keeping available a right of appeal. The State should be very slow to block the citizens' right of access to the highest South Australian court—the Supreme Court. While noting that a very small proportion of magistrates' decisions are appealed, we must also recognise that a number of appeals against magistrates' decisions are successful. In other words, they sometimes get it wrong at the Magistrates Court level and appeal to the Supreme Court should therefore be left open. It is indeed a matter of principle.

The Hon. K.T. GRIFFIN: With respect, I do not think it is a matter of principle. It relates to enforcement orders, which are at the tail end of the expiation system. This person who may seek a review has had an expiation notice and may have had ignored it; he might have had a late payment notice and ignored that. It has then gone to an enforcement order in the court and has then—

The Hon. Carolyn Pickles: They might not have received it.

The Hon. K.T. GRIFFIN: If the honourable member is relying on the issue of not receiving it, that is a different matter. I have said all along that, if the person to whom the expiation notice is addressed has not received it—and there are those cases where that occurs—an application can be made to set it aside. That is an issue that is not relevant to this provision. We have a number of stages before one gets to the enforcement order.

The enforcement order is the order which requires you to make a payment and has brought you into the court system. That is not subject to appeal, but the person liable under the order may apply to the court for a review of the order within 30 days of being given notice of the order. The enforcement order is down the track from the expiation notice and there are 30 days after the enforcement order is made for the review to be undertaken. That review may relate to the substance of the issue or to process. Members will see under subclause (5) that:

If the court revokes an enforcement order on the ground that the applicant failed to receive a particular notice, the applicant will be taken (for the purposes of this Act and any other Act) to have been given that notice on the day on which the order is revoked.

That protection is built in. The other issue is that you may have a different set of circumstances where the person to whom the expiation notice is directed does receive the notice, acknowledges receipt by saying that they need time to pay by instalments, and an order for payment by instalments is made. One or two instalments may be paid and nothing done with the rest and, notwithstanding the follow up, nothing more is done so it moves to the enforcement order situation.

In those circumstances the enforcement order may be subject to review, but you have to ask at what point you stop: at the review process or the appeal process. We are talking about expiation fees—monetary penalties. We have built protections, as far as possible, into the system to guard against injustice. I acknowledge that in some circumstances we may not be successful in achieving the goal, but they are mechanisms designed to provide as much protection as possible for the person who may suffer injustice. In those

circumstances it is quite inappropriate to then be taking the review, on what might be a $150 enforcement order, up to the Supreme Court. That does not occur under the minor civil claims division of the Magistrates Court because there is a review of some minor civil claims by the District Court but then no further appeal or review. That goes up to $5 000. At some point one has to ask, 'Where do we draw the line?' The Government's perspective, from all our experience, is that the provision in subclause (6) is an appropriate point at which to draw the line.

The Hon. M.J. ELLIOTT: There are a number of circumstances in which a case could be made. The argument may be about not the committing of the offence itself but something that happened further along the line in the expiation system. For instance, a person acknowledges that they have committed the offence, wishes to expiate but cannot afford it, and is ordered to do community service. That person could do a significant amount of the community service and then find that the person supervising that community service has made allegations that what was required has not been done: the registrar may make a ruling that the person has to expiate, so there is an appeal to the court. There are circumstances where that person might want to appeal further.

The argument is about not the committing of the offence but whether or not processes subsequent to that, particularly the administration of the community service order, were carried out in an appropriate manner, that is, whether it was done fairly and whether the person was treated properly. Such cases would be rare, but they would exist, and having only the single level of court of appeal available may not offer justice.

The Hon. K.T. GRIFFIN: It also has to be recognised that an enforcement order is not an order of the registrar: it is the order that is made at the end of the process. Even if it were the order of the registrar, this is a subsequent review. It is a review by the court, by a magistrate, of the enforcement order. The grounds of that review are that the expiation notice should not have been given in the first instance. It may be that this person did not commit the offence, that it is a case of mistaken identity. The procedural requirements might not have been complied with, or the applicant might have failed to receive a notice required by this Act or any other Act, or the applicant has expiated the offence, or the amount shown as due has not taken into account the payment of an instalment. There are limited grounds for reviewing the enforcement orders.

The process is directed towards trying to ensure that, where an expiation notice is issued, if someone wants to go to court, they have the option to do that or, if they decide that they are going to ignore it, they are brought to account through the enforcement order or, if they decide they cannot pay it because of hardship, they can make applications before it gets to the enforcement order stage.

The Hon. M.J. ELLIOTT: What happens if the problem actually occurs after the community service has been ordered, and there has been no dispute about it? I do not know how many hours of community service are associated with $3 000 worth of fines, but it would be a lot. A person might have done most of that time but, because of a personal conflict with the supervisor with whom the person is working, the person is abused at that point: the supervisor might go to the registrar, make a claim that this person has not done what should have been done, and the registrar would cancel the order. That could be quite significant. No-one is disputing the crime or the penalty: the dispute relates to the administration of the penalty, particularly the administration of the community service order. That could be quite serious.

The Hon. K.T. GRIFFIN: That then goes back to court. We are not talking about the registrar reviewing it: we are talking about the court reviewing the registrar's decision. That, in itself, is the protection. When you talk about the court, it is not the registrar reviewing the registrar's decision: it is the magistrate reviewing the registrar's decision. A mechanism is built into this to ensure that the circumstances to which the Hon. Michael Elliott referred can be reviewed by the court. Notwithstanding that the registrar has made a decision, which has gone on review to the court—a review means you take everything into account and not limit it to a narrow area of appeal—the magistrate says, 'I do not believe you. I have seen all this evidence. I have looked at your statement. I have looked at these other statements. I do not believe you. You are pulling my leg.' The magistrate then makes an appropriate order. The Hon. Caroline Pickles then wants to say, 'But that magistrate's decision, that court's decision, is appealable.'

That is the process. I believe that we have put into this the sort of safety mechanisms that are necessary to ensure that one is not relying only on the force of the Act, or the force of a registrar's decision, but that the court itself has the capacity to review.

The Hon. M.J. ELLIOTT: I guess I am not clear as to the Attorney's concern about allowing it to be subject to appeal. We are talking expiation notices, the vast majority of which are for very small amounts. In the vast majority of cases, I would not expect that what is a relatively minor amount is the sort of thing on which you would risk significant legal fees in higher courts unless it was a matter of significant principle where a person feels they have been wrongly done by. If they have been wrongly done by, in terms of the committing of the offence, they already have the right to go to court—unless they did not receive the expiation notice anyway. It is not about whether or not you are denying that you committed the offence, because you always have the option of going to court anyway.

The only time that you would not have a court route available is when you claim that you have never received the expiation notice. That probably has all the appeal levels anyway. We are talking about a situation where a person has acknowledged that they have committed an offence, but something has gone wrong in the expiation system after they have admitted that they have done something wrong. I would have thought that people would not run to higher courts unless there was a matter of grave injustice. I want to understand what the Attorney-General actually fears will happen.

The Hon. K.T. GRIFFIN: I am pleased that the honourable member has identified that it is not about the question of whether or not the person to whom the notice is directed committed the offence.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: We have already built that in. Clause 14(3)(c) provides:

> An application can only be made on the ground that the applicant failed to receive a notice required by this Act or any other Act.

