LEGISLATIVE COUNCIL

Thursday 21 March 1996

The PRESIDENT (Hon. Peter Dunn) took the Chair at 11 a.m. and read prayers.

TRAVEL AGENTS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 February. Page 931.)

The Hon. ANNE LEVY: The Opposition supports the second reading of this Bill and does not propose to move any amendments to it. The changes outlined in the Bill are in line with all the other consumer legislation Bills which have been discussed at length in this Council. The licensing of travel agents will, in future, be done by a commissioner, not by the Commercial Tribunal. This will enable an appeal to the courts against a commissioner's licensing decisions or conditions imposed by a commissioner. Certainly, such an appeal system is desirable. All disciplinary matters are being moved from the Commercial Tribunal to the Administrative and Disciplinary Division of the District Court, and provision is made for assessors to be used by the courts.

As I say, this is very much in line with the previous consumer affairs legislation which this Council has considered during the past couple of years. Almost as an aside, I wonder who will represent the members of the public who deal with travel agents to be appointed as assessors to the courts. I wonder whether the Attorney is perhaps considering getting a list of frequent fliers from one of the airline companies. However, I presume that very few people do not travel or use travel agents, so the Attorney will be quite unfettered in drawing up the list of assessors in this particular case.

There are, of course, limits to the changes which can be made to the Travel Agents Act. As the Attorney indicated, there is a longstanding agreement of about 10 years between all the States with regard to the licensing of travel agents—they must be members of the Travel Compensation Fund, and so on—which has been agreed nationally as being necessary for the protection of consumers in this area. This, of course, limits the changes which can be made unilaterally by South Australia.

A new provision in the legislation is the provision for recognition of disqualification which an agent may have had imposed in another State. I think this is a very desirable clause, as it recognises what is being done in other licensing areas. There are a few other new provisions that were not in the old Act. With regard to the definition of a 'travel agent', a new part of it is that a travel agent under new subsection (1)(c) of section 4 is a person who carries out an activity set out in the regulations. I wondered what was intended to be put in the regulations to get people into the definition of a 'travel agent'. This can be discussed in Committee.

A new subsection under clause 7(4)(b) under the licensing provisions provides that:

> a court hearing proceedings for recovery of the fee, other consideration or compensation is satisfied that the person's failure to be so authorised resulted from inadvertence only.

This relates to not being properly licensed. I wondered why inadvertence was being introduced as a mitigation. This does not apply if one inadvertently fails to renew one's driving licence because it went to a wrong address. That is not taken as a mitigation for lack of penalty for driving without a licence, even though it may be quite inadvertent. I wonder why this inadvertence is being permitted for people who do not have a valid travel agent's licence.

Another provision in the legislation, as has occurred in other consumer affairs legislation, is the provision for agreements between the Commissioner for Consumer Affairs and professional organisations representing travel agents, by which is meant AFTA, that being the only such organisation that currently exists. These agreements can be that AFTA would be able to take a role in administration or enforcement of the legislation, although certainly the matters which cannot be delegated by the Commissioner in agreements are key ones which should be retained for the Commissioner, that is, in the licensing function, the involvement of the police, initiating prosecutions and so on.

Such matters certainly should not be delegated, but could the Attorney indicate what is expected to be delegated in agreements with AFTA and whether anything is to be delegated related to training of travel agents or of policing of travel agents to ascertain whether they are complying with the Act. I raise those two matters specifically because AFTA, I understand, has concerns in these areas, has indicated that it would like to be involved and is prepared to contribute financially towards both training and policing. I wondered whether that was what the Attorney had in mind in terms of agreements.

AFTA does have a number of concerns with the legislation but many relate to what will be in regulations rather than in the legislation, so it is not really for discussion at the moment and can presumably be discussed by this Parliament at a later stage when the regulations are available.

I presume one matter is the exemption which will be granted under clause 29. The Attorney has indicated that he is looking at setting $100 000 as the limit of business conducted below which licensing of the agent is not required. Currently, that figure is $30 000 and AFTA is strongly objecting to the raising of that limit. It believes this will reduce protection for consumers. Such concern must be taken seriously. The Attorney said that there are only four travel agents in South Australia with a turnover between $30 000 and $100 000 but, once the limit is lifted, there may be many more who go above the $30 000 range and stay below $100 000. I would be interested to know how many travel agents currently have turnover less than $30 000 who do not need to be licensed.

The Hon. K.T. Griffin interjecting:

The Hon. ANNE LEVY: That information may not be available.

The Hon. K.T. Griffin interjecting:

The Hon. ANNE LEVY: I appreciate that it could be difficult to get such information, but there may be a large number who, once the limit is lifted, lift the extent of their turnover, so that the number between $30 000 and $100 000—there are now four—may increase considerably. I would also be interested to know how many licensed travel agents are in South Australia. I understand that AFTA has a membership of about 200, but not all travel agents are members of AFTA. I presume all the larger ones are members and they would write the bulk of the travel agency business done in this State, but I would be interested to know just how many licensed travel agents there currently are.

I was glad to see the inclusion of clauses such as the liability of an agent for the acts of an employee or agent. This is the same clause as has been put in all consumer legislation that we have considered and it is highly desirable to have it spelt out in all such Bills and, likewise, the altered timeframe for prosecutions to be initiated will come into line with all the other consumer legislation. Uniformity is certainly desirable in these matters. I am also glad to see that people selling commuter tickets and day tours will not require licensing as a travel agent and will be given exemptions under the legislation. Such situations probably do not arise often, but I recall in Murray Bridge considerable problems were caused when, I think, the council was acting to sell bus tickets for travel to Adelaide and back and the council was informed that it needed to have a licence as a travel agent merely to sell bus tickets. I am glad to see that absurdity has been taken care of in this amending Bill.

I note that the penalties in the old Act have been considerably amended. It is natural, of course, for financial penalties to be updated when they have not been changed for 10 years, but I am somewhat intrigued by the way in which the penalties have been changed. Some have been doubled; some have increased by a factor of 2½; some have increased by a factor of seven; and others have been multiplied by eight or even 10. So, it is not just a question of updating penalties: it is very much a question of changing their relativities and changing the relative seriousness of the offences that are created by the Act.

I wondered whether the Attorney would care to indicate on what principles this changing of relativities of penalties has been decided. I am not objecting, but it is a considerable change in the relative seriousness, and I would be interested in the Attorney's comments on this matter.

My only other questions refer to the Travel Compensation Fund, which is set up by the Travel Agents Act as part of the national agreement. It is not being changed in this Bill before us, but it is certainly relevant to the licensing of travel agents, as a condition of licensing is that they be members of the Travel Compensation Fund. I wonder who is the South Australian representative on the Travel Compensation Fund at the moment.

When I was Minister, concern was expressed that quite large sums were being expended by the board of the Travel Compensation Fund on travelling around the country for regular meetings, on five-star accommodation and expensive dinners in five-star restaurants. It was not within the Minister's jurisdiction to do anything about this, as the Travel Compensation Fund board is an autonomous body. Would the Minister inform the Chamber whether there are still concerns regarding this type of expenditure from the Travel Compensation Fund?

I would also be interested to know the current balance in the Travel Compensation Fund, how many claims were made against it in the last financial year, both nationally and within South Australia, and for what amounts, both nationally and within South Australia. Figures like this do give an indication of how healthy the travel industry is, the standards applying within the travel industry and certainly the degree of confidence that members of the public can have in their travel agents. I appreciate that the Attorney may not have these figures at his fingertips, and I am quite happy to proceed with the Bill at this time if the Attorney can indicate that he will let me have that information when it becomes available. However, we certainly support the second reading.

The Hon. K.T. GRIFFIN (Attorney-General): I thank the honourable member for her support of the Bill, and I will endeavour to answer the questions which she has raised. If I do not deal with all of them at the second reading reply stage, she is certainly at liberty to raise them in Committee. I do not have information on the Travel Compensation Fund, but I undertake to provide it to the honourable member in due course.

There was one question about what is proposed for the regulations, and perhaps I can deal with that and the issue of inadvertence in the Committee stage.

The honourable member raised the issue of agreements with professional organisations and asked what is expected to be delegated to AFTA—training, policing, and so on. Right across the range of occupational and licensing legislation that we have been considering over the past two years and as a result of the deadlock conference on the Land Agents Act, we agreed on a form of words that would allow the delegation of certain functions, but not others.

We have had a lot of discussions with professional and trade organisations to try to identify in each particular area what might be capable of delegation. We have not finalised any agreement with any industry group at this stage. Because of the differences between the various occupations, what I have insisted should occur within the Office of Consumer and Business Affairs is that we at least identify the principles that need to be applied against each organisation.

There is a variable approach, for example, in relation to land agents, where initially there was a view that some aspects of the auditing function could be delegated to bodies such as the REI. There was then an indication from the REI that it did not want it, and now there is an indication that maybe it does.

In the land agents area we have a small monitoring or supervisory committee which does not undertake the audit but which oversees the auditing function. My recollection is that tenders are being called at the present time for performance of the auditing function in relation to land agents' and conveyancers' trust accounts. We are involving the industry with the Office of Consumer and Business Affairs generally in managing the audit, so we get the intelligence from the industry, we get the input in relation to practice, and together we get what I hope will be an effective approach to auditing. That is one area where there is no formal agreement with the professional organisation, and it is not a formal delegation, but we have involved it in the planning and likely management of the audit function.

The Hon. Anne Levy: An agreement might follow.

The Hon. K.T. GRIFFIN: An agreement might follow from that. As regards building work contractors, we are still developing the regulations in consultation with industry and unions and, in that area, some aspects of enforcement. The industry is very keen to ensure that it is clean and professional, and we are looking at ways in which it can be involved in that whilst still recognising the constraints that the Act imposes on the capacity to delegate to deal with enforcement issues.

In relation to travel agents, there has been no consultation about what might be the subject of any agreement. Training may well be. However, one thing that is happening across this whole area of occupational licensing is that we are more and more using the national competency standards or seeking to develop them, and the Vocational, Education and Training Council is very much involved at State level, in consultation with industry, in developing particular competency standards.

It may be that even in the area of training there is not a possibility of a formal delegation but nevertheless there is consultation with industry as to the sort of training that ought to be put in place.

If there is an accreditation process, AFTA might decide that it will tender, because we generally would be calling for tenders through that vocational education and training sector and, where it is to be provided by organisations other than TAFE, calling for tenders or expressions of interest, so that there is at least a competitive flavour to the selection process, ultimately leading to accreditation. But, they are matters which have not been the subject of any discussion with the industry at this stage. They will be the subject of discussion once the legislation is enacted and we move through to developing the regulations.

The honourable member was correct in noting—as I have noted—that there are some limits on what the State can do in relation to travel agents, because of the national agreement and because of the existence of the Travel Compensation Fund across Australia. There has been a review of the operation of that fund. I have been concerned about the length of time that has taken. I have also been concerned—and I have expressed this at ministerial council meetings—about the operation of the fund. The honourable member asked questions—

The Hon. Anne Levy: You're not the first one.

The Hon. K.T. GRIFFIN: I am not saying I am. In fact, when Mr Lawson was appointed Commissioner for Consumer Affairs and the State nominee on the Board of Trustees, I insisted that there be a concerted effort to try to bring more discipline and rigour into the whole process of the operation of the fund. I do not think everything has happened that I wanted to happen, but there is a more rigorous approach to expenditure. For example, the whole system of appeals is manageable but at a very significant cost. Even if you get a disputed claim for $300, you have to go to an appeal panel with three people on it; it has to be one lawyer who presides, plus two others. That is a nonsense, because those issues ought to be able to be settled administratively or in a way which is much more cost effective than bringing three people together at a high cost to resolve that sort of issue.

There are lots of other issues about the operation of the fund and the trustees which I am anxious to get sorted out and, from our State's perspective, we have been putting significant pressure on for that to occur, and that pressure will continue. In relation to exemptions—

The Hon. Anne Levy: It started well before the election.

The Hon. K.T. GRIFFIN: I am not saying that it didn't. As the honourable member knows, the difficulty is that the terms and conditions of the Travel Compensation Fund are dictated by a deed. Ministers do not control the process. That is something which is unacceptable, and a higher level of accountability needs to be brought to bear within the operation of that structure.

The honourable member raised issues about exemptions, and I refer particularly to AFTA's concerns about lifting the exemption level to $100 000 from $30 000. We looked carefully at this. Quite obviously, it will be a matter for regulations, and the Parliament will have an opportunity to scrutinise finally what comes out of that. However, upon the review with four travel agents in the $30 000 to $100 000 bracket who were registered it seemed that it was not a significant impact upon the industry—although, as the honourable member has mentioned, it may be that under the $30 000 limit a large number of people might be carrying on some business and might be tempted to increase once the limited is lifted. We do not have figures in relation to those carrying on business below $30 000, because they are not required to disclose information to any authority.

I have indicated to AFTA that we will consult with it about that and all the other issues that arise under the regulation-making process. However, we ought not to be imposing a fairly high level of bureaucracy upon small operators if there is unlikely to be a problem, and so far there has not been at that level. Problems in the travel industry tend to occur at the top level, the bigger level, rather than at the small level.

The bus operators have raised the issue about the description of commuters, particularly when you have people travelling from provincial or rural South Australia to the city on a one-off basis and not commuters, and I have undertaken that that will be the subject of consultation. It seems to me that there is no risk; if you buy a bus ticket in Port Augusta or Mount Gambier, the person who sells that bus ticket should be licensed. I do not think that any risk—or very little risk—is involved, and it just adds an unnecessary level of bureaucracy on those who sell those sorts of tickets.

The Hon. Anne Levy: Particularly if a bus comes 10 minutes later.

The Hon. K.T. GRIFFIN: Absolutely; that's right. We have tried to look at it. Probably a lot of other things can be done with this Act if we can get the national agreement and the compensation fund issue sorted out. Within this State, we are able to do a few things that get rid of some of the red tape which is really unnecessary in the whole scheme of things. I am informed that, as at 18 January this year, there were 272 licensed travel agents in South Australia.

Penalties have been considerably increased. The honourable member asked why there was an apparent lack of any rationale in the increase, and my understanding—and I will correct it during Committee if I am informed that I am wrong—is that they are consistent with the penalties that are imposed in all other occupational licensing legislation. The last thing I want to see in this area is a diversity of penalties for the same offence. My understanding is that there is a consistency of approach, so failure to do something under this Act is treated no differently from failure to do the same thing under the Land Agents Act. That deals with most of the issues that the honourable member has raised. I would be happy to deal with any remaining issues in Committee.

Bill read a second time.

In Committee.

Clause 1—'Short title.'

The Hon. K.T. GRIFFIN: I will check the answer I now give and, if any further information is forthcoming, I will ensure that the honourable member gets it, but we are constrained by the national agreement as to what we can put in the definition in the Act. However, what we are able to do under the regulations and what we intend to do is extend the scope of the cover to include things such as car hire. If you go to a travel agent and purchase a ticket and at the same time make arrangements for the hire of a car, at present the hire car is not covered. We are seeking to expand the provisions so that what you get from a licensed travel agent is more widely protected. That is the reason for that, and I hope that—

The Hon. Anne Levy: If you get national agreement, you can then do it by regulation.

The Hon. K.T. GRIFFIN: That's right. Clause 7(4)(b) relates to a civil recovery not, as I recollect, to a statutory offence. It deals with the issue of when a person is entitled

to a fee in relation to a contract with another on whose behalf the person provided services, unless the person was authorised to provide the services under licence or the court is satisfied that the person's failure to be so authorised resulted from inadvertence only. What we really seek to do is similar to the consumer credit area where you do not lose the fee if you can establish that no harm was created and that the matter was an oversight. It is a matter of judgement as to whether that should be provided for.

I have decided that it is appropriate, just to give the court some flexibility. Otherwise, it would be just a mandatory provision, sort of sudden death, rather than having some discretion. If the court as an independent tribunal makes a decision that the justice of the case requires that this apply, then it seems to me that that provision gives some flexibility which otherwise would not exist.

Clause passed.

Remaining clauses (2 to 11), schedule and title passed.

Bill read a third time and passed.

WILLS (WILLS FOR PERSONS LACKING TESTAMENTARY CAPACITY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 March. Page 981.)

The Hon. R.D. LAWSON: This is a beneficial measure, and I support its second reading. At first glance, a Bill which empowers a court to make a will on behalf of some other person and to take into account the intentions which that person would be likely to have had might appear to be another manifestation of the syndrome that the State knows better than individuals about their own affairs. However, upon examination, that is not the case with this Bill. This measure is entitled to our support but not because the number of cases which will be affected by it is large. Although the number is small, in those few cases the problems are quite acute.

At the present time, persons who have an intellectual disability of such a nature as to affect their testamentary capacity are permanently deprived of the opportunity to determine how their estate should vest on their death. Currently, the law requires their estate to be distributed either in accordance with the will they made prior to developing their testamentary incapacity or, in the case of someone who has never made a will, in accordance with the laws relating to intestacy.

Such a distribution may or may not see their property descend to persons who were close to them during their lifetime. The adverse effects of the present law are acute, and in certain cases they may result, for example, in the estate of a married person descending to a spouse from whom he or she was separated at the time of acquiring the intellectual disability and after having formed a new relationship. The situation with regard to divorced spouses will soon be remedied with other measures.

I encountered a case in practice which I think illustrates this point graphically. It was the case of a young child who was rendered a paraplegic as a result of a motor accident at the age of about eight years. A claim was made by the Public Trustee on behalf of the child for damages against the driver of the vehicle responsible for her injuries. The court awarded a substantial sum, over $1 million, because of the ongoing requirement for medical care for this child over the balance of her life. The intellectual disability wrought by her injuries was such that she would never recover.

Her family situation was most precarious. The child of the father was a man to whom her mother had never been married and with whom she had had but a fleeting relationship. The child had a number of siblings but, because the mother developed a drug addiction, the children were required to care for their intellectually disabled and severely physically handicapped sister. The mother tragically died, and when the young child who had received the substantial award was about 13 years of age she too died. Under the laws relating to intestacy in this State the child's father was entitled to the whole of her estate which, as a result of the interest and other investments, was now valued at over $1 million.

Thus it was that a man who had had absolutely no connection with the family at all, and had never been involved in the upkeep or upbringing of the child, became entitled under the laws to more than $1 million. The siblings, including a sister who was somewhat older, had had the effective care of this child for all its life and were not entitled to receive anything. A claim was made, however, under the Family Provision Act and ultimately a settlement was reached, principally because the man regarded the whole of his bequest as a windfall and was prepared to be reasonably generous. However, he might not have been and the circumstances were such that it may have been difficult for the sister and other siblings to satisfy the stringent requirements of the Family Provisions Act.

This particular measure will enable the court in circumstances such as that to make a will and one would imagine, having regard to the criteria laid out in the Bill, that the court would make provisions entirely more appropriate than the law of intestacy. In the United Kingdom there has been a measure such as this since 1969 when the Mental Health Act in that country was amended to empower a judge to give directions or to authorise the execution on behalf of a mentally disabled person of a will making any provision which could be made by a will executed by the patient if he or she were not mentally disordered, to quote the somewhat quaint language of the English provisions. There are limitations on that power in England. For example, it could not be exercised so long as the patient was a minor. The English legislation would not overcome the situation I described in the South Australian example.

Fortunately, the Bill before the Parliament specifically provides that an order may be made under this Bill in relation to a minor. In England the court is required to have regard as far as possible to the actual views and wishes of the patient in so far as they might have been ascertained. The English Vice Chancellor, a very famous Judge Sir Robert Megarry, has laid out a number of principles to be applied by the court in exercising this power. He did so in the case of *Re D(J)*, which was decided in 1982. The five principles laid down by Sir Robert Megarry, which I expect will be applied by judges in this State, are as follows:

> The first was that it is to be assumed that the patient is having a brief lucid interval at the time when the will is made. The second is that the patient is aware of the past and realises that as soon as the will is executed he or she will relapse into the mental state which previously existed. The third proposition is that it is the actual patient who has to be considered and not a hypothetical patient. Fourth, the patient is to be envisaged as being advised by a competent solicitor. Fifth, the patient is to be envisaged as taking a broad brush to the claims on his or her bounty rather than an accountant's pen.

That judge concluded by expressing the view:

. . . the court must seek to make the will which the actual patient, acting reasonably, would have made if notionally restored to full mental capacity, memory and foresight.

It is my view that our courts will no doubt give appropriate weight to the dictum of Sir Robert Megarry.

The factors specified in the Bill are somewhat more prosaically stated. Proposed new section 7(3) provides that:

Before making an order under this section, the court must be satisfied that—

(b) the proposed will. . . would accurately reflect the likely intentions of the person if he or she had testamentary capacity and it is reasonable in all the circumstances that the order should be made.

There is no attempt to define exhaustively in the statute the particular circumstances or to qualify the expression 'reasonable'. However, the Act does provide a checklist in proposed new section 7(4) of matters which the court must take into account. For example, it must take into account evidence of the wishes of the person. Often I imagine that there will be no available evidence of the particular wishes of the person. However, in many cases it is likely that there will be some evidence. The court is not bound by rules of evidence in proceedings under this section and, accordingly, the court could receive hearsay or other material, no doubt exercising all due caution in relation to such material.

A court is also required to have regard to the terms of any will previously made by the person and it is a notorious fact that many wills are made and never looked at again or reviewed by the testator or testatrix during the next 40 or 50 years of his or her life. Often the circumstances that apply at the time when the person has grown older are vastly different from the circumstances that applied when the will was made. In a case where such a person loses mental capacity there is presently no opportunity to review the will: nothing can be done to remedy injustices and nothing can be done to make appropriate provision for those who have a good call upon the bounty of the testator. This Bill will remedy that situation.

There has in this country been a couple of reports of Law Reform Commissions on this aspect of the law. The New South Wales Law Reform Commission issued a report in February 1992 recommending adoption of a scheme similar to that embodied in the Bill. The Western Australian Law Reform Commission prepared comments on the New South Wales Law Reform Commission's report and in Western Australia the commission also agreed that some form of will-making scheme was appropriate.

The New South Wales Law Reform Commission report suggested that the scheme should apply to individuals in four categories: 'persons suffering from a developmental disorder or disability; secondly, persons diagnosed as suffering from a mental illness or disorder, including both organic and non-organic psychological conditions; thirdly, persons lacking capacity by reason of disease or accident, including the diseases and incapacities associated with old age and brain damage affecting capacity such as results from a stroke or accident; and, fourthly, persons who may have testamentary capacity but through severe physical disability or injury are completely unable to communicate'. They were the recommendations of the Law Reform Commission. The model adopted in the South Australian Bill has not sought to categorise testamentary incapacity in that way, but the Act simply provides that the court may 'make an order on behalf of a person who lacks testamentary capacity'. 'Testamentary capacity' simply means 'the capacity to make a will'. A footnote in proposed section 7(12) states:

The cause of incapacity to make a will may arise from mental incapacity or from physical incapacity to communicate testamentary intentions.

