LEGISLATIVE COUNCIL

Thursday 30 May 1996

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

PSYCHIATRIC PATIENTS

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to table a ministerial statement issued today by the Minister for Health in the other place relating to claims about psychiatric patients being transferred to a city hotel.

Leave granted.

QUESTION TIME

EDS CONTRACT

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 EDS contract and schools.

Leave granted.

The Hon. CAROLYN PICKLES: In the 2 May edition of the Department for Education and Children's Services publication, *DECS-PRESS*, there is an article concerning the transfer of computing equipment from schools to EDS. The article states:

> On 18 April Electronic Data Systems Corporation became owners of all information technology infrastructure in Government agencies and schools.

This includes all file servers, operating and utilities software, hubs and modems in DECS schools and units—in other words, the EDSAS systems. The article states that in the next few weeks schools will receive EDS stickers to place on the relevant equipment. My questions to the Minister are:

1. What was the original purchase price of IT equipment in schools and education units to be transferred to EDS?

2. What price will EDS pay for this equipment, and how is this calculated?

3. Was all equipment to be transferred originally funded by DECS, or are funds raised by schools involved?

4. Is the money being paid by EDS to be returned to schools, or will it be returned to Treasury?

The Hon. R.I. LUCAS: I shall have to take those questions on notice and bring back a reply. Some computer equipment, such as file servers which might have been purchased through school funds as opposed to Government or Education Department provided funds, has been an issue in the discussions between the Government, represented by the Department for Information Industries, and EDS, and specific provision has been made for those circumstances. As to the precise details of the amounts of money that were paid and the processes to be followed, I shall be happy to take the questions on notice and bring back a reply.

PARLIAMENT, CONTEMPT

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking you, Mr President, a question about a serious matter of contempt of this Parliament.

Leave granted.

The Hon. R.R. ROBERTS: Mr President, I do not lightly raise this matter with you. It gives me no pleasure to bring to your attention what I believe to be a serious contempt of this august Legislative Council. In making my explanation, I inform the Council that I will refer to the twenty-first edition of Erskine May (pages 126 and 128). As members are aware, our rights and privileges flow from those rights and privileges deemed to be held, enjoyed and exercised by the House of Commons on 24 October 1856. Erskine May (page 126) quotes a resolution of the House of Commons of 12 April 1733 as follows:

> . . . That the assaulting, insulting or menacing of any member of this House, in his coming to or going from the House, or upon the account of his behaviour in Parliament, is a high infringement of the privileges of this House, a most outrageous and dangerous violation of the rights of Parliament and a high crime and misdemeanour.

Erskine May continues:

> Members and others have been punished for such molestation occurring within the precincts of the House, whether by assault or insulting and abusive language, or outside the precincts. . .

At page 128 Erskine May further states:

> To attempt to intimidate a member in his parliamentary conduct by threats is also a contempt. . .

Mr President, I draw to your attention the serious matter of a member of this Council being threatened with violence by a member of another place, as reported in the *Sunday Mail* of 28 April this year. The article stated:

> A Liberal MP has lodged an official complaint to the Premier, Mr Brown, alleging a parliamentary colleague threatened to break his legs.

One may question where that has gone. The article continues as follows:

> The member of the Legislative Council also has written to the Government Leader in the Upper House, Mr Lucas, following the threat. The MLC refused to comment when contacted by the *Sunday Mail*.

Mr President, I draw your attention to that line, because obviously the *Sunday Mail* knows the name of the person involved. The articles states that the threatening and intimidating behaviour occurred outside this Chamber in one of the corridors of Parliament House. As you, Sir, are the person, duly elected by this place, charged with the protection of our rights and privileges, I bring this matter to your attention.

Members opposite who luxuriate in this place and who enjoy its privileges, such as the Hon. Mr Davis, think this is funny. It is a serious matter. I do not do this frivolously. This is not a spat to catch a mackerel nor even a fly to catch a bass. Perhaps the honourable member who was threatened is too frightened and cowed to speak out. No-one here would wish him any harm or wish to see him limping around this place, as that would be a pathetic and pitiable sight.

It appears from the newspaper article that the member threatened has not brought this threat to your attention, Sir. The person may be a relatively new member or, indeed, may not have been aware that it is indeed you, Sir, who girds your loins to protect all of us from intimidation, threats of violence or molestation from colleagues, Opposition members or factional enemies—either within or outside the precincts of this Council. Mr President, as the protector of our rights and privileges I therefore ask:

1. Will you immediately investigate and report back to this Council next week on the alleged threats made to a member of this place, as reported in the *Sunday Mail* on 28 April 1996?

2. Will you ensure that the person, if identified, who made these threats is dealt with in an appropriate manner, and will you, Sir, report back to this Council as soon as possible on the actions you have taken to deal with this contempt?

Finally, I simply state my willingness as a member of Her Majesty's loyal Opposition to move a motion in this place if you desire—and I will be guided by your wise counsel—to have a full and frank debate in this Chamber about this matter so that the Council may determine appropriate action, whether it be bringing the accused before the Bar or simply referring the matter to the Privileges Committee—again, Mr President, I will be guided by you—to ensure that, in future, no member of this august Legislative Council is threatened with violence and that no contempt of this Council or the provisions of the common law of South Australia is allowed to go unpunished. I thank you for your support, Mr President.

The PRESIDENT: The answer to the question is 'Yes.' At this stage I have received no complaint from any member of this Chamber. Perhaps the honourable member would like to see me in my chamber later this afternoon.

The Hon. R.R. ROBERTS: I ask a supplementary question.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS: By way of explanation, Sir, do you wish to see me or the honourable member who is alleged to have been threatened?

The PRESIDENT: The honourable member who asked the question.

The Hon. R.R. ROBERTS: I thank you for your cooperation and indulgence, Mr President.

TRAMS

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

Leave granted.

The Hon. T.G. CAMERON: An article in today's *Advertiser* begins with the following statement:

> Two learner drivers had a tough start to their training course yesterday when their trams' brakes failed.

Further, I quote from a press release issued earlier this year, which states:

> Maintenance and purchase of spare parts within TransAdelaide are being run down to such an extent that our trams are becoming a danger to the public. . . Trams have effectively lost 25 per cent of their braking capacity following a decision to downgrade previously high standards of service. For instance, doubled trams, which are supposed to run with eight motors, are being allowed to run with six, which cuts their braking power by 25 per cent in an emergency. Previously, if a doubled tram lost two motors during service, it was allowed to limp home on six motors. Now, trams are allowed to leave the depot with only six working motors.

It is obvious to everyone concerned that morale amongst TransAdelaide staff is now at an all-time low. My questions are as follows:

1. Will the Minister assure the public that, despite the cutbacks in maintenance and the poor morale within the public transport system, it is safe to ride on Adelaide's trams?

2. Will the Minister conduct an investigation into the cause of the latest accident to ensure that the braking systems on our trams are adequate and, in fact, safe?

The Hon. DIANA LAIDLAW: The trams are safe. I think it is interesting but also irresponsible that the honourable member has repeated allegations to which he knows I have replied and put on the record the facts which are opposite to the statement which he made earlier and which he has now repeated. Perhaps that is the standard that we have come to expect in terms of scaring the general public at a time when enormous efforts are being made by TransAdelaide staff generally (on all modes) to be competitive, improve their performance and attract more people to public transport. The honourable member may be aware—and if he is not, he should be interested—that at the end of the March quarter trams of all modes recorded a healthy increase in patronage. I hope that his statements today do not see that trend reversed by scaring people away unnecessarily or by scaremongering without any foundation as he has just done.

I can say, without hesitation, from advice that I have received in the past from TransAdelaide—and it has been confirmed again today—that the trams are safe. It is a fact that they are old. They are about 80 years old. A major effort is being made to refurbish these trams. It is a costly exercise that has been undertaken. It is being reviewed at the moment. There is certainly a strong sentiment by many that we should look at replacing the current fleet while keeping a number of trams for tourism sentimental purposes.

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: The honourable member interjects and talks about the brakes. I have indicated to him that he has been peddling false information in the past, and he has peddled it again without seeking to address the issues that I put on the record. He has deliberately ignored the facts. Today, I have received advice from operator No. 8 who is the tram instructor who assisted two trainee drivers yesterday. He advises as follows:

> This report is provided in response to the media attention given to an incident on Wednesday 29 May 1996. As you are aware, on that date I was in charge of two trainees undergoing driver training. The following details in sequential order the activities that occurred:
>
> 1. Tram 371 whilst proceeding to the city at approximately 11.5 a.m. developed a compressor failure near the Marion Road intersection.
>
> 2. I attempted to rectify the problem with tram 371. This was not able to be achieved.
>
> 3. It was then decided by myself to couple tram 371 to the next normal service tram. The service tram would then push the disabled tram into Victoria Square. This a normal operating practice in these types of situations.
>
> 4. At approximately 11.10 a.m. the service tram coupled to tram 371 and commenced pushing it into Victoria Square.
>
> 5. Once mobile, Operations Control was notified that tram 371 was mobile and then I requested an escort from South Terrace to Victoria Square. The reason that an escort was required is because tram 371 at this stage had no braking ability and the braking for both trams was being executed by the service tram.
>
> Communication to the driver on the rear tram is provided by staff on the front tram via oral instructions. This form of communication is sufficient on the dedicated mainline but, however, it is not sufficient in King William Street where there is road traffic to contend with.
>
> 6. We received a police escort at South Terrace at approximately 11.25 a.m. and we proceeded to Victoria Square without incident.
>
> 7. On arriving at Victoria Square at approximately 11.35 a.m., we uncoupled tram 371 from the service tram. There were already media people located at Victoria Square on our arrival.

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: What, the one you said had problems but did not even exist in the fleet! It was a bit embarrassing, was it not? You get very excited about a tram. It is worth putting on the record again. The Hon. Mr Cameron got very excited one Sunday, accusing TransAdelaide, tram operators and me of all sort of trouble with a tram when there was no such tram in the fleet at all. I would have thought he

would be a little more quiet on this front. The document continues:

8. When the trams were uncoupled the disabled tram began to roll. This was due to the maxi-brake (emergency brake) not been fully engaged. I thought it had been applied correctly but obviously this was not the case. The tram rolled approximately half a metre. When this occurred staff attempted to stop the tram rolling further until the maxi-brakes could be applied further. At this stage a photographer took a photograph. The tram was stopped and did not roll any further. No damage or incident occurred as a result of the tram rolling.

It goes on to say:

9. I was then approached by a media person and asked what had happened. I explained that the tram had lost air pressure due to a compressor failure and that normal operating procedures were followed.

I did stress to this person that all operating staff are trained in dealing with these types of situations and that all normal procedures were followed.

10. The problem was then rectified by the mechanical fitters and the tram returned to the Glengowrie depot arriving at approximately 12.20 without further incident.

I wish to reinforce that during this process all normal safe work and practices were adhered to and at no time was any person placed at risk.

CHILD ABUSE

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Attorney-General a question about child sexual abuse.

Leave granted.

The Hon. SANDRA KANCK: About 1½ hours ago I was faxed from the Women's Electoral Lobby a copy of a letter written to it by a mother in sheer desperation regarding the sexual abuse of her children and the lack of an expected trial of the offender. I will read parts of the 2½ page letter selectively and no names will be given. The letter states:

I am writing to you to express my absolute dismay at the laws that allow men to sexually abuse children under seven and escape any sort of legal proceedings. In November 1995 I discovered that my two sons [and I will call them 'A six years' and 'B four years'] had been sexually abused by their father whilst on access visits.

They discovered there had been some sexual abuse and she goes on:

My children very clearly disclosed that their father had been, among other things, subjecting them to oral sex. These disclosures were made to CAMHS, both verbally and with very graphic drawings and writing. As a result, the children were interviewed by the Children's Protection Service at the Women's and Children's Hospital.

Once again, they clearly told what had happened to them, although A spoke more about what he had witnessed happen to B and less about what happened to him, as he told them that he had been threatened by his father that, if he told them, he would kill me and his puppy (which lived with his father).

The PRESIDENT: Can the honourable member inform me whether this involves a matter before the court?

The Hon. SANDRA KANCK: No, it does not. The letter continues:

Again, A drew very graphic pictures in these interviews of what he had witnessed. As a result of these interviews their father was arrested and charged with sexual assault and a bail condition was set that he was not to approach the children at all. . . However, at a meeting with the police prosecutor in February I was told that they could not take the matter to a criminal trial purely on the basis that the children were under seven years of age and too young to take an oath in the stand to give evidence. They quoted one section (12c) from a huge legal book and told me that they were sorry, but the children were too young and that even if they were old enough to take the oath they would be cross-examined so severely that it would be very distressing for them.

I have tried ever since to accept this decision but I am still unable to accept that the legal system can turn a blind eye and let these people get away with sexually abusing young children . . . Everywhere I go I see posters and advertisements encouraging children that 'It's okay to tell' if they are being abused and I cannot help getting angry and cynical about these programs. Why is it that when children do find the courage to 'tell', the legal system does not protect them? Why should any young children be forced to take an oath and give evidence in court? I would have thought that video evidence taken when the children are in a safe environment and conducted by the top professionals in our State would be admissible in court, together with the graphic drawings done in these video-taped sessions, and should be more than enough evidence to warrant a criminal trial to gain a conviction and stop these things from happening again. . .

My boys have suffered from nightmares, fears of their mother being killed, soiling, wetting, anger, mistrust, withdrawal, isolation from their peers, anger at me for making them go on access visits and the uncertainty over whether their father has killed their puppy because they told. Thankfully, they are unaware that the legal system has failed them (that is, until they are old enough to find out for themselves). . . I also want to let you know of a great need for counselling services for the parents of sexually abused children. There is a huge need for immediate counselling for parents upon the disclosure of this crime. I attempted to get counselling through the Victims of Crime Service and was told that it would be six weeks before anyone could even find the time to telephone me to make an appointment.

Ten weeks after my initial contact with them I finally received a phone call from them but, as I told them, it was too late. I needed the counselling at the time I rang them in a desperate state not knowing how to handle what had been done to my boys, not 10 weeks later. I was told by them that they are understaffed and underfunded. Surely the Government can find the funds to assist parents in this distressing situation who have nowhere else to turn.

My questions to the Attorney-General are:

1. Does this decision by the police prosecution effectively say that sexual abusers can continue to abuse children and get away with it, just as long as the children are under seven years of age?

2. Does the Attorney-General consider there is some validity in what this mother has intimated, in that the health professionals who have been involved in investigating the abuse could be cross-examined on behalf of the child or children?

3. Will the Attorney-General set up a working party to investigate ways in which justice can be achieved for young children who have been sexually abused?

4. What financial assistance will the Government give to victims of crime to allow people who require counselling to have that counselling at the time of greatest need?