And subclause (5) provides:

> If the court revokes an enforcement order on the ground that the applicant failed to receive a particular notice, the applicant will be taken (for the purposes of this Act . . .) to have been given that notice on the day on which the order is revoked.

So, we have dealt with the issue of the—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: Well, again—

The Hon. M.J. Elliott: I think that's a side issue.

The Hon. K.T. GRIFFIN: Essentially, we are talking about procedural issues. We are not talking about matters of substance when we are talking about the review. My concern is that, whilst there may be a chance of 1:100 000 that something may go wrong with the process after the enforcement order is made—it may be 2:100 000, I do not know—I do not believe it is correct, in principle, to provide in this sort of legislation that with procedural matters you can go to a court of appeal when you have already been through a process of review by the Magistrates Court. That is what we are talking about.

The Hon. M.J. Elliott: With respect, it is still procedural matters.

The Hon. K.T. GRIFFIN: It can't be.

The Hon. M.J. Elliott: If you have an argument about whether or not you have properly carried out a community service order, issues of the credibility of witnesses and other matters start to arise in the court at that point—whether you did or did not do something, not the initial offence, which you have already admitted by seeking to expiate, but whether you did or did not do what was required of you under the community service order. I argue that that is far more complex.

The Hon. K.T. GRIFFIN: With respect to the Hon. Mr Elliott if, before you get to the point of an enforcement order, someone who has received an expiation notice goes to the registrar and gets an order for community service, and it is asserted that that person has not complied with the order, the registrar can cancel the order. That is subject to review before it even gets to the enforcement order. So, presumably someone who asserts that he or she did the community work but is not being given credit for it, the process would be that the order for relief would, first, be cancelled by the registrar and that would be reviewable by the court. If the court decides that that is not correct—and that issue is not subject to repeal—then that matter would go to an enforcement order, and from there it would again go through the process.

The other point which has been drawn to my attention is that an enforcement order is a conviction. If you are concerned about the lack of opportunities for review of the procedural aspects, then I am advised that the defendant can go the normal route to appeal the conviction. So, you have your normal appeal process for the conviction. This relates to the enforcement order which follows upon the failure to comply with the expiation notice. So, protection is built into it in two ways: a comprehensive expiation scheme and a conviction which you can appeal.

The Hon. CAROLYN PICKLES: I cannot understand why you have such a problem with this amendment because—

The Hon. K.T. Griffin: You are trivialising the process.

The Hon. CAROLYN PICKLES: I do not believe that we are trivialising the process; on the contrary, I think we are actually ensuring that the citizen has every right of appeal. As we have pointed out, we do not believe that too many people will take up this kind of option. Therefore, there will not be huge implications for the court's budget. Can the Attorney-General point to any other decision of a magistrate in the criminal justice system that will have the effect of enforcing a penalty that would not be subject to an appeal by the Supreme Court?

The Hon. K.T. GRIFFIN: I cannot point to any situation outside the expiation system, and that is really the whole point of this. The expiation system is intended, both for the benefit of citizens who might have committed minor offences and for the benefit of the administration of justice, to establish a discrete coherent system which deals with minor matters away from the normal criminal justice processes.

The Hon. M.J. ELLIOTT: If the registrar cancels a community service order—and there is certainly no requirement of the registrar to hear both sides of the case—an application for review can be made to the court. However, the court is not obliged to conduct an inquiry into the application but may require the applicant to provide further informational records. There is no real guarantee that the court will ever hear both sides of the case again. As I understand it, if you are not happy with what the court does, you can then appeal to the court after the enforcement order is made. The court would then be asked to review what it has already done, even if the court has not done it properly the first time. These cases will be rare but, nevertheless, on the few occasions that they happen, there is no great harm in allowing a review to go a further stage. People will not do it unless an important matter of principle is involved, because in most cases the amount of money itself will be trivial. I intend to support the amendment. I have listened carefully to what the Attorney has had to say. I really do not see any problems being created in this case and, in the very few cases where something goes wrong within the system, this protection should rightfully be here.

The Hon. K.T. GRIFFIN: I do not think that I can add any more to the arguments I have made in relation to this matter. In relation to what are essentially procedural issues of a minor nature, it is the Government's view that it is inappropriate to provide for an appeal process in relation to enforcement orders beyond the review by the Magistrates Court. On the basis of the indication given by the Hon. Mr Elliott, we will have to keep the argument going at another stage of the consideration of the Bill.

Amendment carried; clause as amended passed.

Clause 15 passed.

Clause 16—'Expiation notice may be withdrawn.'

The Hon. CAROLYN PICKLES: I move:

Page 10, lines 22 and 23—Leave out paragraph (b) and insert the following paragraph:

(b) the period of 60 days from the date of the notice has expired.

Members will recall that, in my second reading speech, I noted that the Opposition was not happy with the provisions permitting an expiation notice being withdrawn for the purposes of prosecuting an alleged offender. That is not to say that the Opposition opposes outright the concept of prosecutions superseding expiation notices. The difficulty perceived by Opposition members was that citizens would be justifiably aggrieved if they had come to believe that a particular offence had been finally disposed of by paying the appropriate expiation fee only to find, perhaps many months later, that they were being sent a refund check and being prosecuted for the offence. Interestingly, the first proposal that was floated among Opposition members was to prevent prosecution where the recipient of the expiation notice has paid the expiation fee to the court. At that point for most people there would arise the expectation that the matter had been finalised and they would not be prosecuted for that offence.

The Hon. Mr Lawson in his contribution seemed to display some sympathy with that approach to the matter. The difficulty with this approach the Opposition has come to accept is that there may be recalcitrant or repeat offenders who get to know how to play the system by paying off an expiation notice before the prosecuting authorities have had time to ascertain the offending history of that particular citizen. In the case of repeat offenders, people thumbing their nose at the law, it may well be appropriate ultimately to prosecute such an offender.

The same reasoning applies in the scenario put forward by the Attorney when he suggested that the offence which had been the subject of an expiation notice issued to the offender may have been committed concurrently with more serious offences. The problem is that a police officer, parking inspector or one of the other prosecuting authorities entitled to issue expiation notices may be unaware at the time that the expiation notice is handed out that there are these background factors warranting prosecution of the offender. I note here that we are actually going to extend the number of people who will be able to hand out these expiation notices if the privatisation of the Police Force continues.

Because of this particular scenario, the Opposition wishes to retain what is essentially the *status quo*. Section 6 of the current Expiation of Offences Act places a bar on prosecutions 60 days after the date the expiation notice was issued. The Opposition amendment retains the 60-day time limit on the basis that the prosecuting authority then has two months in order to sift through the expiation notices and check for patterns of offending or to reassess the circumstances of particular offending to see whether prosecution in the courts is warranted. I note that the prosecution need not commence in the 60-day period but that the citizen must receive written notice of the course that is to follow by virtue of clause 16 as it is. We believe that at some point citizens are entitled to believe that they have paid their penance for a particular offence.