I am not terribly keen on the use of footnotes in statutes of this kind and I would have preferred to see that definition in the text of the legislation itself, but that is a mere matter of style and not of substance. However, I commend the draftsman for the simplicity adopted in our measure. A Bill similar to that introduced was circulated amongst the legal profession in 1993. As I recall, it was warmly supported on that occasion and I certainly supported it then as I do now.

Other measures that are a significant improvement on some of the earlier proposals on this matter are, first, that any person can apply, with leave of the court, to make an order authorising the making or alteration of a will. Some other measures suggested that a person such as the Public Trustee, the Guardianship Board and managers, etc., of persons be the only eligible persons able to make application, but no limitation is specified in the Bill of the class of persons who can make the application. However, the protection is provided in the legislation that the person must have leave of the court and one would expect the court to exercise a judicial discretion to exclude what might be termed busybody or self-interested applications. The Bill also applies in relation not only to the making of wills but also to the variation and alteration of existing wills. As I mentioned earlier, there may be cases in which it is appropriate that the court exercise that power.

The Bill also gives statutory recognition to the entitlement of a number of different persons to appear and be heard in relation to proceedings under the proposed new section and they include persons such as a legal practitioner, the public advocate, an administrator, a guardian or manager or attorney or any other person who, in the opinion of the court, has a proper interest in the matter. As I said at the outset, this is a beneficial measure and one which I strongly support.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indications of support for the Bill. This important Bill has been well received in the consultation phase by a wide range of people within the community, particularly those who have some involvement with persons who would be regarded as lacking testamentary capacity but who might be disabled in some way or another. The Hon. Caroline Pickles raised a number of questions and I will endeavour to provide some responses to them. She asked whether, in circumstances where a statutory will has been made on behalf of a person who at the time did not have testamentary capacity and who subsequently regained testamentary capacity, there is any guaranteed means of informing the person that they have a statutory will in his or her name. She questioned whether the Registrar of Probates relies on the guardian or carer of the testator to communicate to the testator that a statutory will exists.

The likelihood of the person acquiring or regaining testamentary capacity is a matter referred to specifically in proposed new section 7(4) as a matter that the court must take into account in determining whether or not it will authorise the making of a statutory will. I suppose that, if the court is presented with medical evidence which informs the court that a person is likely to regain testamentary capacity in the future, the court may well refuse to entertain the application. But, if it is only a remote prospect on the medical evidence, the court is likely to proceed to authorise the making of a statutory will. It really is a matter in the hands of the court to

take into account specifically under proposed section 7. If the person regains testamentary capacity after a statutory will has been made it really will be the responsibility of the applicant, who may be the guardian or carer, to bring the existence of a statutory will to the attention of the testator. I do not think it is practicable to place that responsibility upon the Supreme Court or the Registrar of Probates.

The will is certainly deposited with the Registrar of Probates under the Administration and Probate Act, but to try to monitor the whereabouts or even the progress of a particular testator is not a function that can be undertaken by the Registrar of Probates or the Supreme Court generally. The honourable member also asked what procedure is envisaged in circumstances where the testator dies after the Supreme Court has approved the terms of the statutory will but before the Registrar of Probates has executed the will. Could the approved terms of such a will subsequently be deemed to be a testamentary provision of the testator under section 12(2) of the Wills Act? I doubt that situation is likely to arise, but I suppose it is always a remote possibility that it will. Once the court has approved the terms of a statutory will, execution merely requires the seal of the court and the signature of the Registrar. I suggest that procedure is straight forward. I cannot see any reason why the Registrar's signature could not be obtained concurrently with or immediately after the approval by the court or sometime later on the same day if it appeared to be a matter or urgency.

I would think the court can take into consideration those sorts of circumstances where there is imminent risk to the testator and proceed to have the matter dealt with expeditiously. If there is a concern, I suppose, in any event, I could inform the court and the Registrar of Probates that the issue was raised in the Parliament and that it would therefore appear to be a matter of concern to ensure that the placing of the seal and the signing by the Registrar be done expeditiously. In the event that the terms of a statutory law have been approved but not executed, my advice is that section 12(2) of the Wills Act could be relied upon to seek to validate the will. Section 12(2) requires the court to be satisfied that the will, although not executed, expresses the intentions of the testator. If the court has approved the terms of the will then the court should be satisfied that the document reflects the intentions of the testator.

The other advice I have is that the definition of 'will' in section 3 includes appointment by writing in the nature of a will in exercise of a power and that that is sufficiently broad to include a court document setting out the terms of a will in the exercise of its power under the proposed section 7.

I hope those answers satisfy the honourable member. If they do not, there will be an opportunity for her colleagues in another place to pursue the matters further, or even to do so during the course of the Committee consideration of this Bill.

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

BUSINESS NAMES BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to provide for the registration and use of business names; to repeal the Business Names Act 1963; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

The purposes of the Bill are to provide for the registration of business names (where persons and corporations elect to carry on business other than under their own names), to create and maintain a public register of registered business names and to repeal the Business Names Act 1963, which currently regulates these activities.

The current Act has not been amended in any significant way since it was enacted in 1963 and has become outdated. The regulations under the 1963 Act expire on 1 September 1996 and therefore must be remade. This has prompted a review of the Act. The Bill will give recognition and effect to registration practices that have developed over the years and are now commonly accepted in the registration of business names.

It recognises a changed business environment from what was envisaged by the 1963 Act. The Bill will enable more appropriate regulations to be made and more comprehensive ministerial directions to be given to the Corporate Affairs Commission. Neither the 1963 Act nor the Bill confers proprietorial rights of any kind. The Bill preserves and carries forward the existing policy of prohibiting the Corporate Affairs Commission from registering a business name that is the same as or similar to an existing registered name such that registration of the name might cause other business persons and the public generally to become confused or mistaken as to the identity of the proprietor they are dealing with.

However, the Bill does recognise that, with some types of business franchising arrangements and common enterprise schemes, there is a need to register names that are very similar to one another to a number of different proprietors. It is not uncommon that the only difference between the names registered to each proprietor participating in a common business arrangement is a location name. Registrations of this nature are undertaken in a structured environment with understandings reached with the Corporate Affairs Commission. Commonly, the principal promoter and manager undertakes to ensure that no proprietor engages in any conduct which might confuse the public as to the identity of the proprietor they are dealing with.

Experience has shown that few difficulties are encountered and any that have arisen have been of a minor nature. An example of where near identical names are registered to different proprietors is in relation to retail outlets operating in the petroleum industry. However, the practice is by no means limited to that industry. Clause 8(4)(b) accommodates this practical need and allows for appropriate ministerial directions to be given.

Companies and registration of their names are regulated nationally by the Australian Securities Commission, which is established under Commonwealth Law. The Australian Securities Commission will not register a company under a name that is the same as a business name registered in any State or Territory.

In reciprocation, a State or Territory will not register a business name that might be confused with or mistaken for an existing company name. To facilitate this recognition of names, the Australian Securities Commission has established a national database for business names in conjunction with its national register of companies. South Australia joined with other participating jurisdictions in using the registry processing system as well as the national names system. Since mid 1991, the register of South Australian business names has been maintained on the Australian Securities Commission's registry system.

The Bill will give statutory status to this arrangement with the Australian Securities Commission and will enable the Corporate Affairs Commission to make any other arrangements with the Australian Securities Commission that might be approved by the Minister. The electronic database has the capacity to produce certificates and renewal notices in relation to business names and allows for remote electronic searching of the register through information brokers. There are three accredited information brokers who provide on line search facilities at the business premises of their clients, and this provides an additional and alternative service for undertaking searches of the public register to that available at the Business and Occupational Services Branch of the Office of Consumer and Business Affairs.

The Bill contemplates simplified administrative arrangements for registering names, notifying changes in registered particulars, cancelling registration, reinstating registration and correcting errors made in the register. Provision is made for the Corporate Affairs Commission to approve the various forms of application and notice used in registering names and notifying changes in registered particulars. If strictly enforced, the existing requirements can impose unnecessary administrative burdens in that an application or a notice must be provided in a form prescribed by the regulations.

The Bill seeks to remove unnecessary duplication in administration. Clause 12(3) provides that where a company which is the proprietor of a business name gives notice to the Australian Securities Commission of a change in registered particulars (for example, a change of address), that will be sufficient compliance with the requirement to notify the Corporate Affairs Commission of the change. Where the Australian Securities Commission reinstates the incorporation of a company which may have been struck off in error or the court orders reinstatement of a company, the Corporate Affairs Commission can reinstate registration of any business name which may have been registered to the reinstated company with minimal formality.

Proper sanctions are provided in the Bill for non-registration and for supplying of false particulars so as to enable a credible and sufficiently reliable public register of business names registrations to be maintained. Provision is made for a person aggrieved by an act or decision of the Commission to appeal to the Administrative and Disciplinary Division of the District Court to vary or reverse the decision of the Commission.

In summary, the Bill retains the existing requirement that names that may be mistaken for or confused with a registered business name or the name of a body corporate are not to be registered, while recognising that there is a practical need to modify the names test where businesses are carried on under franchising arrangements and some of the more common agency relationships. It also allows a more flexible approach to be taken in administering the requirements for registering of business names and for maintaining the information kept on the public register in an up-to-date, adequate and sufficiently accurate form. It recognises that the public register is principally kept in a standardised electronic format and the nexus which exists between names of companies and registered business names as well as the role of the Australian Securities Commission in making available an electronic database for business names as part of the operating functions of its national register of companies. I commend the Bill to members. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

PART 1—PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause contains definitions of words and phrases used in the Bill. In particular, it defines proprietor of a registered business name to mean the person or each of the persons (whether natural or incorporated) in relation to whom the business name is registered under the proposed Act.

Clause 4: Carrying on business

This clause clarifies when a person is not to be regarded as carrying on business in this State, *eg:* a person who maintains a bank account in this State in not, for that reason only, to be regarded as carrying on business in this State. (This clause is equivalent to section 4(2) of the current *Business Names Act 1963* (current Act).)

Clause 5: Breach of Act does not avoid agreement, etc.

A contravention of or failure to comply with a provision of this proposed Act does not of itself operate to avoid an agreement, transaction, act or matter.

Clause 6: Agreement with ASC

The Commission may, with the Minister's approval, from time to time make an agreement with the Australian Securities Commission (ASC) about any matter in relation to the administration of this proposed Act. The agreement may contain delegations by the Commission of functions or powers under this proposed Act.

PART 2—REGISTRATION OF BUSINESS NAMES

Clause 7: Certain business names to be registered

This is the pivotal clause that provides that a person must not carry on business in this State under a business name unless—

- the business name consists of the name of the person; or
- the business name is registered under this Act in relation to that person.

The maximum penalty for failure to comply with this provision is a fine of $5 000. (*Cf:* section 5 of the current Act.)

Clause 8: Registration or renewal of registration of business names

A person wanting to register or renew the registration of a business name must apply to the Commission in the manner and form approved by the Commission and pay the fee fixed by regulation.

An application will be taken to be deficient and not to have been lodged with the Commission if—

- it is incomplete or inaccurate in a material particular; or
- the applicant fails to provide the Commission with any information or document required by the Commission for the purposes of determining the application; or
- it is lodged outside the period allowed; or
- the fee payable in respect of the application is not paid (whether because of the dishonouring of a cheque or otherwise).

On registration or renewal of registration, the Commission will issue a certificate of registration.

Clause 9: Priorities between applications

If two or more applications for registration are lodged in respect of the same business name or names that are, in the Commission's opinion, likely to be confused with or mistaken for each other, those applications are entitled to priority as between themselves according to the order in which they were lodged with the Commission.

Clause 10: Expiry of registration

Generally, registration of a business name remains in force for three years from the date on which it is granted or renewed.

Clause 11: Register and inspection of register

The Commission must keep a register of business names registered under this proposed Act containing certain information. Persons may, on payment of a fee, inspect and obtain information from the register.

Clause 12: Notification of changes in particulars

If—

- a business ceases to be carried on in this State under a registered business name; or
- some other change occurs such that particulars contained in the register in relation to a registered business name as required under proposed Part 2 are no longer accurate or complete,

the proprietor of the registered business name must, within 28 days of the change, give the Commission notice of the change in writing in the form approved by the Commission and signed by the proprietor.

If the proprietor is a body corporate required by law to give ASC notice of changes in particulars, such notice is considered sufficient compliance with this clause.

Clause 13: Commission may correct register

The Commission may, on evidence that appears sufficient to it, correct an error or supply a deficiency in the register or in a certificate of registration issued under this proposed Act.

PART 3—CANCELLATION OR REINSTATEMENT OF REGISTRATION

Clause 14: Cancellation of registration

If the Commission has reason to believe that the proprietor of a registered business name is not carrying on business in this State under the business name, the Commission may, by notice in writing served on the proprietor, invite the proprietor, within 28 days of the date of the notice, to show cause why the registration of the business name should not be cancelled.

If the Commission has reason to believe that the proprietor of a registered business name has not given the Commission notice of a change in particulars in the register in relation to the business name as required under proposed Part 2, the Commission may, by notice in writing served on the proprietor, require the proprietor, within 28 days of the date of the notice, to provide such particulars as are necessary to correct or supply the deficiency in the register.

If, after notice has been served on a proprietor of a registered business name, the proprietor fails within the time allowed to show cause why the registration should not be cancelled or to provide any necessary particulars (as the case may be), the Commission may cancel the registration.

If the Commission is satisfied that a business name has been registered on a deficient application or through some other mistake or inadvertence, the Commission may, by notice in writing served on the proprietor of the business name, cancel the registration of the business name for the reasons set out in the notice with effect from a date specified in the notice (being not less than 28 days from the date of the notice). (In these circumstances, the fee will be refunded on cancellation.)

If—

- the Commission is notified in writing by the proprietor of a registered business name that the proprietor has ceased to carry on business in this State under the business name and no other person has commenced to carry on business under that name; or
- in the case of a business name registered in relation to a body corporate—the body corporate has been dissolved,

the Commission may cancel the registration of the business name.

Clause 15: Reinstatement of registration

If the Commission is satisfied that the registration of a business name has been cancelled as the result of an error on its part, the Commission may reinstate the registration of the business name and, in that event, the registration is to be taken to have continued in force without having been cancelled.

If, in the case of a business name registered in relation to a body corporate, the Commission is satisfied that—

- the registration of the business name has been cancelled as the result of ASC having cancelled the registration of the body corporate; and
- ASC has reinstated the registration of the body corporate,

the Commission may reinstate the registration of the business name and, in that event, the registration is to be taken to have continued in force without having been cancelled.

PART 4—RIGHT OF APPEAL

Clause 16: Right of appeal

A person aggrieved by an act or decision of the Commission under this proposed Act may appeal, within 21 days after the act or decision, to the Administrative and Disciplinary Division of the District Court against that decision.

On the hearing of an appeal under this section, the Court may—

- vary or reverse the decision of the Commission and make such consequential or ancillary orders as may be just in the circumstances; or
- uphold the decision of the Commission and dismiss the appeal.

PART 5—OFFENCES

Clause 17: Certain convicted offenders not to use business names

A person who has been convicted of certain offences must not (within the period of 5 years after the conviction or, if the person was sentenced to imprisonment, within the period of 5 years after release from prison) commence (or recommence) to carry on business in this State under a business name or continue to carry on business in this State under a business name, unless—

- the business name under which the person carries on business is not required to be registered under this proposed Act; or
- the person has obtained leave of the District Court to carry on business under the business name.

The maximum penalty for such an offence is a fine of $5 000.

Clause 18: Use and exhibition of business name

A person carrying on business in this State under a registered business name must display the registered business name prominently on any document relating to the carrying on of the business and in a conspicuous position on the outside of each place at which business is carried on under that name.

The maximum penalty for an offence against this proposed section is a fine of $750 (which may be expiated on payment of $160).

Clause 19: Invitations to make deposits or loans

A person must not, in connection with an invitation to lend or deposit money made by an advertisement or otherwise to the public or a member of the public, use or refer to a business name that—

- is registered or required to be registered under this proposed Act; or
- would, if business were carried on in this State under the business name, be required to be registered under this proposed Act.

The maximum penalty for an offence against this proposed section is a fine of $5 000.

Clause 20: False or misleading statements

A person who in giving information under this proposed Act makes a statement that is false or misleading in a material particular is guilty of an offence and liable to a fine of $5 000.

Clause 21: General offences and penalties

The general penalty for contravention of or failure to comply with a provision of this proposed Act (where no penalty is otherwise set) is a fine of $1 250 (which may be expiated on payment of a fee of $210).

Clause 22: Offences committed by body corporate

If a body corporate commits an offence against this proposed Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is applicable to the principal offence unless it is proved that the director could not by the exercise of reasonable diligence have prevented the commission of that offence.

Clause 23: Commencement of prosecutions

A prosecution for an offence against this proposed Act cannot be commenced except by the Commission or a person authorised in writing by the Commission.

PART 6—MISCELLANEOUS

Clause 24: Signing of documents to be lodged with Commission

This clause sets out the requirements for signing of documents to be lodged with the Commission.

Clause 25: Statutory declaration

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

Clause 26: Power of court to require compliance with Act

If a person carrying on business under a business name is in default under this proposed Act and commences any suit or action in that business name or in respect of a cause of action arising out of any dealing under that business name, the court before which the suit or action is commenced may order the person to make good the default and—

- may stay all proceedings in the suit or action until the order is complied with; or
- may allow the proceedings to be continued on an undertaking being given by the person that he or she will comply with the order within such time as is fixed by the court.

Clause 27: Commission may waive or reduce fees

The Commission has power to waive, reduce or refund fees (in whole or in part) required to be paid to the Commission under this proposed Act.

Clause 28: General power of exemption of Commission

The clause provides the Commission with power to grant exemptions.

Clause 29: Immunity from liability

Acts committed in good faith by a person engaged in the administration or enforcement of this proposed Act incur that person no liability but instead the Crown will incur the liability.

Clause 30: Service

This clause provides for the method of service.

Clause 31: Service under any Act or rules and registered address for service

If under an Act or rules of court any document is to be served on a person and the person is a proprietor of a registered business name, then service of the document to or at the address registered under this proposed Act as the address for service of the proprietor of the business name is to be taken to be sufficient service on the person for the purposes of that Act or those rules.

Clause 32: Evidentiary provision

Certain apparently genuine documents purporting to be under the seal of the Commission are to be accepted in legal proceedings in the absence of proof to the contrary.

Clause 33: Authority of Commission to destroy documents

Subject to Part III of the *Libraries Act 1982*, the Commission may dispose of documents lodged or records kept under this proposed Act or the current Act where the registration of the business name in respect of which the documents were lodged or the records kept has not been in force at any time during the preceding 6 years.

Clause 34: Regulations

This clause provides that regulations may be made for the purposes of the proposed Act.

SCHEDULE: Repeal and Transitional Provisions

The schedule contains provisions of a transitional nature and provides for the repeal of the current Act.

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

GAMING MACHINES (MISCELLANEOUS) AMENDMENT BILL

Second reading.

The Hon. K.T. GRIFFIN (Attorney-General): On behalf of the Minister for Education and Children's Services 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.

Since their introduction in July 1994, gaming machines in licensed clubs and hotels have been taxed on turnover at a flat rate of 4.2 per cent.

In December 1995, shortly after the release of the Report of the 'Inquiry into the Impact of Gaming Machines in Hotels in Clubs in South Australia', the Government announced a new progressive tax scale on turnover to operate from 1 July 1996, together with the establishment of a dedicated fund into which $25 million from the proceeds of the gaming machine tax would be paid to provide additional funding for education, health, welfare services and community development.

The hotels and clubs indicated a strong preference for a tax based on net gambling revenue, rather than turnover, and proposed through the Australian Hotels Association and the Licensed Clubs Association a two-tiered tax structure using their preferred tax base which would have the capacity to raise an additional $25 million to support the operation of the new fund. The Association is prepared to guarantee a full year tax yield of $146 million from a two-tiered tax structure where a rate of 35% applies to the first $900 000 of net gambling revenue on an annual basis and a rate of 40% applies to the excess above $900 000.

In the event that the tax structure fails to produce $146 million from its first year of operation, the two associations have agreed that fall-back tax provisions, which are specified in the Bill, will automatically come into operation. In essence, through a lowering of the $900 000 threshold and, if necessary, the introduction of a third tax bracket with a marginal tax rate of 45%, the proposed tax structure will be modified to have the capacity to produce $146 million in subsequent years (based on 1996-97 activity levels).

If there is any shortfall below $146 million in the first year of operation, legislative provision has also been made for this amount to be recovered in subsequent periods through temporary increases in marginal tax rates.

The new fund into which $25 million will be paid annually, commencing in 1996-97, will be called the Community Development Fund. The moneys in the fund are to provide additional funding for education, health and community development as well as providing additional assistance of $1 million in 1996-97 to welfare groups. Expenditures from the fund will be determined by the Governor in Executive Council on the advice of Cabinet.

The Bill also contains legislative amendments to give effect to restrictions on hours of gaming in licensed clubs and hotels with a mandatory six hour closedown in each period of 24 hours, as well as a total prohibition on gaming on Good Friday and Christmas Day. The clubs have raised concerns about disparities in trading hours when compared to hotels. The matter has been referred to the Attorney-General for consideration as that area relates to the operation of the Liquor Licensing Act which he administers.

The Bill requires licensees to locate EFTPOS facilities away from gaming areas. To allow a period of time for licensees who have already installed EFTPOS facilities to comply with the new requirement, provision has been made for exemptions to be granted at the discretion of the Liquor Licensing Commissioner. Provision also has been made for exemptions to be granted by the Minister in exceptional circumstances.

Since the introduction of gaming machines, experience has identified that there is scope in some specified areas for licensing arrangements to be improved. The opportunity has therefore been taken to address these issues by appropriate legislative amendment.

Difficulties have been encountered in enabling clubs, particularly in regional centres, from holding a gaming licence on a co-operative basis. To facilitate sharing of gaming facilities, provision has been made in the Bill for gaming machine licences to be held by more than one club provided that no club, either separately or jointly, can hold more than one licence.

Persons holding positions of authority (such as directors) in a body corporate, which holds a gaming machine licence, are to be empowered to manage or supervise gaming operations in their own right. To date, it has been the practice of the Liquor Licensing Commissioner to deem such persons to be licensees within the meaning of section 48 of the Gaming Machines Act 1992. The Crown Solicitor has indicated that this interpretation of the provision is incorrect. The proposed legislative amendment will remove the need for deeming.