The Hon. K.T. GRIFFIN: It is very easy to bring particular instances into the Chamber and then expect me to answer them without having an opportunity to investigate whether the allegations are in fact correct, or there is some other basis for the statements being made. If the honourable member wishes to make information available to me that will enable me to identify the person, I am happy to have the matter investigated. There have been some quite significant changes to the law over the past two or three years in relation to the proof of child sexual abuse. My predecessor, the Hon. Mr Sumner, introduced legislation that dealt with the very matter to which the honourable member referred, that is, the question of the point at which a young person may give evidence.

That law is quite clear that there is no prohibition against a young person's giving evidence providing they can understand, and the judge is satisfied they can understand, the difference between telling and not telling the truth. I also introduced an amendment, I think, in 1994 that deals with persistent child abuse and allegations where it is difficult for

a young person to pinpoint each time and place of an incident that could not therefore be alleged in the information but, with persistent child sexual abuse, a more general approach would be permitted by the court in relation to an information.

The law goes a long way towards providing an opportunity for those who are the victims of a criminal offence to provide evidence in the prosecution process to enable charges to be pursued against an alleged offender. The proposition has been put to me on several occasions that it should be enough to have a videotape of a child being questioned by health or social welfare professionals, and that that ought to be evidence. The fact is that that is not adequate, and the basis of our legal system in our society is that the onus is on the prosecution to prove a case beyond reasonable doubt. That can be done by a number of means, but ultimately evidence must be produced in court.

Evidence taken by just one person questioning an alleged victim by videotape recording is not adequate to prove beyond reasonable doubt the offence that has occurred. The reason why our justice system requires the Crown to prove the case beyond reasonable doubt is for the very reason that an accused person is at risk of losing his or her liberty upon being convicted. Whilst the level of proof in relation to child sexual abuse cases is much lower than in other cases, all burden of proof cannot be removed from the prosecutor in these sorts of cases. The honourable member says that the police prosecutor made a decision. My understanding is that police prosecutors do not make decisions in relation to these matters: there is now a committal unit.

The first pilot project was established in January 1994 to involve the committal unit—officers of the DPP working with police at a very early stage to look at these sorts of cases and to make a decision about whether or not there is sufficient proof or evidence to allow the matter to go to court. I am surprised that there should be any suggestion that a police prosecutor made that decision. That is another reason why I would like to have information that would enable me to have the allegations that have been made to the honourable member in the correspondence properly investigated, and enable me to bring back a report. I certainly will not name the people involved as that would be improper, but I am happy to pursue it.

The Victims of Crime Service gets $355 000 from the Government and got a similar amount through my predecessor, the Hon. Mr Sumner. We are currently undertaking a review in conjunction with the counsel of the Victims of Crime Service about its administration and the focusing of its services. Ultimately, the decisions will be for the counsel of the Victims of Crime Service, although the Attorney-General and the Attorney-General's Department will be involved because we are seeking for the first time to put into the grant to the Victims of Crime Service mechanisms for evaluating the services which it provides and making it more accountable for the taxpayers' funds which it expends.

The issues are not easy. The sorts of concerns that the honourable member has raised are the concerns which prompted me last year to establish a small working group comprising a legal officer from my office, together with a person from the DPP, a person representing the Bar Association, the police, Health and Family and Community Services to try to address a protocol which would determine how allegations of child sexual abuse might be dealt with at an early stage because we were finding that a child might be interviewed half a dozen or even eight times in the process before the matter even got to the DPP, and we would find by the time it got there that the evidence was corrupted or tainted and therefore there was no prospect of the matter going to trial or any reasonable prospect of a conviction.

As a result of that I indicated last week or the week before publicly that in the current budget the Government has made available $300 000 for a 12 month pilot project to deal with the child assessment panel, involving the people to whom I referred, in assessing at a very early stage allegations of child sexual abuse and determining at that point whether it is something that will ultimately go to court. If it is, we then take appropriate steps to obtain evidence and investigate. If it is not one that will ever go to court, we will then divert the matter from the system in a way that provides counselling and support for the child, in particular, at a very early stage. That panel will be a group of people working together as a multi-disciplinary team.

This is the first time it has occurred in this State and it will have the function of assessing at an early stage allegations of child sexual abuse, determining the questioning and the examination of the child and then to determine what course of action should be followed. It is intended that it be located at Noarlunga and that there will be a facility to have it properly evaluated after the initial 12 month period.

So, the Government is not insensitive to the concerns which have been raised. We are endeavouring to deal with the issue, which is extremely complex. We are as supportive as we can be in dealing with the issues of child sexual abuse, as is witnessed by the indication of the multi-disciplinary panel to which I have just referred. If the honourable member wants to make available to me the letter with the information about who has made the allegation, I can check it through the system and find out exactly what are the facts with the DPP, if he was involved. If I cannot get that information I can make no further comments than I have made at the present time.

SELF DEFENCE

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Attorney-General a question about self defence.

Leave granted.

The Hon. L.H. DAVIS: Two weeks ago on 16 May Kingsley Foreman was acquitted of murder and manslaughter by a jury after shooting a young robber at a petrol station. The case was high profile and obviously controversial. Since that acquittal there has been a great deal of debate about self defence as this was a key factor in the case. Much of the debate has been generated by a particular member of the Opposition who has gone to enormous trouble to inform the community, via the media, about the current status of self defence. I have concerns about the information being provided and feel that South Australians should know exactly the true facts about this matter. My questions to the Attorney-General are:

1. Why has the Attorney-General decided to change the law of self defence following this particular case?

2. Is the Attorney-General planning to water down the existing law so that householders have fewer rights than they have at present; is that really true?

3. Will the Attorney-General advise the Council what he is proposing?

The Hon. G. WEATHERILL: I rise on a point of order, Mr President. It is my understanding that this is *sub judice* because charges are still pending in this particular case.

The Hon. K.T. GRIFFIN: Mr President, the questions are not *sub judice*. They have been out in the public arena for the last—

Members interjecting:

The Hon. K.T. GRIFFIN: The preamble talked about the Kingsley Foreman case; it is not before the court.

The Hon. ANNE LEVY: I rise on a point of order, Mr President. When a point of order is raised, is it not up to the President to determine the point of order, not the Attorney-General?

The PRESIDENT: The President needs to determine whether it will prejudice the case. I do not think it does. The question to the Attorney-General was about his actions, and I will allow him to answer it.

The Hon. T. CROTHERS: I rise on a further point of order, Mr President, and seek a ruling from you. The Attorney-General said that the matter was not *sub judice*. We heard that the not guilty decision was handed down two weeks ago. Will you explain whether there is still a chance for an appeal to be lodged in respect of that case, what length of time is allowed for such an appeal and, if an avenue of appeal is still open, does that continue to make the case *sub judice*? I seek your ruling on the matter, Mr President.

The PRESIDENT: I understand that no appeal as yet has been lodged. In that case, I rule that there cannot be any prejudice to the accused because, as I understand it, he was acquitted.

The Hon. T. CROTHERS: What is the statute of limitations on the time for lodging an appeal? If the statute of limitations is still open, does that make the case *sub judice*?

The PRESIDENT: That does not apply to the Parliament at this stage because there has been no appeal. My advice is that it does not apply to the Parliament, anyway.

The Hon. K.T. GRIFFIN: I do not need to talk about that particular case but, even if I did, it is not *sub judice*. The fact is that the jury acquitted and there is no appeal against a jury acquittal. The Hon. Mr Davis referred to the Foreman case, and he is entitled to do so. Mr Atkinson has been talking about it on radio for the last two weeks.

Members interjecting:

The Hon. K.T. GRIFFIN: It is not *sub judice*, anyway. The fact is that it is a question about self defence, and I have been talking—

Members interjecting:

The Hon. K.T. GRIFFIN: Mr Atkinson in another place has been talking about self defence, and two matters triggered that discussion, although I suppose there is a third in that I indicated that the Government was reviewing the operation of the law of self defence, but, more particularly, the drafting of it. Since last year a number of representations have been made to me about trying to make it simpler.

The former Chief Justice Len King made representations about the difficulty of explaining section 15 of the Criminal Law Consolidation Act to jurors, and other judges have made representations. The Law Society has made representations and the DPP has made a representation about the law relating to self defence. They all say that there are difficulties in explaining to a jury the provisions of the Act which were inserted in 1991. I have made the situation clear, notwithstanding the fact that Mr Atkinson is trying to beat up a bit of fear and concern, claiming that we intend to change the substantive law. He is saying, 'I would hate to go back to the pre-1991 position where you had a judgment about a reasonable person: how would a reasonable person react in circumstances which confronted a person who might subsequently have reacted?'

We raised the matter during the 1989 State election, and that was a trigger to review it. When we got to a deadlock conference—and there was a deadlock conference between both Houses in relation to this matter—I can remember the Hon. Mr Sumner and Mr Terry Groom, who was then on the outer from the Labor Party and trying to make a few waves for himself, and I and a few others talking about the issues.

Members interjecting:

The Hon. K.T. GRIFFIN: He wasn't at that stage. It does not matter; he was on the outer at some stage. He could never quite get there. There were discussions about how to frame a very difficult concept. We all agreed to a subjective test; that is, a person does not commit an offence by using force against another if that person genuinely believes that the force is necessary and reasonable to defend himself, herself or another or to prevent or terminate the unlawful imprisonment of himself, herself or another and does not commit an offence if that person, without intending to cause death or being reckless as to whether death is caused, uses force against another genuinely believing that the force is necessary and reasonable for particular purposes. That is a subjective test, and everybody agreed that that was an appropriate way to travel. In fact, since then in the United Kingdom the Court of Appeal and House of Lords have brought down decisions dealing with a subjective rather than an objective test. In South Australia we have that subjective test.

The difficulty comes in other areas of section 15. Again, I can remember at the time that this was being discussed at the deadlock conference there was concern that a subjective test would allow someone to go over the top in reacting to a threat. Therefore, a provision was put in that where a person causes death by using force against another genuinely believing that the force is necessary and reasonable for a purpose stated in subsection (1) and that person's belief as to the nature or extent of the necessary force is grossly unreasonable judged by reference to the circumstances as he or she genuinely believed them to be, that person, if acting for a purpose stated in subsection (1)(b), does not intend to cause death and is not reckless as to whether death is caused, may not be convicted of murder but may, if he or she acted with criminal negligence, be convicted of manslaughter. All right, if we sit down and talk about that we will be here until next week discussing what that means. That is the area which is causing concern: how do you explain that in simple language to a jury? That is the focus upon the sorts of changes which currently are the subject of discussion. I can categorically affirm to the Council that we will not change the substantive test. We will not go back to a test which is objective rather than subjective. It is a matter of seeking to clarify the law to make it much more easily understood by juries.

An honourable member: That's what Michael Atkinson said.

The Hon. K.T. GRIFFIN: No, Michael Atkinson did not say that. Michael Atkinson was creating waves and trying to create fear. When he was on the radio with me he ultimately conceded that what I was doing was quite okay. In those circumstances he has been trying to beat this up for the last two weeks.

Members interjecting:

The Hon. K.T. GRIFFIN: He has, even though I have issued press statements and made public comment about it. The important—

The Hon. T.G. Cameron: You have only 15 minutes of Question Time to go.

The Hon. K.T. GRIFFIN: It is your Question Time. If you keep interjecting I will keep responding. It is important to recognise that, in self-defence, in those matters where the DPP has decided not to prosecute or where there has been a prosecution and an acquittal, as there was in the Foreman case, it is not a licence to kill, shoot or go over the top.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: No, but there are some people who would like to use these sorts of decisions to satisfy their own agendas. No-one acting responsibly could suggest that those decisions, whether they be by DPP or by juries, ought to be at least a basis upon which in a sense a licence to shoot or a licence to kill could be available. We are not interested in protecting those who are out for private revenge. We are not out to encourage vigilantism. We are out to provide comfort for ordinary, law-abiding citizens of this State faced with a situation of imminent danger. That has always been the position of the Government: it will remain the position of the Government.

The Hon. G. WEATHERILL: As a supplementary question, I understood what the Attorney-General said in that the person was acquitted, but why has that person been charged with having a live revolver in his pocket?

The Hon. K.T. GRIFFIN: The issue related to self-defence. The Hon. Mr Davis referred to the acquittal of Mr Foreman. That was the focus for the question as I understood it about self-defence. It was not about firearms or any other offences. In fact, the answer did not even need to explore the issues in the Foreman case, except to tell members what we sought to do with respect to the law relating to self-defence. Technically, I submit that it is not a matter of *sub judice*. But I did not touch upon in any way other offences which might be alleged against anyone else, and I do not intend to do so. That is a matter for the future. They may not go to a jury; they may do. Members will know that on other occasions I have refused to debate cases such as the State Bank, Marcus Clark or anyone else on the basis that for me to comment as Attorney-General about the conduct of those cases would be an improper approach to the way in which I should do my job.

PARLIAMENT, QUESTIONS

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Leader of the Government a question about the provision of answers to questions raised in Parliament.

Leave granted.

The Hon. P. HOLLOWAY: On Thursday 11 April the Minister had carriage of the South Australian Timber Corporation (Sale of Assets) Bill. During the Committee stages of that debate the Minister undertook to provide answers to a number of questions raised by several members, including me. The Minister undertook to provide those answers as soon as possible and, in some cases, during the recent Parliamentary recess which has now ended. It is my understanding that none of the members has received answers. Why does the Minister believe the Opposition should cooperate with the Government in hurrying the passage of legislation through this Council when he does not honour undertakings given to provide answers to questions raised during the Committee stages of debate?

The Hon. R.I. LUCAS: If undertakings were given during the Committee stages of the timber corporation legislation and they have not been met, I can only apologise on behalf of the Government. As the Leader of the Government I will be happy to take the issue up with the Treasurer, his officers and advisers and expeditiously supply responses. My understanding was that information and answers in relation to a number of Bills in the Committee stages had been provided to various members. If that has not occurred I can only apologise on behalf of the Government. I will take the issue up and attempt to supply answers as quickly as possible.

STURT STREET PRIMARY SCHOOL

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

Leave granted.

The Hon. A.J. REDFORD: In the latest edition of the *Public Sector Review*, an article appears at page 6 entitled: 'School closure doesn't add up'. The *Public Sector Review* is an amusing paper saved only by the regular contributions made by colleague the Hon. Legh Davis. In the article at page 6—

The PRESIDENT: Order! I remind the honourable member that that is an opinion. I pulled another member up on this yesterday.

The Hon. A.J. REDFORD: In that article the journalist, Frank Barbaro, states:

> The State Government's plan to close Sturt Street Primary School has shelved a unique tourism project for the State. The school was in the middle of negotiating an agreement to host a group of Taiwanese primary school children to pay for an extensive three week language and culture program during their summer holiday.

In addition to a number of other comments, the article further states:

> Adelaide's Lord Mayor, Henry Ninio, has offered financial backing in a bid to keep Sturt Street Primary School.