In our view, although there is some arbitrariness about the 60-day limit, it seems to us that, if people have paid their expiation fee or if they have entered into an agreement with a registrar to commence payments by instalments within 60 days, after that 60 days is up the recipient of the expiation notice can expect to be free from prosecution in respect of the offence. The current Bill allows over six months before the prosecuting authority even has to decide to take the person to court. That is an unacceptable period for a person to be subject to the jeopardy of prosecution for an expiable offence in circumstances where that person has already paid or arranged to pay an expiation fee and very likely assumed that that would be the end of the matter. Accordingly, we hope that the Democrats and the Attorney can support this amendment, which again we put forward as a matter of principle.

Finally, I note that the Opposition's amendments to this Bill have led us to consider a minor amendment to the Time for Making Complaints Bill. The amendment on file in respect of that Bill simply removes any possible doubt that prosecutions can be commenced within six months of the expiry of the expiation period specified in the notice even though the notice has been withdrawn, as long as the prosecuting authority has written to the alleged offender appropriately withdrawing the expiation notice. We will not proceed with this amendment in that later Bill if this amendment to clause 16 fails. I hope that the Government will support this amendment, because I do not believe that it frustrates the Government Bill at all.

The Hon. K.T. GRIFFIN: I have some sympathy for the amendment the honourable member is moving. I do not have any difficulty with the principle that if there are to be prosecutions they ought to be initiated at the earliest point in time. If an expiation notice has been issued, one would expect that it would not have been issued for some days or even a month or so after the offence occurred, by which time, hopefully, the prosecuting authorities would know whether or not they intended to prosecute for other offences. Therefore, it would be appropriate to bring all charges together. It is correct that the current Act specifies 60 days, as proposed in the amendment, but I draw the honourable member's attention to the fact that in the new system—but not in the old system—is a period of extension for late payment.

It seems to me that, if the amendment is to be accepted—at this stage I would be prepared to accept it provided one change is made—I will further consider it before it is finalised in the House of Assembly. We need to consider the consequences of the late payment period which is being built into the new system. Everyone has welcomed the late payment provision, and it is likely that that will be a period of something in excess of 14 clear days. We have not yet made any final decisions about it. I suggest that, if the honourable member is prepared to change 60 days to 90 days, I am prepared to give conditional support to it, but I reserve the right to review it before the matter is finally dealt with in the House of Assembly.

The Hon. CAROLYN PICKLES: I thank the Attorney for his comments. In the interests of trying to get agreement on the legislation I would be prepared to accept that extension, and I seek leave to move my amendment in an amended form by replacing '60' with '90'.

Leave granted.

Amendment carried; clause as amended passed.

Clause 17 passed.

New clause 17A—'Giving of certain notices and certificates.'

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

Page 11, after line 4—Insert new clause as follows:

17A. Where a written notice is to be given under this Act by a registrar to an issuing authority, or an enforcement certificate is to be sent by an issuing authority to a registrar, the notice or certificate may be given or sent in an electronic form that is acceptable to the recipient, provided that a printed copy of the notice or certificate can be produced if required.

The amendment has been drafted at the request of the Chief Magistrate. There are a number of places in the Bill where notices or written notices are required to be passed on. Clause 9(9) is one of those which provides a good example. The notice should be given expeditiously and efficiently. In the case of police prosecutions, which I think will comprise the great majority of these, it is anticipated that notice will be given by way of electronic data exchange. The amendment is designed, therefore, to facilitate that electronic process where it is appropriate to do so and where the electronic data exchange is the accepted way of doing business.

The Hon. CAROLYN PICKLES: The Opposition supports the new clause.

New clause inserted.

Remaining clauses (18 and 19) and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT AND REPEAL (COMMON EXPIATION SCHEME) BILL

In Committee.

Clauses 1 to 5 passed.

Schedule.

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

Schedule—new item after item 6—page 3, after line 7—Insert:

6A. Building Work Contractors Act 1995

Section 19(6) After the penalty provision insert:
Expiation fee: $80.

Section 19(7) After the penalty provision insert:
Expiation fee: $80.

Section 19(8) After the penalty provision insert:
Expiation fee: $80.

Section 31(2) After the penalty provision insert:
Expiation fee: $160.

Section 49 After the penalty provision insert:
Expiation fee: $80.

Section 50(1) After the penalty provision insert:
Expiation fee: $80.

Section 51(1) After the penalty provision insert:
Expiation fee: $80.

Schedule—new items after item 8—page 3, after line 24—Insert:

8A. Consumer Credit Act 1972

Section 40(5) After the penalty provision insert:
Expiation fee: $75.

Section 40(10) After the penalty provision insert:
Expiation fee: $75.

Section 41(4) After the penalty provision insert:
Expiation fee: $75.

Section 41(7) After the penalty provision insert:
Expiation fee: $75.

8B. Consumer Transactions Act 1972

Section 20(2) After the penalty provision insert:
Expiation fee: $75.

Section 20(6) After the penalty provision insert:
Expiation fee: $75.

Schedule—new item after item 28—page 14, after line 3—Insert:

28A. South Australian Health Commission Act 1976

Section 38(1) After paragraph (n) insert:
(o) to fix expiation fees, not exceeding a division 10 expiation fee, for alleged offences against the by-laws.

Section 38(5) Strike out this subsection.

Section 57AA(1) After paragraph (n) insert:
(o) to fix expiation fees, not exceeding a division 10 expiation fee, for alleged offences against the by-laws.

Section 57AA(5) Strike out this subsection.

Schedule—new item after item 31—page 14, after line 25—Insert:

31A. Technical and Further Education Act 1975

Section 43(2)(ib) Strike out "and providing for the expiation of such offences".

section 43(4) Strike out this subsection and insert:
(4) A regulation under this Act may—
(a) impose fines, not exceeding a division 10 fine, for offences against the regulations;
(b) fix expiation fees, not exceeding a division 10 fee, for alleged offences against the regulations.

Schedule—new items after item 37—page 17, after line 11—Insert:

37A West Beach Recreation Reserve Act 1987

Section 25(2) After paragraph (e) insert:
(f) fix expiation fees, not exceeding $75, for alleged offences against the regulations.