At present, a person is precluded from being approved as a gaming machine manager in respect of more than one gaming machine licence. With the benefit of experience, this enactment is not only unwarranted but acts as a hindrance to the industry. Removal of this provision will give greater flexibility in management arrangements for licensees.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement by proclamation.

Clause 3: Amendment of s. 3—Interpretation

This clause inserts a definition of 'approved gaming machine manager' which has the effect of allowing a director or member of the governing body of a body corporate that holds a gaming machine licence to supervise or manage the gaming operations under a licence. All provisions of the Act that give powers to approved managers, or impose duties on approved managers, will therefore apply to a director who at any time supervises or manages gaming operations.

Clause 4: Amendment of s. 15—Eligibility criteria

This clause provides that a number of clubs can jointly hold a gaming machine licence. A jointly held licence can only relate to the licensed premises of one of the clubs. A club that is the joint holder of a licence cannot hold another gaming machine licence, either solely or jointly.

Clause 5: Amendment of s. 27—Conditions

This clause provides that the hours of operation for gaming machines must be so fixed by the Commissioner that gaming is prohibited on Christmas Day and Good Friday and during a continuous 6 hour period in each 24 hour period at other times.

Clause 6: Amendment of s. 28—Certain gaming machine licences only are transferable

This clause enables an existing gaming machine licence held by a club to be transferred to the existing licence holder jointly with one or more holders of separate club licences.

Clause 7: Amendment of s. 37—Commissioner may approve managers and employees

This clause strikes out the current requirement that a person cannot be an approved gaming machine manager for more than one licensed premises.

Clause 8: Insertion of s. 51A

This clause inserts a new section into the Act. *New section 51A* prohibits EFTPOS, automatic teller machines and other similar facilities from being provided within gaming areas. The Commissioner may grant temporary exemptions for the purposes of the removal of existing EFTPOS facilities. The Minister may exempt a licensee from the operation of the section if exceptional circumstances exist for doing so. The definition of 'cash facility' allows for other similar facilities to be prescribed by regulation.

Clause 9: Amendment of s. 72—Tax system operable to end of 1995-96 financial year

This clause brings the current gaming tax system to an end on 30 June 1996. Certain subsections are deleted as these will be included in proposed new section 72B.

Clause 10: Insertion of ss. 72A and 72B

This section inserts two new sections. Firstly, *new section 72A* sets out the new tax system that will operate from the beginning of the next financial year. The tax for the first year is on a sliding scale and is set out in subsection (5) under the definition of 'prescribed percentage'. Although the tax liability will be based on annual net gaming revenue (i.e., all money bet on the machines less all prizes won), a licensee is required to pay the tax in monthly instalments, to be calculated and paid in a manner determined by the Minister. From the revenue raised by this tax, $25 million will be paid into a special Treasury fund to be established for the purpose. The definition of 'prescribed percentage' sets out the basic tax scale that will apply in the 1996-97 financial year and provides for that scale to apply to subsequent years if the revenue it generates in that first year amounts to at least $146 million. If the revenue does not reach that level, the tax scale for subsequent years will be fixed by the Minister, by adjusting the tax scale that applied in respect of the 1996-97 year to such extent as would have generated that amount had it applied in that year. Subsection (7) allows a further increase in the tax rates (but no variation to the threshold or thresholds) in order to recoup any shortfall in 1996-97. The surcharge will apply to all licensees until the shortfall has been cleared. *New Section 72B* provides for recovery in default of payment of tax, and is essentially the same as the current provisions in the Act. It applies to tax payable under both the old and the new systems.

Clause 11: Amendment of s. 73—Accounts and monthly returns

This clause provides that licensees will now have to include details of net gaming revenue in its accounts and monthly returns.

Clause 12: Insertion of s. 73A

This clause inserts a new section setting up the Community Development Fund into which the special allocation of $25 million per annum will be paid. The money in the fund will be applied, in accordance with the decisions of the Executive Council, for health, welfare or education services provided by the Government, and for financial assistance to community development and to non-government welfare agencies.

Clause 13: Transition provision

This clause is a transitional provision that requires the Commissioner to vary all existing gaming machine licences so as to ensure that gaming operations cannot be conducted on Christmas Day or Good Friday or during a continuous 6 hour period in each 24 hour period at other times.

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

SOUTH AUSTRALIAN TIMBER CORPORATION (SALE OF ASSETS) BILL

Second reading.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I move:

That this Bill be now read a second time.

Given that the Bill has been considered in another place, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

This Bill provides for the eventual sale of Forwood Products Pty Ltd ('Forwood') and such of the assets as are owned by the South Australian Timber Corporation ('SATCO') and utilised by Forwood in its business operations.

It is intended that this asset sale will be concluded in the early part of 1996. Forwood was established for the purpose of corporatising, and ultimately privatising, the Government's sawmilling and timber processing operations in the South-East of this State.

As of 1 July, 1993, the timber processing, marketing and related service activities of SATCO were amalgamated with the sawmilling operations previously operated by the South Australian Department of Primary Industries and located at Mount Burr, Mount Gambier and Nangwarry. This resulted in the transfer of the Woods and Forests assets into SATCO and all of the amalgamated operations being undertaken by Forwood, a wholly owned subsidiary of SATCO.

The key objectives of the amalgamation was to create a single integrated production, distribution and marketing group for timber products produced by Government owned facilities and to improve the ability of the previous separate businesses to respond to changing market conditions in a co-ordinated manner. Forwood undertakes its operations through the lease of the SATCO owned sawmills and the SATCO owned plant and equipment located at these mills.

Since 1993, Forwood been successful in meeting the objectives of the amalgamation and has gained a significant market share of the Australian market for structural radiata pine sawn timber, timber engineered products and plywood. As such, it is a important employer and contributor to the economy in the South East. It is important that the full potential of the company an the economic benefits it brings to the State will be maximised as much as possible.

The sale of Forwood will provide an opportunity for the company to seek capital it cannot otherwise obtain from the Government. The injection of such capital will further enhance the ability of the company to continue to consolidate and improve its profitability. Given that it is no longer feasible for the Government to properly fund further capitalisation of the company nor continue to fund the commercial risk associated with the operations, the necessary capitalisation can clearly only be achieved through significant private sector participation. Such private sector involvement is the only means by which the full potential of the company and the economic benefits it can bring to the State can be achieved.

As with all asset sales, the sale is an also important part of the Government's program to substantially reduce the State's debt.

In selecting a purchaser, the Government will not determine the matter on price alone. Although price is a key objective in the process, it is a matter to consider along with the other objectives of:

- achieving economic benefits to South Australia;
- ensuring fair and equitable treatment of all Forwood employees;
- ensuring that the Government carries no residual responsibility for, or liabilities from, its prior ownership of the assets and businesses;
- ensuring a viable and pro-competitive ownership structure for Forwood post-sale;
- maintenance of good relations with existing suppliers and customers; and
- achieving a timely sale.

As with all sales, the Government is aware of the sensitivities of employment issues. The management and employees of Forwood have worked closely together to achieve many production efficiency initiatives and gains. These gains and other improvements have resulted in making Forwood an attractive purchase option for those persons seeking to enter into, or expand their operations in, the market for sawn timber, timber engineered products and plywood.

In this sale transaction, the future welfare of the Forwood management and employees is of primary concern to the Government. Although the purchaser will not be obligated to offer employment to all Forwood staff, the skill base developed over the years is such that there is a realistic expectation that the purchaser will require the skills of the majority of the Forwood staff. In addition, all potential purchasers will be required to provide full, accurate and detailed written explanations of their intentions towards these employees.

Whilst the objective of fair and equitable treatment of all Forwood staff is a factor in the assessment process, the Government will give high regard to proposals which:

- provide a range of on-going employment commitments to the Forwood staff; and
- demonstrate an appreciation of staff and client needs and a capability and preparedness to consult and accommodate such needs where possible.

Further, in accordance with other sale legislation such as the Pipelines Authority (Sale of Pipelines) Amendment Act 1995, the Bill will also provide a means by which those Forwood employees who are members of the State's contributory superannuation schemes will be able to preserve their benefits under the existing resignation preservation or alternative lump sum provisions os those schemes. As with the PASA sale, this will ensure that there is a 'clean break' from the Government at the time of sale.

Although the proposed sale of Forwood and the ancillary assets of SATCO will result in a significant diminution of the assets owned by SATCO, the sale will not involve all of the SATCO assets. These assets will not be of sufficient quantity to require a Board. Accordingly, the Bill seeks to reconstitute SATCO as a sole corporation constituted by the Minister to whom the administration of the Act is committed from time to time.

The Bill also seeks to provide certainty to the new owner as to compliance with all building and development work undertaken over the years on land presently owned by the Government through SATCO. This certainty is sought as there is some doubt that the work undertaken over the years for and on behalf of the Crown was required to comply with such requirements. In deeming compliance, the necessary certainty can be provided to the new owner.

The Bill will enable the successful sale of Forwood and ancillary assets owned by SATCO and utilised by Forwood in its business operations.

I commend this Bill to the House

Explanation of Clauses

PART 1 PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

Clause 4: Territorial operation of Act

This clause applies the Bill outside the State to the full extent of the extra-territorial legislative power of the State.

PART 2 SALE OF ASSETS

Clause 5: Sale of assets and liabilities

This central provision authorises the Treasurer to enter into an agreement for the sale of the assets and liabilities of the SA Timber Corporation, Forwood (a wholly owned subsidiary of the Corporation) or a Forwood Subsidiary (International Panel and Lumber (Australia) Pty Ltd, International Panel and Lumber (New Zealand) Limited or IPL (Marketing) Limited). The clause contemplates a sale by way of a transfer of shares (which may incidentally include transfer of assets from the Corporation to Forwood or a Forwood Subsidiary) or a transfer of other assets (land, plant and equipment) and liabilities.

The clause provides that any balance from the net proceeds of the sale, after discharging or recouping outstanding liabilities of the Corporation, Forwood or a Forwood Subsidiary, must be used for retiring State debt.

Clause 6: Transferred instruments

This clause allows the sale agreement to provide for the modification of instruments to enable the purchaser to succeed to rights and liabilities as a consequence of the sale.

Clause 7: Legal proceedings

This clause allows for the continuance of legal proceedings by or against the Corporation, Forwood or Forwood Subsidiaries, subject to the terms of the sale agreement.

Clause 8: Registering authorities to note transfer

This clause allows the Treasurer to require a registering authority to make relevant entries relating to a sale agreement.

Clause 9: Stamp duty

This clause exempts transfers from the Corporation to Forwood or a Forwood Subsidiary incidental to a sale agreement from stamp duty and related receipts from financial institutions duty.

Clause 10: Evidence

This evidentiary provision allows matters relevant to a sale to be certified by the Treasurer. A certificate is to be accepted by courts, arbitrators, persons acting judicially and administrative officials.

Clause 11: Saving provision

This clause protects the parties to a sale agreement from adverse consequences through entering the agreement and prevents a sale agreement having unintended consequences.

PART 3 PREPARATION FOR SALE OF ASSETS

Clause 12: Preparation for disposal of assets and liabilities

This clause authorises relevant persons to prepare for the sale including by making relevant information available and providing assistance to prospective purchasers authorised by the Treasurer.

Clause 13: Protection for disclosure and use of information, etc.

This clause provides protection to persons involved in that process.

Clause 14: Evidence

This evidentiary provision allows matters relevant to preparation for a sale to be certified by the Treasurer.

PART 4 MISCELLANEOUS

Clause 15: Act to apply despite Real Property Act 1886

Clause 16: Interaction between this Act and other Acts

This clause excludes the Land and Business (Sale and Conveyancing) Act 1994 and Part 4 of the Development Act 1993 from applying to the sale.

SCHEDULE 1 Staff and Superannuation

This schedule creates a transitional superannuation scheme for employees affected by a sale who were members of a State scheme.

SCHEDULE 2 Consequential Amendments and Transitional Provisions

This schedule amends the South Australian Timber Corporation Act 1979, including by providing that the Corporation is constituted of the Minister and allowing the Corporation to be dissolved by proclamation.

The schedule also removes any inhibitions to a sale by reason of any past non-compliance with building and development rules.

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

[Sitting suspended from 12.26 to 2.15 p.m.]

QUESTION TIME

GILLES STREET PRIMARY SCHOOL

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about the Gilles Street Primary School.

Leave granted.

The Hon. CAROLYN PICKLES: Yesterday the new Parliamentary Secretary for Education and Children's Services passed his first test with flying colours. The Education Secretary used the grievance debate as question time for the second sixteen. He confirmed the threats of closure that are hanging over the Parkside, Gilles Street and Sturt Street Primary Schools. He said that he could give no assurance that the schools would not be closed or amalgamated. The Secretary also acknowledged that property deals could be involved. He said, 'There are a number of potential buyers for a lot of school sites' and that the Minister had explained to him very carefully that he could not give an answer 'until he has made a decision on all three sites'.

The Opposition has correspondence from parents at the Gilles Street school who state that Pulteney Grammar School wants to buy the Gilles Street school. I think everyone in this Council hopes that these schools are not treated in the same shabby way as the Minister treated the Port Adelaide Girls High School and The Parks High School. The Minister treated those school communities—

An honourable member interjecting:

The Hon. CAROLYN PICKLES: It's a fact—with contempt. He closed them without proper consultation or any attempt to minimise the trauma that he caused for staff, students and parents.

The Gilles Street, Sturt Street and Parkside Primary Schools have been held to ransom for two years by the Minister. The review of these schools started in August 1994, and the Minister has had the review recommendations since September last year. The latest Messenger press now quotes the Minister as saying that he would 'put doubts to rest' by announcing his decision at the end of term 1. If he is not

going to consult or if the news is good news, why not announce it today? My questions are:

1. Will the Minister guarantee to consult with the schools on the findings of the review before making his decision; and, if not, why not?

2. Has the Minister, his staff or his department had any discussions or correspondence with the Pulteney Grammar School concerning the possible sale of the Gilles Street school?

The Hon. R.I. LUCAS: I am not about to extend this matter by going into another round of consultations as recommended by the Leader of the Opposition. I would have thought that the local schools would now want to see a decision and would not want what the Leader of the Opposition is suggesting: that is, that I now embark on a further round of consultations which would take many more weeks or perhaps months before a decision could be made. That is not what the local schools want. What they want now is a decision from the person who is responsible for making that decision. So, the answer is: I will not embark on a further period of consultation because there has been more than enough consultation in relation to this issue. I have indicated the timeframe within which I intend to announce the decision—and the honourable member has referred to the comment that I made in the local newspaper: It is my current intention that we resolve this issue by the end of term 1.

Regarding the potential purchase of school properties, I think it was the honourable member or the Hon. Mr Holloway who, three or four weeks ago, asked a similar question in relation to this issue. As Minister, I indicated then, and I do so again today, that the potential sale of sites is not an issue which would affect my decision about a potential school closure. The decisions that I take as Minister depend wholly and solely on, importantly and foremost, educational reasons, regardless of whether it be an amalgamation, a closure or a continuation of the *status quo*. In the case of some schools, such as The Parks which has been highlighted during the past week, financial considerations in terms of the cost of running the school are obviously another consideration. I will have to check whether the Pulteney Grammar School has expressed any interest in the purchase of the Gilles Street school. It would not surprise me that that school might be interested given that it is situated next door. I have no recollection of ever having had a conversation with a representative of the school in relation to the Pulteney Grammar School.

The Hon. Carolyn Pickles: Or the Parliamentary Secretary.

The Hon. R.I. LUCAS: The Pulteney Grammar School, and indeed others, may well have had conversations with a number of people, if it has an interest.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: My colleague the Hon. Mr Redford indicates that, evidently, there is a story in the local newspaper which states that it is not interested in the site. I do not know. However, the bottom line is that, even if it was interested, that would be irrelevant to the decision that I have to take. Pulteney Grammar could be queuing up with $20 million in its back pocket to purchase the site, but that is irrelevant to the decision that I intend to take in relation to the three school sites. I indicated before, and I do so again today, that I put the interests of students first and that it is the educational considerations that are most important.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: In all the decisions that we take, we put the students first. Secondly, as I said, in some cases—for example, The Parks High School—financial considerations regarding the cost of running a school sometimes come into the calculations.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: No, educational interests come first, but sometimes other subsidiary factors may well be considered also. As I said before, the buck stops at my desk as I am the person who makes the decision. I said so before, and I say again today: the fact that there might be a potential buyer or a number of potential buyers—whether or not that includes Pulteney Grammar or the fact that it has spoken to people—is not an issue which concerns me at all. I will make some inquiries of the department to see whether or not Pulteney Grammar has expressed any interest over the past months—and I will be happy to indicate whether it has or has not—but, if it has, that is irrelevant because it is not an issue upon which I will eventually base my decision.

FORESTS

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

Leave granted.

The Hon. R.R. ROBERTS: Some months have now passed since it was first revealed that the Government was actively pursuing the sale of our State's forests through the Asset Management Task Force. It was probably revealed to a greater extent at the time of the political assassination of the member for MacKillop, the Hon. Dale Baker. At that stage it was alleged by the member for MacKillop, the previous Minister for Primary Industries in South Australia, that indeed the Government did intend to sell the forests. It was a clear statement from a former Minister who, one would assume, would know. After considerable public outcry and a number of contributions from people in the South-East in particular in respect of this matter, the Premier, having given assurances to people in the South-East that he was not pursuing the sale of the forests, had a number of Cabinet meetings and a new position was announced that Cabinet had made a decision that it would not sell our State forests or State forest land.

Legal advice received by the Government, quoted in this place and well circulated amongst the media, shows that clearly there was a strong preference for sale of the State's forests. We now see an attempt to fast track the sale of Forwood Products. The Opposition has been advised that Forwood Products has a substantial quota of the State's harvestable timber per year. An agreement has been struck with the Government for Forwood Products to maintain a significant proportion of the harvestable forest timber in South Australia.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS: Clearly the situation is that, if the new buyer of Forwood Products was to maintain the same rights as Forwood Products have to access, it would be a substantial inducement to their buying the forest. My questions to the Attorney-General are:

1. What access rights to the State's harvestable timber per year does Forwood Products hold and for how long are those renewable rights transferable to any new owner?

2. Are those rights dependent on the processing and value adding in South Australia?

The Hon. K.T. GRIFFIN: A significant amount of what the honourable member referred to in his explanatory statement is fallacious and he is just on the wrong bus. He misrepresents the tenor of the advice from the Crown Solicitor. Obviously the honourable member wants the Government to do his research for him when almost all of the information he sought is on the public record. I will refer the matter to the Minister. If the Minister is of a mind to undertake that research work and send back a reply he may do so and I will certainly then table it.

WATER SUPPLY

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister of Transport, representing the Minister for Environment and Natural Resources, a question on water quality and quantity in outer and rural metropolitan areas.

Leave granted.

The Hon. T.G. ROBERTS: There have been two disturbing articles, one in the Mount Gambier *Border Watch* and another in the *Hills Review Messenger*, about the fall off of the quantity and in some cases the quality of water being expected to be used as drinking water in rural areas. The disturbing thing about the fall of quantity in the Blue Lake has been one of those questions raised by the community over a long period and there does not seem to be any replenishment of the aquifer on which the Blue Lake is sitting.

We now have a problem emerging in One Tree Hill which, although not a large problem, is a worrying concern to the residents in the area. The article in the *Hills Review Messenger* indicates that the bore that supplies the houses has run out and they have to search for further resources. There does not appear to be any alternative supply for these people. In the South-East the situation is far different where you have the regional city of Mount Gambier with about 26 000 people. Questions need to be answered about the quality and quantity of that supply in the future. Will the Government report on the future of the quality and quantity of water supplies to communities outside the metropolitan area?

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

PLAYFORD POWER STATION

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Minister for Infrastructure, a question about safety procedures at the Thomas Playford power station at Port Augusta.

Leave granted.

The Hon. SANDRA KANCK: On 2 March 1996 there was an accident at the Thomas Playford power station in which a subcontractor was killed. This raises serious concerns about safety at the power station. My office has been informed that the subcontractor concerned was cleaning up tumbleweed in one of the substations (or switch-yards, as they are also known) at the time. The subcontractor was standing on the back of his utility vehicle hooking tumbleweed over his shoulder with a pitchfork. The utility was parked under a copper busbar with 132 000 volts running through it, which caused an arcing between the busbar and the pitchfork. Consequently there was at least 76 000 volts running through the man for one second, giving him no chance of survival.

It was put to my office that a clean up in such an area should be closely supervised by suitably qualified ETSA employees with dangerous areas being roped off and highly conductive objects like utility vehicles and metal pitchforks not permitted in the vicinity. It was also put to me that the fact that the fault took over one second to fix demonstrated how outdated is much of the safety equipment at the power station—what is known in the industry as 'serious protection inadequacies'. I am informed that .1 seconds is around the modern standard for a cut-out mechanism to break the circuit. My questions to the Minister are:

1. Is the true that the cut-out mechanism for the busbar took more than a second to cut out and that that time lapse is too long by modern technological standards?

2. Is it true that inadequate supervision by ETSA, caused by the reorganisation of work arrangements at the Thomas Playford power station and obsolete equipment, contributed to the death?

3. Will the Minister table in Parliament a copy of the inquiry into the subcontractor's death? If not, why not?

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

PERRY PARK AGED CARE HOSTEL

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport a question about the Perry Park Aged Care Hostel.

Leave granted.

The Hon. T.G. CAMERON: I recently presented a petition from residents of the Perry Park Aged Care Hostel on Murray Road, Port Noarlunga. Approximately 70 old age people live in the section and are required to cross Murray Road regularly. Recently there was an accident on Murray Road in which a resident of the hostel was admitted to hospital with serious injuries. I understand that the local member has stated that a refuge or island will be installed on Murray Road by the Government in April. The residents of hostel believe that the island or refuge is inadequate and are opposed to it. Murray Road is a busy road often used by heavy vehicles and trucks. The residents believe that the island option is unsafe and they have expressed fears about standing in the middle of the road with traffic whizzing past them. My questions to the Minister are as follows:

1. In view of the concern expressed by the residents about the island option and the recent accident, will the Minister examine the option of installing traffic lights with restricted hours of operation between 9 a.m. and 4 p.m.?

2. Will the Minister provide details of the cost of installing traffic lights compared to the cost of installing the island?

The Hon. DIANA LAIDLAW: I will get the information for the honourable member in terms of the cost implications of traffic lights or an island refuge. True, the member for Kaurna, local residents and I worked through measures—I have not worked with local residents personally but through correspondence—and the refuge island has been the preferred option until the recent accident, as I understand it, and commitments have been made for that initiative to be constructed. I believe April is the deadline, as the honourable member has said. I will make further inquiries to ensure that that initiative is working to the April deadline because it is

important, after earlier work done by the Department of Transport and taking into account the earlier views of residents prior to the accident, that this initiative takes place first.