My questions to the Minister are:

1. Does the Minister have any knowledge about the agreement which was being negotiated with the group of Taiwanese primary school children?

2. Is there any provision for State schools to charge overseas students for courses, etc. and, if so, on what basis?

3. Is the Minister aware of the Lord Mayor's offer of financial backing? If so, could he tell us what that financial backing is?

The Hon. R.I. LUCAS: In relation to the third question, I am aware of the Lord Mayor's kind offer. The Lord Mayor on behalf of the council has offered $10 000, which will purchase about one-fifth of a teacher for one year. Given that the teachers and staff at Sturt Street Primary School have advised me that they have over 30 staff at the school, I have suggested to the Lord Mayor that his generous offer of $10 000 would not resolve this issue. Nevertheless, courteous as always, I thanked the Lord Mayor for his generous offer. In relation to whether Government schools can charge for overseas students, under certain conditions they can.

There are four designated high schools in South Australia, established by the previous Labor Government, which take full fee paying overseas students. They pay about $6 000 or $7 000 a year, I think, for a full year's tuition, but I can get the exact figure for the honourable member. Regarding the

program at Sturt Street, I have seen that particular story, and I would be happy to follow that through, because there is nothing that would prevent the continuation of that program at either Sturt Street or some other location, perhaps even Gilles Street in the city. I am prepared on behalf of the Government to pursue that issue and bring back a reply.

In relation to whether Sturt Street can actually charge for the use of the premises, if that is part of the proposal, I will have to investigate what the regulations and the administrative instructions and guidelines allow for the Sturt Street Primary School. All that I can add to the answers to the first two questions is that I will bring back a reply regarding the specific aspects of the overseas proposal for Sturt Street, but my understanding is that, if desired, it could be continued, if not at Sturt Street perhaps at Gilles Street or some other location.

SERCO CONTRACT

In reply to **Hon. T.G. CAMERON** (30 November).

The Hon. DIANA LAIDLAW: I provide the following information in response to the honourable member's questions concerning the contract transfer of TransAdelaide's Elizabeth Depot to Serco. I apologise for the delay in responding.

1. *Number of TransAdelaide employees who have transferred to Serco*

42 employees transferred to Serco.

Number of TransAdelaide employees who have accepted TVSPs

140 employees have taken TVSPs from the Elizabeth Depot.

Total cost to Government revenue of people who have transferred to Serco or accepted TVSPs

In line with the 'Whole of Government' budget estimates undertaken prior to the decision by the Passenger Transport Board to award the Outer North bus contract to Serco—

. the cost associated with the transfer of 42 employees to Serco was $389 237.
. the cost of the 140 separation packages was $6 225 237.26, excluding tax of $506 541.49. Of this sum the cost of annual leave and long service leave payments amounted to $1 323 423.25.

2. The Serco contract with the Passenger Transport Board requires Serco to implement and maintain plans and procedures to ensure the safety of passengers, drivers and members of the public.
. Serco drivers are required to be suitably trained and accredited.
. Buses used by Serco must meet minimum standards.
. Serco's performance will be continually monitored to ensure that safety standards are being met.

3. For the period commencing 14 January up to and including 23 May 1996, Serco recorded 4 accident reports, only one of which caused property damage and injury for which a Serco operator was deemed responsible.

For the period commencing 1 December 1994 up to and including 31 December 1995, TransAdelaide recorded 110 accident reports, 39 of which caused injury or property damage for which TransAdelaide's Operators were deemed responsible. Of the 39 accidents, 5 were associated with injury and 34 with property damage.

For the six month period commencing 1 June 1995 up to and including 3 December 1995, 60 accidents were recorded by TransAdelaide, 20 of which caused injury and property damage for which TransAdelaide Bus Operators were deemed responsible. Of the 20 accidents, 3 were associated with injury and 17 with property damage.

4. The Serco contract requires Serco to provide on-going accident statistics and other reports associated with service performance statistics.

5. Within one week of being announced as the preferred tenderer for the Outer North bus contract, Serco entered into negotiations with the Public Transport Union (PTU).

Following intense negotiations the PTU negotiating team and Serco agreed that the terms and conditions should apply to all employees. The employees who were to be offered employment with Serco endorsed the agreed terms and conditions as recommended by the PTU.

There has been no further meetings with any other union in respect to an Enterprise Agreement and the terms and conditions of the initial agreement with the PTU remain applicable.

The agreed document is presently a matter before the Australian Industrial Relations Commission (AIRC) where both Serco and the PTU are seeking the document to be approved as an Award of the Commission. Intervention by the Transport Workers Union (TWU) before the AIRC has resulted in the Award process being delayed pending an appeal by the TWU due to be heard by a Full Bench of the Commission on 4 and 5 June 1996.

HINDMARSH ISLAND BRIDGE ROYAL COMMISSION

In reply to **Hon. T.G. ROBERTS** (29 November).

The Hon. K.T. GRIFFIN:

1. The witnesses subpoenaed to give evidence at the Royal Commission were:

NAME	DOCUMENTS AND/OR PERSON	PROVIDED EVIDENCE
Ms Alison Caldwell ABC	D&P	Y
Dr Neale Draper Consultant anthropologist and archaeologist	D&P	Y
Mr Geoffrey Easdown The Herald Sun	D&P	Y
Ms Vanessa Edmonds Mildura, Victoria	D&P	Y
Dr Deane Fergie University of Adelaide	D&P	Y
*Mr Stuart Gray Murray Bridge Soldiers' Memorial Hospital	D	Y
Mr Colin James Advertiser Newspapers Limited	D&P	Y
*Mr Ric Jay Head of ABC News and Current Affairs	D&P	Y
*Mr Arthur Jones Graham's Castle	D	Y
Ms Kyla Mulhern Apollon Motor Inn	P	Y
*Ms Anita Poddar Acting Head of ABC News and Current Affairs	D	Y
Ms Sandra Saunders Aboriginal Legal Rights Movement Inc	D	N

NAME	DOCUMENTS AND/OR PERSON	PROVIDED EVIDENCE
Ms Alison Caldwell ABC	D&P	Y
*Mr Patrick Weaver 5AN	D	Y
Mr Timothy Wooley Solicitor for ALRM	D&P	Y

* Indicates these witnesses provided documents which obviated the necessity for them to go into the Royal Commission to give further evidence.

2. As at 13 February 1996:

In respect of each of the counsel appearing at the commission and paid for by the Government, on what dates were the agreements reached in respect of the rates to be paid?		What was the basis for calculating their final bill?	Have any of these fee arrangements been renegotiated since the date for finishing the commission was changed?
Counsel Assisting (D Smith and A Simpson)	On or about 20/06/95	In accordance with agreement	No
M Abbott QC M Shaw (through Piper Alderman)	Offer was made on 24/07/95 and rates agreed.	In accordance with agreement	The date on which funding was to expire was amended
Michell Sillar Lynch and Meyer	Offer made 26/07/95 and rate of funding subsequently accepted.	In accordance with agreement	The date on which funding was to expire was amended, and additional legal assistance approved.
Camatta Lempens—Dr Fergie	Offer made on 02/08/95 and accepted on 09/08/95	In accordance with offer	The date on which funding was to expire was amended
Camatta Lempens—Lower Murray Aboriginal Heritage Committee	Offer made on 02/08/95 and subsequently accepted	In accordance with offer	The date on which funding was to expire was amended
Michael Sykes & Co	Offer made 26/07/95 and subsequently accepted	In accordance with offer	The date on which funding was to expire was amended
Andersons	Offer made on 07/08/95 and subsequently accepted	In accordance with offer	The date on which funding was to expire was amended
Stratford and Co	Offer made 15/08/95 and subsequently accepted	In accordance with offer	The date on which funding was to expire was amended
Ward & Partner	Offer made on 28/07/95 and subsequently accepted	In accordance with offer	The date on which funding was to expire was amended
Douglas Wardle	Offer made on 10/08/95 and subsequently accepted	In accordance with offer	The date on which funding was to expire was amended
Fisher Jeffries	Offer made on 04/09/95 and subsequently accepted	In accordance with offer	The date on which funding was to expire was amended
Minter Ellison Baker O'Loughlin	Offer made on 04/09/95 and subsequently accepted	In accordance with offer	The date on which funding was to expire was amended

3. Dr Clarke was a witness before the Royal Commission into the Hindmarsh Island Bridge for nine days. By his account, he attended as an observer for a total of three weeks.

Mr Jones was required as a witness for two days and he attended as an observer for a total of around 3 weeks.

Dr Clarke (PSO-3) is paid by the Museum a total (including on-costs) or $214 per day. Mr Jones (PSO-4) earns $219 per day.

Accordingly, the cost for these two witnesses—for both evidence and observation days—was $8 859 (excluding any office, telephone or other support costs).

The above sum has been a direct cost to the Museum. The Museum has not been compensated by the Commission or Government for this sum.

In reply to **Hon. ANNE LEVY** (7 February).

The Hon. K.T. GRIFFIN:

1. Colin James

Counsel assisting the Royal Commission advised the Crown Solicitor's Office that he regarded Mr James' evidence as essential for the Royal Commission. An offer of funding on the usual terms and conditions was made to Mr James' solicitors on 22 August 1995. On the same day, Mr James' solicitor contacted the relevant officer from the Crown Solicitor's Office to indicate that it was proposed that Mr James' employer would 'top up' the rate of funding offered by the Government and that this could not be done under the terms and conditions of funding which were offered by the Government. Mr James' solicitor went on to advise that the rate of funding that was offered by the Government was insufficient to cover his fees and that unless the condition was omitted, Mr James would not voluntarily give evidence to the Royal Commission. In those circumstances, the matter was drawn to my attention and I reluctantly approved the omission of the funding condition that prohibited funding being received from any other source. I did so because the Royal Commissioner was obviously proceeding sensitively and with a view to avoiding the use of subpoenas against any party. In addition, there was a real risk of delay if the matter was not resolved quickly. In those circumstances I thought the better course was to delete the relevant funding condition in consideration of the view of counsel assisting the Royal Commission that Mr James' evidence was essential.

Chris Kenny

Counsel assisting the Royal Commission had advised the Crown

Solicitor's Office that Mr Kenny's evidence was essential to the Royal Commission and was relevant to the investigation. A formal request was received by the Crown Solicitor from the solicitors for Mr Kenny on 21 August 1995. By the time this formal request was submitted to me for approval, the proposal to vary the offer to Mr James had been submitted to me also. The Crown Solicitor anticipated that Mr Kenny's solicitors, like Mr James' solicitors, would wish to have the condition that there be no funding from any other source deleted from their funding offer also. I formed the view that Mr Kenny should be treated in the same manner as Mr James, and accordingly approved a funding offer which was not subject to the 'top-up' condition.

2. Colin James

It was apparent that his employer was not prepared to pay the total costs of his legal representation.

Chris Kenny

See answer to question 1.

3. Colin James

See answers to questions 1 and 2.

Chris Kenny

See answer to question 1.

4. Colin James

I do not know the top up provided by the employer. The amount provided by the taxpayer for Mr James' legal representation was $6 174.40.

Chris Kenny

I am not aware how much money was paid by Mr Kenny's employer towards his legal representation. The amount paid by the Government towards his legal representation was $56 804.50.

OVERHEAD CABLES

The Hon. R.I. LUCAS: I have the following answer to a question asked yesterday by the Hon. Sandra Kanck from the Minister for Infrastructure. The reply is as follows:

1. ETSA Corporation does recover its costs for repairing stobie poles from motorists where that damage is extensive.
2. The cost of restoring a carrier's cable is borne by the carrier. We are not aware of the carrier's practice, but we suspect that it is similar to ETSA's.
3. Telecommunications carriers have rights of access and attachment to ETSA poles under the Telecommunications Act. Pursuant to those rights, ETSA is negotiating compensation as both parties are presenting their position in a commercial manner and negotiations are continuing in that spirit.
4. Negotiations are continuing but an outcome is expected shortly.

That question was asked yesterday and answered today. In the spirit of cooperation, this Government always provides a 24 hour turnaround service for the Deputy Leader of the Australian Democrats, and we will continue to provide that service for her.

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! If members would control themselves they would get some more questions answered.

MEDICARE

The Hon. T. CROTHERS: I seek leave to make a precised statement before asking the Minister representing the Treasurer a question about the increase in the Medicare tax levy.

Leave granted.

The Hon. T. CROTHERS: Recently, the Prime Minister adopted a policy in respect of the possession of automatic and semi-automatic weaponry. I am led to believe that most people think this is an appropriate thing to do and that Mr Howard should be highly commended for his policy direction. Likewise, people say that most of the Leaders of other political Parties in Australia are also to be commended for the unity of purpose they have displayed in standing alongside Prime Minister Howard in respect of his initiative. As part of his proposed legislation to give effect to his small arms policy, he intends to compensate former gun owners upon the surrender of their weapons, and in order to do this he intends to increase the Medicare levy by .2 of 1 per cent until such time as it is necessary for the collection of sufficient revenue to discharge any compensation payable to former gun owners who have surrendered their guns in compliance with the new law. However, some constituents have indicated to me that once the additional Medicare tax is on the statute books it may not be so easy to remove. My questions to the Treasurer are:

1. Will he ensure that the Federal legislation is so framed by the Federal Government that there is some form of a sunset provision in the new tax so that it expires automatically once compensation requirements are discharged in relation to the surrender of firearms?

2. Will he also ensure that the moneys going into the Federal revenue coffers from the .2 of 1 per cent additional Medicare levy can be used solely for the payment of moneys that would be needed to compensate the gun owners who surrender their weapons in accordance with the proposed new State and Federal laws?

The Hon. R.I. LUCAS: As always, I thank the honourable member for his questions, and I will refer them to the Treasurer and bring back a reply as soon as I can.

BUDGET PAPERS

The Hon. R.I. LUCAS (Minister for Education and Children's Services): With much pleasure, on behalf of the Government I lay on the table the following papers: Budget speech, Financial Statement, Estimates of Receipts and Payments and the Capital Works Program for 1996-97.

PUBLIC FINANCE AND AUDIT (POWERS OF ENQUIRY) AMENDMENT 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.

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

Leave granted.

In February 1996, I requested the Auditor-General to examine the accounts of the Port Adelaide Flower Farm Board and examine the efficiency and economy with which the Board conducted its affairs, under section 32 of the *Public Finance and Audit Act*.

The Auditor-General has since informed me that there may be some doubt as to whether the Board was a properly constituted controlling authority and whether it had its own accounts. Further the Board was dissolved on 3 August 1995 and the Port Adelaide Council itself ceased to exist on 22 March 1996 when it amalgamated with the City of Enfield.

The Solicitor-General has advised the Auditor-General that it is not clear that section 32 of the Act extends to the examination of past activities, publicly funded bodies that have amalgamated, nor particular aspects of an organisation's activities.

The Solicitor-General indicates that it is appropriate for the inquiry to go ahead and that the circumstances of the Port Adelaide Flower Farm suggest that unambiguously broader powers are required under Section 32.