Section 25(5)—-(7) Strike out these subsections and substitute:
(5) An expiation notice or expiation reminder notice given under the Expiation of Offences Act 1995 to the owner of a vehicle for an alleged offence against a regulation arising out of the use of the vehicle must be accompanied by a notice inviting the owner, if he or she was not the driver at the time of the alleged offence, to provide the Trust, within the period specified in the notice, with a statutory declaration—
(a) setting out the name and address of the driver; or
(b) if he or she had transferred ownership of the vehicle to another prior to the time of the alleged offence and has complied with the Motor Vehicles Act 1959 in respect of the transfer—setting out details of the transfer (including the name and address of the transferee).
(2) Before proceedings are commenced against the owner of a vehicle for an offence against a regulation arising out of the use of the vehicle, the complainant must send the owner a notice—
(a) setting out particulars of the alleged offence; and
(b) inviting the owner, if he or she was not the driver at the time of the offence, to provide the complainant, within 21 days of the date of the notice, with a statutory declaration setting out the matters referred to in subsection (1).
(3) Subsection (2) does not apply to—
(a) proceedings commenced where an owner has elected under the Expiation of Offences Act 1995 to be prosecuted for the offence: or
(b) proceedings commenced against an owner of a vehicle who has been named in a statutory declaration under this section as the driver of the vehicle
(4) Subject to subsection (5), in proceedings against the owner of a vehicle for an offence against a regulation. it is a defence to prove—
(a) that, in consequence of some unlawful act, the vehicle was not in the possession or control of the owner at the time of the alleged offence; or
(b) that the owner provided the complainant with a statutory declaration in accordance with an invitation under this section.
(5) The defence in subsection (4)(b) does not apply if it is proved that the owner made the declaration knowing it to be false in a material particular.
(6) If—
(a) an expiation notice is given to a person named as the alleged driver in a statutory declaration under this section; or
(b) proceedings are commenced against a person named as the alleged driver in such a statutory declaration.
the notice or summons, as the case may be, must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged driver.
(7) In proceedings against a person named in a statutory declaration under this section for the offence to which the declaration relates, it will be presumed, in the absence of proof to the contrary, that the person was the driver of the vehicle at the time at which the alleged offence was committed.
(8) In proceedings against the owner or driver of a vehicle for an offence against this Act, an allegation in the complaint that a notice was given under this section on a specified day will be accepted as proof, in the absence of proof to the contrary, of the facts alleged.

37B. Wilderness Protection Act 1992

Section 41(2)(z) Strike out this paragraph and insert:
(z) fix expiation fees for alleged offences against the regulations.

This Bill is consequential on the establishment of the new expiation scheme. The amendments on file are necessary because Parliamentary Counsel had to make sure that the consequential Bill was as up-to-date as was absolutely

possible when it came to the vote. It may be that there will be even more amendments in another place, but I would not expect so. Parliament is active, as we all know, and things change from time to time. These amendments are to make the consequential Bill as current as possible with the whole of the relevant part of the statute book.

In relation to the second amendment, in almost cases what is being done is consistent with fees and penalties that currently exist. Parliamentary Counsel has taken the opportunity to make some changes of a statute law revision nature, as they have reviewed the statute book. That is to say, there are some changes to current levels of fees and charges in the Bill, but the changes that have been made are only those where Parliamentary Counsel has been convinced that anomalies or mistakes exist and require correction.

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

Amendments carried; schedule as amended passed.

Title passed.

Bill read a third time and passed.

SUMMARY PROCEDURE (TIME FOR MAKING COMPLAINT) AMENDMENT BILL

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Limitation on time in which proceedings may be commenced.'

The Hon. CAROLYN PICKLES: I move:

Page 1, line 24—Insert '(whether or not the notice was subsequently withdrawn)' after 'notice'.

This amendment is consequential upon the Expiation of Offences Bill which we have just passed and makes clear that if an expiation notice is withdrawn within 90 days, as we have now agreed, from the date of the notice, the time for prosecution remains as the expiation period plus six months. This caters for the situation where an expiation notice is first issued to a driver of a vehicle nearly six months after the alleged offence following a lengthy procedure for withdrawing a notice, and the right of prosecution against a driver should still be available. The Opposition was advised by Parliamentary Counsel that this amendment would be necessary.

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

Page 1, lines 21 to 30—Leave out paragraphs (a) and (b) and insert the following paragraphs:

(a) in the case of an expiable offence in respect of which an expiation notice was given to the person—the proceedings must be commenced within 6 months of the expiry of the expiation period specified in the notice;

(b) in any other case—the proceedings must be commenced within 6 months of the date on which the offence is alleged to have been committed.

Essentially, subclause (a) seeks to achieve the same goals as the Government in relation to expiable offences. However, for non-expiable offences I have not accepted the notion that proceedings must be commenced within two years but have kept it at six months, which is where it is at present.

In relation to non-expiable offences, it seems to me that, if there are particular offences where it is felt that a greater time is needed, the Government always has within its power, as it already does with many offences, to specify that other time. A case needs to be made for a longer period of time and not its simply being made two years as a minimum in all cases.

The Hon. CAROLYN PICKLES: While the Opposition fully understands the genuine concern expressed by the Hon. Mr Elliott, we will not support his amendment. I stand by my remarks that the initial justification proffered by the Attorney was somewhat sketchy, and the display of erudition and arrogance from the Hon. Mr Redford did not nothing to enlighten members, despite the repeated references to the legislative history of section 52. In contrast, the Attorney graciously and properly responded to the concerns that I raised in my second reading speech. Certainly, he gave a much fuller explanation yesterday compared to that which was given when the Bill was introduced.

No-one yet has made mention of the important reasons why time limits are placed on prosecution of minor offences. Mainly such rules operate for the benefit of accused people who can generally be expected to find it increasingly difficult to prepare and gather evidence for their defence as time goes on. Few of us would be in a position to bring evidence to defend a charge that we exceeded the time limit in a parking zone on 15 February 1995 or 1994. Even in the case of more serious offences, such as an assault, it obviously becomes more and more difficult to gather alibis and witnesses in favour of a defendant in relation to a fist fight that took place, say, one, two or three years ago. To me, this is the most important reason why we would want to have time limits on prosecutions. The natural consequence of these time limits is that prosecutors are encouraged to work diligently and expeditiously to prosecute as soon as possible in these cases where there is to be a prosecution at all.

Another related consequence of setting these time limits is that, after a reasonable period, citizens can be free of the fear that they might be prosecuted for a minor incident which may or may not have involved transgressions of the law. Our criminal justice system has always taken into account the reasonable expectations of our citizens. On balance, the Opposition is persuaded that the time limit for summary offences charged on complaint has been set appropriately relative to the time limit set for expiable offences and sufficiently lengthy to take account of some of the serious and complex crimes which are charged on complaint. In this context, some of the financial crimes which are often not readily detectable are particularly relevant. For those reasons, we oppose the Hon. Mr Elliott's amendment but we will be pursuing our own.

The Hon. K.T. GRIFFIN: At this stage I am prepared to accept the amendment of the Hon. Carolyn Pickles. I think it is consistent with what the Government has been proposing. We will have another look at it over the next few weeks before it is resolved in the House of Assembly, but I think it is an appropriate amendment and therefore indicate at this stage conditional support for it.

In respect of the Hon. Mr Elliott's amendment, I do not support it. I oppose it strenuously. I have already spoken at length in reply at the second reading stage as to why there should be an extension of time for the issue of proceedings in relation to summary offences. Even today, with the introduction of the Travel Agents (Miscellaneous) Amendment Bill, I am seeking to extend the time for issuing proceedings for summary offences from 12 months to two years, because of issues relating to the travel compensation fund whereby offences might have been committed in the fall of a travel agency business but which cannot be detected within 12 months. Sometimes problems linger on, and the whole object of this is to try to provide some flexibility, but not undue flexibility, to enable those who have committed

offences to be brought to account if the evidence provides a *prima facie* case for that to occur.

I evidenced a number of examples where presently the law does have a somewhat inconsistent approach which I would like to see developed on a more consistent basis in the longer term, and I also referred to several particular instances where the operation of the six month time limit created problems. I am pleased that the Leader of the Opposition has indicated her support for the Government position in relation to those time limits. It is a matter of judgment as to what is the most appropriate time. All I can say is that it ought to be commonly accepted that the six month time limit which presently exists, particularly for serious offences, is no longer an acceptable and appropriate limitation on the period for issuing proceedings for summary offences.