We can assess it and, if it appears to be inadequate for their needs, we can look at the whole issue again. Certainly, it is the Department of Transport's view that the refuge island is the most appropriate response. It certainly meets all the Australian standards and Ausroads' rules in terms of safety for pedestrians in such circumstances. The honourable member would know that I commissioned and received last year a major report on pedestrian facilities in South Australia because I was so anxious about the responses that I was receiving from the department to the many requests for improved pedestrian facilities in South Australia. We have reviewed our ways of working in this field now and many more opportunities have been provided. The department is being proactive in helping communities improve pedestrian facilities. It is not with any sense of negativeness by the Department of Transport or an unwillingness to cooperate with local residents. It is because that response is not the one we now see in the Department of Transport to such issues as pedestrian facilities.

I have to acknowledge that when I became Minister the department was far more interested in trucks, cars and other motor vehicles rather than pedestrians, rollerbladers, motorcyclists, cyclists and any other road system users. We have changed attitudes considerably over two years. The department has been working with the local community in this respect. It is believed that the refuge island is a most appropriate response and funds will be found for this purpose. I will check that the work will be undertaken as promised by April.

HOSPITALS BUDGET

The Hon. T. CROTHERS: I seek leave to make a statement before asking the Minister for Transport, representing the Minister for Health, some questions about State Government budget cuts to the South Australian hospital system.

Leave granted.

The Hon. T. CROTHERS: A recent statement by the Chief Executive Officer of the newly formed North Western Health Service, Mr Greg Bussell, revealed that, as a result of the critical budget position confronting his area of responsibility, he had enforced the following:

(a) The cessation of elective surgery in May and June;
(b) Suspension of minor works and maintenance;
(c) Extended Easter closure of wards to the end of April;
(d) Continuation of an absolute staff freeze; and
(e) Further cuts in services and administration.

Further, reports leaked from the same North Western Health Service reveal that the Queen Elizabeth Hospital, one of South Australia's major medical centres, despite $9 million in cuts, including the loss of 250 jobs and a major reduction in hospital activities, still faced a shortfall of $4 million. The leaked memo stated that this shortfall would mean that severe emergency measures would need to be taken for the rest of this financial year.

It should be noted that the Minister for Health cut Queen Elizabeth Hospital funds in June last year by $13 million as part of a wide range of other hospital cuts. It should also be noted that some cuts to other major hospitals included the Royal Adelaide Hospital, Flinders Medical Centre and the Women's and Children's Hospital, which have said that they were on target to meet their budgets in spite of their multi-million dollar cuts that they suffered last June. Again, these health centres have recently reported abnormal shortages in their capacity to treat patients needing intensive care services.

Against that backdrop, the Minister for Health, Dr Armitage, has said that his Government intends to re-engineer health care in the western suburbs by spending $130 million on new infrastructure in that area. Incidentally, the health cuts in question involve $12 million to the Royal Adelaide and $9 million to Flinders Medical Centre. To top this off, reports have been circulating in the media that cuts to our State health services are also exercising the minds of the recently set up Howard razor gang. My questions are as follows:

1. Is the Minister considering further funding cuts to this State's hospital system?

2. In spite of his promise to expend $130 million re-engineering health services in the north western area of Adelaide, how is he going to ensure that sick South Australians in that area get the health care they need, bearing in mind that services, as I have already indicated, have already been cut severely in the north western area?

3. How long does the Minister believe that his so-called re-engineering plan will take to get up and running?

4. In the meantime, how long will the poor, sick residents of the north western areas have to wait for proper access to adequate health care, bearing in mind that the same costs, taxes and charges are levied on them as they are on all other South Australians?

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

CARRICK HILL

The Hon. ANNE LEVY: I seek leave to make an explanation before asking the Minister for the Arts a question about Carrick Hill.

Leave granted.

The Hon. ANNE LEVY: It is now nearly two years since the last Director of Carrick Hill left and still there is no replacement to fill that position. For nearly two years Carrick Hill has been without a director. Instead, there is a manager, but the manager cannot be expected to undertake the role of a director. He does not do so, and nor should anyone expect him to do so. The board of Carrick Hill has prepared a business plan, which it expects will revitalise Carrick Hill, put it on a sound financial footing, and enable it to grow in attractiveness and continue to be a major tourist attraction in Adelaide. I understand that that business plan was presented to the Minister 11 months ago—11 months ago that business plan was presented, yet it has still not been formally approved by the Minister. Even when it is approved, it will require a director to be appointed to Carrick Hill to implement the many recommendations and plans contained within the business plan. My questions are:

1. When will the Minister respond to the board of trustees of Carrick Hill regarding the business plan submitted to her last April?

2. When will a director be appointed to Carrick Hill so that the business plan can be implemented and so that Carrick Hill will not have to continue to mark time, as it has done for nearly two years?

The Hon. DIANA LAIDLAW: I appreciate the honourable member's questions and the opportunity to dismiss some matters that are clearly unsound in terms of statements she has made. I did receive a business plan 11 months ago and I immediately responded and said, 'Where do you think all the money is coming from for everything you want to achieve?' I thought it was a pretty reasonable question and I am still waiting for the answer. In fact, I have waited for so long I have taken some matters into my own hands, and some decisions will be made shortly about where the money is coming from. The honourable member has made public comments in terms of Labor support for land sales. I have undertaken some research—

The Hon. Anne Levy: Changed your mind?

The Hon. DIANA LAIDLAW: No; I am saying to the honourable member that I have now taken matters into my own hands because I have not had an answer for the 11 months since I received the business plan—which was almost a wish list of things the board would like to see achieved. They are most worthy objectives. I do not argue that the objectives are worthy of pursuit and support, but many require considerable capital costs and the board has given no attention as to how those projects can be paid for. Therefore, as I say, I have suggested that we look at this issue of land sales, and some work has been undertaken on that. We will meet with residents, councils, and others when we have more detail on that matter. I will also approach my own Party about the issue because, as the honourable member will recall when she chaired a select committee on this matter, there are some very strong views held about the issue of land sales.

The Hon. Anne Levy: Including from you.

The Hon. DIANA LAIDLAW: Me? I have never had a personal difficulty with land sales. I may have at the time—

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: —followed the majority view in the Party room.

Members interjecting:

The Hon. DIANA LAIDLAW: We do. At the time it was not such an important decision for me to get so excited about that I would not do what the majority of the Party wanted.

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: No, the Hon. Legh Davis. As I recall, on a personal level, the Hon. Legh Davis also supported that matter. The majority of members of the select committee did not, and I think the Australian Democrats may have had some difficulty with the issue. We will explore it again and perhaps in a different way, and, if it goes ahead, with the funds used for different purposes. I understand the board would wish to reserve a decision on this matter. However, in principle, it would not have objections if the funds were committed in trust for the future of Carrick Hill, and that matter will be explored further by the Government and this Parliament—

Members interjecting:

The Hon. DIANA LAIDLAW: I do not think it need go to a select committee: it could be a motion in this place and voted on if members were prepared to consider that matter.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: I have not been provided with that advice.

The Hon. Anne Levy: It would be a hybrid Bill.

The Hon. DIANA LAIDLAW: The advice I have from the legal officers that one normally consults on these matters is that it could be a motion to this Chamber. Of course I would take a matter that has aroused considerable sensitivity in this place and in the community to the Party room, just as the former Minister would have taken the matter to her Party room and her Cabinet at the time.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: I am not saying that it will not in my Party room and in the Parliament, and there may be a variety of views. I suspect there will be a variety of views in the community, but we are not yet at that stage. Several issues need to be considered. Carrick Hill has performed well with the manager, Rob Corville. He has worked well. The board has recently appointed—

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: No, I know you were not criticising. I am just saying that the structure has worked well. I do not share the board's view that a director has been necessary. The manager has worked extremely well. He is now supported by funding that has been found for publicity and public relations purposes, and that has also been an effective initiative. I have been relatively pleased with the progress made with Carrick Hill in recent times but, in terms of the board, we have not agreed on all matters. As I said, I have been waiting for 11 months for some references to costings. I will be putting certain matters to the board in the near future.

KOALAS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for the Environment and Natural Resources, a question about Kangaroo Island koala relocation.

Leave granted.

The Hon. M.J. ELLIOTT: An article in the *Australian* newspaper today quotes a report from the Australian Koala Foundation, an organisation which has spent in excess of $1 million over the past 10 years dedicated to scientific research on koalas and which is committed to their wellbeing. This report slammed the South Australian Government's proposal to relocate about 2 000 Kangaroo Island koalas to the mainland. The foundation Executive Director, Deborah Tabart, claims that the relocation is doomed to failure and is nothing more than a soft cull.

She is reported as saying that existing koala colonies would not accept animals transplanted from another location, and it was likely that the Kangaroo Island subspecies was genetically inferior and would perish if relocated. Ms Tabart criticised the planned move to shift the koalas as short-sighted and politically motivated, and claimed the decision making had been hijacked by bureaucrats and excluded scientific experts. She called on the Government to wait until an annual conference on the koala is held in August this year before deciding on a course of action.

The Hon. Anne Levy interjecting:

The Hon. M.J. ELLIOTT: Ms Tabart telephoned me today and confirmed the accuracy of the report in the *Australian* and also supported the information I supplied to the Legislative Council yesterday. She advised me that the situation on Kangaroo Island has been bad indeed for some time and that a delay of some months would not exacerbate seriously the situation there.

She concurred that, if the koalas are moved to the mainland, they do not occur naturally in South Australia, except in the South-East. If moved to areas where they do not

occur naturally it will create other problems within the environment in relation to other species. She also concurred that shifting them to where there are current populations will create their own problems, as the example I gave yesterday in relation to the bush tick. She also said that these koalas have been on the island for a long time and came from a parent stock originally of only 12 adults. The author of an as yet unpublished PhD thesis has examined them and found that they are genetically inferior—

The Hon. Anne Levy: In what way?

The Hon. M.J. ELLIOTT: I did not go into the depth of it; but she did say that they will be prone not only to the bush ticks but also to chlamydia and a whole host of other diseases to which they have no real resistance, because they have been separated from those diseases for some time. The koalas also have a narrow genetic base. It has been suggested to me that commercial interests which wish to be able to trade in native animals have been driving the agenda over the last week in relation to koalas, perhaps in reaction to the fact that the national parks legislation faced some amendment. My questions to the Minister are:

1. Will the Minister ensure that he receives full and proper scientific advice before making a decision and say whether he is prepared to wait until the August conference, which I understand will look at the issue of Kangaroo Island koalas?

2. Does the Minister have reason to believe that certain commercial interests may have been driving the debate up until this stage?

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

OVERSEAS QUALIFICATIONS BOARD

The Hon. P. NOCELLA: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Minister for Employment, Training and Further Education, a question about the Overseas Qualifications Board.

Leave granted.

The Hon. P. NOCELLA: The Overseas Qualifications Board was established with the specific purpose of enhancing skills recognition and employment prospects of migrants with overseas qualifications. The board seeks to ensure that the assessment and recognition of overseas qualifications, skills and experience are fair, equitable and as simple as possible in order to assist new arrivals in returning to the work force without delay. It also seeks to stimulate the provision of bridging programs which assist migrants with overseas qualifications to gain occupational registration or licensing and stimulates the provision of employment and training programs to assist migrants with overseas qualifications to gain more equitable access to employment. These are some of the objectives, amongst others.

The Minister for Employment, Training and Further Education met with the board towards the end of 1994 but, despite all the assurances of attention and action by the Minister, the board has been left languishing in a sort of suspended animation. Of course, the Minister has not done anything since then. The board is not provided with resources and the fact is that very little has happened since then. Appointments have not been made and, of course, resources have not been allocated. My questions to the Minister are:

1. Can the Minister inform the Council when appointments will be made in order to complete the board to its full compliment?

2. What resources will be allocated in order to allow this board to carry out its important function?

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

CONSTRUCTION INDUSTRY TRAINING BOARD

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Minister for Employment, Training and Further Education, a question about the Construction Industry Training Board.

Leave granted.

The Hon. A.J. REDFORD: I have recently been approached by a number of people concerning the Construction Industry Training Board, and I have also noticed a number of articles in the *Border Watch* and in other publications in the South-East of South Australia. Following those approaches and those articles in the paper, I have noticed a number of comments in the two annual reports presented to this Parliament of the Construction Industry Training Board. In particular, I draw members' attention to the fact that the audits for both of the annual reports tabled in this place have been qualified and, in particular, last year the qualification stated:

> The board had requested all agents provide a certificate by their respective external auditors that all levy moneys had been appropriately accounted for by the agent. This has met initial resistance from agents and the board is continuing to negotiate a mutually accepted solution.

I also note that in 1994 the net assets of the board were $1.5 million and that grants of $1.2 million were made out of a total income of $3 million. Last year's accounts reveal a total income of $4.2 million, of which grants of $2.3 million were made, and that the net assets of the board were something in the order of $3 million. In the light of that information, my questions to the Minister are:

1. Will the Minister inquire as to what plans the board has for the funds it currently has?

2. What steps are being taken to ensure that this year's audit will not be qualified and, in particular, what steps are being taken to ensure that agents provide the appropriate certificate from their respective auditors to ensure that all moneys have been appropriately collected?

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

ROAD FUNDING

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Minister for Transport a question about road funding.

Leave granted.

The Hon. P. HOLLOWAY: The Howard Government has established an Audit Commission and the new Federal Treasurer, Mr Costello, has made threats that funds across a number of areas will be cut. The Chairman of the new Commission of Audit, which has been set up by the Federal Government, Professor Officer, was reported in the *Australian* last week as stating that the increased use of tolls for road funding was inevitable. The article states:

> Professor Officer said that there was no real alternative to the more extensive use of tolls to fund road construction now that tax

increases were off the agenda. 'The only way I can see it being financed is by user pays principles,' he said.

My questions to the Minister are:

1. Does the Minister agree with Professor Officer that road tolls are inevitable?

2. Will the Minister categorically rule out the application of tolls to the new tunnel through the Adelaide Hills which is to be funded by the Federal Government?

3. Will the Minister also rule out tolls on other road construction projects in this State?

The Hon. DIANA LAIDLAW: I think the honourable member is looking more and more like the shadow Minister for Transport every day—

The Hon. R.I. Lucas: Who is the shadow Minister for Transport?

The Hon. DIANA LAIDLAW: He has promised that we will hear a lot from him next week. The issue of road funding is, of course, an important one for us at both a Federal and State level. It is important not to confuse the two levels of funding and the purposes for which those funds are spent. For instance, the State has invested tens of millions of dollars more on road construction and maintenance in the past two years, and those funds have been found by reorganising functions within the Department of Transport. There has been no suggestion with respect to any of the major projects that we have been undertaking and to which we have made commitments that there is a toll arrangement.

In terms of the Mount Barker Road, for which initiative there is $163 million, there has never been any suggestion by the State or Federal Government or by the new Federal Minister for Transport that a toll would be imposed. No national highway in Australia funded by the Federal Government is tolled. However, many toll roads in Australia have been provided by States, in partnership with the Federal Government, ahead of what would have been possible if they relied solely on State funds.

The policy at Federal level has always been that national highways should not be tolled. I have no reason to believe that any change is proposed or contemplated in that policy. I find it interesting that it involves an officer who has nothing to do with the Federal Government and who is certainly not speaking for the Minister for Transport.

The Hon. P. HOLLOWAY: As a supplementary question, will the Minister seek an assurance from her Federal colleague that he will not be changing policies and applying tolls to national roads?

The Hon. DIANA LAIDLAW: If you wish.

WOMEN, DISCRIMINATION

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Attorney-General a question on the optional protocol to CEDAW.

Leave granted.

The Hon. ANNE LEVY: CEDAW is the acronym for the Committee on the Elimination of Discrimination Against Women. It is an international body established under the United Nations, and Australia has long acceded to the treaty on the elimination of discrimination against women. CEDAW meets annually in New York. In fact, 37 countries are represented on CEDAW, Australia has long been a member of that committee, and for a number of years it was chaired by Justice Elizabeth Evatt.

Various human rights groups throughout the world, including most recently the Maastricht Centre for Human Rights, which is a European body related to the Maastricht Treaty, have recommended that the CEDAW convention should have an optional protocol attached to it, as do all the other international human rights treaties. An optional protocol means that it is optional whether countries adhere to it or not, but, if they do, it gives individuals, organisations and groups the right to make complaints directly to the committee alleging violations of the convention and sets out a procedure authorising the committee to make inquiries into systematic violations of the convention.

Of course, it is a Federal matter whether Australia supports having an optional protocol and, if one exists, whether Australia signed it. As far as I am aware, the Federal Government never undertakes actions regarding international treaties in this way without first consulting with the States to ascertain their views. My questions to the Attorney are:

1. Has either the previous or present Federal Government made any inquiries of the States as to their views on Australia's either supporting or signing an optional protocol to the convention on the elimination of all forms of discrimination against women?

2. If such inquiries have been made, what was the response of the South Australian Government?

3. If no inquiries have been made by either the previous or the present Federal Government, what would be the response of the State Government should such inquiries be made?

The Hon. K.T. GRIFFIN: The last question is really hypothetical, and I cannot indicate what the response would be. I do not have that information at my fingertips. I will have some inquiries made and bring back a response.

ADELAIDE FESTIVAL

The Hon. P. HOLLOWAY: Did the Attorney-General receive complaints from members of the public and from the member for Florey about the performance during the Festival of Arts by Annie Sprinkle, who described herself in the media as a slut, and what action did he take to have those complaints investigated? In view of the Attorney's previous statements and actions against performances which might be considered obscene, even where those performances were to a restricted audience, why did he not take action on this occasion?

The Hon. K.T. GRIFFIN: If the honourable member had bothered to look at the Classification of Theatrical Performances Act, he would have seen that the Attorney-General has no power or authority in respect of those performances. I recollect that the Act, which was passed in the mid-1970s, deliberately gave power to the Classification of Theatrical Performances Board, without any influence or interference from a Minister, to determine whether or not a particular performance should be classified.

Any inquiries that were made to me or to my office by members of the public were referred to the Classification of Theatrical Performances Board. As the series of performances were so brief over a period of time, I am not aware that the board did, or was able to do, anything about it. I will have some inquiries made and bring back a reply.

The Hon. Diana Laidlaw: It was outrageous.

The Hon. K.T. GRIFFIN: The organisers of the festival voluntarily put conditions on it which were equivalent to an 'R' rating, which meant that access was not given to anyone under 18 years of age. From that perspective, restrictions were voluntarily imposed. I make clear that the Attorney-

General has no power to do anything in relation to the classification of theatrical performances.

CRIMINAL LAW (LEGAL REPRESENTATION) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave to introduce a Bill for an Act to prescribe rules about legal representation in criminal cases. Read a first time.

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

That this Bill be now read a second time.

This Bill seeks to clarify the law relating to the legal representation of indigent people at criminal trials. It seeks to remedy some of the difficulties arising from the High Court decision in *R v. Dietrich*. In *Dietrich*, the High Court considered the legal issues which arise in serious criminal cases where the defendant does not have legal representation and cannot afford a lawyer. Members of the High Court rejected the submission that any indigent accused has a right to the provision of counsel at public expense. However, on examining the right of an accused person to a fair trial, the court established the principle that, other than in exceptional circumstances, an indigent person is likely to be denied a fair trial, if through no fault of that person, he or she is unrepresented in a serious criminal trial.

In a joint judgement, Chief Justice Mason and Justice McHugh concluded (page 399):

> It is desirable that. . . we identify what the majority considers to be the approach which should be adopted by a trial judge who is faced with an application for an adjournment or a stay by an indigent accused charged with a serious offence who, through no fault on his or her part, is unable to obtain legal representation. In that situation, in the absence of exceptional circumstances, the trial in such a case should be adjourned, postponed or stayed until legal representation is available. If in those circumstances, an application that the trial be delayed is refused, and by reason of the lack of representation of the accused the resulting trial is not a fair one, any conviction of the accused must be quashed by an appellate court for the reason that there has been a miscarriage of justice in that the accused has been convicted without a fair trial.

The court did not set out the meaning of the term 'indigent'.

The decision in *Dietrich* has the potential to have far-reaching effects on legal aid bodies throughout Australia and, in turn, Governments. Courts are increasingly being asked to stay proceedings on the basis of the indigence of the defendant. For a case to proceed in such circumstances, it is necessary for the Legal Services Commission to provide legal assistance (even if the case does not meet its criteria) or for the Government to contribute to the defendant's costs. The Government has a responsibility to ensure that prosecutions are litigated in a proper manner and brought to a just conclusion. Matters should be brought to trial so that accused persons can answer charges against them. Charges should not be avoided because of a failure to prosecute as a result of a lack of legal representation.

The Government also has a duty to ensure that legal aid moneys are administered in a proper and efficient manner. The approach adopted in *Dietrich* could have the effect of shifting responsibility for decisions relating to legal aid from the Government and Legal Services Commission to the judiciary and that, in the view of the Government, is not appropriate. Therefore, the Government considers that legislation is required to limit the effect of the *Dietrich* decision. This Bill seeks to limit the effect of the decision by setting out provisions relating to legal representation in criminal cases.

Clause 4 provides that a court may adjourn a trial to enable a defendant to apply for legal assistance where it appears to the court that the defendant may not receive a fair trial because of insufficient means to retain legal representation. In making this decision, the court may decline to adjourn a trial if it is satisfied that, for example, the defendant has dissipated assets in anticipation of the trial or the defendant has sought to delay or impede the trial. In those cases where an adjournment is granted, the defendant must make application for legal assistance to the Legal Services Commission.

Clause 6 sets out the grounds on which the commission may refuse an application for legal assistance. These include the applicant's failure to qualify under the Legal Services Commission criteria and the applicant's failure to provide information, or comply with a request by the commission to waive legal professional privilege, to enable the commission to decide the application. The Bill places the responsibility for making decisions relating to legal assistance on the Legal Services Commission. The Bill makes it clear that the commission can impose conditions on the grant of legal assistance. This ensures that decisions on the level of funding, the terms or conditions of funding and the level of representation rest with the Legal Services Commission. The Government has adopted this approach as it considers that the Legal Services Commission is best placed to make these judgments.

Clause 8 provides that the trial of a criminal charge is not liable to be stayed, even though a defendant is unrepresented, under a number of circumstances. These include where an application is made and refused under this Bill or where the defendant is offered legal assistance but does not accept it on the basis and the conditions offered. Clause 9 provides that the fairness of a trial cannot be challenged unless there has been non-compliance with the new provisions or other statutory provisions relating to legal representation. The clause also makes it clear that the fairness of committal proceedings cannot be challenged on the ground that the defendant was unrepresented.