This Bill amends section 32 of the *Public Finance And Audit Act* to afford the Auditor-General these broader powers of inquiry.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for the retrospective operation of the amending Act to ensure the validity of investigations which have already commenced.

Clause 3: Amendment of s. 4—Interpretation

A definition of "publicly funded project" is added to cover projects like the flower farm.

Clause 4: Amendment of s. 32—Examination of publicly funded bodies and projects

This clause expands section 32 to enable the Treasurer to request the Auditor-General to examine the accounts of a publicly funded project and the efficiency and cost-effectiveness of the project.

Proposed new subsection (1A) provides that an examination may be made even though the body or project to which the examination relates has ceased to exist.

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

CARRICK HILL

The Hon. DIANA LAIDLAW (Minister for Transport): I lay on the table a plan depicting land in certificate of title register books volume 2500, folio 57 and 1718, folio 159, such land being part of the Carrick Hill Trust. I move:

1. That this Council appoints a select committee to consider a proposal designed to secure the financial future of Carrick Hill in perpetuity, namely—
   (a) that, in accordance with the requirements of section 13(5) of the Carrick Hill Trust Act 1985, a maximum of 11.34 hectares of the land comprised in Certificate of Title Register Books Volume 2500 Folio 57 and 1718 Folio 159 (as shaded on the plan laid on the table of this Council) be sold, with the amount of the land to be determined by the Carrick Hill Trust with the approval of the Minister for the Arts;
   (b) that a new trust fund be established to incorporate the net proceeds of the land sale and other external fund raising activities; and
   (c) that the net proceeds of the land sale be directed to effecting necessary repairs and improvements to the Carrick Hill house and that the income from the trust fund be applied towards Carrick Hill's operating costs;
2. That Standing Order No. 389 be suspended as to enable the Chairperson of the committee to have a deliberative vote only;
3. That this Council permits the select committee to authorise the disclosure or publication, as it thinks fit, of any evidence or documents presented to the committee prior to such evidence being reported to the Council; and
4. That Standing Order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

This motion reflects the Government's determination to secure the financial future of Carrick Hill and thus maintain in perpetuity Carrick Hill as a cultural and tourism asset for the people of South Australia.

Carrick Hill comprises an Elizabethan style house built in 1936 set in 39.5 hectares of garden and grounds at Springfield. The property was jointly bequeathed to the State by the late Sir Edward and his first wife Lady (Ursula) Hayward. The National Trust was nominated as the alternative beneficiary in the event that the State did not accept the bequest.

Lady (Ursula) Hayward died in 1970 and Sir Edward in 1983. In 1985 the Carrick Hill Trust Act established a seven member trust to administer the property in accordance with the bequest. A year later, as part of a Jubilee 150 project, Carrick Hill was developed as a gallery for the Haywards' art collection, with a heritage garden, bush and garden walks and function venue. Work to enhance all these activities has been ongoing. However, most of the land remains undeveloped.

Today, Carrick Hill functions with nine staff employed under the Public Sector Management Act by the Department of Arts and Cultural Development—two in administration, four attendants and three gardeners. A host of friends and volunteers provide invaluable support. They run a gift shop, conduct guided tours, prepare floral arrangements throughout the house, work in the garden and organise special events. The restaurant is operated under contract.

Last financial year, Carrick Hill, which is open to the public almost every day of the year, recorded 35 400 admissions. Income earned by the trust, mainly from admission and hire charges, amounted to $218 000. Of this sum, $68 000 was returned to Treasury under an arrangement which will now cease as the Government supports Carrick Hill in its move towards self sufficiency. This financial year, the Government's contribution to recurrent operating costs, met by the Department of Arts and Cultural Development, is $408 000. This allocation comprises $336 000 to help meet staff costs and $72 000 for building maintenance and insurance. The Department provided an additional $50 000 for minor works and absorbed further expenses related to corporate and other services. Since the State accepted the bequest from Sir Edward and Lady Ursula Hayward just over a decade ago, Carrick Hill has attracted State Government funding amounting to about $6 million in recurrent operating costs, and further uncharged sums from the Department's budget—plus capital costs of $615 000 over and above the initial $2.5 million in Jubilee 150 grants.

A decade later, it is appropriate for the Government and the Parliament to reassess the financial status and future funding arrangements to support the maintenance of Carrick Hill, this State asset. A building audit undertaken late last year on behalf of the Department of Arts and Cultural Development reinforces the urgency of such a reassessment. The building audit, conducted by Woodhead Firth Lee, has identified as urgent over the next three to five years work estimated to cost $1.5 million to address structural problems with the foundations of Carrick Hill House, cracks in external and internal walls, poor fire protection and electrical systems, inadequate kitchen and toilet facilities and ageing air-conditioning.

Failure to address these capital needs will see the asset deteriorate further and, in turn, undermine the trust's efforts to promote Carrick Hill as a grand cultural tourism attraction of which we should all be proud. The Government does not want to accept such a negative fate for Carrick Hill. Nor does the Government accept that the late Sir Edward and Lady Ursula Hayward ever contemplated that their generous bequest, drawn up in 1970 would, some 26 years later, present a very real dilemma for the State. Certainly, former Premier the Hon. David Tonkin recalls that in 1982, during discussions to secure Carrick Hill as a State asset, Sir Edward Hayward acknowledged the sale of land may represent a valuable source of capital which would provide basic income to develop Carrick Hill, should the Government find it difficult to provide adequate funds. This reference was in a letter from the former Premier to the President of the Legislative Council, 23 June 1987.

In this context, members should be aware that in the past year an enormous effort has been made by the members of the Carrick Hill Trust, together with the Department of Arts and Cultural Development, to prepare new strategic directions

for Carrick Hill that represent the wishes of the Haywards' bequest while striving to gain financial self sufficiency for the property. This effort has acknowledged that neither the Haywards nor the Government of the day provided a capital fund to provide for the ongoing recurrent or capital needs and demands of maintaining this asset when the State—and ultimately the Parliament—agreed to accept responsibility for the asset in 1985.

Indeed, having recently read the complete *Hansard* debates on the Carrick Hill Trust Bill, the absence of concern about such a fundamental issue is surprising. However, the Parliament did have the foresight to provide in section 13(5) for the sale or disposal of real property at Carrick Hill if approved by both Houses of Parliament. At that time, this provision generated comment only in so far as the original proposition in the Bill—and that proposition was for the sale or disposal of real property, as approved by the Minister—was amended in the House of Assembly to read, 'sale or disposal with the approval of both Houses of Parliament'. The rationale given at time was that its being approved by the Minister was not sufficient safeguard in terms of the sale or disposal of real property and that it should be strengthened so that such an initiative was undertaken only with the approval of both Houses of Parliament. Other than that, the whole issue of sale or disposal of real property was not in question by either House of Parliament when the Carrick Hill Trust Bill was introduced in 1985.

The proposition that I move today seeks the concurrence of the Legislative Council to establish a select committee to consider a proposal designed to secure the financial future of Carrick Hill as a self-supporting entity. The proposal is as follows:

1. That a maximum of 11.34 hectares of the Carrick Hill land as defined be sold—with the amount of land to be sold ultimately determined by the Carrick Hill Trust with the approval of the Minister.

2. That a special trust fund be established to incorporate the net proceeds of the land sale and any other external fundraising activities; and

3. That the net proceeds of any land sale be directed to effecting necessary repairs and improvements to the house, with income from the trust fund being applied towards Carrick Hill's operating costs.

The clear intention of this proposition is the establishment of the trust fund, with the sale of land a means to generate the $8.1 million net which is deemed necessary to carry out essential capital works and to provide income to supplement its earned income.

I stress the following point: the amount of land required to be sold to achieve the goal of self-sufficiency for Carrick Hill will depend on the collective efforts of the trust and the community to earn income and/or on the price realised from the sale of the first blocks of land. The sum of $8.1 million to be raised has been calculated on the basis that $1.5 million is required for recommended capital works, and a further $6.64 million is required as a base fund to generate (at a 5 per cent real rate of return) a real annual income of $332 000. If the whole of the required sum of $8.1 million is to be raised from land sales, the Hassell Group, on behalf of the Department for the Arts and Cultural Development, has calculated that 34 allotments will need to be sold at an average price of $300 000. In terms of the 34 allotments, I stress that this is the maximum number, and that the proposal before the Legislative Council envisages that the extent of the subdivision can be reduced if the required capital, or a significant part of it, can be realised by other means, including higher than estimated prices for initial sales. For this reason, the proposed subdivision would be released in stages.

In terms of land sales generally, I assure members that very strict land management conditions would be imposed consistent with the existing use of the land and surrounding development. Indeed, if subdivision is to proceed at a minimum the Government would insist upon three conditions:

1. Preparation of a new landscape master plan to re-identify future management and maintenance, including all important elements of the gardens and grounds, vehicular and pedestrian movement, views and retention of the main axis.

2. Buffer screen planting and encumbrances on new development to retain the total parkland setting; and

3. Exploration of reinstatement of the 'grand entry' to Carrick Hill through any subdivision.

In keeping with these conditions, it is proposed that each of the 34 blocks would be a minimum of 2 023 square meters, the size under the existing Springfield Estate encumbrances. This size is about three times the average block of land available for purchase today in the metropolitan area. I acknowledge some people I have consulted about the proposal, which I now present to the Council, have argued that the 34 blocks should be reduced well below 2 023 square meters so as to reduce the area of the proposed subdivision. This option has not been supported because it would abuse the Springfield Estate encumbrances and fail to retain the greatest number of existing mature trees which contribute to the character of Carrick Hill. The proposed subdivision focuses on the western portion of the Carrick Hill property and ensures the hills face zone plus the Hillside Road and Meadowvale Road boundaries remain undeveloped in order to protect the city views from the house and land that forms part of the Heysen Trail.

The Carrick Hill Trust supports in principle the proposal to sell a maximum of 11.34 hectares of land as depicted on the plan I earlier today laid on the table of the Council, recognising that the actual land to be disposed of would be determined by the trust with the approval of the Minister. The proposal, however, does not enjoy overwhelming support from local residents. To date, I have attended four meetings with local residents. I have been diligent in speaking with them and I have also met with representatives of the Friends of Carrick Hill, with a big meeting of volunteers and also with many family members of the Haywards.

In each case I have outlined the background to the issues confronting the future of Carrick Hill and the subdivision proposal in general. While they may not all agree with my views, generally there is an appreciation of why the Government is taking this action. I think that they have appreciated the fact in general that I have come forward and outlined it myself, rather than delegating it to others, other than on one occasion at a public meeting which was impossible for me to attend because of other commitments; and, also, I have not brought this issue on them with some element of surprise. So, I have canvassed this proposal widely and I have also endeavoured to tailor the proposal to address various concerns expressed. These concerns range from the loss of open space to the fate of the sulphur crested cockatoos and the impact on the Queen's Gate driveway.

I accept that there is also some concern that the sale of any land at all will lead to the sale of further land in the future. However, I contend that this concern would have no foundation if the Parliament approves the 11.34 hectares proposition

outlined in my motion, as this is the maximum amount of land that would ever (and I stress that) be necessary for the Parliament to authorise for sale to secure the financial future of Carrick Hill. In order to reassure local residents on this count I certainly would be prepared to support an amendment to the Act to delete section 13(5), which would remove the capacity for any Parliament at any future date to consider, let alone approve, the sale of further land at Carrick Hill. But my support for such a move would be conditional on the passage of the proposal I am now moving.

In the meantime, I understand that a group of local residents propose to form a Mitcham Foothills Action Group to monitor developments in the foothills and 'to save Carrick Hill'. Essentially, I seek the same objective for Carrick Hill, and hence this motion. In turn, I hope the members of the action group will consider and support creative income generating solutions that will boost the funds of the proposed trust fund and thereby reduce the pressure on the Carrick Hill Trust to realise funds from the sale of land.

Finally, it is important to note that the motion guarantees that the proceeds from the sale of any land will be reinvested in the property to restore and upgrade the house and to extend and maintain the gardens and grounds. The proceeds will not be siphoned off to help pay off State debt as is the Government's practice with other asset sales. Nor will the proceeds be assigned to fund a special project, notwithstanding the perceived worth of such a project, such as the development of a sculpture park at Carrick Hill, as was proposed when a motion supporting the sale of some land was last before this place in 1987.

I would stress also in relation to this motion that there is no consideration of the sale of the property as a whole or the sale of the house or putting out the property in whole or in part to exploitation by the private sector as some people have argued and feared. Also, it is not to be the base for a private sector wine venture as one proposal would seek in relation to the future use of the land at Carrick Hill. In moving this motion the Government acknowledges that the proposition for the sale of land at Carrick Hill has generated community interest and accordingly we propose that a select committee be established to provide an opportunity for all views to be heard on this matter. I commend the motion to honourable members.

The Hon. SANDRA KANCK: This matter arose during April when Parliament was not sitting, so this is the first opportunity I have had to address it within a parliamentary sphere. When I heard the proposal was to sell off part of the land I immediately dived for the select committee report from 20 October 1987 to see what were the issues and what had been decided at that stage. I am not aware of any new information that would alter the recommendations of that report, even though it occurred nine years ago. However, I did say that if there was strong enough evidence presented to me I would be willing to consider some sell off of land. To date I have not had that evidence given to me. I do not wish to spend a great deal of time on this issue now, given that I am going to support the setting up of the committee. There will be an opportunity to expand on arguments when the committee has heard all the evidence, if there is any new evidence, and report back to the Council. But I do want to put on record information that was put on the record back in November 1987 when the then Labor Government's motion was being debated.

This was a letter to the then Premier, the Hon. John Bannon, which the Hon. Ian Gilfillan read into the *Hansard* record. I will not read it to the same extent but will select only parts of it. I choose to read this letter into the record now in order to remind people that, although there is talk of what Sir Edward might have said to this or that person, when it comes to the crunch a person's will is the opportunity to say to future generations what they want done with their property. One would have thought that Lady Ursula and Sir Edward, being intelligent people and with the level of legal expertise for which they would have been able to pay, would have made it very clear. This letter, dated 6 April 1987 and written by Mr A. Trenerry of Bonnin and Partners, states:

> As a junior solicitor assisting the late M.F. Bonnin, the writer was involved in the formulation of early plans for Carrick Hill and the preparation of documentation relating thereto, in particular, the deed of trust dated 12 June 1970 and Lady Ursula's will of the same date. It is the writer's clear recollection that the intention of all parties was that the gift to the State would be made if and only if the State agreed to hold and maintain the whole of the property for one or more of the purposes set out in those documents.
>
> We believe that intention is made clear by the documents themselves. In particular we draw your attention to the fact that in contemplating the possible gift over to the National Trust that donee was to be given a specific power to subdivide and sell a portion of the land to provide funds to maintain the balance. No such power was included for the State because no such power was intended.