The Hon. Carolyn Pickles's amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

RACING (TAB) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 February. Page 916.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank honourable members for their contributions during the second reading stage. There are issues of concern which need to be addressed in Committee. When the amendments are debated, I will deal particularly with those issues which undoubtedly cause the greatest concern.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Membership of the board.'

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

Page 2, lines 2 and 3—Leave out subsection (3) and insert subsection as follows:

(3) At least two members of the board must be men and at least two must be women.

As I indicated earlier, at the time of having this amendment drafted I had not seen the amendment in the Lower House to ensure that at least one member of the board should be a man and one should be a woman. My amendment calls for two men and two women. I do not think that the Government will have any problems with that. I note that in the National Parks and Wildlife (Miscellaneous) Amendment Bill a seven-member council is proposed and that the Government is proposing that at least two must be men and two must be women. This amendment is consistent with the Government's approach in another piece of legislation. As I said previously, I look forward to the day when amendments such as this are not necessary, but sadly they still are.

The Hon. R.R. ROBERTS: The Opposition supports this amendment for many of the reasons outlined by the Hon. Mr Elliott.

The Hon. K.T. GRIFFIN: The Hon. Mr Elliott has suggested that amendments like this are still necessary. I would like to think they were not, but really it is a matter of judgment whether that is or is not the case. Certainly, as a matter of Government policy, we are seeking to ensure that there is very broad representation of interests on our boards and committees, and that there is, as near as it is possible to achieve it, equal representation of men and women on boards and committees, but it does take a while for that to flow through the system. I raise no difficulty with the amendment.

Amendment carried; clause as amended passed.

Clause 5—'Terms and conditions of office.'

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

Page 2, lines 16 to 18—Leave out paragraph (e).

This issue was before us previously in the 'Get Bill' Bill. In this case a person is not being targeted, but the principle still remains. I believe there must be grounds which are understood by the general public as to why a person is going to be removed. Section 45(5) of the current Act provides that the Governor may remove a member for any breach or non-compliance with the conditions of his or her appointment, or mental or physical incapacity, or neglect of duty, or dishonourable conduct. That provision is standard through most pieces of legislation we already have in place. I do not think it is good enough, on what is essentially a Minister's whim, for people to be whipped out of boards.

In this Act the Minister has the power to direct the board. It is a power that the Minister did not use too much until very recently, but if the Minister does direct the board and the board members are consistently acting against those directions, then I would argue that, at that point, they were neglecting their duties, and a case could be made that they should be removed from the board. There is no point in having a board if we do not have people who, at least, have a mind of their own. Perhaps this Act also needs 'Objects for the TAB' to clearly spell out what its goals and aspirations should be, as well as the directions given by the Minister.

That is the way to handle the problem, and not simply include a clause, as the Government proposes, where the Government may remove a member from office on any ground the Governor considers sufficient. I do not find that acceptable.

The Hon. R.R. ROBERTS: I indicate that, after a wide-ranging discussion within the forum of the Australian Labor Party, and taking into account many of the issues raised by the Hon. Mr Elliott, the Opposition will not support this amendment.

The Hon. K.T. GRIFFIN: I oppose the amendment, and quite strenuously. There is a very important issue here. The Hon. Mr Elliot is correct in saying that there is a certain form of drafting which appears in legislation and which deals with the appointment of boards and the mechanism by which members of boards can be removed, but experience in recent times of the way in which boards operate, even though they are instrumentalities of the Crown and deal with taxpayers' money and interests, has caused Governments to rethink the responsibility which members of boards and committees should have when acting on behalf of Government and thus the people of, in this case, South Australia. I am sure that this issue will be further developed over the next year or so in relation to—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: WorkCover was established a while ago. The previous Government wanted to have WorkCover operate at arm's length from the Government. I remember when the Hon. Frank Blevins had the responsibility for WorkCover he said, 'Look, we are out of this. It is a deal between the unions and the employers. Let them worry about it. We do not want Government involved.' I do not think you can adopt that position in that way. But the philosophical question, as well as the issue of responsibility and accountability, undoubtedly will be further explored and

developed over a period of time and, quite properly so, as the whole framework of Government changes to more commercial or corporatised entities.

I draw the attention of the Committee to the fact that there are similar provisions as those to which the Hon. Mr Elliott's amendment refers in the Gaming Supervisory Authority Act 1995, the Electricity Corporations Act 1994, the South Australian Water Corporation Act 1994, the Land Acquisition Act 1969, and the State Bank of South Australia Act 1983, although I suspect that the latter two are not as explicitly in the same terms as the first three to which I have referred. A number of other pieces of legislation were brought in by the previous Government where a similar sort of provision applies. I do not believe it is appropriate to support the amendment of the Hon. Mr Elliott, but it is important to maintain our support for the provision which he seeks to amend.

The Hon. M.J. ELLIOTT: I express my dismay that the Labor Party has taken this position. I would like to know whether or not it would support a similar position in relation to the board of WorkCover where, if it was not doing precisely what the Minister wanted in terms of policy, the Minister could withdraw it immediately. We find that once people get elected to boards, even employer representatives, some of them behave reasonably from a worker's perspective and vice versa, because they get there, they listen to the facts and they use their commonsense. But to have a Minister able to pull anyone out for what are blatantly political reasons destroys the capacity for these boards to function effectively. The reasons there were problems with the TAB had nothing to do with the TAB board and had everything to do with the Minister, who had powers that he never ever used and then sought to make Bill Cousins a scapegoat.

That the Labor Party should take this position is an absolute disgrace. It is handing more power over to the Executive. We passed some legislation which had some protections by establishment of boards and councils, even if appointed by the Government, and now we are saying, 'But every member of that council must be in the pocket of the Minister all the time.' I cannot believe the Labor Party has taken this position. I hope that it will review its approach before the next piece of legislation with similar contents.

Amendment negatived; clause passed.

Remaining clauses (6 and 7) and title passed.

Bill read a third time and passed.

EDUCATION SERVICES

Adjourned debate on motion of Hon. Caroline Pickles:

1. That a select committee of the Legislative Council be established to consider and report on the following matters of importance to primary and secondary education in South Australia:
   - (a) the fall in the retention rate of year 12 to 71.4 per cent, including the reasons for fewer students completing year 12, for example—the introduction of SACE, curriculum choice and economic factors.
   - (b) the effect of the reduction of 250 full time equivalent school service officers on the operation of schools and the delivery of programs.
   - (c) the practice of State schools charging fees including—
     - (i) the level of school fees;
     - (ii) the purposes for which fees are charged;
     - (iii) inequities between schools in the level of fees;
     - (iv) whether fees limit curriculum choice for some students;
     - (v) the effect of new regulations empowering schools to charge fees;
     - (vi) the availability and level of school card; and
   - (d) any other related matter.

2. That Standing Order No. 389 be suspended as to enable the Chairperson of the committee to have a deliberative vote only.