This Bill is an important measure but is potentially controversial in nature. The Bill has been the subject of limited consultation at this time. However, it is clear there are some issues which will need to be carefully considered by the Government and Parliament. The Bill seeks to balance the interests of persons charged with a criminal offence and their right to a fair trial with the community's expectations that prosecutions will be litigated in a proper manner and brought to a just conclusion with the proper administration of legal aid funds.

Some concern has been expressed at the transfer of responsibility for decisions on indigence from the court to the Legal Services Commission. The inclusion of the 'merit test' within the criteria in clause 6(2)(a) has also been queried. It has been suggested that this will place an onus on a defendant to satisfy the commission that he or she has a good defence, before being entitled to a fair trial. On the other hand, removal of the 'merit test', which the Legal Services Commission has for years taken into consideration in deciding on an application for legal aid, may well result in 'open slather' for the granting of legal aid in criminal cases.

Another issue which has been raised is the possible impact of the legislation on the funding cap fixed under Legal Services Commission guidelines. Given the nature of this legislation and its potential consequences, the Government

proposes to introduce the Bill into Parliament in order to allow an opportunity for widespread public consultation on the principles contained in the Bill and the proposed implementation of those principles. The Bill will lay on the table until the budget session to allow for consultation and comment. I commend this Bill to members. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Clause 1: Short title

Clause 2: Commencement

Clauses 1 and 2 are formal.

Clause 3: Interpretation

Clause 3 provides that where the Bill refers to the commission it is referring to the Legal Services Commission and that where it refers to legal assistance it means legal assistance by way of the provision of, or assistance with the provision of, legal representation.

Clause 4: Court's discretion to adjourn proceedings

Clause 4 provides that if a person is to be tried before a court on a criminal charge and it appears to the court that the defendant might not receive a fair trial because of insufficient means to retain legal representation, the court may adjourn the trial to enable the defendant to apply to the commission for legal assistance. The court may refuse to adjourn the trial if there is some proper reason to do so. For example, if the defendant has dissipated assets in anticipation of trial, or the defendant's appearance at the trial unrepresented is motivated by an intention to delay or impede the trial.

Clause 5: Application for legal assistance

Clause 5 states that if the court does adjourn the trial under clause 4, the defendant must apply for legal assistance within five business days after the date of the adjournment.

Clause 6: Limitation of grounds on which application may be refused

Clause 6 provides that an application for legal assistance under this Bill is to be dealt with in the same way as an application under the *Legal Services Commission Act 1977*. However, the commission may only refuse an application for legal assistance under this Bill if—

(a) the applicant does not qualify for legal assistance under the criteria fixed by the commission; or

(b) the applicant has made a material misstatement of fact in or in relation to the application for legal assistance; or

(c) the applicant has failed to provide information or evidence required by the commission to decide the application, or to comply with a request by the commission to waive legal professional privilege in order to enable the commission to obtain information it reasonably requires to decide the application.

It also provides that the commission may impose conditions on the provision of legal assistance.

Clause 7: Commission to report result of application

Clause 7 provides that the commission is to report its decision on an application for legal assistance to the court and inform the court if the defendant does not make an application for legal assistance within the time allowed under this Bill.

Clause 8: Trial may proceed

Clause 8 states that the trial cannot be stayed on the ground that a defendant is unrepresented if—

(a) the defendant notifies the court that he or she chooses to be unrepresented; or

(b) the court decides against adjourning the trial; or

(c) the trial is adjourned under this Bill to enable the defendant to make an application for legal assistance and the defendant fails to do so within the time allowed; or

(d) the defendant makes an application for legal assistance and the application is refused by the commission under this Bill, or on a ground on which the application, if made under this Bill, could be properly refused; or

(e) the defendant is offered legal assistance by the commission but does not accept it on the basis and on the conditions on which it is offered, or having accepted it, later rejects it; or

(f) the commission terminates legal assistance to the defendant for non-compliance with a condition on which the legal assistance was provided.

Clause 9: Saving provision

Clause 9 is a saving provision that provides that the fairness of a trial cannot be challenged on the ground that the defendant was unrepresented unless the defendant establishes non-compliance with this Bill or some other statutory provision about legal representation.

Clause 10: Application of Act

Clause 10 provides that the Bill applies to trials and preliminary examinations that begin after the commencement of this Bill.

Schedule

The schedule makes a consequential amendment to the *Criminal Law Consolidation Act 1935* by striking out section 360.

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

EVIDENCE (SETTLEMENT NEGOTIATIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 March. Page 978.)

The Hon. R.D. LAWSON: I support this measure, which comes before the Parliament ultimately as a consequence of the ill-advised purchase in 1988 by the State Bank of South Australia of Security Pacific Bank (New Zealand) Limited. The bank's acquisition of that New Zealand company was the subject of criticism in the first report of the Royal Commission into the State Bank. The Commissioner concluded in relation to it that that investment was another of Mr Marcus Clark's 'counter-cyclical opportunities'. In consequence of that acquisition, which turned out to be financially disastrous, the State Bank has instituted proceedings against Security Pacific Bank. That bank wisely changed its name to Smoothdale No. 2 Limited. During the course of the Smoothdale litigation, as I shall describe it, an issue arose as to whether certain documents which had been brought into existence for the purpose of settling a claim ought to be disclosed in the course of other proceedings also involving the State Bank and Smoothdale.

The bank claimed that the documents ought not be produced and were excluded from production on the grounds of legal professional privilege. It was claimed that section 67c of the South Australian Evidence Act precluded production. Section 67c provides:

> . . . evidence of a communication made in connection with an attempt to negotiate the settlement of a civil dispute, or of a document prepared in connection with such an attempt, is not admissible in any civil or criminal proceedings—

subject, however, to subsection (2) which provides certain exceptions. Subsection (2) provides that such evidence is admissible if, for example, the parties to the dispute consent. A further example is if the communication or document included a statement to the effect that it was not to be treated as confidential. Paragraph (e) of section 67c(2) makes an exception for a communication or document which relates to 'an issue in dispute and the dispute, so far as it relates to that issue, has been settled or determined'.

In the Smoothdale litigation, Smoothdale claimed that a document which had been brought into existence in connection with a settlement was producible and disposable. The judge at first instance, Justice Duggan, agreed with that proposition. On appeal to the Full Court of the Supreme Court, the bank's appeal was dismissed. The judges comprising the court were: the Hon. Chief Justice, Justice Prior and Justice Williams. The Chief Justice delivered the principal judgment. His Honour noted that this particular provision was a relatively recent one and that it was based upon a green paper issued by the then South Australian Government. The green paper made the point that an assurance of confidentiality encourages private dispute resolution. It suggested that the

'purpose of section 67c was to protect the confidentiality of communications in the course of private dispute resolution'. His Honour also referred to the second reading speech of a Bill in this place. On 10 March 1993 at page 1 504, it is stated:

> The Government believes that the law protecting the disclosure of settlement negotiations should be clear and ascertainable and that legislation is necessary.

That is a sentiment with which I and every member in this place would agree. However, as the Chief Justice pointed out, the question was whether or not the paragraph so recently enacted by Parliament had the effect intended for it, the difficulty being that it was not entirely clear what the common law of Australia on this point was, because in England it had been established in a decision of the House of Lords in *Rush and Tompkins Limited v Greater London Council and Anor* [1989]. Lord Griffiths states:

> I would therefore hold that as a general rule the 'without prejudice' rule renders inadmissible in any subsequent litigation connected with the same subject matter proof of any admissions made in a genuine attempt to reach a settlement. It of course goes without saying that admissions made to reach settlement with a different party within the same litigation are also inadmissible whether or not settlement was reached with that party.

That learned law lord went on to say:

> I have come to the conclusion that the wiser course is to protect 'without prejudice' communications between parties to litigation from production to other parties in the same litigation.

The conundrum was well described by Chief Justice Doyle in his judgment in the Smoothdale case. He gave the following example. Assume that a driver negligently drives a motor car so as to cause injury to passenger one and passenger two. Assume that passenger one sues the driver and that, during the course of settlement negotiations, the driver makes certain admissions. Assume that the claim by passenger one is settled and that passenger two then sues. Can the driver claim privilege in respect of the communications contained in the admissions made in the course of settling the claim by passenger one? On the argument of Smoothdale in the present case, His Honour went on to say:

> . . . evidence of the communication is admissible because the issue in dispute between the driver and passenger one has been settled.

His Honour went on to say that, on the argument of the plaintiff (that is, the bank):

> . . . evidence of the communication is not admissible because the issue in dispute between the driver and passenger two has not been settled, and the communication relates to that issue because it bears upon an allegation of negligent driving by the driver.

The paragraph proposed to be introduced by this Bill will resolve the ambiguity, one hopes—and I believe it will. The only matter of concern that I had about this proposed amendment was its effect upon existing litigation. All members will have received communications from the solicitors representing Smoothdale in the litigation who were concerned that the bank had sought to negative the effects of a decision which it obtained in litigation by securing passage of this amendment through the Parliament. That was clearly seen by most people, if it were true, as an unacceptable use of the privileged position which any Government instrumentality occupies.

Members are also aware of the letter from the Bank of America which was read in the Council by the Leader of the Opposition in this place. So, the question is whether some appropriate steps can be taken to ensure that this amendment will not deprive a litigant of the fruits of litigation already obtained. This does raise, of course, the question of the retrospective operation of legislation. It is a fundamental rule of our law that no statute should be construed to have a retrospective operation unless that construction appears very clearly in the terms of the Act or arises by necessary and distinct implication.

There are, however, a number of exceptions to that very important principle, one being that the presumption against retrospective construction has no application to statutes which affect only the procedure and practice of the courts. The reason for this being an exception is that no person has a vested right in any course of procedure but only has a right to prosecute or defend an action in a manner prescribed for the time being by or for the court in which that person sues. If an Act of Parliament alters the mode of procedure, the litigant can only proceed according to the altered mode. As was said in a case in the nineteenth century:

> Alterations in the form of procedure are always retrospective unless there is some good reason or other why they should not be.

Amendments have been placed on file by both the Leader of the Opposition and the Attorney. I indicate my support for the Attorney's amendment which, in my view, will clearly protect the existing litigant by simply providing that the amendment does not affect any order made before the commencement of this Act. I ask the Attorney to indicate whether he is aware of any other applications or orders that may have been made or appeals pending relating to matters under section 67c(2)(e) of the Evidence Act. Whatever his answer, I would take the view that unless an order has been obtained no-one has any vested right in the course of procedure and there should be no complaints.

It must be borne in mind that the effect of the amendment is merely to restore to the Evidence Act the principle which I am sure that everyone in this place at the time of the passage of the section in 1993 believed it would have. I support the second reading.

The Hon. K.T. GRIFFIN (Attorney-General): I thank honourable members for their indication of support for the second reading of this Bill and their consideration of the issues. The Hon. Caroline Pickles expresses concern about what she calls the retrospective effect of the amendments. Amendments to procedural rules, as the Hon. Robert Lawson has indicated, and the amendment to section 67c of the Evidence Act are procedural, having prospective effect. Amendments to procedural rules operate prospectively because they prescribe the manner in which something may or must be done in future even if what is to be done relates to or is based upon past events. (The case of Rodway in 1990, 169 Commonwealth Law Reports, is authority for that.)

Ordinarily an amendment to the practice or procedure of a court, including the admissibility of evidence and the effect to be given to evidence, will not operate so as to impair any existing right. It may govern the way in which the right is to be enforced or vindicated, but that does not bring it within the presumption against retrospectivity. It was expressed in this way by Lord Justice Mellish in *Republic of Costa Rica v. Erlanger* back in 1876 when he said:

> No suitor has any vested interest in the course of procedure nor any right to complain if, during the litigation, the procedure is changed, provided of course that no injustice is done.

The implications of this on proceedings that have commenced is that the amended law applies to the trial from the date that

it comes into operation. Any interlocutory orders that have been made can be reconsidered in light of the new law. It is important to note that it is up to the court whether or not to make a new order.

The December 1995 judgment of the Full Court in the Smoothdale litigation makes it imperative that section 67c(2)(e) of the Evidence Act is amended. The Law Society in its letter to the parties has indicated quite strong support for that. The Chief Justice in delivering the court's decision in the Smoothdale case exposed the ambiguities in section 67c(2)(e). Is it referring to the current dispute or the dispute that has been settled? The Chief Justice remarked in considering the matter that he thought that each of the rival arguments was correct. He also exposed the difficulties in characterising the issue in dispute. The ambiguities in the subsection require that something be done with it. Whenever it is amended it may affect proceedings that are pending in the preliminary stages or on foot.

The Leader of the Opposition refers to the fact that the Smoothdale litigation is still continuing and this is so. She has referred to the fact that an application for special leave to appeal to the High Court has been made so that the correctness of the judgment of the Full Court can be determined by the High Court. This also is true and I understand that it is the wish of the plaintiff in the Smoothdale litigation that the matter be determined by the High Court. Because of the concerns that have been raised by this amendment, and in order to put the matter beyond doubt, I have already placed on file an amendment that would preserve any orders made under the existing law. This will, amongst other things, allow the High Court challenge to the order which is giving concern to proceed.

The Hon. Robert Lawson asked if I was aware of any applications for orders likely to be affected by the legislation. I am not aware of any applications for orders likely to be affected but, as he indicated, it is important to recognise that the orders are of a procedural nature and relate to discovery and inspection and, if there are applications for those orders, the law is generally that the applications will be considered in the context of the law as it applies presently.

There are two amendments on file, one by the Leader of the Opposition and the other by me. There are major problems with the amendment by the Leader of the Opposition and I hope that, during the course of Committee consideration of this Bill, we can explore those issues. The amendment that I have on file addresses the procedural issue and maintains the order that has been complained about by the defendants in the Smoothdale case and ensures that that and any other orders that have been made are preserved. That puts the matter beyond doubt. Rather than dealing with preserving the current procedural law as it relates to any action which is on foot—and there may be hundreds of those throughout the whole of the legal system and will prove to be a cumbersome and unnecessary widening of the ambit of the amendments—the appropriate course is to support the amendment that I have on file.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

New clause 3—'Application of amendment.'

The Hon. CAROLYN PICKLES: I move:

After clause 2—Insert new clause as follows:

3. The amendment made by this Act applies only to proceedings commenced after the commencement of this Act.

The intention of our amendment is clear. We propose that parties to litigation presently on foot should be able to rely on the privilege and discovery rules presently embodied in section 67c of the Evidence Act. Although we have agreed to endorse the principle put forward by the Attorney in this Bill, which has the effect of extending what is known as the privilege in aid of settlement, the Opposition has been concerned not to create unfairness for anyone presently party to litigation before the courts.

We have been particularly concerned in this matter because the Bill has so obviously been spurred on by one particular unhappy litigant, and that litigant is presently the subject of orders made by the Full Supreme Court. If the Opposition had not fought for an appropriate amendment, the discovery orders made by the Full Supreme Court would have been effectively subverted. As I indicated in my second reading speech, the Opposition is well aware that changes to court procedures, including the discovery process, would normally take effect immediately upon commencement of the amending legislation. This has occurred with most amendments to the Evidence Act and other matters of procedures over the years. In this particular case, however, the issue of fairness to current litigants has fairly and squarely been raised. Even the Attorney concedes, as indicated by his own amendment, it would not be right to allow the Bill to be passed in its original form such that it would alter the course of litigation presently on foot.

It would be fair to say that our amendment goes slightly further than the Attorney's amendment. Our intention is to permit the legal profession, and parties who are about to become involved in litigation, some time to adjust to the new rules. The reason why we do not believe that the Attorney's amendment goes far enough is because we do not know how many cases there are out there where litigants are currently expecting discovery from the opposing party in the litigation in respect of documents created or communicated for the purpose of promoting settlement in an earlier finalised matter.

This is the situation which Smoothdale No. 2 Limited is in. Smoothdale is the defendant in the litigation which led to this Bill's being brought into the Parliament. Smoothdale is fortunate enough to have the backing of a court order to enforce discovery of the contentious documents in that particular matter. Yet there may well be other cases where a litigant is about to apply for a court order. There may be applications for discovery before the courts of which nobody in this place is aware at present. Only this morning the Opposition was informed of another case which will be affected by the passage of this Bill if it goes through unamended.

The point is that, if the Bill goes through with only the Attorney's amendment, and if our amendment is voted out, then the Bill will fall as a curse on one person and a blessing on the next person, even though they are in substantially the same position—one may have obtained a court order, the other may have not yet obtained a court order. The difference between those two situations is largely a matter of chance, a matter of timing. The Attorney's amendment and our amendment both acknowledge that there should be a cut-off point, after which the principle embodied in the Bill should come into effect. We simply wish to postpone that cut-off point to preserve the rights of those people, companies or individuals, who are presently carrying on litigation. There is a degree of arbitrariness about exactly where the cut-off point is made, but I hope the Australian Democrats will see the fairness inherent in the position that we have taken.

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

After clause 2—Insert new clause as follows:

3. The amendment made by this Act applies to proceedings commenced before or after the commencement of this Act, but does not affect any order made before the commencement of this Act.

The Leader of the Opposition is off the mark and quite significantly so. She is off the mark because, as I indicated in my second reading reply, these amendments relate to procedural rules and, even if the Bill had been passed without my amendment or that of the Leader of the Opposition, it would still be a matter for the court to determine whether the order in particular which prompted this judgment of the Supreme Court which prompted this should be revisited. It was entirely a matter for the court in respect of a procedural issue. Courts make rules of court relating to procedure on a regular basis. Even if there is a significant change in a rule of court relating to procedure—maybe inspections or discovery—the fact is it applies immediately. It does not apply only to those cases which have not yet been commenced by lodging a summons or an application. It applies to all of them. You take your procedure as you find it when you are in court. It does not relate to prejudicing substantive rights of any of the litigants.

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: It is important to recognise that what the Leader of the Opposition seeks to do relates to thousands of cases. There are thousands in the Magistrates Court, the District Court and the Supreme Court where proceedings have been issued. They are making a claim and asserting a breach of contract or whatever. Many of them have been issued up to the present time and many of them are not even in the trial list and they may not end by the year 2001 and 2002 or even longer and they are all going to be bound in terms of the procedure by the law which existed when the Supreme Court interpreted section 67c(2)(e) in December 1995. That means that when a court sits in relation to any particular matter it has to go back and say, 'When was this proceeding issued?'

If it was issued before this Act was assented to, then one law will apply in relation to discovery. If the proceedings were started after that date, then the new law applies and for perhaps all those thousands of cases where the old law applies there will be no security to anyone who wishes to enter into discussions or negotiations in relation to settlement. That is what this Bill seeks to do, to preserve what is the common law position about those who decide that even though they may be protagonists in litigation they can talk about settlement, disclose documents, make admissions, beat around the bush, come head on and do whatever they like and all of that is not material that ultimately will be required to be produced in a court in other proceedings. That is what we are seeking to protect. The Law Society supports it. There is only this issue about when the procedural provisions should apply.

The Hon. T.G. Cameron: That's an important point.

The Hon. K.T. GRIFFIN: It is not an important because, as I said, even if the Bill went through unamended, it is a matter for the court as to whether that particular order made in the Smoothdale case, which related to a requirement to give inspection of particular documents—not that they are admissible—but merely to get a look at them because they were documents relevant because they were used in the course of negotiations in settlement of another matter completely.

The Smoothdale defendant wants to gain access to documents and information involved in a settlement discussion in another matter, which has been concluded—it is finished. The technical problem is that because of the way in which section 67c(2)(e) has been drafted and now interpreted by the Supreme Court—and it is a technical point only—the Supreme Court has said, 'Look, it is ambiguous, but we make an order in favour of Smoothdale to give it access to information relating to the settlement discussions in another matter which has now been resolved. The settlement has been carried out, and that is the end of it.'

In this litigation, inspection is given in relation to matters that relate to settlement discussions in another matter that have finished. We say that procedurally that will prejudice any discussions in relation to potential settlement. What we are trying to do in the law is encourage people to talk settlement rather than to end up in a long trial, whether it is this or any other matter. It does not affect the merits of the case or the substance of the issue, and if the majority of the Council insists on supporting the Leader of the Opposition's amendment then it means we will have two bodies of procedural law applying in the courts for many years to come.

The Hon. A.J. Redford: Has that ever happened before?

The Hon. K.T. GRIFFIN: It has not, because procedural changes to the law come into effect immediately. I have noted the concern about the ambiguity of whether or not the Bill I have introduced has retroactive effect, and I have brought in an amendment which seeks to deal with orders that have been made relating to procedure. One must remember that the Smoothdale case was about a matter of procedure: can the other party in this case get access to documents and papers and inspect them? In other words, can they have discovery of them?

The Hon. T.G. Cameron: And they could not get them.

The Hon. K.T. GRIFFIN: On the technical interpretation of section 67c(2)(e), yes, they could. This amendment is preserving their right to obtain that order. My amendment preserves that order, but the Leader of the Opposition's amendment—

The Hon. T.G. Cameron: They are okay, but what about all the other cases?

The Hon. K.T. GRIFFIN: It protects any other order that has been made, but it does not protect those cases where people have issued their proceedings now but, two years down the track, they may want to use section 67c(2)(e) to get access to documents relating to another matter where there have been settlement negotiations, settlement has been achieved and the matter has been concluded. That is procedural. It does not say that those documents are admissible when the matter finally goes to trial. It is only to get a look at what someone else was negotiating to determine whether they made any admissions that would compromise their negotiating position in relation to some other matter, and that is the issue.

It is wrong in principle. I have acknowledged that what I am seeking to do is protect orders that have been made. There is no problem about that. I believe that those orders would have been protected anyway, but a doubt was raised about it and, in those circumstances, I took the decision that we should put that issue beyond doubt. We had the Bank of America getting up on a band wagon and we had Mouldens involved. They quite rightly misinterpreted, or had a fear, that they would lose the benefit of the order. I said, 'Look, we will get rid of that and we will deal with the principle. We will

protect the orders that have been made.' That is as far as it really ought to go. It is a matter of procedure.

I repeat that all those proceedings that have been issued up to the date of assent of this Bill, that is, a claim for breach of contract and some of the more complex cases, will take between four and nine years to go through the system. If they go to trial that is what will happen. A lot of procedural matters will arise between issuing the proceedings and the trial: orders for discovery of documents, inspection of documents, and so on. They are procedural matters, and that is what the Smoothdale issue related to. We are saying that the normal practice in the general law is that you take your procedure as you find it.

If the procedure happens to change, and if it puts another requirement upon you to satisfy a basis for getting inspection of documents, so be it. It does not affect the substantive question that is being litigated.