That sentence is very clear—'No such power was included for the State because no such power was intended.' As I said, I will support the appointment of a committee, but I do not know what it will achieve. I have some doubts that it will be able to achieve a great deal because I do not know that there is any new information to be added to that which was collected in 1987. However, a committee opens up the democratic processes; it allows the people who will be affected by such a decision to give their input, either in writing or by speaking to the committee, and that can only be for the best. I therefore support the motion.

The Hon. P. NOCELLA secured the adjournment of the debate.

MOTOR VEHICLES (TRADE PLATES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 May. Page 1450.)

The Hon. DIANA LAIDLAW (Minister for Transport): I thank members for their contributions to the debate on this Bill. The Hon. Sandra Kanck made her contribution on 6 February and asked various questions, to which, I am sure since that time, she has been eager to receive the answers. It was not possible for me to answer formally until contribution from the Opposition, and the Hon. Terry Cameron spoke yesterday. I therefore apologise for the delay in providing this response to the honourable member.

Current legislation allows the issue of trade plates to manufacturers, repairers and dealers in motor vehicles and agricultural machinery. Businesses, such as liquid petroleum gas tank fitters, vehicle window tinters and sunroof fitters are not considered to fall within the definition and are currently ineligible to be issued with a trade plate.

So, that is not an issue in relation to this Bill and that, in part, responds to the honourable member's question. Such businesses may justify the issue of a trade plate to move unregistered motor vehicles during the normal course of

business. A liquid petroleum gas tank might be fitted to a new or unregistered secondhand motor vehicle prior to its being offered for sale. Likewise, an unregistered motor vehicle may be fitted with a sunroof or window tinting prior to being offered for sale.

Some businesses in the past have maintained a company vehicle on a trade plate, thereby avoiding their obligation to pay the appropriate registration, third party insurance premium and stamp duty. It is that concern, among others, that has given rise to the industry as a whole, but abuse of the trade plate system is of particular concern to the Registrar of Motor Vehicles and the police. That is one reason why the legislation is before the Council at this time. We want to remove that sort of abuse from the system, because that sort of abuse certainly provides a business with an advantage over others that are paying all the appropriate registration, third party insurance and stamp duty fees, and it is an advantage they should not enjoy.

I also outline to the honourable member that the current legislation prohibits the carriage of goods by a motor vehicle to which a trade plate is attached, except some ordinary form of ballast, such as sand, gravel, scrap iron, and the like, carried solely for the purpose of testing the vehicle.

Goods carrying motor vehicles, such as trucks, vans and prime movers are best demonstrated to potential purchasers when undertaking a commercial operation and where fuel consumption and handling characteristics can be assessed.

Finally, I advise that applicants for a trade plate are currently required to have a police inspection of their premises before being issued a plate. It is proposed that applicants be offered the alternative of obtaining confirmation from the Motor Trade Association or the RAA that they are *bona fide* applicants for a trade plate, thereby streamlining the administrative procedures and relieving the police of non-core tasks.

I would emphasise this point because it has been implied by the honourable member, and stated more specifically by the Hon. Terry Cameron, that there is some sort of collusion, and—

The Hon. R.R. Roberts: A worry.

The Hon. DIANA LAIDLAW: A worry or a *quid pro quo* in this legislation—earlier reputed support by the Motor Trade Association for the Liberal Party. No member of Parliament—at least in the Liberal Party—is aware of any donation from any individual or company. That has been a deliberate policy of the Liberal Party for years so as not to place any member of Parliament, particularly a Minister, under pressure from any lobby group, employer association, and the like. I know this for a fact because my father was Treasurer of the Liberal Party for years and never, in the 13 years that I have been a member of this place, did I learn or did my father ever suggest that I should see on any matter an individual who might have had an interest in a piece of legislation, and that interest I should reflect in this place.

The Hon. Sandra Kanck: You do not know whether the Motor Trade Association—

The Hon. DIANA LAIDLAW: No, and nor should I know.

The Hon. R.R. Roberts: Everyone else knows.

The Hon. DIANA LAIDLAW: And nor should I know.

The Hon. Sandra Kanck: Well, I know.

The Hon. DIANA LAIDLAW: You may, but I say that I would not formally be advised and nor would I ask about any donation from any individual or company. I know now because they are published, but throughout the whole time I have been in this place I have never inquired and never been told, and it has never been suggested that I should meet anybody because of any donation made to the Liberal Party and that favouritism should result from it.

The Hon. Trevor Griffin, as President of the Party, will be aware that it is important that the integrity of the decision making process is not influenced by such matters, and I maintain that principle very strongly. In fact, I suspect that some people may have been upset by the decisions that I have made. I would not know and I would not necessarily be fussed, because I know that I have made the right decision without outside influence.

I find it personally, politically and professionally offensive to hear it suggested that I, as Minister for Transport, would have been influenced in any way by any contribution by any organisation, whether the Motor Trade Association or any other, to bring in legislation that incorporated some interest in this matter. Therefore, I say very strongly that this Bill came to me from the Registrar of Motor Vehicles after he had received representations from the Commissioner of Police, who indicated that, after the Police Department had fully reviewed its operations and determined core and non-core tasks, the police no longer wished to continue the procedure of police inspection of premises before issuing a plate.

So, the initiative for this Bill came from the Police Commissioner to the Registrar of Motor Vehicles. The Registrar then carried out investigations, realising that some new initiative had to be taken in order to find a credible, workable, cost-efficient means of providing and authorising the use of trade plates in the future. At that stage the Registrar met the Motor Trade Association, the RAA and others in order to work out the scheme that I outlined in my second reading explanation. That is the basis for which—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: What are you suggesting?

The Hon. T.G. Cameron: This is a good scheme for the MTA.

The Hon. DIANA LAIDLAW: It is a good scheme for the Registrar and the South Australian community, because the scheme proposed by the Registrar provides integrity in terms of the operation of trade plates in the future.

The Hon. T.G. Cameron: And you're going along with it.

The Hon. DIANA LAIDLAW: Why shouldn't I? What are you going to say outside this place about the Motor Trade Association? Go outside and say what you are gutlessly suggesting in this place.

The Hon. T.G. Cameron: Why don't you read what I said?

The Hon. DIANA LAIDLAW: Because you are becoming more and more—

The Hon. T.G. Cameron: Why don't you read what I said?

The Hon. DIANA LAIDLAW: All you do is mutter under your breath and suggest that the Motor Trade Association is scandalous in the way in which it operates because of a donation which allegedly, I understand, has been provided to the Liberal Party and which may have influenced this decision.

The Hon. T.G. Cameron: Who said that?

The Hon. DIANA LAIDLAW: That is what is implied in all your statements. I suggest you would be very unwise to repeat that outside this place, because the matter would go to court. I have just been reminded that Mr Richard Flashman, the Executive Director, wrote to the Hon. Mr

Cameron on 8 February, reminding him and the Labor Party Secretary, Mr Hill, about election activities by visiting Labor candidates in terms of donations of funds towards the Party's election campaign.

Members interjecting:

The ACTING PRESIDENT (Hon. T. Crothers): Order! There are far too many interjections. I remind members that the Minister is winding up the debate on the Bill, and I ask the Minister to limit her remarks to matters of substance in the Bill.

The Hon. DIANA LAIDLAW: In view of the slight, innuendo and mud slinging by the Hon. Mr Cameron, it is important to remember this statement by Mr Flashman to the Hon. Mr Cameron on 8 February. In his letter he said:

> I remind you that it was into your hands [the Hon. Mr Cameron's hands] that Rick Collins, then State Chairman of the Motor Trade Electoral Action Committee, placed a cheque of $8 000 on 9 December 1993 at your office in Trades Hall.

That is wonderful. The beneficiary of $8 000 from the Motor Trade Association comes into this place reflecting on the Motor Trade Association. I have no idea, formally or informally, of donations to the Liberal Party, but I was most interested to see that the Motor Trade Electoral Action Committee provided $8 000 to the Hon. Mr Cameron at his office in Trades Hall on 9 December 1993, and then he comes into this place and reflects on the Motor Trade Association. I suspect that may be only because the honourable member was peeved that he did not receive more, but I suggest he will receive even less next time.

Members interjecting:

The ACTING PRESIDENT: Order! There are too many interjections. I also inform the Minister of the fact that she is dealing with matters of substance that are not pertinent to the Bill. In the interests of decency, commonality and good democratic procedure I ask both members to address the matter before the Chair.

The Hon. DIANA LAIDLAW: Mr Acting President, thank you for reminding me about appropriate behaviour. Mr Flashman continues:

> The MTA was invited to participate in the traders' plate discussions because, believe it or not, our members are in the industry that uses traders' plates.
>
> The South Australian system is the most abused in Australia and our members resent that. In our efforts to help the Government control the issue of traders' plates, we suggested that we, the MTA administration, would be in the best position to determine whether an entitlement truly existed for plates to be issued to a business.

I stress that the suggestion in respect of the MTA administration came after the Registrar approached it to see how the MTA, as users of traders' plates, would also be able to assist the Registrar in dealing with the issue of the plates after the police had indicated that they wished to withdraw from the inspection of premises in the future because it was not their core business.

In relation to other points raised by the Hon. Terry Cameron—and, in terms of my briefing notes, they come under the heading 'Relevant points'—the proposed trade plate system will allow any issued trade plate to be used for up to five different vehicle categories. The holder will pay the equivalent registration charge for each category required and the plate will display a number of coloured stickers corresponding to the chosen categories to assist enforcement. This arrangement, which was one of the issues of concern to the honourable member, will prevent the concerns expressed regarding multiple requirements for administration and plate fees. Therefore, the honourable member's concern about multiple requirements for administration plate fees will not be fulfilled.

In terms of compulsory third party insurance, I am advised that the determination of the compulsory third party insurance premium—incorrectly referred to as compulsory third party property insurance—is the prerogative of the third party premiums committee. I understand that all this is before the committee at the present time: it has not yet been declared. It is envisaged, however, that the premium applied will not be the sum of all the premiums.

The Hon. T.G. Cameron: I do not understand.

The Hon. DIANA LAIDLAW: If a trader has a number of plates—and the honourable member indicated earlier he was concerned about multiple requirements for administration and plate fees—they certainly will not also have multiple requirements in terms of the premiums: it will be addressed in the one plate. In terms of eligibility criteria, the proposed scheme will still require the Registrar of Motor Vehicles to approve all applications. The Bill further allows the Registrar of Motor Vehicles to seek outside advice as to the suitability of applicants. The proposal to allow industry associations to assist in assessing applications for trade plates will streamline the administrative processes and, as I indicated earlier, relieve police of non-core duties.

The Motor Trade Association will be used by its members to supply information essential to the Registrar of Motor Vehicles in determining the validity of an application for trade plates. Applicants will continue to have the option of approaching the Registrar of Motor Vehicles direct for the service. Therefore, the concern expressed by the honourable member that the only way that a person could get their plates, if they did not meet any of the other criteria, was to become a member of the Motor Trade Association is not so, because applicants will continue to have the option of approaching the Registrar of Motor Vehicles direct for the same service. This will ensure that equity is maintained.

The Hon. T.G. Cameron: You said yesterday that you have not approved that system.

The Hon. DIANA LAIDLAW: No, I haven't.

The Hon. T.G. Cameron: You were just talking as if you have.

The Hon. DIANA LAIDLAW: No, I have not, but I am saying that the Registrar has advised me that—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: These are the options that have been put—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: No, it is not ridiculous. We have put down what the Registrar has presented.

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: No, because it is either regulation or administrative decision and neither of those can be approved until we have gone through this measure, and it has been pretty hard to go through this measure because you have not wanted to speak in this place until this time.

In terms of all the options and matters to be considered, which the honourable member has alluded to and which have caused some concerned, the option of approaching the Registrar direct for the service will be maintained. The Registrar has also advised me that the statement which suggests that the Registrar of Motor Vehicles is 'concerned about this section of the Act' is incorrect.

With respect to prosecutions, the 1993-94 figures previously supplied to Mr Cameron are the latest available. However, by way of illustration of the type of abuse that

occurs, the current example may be of assistance. I earlier gave an example of this in response to the Hon. Sandra Kanck. This is a further example. Police have recently reported a number of people for offences associated with a trader's plate holder hiring out his plate on weekends to allow the owner of an unregisterable left-hand drive imported vehicle to use the vehicle for extensive social travel.

Under the heading 'revenue' I am advised that the following information is relevant in relation to fees and revenue: fees for initial applications for a trade plate include a $20 administration fee, which covers the cost of establishing the necessary records, and a $20 plate fee that covers the cost of plate manufacture and supply. The following numbers of traders' plates are currently on issue as at September 1995: total recorded, but also including lapsed plates, are 5 426; general traders' plates amount to 2 972; and limited traders' plates amount to 738. The current total amounts to 3 710. The Registrar advises that revenue estimates assume that all current limited and general traders' plates would be replaced with the new plate along with some additional issues to result in 4 500 plates in total.

The Hon. T.G. Cameron: How many additional plates is that?

The Hon. DIANA LAIDLAW: We can add it up. 4 500 minus 3 710 equals 790.

The Hon. T.G. Cameron: Does that mean your new system will require current holders to get 790 additional plates?

The Hon. DIANA LAIDLAW: This would result in a revenue change from—

The Hon. T.G. Cameron: This is backdoor taxation.

The Hon. DIANA LAIDLAW: No, we are cleaning up the business as the police and others in the business seek. This will result in a revenue change from $667 000 to $733 000. The estimated cost to modify the computer system to implement these changes is $190 000; so, the changes to be implemented to get rid of the abuses, to clean up the system, in fact will cost more than we will gain in revenue. For the honourable member to suggest that this is a money making venture is hardly sound. The fees for traders' plates under this proposal are based—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: If the honourable member were quite for a moment he would perhaps be keen to learn that the fees for trade plates under the proposals I have outlined in the Bill are based on the user-pays premise. I am sure that he is pleased to learn that, because he would then recognise that it is not a revenue raising issue.

The ACTING PRESIDENT: I draw both members' attention to the fact that, if there is any disputation as a consequence of the Minister's concluding speech, it is best dealt with in the Committee stage.

The Hon. DIANA LAIDLAW: I also want to take issue with a remark or interjection that may not have been picked up earlier. When I was giving the figures for the total recorded number, the total current number, the proposed new number and also the revenue change, the honourable member suggested that those figures had changed from the earlier advice the Registrar had provided. That is not true. The figures I quote from today are those of today's date, 30 May. They are the same figures as were provided to the honourable member in February 1996. I do not have the date, but I have the briefing notes that were provided to him on that date. So, there has been no change in the estimates from the Registrar over the period of the past few months. I commend the Bill and thank members for their participation in the second reading.

Bill read a second time.

STATUTES AMENDMENT (SENTENCING OF YOUNG OFFENDERS) BILL

Adjourned debate on second reading.