3. That this Council permits the select committee to authorise the disclosure or publication, as it thinks fit, of any evidence or documents presented to the committee prior to such evidence being presented to the Council.

4. That Standing Order No. 396 be suspended as to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

(Continued from 14 February. Page 896.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I oppose the motion, which relates to the establishment of yet another select committee in the Legislative Council. I know that I have addressed this issue on a number of previous occasions but, when one looks at the Legislative Council Notice Paper and at the number of select committees currently established by this Chamber, one notes that we have already four select committees: on information technology, prisons, Modbury Hospital, and outsourcing and the EWS. Regarding anything that the Government does in relation to outsourcing, we have a select committee, as previously discussed.

We also have joint committees on retail shop tenancies, on South Australia's living resources and on women in Parliament and, of course, we have the long-standing Joint Parliamentary Service Committee.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: I am not sure how many committees the Hon. Mr Elliott is on. Of course, we also have all the standing committees of the Parliament, which are combined committees. To restate the issue briefly, I can recall, having been in this Chamber for a number of years, that, when the standing committee system of the Parliament was established, the Hon. Mr Elliott indicated quite clearly that he, speaking for himself and the Australian Democrats, would not be supporting, except in exceptional circumstances, the establishment of select committees in the Legislative Council. He believed that the establishment of the standing committee system was such that any issues that needed to be pursued would be pursued by the standing committees.

The correct argument put to him by the then Opposition was that there would still remain occasions when the flexibility of having a select committee of the Legislative Council would be required, and that should ensure that that opportunity remained for the Legislative Council. As a member of the Government, I still hold that position. Obviously, there will be occasions when select committees of the Legislative Council will need to be established on particular issues that cannot be canvassed by the standing committee system of the Parliament.

At the moment, when anyone thinks of an issue on which to have a select committee, they establish one. Some might assume—and I am sure it would not be the case—that the sitting fees members are gathering for being on these select committees may be some motivation, although I am sure that I would not attribute such base motives to some members.

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: No, I would not attribute that sort of base motive to members, but certainly some cynics have done so in terms of the establishment of select committees left, right and centre whilst, at the same time, the standing committees of the Parliament are maintained. Nevertheless,

the Hon. Mr Elliott in previous months, and certainly in the past two years, has acted contrary to his original undertakings in relation to select committees as opposed to standing committees and has supported the establishment of four select committees in the Legislative Council.

For a number of reasons, I believe that there is no good purpose likely to be served by the establishment of a select committee as proposed by the Hon. Carolyn Pickles. If an issue needed to be picked up, it could be explored through a number of other avenues and, if the decision was that Parliament wanted some role in it, again, a number of options could be pursued should the Parliament choose to go down that path.

The Hon. A.J. Redford: She wants to ask her questions in private because she gets very embarrassed if she does it in public.

The Hon. R.I. LUCAS: The Hon. Mr Redford makes a point. There has been some suggestion as to what is the motivation of the Leader of the Opposition in calling for this select committee. It might have been designed to try to raise her profile in the electorate in the education portfolio and education issues. If that is the purpose, it will be singularly unsuccessful in terms of raising the Leader of the Opposition's profile in relation to the education portfolio.

I now want to address some of the issues that have been canvassed in this call for a select committee. I have addressed previously the important issue of the retention rate of year 12 students but, for the purposes of this motion, I will restate some aspects of those comments. I indicated that the introduction of the South Australian Certificate of Education might have some influence or impact on the number of students staying on to complete year 12 and that will be reviewed this year by the Senior Secondary Assessment Board of South Australia as part of its review of the South Australian Certificate of Education.

That review process is on the public record and it is a public process. Teachers, principals, parents, universities, TAFE, the Commissioner for Equal Opportunity and anyone else members can think of will be involved in the review of the South Australian Certificate of Education. It will cover many other issues but I have asked the assessment board that it consider this matter as part of its overall review. Whether it is a specific term of reference will be an issue for the board to determine. A number of the broad terms of reference of the board's review allow some consideration of these sorts of issues.

Some of the anecdotal evidence that I have received is that students have found year 11 or stage 1 of SACE difficult and, as a result, they have decided that SACE is not for them, and they might well have gone on to other challenges, whether it be in TAFE, employment, a traineeship or, sadly in some cases, the unemployment queue. If that is the case, the education system will have to address that issue when the review of SACE has been completed.

The original intention of SACE was that it would be one certificate for everyone. It was an ambitious goal. It was intended that the one certificate would cater for the most academic and the brightest of students and also for those students who struggle, who were not interested in going on to university but who nevertheless wanted to complete their year 11 and year 12 at secondary school.

As I said, that issue will be canvassed as part of that review and I can assure honourable members, given the expertise available to SSABSA, given their experience as an independent assessment body—not subject to control and direction by the Minister—it is in a much better position than a Legislative Council select committee to canvass this particular issue and to collect the information because it will not be restricted in any way. Clearly, there can be no concern that the Government of the day or the Minister of the day could direct the officers in any particular way. It is an independent body and will be able to conduct its review freely and fairly.

As I have indicated, there are a number of other reasons for the fall in the retention rate in South Australia. One is the curious disposition of the Australian Bureau of Statistics to not include part-time students who are undertaking year 12 in our secondary schools. We have some 3 000 students in part-time study at year 12 in Government schools in South Australia and they are not included in the retention rate figure of 71.4 per cent staying on to year 12. Those 3 000 part-time students constitute almost 30 per cent of the total number of year 12 students in Government schools. The ABS figure of 71.4 per cent is unfair to South Australia to the extent that it ignores a significant percentage—almost 30 per cent—of our year 12 students. They are not included in the retention rate figure.

That number of part-time students has grown significantly. In 1990 or 1991 the number of part-time students was about 1 300 students and that more than doubled to almost 3 000 in 1995. Secondly, I understand that, together with Tasmania, South Australia has the highest percentage of part-time students studying at year 12. Therefore, if the figures are excluded, South Australia's figure is disadvantaged to the greatest degree in a comparison with other States and Territories.

In 1995, the number of year 12 repeating students, or year 13 students, dropped significantly in South Australia, for a number of reasons. From recollection, the figures that I had been given previously suggested that the figures had dropped from 1400 to 700. I think, on more recent figures that I have seen, that has changed a bit and I would need to refresh my memory on those figures. Nevertheless, the more recent figures, after the first and sixth day census information produced this year in our schools, still indicate that there have been a significant drop in the number of year 12 repeating students, or year 13 students.

Quite clearly, the reason for that is the fact that in 1995 universities and TAFE institutes—in particular universities—dropped their entrance quotas. For example, some students were getting into university courses with entrance scores as low as 38 out of 70, whereas in 1994 students getting into those same courses were requiring a score of 42 or 43 or 44 out of 70. In 1994 those students could not get into the university courses and were repeating year 12 to improve their score in order to get into university the following year. In 1995, those students who scored 38 out of 70 actually got into university and, therefore, did not have to return to school to repeat year 12. That significantly reduced by a considerable margin the number of year 12 students in 1995.