The Hon. T.G. Cameron: Could you have situations where actions were started before the Smoothdale orders were made and they will now miss out?

The Hon. K.T. GRIFFIN: There may be some interlocutory applications.

The Hon. T.G. Cameron: You have given me the impression that there are thousands of these.

The Hon. K.T. GRIFFIN: The honourable member needs to understand that we are talking about legal proceedings—cases. The Leader of the Opposition's amendment says that if you have any action that has been commenced—and that might be a claim—before you get to trial there may be a number of interlocutory proceedings. That may be for discovery of documents, that is, 'What documents have you got in your possession which are relevant to the issue before us in the case?'—an order for inspection. Some of those documents will be privileged, such as solicitor-client communication, so they will be discoverable but you cannot inspect them.

We are talking about all those things in between, from the point where you go to court, you file your documents and, in the old terminology, you issue a writ, and the point where you end up at trial if the matter is disputed. The Leader of the Opposition's amendment applies to all those matters that have been initiated in the court—the writs.

The Hon. T.G. Cameron: Which might well have been well before the Smoothdale case.

The Hon. K.T. GRIFFIN: That could be, and they may not even—

The Hon. T.G. Cameron: That is bad luck for them.

The Hon. K.T. GRIFFIN: It is not bad luck. The fact is that they may not even contemplate at the present time seeking to take out an application in the court, as an interlocutory proceeding, to get inspection of documents which relate to settlement proceedings. It is a procedural matter: it is not a substantive issue. If one looks at our amendment, one sees that we are seeking to strike out paragraph (e) of subsection (2) and substitute the following paragraph:

> Subject to this section evidence of a communication made in connection with an attempt to negotiate the settlement of a civil dispute or of a document prepared in connection with such an attempt is not admissible in any civil or criminal proceedings.

That is the principle you start off from. It is not admissible. But then subsection (2) provides:

> Such evidence is, however, admissible if, under the present drafting, the communication or document relates to an issue in dispute, and the dispute so far as it relates to that issue has been settled or determined.

We are seeking to change that to read:

> the proceeding in which the evidence is to be adduced is a proceeding to enforce an agreement for the settlement of the dispute or a proceeding in which the making of such an agreement is in issue.

That is seeking to preserve those settlement negotiations and the confidentiality thereof in proceedings which someone might be able to argue are issues which are being raised in the current litigation but which in essence are irrelevant. It is a fishing expedition. The Law Society has said (I am not sure whether you have a copy of the letter) that it supports what we are doing, because as a result of the Smoothdale case it is too broad. I am trying to stress that it relates to procedure: it does not relate to the merits of the matter that is the subject of the writ which has initiated the legal proceedings. It does not prejudice that at all—that is the important issue.

What the Hon. Robert Lawson said—and what I have indicated—is that, as you go through the processes before you get to trial, they are of a procedural nature. If the court says (if you even get to trial) that it will change the way in which it deals with the trial and the way in which things will happen—even though you have come prepared to do it in a different way and new rules of court have been made—those rules of court will be valid and will change the process. They will not change the substantive issue or the ability of a party to prove or to disprove a particular case.

So, I make a very strong plea to the Committee and to the Leader of the Opposition in particular to rethink the position which she is putting in the hope that she will understand that this is not prejudicing litigants—even those who have now issued their writs but who may not end up at trial (if they ever get there) for years ahead. The Hon. Mr Cameron said that I was talking about thousands of cases. There may well be thousands of those cases presently in the pipeline—

The Hon. Carolyn Pickles: There may well not be.

The Hon. K.T. GRIFFIN: There may not be; but there will be hundreds of cases which will continue to the end of this century at least. The concern I have is the way in which the Leader of the Opposition is approaching this. She does not understand the principle and will not give full weight to the recognition that it is a procedural issue and that no citizen or litigant has ever had a right to expect that the procedures relating to the way a case is dealt with will always remain certain. Otherwise, you would end up with a multiplicity of different processes applying to different cases. It would be a nightmare trying to sort that out; but the important thing is that it does not go to the merit.

The Hon. T.G. Roberts: It would be like WorkCover.

The Hon. K.T. GRIFFIN: Well, I am not involved with WorkCover, and I don't intend to get involved. This is quite different.

The Hon. Carolyn Pickles: It may be like WorkCover.

The Hon. K.T. GRIFFIN: Well, it may be like WorkCover. There is a multiplicity in this case of procedural—not substantive—issues. The WorkCover legislation deals with a whole range of substantive changes to the law: this deals with procedure only. It preserves the right which in this case Smoothdale has and which others may have if there is an order. It is as simple as that.

The Hon. R.D. LAWSON: I agree with the Attorney on this. The Hon. Terry Cameron said that someone may miss out in consequence if the amendment moved by the Leader of the Opposition is not carried. That is not the case, and I will explain why. Perhaps we ought to go back one stage. This amendment is necessary because in this place in 1993

ambiguous legislation was introduced and passed. Until and after that time it had always been understood that any communication passing between lawyers that was expressed to be without prejudice could not be disclosed in any proceedings—either in the proceedings in which the correspondence is passed or in any other proceedings between those or any other parties. There was absolute legal professional privilege for such communications.

That was the common law; that was what was understood in England; and that was understood by everyone here. But this Parliament passed a law which someone looked at carefully and thought 'Well, actually that is ambiguous in the provision.' The provision which seeks to preserve that position has actually made it possible to argue that it has been abolished.

An honourable member interjecting:

The Hon. R.D. LAWSON: Well, no-one picked it up. It is all very well to be wise after the event but it was not picked up at the time, and this Parliament created a silly and inadvertent loophole.

The Hon. K.T. Griffin: That applied to all existing cases.

The Hon. R.D. LAWSON: It applied to all cases. In one case the point was picked up and that litigant obtained an order which said, 'Contrary to everyone's understanding, as the Full Court held, the wording of that particular provision is such that you can inspect those documents; the claim to privilege is rejected in respect of those documents.' One order has been made. The effect of the Attorney's amendment is that that order will be preserved. They got through the loophole. Fine, they got through it. They are entitled to their victory and we do not seek to deprive them of it.

However, the same nonsense should not be allowed to continue in respect of other cases presently in the system, because it will have a deleterious effect upon the conduct of litigation. If it applies to every case presently in the list—and there are thousands of cases in the lists of the Magistrates, District and Supreme Courts—no solicitor henceforth will advise the writing of any letter that is without prejudice. One cannot write a letter without prejudice at the moment if the Leader of the Opposition's amendment is passed because, notwithstanding everyone's expectation, the letters are not protected. Someone in some other proceedings will have the opportunity to say, 'Disclose those documents' and no claim to privilege will necessarily succeed. One will simply advise clients, 'I do not suggest that we write anything without prejudice, because on the decision of the Full Court that document might be required to be produced, and an admission which you are prepared to make to party A to solve the matter but which we should never make to someone else may be used against you; so, simply do not make the admission.'

The Hon. A.J. Redford: It will help lawyers, because a lot more cases will go to trial.

The Hon. R.D. LAWSON: It will, and cases will not settle. In respect of most of the cases in the pipeline, people will say 'Do not commit yourself; do not make admissions, even if they are without prejudice, because they might be held against you.' It is not as if all those people who have cases in the pipeline have some vested right in an opportunity to inspect somebody else's documents. They did not start the proceedings on the basis—

The Hon. A.J. Redford interjecting:

The Hon. R.D. LAWSON: Parties whose cases are in the pipeline have a clear understanding that their without prejudice documents will not be disclosed to others. It is not a question of anybody missing out at all. I admit that I was concerned when I first saw this legislation because it seemed to me that it would deprive Smoothdale of the fruits of litigation which they had won, and I was very concerned about that. I was not surprised when Moulden's communicated with me and other members. The Attorney's amendment will secure to them the fruits of their judgment. It is not a case of anybody missing out. It is simply a case of this Parliament correcting an error which it made and without, at the same time, adversely affecting somebody who has obtained a judgment.

The effect of the Leader of the Opposition's amendment will be to create chaos for years to come. Let us assume that this legislation is passed tomorrow. Everything will depend upon whether or not your writ or summons was issued or your application was made before 22 March 1996. It will create two classes of action in the whole of our cause lists, and that is entirely undesirable, and for absolutely no good purpose in principle or practice.

The Hon. K.T. GRIFFIN: If members look at Act No. 37 of 1993 when section 67C was enacted, there was no provision for section 67C, which changed the law relating to procedures, to apply to actions which had commenced only after that came into operation. It applied to all actions. There were others: there is a warning relating to uncorroborated evidence. The fact is that the procedural rule relating to the warning against corroboration was removed. It might be said in the criminal area that some people who were being tried and whose cases were brought before the courts would have suffered from that, because no longer was a warning permitted. There was no distinction between the matters that were already in the courts and those that might come before the courts later.

Section 67C was assented to in May 1993 and came into effect a short while later, as I understand it. It made significant changes—exclusion of evidence of settlement negotiations—and the principle we are talking about is no different now from what it was then.

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: This is the first case that has drawn attention to the fact that there is a problem with the drafting which did not achieve what the previous Attorney-General, Government and Parliament believed it would achieve: it is as simple as that. Looking at the principle, section 67C was enacted in 1993. It applied to current cases as well as new cases. No distinction was made. I say that it related essentially to procedural issues. If we are to change section 67C now, why change the principle upon which it previously came into effect? It applied to everything, but in this case we are preserving the order in the Smoothdale case and any other orders that have been made under the existing law.

The Hon. M.J. ELLIOTT: It is important that, when we pass laws and we and everybody in the community have an understanding of what it means, we do not want a reinterpretation by the courts, or elsewhere, to stand for too long. We will be debating further the WorkCover legislation which has had some interesting interpretations placed on it which were not intended by the Parliament, and I hope that the Attorney-General recognises that argument in that case, as well, and I will return to that point. I agree with the general principle that, if Parliament has a clear intention and the law is not being interpreted in the way that it is intended, we should rectify it very quickly. I will be absolutely consistent with that.

As to the question about when applications should occur, if what the law meant was clearly understood, I do not really think that anybody who is involved in proceedings that may have already commenced has any special right, as distinct perhaps from the one case where an order has been made. That is a special case and it needs to be recognised. When the legislation emerged, my double concern was that it was a case in which the State had a special interest as well, which is doubly bad law in terms of the interaction between Parliament and the courts.

There is no question whatsoever that I would have rejected the Bill as it originally stood. However, there has not been any debate about the general principles behind what is intended. The only argument is as to when it comes into effect. It seems nonsense to concede that we want the law to remain as it was understood, but to have a number of cases to which we will not apply it when in reality none of those people would have had a lively belief that the law was interpreted in any other way. In those circumstances, I shall be supporting the Attorney-General's new clause, acknowledging the important role played by the Opposition in making sure that the principles were adequately addressed.

The Hon. CAROLYN PICKLES: I am disappointed that the Australian Democrats will not be supporting our new clause. It would be interesting to know whether, if we had not moved our new clause, the Attorney would have been prompted to move his. I think that the Attorney-General has grossly exaggerated the number of cases where a party will seek documents used in previous finalised matters. It would be a very rare case which went on for eight or nine years, as the Attorney suggested. The Australian Democrats have seen fit to support the new clause moved by the Attorney-General. However, I believe that it was prompted by the amendments widely circulated by the Labor Party. It would be interesting to know whether he would have bothered to move his amendments had we not prompted him to do so.

The Hon. K.T. GRIFFIN: I understand the argument put forward by the Hon. Carolyn Pickles. Her amendment was certainly on file first, but well before the Opposition had spoken I had—

The Hon. Carolyn Pickles: You wanted your Bill to come in that same week.

The Hon. K.T. GRIFFIN: Yes, that is correct. It was brought in on the basis that we would endeavour to deal with it quickly. When concern was expressed that it would have what was called retroactive effect, and even though I believed and the advice that I had was that the courts would make their own decision, I decided that it would not be prudent to pursue it as expeditiously as originally intended. At that point I decided that there would be an amendment, and it was coming through the pipeline.

The Hon. CAROLYN PICKLES: I remind the Attorney-General that he wished this Bill to go through prior to the Federal election. You asked the Australian Labor Party to expedite the process. We said that we had some concerns about it and we delayed it. I believe that our amendment prompted the Attorney-General to do the same.

The Hon. Carolyn Pickles's new clause negatived; the Hon. K.T. Griffin's new clause inserted.

Title passed.

Bill read a third time and passed.

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 March. Page 1046.)

The Hon. T.G. ROBERTS: I rise to indicate the Opposition will be supporting most of the initiatives in the Bill. However, we do have some concerns about one aspect. We have introduced an amendment to delete clause 8, proposed new section 85B, which relates to strip searching of visitors to prisons. The shadow Minister in another place has indicated that it is not the intention to remove the whole of the clause, that some negotiations may take place at a later date to either get some wording that is suitable to encompass some sections of it or at least negotiate some changes to it.

By the Minister's own admission, the Bill comes out of an inquiry into drugs in prisons and a report prepared for the Minister, who makes a couple of references to it in his second reading speech when probably goading the Hon. Mr Quirke in relation to his contributions. I do not think that is very helpful if you are trying to reach a joint position on a movement towards reforms in prisons in relation to drugs. If the Minister had sent me a copy of that report, I am sure I would have read it dutifully and probably would have been as up to date as he is on it. We may have had a different attitude to it, but in terms of our own assessment on civil liberties and the rights of visitors to correctional institutions we felt that the proposed changes to the Act were not suitable for defending people who had committed no crime, and adequate procedures were already in place for police to conduct searches on visitors if people felt there was a danger that illicit substances were being passed onto prisoners via visitors.

The contribution made by the Hon. Sandra Kanck last evening partly indicated there was a reaction to drugs in prisons and not coming to terms with the problems that bring about the difficulties that prisoners have who find themselves in prison with drug problems, and therein lies a major problem in terms of reform. Is it a reform process to change legislation that further penalises the victims who have been hooked on drugs, in the drug culture, not only the prisoners who have been caught but their families or friends, or do you try to correct the problems created by drugs in prisons by having counselling, treatment and service programs that come to terms with those problems associated with the level of drug addiction that people have in prisons?

Many people who come into the prison system do so with different drug problems, with different degrees of addiction and with different associated problems. Therefore, they need different methods of treatment. We tend to stream prisoners into categories. I have never been satisfied that the drug services program in the ARC or the prison system itself is adequate. When I was the shadow Minister for Correctional Services, most of the correspondence I received indicated the opposite: that the drug treatment programs—particularly in the Remand Centre—were not adequate. The assessment process—again, particularly in the Remand Centre—was not able to identify properly the problems individuals had, even though they had not been not convicted of any crime. Those problems are starting to emerge in the Remand Centre because of the length of time prisoners spend on remand. That is where the treatment and identification of those problems should commence.

Once a conviction has been secured, a treatment program should follow the prisoner. A streaming program to find suitable accommodation or a suitable type of prison for that treatment program should be administered. It should be part of the treatment process. Unfortunately, we have not yet reached that stage. It makes it difficult for prison administrators to begin adequate treatment programs which have continuity and which follow those prisoners. I agree with the Minister, who says that many deaths in custody and violent acts occur due to stand-over tactics inside prisons emanating out of drug distribution. Of course, there are other problems associated with drug abuse in prisons which could lead to depression and eventually suicide. I also agree with the Minister that drug overdosing in prisons leads to a person becoming so medically incapable of breathing and helping themselves that they die.

There are all sorts of problems related to drugs, and the Opposition acknowledges that. However, my Party would deal with those problems differently. The contributions of my colleagues in the Lower House, particularly that of the member for Playford, make it clear that we agree with many clauses in the Bill that try to come to terms with that. However, we do not agree with visitors being searched.

Although we have no amendments to the clauses relating to prisoners' mail, some concerns about that were expressed in Caucus. We do not want to see prisoners' mail being unnecessarily interfered with, if they are conducting campaigns, or personal or private business that leads to their rehabilitation or, in some cases, are fighting for their defence if they felt they were innocent of the charges that led to their entering the prison system. Members of Parliament must have an open mind as to whether a prisoner is guilty of an offence with which they are charged. We should always try to assist those prisoners who are genuine in their attempts to have the authorities review their case, either by having it looked at in a different light or with new evidence.

We would certainly not like to see prisoners being victimised or the opening of prisoners' mail used in a way that is abusive. I guess we will have to rely on the authorised officer clause and the other amendments to section 33 to make sure that those abuses do not occur and that the need for opening or interfering with mail relates genuinely to a concern that people may have about drugs entering prisons via the mail system. The other amendment to section 37A relating to the release of eligible prisoners on home detention we agree with as it stands. I understand that the Government needs to formalise in legislation a clause relating to the garnishing of moneys from prisoners on work release programs for reasonable payment for board inside the prison—and we agree with that.

Many problems are starting to emerge with work release programs in relation to prisoners working in a dangerous manner and endangering themselves and others by working unsupervised or with dangerous plant and equipment. I do not think that matter has been addressed particularly well, and it needs to be looked at. The Opposition agrees with the clauses relating to the release of information to victims, and it has no problem with the section on confidentiality. So, in general, the Opposition supports the amendments to the Act, and it will support the second reading. I have indicated the amendment that will have some negotiated life as we go into Committee.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indication of support for the second reading of this Bill and most of its provisions. I will reply in respect of the major issues raised by members, but if there are matters that need further amplification I am happy to endeavour to do that during the Committee consideration of the Bill. The Hon. Sandra Kanck raised the issue of drugs in the prison environment. Some matters need to be put on the record in relation to that issue. I am informed that drugs in the prison environment is the single most contributing factor to incidents, including assault and, in some cases, death, which occur among prisoners. Not only are prisoners subjected to pressure generated by those who wish to profit from the trafficking of drugs but families of prisoners who choose not to take part in the drug trade are also often made to become involved by bringing drugs into prisoners to avoid harm to either themselves or the prisoner to whom they are related.

It is acknowledged that drugs are brought into prisons through a number of sources; however, it is generally recognised that visitors are the main source of drug transfers. The legislation attempts to deter visitors from bringing drugs into prisons by enabling prison staff to detain and search visitors who may give staff reason to believe that they are carrying drugs and by establishing suitable penalties to reflect the seriousness of the action. Under the present restrictions, such visitors are turned away from the institution for the day and are often seen giving the drugs which they are carrying to other visitors to bring in on their behalf.

It should be clearly understood that the Department for Correctional Services will, in consultation with a number of other appropriate agencies, establish strict procedures to determine the circumstances under which visitors may be strip-searched. These procedures could be expected to include those visitors who have been identified as carrying drugs by either dogs or the department's new drug itemiser or from information given by other sources.

The drug legislation which is now before us is just a part of an overall drug strategy which will see the Department of Correctional Services also attacking areas, quite rightly identified by the honourable member, as sources of drugs in the prison system. It should be clearly understood that only those visitors whom the department has very good reason to suspect may be introducing drugs will be targeted. The introduction of drugs in the innocent circumstances raised by the honourable member will be sensitively handled. Visitors will be adequately warned of the illegal items, which they may be carrying and which cannot be taken onto prison property, by strategically placed signs in a number of languages and they will be given the opportunity to declare them before they enter the prison gates. This is much the same as one would expect when entering the country and being questioned by customs officers.

In relation to the opening of prisoner mail, this is not meant as an additional punishment for prisoners. The aim of this part of the legislation is to stop not only those prisoners who may be bringing drugs into prison but also those who may be organising illegal activities and, more importantly, those who write to their victims. The amendment is consistent with the so-called truth in sentencing legislation which was introduced previously and the emphasis there upon the interests of victims of crime. I should point out that under the present Act there are rules relating to the access to prisoners' mail, and the amendments in the Bill build on the experience which has been gained as a result of the administration of section 33 of the principal Act.

The Hon. Mr Terry Roberts raises some issues in relation to strip searching. I would hope that in the course of the

consideration of this Bill in this Council there will be an opportunity to resolve any outstanding difficulties which honourable members believe there may be in relation to the administration of that part of the legislation. As I have said earlier, if there are matters which need further clarification I will be happy to endeavour to provide that when we deal with the Bill in Committee.

Bill read a second time.

BIOLOGICAL CONTROL (MISCELLANEOUS) AMENDMENT 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.

This simple Bill accommodates changes that have transpired since the passage in 1986, of the Biological Control Acts of South Australia, the Commonwealth and other States.

As honourable members may be aware these Acts resulted from injunctions that for some time, restrained CSIRO from releasing agents for the biological control of Salvation Jane. Stated simply, the legislation provides that such an injunction cannot now apply where a biological control proposal has been tested publicly in accordance with prescribed procedures.

In basic terms the legislation also stipulates that any proposal to 'target' an organism or do certain other things requires the approval of the Australian Agricultural Council. That body, of course, currently bears the title Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) and includes Ministers other than those responsible for primary industries.

The proposed amendments will reflect these developments and clear up any doubts that might otherwise emerge over the powers of ARMCANZ. In addition, it will be clear that the Minister for Primary Industries will continue to be responsible for biological control as a member of the expanded Council.

Similar amendments are underway in other jurisdictions and collectively are appropriate when it is considered that ARMCANZ may be asked to ratify the release of rabbit calicivirus disease.

Explanation of Clauses

Clause 1: Short title

Clause 1 is formal.

Clause 2: Amendment of s. 3—Interpretation

Clause 3 alters the name of the Council to its current name and provides for another body if prescribed by regulation to be the Council.

Clause 3: Amendment of s. 8—South Australian Biological Control Authority

Clause 3 ensures that it is the Minister for Primary Industries who is the Authority.

Clause 4: Amendment of s. 9—Delegation

Clause 5: Amendment of s. 53—Service of documents on Authority

Clauses 4 and 5 alter the title of the Department to its current title.

The Hon. R.R. ROBERTS: I rise to indicate that the Opposition will be supporting this measure. I have had discussions with the Minister in another place. My colleague the Hon. Ralph Clarke has succinctly put on behalf of the Opposition most of the concerns that we had and, by and large, they were answered by the Minister himself. I was very interested to read the contribution made by the member for Custance (Mr Venning) who has had a long history with farming and is known as the 'farmer's friend' throughout the Mid North. He made a long and thoughtful contribution in respect of this matter, obviously showing his credentials for a future run as part of the second team as Minister for Primary Industries.

I understand that he was extremely disappointed. I know that in his contribution he has done some in-depth study of the biological controls and continues to maintain his association with farmers. I was a little concerned when he revealed that the property owned by the Minister for Primary Industries was covered with Paterson's curse, but I do not think we need to worry about it too much because he disposed of that property last Friday, which is somewhat of a problem when in a previous life he was considered somewhat of an expert on the use of chemical pesticides. I do not think Mr Venning was being vindictive but was using this as an example of what can happen with some pest weeds and other vertebrae.