(Continued from 10 April. Page 1299.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading. We have a number of questions which will be contained in our second reading speech and to which hopefully the Attorney can respond before the Bill goes into Committee. As members would be aware, the Youth Court system was set up under a Labor Government. The legislation to set up the system was based primarily on the interim report of the select committee to which the Attorney referred in his second reading speech. Family conferencing and a flexible approach to minor offences formed a crucial element in the new system. On the whole, the Young Offenders Act 1993 and the Youth Court Act 1993 have been deemed to be reasonably successful reforms.

The first issue I wish the Attorney to consider is the consequences of the sentencing philosophy of the Youth Court being substantially changed to incorporate the concept of general deterrence. I refer to clause 30 of the Bill. Does the Attorney anticipate that amendments to section 3 of the Young Offenders Act will lead to substantially longer periods of detention for young people, will it lead to more people being detained and will it lead to more sentences of actual imprisonment in the cases of young people who are dealt with as adults in the court system? There is also a general criminological question whether general deterrence in sentencing will have any real impact on young offenders, many of whom commit crimes on impulse rather than as a considered and rational course of action.

Clause 45 adds a further subsection to the existing section 36 of the Young Offenders Act. The new subsection provides that young people who have served a sentence of detention or imprisonment in a training centre must be transferred to prison if they are further sentenced to a term of imprisonment committed after turning 18 years of age, where that term of imprisonment is to be served concurrently with the existing sentence. This transfer to an adult institution must take place in the terms of clause 45, unless the sentencing court directs otherwise. The question is whether we as a Parliament should give the courts some guidance as to what reasons a sentencing court could have to commit a young adult to continue with imprisonment in a young offenders institution. Some of the reasons are fairly obvious; for example, there may be psychological or health risks peculiar to a particular 18 year old offender which would best be minimised by permitting the youth to continue in the detention centre where that person currently serves his or her sentence.

Also, some individuals may be especially vulnerable to the risk of harm in an adult prison perhaps due to their immaturity or for a number of other reasons. The Opposition is concerned that the Bill does not give a sentencing court sufficiently broad discretion in respect of these matters. Perhaps some of these factors should be spelt out for consideration by the courts.

Clause 47 proposes to insert a new section 37A in the Young Offenders Act. The new section concerning home

detention in respect of young offenders provides an opportunity to raise an important issue regarding home detention. There appears to be a lack of statutory criteria to guide courts as to when home detention might be appropriate or inappropriate. In many but not all cases, parents will be present in court at the sentencing of a young offender, but that will not necessarily guarantee that the place in which a young person is to serve out home detention is a suitable environment in which that young person can improve their behaviour. Can the Attorney guarantee that the court or the Family and Community Services officers on behalf of the court are ensuring and will ensure that the residential environment is appropriate for each youth offender subject to a home detention order?

Many of the matters I have raised will be of particular importance to young Aboriginal offenders. The Opposition was pleased to receive some particularly useful submissions from the Aboriginal Rights Movement concerning these matters. For young Aboriginal offenders particularly, the introduction of general deterrents as an important factor in sentencing might serve only to overshadow the special consideration which the social and cultural background of young Aboriginal offenders requires. As the Attorney would be aware, the Royal Commission into Aboriginal Deaths in Custody highlights the need for these cultural specific factors to be considered by the courts in sentencing. Needless to say, the Opposition is not suggesting that young offenders of any particular group in society should be let off more lightly than others, but the point is that the punishment for a particular individual should fit the crime committed by that individual in the context of that individual's social and cultural background.

As members would appreciate, the Opposition has some questions about the impact of this Bill. We look forward to the Attorney's response to these matters before the Bill proceeds to the Committee stage. Finally, I point out that the Opposition will happily support most of the amendments in the Bill, many of which are obviously designed to make the system work more efficiently and, in some cases, are simply matters of improved drafting. I support the second reading.

The Hon. SANDRA KANCK secured the adjournment of the debate.

BANK MERGER (BANKSA AND ADVANCE BANK) BILL

Adjourned debate on second reading.

(Continued from 29 May. Page 1456.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading. In his second reading speech in another place, the Treasurer adequately described the historical background of this Bill and the creation of BankSA. This Bill takes BankSA into another stage of its life following the purchase of BankSA by Advance Bank in the middle of last year. The shadow Treasurer in another place has examined the Bill in some detail and he sees no problem with it. I understand there is some urgency in getting this Bill through. As usual, the Opposition, contrary to the remarks made by the Premier, is pleased to cooperate. There is little that I need to add. It will be just as well to get this Bill through so that BankSA and its parent, Advance Bank, can get on with the development of BankSA's successful operations in this State.

The Hon. SANDRA KANCK secured the adjournment of the debate.

STATUTES AMENDMENT (MEDIATION, ARBITRATION AND REFERRAL) BILL

Consideration in Committee of the House of Assembly's amendments:

No. 1 Clause 4, page 2, after line 10—Insert new paragraph as follows:
(ba) by inserting in subsection (3) 'by mediation' after 'action';

No. 2 Clause 7, page 3, after line 4—Insert new paragraph as follows:
(ba) by inserting in subsection (3) 'by mediation' after 'action';

No. 3 Clause 10, page 3, line 37—Insert 'by mediation' after 'settle a proceeding'.

No. 4 Clause 10, page 4, line 19—Insert 'a referee who is' after 'report by'.

No. 5 Clause 11, page 4, line 34—Insert '(whether appointed under section 67 or otherwise)' after 'expert'.

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

That the House of Assembly's amendments be agreed to.

It might be helpful if I briefly explain the rationale for the amendments. The first amendment is to the District Court Act. It clarifies the distinction between a judge or master who attempts to settle a proceeding or to resolve issues between the parties in an informal manner, and a mediator who presides over a formal mediation conference in an attempt to settle a proceeding or to resolve issues in dispute.

In the first instance, the judge or master is not disqualified from taking further part in the proceeding, and therefore evidence of anything said or done at the commencement or during the course of the hearing is admissible. In the second instance, a mediator is disqualified from hearing a matter if issues cannot be resolved, and anything said or done during the mediation is subsequently not admissible at the hearing. Hence the insertion of the words 'by mediation'. Subsection (3) of section 32 will now read:

> Evidence of anything said or done in an attempt to settle an action by mediation under this section is not subsequently admissible in the proceedings or in related proceedings.

The second amendment is to the Magistrates Court Act and clarifies the distinction between informal discussions and formal mediation hearings in relation to the admissibility of evidence. The third amendment is an amendment to the Supreme Court Act which does the same in relation to the Supreme Court.

The fourth amendment deals with section 67 of the amending Act. It empowers the Supreme Court to appoint an expert who then becomes an officer of the court. Rule 82.01 of the Supreme Court Rules invests the court with the power to appoint an independent expert for the purposes of providing a report to the court where the court believes that independent evidence is required. The expert in the latter case does not become an officer of the court but simply provides independent evidence to the court. The amendment seeks to make a clear distinction between an expert appointed pursuant to section 67 and an expert appointed pursuant to rule 82.01, hence the insertion of the words 'a referee who is an expert'.

The last amendment deals with the inclusion of the words 'whether appointed under section 67 or otherwise'. It simply flows as a matter of consequence from the amendment to section 67. It allows the Supreme Court to makes rules of court in relation to experts whether appointed pursuant to

section 67 or pursuant to rule 82.01. The amendments, I believe, are not controversial. They are of a technical nature, having arisen as the result of further consideration of the Bill by judges of the Supreme Court. I am pleased to be able to move agreement to these amendments.

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

Motion carried.

NATIONAL ELECTRICITY (SOUTH AUSTRALIA) BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

The National Electricity (South Australia) Bill heralds a new era for competitive trading and regulation of the generation, transmission, distribution and supply of electricity in south eastern Australia.

The plans for developing a coordinated electricity grid spanning the eastern States have been in the making since the Special Premiers' Conferences of October 1990 and July 1991. These conferences led to the formation of the National Grid Management Council and subsequently to the publication of a discussion paper in October 1993 which recommended a range of regulatory arrangements for the national electricity grid consistent with reforms of competition policy. The Council of Australian Governments agreed to these recommendations in February 1994.

On 9 May 1996 Ministers representing New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory signed a series of intergovernment agreements to give effect to those recommendations.

The regulatory arrangements for the national electricity market will principally consist of a uniform National Electricity Law and National Electricity Code applying in each participating jurisdiction. The National Electricity Law will be enabled by application of laws legislation in each participating jurisdiction and the National Electricity Code will be effective pursuant to the National Electricity Law.

Because of the nature of the market arrangements under the Code care needs to be taken to prevent anti-competitive practices or processes. Accordingly, the Australian Competition and Consumer Commission will be requested to authorise the National Electricity Code in relation to Part IV of the Trade Practices Act of the Commonwealth. The Code will also be lodged with the Commission as an access undertaking in relation to Part IIIA of the Trade Practices Act.

The Code will be a living document subject to some degree of change. It may require amendment to accommodate requirements of the Australian Competition and Consumer Commission made in the course of the authorisation process under the Trade Practices Act. It will inevitably require changes as market practices evolve over time. The Code as currently drafted (which will be tabled in this place) remains subject to further technical drafting changes and to signing-off by Ministers in the relevant jurisdictions as set out in the Intergovernmental Agreement on the National Electricity Market Legislation. Updated versions of the Code will be tabled in Parliament when they become available.

South Australia vigorously pursued and won the role of lead legislator. As such, South Australia is responsible for enacting the National Electricity Law as a schedule to this Bill. The National Electricity Law will be incorporated into the law of South Australia by clause 6 of this Bill. New South Wales, Victoria, Queensland and the Australian Capital Territory will enact legislation similar to Part 2 of this Bill which will have the effect of applying the National Electricity Law, as in force from time to time, as part of the law of their jurisdictions. This will ensure the consistent application of the National Electricity Law and amendments to it in each jurisdiction.

All States and Territories that are electrically interconnected now, or can be interconnected within the foreseeable future will be able to participate in the national electricity market. Currently the transmission networks of New South Wales, Victoria, South Australia and the Australian Capital Territory are interconnected. Queensland and Tasmania may become connected to the existing grid in the foreseeable future. Western Australia and the Northern Territory will not participate in the national electricity market because the long transmission distances involved make efficient interconnection difficult.

When established, the national electricity market will be a competitive wholesale electricity market comprising a comprehensive and integrated set of wholesale trading arrangements applying in the participating jurisdictions. It will enable electricity produced by generators to be traded through a common electricity pool serving the interconnected States and Territory. The dispatch of electricity from generators with an output greater than 30MW will be co-ordinated by a newly formed national organisation established by the participating jurisdictions, National Electricity Market Management Company Limited—NEMMCO, under a multi-State system control process.

Contestable customers, determined according to processes adopted by individual participating jurisdictions, will be able to choose to purchase in the wholesale market or in the retail market from a retailer or trader. Contestable customers purchasing in the wholesale market will be able to enter into financial hedging arrangements with any counterparty, including generators, retailers and traders. A pool settlement function will have the capacity to handle spot market forward trading within the wholesale pool.

This Bill also empowers the Governor of South Australia to make regulations with respect to any matter necessary to give effect to the National Electricity Law but only on the recommendation of the Ministers of the participating jurisdictions. Certain regulations of a machinery nature may be made on the recommendation of a majority of the Ministers.

A National Electricity Tribunal will be established by this Bill, as a statutory tribunal of South Australia, with two principal functions. The first will be to review the decisions of the two bodies which administer the National Electricity Law and the National Electricity Code, namely, NEMMCO and the other national organisation, also established by the participating jurisdictions, the National Electricity Code Administrator Limited—NECA. The other principal function will be to order sanctions for breaches of the National Electricity Code on application by NECA.

The Bill makes it clear that NECA and NEMMCO and any body when acting as an agent of NECA or NEMMCO under the National Electricity Code will not be subject to South Australia's Freedom of Information Act.

The National Electricity Law set out in the schedule to the Bill provides that the States of New South Wales, Victoria, Queensland and South Australia together with the Australian Capital Territory will be the initial participating jurisdictions for the purposes of the National Electricity Law. Any of those jurisdictions other than South Australia will, however, cease to be a participating jurisdiction if it does not enact and bring into force a law corresponding to Part 2 of the Bill within two years after enactment of the Bill or if it repeals such a law. The law also provides for a non-participating jurisdiction to become a participant by undertaking to be bound by the terms of the Agreement entered into with all participating jurisdictions and by enacting and bringing into effect legislation corresponding to Part 2 of this Bill.

Part 2 of the National Electricity Law provides for the approval by Ministers of each participating jurisdiction of a National Electricity Code as the Code for the purpose of the National Electricity Law. The Code will define the terms of participation in the national electricity market for generators, transmission and distribution network owners, service providers, system operators, retailers, other market participants and customers. Specific National Electricity Code chapters will deal with connection and access arrangements to networks, rules for the operation of the wholesale electricity market, the provision of network services, metering, the security of the interconnected power system and the administration of the National Electricity Code itself through enforcement, dispute resolution and a process to change the National Electricity Code.

This Part also provides for NECA to make available copies of the National Electricity Code to assist participants and others to gain access to the Code and changes to the Code.

Part 3 of the National Electricity Law regulates relevant activities in the national electricity market. The activities regulated will be the ownership, control or operation of generation systems and transmission or distribution systems, the administration or operation of a wholesale market for electricity by a person other than NECA or

NEMMCO and the purchase of electricity from a wholesale market. A person will only be able to engage in such an activity if the person is registered or authorised by NEMMCO to do so or is exempt from the requirement to be registered or authorised.

Part 4 of the National Electricity Law contains provisions governing enforcement of the National Electricity Code.

Part 5 of the National Electricity Law creates a scheme for the review by the Tribunal of decisions of NEMMCO and NECA and describes the Tribunal's jurisdiction and powers to deal with breaches of the Code and the procedures to be followed in proceedings before the Tribunal. It also describes the way in which members of the Tribunal will be appointed and the terms of their appointment.

Part 6 of the National Electricity Law provides for the creation of statutory funds by NECA and NEMMCO.

Finally, Part 7 of the National Electricity Law provides for the issue of search warrants in limited circumstances and for NEMMCO to have certain powers of intervention in respect of the power system for reasons of public safety or security of the electricity system. A provision of this Part also creates a rule to apply uniformly in the participating jurisdictions governing liability for failures of electricity supply. Under the provision, a Code participant will not be liable for failure to supply electricity unless the failure is due to an act or omission by the Code participant in bad faith or the negligence of the Code participant. This rule may be modified by contract.

Explanation of Clauses

PART 1—PRELIMINARY

Clause 1 is formal.

Clause 2 is a commencement provision.

Clause 3 contains a number of definitions for the purposes of the measure.

Clause 4 provides that the measure, the *National Electricity (South Australia) Law* and the *National Electricity (South Australia) Regulations* are to bind the Crown.