The other factors were that during 1995 the percentage of unemployed young people dropped from about 42 per cent under the previous Government to about 32 per cent. The Leader of the Opposition compared some figures in December 1993, 1994 and 1995. That is the old straw person argument, because that has nothing to do with the number of year 12 students who stayed on in 1995. It is not the state of the employment and unemployment figures in 1995, it is the state of the employment and unemployment figures in early 1995 which determine the number of students who stay

on at school or go out and get a job. During that period, because of the economic turnaround more students were able to go out and get some employment whereas previously they were not able to do so.

That is the first proposed term of reference for the select committee. As I have indicated, SACE will be reviewed by SSABSA. During the past 12 months, my officers have been looking at possible reasons for the decline in the retention rate. I have indicated some of the results of their research, and during this year we will continue to undertake analysis in this area, and to collect information and share it with members of the community when we have the results.

The second proposed term of reference is the effect of the reduction of 250 full-time equivalent SSOs on the operation of schools. The suggestion is made by the Leader of the Opposition that the establishment of this select committee will, for the first time, mean that the Minister's personal decisions will be open to public scrutiny and debate and I have no doubt that this is something that the Minister would like to avoid at all costs. Let me assure members that, for the past two years, there has been public scrutiny and debate about the difficult budget decisions that the Government has had to take in terms of reducing the number of classroom teachers and school services officers. This issue has been debated on dozens of occasions with my involvement; I have met dozens of delegations; I have spoken at dozens of meetings; I have visited many schools; I have met with delegations from the Institute of Teachers, with parents and principals; I have heard all the concerns that members of the wider education community have about the Government's difficult budget decisions on the reduction in the number of teachers and SSOs.

Let me assure the Leader of the Opposition and other members that there is nothing that can be revealed to a select committee that has not already been revealed to the wider education community in that two year discussion and debate that I have indicated, that has not already been indicated to me by way of correspondence and submissions and also to the Leader of the Opposition who has received many letters and telephone calls on these issues. So, it is an intellectual nonsense to suggest that this will be the first opportunity for there to be public debate and scrutiny about these decisions. I have been in this Chamber for two years waiting for questions from the Leader of the Opposition, and she and her colleagues have had the opportunity to ask literally thousands of questions, if they so wished, in relation to the education portfolio and school services officers, in particular. That opportunity will remain for the next two years, should they so wish, in terms of having questions answered. The issue is that the select committee will not be able to establish anything that has not already been placed on the public record.

The Hon. T.G. Cameron: You hope.

The Hon. R.I. LUCAS: Not I hope, I know; it will not be able to place anything on the public record that is not already on the public record. Every possible claim has already been made by the opponents of the Government's decisions.

The Hon. T.G. Cameron: You never said this about select committees when you were in Opposition.

The Hon. R.I. LUCAS: Because the select committees moved by the Liberal Party were sensible select committees—quite contrary to this one. I know that the Hon. Mr Cameron is being noble, but I also know what he is saying in the corridors behind his Leader's back: he is saying this select committee is a nonsense.

The Hon. T.G. CAMERON: I rise on a point of order, Mr President. How would the honourable member know what I am saying in which corridors?

The PRESIDENT: Order! There is no point of order.

The Hon. R.I. LUCAS: The honourable member knows that that was not a point of order and that he is not a supporter of this move for a select committee. He also knows that he has been trying to undermine his Leader and that he has been trying to beef up his select committee. He has been heaping shovel loads on his Leader's proposal for a select committee—that it is just her trying to get into the action in relation to select committees. That is the simple answer to the proposition about the select committee. This one serves no good purpose at all because—

The Hon. R.R. Roberts: What about a royal commission?

The Hon. R.I. LUCAS: The Hon. Ron Roberts wants a royal commission. A Government of his persuasion did have a royal commission on the suspension or expulsion of a 14 year old from Woodville High School in the 1970s. Maybe in 20 for 30 years a future Government of Labor persuasion might be able to have another royal commission on an education issue.

Members interjecting:

The PRESIDENT: Order! Members on my left will have or have had an opportunity to speak.

The Hon. R.I. LUCAS: The Leader of the Opposition asserts that the South Australian education system is no longer a national leader in terms of development of curriculum in the delivery of education. She also asserts that South Australia's system is behind that of the leading States. Again, I will speak to the Leader of the Opposition in simple terms. I am not suggesting that the Deputy Leader of the Opposition is simple; he is very complex. Whilst he is complex, I know that I need to speak in simple terms to him so that he can understand me. When the independent umpire, the Australian Bureau of Statistics, produced its national schools statistics collection, it indicated quite clearly that South Australia still led the nation in education. As I said, I have to speak in very simple terms for the Deputy Leader of the Opposition. We led the nation, and we have the lowest or best student teacher ratio of all States in Australia. We spend more dollars per student on education than any State in Australia. We have almost 10 per cent more school services offices staff than the national average for all States in Australia. The Institute of Teachers and the Labor Party used this vote—

An honourable member interjecting:

The Hon. R.I. LUCAS: That was before your 1994 and 1995 budget cuts. These figures were released in January this year and related to the 1995 school year. That is certainly well after the implementation of the reduction in classroom teaching numbers in Government schools. It might not please the members of the Labor Party or the Institute of Teachers that this Government leads all other State Governments in terms of commitment to quality education in Government schools, because that cuts across their essential argument that education has in some way been disadvantaged under the new Liberal Government. The third and final issue that the Leader raises is that of school fees. This issue has been a problem for many years. When I first came to the Ministry in 1994 the files indicated that for a number of years school councils and principals had been urging the Labor Government to assist school councils in the difficult task of collecting fees from those parents who could pay but who had refused to pay.

It might interest members of the Labor Party to know that the strongest support from school councils for compulsory

materials and services charges or fees, whichever phrase one wishes to use, comes from the northern suburbs, in the areas of Para Hills, Parafield Gardens, Pooraka and Salisbury. That broad area is one of the strongest areas in support of the compulsory collection of service fees and charges. The other strongest area, it might surprise the complex Deputy Leader of the Opposition who needs things explained in simple terms, is that of places like Noarlunga, Christies Beach, Moana, Port Noarlunga and that broad area of the south.

The two areas that have been strongest, longest and loudest in their entreaties to Labor and Liberal Governments to do something have been those two broad areas. Indeed, those schools in that broad area in the south have been those that under Labor Governments have successfully been collecting school fees compulsorily in the small claims court with support of the small claims jurisdiction. They have been taking parents under Labor Governments to the small claims court and successfully enforcing the compulsory payment of fees. Those parents in those areas say that where a parent can afford to pay a fee they should pay the fee. They accept that, if a family cannot afford to do so, the system must make allowances and, under the new arrangements, that will be the case.

Those families in the northern and southern suburbs are those who argue the loudest for a fair go. It is not the well heeled from the eastern suburbs or the southeastern suburbs who are pushing this policy change, it is the battlers, the families from those northern and southern suburbs and some parts of the western suburbs who have led the charge in relation to this policy change. And it is an indication of how out of touch this Labor Party is with its own grass roots that it ignores the wishes of the northern suburbs, the southern suburbs and the western suburbs, the cries from those areas for some support that were ignored for so long by previous Ministers under the Labor Government. They are taken for granted, and this Labor Party is sadly out of touch. The slogans are there, such as 'Labor listens', but nothing is registering.