However, one issue that I raised with the Minister privately, as did my colleague, concerns the effect of the untimely release of the rabbit calicivirus from the experiment on Wardang Island and the effect it has had on rabbit processors and people in the shooting industry in South Australia. One of the questions my colleague in another place put to the Minister was whether the Government would assist those people who have been dispossessed of their incomes. Some have been sent to bankruptcy because of this and, because of the Government's involvement, the question put to the Minister was whether the South Australian Government would support these people all the way with their claims against the insurer who, like the rabbit calicivirus, slipped through a hole and tried to avoid their responsibilities to those who were suppose to be covered by insurance.

I was somewhat disappointed to find that the only response that the Minister for Primary Industries was prepared to give in respect of that matter was that the department will continue to monitor the situation. Whilst everybody in South Australia would applaud measures that would control the rabbits in South Australia, it is a matter of some concern that this experiment has gone so horribly wrong. I will be monitoring that matter and hope that in all the circumstances the Minister can assist those processors in their claims. The rest of the Bill basically talks about terminology and reflects the modern acronyms for boards and associations that are involved in these processes. The Opposition, having received the answers that it needed in another place, will be supporting the Bill and moving no amendments.

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

SUPPLY BILL

Adjourned debate on second reading.

(Continued from 19 March. Page 980.)

The Hon. P. HOLLOWAY: I welcome this opportunity to comment on the State's finances and on the impact that the new Government in Canberra will have on those finances because nothing over the next few years will more affect the finances of this State than the treatment we receive from the new Federal Liberal Government. The election of the Howard Government on 2 March will not in my view be the blessing for South Australia that the Premier told us all that it would be before the election. I am sure that the Premier would not be surprised that the Howard Government has already discovered an alleged black hole in its finances and has established an Audit Commission to review the Commonwealth's financial position, including—and I quote from the terms of reference of the new Audit Commission:

. . . including identifying duplication, overlap and cost shifting between the Commonwealth and the State-Territory tiers of Government.

Nor would I expect that the Premier would be surprised by the findings likely to come out of that Audit Commission in a few months because, after all, the Premier used the same tactic as did Nick Greiner, Ray Groom in Tasmania, Jeff Kennett in Victoria and Richard Court all before him. This is a track that has been pretty well travelled at the moment. I am sure that the Premier knows better than everyone exactly why the Commonwealth Government is setting up the Audit Commission and exactly how it will be using this in a political sense to justify some rather large, unpleasant and unforeshadowed cuts in Government expenditure. An article in the *Australian* last Friday reported:

Two of the Federal Government's newly appointed audit commissioners support shifting the burden of the Commonwealth's budget problems onto the States, including the possibility of a State GST-like tax to meet their revenue needs.

That, of course, clearly has great implications for the finances of South Australia. I would like to quote from that article, which refers to Professor Bob Officer, who has been chosen by the Howard Government to chair the Commission of Audit:

. . . he believed there was merit in giving the States a broader tax base, and that the increased use of tolls for road funding was 'inevitable'. . . there was no real alternative to the more extensive use of tolls to fund road construction, now that tax increases were off the agenda.

Also in that article, another senior member of the new Audit Commission, Mr Maurice Newman, told the Australian Stock Exchange annual dinner last year that a financial imbalance between Federal and State levels of Government meant that there was a need for a broad based State tax like a GST. So, here we have two key members of the Commonwealth Government's new Audit Commission saying that there should be a broad based State tax, and Professor Officer saying there should be more user-pays and tolls for roads. Also in that article, the Director of Access Economics, who has been appointed an executive officer to the new Federal Audit Commission, raised a possible shift in the tax burden onto the States as a way of dealing with the budget problems:

'Reform of the Federal system to push taxes onto the States and rationalise spending could be one way of solving the budget deficit,' Access said in its Economics Monitor this week.

In the last few weeks Mr Costello, the new Federal Treasurer, has flagged the possibility of cuts to tied grants from the Commonwealth to the States while insulating general financial assistance from the Coalition's razor. So, already, after just two weeks of the new Government, we have a pretty fair idea of where its fiscal policies will go and, quite clearly, it is onto the States. It is not surprising that the Premier is already showing some signs of panic at this very real prospect of large cuts in funding to the States and the possibility of the Commonwealth forcing the States to impose a consumption tax.

I suggest that, after endorsing the Howard team before the election, it is not surprising that the Premier has already initiated damage control procedures in the media to distance himself from the cuts that he well knows will come. One thing that Mr Carmody from Access Economics also said in the article was that he was concerned about the cost shifting between the Commonwealth and the States. I must say that, to the degree that this Federal Audit Commission can identify overlap and cost shifting between the Commonwealth and the States, it may well perform a useful function.

However, it is something that this State could be somewhat concerned about. I note that, over recent years, while Carmen Lawrence has made statements about cost shifting in the health area where some $800 million extra has gone into the States for health from the Federal budget but much of that money has disappeared into State budgets, she has been criticised by some of her own Federal colleagues, such as Gordon Bilney, who criticised her for being too lax in allowing Governments such as the State Government here to shift the costs in the health system. It will be interesting to see what the new Federal Government does in relation to that, because I suspect it will not be as generous as the former Keating Government was in allowing the States to cost shift in areas such as the health system.

As I said, the Premier has publicly supported the election of the Howard Government, and his constant carping at the Keating Government will not be forgotten by South Australians when the Government undoubtedly tries to weasel out of responsibility for the consequences of these new policies that will come from Canberra. One problem is that this Government is now so accustomed to apportioning blame for any act that brings public criticism that it finds it difficult to face up to home truths.

It is now more than five years since the State Bank first reported its losses, but this Government has become hooked—a bit like a junkie—on using the State Bank as an excuse for any and every unpopular decision. Unfortunately, it has simply been too easy and too convenient with the media we have in this State for this Government to impute others for its shortcomings. The politics of blame has been refined and developed to new heights by this Government ever since its days in Opposition. Now that the Keating Government no longer exists, a soft target for this Government has been removed. As the State Bank fades into the past after more than five years, the Brown Government is looking for new scapegoats.

The fiscal policies that will be pursued by the new Federal Government will pose a threat to this State's finances in a number of other ways. The Government has undertaken to cut information technology by about $1 billion to fund some of its election promises. This can only work against the Premier's plans—for which I applaud the State Government—to make South Australia the centre of information technology for the Asian region. The Better Cities money—

The Hon. R.R. Roberts interjecting:

The Hon. P. HOLLOWAY: As the Hon. Ron Roberts says, much work has been done in South Australia over a number of years by the previous Government to make South Australia the centre of technology development, and the current Government has picked that up and moved it forward. As I said, I agree with its attempts to do so but, if the Government is to cut $1 billion from information technology by the largest purchaser of information technology in the country—the Federal Government—undoubtedly that will have an impact on this State. Also, what will the cuts in Better Cities money mean for South Australia, particularly for projects such as the MFP and the Mile End project? We have heard that the new Federal Government will cut money from those projects although we do not yet know the details, but I fear that some of those very useful projects for this State will be cut and benefits in terms of a better quality of life for our cities may well go.

The new Federal Treasurer has also canvassed cuts to State grants. While financial assistance grants are subject to an indexation agreement with the States—and I believe that the Howard Government has agreed to honour those agreements, although we will have to wait to see whether that is the case—it seems that special purpose grants to the States are likely to be singled out to be slashed by the new Government. The importance of special grants to South Australia's budget cannot be understated, and I refer to the financial statement from our last budget which gives an idea of the importance of those grants to this State's budget.

Overall, the State's own sourced revenue accounts for only about 45 per cent of the total receipts of the non-commercial public sector. Commonwealth grants—general and specific purpose—account for about 55 per cent of the revenue of the State. As to the breakdown between general and specific purpose grants, the estimate for the forthcoming 1996-97 financial year shows general purpose grants at $1.571 billion with specific purpose grants at $1.698 billion.

One can see that specific purpose grants are actually larger than the general purpose grants and, in turn, the two together represent 55 per cent of the revenue to this State. So, if there are sizeable cuts in those areas, they will have a big effect not only on the budget of this State but also on the quality of life of the people who benefit from those specific purpose grants. If we review the areas where those grants come in, we see that it is clear that education and hospital funding are two of the largest areas. There are also grants for specific purposes within the health sector, such as disabilities, mental health and Aboriginal health. There are specific grants to cut hospital waiting lists, to the Home and Community Care (HACC) programs and to supported accommodation assistance for homeless people and those in crisis. There is housing money; in the current financial year this State received about $75 million in housing grants that cover not only block assistance for public housing through the Housing Trust but also money for pensioner, Aboriginal and community housing, mortgage and rent relief and crisis accommodation. There is also tied money for roads, drought assistance, assistance for sport and recreational groups and a number of other purposes.

So, we have all these funds under the special purpose grant, and it is now clear that the new Federal Government will target some of these grants. No doubt that means that this State will be left to choose which of those grants to cut. One thing of which we can be sure is that the vast majority of those specific purpose grants go to some of the most disadvantaged in our community. Cuts in those grants can only harm some of the most disadvantaged people, not only in the city but also in the country areas, because some of these specific purpose grants would go to areas such as assistance in education for rural students, and so on.

It will be interesting to see whether the Commonwealth Government unties all these grants and leaves it up to the States to pick the areas where they make their cuts or whether it will keep some tied grants and make the decision itself which grants to cut. I suspect that it will take the easy path.

Another matter on which I wish to speak in the debate on the Supply Bill is the question of accountability. Before the last election the Liberal Party promised to make the Executive Government more accountable to Parliament. I believe that the reverse has happened. Under the previous Government the system of parliamentary committees was revamped, and the key economic watchdog, the Economic and Finance Committee, was given some real teeth. It was given powers similar to those of a royal commission. That committee, of which I was pleased to be a member for 18 months in the other House, produced major reports on subjects such as executive salaries and the use of consultants.

On the executive salaries question, for example, the committee made public for the first time the full range of payments made to executives in the Public Service and bodies such as the State Bank. I do not think the exposure of those things did me any good politically, but I believed it was important for this State that that was done. It had to be done and it was important that it was addressed. Unfortunately, I believe that committee was too effective for the Brown Government and, judged on its output, the Economic and Finance Committee is in my view a pale reflection of past committees. Where is the serious review and public debate on the major issues of public accountability which so disturbed the Auditor-General in his last annual report?

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I would have thought that the exposure of the salaries in the State Bank and the use of consultants, which was the other report that I mentioned—

The Hon. R.I. Lucas: You were just retracing old ground.

The Hon. P. HOLLOWAY: No, that was not the case. Some of the honourable member's colleagues may well have leaked information that came before the committee.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: The Economic and Finance Committee reviewed the situation and laid down guidelines. It is all very well for the Leader of the Government to talk about what we did, but the point is that what was required were some guidelines so that, in the future, the use of consultants would be conducted in such a way that the public could have confidence in the procedures. The reports produced by the Economic and Finance Committee laid down some of those guidelines and I believe made an important contribution to the debate in those areas.

In his report this year, the Auditor-General told us that the need for parliamentary committees to examine the rapidly growing off-balance sheet activities of the Government has never been greater, yet the only committees that have any chance of holding this Government to account are those established by this Council to examine Government outsourcing. I believe that it is largely as a consequence of the work of those committees, combined with the criticisms of the Auditor-General, that the Premier has announced that mechanisms for examining outsourcing contracts by the Parliament are to be the subject of discussions between the Government, the Opposition and Democrats. We can only hope that the Brown Government is much more serious about these matters than it has shown itself to be to date.

Another area where accountability has, in my view, declined under the Government, is the lack of financial information provided by the Government. To understand the health of a private company we would normally look to the financial statements. The income statement provides the cash flow information relevant to the health of a company over a 12-month period, and the balance sheet provides information on the assets and liabilities of the company—a snapshot of the company's standing at a particular point in time.

For Government the estimates of expenditure and receipts and the consequent size of the deficit or surplus is a measure of the cash flow of the public sector, while the balance sheet provides a snapshot of the accumulated assets and liabilities of the Government. For the past two years the Brown Government has failed to produce a balance sheet of State

assets. I think we need to ask ourselves why. The Auditor-General—

The Hon. R.R. Roberts interjecting:

The Hon. P. HOLLOWAY: That well might be one reason. At page 10 of his report, the Auditor-General explained why. I quote, in part, from the report, as follows:

> The Department of Treasury and Finance has advised that it did prepare and include an indicative balance sheet in early drafts of the 1994-95 budget documentation but did not proceed with its publication. The Treasurer indicated in Parliament on 8 March 1995 that asset value data would be included in the budget papers for 1995-96. However, data that was produced was limited to that mentioned above. The department has advised that it does not plan to prepare statements of this type until an accounting standard dealing with the subject becomes effective.

I believe this is the important quote from the Auditor-General:

> I regard this as an unduly conservative approach and a backward step compared with earlier approaches. In my view, the approach to defer publication of available data until relevant accounting standards are finally in place prevents relevant information being made available to Parliament. It is also my opinion that State balance sheet information is not a mere theoretical interest. It can have important policy implications, for example, a decision as to whether a particular asset considered necessary in the public interest should be provided by way of a publicly owned facility funded by debt or by way of a privately owned facility leased by the public sector should be made on the basis of an analysis of relative costs and other possible advantages and disadvantages. The decision should not be made on the basis that one approach would increase the State's debt and the other would not disregards the fact that the increasing debt is associated with an increase in assets.

What the Auditor-General was really saying in polite language is that the Brown Government is a secretive Government. Its furtive use of off-balance sheet transactions—and that is what we are really talking about here—to hide the true state of this State's finances is no better than Tim Marcus Clark and his cronies' use of off-balance sheet transactions to hide the State Bank's position.

This Government is in the business of selling every State asset it can and—in a carefully orchestrated campaign with the assistance of its friends in the media—using the proceeds to try to make itself look financially responsible. It is using the inheritance from past generations—those assets that have been accumulated over many years—to enhance its re-election prospects. While the assets of the Government continue to fall, the Government will claim that it is reducing debt, but what really matters is the capacity of the State to service the level of debt. I do not believe that any sensible person would oppose the sale of surplus or non-productive State assets. However, why should we sell assets which produce a return to taxpayers greater than the interest that would be saved by using the proceeds of the sale in debt reduction?

A good example of this in recent days is the Government's plan to sell the Flinders Central Building occupied by sections of the Police Department. There has been speculation in the media that this building, which was purchased in 1991, will be sold for around $25 million. When the $25 million is applied to reducing State debt, no doubt the Brown Government will claim it is very clever to have cut debt by this amount. However, by selling the building the Government will be committing itself to an annual liability to pay rent for offices for the Police Force well into the future. This future liability for rent is no different from an equivalent amount of debt, as far as long suffering taxpayers are concerned. However, such liabilities are not recorded under our present accounting systems, whereas debt is. Clearly, deals such as this need to be carefully scrutinised to ensure that they are in the long-term public interest as opposed to making the Government look good before the next election.

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: No, I did not hear that, but some things would not surprise me. I also refer to the Auditor-General's comments on off-balance sheet transactions. He made essentially the same point when he said:

> The budget estimates indicate a trend to private sector financing of public sector infrastructure. It is crucial to note that the fundamental issue is not whether a transaction should be on or off-balance sheet. The crucial matter is that such transactions continue to carry with them ongoing recurrent obligations such as rent or lease payments.

In other words, we should not just believe the superficial information that this Government has been giving us: we need to look behind it and at the real costs and the real outcome of any transactions from deals which this Government undertakes. Clearly, deals such as the one I have just given as an example need to be scrutinised carefully to ensure that they are in the long-term public interest as opposed to making the Government look good. I will not take up any further time by referring to some of the other areas: I will leave that for another day.

In conclusion, the State finances have, in my view, received favourable treatment from the Federal Government in the past—and perhaps we could remind the Chamber how the Keating Government provided $650 million dollars to the State for the State Bank bailout—but that is now coming to an end. I think Jeff Kennett read the writing on the wall well and truly when he called an election within days of the election of the Howard Government. Clearly, the Premier of South Australia is also becoming nervous about what the election of the new Federal Government means. However, early elections, such as the one in Victoria, will not solve the underlying problems. It is time that the Brown Government stopped blaming others, stopped looking to the past and stopped looking for scapegoats. It will have some difficult decisions arising as a result of the election of the Howard Government. That is a Government that the Brown forces have told us should be elected, so they will have to live with the consequences of the election of that Government. They cannot blame anyone else for the consequences to this State's finances than themselves.

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

NATIONAL PARKS AND WILDLIFE (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 March. Page 1045.)

The Hon. M.J. ELLIOTT: I support the second reading of the Bill. This Bill is something of a mixed bag. There are some things which the Government seeks to achieve that I agree with and some that I do not. The major debate will be the mechanisms being adopted in relation to some of the goals that the Government has set itself. One of the amendments that I will move in the Committee stage will be to insert objects into the Bill. This is a Bill which would benefit from the objects and, since there are a number of committees and advisory bodies operating within the Bill, placing objects in the Bill gives some guidance to them as to what it is that they should seek to achieve. As I see it, the objects of an Act

such as this should be objects which recognise that the primary goal we should set ourselves should be in relation to the living environment. If that is not what you seek to do, what is the point of a National Parks and Wildlife Act? If you seek to protect the living environment then you would regard human recreation activities and commercial activities as secondary. My amendments would state that the objects of the Act be:

(a) the conservation and preservation of naturally occurring ecosystems and plants and animals indigenous to Australia;

(b) to set aside and manage land of national significance or for the purpose of conserving and preserving the land and its ecosystems and its native plants and protected animals;

(c) the reintroduction of species of plants and animals to land once inhabited by those species; and

(d) to set aside and manage land for public recreation and enjoyment to the extent that it can be done consistently with the objects set out in paragraphs (a), (b) and (c).

I quite frequently visit national parks—both the recreation oriented parks like Belair and much wilder parks such as the Gammon Ranges National Park. They are quite different parks, but one has a significant focus on recreation while the other does not. When I say 'recreation,' one park allows tennis courts and the like, but in each case they have the clear goals of conservation and preservation first while any recreational pursuit is clearly secondary and subservient to that primary goal. That is the way it should be. I will not have difficulties with even commercial pursuits in parks as long as the structures we set up ensure that those commercial pursuits are subservient to the objects of this Act. From my observation, that is quite difficult. When we come to talk about harvesting of animals later on I will touch on the difficulty of that point. The Minister seeks to establish a council to replace another body while keeping its role as more or less similar.

I have major problems with the council because I do not think that it is capable of doing the sorts of jobs that the Minister is asking of it; nor do I think that it is capable of ensuring that the legislation will work in the way that I am sure most people will expect it to work. It is worth looking at the role that the Minister has set for the council under this Bill.

The council's function is to provide advice to the Minister at the Minister's request, or on its own initiative, on any matter relating to the administration of the Act and such other functions as are set out in this Act. It is an advisory body. I imagine that, on the basis of its advice, the Minister will justify actions that he or she will carry out either in relation to national parks or in relation to species of plants and animals outside national parks. What sort of advice will it give? New section 19C(2)(a) talks about planning in relation to the management of reserves, and new section 19C(2)(b) talks about the conservation of wildlife. If one looks at the composition of the council the Minister is proposing, a number of positions on the council would not be qualified to give that sort of advice. The Minister's proposal is a small body, being a council of only seven people, at least two of whom clearly have commercial interest, be it tourism, business management, financial management or marketing. I do not expect that they will necessarily bring the primary commitment to the conservation of wildlife and management of reserves that I would like to see.

We should form a peak council in the first instance, the voting members of which are qualified and have as their primary interest the protection, preservation and conservation both of ecosystems and of South Australian indigenous plants and animals. The advice that they give should be focused upon that. What if the Minister wants advice on tourism? I cannot see much point in his going to the council, which will have seven members of whom only one is qualified in tourism, to give advice about tourism. The amendments that I will move will create a series of advisory committees, similar to those proposed by the Minister, which will be specialised, and one of those that I propose to be formed is a tourism and recreation advisory committee.

If the Minister wants advice on tourism in national parks, for instance, he should go to an advisory committee that has specialist knowledge in tourism, and my proposal is that it will have at least five people with specialist knowledge in tourism and at least two people who have a specialist knowledge on conservation. Those people can look at issues of tourism within that committee but, before their advice goes back to the Minister, it should then go to the council, which is a specialist body focused upon conservation and preservation. The tourism advice goes through a body that is committed to the principal objects of the legislation. The Minister will receive advice on tourism from the tourism advisory committee, but that advice will be qualified by a committee that has as its first priority the conservation objects of the Bill. Similarly, if the Minister wants to look at the impact on farmers of native species of animals such as kangaroos, what is the point in going to the council, which may not have a farmer on it at all, to get that sort of advice?

My proposal is that we should have a structured natural resources advisory committee made up of at least five people with qualifications or experience in the use of natural resources for commercial purposes. This committee would have people with knowledge of mining, farming and the like, again with at least two members having qualifications in conservation. They can then look at the problems from their perspective and use their specialist knowledge to say, 'Here is the way that we see things and this is what we think the Minister should do.' Their advice would then pass via the council, which would say, 'Yes, that advice is fine, but from a purely conservation preservation perspective we totally disagree or think that it needs to be modified,' or whatever else.

I do not think that the Minister will be producing a body that can give useful advice with the current structure of his proposed council. His council of only seven people will have a bit of this and a bit of that, but not necessarily the capacity to give substantial advice in any direction at all. I believe that not only would it seek to try to produce compromise, but it would be the worst form of compromise, with the risk that the commercially oriented people might form a voting group and the conservation-minded people might also form a voting group. From the way that it is currently proposed to be structured, a Minister, if so minded, could appoint a majority of people with a purely commercial orientation. My experience with legislation is that if something is possible at some time somebody will do it. The very appointment of the personalities on the council could undermine the whole intent and purpose of the Act, and that would be most unfortunate. I think that we should set up a structure which seeks to uphold the objects that I am proposing should be inserted in the Act so that everybody knows what the purpose of the Act is.

I believe that a third advisory committee should be formed—an Aboriginal advisory committee. There is no

doubt that over the next couple of years significant conservation and Aboriginal issues will overlap. They will vary from land title claims in relation to reserves to the right to hunt native species, even if they are endangered. I must say that causes me grave concern. As far as I am concerned, if an animal is endangered, just because it has traditionally been hunted people should not continue to have that right to the extent that the species is exterminated.

Over a whole range of issues there will need to be sensitive treatment of those two different interests. Just as we want to see sensitive treatment of the interests of tourism versus conservation or of natural resources versus conservation, we must find a structure which achieves that. I do not think that the council will achieve anything in particular, because it is too much of a rag bag of sectional interests which will not allow the issues to be analysed in the way that they need to be analysed.