Clause 5 provides for the extra-territorial effect of the measure, the *National Electricity (South Australia) Law* and the *National Electricity (South Australia) Regulations*.

PART 2—NATIONAL ELECTRICITY (SOUTH AUSTRALIA) LAW AND NATIONAL ELECTRICITY (SOUTH AUSTRALIA) REGULATIONS

Clause 6 applies the National Electricity Law set out in the schedule as a law of South Australia. The clause also provides that the Law as so applying may be referred as the *National Electricity (South Australia) Law*.

Clause 7 provides that the regulations in force under Part 4 apply as regulations in force for the purposes of the *National Electricity (South Australia) Law* and, as so applying, may be referred to as the *National Electricity (South Australia) Regulations*.

Clause 8 contains a number of definitions for the purposes of the *National Electricity (South Australia) Law* and the *National Electricity (South Australia) Regulations*.

PART 3—ESTABLISHMENT OF NATIONAL ELECTRICITY TRIBUNAL

Clause 9 establishes the National Electricity Tribunal.

PART 4—POWER TO MAKE REGULATIONS UNDER NATIONAL ELECTRICITY LAW

Clause 10 is an interpretation provision for the purposes of Part 4.

Clause 11 enables the Governor to make regulations to give effect to the National Electricity Law on the unanimous recommendation of the Ministers of the participating jurisdictions. Regulations relating to the matters specified in clause 12 may, however, be made on the recommendation of the majority of the Ministers of the participating jurisdictions. In view of the interstate application of laws scheme for this legislation, Parliamentary disallowance of the regulations is excluded.

Clause 12 specifies as subject matters for the regulations arrangements for making the National Electricity Code publicly available and matters relating to the Tribunal under Part 5.

Clause 13 deals with civil penalties for breaches of the National Electricity Code. Under the clause regulations may prescribe provisions of the Code as Class A, Class B or Class C provisions. A Class A provision will be a provision in respect of which a civil penalty, not exceeding $20 000, may be demanded by NECA in the event of a breach of the provision. A Class B provision will be a provision for a breach of which the Tribunal may impose a civil penalty not exceeding $50 000 and $10 000 for each day that the breach continues. A Class C provision will be a provision for a breach of which the Tribunal may impose a civil penalty not exceeding $100 000 and $10 000 for each day that the breach continues.

PART 5—GENERAL

Clause 14 provides that NECA and NEMMCO and an agent of NECA or NEMMCO (with respect to functions performed under the Code) will be exempt agencies for the purposes of the *Freedom of Information Act 1990*.

SCHEDULE

National Electricity Law

PART 1—PRELIMINARY

Clause 1 states that the Law may be cited as the *National Electricity Law.*

Clause 2 states that the Law is to commence in accordance with provision under the *National Electricity (South Australia) Act 1996.*

Clause 3 contains the principal definitions of words and expressions used in the Law.

Clause 4 states that Schedule 1 contains miscellaneous provisions relating to interpretation of the Law.

Clause 5 sets out the States that are taken to be participating jurisdictions for the purpose of the Law and the circumstances in which another jurisdiction may become a participating jurisdiction or a participating jurisdiction will cease to be a participating jurisdiction.

PART 2—NATIONAL ELECTRICITY CODE

Clause 6 provides for approval of the initial National Electricity Code by the Ministers of the participating jurisdictions, and for notice to be given of that approval and of any amendment of the Code. The clause also contains evidentiary provisions as to the contents and making of amendments of the Code.

Clause 7 provides that certain provisions of the Code are to prevail in the event of inconsistency with other provisions of the Code and that those provisions may not be amended without unanimous approval of the Ministers of all the participating jurisdictions.

Clause 8 sets out the requirements for availability of the Code.

PART 3—REGISTRATION WITH NEMMCO

Clause 9 requires any person owning, controlling or operating a transmission or distribution system for supply of electricity to wholesale or retail customers that is connected to another such system to be registered by NEMMCO in accordance with the Code unless that person is the subject of a derogation or otherwise exempt under the Code from the requirement to be registered.

Similarly, any person owning, controlling or operating a generation system that supplies electricity to such a transmission or distribution system will be required to be registered by NEMMCO unless subject to such a derogation.

A person other than NECA or NEMMCO will be required to obtain authorisation under the Code in order to administer or operate a wholesale market for the dispatch of electricity generating units or loads.

A person will also be required to be registered with NEMMCO in order to purchase electricity from the wholesale market for the dispatch of electricity generating units or loads unless that person is the subject of a derogation or otherwise exempt under the Code from the requirement to be registered.

A breach of this provision is to attract a maximum penalty of $100 000 and $10 000 for each day that the offence continues.

PART 4—PROCEEDINGS AND CIVIL PENALTIES

Clause 10 prohibits proceedings from being brought against a person to whom the Code applies in respect of an alleged contravention of the Code unless the Law or the Code recognises that the contravention gives rise to an obligation or liability to the person bringing the proceedings. NECA may, however, bring proceedings against Code participants for any alleged contraventions of the Code.

In proceedings alleged contraventions of the Code may only be relied on by NECA, or by a Code participant in relation to another Code participant.

Clause 11 enables NECA to demand, by notice in writing, the civil penalty prescribed by regulation for a breach of a Class A provision of the Code. If a penalty so demanded is not paid within 28 days and no application is made for review of NECA's decision to demand the penalty, NECA may apply to the Tribunal under Part 5 for an order for payment of the penalty.

Clause 12 provides that NECA may apply to the Tribunal for an order under Part 5 if NECA considers a Code participant to be in breach of a provision of the Code.

Clause 13 requires civil penalties paid to NECA to be paid into the civil penalties fund established by NECA under Part 6.

Clause 14 provides that an order of the Tribunal for payment of a civil penalty may be registered and enforced in a court with jurisdiction for recovery of debts up to the amount of the penalty.

Clause 15 provides that an amount due by a Code participant to another Code participant which is not paid within 28 days after it is due in accordance with the Code may be recovered in a court of competent jurisdiction.

PART 5—NATIONAL ELECTRICITY TRIBUNAL

DIVISION 1—TRIBUNAL

Clause 16 provides that the Tribunal is the National Electricity Tribunal to be established under Part 3 of the *National Electricity (South Australia) Act 1996* and that the Tribunal has the functions and powers conferred on it under the national electricity legislation.

Clause 17 provides that the functions of the Tribunal are—

- to review decisions of NECA under clause 11 and decisions of NECA or NEMMCO that are, under the national electricity legislation or the Code, reviewable decisions;
- to hear and determine applications to the Tribunal by NECA alleging breaches of the Code by Code participants.

The clause spells out that a decision of NECA not to bring proceedings in respect of a Code breach will not be reviewable.

Clause 18 provides for the composition of the Tribunal.

Clause 19 provides for appointments to the Tribunal to be made by the Governor of South Australia on the recommendation of a majority of the Ministers of the participating jurisdictions. Appointments are to be made on a part-time basis.

Clause 20 provides that the chairperson or a deputy chairperson of the Tribunal is to be a practitioner of the High Court or a Supreme Court of not less than five years' standing.

Clause 21 provides for the terms and conditions of appointment of a member of the Tribunal.

Clause 22 provides for the resignation and termination of the appointment of a member of the Tribunal.

Clause 23 provides for the appointment of an acting chairperson of the Tribunal and the terms and conditions of such an appointment.

Clause 24 requires the disclosure of conflicts of interest by the members of the Tribunal and provides for the non-participation of members in proceedings in which they are interested.

DIVISION 2—PROCEEDINGS BEFORE TRIBUNAL

Clause 25 enables the chairperson of the Tribunal to give directions as to the constitution of the Tribunal and the arrangement of the business of the Tribunal for particular proceedings.

Clause 26 requires the Tribunal to be constituted by the chairperson or a deputy chairperson or 2 or 3 members at least one of whom is the chairperson or a deputy chairperson.

Clause 27 deals with the situation in which a member ceases to be available for the hearing of a proceeding during the course of that hearing.

Clause 28 states that sittings of the Tribunal may be held at any place in a State or Territory that is a participating jurisdiction.

Clause 29 specifies the persons who will be parties to a proceeding before the Tribunal.

Clause 30 enables the Tribunal to decide whether the interests of a person are affected by a decision of NECA or NEMMCO and hence whether the person should be joined as a party to a proceeding for review of the decision.

Clause 31 enables a person to be represented before the Tribunal by some other person who need not be a legal practitioner.

Clause 32 provides for the Tribunal to follow an informal procedure in its proceedings and enables procedural directions to be given.

Clause 33 enables the chairperson of the Tribunal to direct the parties to a proceeding for the review of a decision to hold a conference. If agreement is reached by the parties at the conference, the Tribunal may make a decision in accordance with that agreement.

Clause 34 requires the proceedings of the Tribunal to be held in public. The Tribunal may, in appropriate circumstances, prohibit or restrict the publication or disclosure of evidence given before the Tribunal.

Clause 35 requires the Tribunal to give every party to a proceeding a reasonable opportunity to present its case, inspect relevant documents and make submissions in relation to those documents.

Clause 36 sets out the particular powers of the Tribunal for the purpose of a proceeding such as power to take evidence on oath or affirmation, to proceed in the absence of a party, to adjourn proceedings and to issue summonses.

Clause 37 enables the Tribunal to make an order staying or otherwise affecting the operation or implementation of a decision to which the proceeding before the Tribunal relates.

Clause 38 sets out the way in which questions arising in proceedings before the Tribunal are to be decided, that is, by majority opinion with questions of law being decided by the person presiding in the proceeding or by the chairperson.

Clause 39 enables the Tribunal, in a proceeding on an application for review of a decision, to dismiss the application if the applicant fails to appear at a conference or a hearing of the proceeding or to strike out a party who fails to appear at a conference or a hearing.

Clause 40 gives the Tribunal the power to do all things necessary for the hearing and determination of a proceeding.

Clause 41 sets out the powers that may be exercised by the Tribunal for the purpose of reviewing a decision. It also provides that decisions of the Tribunal are to be in writing and when they come into effect.

Clause 42 requires the Tribunal to give written reasons for a decision made by it.

Clause 43 provides that a person whose interests are affected by a reviewable decision may apply to the Tribunal for review of the decision, and sets out the time frame for making such an application.

Clause 44 sets out the orders that the Tribunal may make where NECA applies to the Tribunal alleging a breach of the Code by a Code participant. The orders include orders imposing civil penalties up to the levels described in the note relating to clause 13 of the Bill, orders of an injunctive nature and orders suspending the registration of Code participants or other rights of Code participants under the Code.

Clause 45 empowers the Tribunal to order a Code participant to pay an unpaid amount demanded by NECA as a civil penalty. The clause makes it clear that any enquiry as to whether the breach occurred must take place in a proceeding for review of NECA's decision to demand payment of the civil penalty and not in the proceedings for recovery of the penalty.

Clause 46 makes provision for appeals to the Supreme Court against decisions of the Tribunal on questions of law, including any question as to whether a person's interests are affected by a decision of NECA or NEMMCO.

Clause 47 enables the Supreme Court to make an order staying or otherwise affecting the operation or implementation of a decision of the Tribunal that is the subject of an appeal to the Supreme Court.

Clause 48 enables the Tribunal to refer a question of law arising in a proceeding before the Tribunal to the Supreme Court.

Clause 49 enables the Tribunal to direct a party to a proceeding to pay the costs of the proceeding. In the absence of such a direction, each party is to bear its own costs.

Clause 50 gives a member of the Tribunal, a person representing a party before the Tribunal, and a person summoned to attend or appear before the Tribunal the same protection and immunity as if the proceeding were a proceeding in the High Court.

Clause 51 makes it an offence if a person who is summoned to appear fails to appear as a witness before the Tribunal without reasonable excuse (maximum penalty: $5 000).

Clause 52 makes it an offence if a person appearing as a witness before the Tribunal refuses to be sworn or to answer a question or produce a document without reasonable excuse (maximum penalty: $5 000).

Clause 53 provides a penalty for a person appearing as a witness before the Tribunal who knowingly gives evidence that is false or misleading (maximum penalty: $10 000).

Clause 54 creates offences dealing with contempt of the Tribunal (maximum penalty: $10 000).

Clause 55 prohibits a person from obstructing or improperly influencing the conduct of a hearing of the Tribunal (maximum penalty: $10 000).

Clause 56 prohibits a person from contravening an order of the Tribunal under clause 34 restricting publication of confidential material (maximum penalty: $50 000) or any other order of the Tribunal (maximum penalty: $20 000).

Clause 57 exempts a person from giving evidence or producing a document in a court if to do so would be contrary to an order of the Tribunal under clause 34 restricting publication of confidential material.

Clause 58 provides for the payment of allowances and expenses to witnesses appearing before the Tribunal.

DIVISION 3—MISCELLANEOUS

Clause 59 states that the chairperson of the Tribunal is responsible for managing the administrative affairs of the Tribunal.

Clause 60 requires that there be a Registrar and Deputy Registrar of the Tribunal in each participating jurisdiction appointed and employed by NECA.

Clause 61 requires the chairperson of the Tribunal to submit a draft budget to NECA for each financial year. NECA is to determine the budget but may only vary it with the agreement of the Tribunal's chairperson or the approval of a majority of the Ministers of the participating jurisdictions.

Clause 62 requires NECA to provide funds to the Tribunal in accordance with the Tribunal's budget.

Clause 63 requires the chairperson of the Tribunal to provide an annual report to the Minister of each participating jurisdiction.

Clause 64 enables the chairperson of the Tribunal to delegate his or her powers.

PART 6—STATUTORY FUNDS OF NECA AND NEMMCO

Clause 65 provides definitions for this Part of the National Electricity Law.

Clause 66 makes provision for NECA to establish a civil penalties fund, into which all civil penalties received or recovered by NECA under the national electricity legislation will be paid. Payments out of the fund are also governed by this provision.

Clause 67 makes provision for NEMMCO to establish and maintain Code funds as required by the Code. The Code will contain provisions governing payments into and out of the funds.

Clause 68 enables NECA and NEMMCO to invest money standing to the credit of the civil penalty fund and the Code funds.

Clause 69 declares that neither NECA or NEMMCO, nor a director of NECA or NEMMCO, is a trustee or trustees of the money in the civil penalty fund or the Code funds.

Clause 70 states that in the winding up of NECA or NEMMCO money in the civil penalty fund and the Code funds will be applied in accordance with the Corporations Law in discharging debts and claims but only to the extent that the debts or claims are liabilities referrable to those funds.

PART 7—GENERAL

Clause 71 makes provision for a person authorised by NECA to obtain a search warrant from a Magistrate conferring power to enter and search for things reasonably suspected of being connected with a breach of the Code.

Clause 72 requires the person executing a search warrant first to attempt to obtain permission for entry from any person at the place to which the warrant relates unless there is reason to believe that immediate entry is required to ensure the safety of a person or the effective execution of the warrant.