It is a bit like the Leader of the Labor Party: it is all media hype, but there is no substance. 'Labor listens' means nothing more than a slogan to the Labor Party. I advise the Labor Party to get in touch with what used to be its grass used roots and listen to what the school councils and parents are saying out there. If they listened to what they were saying, they would not come into this Chamber with half baked ideas for select committees being moved by the Leader of the Opposition to raise a profile on the issue of education and supporting these nonsense terms of reference in this area.

What kind of intellectual rigour suggests that a select committee established this month will be able to monitor the effects of new regulations empowering schools to charge fees? The regulation is about to be introduced. Will the select committee sit for three years? Will it be a nice little sinecure for three years to sit on a select committee and monitor the impact of the new regulations? It is intellectual nonsense to be establishing a select committee to monitor something that is about to be introduced.

An honourable member: We might knock it off then.

The Hon. R.I. LUCAS: If you want to do that, you do not do it with a select committee. The dilemma of the Deputy Leader of the Opposition is that many of his colleagues do not support his views. The Leader of the Opposition quotes from the alleged advice on this issue from a Solicitor-General's senior legal adviser on education matters in 1992. Certainly, I am not aware of any senior legal adviser to the Solicitor-General. The Leader might be talking about the Crown Solicitor; I am not sure.

An honourable member interjecting:

The Hon. R.I. LUCAS: You're not going to find out at the select committee. I think the Leader is confused.

Members interjecting:

The Hon. R.I. LUCAS: There is nothing to conceal, because in the press statement I indicated the Solicitor-General's opinion to everyone. I shared it with members and everyone. There is nothing secret there. I shared with everybody what the Solicitor-General's advice to me was in 1994-95, when I sought advice in this area. The Leader talks about several thousand cases being dealt with every year. That is a gross exaggeration. Certainly, I have had discussions within my own advisers in the department in relation to how the processes will be established. Detail on that will be provided to schools when the regulation is promulgated. The select committee will be able to provide nothing better than the information that will be provided by the experts in the area in terms of process to provide advice to parents.

The Hon. T.G. Roberts: It'll be more public.

The Hon. R.I. LUCAS: It will not be more public, because the advice we provide will be disseminated to every school in the State: it will be given to the parents. So, the advice will not be hidden. We will provide the advice to parents, school principals and school councils about how these processes will be followed through.

The Hon. T.G. Roberts: You can get the feedback from select committees; you can't get it from press releases.

The Hon. R.I. LUCAS: Feedback? I have said that I have had two years of feedback. I know what people's views are; it is not as if I have been hidden for two years. I can assure the honourable member that a select committee will not be presented with anything new. It has all been exposed to the previous Government; it is all in the files. It has been 're-exposed' and given to me as a representative of the new Government over the past two years.

Members interjecting:

The Hon. R.I. LUCAS: You took out 800 teachers; that was your record.

The Hon. P. Holloway: But they were not SSOs.

The Hon. R.I. LUCAS: But you took out 800 teachers; that's the record you supported.

The Hon. T.G. Cameron: If we hadn't, you would have.

The Hon. R.I. LUCAS: The Hon. Mr Cameron's defence is that, if the Labor Government had not done so, the Liberal Government would have. Let us put that on the record. The Hon. Mr Cameron's defence for ripping 800 teachers out of the system is that the Labor Government had to rip them out because if it did not do so the Liberal Government would have. That is the contribution from the Hon. Mr Cameron. I can only hope that, when the select committee is established, the Hon. Mr Cameron is a member of it, because we can have someone ask the honourable member why the Labor Government removed 800 teachers. The Hon. Mr Cameron can tell the Institute of Teachers, the parents' associations and principals that the Labor Party ripped out 800 teachers because if it had not done so the Liberals would have done it, and that the Labor Party thought it had better get in first! That is the sort of intellectual strength being offered by the Labor Party. That is the sort of intellectual rigour we will have on the select committee. We will have the Hon. Carolyn Pickles and the Hon. Mr Cameron—

The Hon. T.G. Cameron: No, I am busy on another one.

The Hon. R.I. LUCAS: Thank goodness for that.

Members interjecting:

The Hon. R.I. LUCAS: I do not think the Hon. Mr Cameron should interject. To use a baseball phrase, he is batting zero. So, he should not interject. Finally, the Leader talked about the issue of school fees and then raised a couple of specific issues in terms of the gap between the compulsory fee and the total fee being charged by a school. I acknowledge that this is an issue of concern, and I have indicated publicly that we will monitor this. Certainly, there is nothing that can be done by the select committee in the short term. But the Government will monitor this issue.

One of the issues may well be that we will have to look at the compulsory level of the fee. We will obviously have to discuss that with parents, principals and others if it proves to be an issue of concern. At this stage, people have said, 'Look, we have some concerns, but let's wait and see; as long as you are prepared to give a commitment to monitoring that, we are comfortable with it.'

In terms of one other claim being made by the Leader of the Opposition that the Government has no knowledge of the level of fees, let me indicate to the honourable member that I will provide her with a broad analysis that has been done to indicate that the select committee will not have to do that. As I indicated previously, we have undertaken to do that. My recollection is that the average level of primary school fees is about $100 to $110 and that the average level of secondary fees is about (and I am relying on memory in this respect) $150 or $170. I will provide those figures to the Leader of the Opposition and to any other members who are interested.

It is certainly not correct to say that the average level of fees is $330, as was suggested in some parts of the media. We have collected those figures and they are available. The select committee will not be able to provide any more information on that, because the information has already been collected.

The Leader of the Opposition claimed that in some cases school fees and fundraising contribute up to 60 per cent of the annual operating grants. That has been true for decades in South Australia in some schools. I can recall in my first term in Parliament a survey conducted under the Labor Government in the early 1980s of schools in the western suburbs. That analysis showed that in some cases under the Labor Government parents were contributing some 50 to 60 per cent of the total operating income—obviously less salaries—of schools in those western suburbs. Again, we acknowledge any evidence which the select committee takes that that figure is up to 50 per cent or 60 per cent. In some areas, it is as high as that, but it has been as high at that in some areas since the Labor Government's days of the early 1980s. So, again, information that might be offered in that area will not be new. It is information which is already part of the public record, and people are aware already of the important input that school councils and parents make to the operation of schools.

Indeed, that is why this change has been made by the Government. Some schools have had up to $30 000 in unpaid fees from parents who can pay them. They question why the rest of the families in schools have to pay higher fees to make up for the $30 000 in unpaid fees by parents who can afford to pay them, who have just come back from a holiday, who have just bought a new car or whatever and yet have refused to pay their contribution to their local school by way of a materials and services charge.

There is really nothing more that I can add to the call by the Leader of the Opposition for a select committee. I indicate again the very strong opposition from the Government to the establishment of a select committee—not on the basis that it will prevent information becoming public but that it will be a waste of time. All the complaints, issues and concerns have already been made public; they can continue to be made public, and the Opposition and others can raise them in this Parliament or in the public arena whenever they wish, but nothing new can be offered to or collected by a select committee to throw any further light on these issues.

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

ADJOURNMENT

At 5.58 p.m. the Council adjourned until Tuesday 19 March at 2.15 p.m.