I support the consultative committee structures. As with the advisory committees, I want to ensure that a conservation representative is put on to most of those by way of being a Conservation Council nominee, but that will not become a big issue.

The next issue I will look at is the whole question of the taking or culling of protected animals. It is an issue that has had special focus over the past couple of days in relation to koalas on Kangaroo Island. As I said during Question Time today, it has been suggested to me that some commercial interests may have driven this issue a little faster than it should have gone over the past couple of days because they have an interest in what happens with this legislation.

The Hon. Diana Laidlaw: Who are you accusing?

The Hon. M.J. ELLIOTT: I have not named the people involved and, even with the privilege of Parliament, I will not do it. If I did do it, I would be abused. I am just saying that that appears to be what is happening. People might note that, in the debate about the koalas, I have said that it may be necessary for us to cull them. However, when we debate this legislation, members will find that it places great restrictions on culling. I had a discussion with the Minister earlier today, and he expressed some frustration. He said, 'I met with some of the conservation groups, and they are all against the culling clauses of the Bill, yet now they are calling for the culling of koalas.' He could not work it out.

The Minister needs to understand the philosophical underpinning of all this. The argument starts this way: the reason you would want to cull is the overpopulation of some species. Why has that overpopulation occurred? It is because we have upset the balance in some way. In the case of koalas on Kangaroo Island, we put them there to start with. It was done for all the best reasons. The koalas were considered to be endangered on the mainland, and it was thought that they would be safe there. That has certainly turned out to be the case so far, but it was the intervention of people that caused that change in population.

The increase in the number of kangaroos is related also to people. The extra watering points placed on farms has enabled certain species of the kangaroo population to be at higher levels than would have been the case naturally. Some kangaroo species have been in significant decline, but several species, particularly the red, the grey, and possibly the euros, have increased due to human intervention. Whether a species has gone into decline or its numbers have increased massively, it is because we have changed the environment in some way.

The concern of the conservation movement generally is that culling can be a very easy way of abrogating our responsibility. It may turn out that, with some species, there is not much we can do to stop the population from growing and becoming a problem on a regular basis, but I do not think that will relate to many species. Our goal should be as much as possible to try to find ways to make sure the population does not get out of control in the first place. I think the conservation movement will say, 'We can understand that there are some circumstances where a cull may be necessary, but we do not want the fact that culling is being accepted in these cases to make it appear that culling in general is an acceptable practice and that we should not be looking for other ways to stop the problem from occurring in the first place.'

The Hon. J.C. Irwin: What is your interpretation of the word 'cull'?

The Hon. M.J. ELLIOTT: In this case I am talking about shooting.

The Hon. J.C. Irwin: In other words, you are not talking about transferring but eliminating?

The Hon. M.J. ELLIOTT: I think you would argue that even transferring is something that has limited capacity. The Australian Koala Foundation and a number of other leading experts are now saying that transferring the koalas will not help them. It will certainly reduce the population on Kangaroo Island. My advice is that almost all of them will die for a range of reasons, so it will still end up being a cull, just as surely as if we shot them.

The Australian Koala Foundation said that it could not think of any place that could take any significant number of koalas at all. If you put them where other koalas exist, you will do one of two things. First, you will exacerbate the population there; you will make it artificially high. If koalas are already there, they should be at a stable level. You will exacerbate population problems for them. Secondly, by transferring them you will expose the Kangaroo Island koalas to other koalas and their diseases. The Kangaroo Island koalas have no diseases at present, which is one of the reasons why their population is so high.

People ask, 'What about selling them overseas?' You might be able to do that in the short term, if you accepted that proposition—which I do not—but in the longer term the market will not be able to absorb them. If species are becoming a problem, we should look for a longer term solution rather than regular culling. That would probably be less expensive in the long run, as well. As I said, the conservation movement's position superficially looked like a contradiction. It is not. It is not against culling, but it is very wary of it and sees it as a last resort. It does not want the legislation to end up in such a way that culling becomes a first resort. It does not want the attitude to be, 'As soon as there is a problem, you cull, and you do not do anything else until next time the population rises and you go and cull again.' In some cases, this could be a yearly exercise, and in other cases perhaps slightly less frequently. In relation to Kangaroo Island, if we do nothing else, it would probably be a once every 10 years operation, and that is not acceptable.

There is also the question of the taking, sale and export and import of protected animals. At this stage, the legislation even allows that to happen inside national parks as well as out. I certainly do not want to see harvesting within national parks. If you run your national parks properly, the populations should be relatively stable and there should not be a surplus. I might add that, if they are being harvested for sale,

for export, they will take not the weak or the old but the best specimens. They will take them not because there is a surplus of animals but because, they will argue, the population can bear it. We will have the profit motive being put up against conservation values. My argument is that you set about managing your national parks in the best interests of the animals. There should not be a surplus, and there certainly should not be any question that any form of profit motive is providing a lever to cause park management to change in any way. There is no doubt that the profit motive does interfere with the operation of parks.

The Hon. T.G. Roberts: What if they come on to agricultural land?

The Hon. M.J. ELLIOTT: I will get to that. I was in the United States just after they had the fires in Yellowstone National Park. About seven or eight years ago, there was a large number of big fires in the United States and in its parks. One reason for these big fires was that they put out fires so often in the parks that eventually there was a build up of fuel. We have the same problems in some parts of Australia, too. When they did eventually get a fire, it was an absolute beauty. Yellowstone Park started burning, and the park rangers welcomed the fire. The fire was well overdue, and the park needed that fire to go through.

The concessionaires, the people who made a profit out of the park, politically became active, demanding that the fires be put out, because nobody would want to visit a park that had been burnt. They were not interested in what was good for the park but what was good for them. That is an example of where the profit motive gets in the way of the conservation motive. That is just not acceptable, and we must do as much as we can in relation to our national parks to not allow the profit motive to get a place that it should not have. That is not to say that there may not be some commercial operations, but we have to be very careful about which ones we allow and under what circumstances.

As far as the harvesting of native species is concerned, there is no case for allowing it, to begin with, so why would we be silly enough even to entertain it? I also argue in relation to harvesting that, if there is sufficient demand for these species, we should look at farming them. I support the farming of native plants and animals with some provisos, to which I will refer. I think farming is far preferable to harvesting. We are going to have arguments about whether or not a particular population is too high or capable of sustaining the level of harvesting that is occurring.

Native foods are becoming very popular. I must say that I enjoy them: I really enjoy a piece of kangaroo, medium rare with muntries sauce. Unfortunately, most muntries are not being grown commercially. I have no problem with kangaroos, because I believe the kangaroo cull is being carried out efficiently, and that is okay because we are talking about only three species of kangaroos. If we allow a broad brush approach so that any native animal or plant can be harvested, there is no way known that we can monitor them in the way in which the kangaroo cull is being monitored. At the end of the day, if I want to eat quandongs I believe they really should come from orchards. It is okay for people who live at Kimba who have a few trees on their farms, but I do not want the wild stock to be feeding all of Adelaide—that is just not on. If there is going to be significant usage of the native species, we should encourage people to grow muntries. I have a bush in my backyard. It flowered, but it would not set fruit this year. I should be growing quandongs. Again, my quandong tree flowered but did not set fruit—I can but hope for next year. We should encourage the commercial growing of these things and not the commercial harvesting of them.

The Hon. T.G. Roberts: You need some wild bees.

The Hon. M.J. ELLIOTT: They do get wild sometimes, but the wasps are a real worry. I have grave reservations about harvesting. As I said, I make an exception in relation to kangaroos—I think that is necessary. There are many conservationists who believe that in the current circumstances it is necessary, but I see it as an exception rather than the rule. We should not look at commercially harvesting large numbers of species from the wild, because there are many species that will not be able to sustain that and we will not be able to monitor them. It is a significant effort just to monitor the cull of the kangaroos without trying to do it with every individual species. In Europe, there was a growth industry of wild fungi. Apparently, some fungi are disappearing from European forests because they are being overpicked. The same industry has been started in Australia: a couple of companies are now specialising in wild fungi. If there is a significant demand, we will really upset the wild population.

The Hon. T.G. Roberts interjecting:

The Hon. M.J. ELLIOTT: I don't know about truffles, but a lot of other things. I will support the farming of native species with protections. I will support some culling, but again I will move amendments to provide some protections. I will not support harvesting. The Minister already has the ability to allow some limited harvesting, as we have seen with kangaroos, but beyond that I will not encourage it because it is not in the long-term best interests of many species that people are likely to want to harvest.

I want to make a couple of quick comments about farming in terms of the sorts of protections that I entertain. Members may recall that when we debated emu farming, I supported the farming of emus in this place and the amendments which allowed it to occur, but I argued that we must recognise that, if we are farming a wild species, one that has not been through thousands of years of domestication, for reasons of animal welfare, to begin with, we will need to put some constraints on the way they are managed. As long as those management plans were correct I was prepared to support emu farming. I have had a report in recent times that some emu farmers have taken to cutting some of the toes off emus, for some management reason. It is not an acceptable practice, but the codes of management are silent on it at this stage and I would hope that the codes of management would be changed.

One of the amendments that I am proposing is that codes of management will be regularly reviewed. I have amendments that, for a species to be trial farmed and ultimately to be farmed, it must be done by regulation. In each case regulations must be promulgated on codes of management of those species and those codes of management need to be regularly reviewed. It should be done on a species by species basis and I believe that by doing it this way we will be ensuring that we have proper management of those various species in relation to animal welfare issues and also in relation to a need to keep wild stock and farm stock separate.

If we start farming native species, as we do with all plants and animals, we will want to improve them genetically—we will want something that grows bigger and grows faster. If it is a fruit, it will be a larger fruit with a smaller stone and it will taste better. That is fine, but there will be a need to—

An honourable member interjecting:

The Hon. M.J. ELLIOTT: If you are growing significant quantities of any species, particularly if the numbers you are

growing are much greater than the wild stock adjacent, then you need to keep them separate. You do not want the genetically altered domestic stocks to be interbreeding with the wild stocks. There are cases overseas where the wild species has been lost simply because it has been swamped by the genes of the domesticated varieties. I believe that the codes of management need to take that into account as well as welfare issues. The amendments are far more detailed, and I will have an opportunity to address them in the Committee stages. The Democrats do support the Bill and we support a number of the things that the Minister is trying to achieve. We are opposing a few of them but, most importantly, we are seeking to ensure that there are proper safeguards in relation to a number of the changes that the Minister is seeking to achieve.

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

ADELAIDE FESTIVAL

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

That this Council recognise the brilliant success—artistically, culturally and economically—of both the 1996 Telstra Adelaide Festival and the Festival Fringe and congratulate all associated with both events for their outstanding efforts in reaffirming Adelaide as the premier festival State.

It was a matter of some importance to me that when the parliamentary program for this period was being determined last year that this Government ensured that the Parliament was not sitting over the two weeks of the festival period, 1 to 17 March, because the Festival is one of three of the best international festivals in terms of the arts in the world, together with Edinburgh and Avignon in France. I suspect that many people have reassessed the evaluation of Adelaide in terms of the international arts festival scene after the last two weeks.

Certainly, I am aware that all associated with *Operation Orfeo* at the Copenhagen-based Hotel Proforma founded in 1985 were in raptures about Adelaide as a base for the Festival, the program in general and the reception that they had been given, the courtesies and the weather. They proclaimed loudly to all who wished to hear at the Directors' Club and others that this was the best Festival and the best place for such a Festival.

From personal experience, I too have been raving about the quality of their work in terms of *Operation Orfeo*: the light and sound was quite stunning. It was one of so many stunning performances. This matter was also remarked on by Robyn Archer, who will take over as the next Festival Director, in congratulating Barrie Kosky, the current director; she said that at so many of the performances—I think that in 10 days she had been to seven performances—people had leapt up in their seats to applaud what they had seen. Robyn remarked that she too leapt but was also full of praise for the audiences themselves and the fact that Adelaide had been so bold and courageous in some senses, so willing to accept the new and recognise the best. She said that it provided a fantastic foundation on which she could build the next Festival as Artistic Director for 1998 and the year 2000.

I have no doubt that some of the enthusiasm and knowledge within the audience was due to the fact that there was quite a different audience mix attracted to many of the productions this time than has been the experience at some earlier Festivals. This is fantastic for the arts in general in South Australia. They all need to look at developing a new audience base and, without question, this is one of the legacies of this Festival—a new and younger audience base for the arts that other companies in this State, which will be based here and which will continue to do wonderful work, will find will work to their advantage.

An important feature of the Festival for me was the strength of South Australian work compared with that from overseas. The Centre for Performing Arts, as part of the Festival program with *Excavation*, was a remarkably strong, innovative production, as was *The Ethereal Eye* with Leigh Warren, *Rasa* and Meryl Tankard, and *Solstice* with the State Theatre Company. I saw all of them and they all won wonderful critiques. I was proud to be South Australian and involved in the arts when seeing those productions.

Equally I was pleased to take the new Federal Minister for the Arts, Senator Alston, to see *Solstice*—so I saw it twice. He could not get over the fact that Matt Rubenstein, the author of this play and verse, was only 19 years old. He was particularly impressed with the quality of our young performers and the fact that the State Theatre Company was using multi-media.

South Australian companies did us proud and it is excellent that Barrie included such a strong element of South Australian work in this Festival and did not present work from just overseas for us to enjoy. Many people now see what we can provide here. Equally with Writers' Week, for the first time for years with Greg Mackie and his committee, 11 South Australian writers were featured, and this was wonderful for them and certainly fantastic for the State. In terms of Writers' Week, a number of awards were presented. I was particularly pleased to be associated with the new Premier's award presented to the best of the four earlier awards given on a national basis for various categories in writing.

There were other new things in terms of this Festival, such as the alliance with the taxis. I worked very hard to achieve this initiative, because the taxi industry in this State has always been talked about as having the potential to help with tourism. Rarely has that potential been used to the full, and certainly not for the arts. One of the great things about this Festival was to see that even taxi drivers were happy and were flying the flag, literally, for the Festival and for the arts. They were presenting—

The Hon. Anne Levy: They were very helpful.

The Hon. DIANA LAIDLAW: They were tremendously helpful, as the Hon. Ms Levy notes. They got right behind it and helped many people who were new to this town, and many people who came even from country South Australia. I know of one couple who, when presented with their seventh cabbies guide, decided that before they got into a taxi they would hold up the current one, they were being given out so enthusiastically. In fact, the estimate from the South Australian Taxi Association is 10 000 a day. There was an enormously high profile for the Festival and the Fringe in Adelaide in the national press and magazines, television and radio. The Festival alone estimates $500 000 to $1 million in free publicity. There was even a front page review in the Hong Kong and Shanghai paper.

The Government found $1 million more to ensure that there was more exclusive content in this Festival, but the support from general sponsorships was also fantastic. I applaud Mark Colley and his team, the board as a whole. Telstra was a wonderful naming rights sponsor. It was a bit of a risk going with naming rights for a Festival, because

South Australians hold their Festival to be very precious, as evidenced by the fact that we debated so much about Barrie's appointment in the first place: now so many people are asking me whether Robyn Archer will be able to match or cope with or deliver the goods in the next Festival. I cannot deny that I have the fullest praise for Robyn and her ability. Adelaide people are very passionate about the Artistic Director of the Festival. It was, therefore, very important if there were to be a naming rights sponsor that great care was taken. It was a risk and it paid off, and I thank Telstra very much indeed.

Some controversy was beaten up by the *Advertiser* in terms of Annie Sprinkle. But Telstra kept its nerve, did not get fussed and was a wonderful sponsor in that sense. It did not make any artistic demands upon the Festival. While it was aware that that was a condition of its sponsorship, it certainly honoured all those issues. It is important to recognise that about 65 per cent of the sponsorship for the 1988 Festival and the year 2000 Festival has already been committed. So, not only has the team worked hard in terms of finding 200 per cent more sponsorship for this Festival than for the previous one but also it has found 65 per cent in terms of commitment already for the next two Festivals.

Red Square, free concerts in the park, art installations, Writers' Week, night concerts—wherever one looked there were fantastic free activities as well as paid activities. As to the Fringe, it was just wonderful to see how well it excelled in the East End with $200 000 from the Government to help the Fringe's relocation and fitting out costs for the Star Club.

Barbara Allen and the board led by Glen Cooper have just been marvellous. It was not easy for Barbara to take over a new position seven months out from the Festival. At that stage the Fringe did not have a new base in the East End; it still had a program to fill and sponsorships to secure, and Barbara has worked overtime. I thank her very much, first, for coming to South Australia, and I congratulate the Fringe board on her appointment. She is now working on a plan to see whether it is possible to have an annual Fringe Festival either of its present nature or in a different form. Some people have argued that it could be tighter in its content and number of performers, but Barbara Allen and the board will be working on those matters.

I will make a final comment because the Hon. Anne Levy would like to say a few words and I would certainly like to provide an opportunity for her to do so. I do not want to finish on a bitter note, but it was with some disappointment that I noticed Christopher Pearson's assessment of the Festival in the *Sydney Morning Herald*. It seemed rather mean spirited and almost jealous of Barrie Kosky's success, as if looking for fault when everyone in Adelaide was enjoying themselves and looking at the good things. Indeed, one did not have to look far to find them.

I congratulate the Festival and the Fringe, the board, the artistic direction and directors, Barrie Kosky and all their volunteer and paid staff.

The Hon. ANNE LEVY: I heartily endorse the remarks made by the Minister. There is no doubt that the recently terminated Festival was a huge success artistically, culturally and, we hope, economically. I would like to add my voice in congratulating Barrie Kosky as Director of the Festival and Barbara Allen as Director of the Fringe. Their combined efforts certainly made a wonderful two and three weeks respectively for Adelaide which were enjoyed by an enormous number of people.

The Minister mentioned that Robyn Archer said she had been to seven shows where people leapt to their feet spontaneously as the curtain came down. That happened for me at six shows to which I went, but of course the Festival is so huge that one cannot attend everything. I certainly did my best.

The Hon. Diana Laidlaw: You were wonderful.

The Hon. ANNE LEVY: I calculated yesterday that I had booked for 27 different performances, although in fact I attended only 26. I went to nine different openings or functions associated with the Festival, visited eight galleries plus the 15 homes that were part of the compost art show in Artists' Week. Unfortunately, I was only able to visit Red Square twice, and my Fringe attendances were nowhere near as extensive as I would have wished.

However, there is a limit to what one can do, both in terms of time and cost. There has been a great deal of talk about the worth of this Festival, and I am sure the analysis of it will continue for some time. I share the Minister's dismay at the sour comments from Christopher Pearson—the only sour note on the Festival as a whole throughout Australia. Certainly, all other radio, television and newspaper commentaries were most encouraging to read—a general recognition throughout Australia that the Adelaide Festival of Arts is the premier festival in Australia and certainly one of the of the premier festivals in the world. That is not to say that everyone liked every single performance they attended, but that is not necessarily the object of a festival.

I would like to add Red Shed to those mentioned by the Minister as being South Australian companies that contributed to the Festival at an extremely high standard. Their work, *The Eye of Another*, was on a par with that of many of the international companies that came. Also, the Adelaide Symphony Orchestra contributed magnificently both to the Opera and to other performances, playing difficult and rarely heard work in the Festival Theatre and, I think, the Town Hall. Certainly, the South Australian contribution to the Festival bore very favourable comparison with that from overseas.

We have been told that 20 per cent of the tickets were sold to people from outside South Australia—people coming from interstate and overseas—which doubtless stresses the economic value of the Festival to the State, that box office was very much greater than in previous Festivals and that the number of performances booked out was very much higher. At this stage we do not have the financial settlement of the Festival. That will take some time to work out.

Some time ago the Minister informed the Council that, with the new Festival structure, the financial reports from the Festival will be audited by the Auditor-General before being presented to her. I hope she will agree that, when she is presented with these, they can be tabled in the Council so that all members of Parliament will be able to see how the Festival fares financially. That is an important matter of the accountability of the Festival. In saying this I am in no way being critical, but I feel that it is desirable that they should be tabled in Parliament.

The Festival had a much greater emphasis on dance and physical theatre than did previous Festivals. Whether this was what attracted so many young people to the performances, I do not know. Certainly it was noticeable that many audiences had a very large component of young people, without the older people being absent. I do not think we have ever had a Festival with such an emphasis on contemporary dance and physical theatre. I certainly enjoyed this aspect very much,

as obviously did many other people. I venture to suggest that this came from the interest of Barrie Kosky in physical theatre and physical opera with which he has been associated in the past. I am brave enough to forecast that the next Festival, under Robyn Archer, may have a somewhat greater emphasis on performance theatre, which constitutes a large part of her background in her artistic life.

The Minister mentioned the controversy over Annie Sprinkle. The newspapers would never be happy if there were not some sort controversy. In the last Festival there was the controversy over Penny Arcade, and before that over *Ila Topie*, the French company. I believe these are insignificant issues and do not deny that such performances can have an extremely high artistic merit, even though the press likes the slight titillation it can dredge out of reporting such matters. I did not see Annie Sprinkle, although I did see Penny Arcade in the last Festival and *Ila Topie* in the Festival before that.

In discussing the critical acclaim of the Festival, it is perhaps worth noting that a very serious discussion of the Adelaide Festival on the Radio National *Arts National* program, involving both the Festival and Fringe in depth, suggested that the emphasis on physicality and ecstasy in the Festival was perhaps making the line between Festival and Fringe harder to draw, that the Fringe might need to have a good look at just what its function was if it started overlapping with the Festival in function and role, and that such a blurring would not be of advantage to either Festival or Fringe.

I am very interested to know that the Fringe board and Director are considering future directions for the Fringe and just how it should be organised. Perhaps they too heard the *Arts National* program—

The Hon. Diana Laidlaw interjecting:

The Hon. ANNE LEVY: It certainly fits well with the comments that were made at that time. I do not want to take up the time of the Council, but I certainly endorse everything the Minister said. The Festival has been a wonderful occasion. I am delighted that the Parliament did not sit during this Festival, as it used not to do during the time I was Minister, so that members of Parliament were able to take advantage of the Festival. Indeed, I met many members at numerous performances I attended and they seemed to be enjoying it just as much as I did.

The Festival is a wonderful occasion for Adelaide. It blows all the provincial cobwebs away. We feel invigorated, culturally refreshed and excited by the Festival, and it is a pity that we have to wait two years before it happens again. I am sure that I will not be the only person eagerly anticipating the next Festival and another fortnight of absolute magic.

Motion carried.

ADJOURNMENT

At 6.16 p.m. the Council adjourned until Tuesday 26 March at 2.15 p.m.