Clause 73 requires a person executing a search warrant to identify himself or herself to the occupier or a person apparently representing the occupier at the place to which the warrant relates and to give a copy of the warrant to such a person.

Clause 74 sets out various further powers of a person executing a search warrant such as power to inspect, examine or photograph anything in the place to which the warrant relates and power to take extracts from and copy documents.

Clause 75 allows the person executing a search warrant to seize things connected with a breach of the Code other than the things named or described in the warrant if there are reasonable grounds to believe that the seizure of the things is necessary to prevent their concealment, loss or destruction or their use in further breaches of the Code.

Clause 76 provides that NEMMCO may, for public safety or electricity system security purposes, authorise a person to switch off or re-route a generator, to call equipment into service or take equipment out of service or to exercise other similar powers.

Clause 77 makes it an offence if a person, without reasonable excuse, obstructs or hinders a person in the exercise of a power under a search warrant or a power under clause 76.

Clause 78 provides that, subject to any agreement to the contrary, a Code participant will not be liable in damages for any partial or total failure to supply electricity unless the failure is due to anything done or omitted to be done by the Code participant in bad faith or to the negligence of the Code participant.

Clause 79 provides for a certificate signed by a director of NECA to be evidence of a person's status as a Code participant.

Clause 80 provides that where a corporation contravenes the National Electricity Law or Regulations or is in breach of the Code, each officer of the Corporation will also be guilty of that contravention or breach if he or she knowingly authorised or permitted the contravention or breach.

Clause 81 makes it clear that for the purpose of determining the civil penalty for a Code breach that consists of a failure to do something that is required to be done, the breach is to be regarded as continuing until the act is done despite the fact that any period within which or time before which the act is required to be done has expired or passed.

SCHEDULE 1

Miscellaneous Provisions Relating to Interpretation

Schedule 1 contains uniform interpretation provisions of a kind which are usually contained in the Interpretation Act of a State or Territory.

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

ELECTRICITY CORPORATIONS (GENERATION CORPORATION) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Members may recall the passage of the *Electricity Corporations Act* in November 1994 when the most fundamental restructure of ETSA since its formation in 1946 was contemplated. It is interesting to note that in September this year, ETSA will celebrate its 50th year of service to the community of South Australia. It is a proud record of achievement that the Electricity Trust has recorded as testimony to Sir Thomas Playford's aspirations.

Members would also be aware of the intense pressure applied by the previous Federal Government and the New South Wales and Victorian participants in the electricity supply industry for South Australia to vary its structure to become more aligned with the competition principles agreed at COAG by the Premiers.

What we have in ETSA at present is a "holding company", ETSA Corporation, beneath which there are four subsidiaries formed in line with the provisions of the *Public Corporations Act*. They are—

ETSA Power (the distribution and retail business);

ETSA Generation (Leigh Creek coalfield, Port Augusta and Torrens Island power stations);

ETSA Transmission (the transmission and system control functions); and

ETSA Energy (gas supplies, alternative energies).

These subsidiaries were gazetted on 29 June 1995.

Although it was the Government's opinion that the existing structure was appropriate, it became apparent that the COAG requirements, along with the attitudes of the Commonwealth, NSW and Victorian State Governments, would stand in the way of South Australia entering the National Electricity Market, and so possibly not qualify for the full competition policy compensation payments from Canberra. The Government therefore invited the Industry Commission to review the structure of ETSA.

Members may have noticed that the Industry Commission Report was released by the Government on Monday 29 April 1996. At the same time, the Government's intentions regarding that report's recommendations were announced.

The Industry Commission Report recommends that the generation functions be separated from ETSA Corporation. It also recommends, in a second phase of further disaggregation, either the separation of transmission and dividing ETSA Power into two or three independent retailers or the transfer of ETSA Power's retail activities to two or three independent retail businesses.

The Government does not accept the Industry Commission view on the second phase. They have not demonstrated that there are economic advantages to South Australia in adopting that course.

However, we cannot take the same position regarding generation. We have been advised that electricity generation costs may be as much as 15 per cent higher than they would be if ETSA Generation had to meet real competition for the South Australian market. This translates to a tariff effect of more than 6 per cent.

These potential benefits, and indeed any other benefits we can find, should be available to the commercial, industrial and domestic sectors of the South Australian economy from the earliest moment.

There are other issues at stake. Between 1997/98 and 2005-06, South Australia expects to receive from the Commonwealth Competition payments estimated to total $349 million in 1995-96 dollars. This money is dependent upon the State meeting the three-

stage conditions of payment specified in the competition policy agreements. Reforms to facilitate the National Electricity Market are part of the first stage of those conditions. If South Australia fails to introduce these reforms during the life of the agreement, some or all of that money may be at risk. In addition, a component of Financial Assistance Grants, estimated to be worth $839 million to the State including a local government component, is linked to implementation of competition reforms. Implementation of this restructure will leave no room for argument that South Australia has complied with its obligations in this area, and will therefore help to ensure that the State receives all of this Commonwealth assistance.

The separation of generation could have been accomplished within the existing legislation simply by regulation.

The Government has instead decided to introduce a bill, mindful of the undertaking to the Opposition in November of 1994 that the matter of separation would be brought back to the Parliament.

At that time, in answer to a question from the Opposition, we estimated that it could be 3 to 5 years before the step was necessary. We also said that the circumstances around the National Electricity Market can change rapidly.

It is our intention to have the South Australian Generation Corporation operational by 1 January 1997. The advantages of that will be that the two separate corporations will have the opportunity to "bed down" before South Australia commences participation in the full National Electricity Market. Secondly, it will demonstrate South Australia's *bona fides* regarding competition compensation payments to leave no opportunity for discounting by Canberra.

The provision in the *Electricity Corporations Act* for the transfer of staff to SA Generation Corporation guarantees the continuation of the existing terms and conditions of employment for staff transferred to the new Corporation. However, the creation of two separate corporations requires some amendment to Schedule 1 of the *Electricity Corporations Act* dealing with superannuation to facilitate this. The ETSA Superannuation Fund will need to become an industry fund. Therefore, provisions need to be made for all electricity corporations to ensure that the liabilities of the Fund are met.

There has been much said by the Opposition about a privatisation agenda. We said, in answer to a question on 16 November 1994 (*Hansard* p. 1096), that the Government had no plans to privatise ETSA. It had no such agenda then nor does it now. We have repeated the position *ad nauseam*. It seems that the only way we can convince the Opposition of our position is to enshrine the Government's position in the legislation and we are prepared to do so.

I commend this bill to Honourable Members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 4—Interpretation

These amendments propose to insert a reference to SAGC (the SA Generation Corporation) and delete the obsolete reference to an electricity generation corporation in the definition of an electricity corporation.

Clause 4: Amendment of s. 5—Electricity generation functions

The first amendment is consequential on the establishment of SAGC as the electricity generation corporation. The second amendment makes it clear that an electricity generation corporation will have power to retail electricity generated by it. The third amendment to section 5 proposes to expand slightly the functions of SAGC to include in the list the carrying out of transport operations.

Clause 5: Amendment of s. 6—Electricity transmission corporation and functions

This clause amends section 6 of the principal Act to make it clear that electricity transmission and system control functions will include the generation of electricity for security of supply purposes.

Clause 6: Amendment of s. 7—Electricity distribution functions

This clause amends section 7 of the principal Act which sets out the functions which constitute electricity distribution functions for the purposes of the Act. Currently one of the functions is the generation of electricity on a minor scale or local basis. The limiting words are removed by the clause and provision is made to make it clear that electricity generated by a corporation with distribution functions may be supplied on a wholesale, retail or other basis.

Clause 7: Amendment of s. 10—Functions of ETSA

This is consequential on the establishment of SAGC. ETSA will no longer have electricity generation functions as these functions are to be the functions of SAGC.

Clause 8: Substitution of headings

This is a consequential amendment.

Clause 9: Substitution of ss. 20, 21 and 22

These amendments are consequential.

20. Establishment of SA Generation Corporation

New section 20 establishes SA Generation Corporation as a body corporate with perpetual succession and a common seal and the capacity to sue and be sued in its corporate name.

Clause 10: Amendment of s. 23—Application of Public Corporations Act 1993

This amendment is consequential and changes the reference to a generation corporation to a reference to SAGC.

Clause 11: Substitution of s. 24

24. Functions of SAGC

New section 24 provides that SAGC has electricity generation functions that it may perform within or outside the State.

Clause 12: Amendment of s. 25—Powers of SAGC

Clause 13: Amendment of s. 26—SAGC to furnish Treasurer with certain information

Clause 14: Amendment of s. 27—Common seal and execution of documents

These amendments are consequential and change references to the generation corporation to references to SAGC.

Clause 15: Amendment of s. 28—Establishment of Board

These are consequential amendments changing references to SAGC as well as changing the number of board members from 4 to 6. At least 2 members must be women and 2 men.

Clause 16: Amendment of s. 31—Remuneration

This amendment is consequential.

Clause 17: Amendment of s. 32—Board proceedings

This amendment in respect of a quorum of the board is consequential on the increase in membership of the board from 4 to 6.

Clause 18: Amendment of s. 33—Staff of SAGC

This amendment is consequential.

Clause 19: Insertion of s. 47A

47A. Limitation of power to dispose of certain assets

New section 47A provides that a transaction for the disposal of assets to which proposed section 47A applies cannot be made except on the authority of a resolution passed by both Houses of Parliament. The new section applies to a transaction if—

- it is a sale of assets of an electricity corporation consisting of electricity generation facilities or the whole or part of an electricity transmission system or electricity distribution system; and
- the sale is negotiated with a view to the operation of the assets as part of the South Australian electricity supply system by a person or body other than an electricity corporation.

Clause 20: Amendment of s. 48—Mining at Leigh Creek

These amendments are consequential.

Clause 21: Amendment of schedule 1

Schedule 1 deals with the superannuation schemes for electricity corporations. Currently provision is made under the schedule for the creation of subdivisions of the ETSA Superannuation Fund. Subdivisions have not in fact been created and the amendments are designed to replace references to subdivisions with references to divisions of the Fund to reflect this fact. If subdivisions are subsequently created then, under the amendments, references to divisions will be required to be read as references to subdivisions.

An amendment is made to clause 9(4) of the schedule so that it no longer specifies that the periodic contributions (reflecting the contributions paid to the Treasurer by contributors) be paid into the ETSA Superannuation Fund from the Consolidated Account. Instead the practice followed will be for contributions to be paid into a special deposit account at the Treasury and subsequently paid out of that account into the ETSA Superannuation Fund.

Provision is made by the clause to relieve the Superannuation Board of the need to keep contributors' accounts for persons in receipt of pensions under the contributory scheme. The current requirement for such accounts serves no practical purpose.

In addition, the clause inserts a new provision under which an electricity corporation will, if the superannuation Rules so provide, be required to establish at the Treasury funds for the purpose of setting aside money to be applied towards meeting liabilities of the corporation that arise from time to time by virtue of the contributory scheme or a non-contributory scheme. The money in such a fund will be invested by the ETSA Superannuation Board.

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

ELECTRICITY CORPORATIONS (SCHEDULE 4) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

The generation, transmission and distribution of electricity has been traditionally performed by one utility. However, with the restructure of the electricity industry in South Australia with a view to making the industry more competitive, subsidiaries of ETSA Corporation established by Regulations under the Public Corporations Act will perform these functions with ETSA Corporation operating as a holding corporation. As a consequence, many of the provisions relating to ETSA now have to be modified to apply to the electricity corporations or the electricity corporation that is carrying out the function, previously only carried out by ETSA. To effect this, this Bill comprehensively amends Schedule 4 of the Electricity Corporations Act.

In particular, the present immunity for discontinuance or failure of supply will now apply to all electricity corporations. This is also the case with the limited liability in relation to vegetation clearance and, to remove any doubt, whether the vegetation clearance work is carried out by an electricity corporation or a contractor on behalf of the electricity corporation. This is most important in keeping insurance premiums to a minimum and keeping electricity charges low.

Further restructuring is contemplated with the presentation of a Bill for the establishment of a separate Generation Corporation before the house. This Bill is independent of the separation of Generation Corporation yet consistent with it.

These amendments will ensure the electricity corporations can carry out their functions in the same way ETSA Corporation has to date been operating.

The application of the Public Corporations Act to ETSA Corporation with its corporatisation on 1 July 1995 led to the implementation of a tax equivalent regime whereby taxes and charges including council rates are paid to Treasury. The consequent loss in council revenue could have affected some councils' revenue base but for the fact that ETSA Corporation was exempted by the Treasurer from having to pay rates to Treasury and could, instead, continue the previous arrangement of paying councils direct. The payment of rates direct to councils is similar to arrangements which apply to electricity authorities interstate and the valuation arrangements are also in line with usual practice in respect to other utilities and manufacturing industry.

I commend this Bill to Honourable Members.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure is to be brought into operation by proclamation.

Clause 3: Insertion of s. 48A

This clause reinstates a provision that was contained in the now repealed *Electricity Trust of South Australia Act 1946* providing for the liability of ETSA to council rates. The proposed new section 48A provides that any electricity corporation will be liable to rates in respect of land and buildings of the corporation but not in respect of plant or equipment or easements, rights of way or other similar rights used or operating in connection with the corporation's electricity generation, transmission or distribution activities.

This liability will apply in place of the current provision for council rate equivalent payments to be made to the Treasurer under the *Public Corporations Act 1993*.

Clause 4: Amendment of schedule 4

Schedule 4 of the principal Act contains various powers, duties and immunities conferred on or relating to ETSA that were contained in the former *Electricity Trust of South Australia Act 1946*.

Under section 4 of the Act, "electricity corporation" is defined as ETSA Corporation or any new corporation (with generation or transmission functions) established under Part 3 or 4 of the principal Act or any subsidiary of ETSA or of any such other corporation. Subsidiaries of ETSA have been established under the *Public Corporations Act 1993*.

The clause amends schedule 4 so that its various provisions apply not just in relation to ETSA but in relation to electricity corporations and, hence, the subsidiaries of the ETSA.

The provisions of schedule 4 amended by the clause relate to the following—

- power to compulsorily acquire land;
- power to excavate public places and lay and install cables and other equipment;
- power to cut off electricity supply in appropriate circumstances;
- immunity from civil liability in consequence of the cutting off of supply or a failure of supply;
- vegetation clearance rules and immunity from liability if the rules are complied with;
- powers of entry and inspection.

In addition, the clause amends clause 7(5) of schedule 4 which provides an immunity if the vegetation clearance principles are observed. This provision is amended to make it clear that the immunity exists with respect to vegetation clearance whether an electricity corporation carries out the work itself or the work is carried out by a contractor or other agent on behalf of an electricity corporation or by a council or other person pursuant to a delegation by an electricity corporation.

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

ADJOURNMENT

At 4.28 p.m. the Council adjourned until Tuesday 4 June at 2.15 p.m.